

O/0827/24

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. UK00003770153
BY RETURN TO RAGE LTD TO REGISTER:**

**Return to RAGE
RETURN TO RAGE
Return to Rage
(SERIES OF THREE)**

AS TRADE MARKS IN CLASSES 25, 35 & 41

AND

**IN THE MATTER OF THE OPPOSITION THERETO
UNDER NO. 436450 BY
KEVIN MILLINS**

BACKGROUND AND PLEADINGS

1. On 25 March 2022, RETURN TO RAGE LTD (“the applicant”) applied to register the series of trade marks shown on the cover of this decision (“the application”) in the UK for the goods in class 25 and services in classes 35 and 41, as set out in the Annex of this decision.
2. The application was published for opposition purposes on 24 June 2022 and, on 23 September 2022, it was partially opposed by Kevin Millins (“the opponent”). The opposition is based upon sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”) and is targeted only at the services in classes 35 and 41 of the application. In respect of the sections 5(2)(b) and 5(3) grounds, the opponent relies on the following marks:

Rage

UK registration no. 3030818

Filing date 6 December 2013; registration date 21 March 2014

Registered for the following services, namely:

Class 41: Arranging for ticket reservations for shows and other entertainment events; Arranging of music performances; Arranging of music shows; Arranging of musical performances; Arranging of music shows; Arranging of musical entertainment; Artistic management of musical shows.

(“the opponent’s first mark”); and

RAGE

UK registration no. 3749524

Filing date 31 January 2022; registration date 20 May 2022

Registered for the following services:

Class 41: Arranging, organizing, conducting, and hosting social entertainment events; Arranging of Concerts; Arranging of

Nightclub events: Arranging of music performances; Arranging of music shows; Arranging of DJ performances; Arranging of dance parties; Arranging of musical performances; Arranging for ticket reservations for shows and other entertainment events; Artistic management of musical shows; Nightclub services.

Class 43: Provision of food and drink; bar, restaurant and cafe services; all provided in nightclubs.

("the opponent's second mark").

3. Under the section 5(2)(b) ground, the opponent claims that the marks in the application consist of the dominant element 'RAGE', which is identical to his own marks. Further, the opponent claims that the class 35 and 41 services under the application are highly similar to identical to the class 41 services under both his earlier registrations and in light of the overall similarities, there exists a likelihood of confusion. The pleaded case of the opponent also relies upon a claim that his marks enjoy an enhanced degree of distinctive character.¹
4. The opponent's claim under the section 5(3) ground is that the earlier marks enjoy a reputation in respect all of their registered services. The opponent claims that the marks are similar, so too are the services at issue. As such, the opponent contends that consumers will consider that the marks are economically connected. As a result of the claimed reputation, the opponent argues that use of the application will take unfair advantage of his own marks, will be detrimental to those marks' reputation and/or their distinctive character.
5. Under the section 5(4)(a) ground, the opponent relies on the sign 'RAGE' which he claims to have been using in London since October 1988 in respect of the following services:

¹ While the pleadings refer to a reputation that increased the chances of confusion, this can be read as a claim of enhanced distinctiveness.

“Arranging, organizing, conducting, and hosting social entertainment events; arranging of concerts; arranging of nightclub events: arranging of music performances; arranging of music shows; arranging of DJ performances; arranging of dance parties; arranging of musical performances; arranging for ticket reservations for shows and other entertainment events; artistic management of musical shows; nightclub services.”

6. The opponent claims to have built up a significant goodwill due to his extensive prior use of the sign ‘RAGE’. The pleaded case, at question four, states that the opponent has used the sign throughout the UK, despite stating at question one that it has only been used in London. This is a point I will come to discuss further below, if necessary. The opponent claims that use of the applicant’s similar marks for highly similar or identical services will likely mislead the public into thinking that the services offered by the applicant originate from the opponent, with his consent or that the marks are economically connected. Such a misrepresentation, the opponent claims, will cause him damage, both financially and reputationally.
7. The applicant filed a counterstatement wherein it responded to each point raised by the opponent in his notice of opposition and sought to deny the same. The applicant also elected to put the opponent to proof of use for his first mark.
8. The opponent is represented by Lewis Silkin LLP and the applicant is unrepresented. Both parties filed evidence in chief and the opponent elected to file evidence in reply. I note that alongside both the opponent’s evidence in chief and evidence in reply, he also filed written submissions. No hearing was requested and neither party filed written submissions in lieu. This decision is taken after careful consideration of the papers.
9. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying

assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

EVIDENCE

10. The opponent's evidence came in the form of two witness statements in his own name dated 22 June and 23 October 2023, the latter statement being that which was filed in reply. The opponent's first statement was accompanied by 16 exhibits, being those labelled KM1 to KM16 and his second was accompanied by a further exhibit, being that labelled KM17.

11. The applicant's evidence came in the form of the witness statement of Fitzroy Heslop, a Director of the applicant. His statement is undated but I note that it was filed on 22 August 2022. Mr Heslop's statement is accompanied by 11 exhibits, being those labelled FH1 to FH11. I note that some of the exhibits filed by the applicant are the same as those filed by the opponent in his evidence in chief, see KM12 and FH1 and FH3.

12. I do not intend to summarise the documents filed by the parties in full here. However, I confirm that I have taken all filed documents into account and will summarise them to the extent that I deem necessary below.

DECISION

PRELIMINARY ISSUE

The alleged ownership of the 'RAGE' marks/brand

13. Throughout these proceedings, the applicant has sought to mention the entities that have owned the 'RAGE' marks throughout the period of use claimed of the opponent (being from 1988 onwards). For example, the applicant argues that the 'RAGE' mark, when it was actually in use, was registered under a different trade mark number and was owned by 'Pure Organisation', not the opponent. Further,

the applicant explains that the mark that was actually in use at that time expired on 27 April 1999. The evidence also claims that the company 'Pure Organisation' "had long since dissolved".² The applicant's argument is, therefore, that any use of 'RAGE' is not by the opponent. I note that in respect of this argument, there is evidence back and forth from both parties in respect of the same. While this evidence is noted, I will only seek to discuss it further in the event that it becomes necessary to do so. For example, if it transpires that there is genuine use of the opponent's first mark, I will discuss the evidence on this point in order to determine the identity of the user of the mark. However, if there is no genuine use, the issue as to the user is of no relevance. This same approach will apply to each evidential assessment wherein I am required to determine use (such as enhanced distinctiveness, reputation and goodwill).

My approach

14. Before proceeding to the substance of my decision, I wish to briefly set out here that even if the opponent fails in demonstrating genuine use for his first mark, the opposition will still proceed in reliance upon his second mark. This is because that mark is not subject to the proof of use assessment. Because of this, I have given consideration to whether such an assessment is even necessary. In the present circumstances, the services relied upon under the two marks of the opponent differ. While they do not differ considerably, I am of the view that it is beneficial to assess genuine use accordingly. Having said that, for reasons that will become obvious below, I am of the view that I can deal with the issue of genuine use relatively briefly.

Proof of use

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

² See paragraph seven of the witness statement of Fitzroy Heslop.

“(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.”

16. Section 6A is also relevant. It reads:

“(1) This section applies where:

(a) an application for registration of a trade mark has been published,

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

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

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

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

(3) The use conditions are met if –

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

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

(4) For these purposes –

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

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

(5)-(5A) [Repealed]

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

17. Section 100 of the Act is also relevant. It reads:

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

18. The opponent’s first mark completed its registration process over five years before the filing date of the application at issue. As a result, the opponent’s first mark is subject to the use assessment and, as set out above, the applicant requested that the opponent provide proof of use in respect of the same. As alluded to the above, the opponent’s second mark is not subject to the use provisions. This is because it did not complete its registration process more than five years prior to the filing date of the application. Therefore, the opponent can rely on all services highlighted in its notice of opposition under his second mark.

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

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

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

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

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

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

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

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

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

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

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods

can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

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

20. Pursuant to Section 6A of the Act, the relevant period for my assessment of genuine use is the five-year period ending with the filing date of the application, being 25 March 2022. Therefore, the relevant period for this assessment is 26 March 2017 to 25 March 2022 (“the relevant period”).

21. Proven use of a mark which fails to establish that “the commercial exploitation of the mark is real”³ because the use would not be “viewed as warranted in the economic sector concerned to maintain or create a share in the mark for the goods or services protected by the mark” is, therefore, not genuine use.

Evidence of use

22. The evidence of use from the opponent covers events from 1978 onwards. I appreciate that this is an extensive timeline, however, I note that the majority of the evidence from 1978 to the late 1980s relates to brands other than ‘Rage’, namely Final Solution, Heaven nightclub and Pure Organisation. Use in relation to these brands is not relevant here so I see no reason to discuss it in any detail. As for use of the ‘Rage’ brand itself, the bulk of this evidence relates to a ‘Rage’ event that the opponent founded and promoted in 1988. This was a nightclub event that took place at the Heaven nightclub every Thursday between October 1988 and June 1993. As above, the relevant period for the present assessment is March 2017 to March 2022. Therefore, none of the alleged use of the ‘Rage’ nightclub event for

³ *Jumpman* BL O/222/16

the years 1988 and 1993 are of assistance. It is clear from the evidence that this was the most intense period for which the mark was actually used.

23. There is reference to a further 'Rage' event that took place in September 2013 as part of the Red Bull 'Revolution in Sound' event. Regardless of what this event was, it took place before the relevant period so is of no assistance here. The evidence that follows the 'Revolution in Sound' event relates to an article by a Lauren Fintoni in July 2015.⁴ Not only was this before the relevant period but there is no indication of where this article was published (be that online, via a magazine or other publication). Instead, this article simply appears to be a record of a conversation involving people including the opponent, Fabio & Grooverider (which are the professional names of Fabio Heslop and Raymond Bingham), Trevor Fung and Storm, together with a number of posters for various 'Rage' events.

24. The only evidence before me that I can determine as relating to an activity that took place during the relevant period is a one-off event⁵ hosted by Fabio and Grooverider in 2019. The narrative evidence sets out that this event was called 'Return to RAGE'.⁶ I note that the event was put on with the opponent's permission, albeit under the name 'Pure Organisation'. It appears that the purpose of this event was to promote Fabio and Grooverider's album launch. While the event is noted and I appreciate that it appears to be in co-operation with and with the consent of the opponent, there is no information about the attendance at this event. On this point, I note that there is a Facebook post dated 15 December 2019 by Fabio and Grooverider (wherein they also tagged the opponent's account) which discusses the event having taken place a week before. I note that the post includes images of the event which show people in the crowd.⁷ While people were clearly in attendance, there is nothing to show how many. In addition, it is possible that some of the attendees were there as guests and not paying customers. On this point, I note that the evidence sets out that the opponent was a guest at the event,

⁴ KM3

⁵ Referred to as such as paragraph 20 of Mr Millins's first witness statement.

⁶ I have my reservations as to whether 'Return to RAGE' would constitute use of the opponent's mark as registered or whether it is an acceptable variant of the same. However, I will ignore this point for the purpose of this assessment.

⁷ KM9

alongside some other guests he was permitted to invite.⁸ Lastly, I note that the Facebook post I have mentioned shows a very limited level of engagement (a total of 162 likes with 11 comments and just six shares).

25. Two articles have been provided from the publications 'Mixmag' and 'Time Out London'.⁹ The former article is simply an interview with Fabio and Grooverider, which appears to have been for the purpose of promoting their 'RAGE' album that is referred to as 'being out now', though the article is undated. There is mention of the 'RAGE' events during the 1980s and 1990s, but nothing to suggest any use by the opponent during the relevant period. The latter article appears to be one that discusses the history of 'Jungle' music with reference to the 'RAGE' events. At the very end of this article, it makes reference to the '30 Years of Rage' event taking place on 8 December 2019. While this could be considered press coverage or promotion for the event discussed in the preceding paragraph, it is just one article from one regional publication with very little mention of the actual event itself. Further, there is no supporting evidence to demonstrate the readership figures for such an article or the publication's reach across the average consumer base.

26. The evidence goes on to discuss a further event on 17 April 2022. This event is confirmed as being a 'Return to RAGE' event at the Heaven nightclub organised by Charlotte Devaney, Fitzroy Heslop and Raymond Bingham (the latter two being the real names of Fabio and Grooverider). A promotional image of this event is provided.¹⁰ This event took place after the relevant period ended, so is of no assistance in these proceedings regardless of whether the event took place with the consent of the opponent.¹¹

27. In considering the evidence as a whole, I am of the view that it falls far short of demonstrating that the opponent had, during the relevant period, used his first mark

⁸ See paragraph 20 of the opponent's witness statement wherein he discusses his attendance along with other guests on the proviso that he had drinks paid for by the event organisers. See also pages 2 and 3 of KM11 which detail a conversation with one of the event organisers regarding this point.

⁹ See KM12 and KM13, respectively.

¹⁰ KM14

¹¹ It is noted that it was initially planned without the opponent's permission, though legal action seemingly encouraged some co-operation - see paragraphs 26 and 27 of the opponent's witness statement, and KM15.

at a level that is sufficient to be considered genuine. I say this because the only evidence from the relevant period is of one event in 2019. While this may have been use with the opponent's consent, there is no supporting evidence regarding any attendance at this event and, arguably, only one promotional item by way of an article in Time Out London. Even if attendance figures were provided, I do not consider that the organisation of one event over a five-year period is capable of being use that may be considered genuine. I say this because while I appreciate that use need not be quantitatively significant in order for it to be genuine, the provision of just one event (which was described as a 'one-off event') is not, in my view, sufficient to demonstrate that the opponent has attempted to create or preserve a market share for his trade mark in respect of the services relied upon. As a result, I find that the opponent has failed to prove use of his first mark. He may not, therefore, rely on this mark for the purpose of his section 5(2)(b) or 5(3) grounds.

28. In light of the above, the opponent may only proceed to rely on his second mark which, going forward, I will refer to simply as the opponent's mark.

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

29. 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.”

30. 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.”

31. The opponent’s mark qualifies as an “earlier trade mark” for the purposes of this decision since it was applied for at an earlier date than the filing date of the application.¹²

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

(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;

¹² See Section 6(1)(a) of the Act.

- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of services

33. The applicant's services are set out in the Annex of this decision and the opponent's services are set out at paragraph two above. I remind myself that only the class 41 services of the opponent's specification is relied upon under the present ground.

34. 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".

35. 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.

36. 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.”

37. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the GC stated that “complementary” means:

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

38. I note that the opponent has filed submissions wherein he discusses a level of similarity between his own services and the applicant’s class 25 goods. While noted, the opposition is only targeted at the applicant’s class 35 and 41 services.¹³ These submissions are, therefore, of no assistance here. As for the submissions regarding the applicant’s class 35 and 41 services, I note that the opponent claims

¹³ See question four of the section 5(2)(b) ground (which can be found at page nine) of the notice of opposition.

that the class 41 services are identical and that the class 35 services are highly similar.

39. While I appreciate that the applicant has denied a likelihood of confusion, it has failed to mention the similarity of the services at issue. This lack of mention could be construed as a concession as to the opponent's case, namely that the services are identical or highly similar. While that may be the case, I will give the applicant the benefit of the doubt and will take its bare denial as to confusion as one that applies to each argument of the opponent's case, namely a denial that (1) the marks are similar and (2) that the services are identical/highly similar. I will, therefore, proceed to consider the comparison of the services in full.

Class 35

Event marketing; Conducting of commercial events; Promotion of special events; Arranging and conducting of marketing events; Arranging and conducting of promotional events; Promotion [advertising] of concerts; Promotion of musical concerts.

40. The opponent's specification does not include any services in class 35. While that may be the case, section 60A of the Act sets out that services may still be similar even if they are not in the same class. I consider that to be the case here. In my view, the opponent's class 41 services cover a range of arranging, organising, conducting and hosting services, all for different types of entertainment events. While the nature, method of use and purpose of the services all differ, I consider that they overlap in user, trade channels and share a complementary relationship (in the way described by the case law). I say this because someone looking for organisation of an event (being the user of the opponent's services) is also likely to seek to market the same (by seeking the applicant's services). In my view, an undertaking that provides the arranging, organising and hosting services for events is also likely to offer to consumers the marketing and promotion of the same. I consider the services complementary because, firstly, the marketing of an event is likely to be considered important to the arranging, conducting and hosting of the

same (for an event to attract attendees, it is important for said event to be marketed). Secondly, I consider that consumers will believe that the services are the responsibility of the same undertaking. Taking all of this into account, I am of the view that the class 35 services of the applicant are similar to the opponent's class 41 services to between a low and medium degree.

Class 41

41. I will begin my comparison of the class 41 services by setting out that "nightclub services" in the applicant's specification also appears in the opponent's specification. These services are, therefore, self-evidently identical. The term of "night club services [entertainment]" also appears twice in the applicant's specification. While expressed slightly differently, it is the same service as the opponent's and is also self-evidently identical.

Organising dancing events; organisation of musical events; organising of recreational events; organization of entertainment events; musical events (arranging of -); organisation of entertainment events; arranging of musical events; organization of dancing events; conducting of entertainment events; organising events for entertainment purposes; conducting of live entertainment events; organisation of entertainment [...] events; organising of entertainment; entertainment services in the nature of organizing social entertainment events; organisation of entertainment services; organisation of musical entertainment; organisation of concerts; organisation of musical concerts; organisation of music concerts; arranging and conducting of concerts; conducting of concerts (arranging and -); arranging and conducting of music concerts; arranging, conducting and organisation of concerts; arranging of visual entertainment; arranging of music shows; arranging of entertainment shows; arranging of music performances; arranging of musical entertainment; arranging and conducting of entertainment events; arranging and conducting of live entertainment events; entertainment services in the nature of arranging social entertainment events; arranging of concerts; hospitality services (entertainment); party planning [entertainment].

42. All of the above services expressly relate to the arranging, organisation or conducting of events that can all be said to be types of entertainment. They are all, therefore, identical with the following services of the opponent, be that self-evidently or under the principle outlined in *Meric* (because they either fall within or are encompassed by them):

Arranging, organizing, conducting, and hosting social entertainment events; arranging of concerts; arranging of nightclub events: arranging of music performances; arranging of music shows; arranging of DJ performances; arranging of dance parties; arranging of musical performances.

Dance events; presentation of live entertainment events; disc jockey services; disc jockey services for parties and special events; services of a disk jockey; entertainment services provided at nightclubs; entertainment; entertainment services; musical entertainment; interactive entertainment; live entertainment; audio entertainment services; planning (party -) [entertainment]; entertainment party planning; entertainment club services; music entertainment services; interactive entertainment services; club entertainment services; club services [entertainment]; live entertainment services; musical entertainment services; popular entertainment services; laser show services [entertainment]; entertainment services performed by singers; entertainment by means of concerts; entertainment services performed by musicians; entertainment services provided by vocalists; entertainer services provided by musicians; presentation of live entertainment performances; entertainer services; concert services; music concerts; music concert services; musical concert services; singing concert services; live musical concerts; presentation of concerts; presentation of musical concerts; presentation of music concerts; providing facilities for entertainment; musical performances; live musical performances; performance of music; live music concerts; live music shows; live music services.

43. The above services of the applicant all relate to various types of entertainment services. Some of them expressly cover services that can be said to be services provided at nightclubs. As for those that do not, they are both clear and broad enough to cover those that can reasonably be provided at nightclubs. For example,

entertainment at large is very broad and may simply cover entertainment services provided at nightclubs.¹⁴ As a result, I find that all of the above services can either be said to fall within the opponent's term of "nightclub services" or can encompass the same. As such, I find that these services are all identical under the principle outlined in *Meric*.

Production of live entertainment events; live entertainment production services; production of live entertainment; production of music concerts; Production of audio entertainment.

44. While closely associated with the opponent's terms (in that they relate to entertainment events), the above terms actually cover production services. This is not the same as the provision of entertainment events and neither is it the same as organising or arranging the same. I say this because the opponent's services of "arranging of concerts", "arranging of nightclub events", "arranging of music performances" and "arranging of music shows" are those provided before an event whereas the applicant's services are those provided during an event (such as live production regarding sound mixing and sound levels, for example). That being said, I consider that the above services are similar to the aforementioned services of the opponent. I say this because while the nature and methods of use may differ, they overlap in purpose, user and trade channels. Both parties' services aim to assist in the provision of an entertainment event so while not a direct overlap in purpose, I find that there is some. As for user, I consider it likely that someone looking for the organisation of a music performance is also likely to seek the production of the same. In respect of trade channels, I consider that an undertaking that organises live entertainment is likely to also offer production services in relation to the same. Lastly, I consider that they may be complementary to each other in the way explained by the case law. This is because production of an event is likely to be important to the organisation of the same (without production, the organised event is unlikely to function as all events will require some form of production) and, further, consumers are likely to believe both to be the

¹⁴ On this point, I accept that concerts, for example, are not necessarily reserved for larger events in arenas or stadiums but can include small scale concerts, such as those put on at nightclubs.

responsibility of the same undertaking. Taking all of this into account, I find that the services are similar to a medium degree.

Music mixing services.

45. It is my view that the above term is either a service that would be provided by a nightclub, namely for the mixing of music played at the club or a production service used at music events that ensures the accurate balancing of different instruments or sound sources. If read as the former service, it will be considered a type of nightclub service in line with the provision of a DJ who will 'mix' music. Therefore, it is identical to the opponent's "nightclub services". If understood as the latter, I am of the view that for the same reasons discussed in the preceding paragraph, these terms will share a medium degree of similarity with the opponent's services of "arranging of concerts", "arranging of nightclub events", "arranging of music performances" and "arranging of music shows".

Organisation of cultural events; arranging of cultural events; organisation of [...] cultural events.

46. In considering the above terms, I appreciate that they are not expressly entertainment events. That being said, music is a large part of different cultures meaning that it is possible that cultural events can cover musical events such as concerts, i.e. a cultural concert. Therefore, I consider that the above services can be said to fall within the opponent's services, namely "arranging of concerts", "arranging of music performances" and "arranging of music shows". I say this because while the opponent's terms cover arranging services, this describes the same type of service offered by organisational services. As a result, I find that these services are identical based on the principle outlined in *Meric*.

On-line entertainment; Online entertainment services; Online interactive entertainment; Provision of on-line entertainment; Providing online videos, not downloadable; Providing online music, not downloadable.

47. I compare the above terms with the opponent's service of "arranging, organizing, conducting and hosting social entertainment events". In my view, a social entertainment event can cover a range of entertainment services that take place with a social element in mind. This can include dance clubs wherein entertainment via dancing is provided but, also, acts as a means for people to socialise at the same time. In the context of online services (which the opponent's term is broad enough to cover), the opponent's service can include online platforms where users can join video or audio chat lobbies where they spectate an event together (such as watching a live entertainment event or listening to an album launch, both of which provide access to a chat room at the same time to discuss the event with others, for example) or participate in one (such as an online game with access to a chat lobby, for example). While the opponent's term covers an arranging or organisational service (which would not be the same as the provision of actual entertainment), I consider that *conducting* or *hosting* an event requires the actual provision of the entertainment involved. Therefore, I consider that the opponent's service can be for the actual provision of online entertainment, albeit with a social element. In my view, the above services of the applicant, while online, can include the same services that I have described as being covered by the opponent's term. As a result, I find that that the opponent's service falls within the above terms of the applicant meaning that they are identical under the principle outlined in *Meric*.

Television and radio entertainment; television and radio entertainment services.

48. As was the case in the preceding paragraph, I will consider the above term against the opponent's "arranging, organizing, conducting and hosting social entertainment events" on the basis the *conducting* and *hosting* can cover the provision of entertainment itself. In the context of television and radio entertainment, I consider that the opponent's term can cover live concerts shown on television or broadcast on the radio which may allow for elements of social engagement, such as the ability to engage in 'live tweet' discussions regarding the event (by using hashtags recommended by the television broadcaster, for example) or radio phone ins. The same type of service can also be provided for by the applicant's term. As a result, I am of the view that the same finding found in the preceding paragraph applies

here, namely that the opponent's term falls within the applicant's term. These terms are, therefore, identical under the principle outlined in *Meric*.

49. If I am wrong to make the above finding of identity on the basis that the opponent's term does not cover events broadcast on television or radio entertainment, then the services will still be similar to a medium degree. In these circumstances, the services overlap in purpose, trade channels and user because both will aim to entertain the user and are likely to be provided by the same undertakings and sought by the same consumers. Further, there may be a degree of competition between them as a user may elect to watch television or listen to a radio over engaging in social entertainment events that may relate to the same, and vice versa.

Booking agencies for entertainment; concert booking; concert booking services; entertainment booking services; booking of entertainment.

50. The opponent's specification includes the term of "arranging for ticket reservations for shows and other entertainment events". While expressed differently, I consider that this term is the same as the above services of the applicant in that they all cover booking services that allow the user to obtain tickets for a range of entertainment events. It is my view, therefore, that these services are identical.

Management of concerts.

51. The management of a concert is not restricted in any way so can, therefore, be said to cover the artistic management of a concert. As a concert is a musical show, I consider that the applicant's term can cover "artistic management of musical shows" in the opponent's specification. Therefore, I find that the broad nature of the applicant's term means that it encompasses the opponent's service meaning that these services are identical under the principle outlined in *Meric*.

The average consumer and the nature of the purchasing act

52. As the case law set out above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods. I must then decide the manner in which these goods are likely to be selected by the average consumer in the course of trade. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. (as he then was) described the average consumer in these terms:

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

53. The services at issue will, for the most part, be selected by business users looking for assistance in organising events. That being said, I consider that some services (such as “entertainment” at large, for example) are broad enough to cover ordinary entertainment services that will be sought by members of the general public at large. Regardless of the identity of the consumer, the services are likely to be available from the providers themselves, either via their physical premises or their websites. The services available will be listed on pamphlets, placards or via online menus. For members of the general public, the selection of the services will be primarily visual, though I do not discount an aural component playing a role by way of word-of-mouth recommendations or advice from sales assistants. As for business users, I consider that the visual and aural components will play an equal role during the selection process. I say this because I consider it likely that the business user will rely more heavily on discussions with sales assistants when making their selection.

54. The frequency and cost of the services at issue will vary quite significantly. I say this because some of the broad entertainment terms will cover services such as those provided at cinemas, for example. Such services will be selected frequently and at a relatively low cost. On the other end of the scale are the organisational services that can cover those larger events such as festivals, for example. These are likely to be selected on an infrequent basis and will come at a considerable cost.

55. In terms of the level of attention paid, I consider that this too will vary. For members of the general public, they will pay attention to factors such as the nature of the entertainment being provided, the performers or actors involved (for concerts and films/theatre shows, respectively), reviews (for films, for example) and the venue at which the entertainment is being provided. In my view, the selection of such services is likely to attract a medium degree of attention. As for the business user, the selection process is likely to be an important factor in the running of their business so the selection process is likely to be more involved. For example, when seeking services relating to larger events, the consumer will pay attention to a number of factors including whether the provider is capable of organising all relevant parts of the event, the size of the event that the provider can accommodate and information about previous events organised. The consumer is also likely to have transport considerations (such as whether parking is available or whether the service provider will offer transport links for attendees) as well as health and safety considerations (such as whether security or medical tents are provided). Taking all of this into account, I am of the view that the level of attention paid by some business users will be high. All of this being said, I consider that it is likely that for some smaller scale services selected by the business user, the selection process will likely be medium.

56. In summary, I consider that some services selected by business users and all services selected by members of the general public at large will attract a medium degree of attention. However, I appreciate that business users looking to select the services relating to larger scale events are likely to pay a high degree of attention.

Comparison of the marks

57. 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.

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

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

59. 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.

60. The respective trade marks are shown below:

The opponent's mark	The application
RAGE	Return to RAGE RETURN TO RAGE Return to Rage (series of three)

61. Before proceeding, I wish to discuss the fact that the application covers three word only marks, all being the words 'Return to Rage' in different cases. Fair and notional use of the marks in the application means that each mark is capable of being presented in any standard typeface and in upper case, lower case or any customary combination of the two. As a result, the differences between the marks in the application are of no consequence and I, therefore, consider it necessary to consider just one of the marks. Therefore, going forward I will refer to 'RETURN TO RAGE' only and preface this by saying that each mention of the same also covers the other two marks in the application. For ease of reference, I will simply refer to this as 'the applicant's mark'.

62. I have submissions from the opponent in respect of the comparison of the marks. While these are noted, I do not intend to reproduce them here but will, if necessary, discuss them further below.

Overall Impression

63. The applicant's mark is a word only mark consisting of the words 'RETURN TO RAGE'. The word will, in my view, form a unit meaning that no one word will dominate the other. Therefore, I find that the overall impression of the mark lies in the phrase as a whole. The opponent's mark is also a word only mark consisting solely of the word 'RAGE'. There are no other elements that contribute to the mark meaning that the overall impression lies in the word itself.

Visual Comparison

64. Visually, the marks share the word 'RAGE'. This word forms the only element of the opponent's mark and sits at the end of the applicant's mark. The marks differ in the presence of the words 'RETURN TO' at the beginning of the applicant's mark. This has no counterpart in the opponent's mark. Taking into account that

consumers tend to focus on beginnings of marks,¹⁵ which is where the differences in the applicant's mark lie and bearing in mind the impact of 'RETURN TO' in the applicant's mark (namely that it plays an equally strong role to 'RAGE'), I find that the marks are visually similar to no more than a medium degree.

Aural Comparison

65. Aurally, the applicant's mark consists of four syllables that will be pronounced in the ordinary way. The opponent's mark is just one syllable in length that will, again, be pronounced in the ordinary way. The word 'RAGE' is clearly a point of aural identity between the marks, however, the words 'RETURN TO' in the applicant's mark have no counterpart in the opponent's mark. On this point, I note that the opponent's mark is a short mark. I remind myself that while there is no special test which applies to the comparison of 'short' marks,¹⁶ I am of the view that in the present case, the shortness of the opponent's mark (being just one syllable in length) further emphasises the points of difference. This is further compounded by the fact that the differences sit at the beginning of the applicant's mark. As a result, I find that the marks are aurally similar to between a low and medium degree.

Conceptual Comparison

66. The word 'RAGE' will be readily understood as meaning *an intense anger or fury*.¹⁷ For the avoidance of doubt, I note that the dictionary definition includes two additional meanings that I consider necessary to discuss briefly here. Firstly, 'RAGE' can mean *a fashion or craze*. This is referred to in the context of the phrase 'all the rage'. While noted, I do not consider that 'RAGE' either on its own or within the phrase 'RETURN TO RAGE' will necessarily be attributed this meaning. Additionally, 'RAGE' may also mean *a dance or party*. However, this is confirmed as being an informal term in Australia and New Zealand and, as such, I do not consider that this will be known to a significant proportion of consumers in the UK

¹⁵ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

¹⁶ See paragraph 44 of *BOSCO*, BL O/301/20

¹⁷ https://www.collinsdictionary.com/dictionary/english/rage#google_vignette

(and I have nothing before me to suggest otherwise). As the only word in the opponent's mark, the above concept of *an intense anger or fury* will be the concept associated with that mark. As for the applicant's mark, 'RAGE' will be viewed together with the words 'RETURN TO', which in turn, forms the unitary phrase 'RETURN TO RAGE'. As a whole, I consider that the applicant's mark will be understood as either an invitation to the reader to '*return to intense anger or fury*' or a statement that someone has '*returned to a state of intense anger or fury*'.

67. In comparing these two marks, clearly the concept of 'RAGE' will be the same across them both. While this is a point of similarity, the concept created by the additional words 'RETURN TO' in the applicant's mark (which creates a unitary phrase) will act as a point of conceptual difference, though not to such a degree that it counteracts the meaning of 'RAGE' entirely. Overall, I consider that the marks are conceptually similar to a medium degree.

Distinctive character of the opponent's mark

68. 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).”

69. Registered trade marks possess varying degrees of inherent distinctive character, perhaps lower where a mark may be suggestive or allusive of a characteristic of the goods or services for which it is registered, ranging up to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use made of it. I have set out above that the pleadings of the opponent can be construed as covering a claim that his mark enjoys an enhanced level of distinctiveness. I will, therefore, assess whether the evidence provided gives rise to a finding that the distinctiveness of the opponent’s mark has been enhanced through use. Before doing so, I will consider the inherent position.

70. The opponent’s mark is a word only mark consisting solely of the ordinary dictionary word ‘RAGE’. This word will have an obvious meaning to the consumer but is not one that is either descriptive or allusive of the services relied upon. Saying that, the use of an ordinary dictionary word is not particularly remarkable from a trade mark perspective. Overall, I consider that the opponent’s mark enjoys a medium degree of inherent distinctive character.

71. While I have assessed the opponent’s evidence insofar as it relates to genuine use, I remind myself that the assessment in respect of enhanced distinctiveness is not limited to the same relevant period as the genuine use assessment was. While the relevant date for this assessment is 25 March 2022, there is no earlier date meaning that any and all evidence from prior to this date is relevant here. This means that the presence of the weekly ‘RAGE’ event between October 1988 and June 1993 is something that may be relied upon under the present assessment. That being said, this covers just one weekly event at one nightclub in London over

a five-year span. At the outset, I will say that just because the use relates to one weekly event at just one nightclub, it does not mean that such use is not capable of supporting a finding of enhanced distinctive character. That being said, in the present case there is nothing to suggest the level of attendance at these events when they were in operation. I appreciate that it may have been a popular event at the time (and note that the supporting articles provided at KM12 demonstrates as such), however, there is nothing to suggest any wider awareness of the event across the entirety of the UK consumer base. Even if there were such evidence that could be said to point to widespread knowledge of 'RAGE' in 1993, this was almost 30 years prior to the relevant date. On this point, there is nothing to suggest any lasting impression the brand had on the relevant consumer base. Further, the evidence in the intervening years is very limited in its support of a claim that any degree of knowledge that the opponent *may* have enjoyed in 1993 would still exist as at the relevant date.

72. The only evidence of actual use appears to be two events. The first being the Red Bull Revolution in Sound event that took place at the London Eye in 2013. The evidence sets out that this was an event wherein each of the capsules of the London Eye became separate music venues. While I appreciate that the event was run by the well-known drink brand 'Red Bull' at a popular London landmark, there is very little provided in order to assist me in determining the actual presence of the 'RAGE' brand (by way of images of the capsules at the event, for example). On this point, it is my understanding that the London Eye capsules are not particularly large for the purposes of hosting music events (especially taking into account that the capsules would have no doubt been loaded with music equipment which inevitably would have taken up room, therefore possibly reducing capacity) and there is nothing to suggest how long each event was (was it just one rotation of the wheel, for example) or how often the attendees of the capsules were rotated. In short, the evidence is just too insufficiently solid to allow me to determine the level of exposure generated by this event. I note that the only evidence in support of this event is a draft contract between the opponent and Red Bull and an email between the opponent and a company called Big Box Media in relation to the signing of the

contract.¹⁸ While noted, this evidence is of no assistance in pointing to a level of awareness of the event amongst the relevant public.

73. As for the second event, I note that this was the 2019 one-off event in respect of which the opponent gave permission for the use of the 'RAGE' branding. As I explained when considering the genuine use assessment of the opponent's first mark, the significant weakness of this evidence is that there are no attendance figures for said event.

74. As noted when considering genuine use above, the opponent has provided two articles that discuss the history of the 'RAGE' events at the Heaven nightclub.¹⁹ I appreciate that the authors of said articles may recall the 'RAGE' events and that the Time Out London article even states that as a result of its five-year run, "Rage has an untarnished reputation and pride of place in the history books." While noted, this comment appears merely to be the writer's opinion and is not something that can be transferred to an actual finding that a section of the relevant public would, as at the relevant date, possess any awareness of the opponent's mark. On this point, there is nothing to suggest the readership figures for either publication. Therefore, I have nothing to demonstrate whether these articles re-ignited any awareness in the opponent's brand at the time the articles were published. In short, these articles are not supported by any further evidence and there is nothing to suggest that the awareness of the 'RAGE' events possessed by these authors is shared by a significant part of the relevant public in the UK.

75. In addition, I note that an excerpt from a book entitled 'It's a London Thing' has been provided which covers the opponent's creation of the 'RAGE' event.²⁰ It appears that this book was published online on 21 November 2019. While noted, the same issue with the articles discussed above applies to the book also, namely that there is nothing to suggest readership figures or how this can be said to equate to knowledge of a significant part of the relevant public in the UK.

¹⁸ See KM7 and KM8

¹⁹ KM12

²⁰ KM13

76. Taking all of the evidence into account, there is nothing wholly determinative that allows me to find that a significant part of the relevant public would have, at the relevant date, been aware of the 'RAGE' brand in relation to the services relied upon. In short, the use appears to have mostly ceased almost 30 years prior to the relevant date. There were just two subsequent events and as set out above, the evidence in relation to these events is just too vague to support a finding that they succeeded in buoying the awareness of the 'RAGE' brand amongst the relevant public. Lastly, I refer to the recent comments of Mr Thomas Mitcheson K.C., sitting as the Appointed Person, in the case of *Paige & Partridge* (BL O/0640/24) wherein he stated that "[i]t is incumbent upon a party wishing to rely on enhanced distinctiveness to submit the necessary evidence of sales and marketing". In short, there is no such evidence before me and, as discussed above, the evidence actually provided is wholly insufficient to support the opponent's claim.

77. As a result, I find that there is no enhanced distinctiveness in the opponent's mark. Therefore, the inherent position applies, namely that it is distinctive to a medium degree.

Likelihood of confusion

78. 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 services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's mark, the average consumer for the 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 he has retained in his or her mind.

79. Before proceeding to consider whether there exists a likelihood of confusion, I wish to briefly discuss that the evidence before me from both parties is clear in that 'RAGE' in 'RETURN TO RAGE' is a reference to the historic 'RAGE' nights at the Heaven nightclub in London that took place between 1988 and 1993. While that may be the case, this has no bearing on the assessment that I must make. I say this because the assessment I must make here is a notional one based on the factors considered throughout this decision. Therefore, the intention of the applicant in coming up with its mark is of no relevance and I will say no more about it.

80. I have found the parties' services to range from being identical to being similar to between a low and medium degree. I have found the average consumer for the services to be business users and members of the general public at large. The former group of consumers will select the services having paid equal attention to the visual and aural components and are likely to pay between a medium and high degree of attention, depending on the services being selected. The latter group are likely to select the services with primarily visual considerations (though I do not discount the aural component) after having paid a medium degree of attention. In respect of the similarity of the marks at issue, I have found the marks to be visually similar to no more than a medium degree, aurally similar to between a low and medium degree and conceptually similar to a medium degree. I have found the opponent's mark to be inherently distinctive to a medium degree.

81. The opponent's submissions set out that while the average consumer would notice some differences between the marks, there still exists a likelihood of indirect confusion between them. I take this to be a concession that the opponent does not consider there to be direct confusion. Even if he did not make such a submission, I consider that there exists no likelihood of direct confusion in any event. I say this because in taking all of the above into account and even bearing in mind the

principle of imperfect recollection, I am of the view that consumers will not misremember or inaccurately recall the parties' marks for one another. I appreciate that the marks share the word 'RAGE', however, this word is preceded by the words 'RETURN TO' in the applicant's mark. I do not consider that the beginning of the applicant's mark will be overlooked, particularly given that as I have stated throughout this decision, the beginnings of marks are where consumers tend to focus. Further, I remind myself that the consumers will perceive the applicant's mark as a unit, a factor that they will not overlook. Consequently, I find that there exists no likelihood of direct confusion in respect of the marks at issue, even in respect of identical services.

82. I turn now to consider 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)".

83. 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.

84. I note that the opponent's submissions in respect of indirect confusion are as follows:

"19. [...] The fact that the dominant and distinctive element of the Earlier Marks ('RAGE') will be read and verbalised in the same manner as the dominant and distinctive element of the Application and will be perceived independently from the other verbal elements of the marks. There is therefore a likelihood of indirect confusion. The reasons for this is that the 'RAGE' element is not absorbed into the other word elements of the Application. See Case T-438/07 [2009] *Spa v OHIM and De Francesco Import*.

20. In addition, the Opponent has provided evidence in the form of the Witness Statement together with Exhibits KM1 to KM16 that demonstrates that the mark 'RAGE' has cultivated a strong association in the mind of the average consumer familiar with the Heaven nightclub scene and its back history."

85. It appears to me that the opponent's argument is based on a claim that 'RAGE' will be perceived independently in the applicant's mark meaning that the *Medion*²¹ principle applies. In the present case, such a principle would apply if the average consumer, while perceiving the applicant's mark as a whole, also perceives that it consists of two or more signs ('RETURN TO' and 'RAGE', separately), one of which (being 'RAGE') having a distinctive significance which is independent of the significance of the whole. In such an instance, it may follow that the consumer would be confused as a result of the identity of that independently distinctive sign to the opponent's mark.

86. While this submission is noted, I disagree that it applies in the present case. This is because I do not consider that 'RAGE' will be perceived independently from the other elements of the applicant's mark. I have found 'RETURN TO RAGE' to form a unit and I hereby rely on the comments of Arnold LJ (as he then was) at paragraph 20 of *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch) wherein he set out that the *Medion* principle "does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components." Arnold LJ set out that this includes circumstances where the meaning of one of the components is qualified by another component. While he gave the example of a first name and a surname (BECKER and BARBARA BECKER), I find that the same principle applies to 'RETURN TO RAGE' because, while the meaning of 'RAGE' will be understood, the addition of 'RETURN TO' creates a different meaning that the consumers would not seek to dissect in the way described by the case law. As a

²¹ *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04

result, the opponent's reliance upon his argument in this respect is of no assistance.

87. Moving to the second part of the opponent's submission, I appreciate that he began using 'RAGE' in the 1980s, however, as discussed above, the use stopped in 1993 with only two examples of use in the intervening years. I have found that the evidence of the opponent is insufficient to warrant a finding that the distinctiveness of the opponent's mark has been enhanced to any degree. As a result, the opponent's argument on this point is of no assistance either.

88. All of the above being said, I do not consider that the opponent's claim of indirect confusion fails simply because the above arguments are of no assistance. While the opponent did not expressly mention any of the categories set out in *L.A. Sugar* (cited above), I consider it necessary to consider them in any event, as I would for any claim of indirect confusion. Taking the categories in turn, I do not consider that the opponent's mark is so strikingly distinctive that it could be said that the consumer would believe that only one undertaking would use it. Therefore, category (a) is of no assistance here.

89. Turning to category (b), I am of the view that this is ordinarily reserved for a finding relating non-distinctive additions that may allude to the nature of a sub-brand or brand extension. On this point, I refer to the examples given in *L.A. Sugar* of a reference to 'LITE' or 'MINI' (being possible indicators of a stripped back or scaled down version of a brand, for example). Such instances are not in play here.

90. That being said, I have given consideration as to whether consumers would see 'RETURN TO' before 'RAGE' as an enticement or invitation for them to *return* to the brand after a hiatus or to signify a relaunch and whether this would be viewed as a logical indicator of a sub-brand or brand extension. I do not categorically rule out the possibility that a trade mark may convey the message of a relaunch; there may potentially be circumstances in which an earlier mark is sufficiently distinctive, either inherently, or particularly through use - that a mark 'harkening back' may be seen as "another brand of the owner of the earlier mark" - as called for in Mr

Purvis's description in *L.A. Sugar*. However, I do not find this scenario to arise in the present case, where I do not consider the earlier mark to be highly distinctive and where the evidence has failed to show that it benefits from enhanced distinctive character through past use. Nor has the opponent filed evidence to indicate that use of trade marks to indicate relaunches or returns of brands is common in the trade.

91. In the circumstances, I am not convinced that "RETURN TO RAGE" would be seen as a sub-brand or a brand extension (as such) of "RAGE". While the return of an undertaking after a hiatus or a relaunch may be alluded to in marketing or promotional materials, the opponent has not demonstrated that consumers would be used to seeing such a message conveyed in an actual trade mark. As a result, I do not consider that consumers would believe it logical for the opponent to indicate a sub-brand or brand extension in such a way. As a result, and without anything further to assist me from the opponent, I am not convinced that the addition of 'RETURN TO' before 'RAGE' would be viewed as a logical indicator of a sub-brand or brand extension.

92. Lastly, I do not consider category (c) would apply here either. This is because the opponent's mark consists of just one element and the differences between the marks cannot be said to be a result of the applicant taking one of the elements of the opponent's mark and making a logical change to the same.

93. While I appreciate that the categories set out in *L.A. Sugar* are not exhaustive, I remind myself of the recent comments of Dr Brian Whitehead, sitting as the Appointed Person, in *RODEO JACKS* (BL O/0648/24) wherein he stated at paragraph 47 that:

"If indirect confusion is alleged to occur in a manner falling outside those categories, it is incumbent upon the opponent to specify precisely how indirect confusion is said to arise."

94. In the present case, the opponent has argued points that I have dismissed above. There is nothing further provided as to how indirect confusion would arise and, in the circumstances (and in light of the comments of Dr Whitehead above), I do not consider it necessary to consider the issue of confusion any further. Consequently, taking all of the above into account and particularly bearing in mind the comments of Mr Mellor Q.C. and Arnold LJ at paragraph 83 above, I find that there exists no likelihood of confusion, even for identical services.

95. As a result of the above, the opposition reliant upon its section 5(2)(b) ground has failed in its entirety. I will now proceed to consider the remaining grounds of this opposition.

Section 5(3)

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

“5(3) A trade mark which –

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

97. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, Case 252/07, *Intel*, Case C-408/01, *Adidas-Salomon*, Case C-487/07, *L’Oreal v Bellure*, Case C-323/09, *Marks and Spencer v Interflora*, Case C383/12P, *Environmental Manufacturing LLP v OHIM*. The law appears to be as follows:

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

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

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

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

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

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

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

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

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

98. Under the present ground, the opponent relies on the same marks as it did under its section 5(2)(b) ground. However, as it failed to prove use of his first mark, this ground only proceeds in respect of his second mark. As was the case above, I will refer to this simply as 'the opponent's mark'.

99. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that the marks are similar. Secondly, the opponent must show that his mark has achieved a level of knowledge/reputation amongst a significant part of the public. Thirdly, it must be established that the level of reputation and the similarities between the parties' marks will cause the public to make a link between them, in

the sense of the earlier mark being brought to mind by the applicant's mark. Finally, assuming the first three conditions have been met, section 5(3) requires that one or more of the types of damage will occur. It is unnecessary for the purposes of section 5(3) that the services at issue be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

Reputation

100. I am of the view that I can deal with this ground relatively briefly. I appreciate that the assessment of a mark's reputation is not exactly the same as the assessment of enhanced distinctiveness. However in the present case, I consider that I can apply the finding under my enhanced distinctiveness assessment to the issue of a reputation. I say this because the relevant date and relevant territories at play here are identical to those that were applicable to the enhanced distinctiveness assessment.

101. I do not intend to go over the issues with the evidence once again. Instead, I will simply state that for reasons that I have explained above (under both my genuine use and enhanced distinctiveness assessment), I find the evidence to be insufficiently solid and that it fails to demonstrate that, as at the relevant date, the opponent enjoyed any reputation in his mark amongst a significant part of the relevant public in the UK. There is no evidence at all relating to the claimed reputation for the food- and drink-related services in Class 43. In so far as the evidence relates to the claimed services in Class 41, it speaks only to use which ceased in 1993, with just two events taking place in the years since. The lack of sufficiently solid evidence surrounding the subsequent events and, generally, the lack of evidence as to the awareness of the 'RAGE' brand since 1993 means that, even if any reputation existed in 1993, I am not willing to find that it would have remained at a sufficient level by the relevant date. As a result, the opponent's reliance upon his section 5(3) ground fails at the first hurdle.

Section 5(4)(a)

102. Section 5(4)(a) of the Act reads as follows:

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

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

(aa)

(b)

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

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

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

104. As was the case with the section 5(3) ground above, I can deal with this ground swiftly. Put simply, the evidence is insufficient to allow me to find that the opponent, by the relevant date, enjoyed any goodwill in his sign. I say this because as explained already many times throughout this decision, the evidence since 1993 is insufficiently solid and in respect of the present ground, it fails to demonstrate that the opponent enjoyed any residual goodwill in his sign as at the relevant date. Even if I am wrong on this point and the opponent did enjoy a protectable level of goodwill at the relevant date and the sign relied upon was distinctive of and/or associated

with said goodwill, the present ground would still fail. I say this because while the test for misrepresentation is different from that for likelihood of confusion in that it entails “deception of a substantial number of members of the public” rather than “confusion of the average consumer”, it is unlikely that the difference between the legal tests will produce different outcomes.²² In the present case, there was no confusion under the 5(2)(b) ground assessed above and, for the same reasons discussed at paragraphs 81 to 95 above, I consider that a similar finding applies here, namely that use of the applicant’s mark would not deceive a substantial number of members of the public. As a result, there is no misrepresentation and the opposition reliant upon section 5(4)(a), therefore, fails.

CONCLUSION

105. The opposition fails in its entirety and, subject to any successful appeal of my decision, the application may proceed to registration for all goods and services that the applicant seeks to protect.²³

COSTS

106. The applicant has succeeded in defending its mark in its entirety. As a result, the applicant would, in the ordinary course of these proceedings, be entitled to a contribution towards its costs. However, the applicant is unrepresented meaning that, in order to claim its costs, it was required to file a completed costs pro-forma. It did not do so. On this point, I note that a blank costs pro-forma was provided to the applicant under the cover of a letter from the Tribunal dated 7 December 2023. This letter set out that:

“If the pro-forma is not completed and returned, costs, other than official fees arising from the action (excluding extensions of time), may not be awarded.”

²² See *Marks and Spencer PLC v Interflora* [2012] EWCA (Civ) 1501

²³ It is noted that the registration of the goods at issue is not subject to the success of any appeal as they were not opposed in the present proceedings.

107. As no costs pro-forma was filed and the applicant incurred no official fees arising from this action, I make no order as to costs. Both parties are to bear their own costs of these proceedings.

Dated this 28th day of August 2024

**A COOPER
For the Registrar**

ANNEX

Class 25

Clothes; Clothing; Jackets [clothing]; Tops [clothing]; Hoods [clothing]; Leisure clothing; Jerseys [clothing]; Tee-shirts; Embroidered clothing; Caps; Peaks (Cap -); Peaked caps; Caps [headwear]; Baseball caps; Cap peaks; Bucket caps; Caps with visors; Caps being headwear; Baseball caps and hats; Bomber jackets; Hoodies; Hoods; Hooded sweatshirts; Hooded tops; T-shirts; Short-sleeved T-shirts; Casual jackets; Jackets; Sleeved jackets.

Class 35

Event marketing; Conducting of commercial events; Promotion of special events; Arranging and conducting of marketing events; Arranging and conducting of promotional events; Promotion [advertising] of concerts; Promotion of musical concerts.

Class 41

Dance events; Organising dancing events; Organisation of musical events; Organising of recreational events; Organisation of cultural events; Organization of entertainment events; Musical events (Arranging of -); Organisation of entertainment events; Arranging of musical events; Organization of dancing events; Arranging of cultural events; Conducting of entertainment events; Organising events for entertainment purposes; Conducting of live entertainment events; Production of live entertainment events; Organisation of entertainment and cultural events; Presentation of live entertainment events; Arranging and conducting of entertainment events; Arranging and conducting of live entertainment events; Disc jockey services; Disc jockey services for parties and special events; Services of a disk jockey; Nightclub services [entertainment]; Entertainment services provided at nightclubs; Entertainment; Entertainment services; Musical entertainment; Interactive entertainment; Live entertainment; Audio entertainment services; Entertainment booking services; Booking of entertainment; Planning (Party -) [entertainment]; Entertainment party planning; Entertainment club services; Music entertainment services; Online entertainment services; Interactive entertainment services; Party planning

[entertainment]; Club entertainment services; Club services [entertainment]; On-line entertainment; Organising of entertainment; Live entertainment services; Musical entertainment services; Popular entertainment services; Hospitality services (entertainment); Online interactive entertainment; Laser show services [entertainment]; Television and radio entertainment; Providing facilities for entertainment; Booking agencies for entertainment; Production of audio entertainment; Entertainment services in the nature of organizing social entertainment events; Live entertainment production services; Production of live entertainment; Organisation of entertainment services; Organisation of musical entertainment; Night club services [entertainment]; Entertainment services in the nature of arranging social entertainment events; Entertainment services performed by singers; Entertainment by means of concerts; Entertainment services performed by musicians; Provision of on-line entertainment; Entertainment services provided by vocalists; Entertainer services provided by musicians; Television and radio entertainment services; Presentation of live entertainment performances; Entertainer services; Nightclub services; Concert booking; Concert services; Music concerts; Management of concerts; Music concert services; Arranging of concerts; Musical concert services; Singing concert services; Concert booking services; Live musical concerts; Organisation of concerts; Presentation of concerts; Presentation of musical concerts; Presentation of music concerts; Organisation of musical concerts; Production of music concerts; Organisation of music concerts; Arranging and conducting of concerts; Conducting of concerts (Arranging and -); Arranging and conducting of music concerts; Arranging, conducting and organisation of concerts; Arranging of visual entertainment; Arranging of music shows; Arranging of entertainment shows; Arranging of music performances; Arranging of musical entertainment; Musical performances; Live musical performances; Performance of music; Live music concerts; Live music shows; Music mixing services; Live music services; Providing online videos, not downloadable; Providing online music, not downloadable.