

O/1203/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 385523

BY PLAMEN VASSILEV

TO REGISTER:



AS A TRADE MARK IN CLASSES 9, 11, 12, 39 & 42

AND

IN THE MATTER OF THE OPPOSITION THERETO

UNDER NO. 439781 BY

JAGUAR LAND ROVER LIMITED

BACKGROUND AND PLEADINGS

1. On 2 December 2022, Mr Plamen Vassilev (“the applicant”) applied to register the trade mark shown on the cover of this decision in the United Kingdom in respect of the following goods and services:

Class 9

Vehicle stereos; Vehicle batteries; Vehicle radios; Radios (Vehicle -); Vehicle fuses; Vehicle dipsticks.

Class 11

Vehicle headlights; Vehicle taillights; Vehicle headlamps; Motor vehicle lamps; Vehicle lights; Reflectors (Vehicle -); Vehicle reflectors; Vehicle brake lights.

Class 12

Vehicle tires; Vehicle chassis; Chassis (Vehicle -); Vehicle windshields; Bodywork (Vehicle -); Vehicle wheels; Wheels (Vehicle -); Underbodies of vehicle; Vehicle windscreens; Vehicle tyres; Vehicle trailers; Vehicle sunroofs; Vehicle bumpers; Bumpers (Vehicle -); Motor vehicle horns; Vehicle cabs; Motor vehicle bodies; Passenger motor vehicles; Seats (Vehicle -); Vehicle seats; Wheel tires (Vehicle -); Vehicle wheel tires; Vehicle trolleys; Vehicle propellers; Vehicle mirrors; Vehicle bodies; Vehicle doors; Vehicles; Towed vehicles; Vehicle seating; Vehicle wheel tyres; Wheel tyres (Vehicle -); Vehicle hoods; Vehicle windows; Vehicle seat subsystems; Airplane towing vehicles; Motor vehicles; Tyres for motor vehicle wheels; Self-propelled electric vehicle; Motor land vehicle engines; Vehicle joysticks; Tires for vehicle wheels; Tyres for two-wheeled motor vehicles; Chassis for motor vehicles; Motor vehicles (Chassis for -); All-terrain vehicles; Vehicle body hardware; Bonnets for vehicle engine; Motor car derived vans; Vehicle partitions; Off-road vehicles; Autonomous motor vehicles; Automotive vehicles; Tyres for vehicle wheels; Vehicle axle assemblies; Two-wheeled motor vehicles; Vehicle safety seats; Valves for vehicle tires.

Class 39

Truck and vehicle rental; Vehicle rental; Motor vehicle rental; Vehicle parking; Passenger vehicle hire; Vehicle storage; Automobile vehicle leasing services; Towing of motor vehicles; Automobile vehicle renting services; Towing of

vehicles; Vehicle towing services; Rental of vehicle parts; Arranging vehicle towing; Vehicle hire; Armoured vehicle transport; Vehicle recovery; Recovery (Vehicle -); Rental of motor road vehicles; Rental of motor vehicles; Motor land vehicle renting; Towing of road vehicles; Rental of traction vehicle and trailers; Motor vehicle transport services; Leasing of motor vehicles; Arrangement of vehicle rental; Towing by motor vehicles; Vehicle parking services; Towing and transport of cars as part of vehicle breakdown services; Vehicle rental services.

Class 42

Design of motor vehicle parts; Design of vehicle transporters; Design of vehicles and vehicle parts and components.

2. On 16 March 2023, the application was opposed by Jaguar Land Rover Limited (“the opponent”). The opposition is based on sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”) and concerns all the goods and services in the application.

3. Under section 5(2)(b), the opponent relies on the following marks and goods and services:

UKTM No. 916493413 (“the 413 mark”)

RANGE ROVER

Application date: 21 March 2017

Registration date: 18 August 2017

Class 11

Automobile lights; Reflectors for vehicles.

Class 12

Motor land vehicles; parts and fittings for all of the aforesaid goods.

Class 39

Rental, leasing or hiring of vehicles.

WO No. 1450293 ("the 293 mark")

RANGE ROVER

International registration date: 6 December 2018

Designation date: 6 December 2018

Date of protection of international registration in the UK: 22 August 2019

Class 9

Computer hardware; on-board computers for vehicles; computers for autonomous-driving; on board electronic systems for providing driving and parking assistance; on board electronic systems for automatic braking; on board electronic systems to assisting in maintaining or changing lanes when driving; cruise control systems for vehicles; vehicle speed control apparatus; computer software; automotive computer software and hardware; computer software for use in relation to vehicles; telemetry devices for motor vehicle and engine applications; electric control panels; electronic control apparatus, instruments and displays; sensors; vehicle safety equipment; safety and driving assistant systems; lasers for use in relation to vehicles; LADAR apparatus for vehicles; radar apparatus for vehicles; cameras for vehicles; onboard cameras; action cameras; parking sensors and rear-view cameras for vehicles; automotive measuring instruments; electronic apparatus for collecting measurements and receiving data; computer software, mobile applications and wireless transmission and receiving equipment for use in connection with autonomous and hands-free driving, automobile safety features and warning or alarm functions, accident prevention and traffic alerts; driving control unit for vehicles; driver assistance systems for motor vehicles; charging stations for charging electric vehicles; apparatus and cables for use in charging electric vehicles; batteries for vehicles; electric accumulators, voltage regulators, aerials, electric batteries and mountings; anti-theft warning devices; alarm sensors; gauges; instrument panels and clusters; odometers; speedometers; tachometers; temperature sensors; voltmeters; ammeters; testing apparatus; proximity meters; electric circuit breakers; commutators; electric condensers;

electric connections; electric cables; electric fuses; electric fuse boxes; electric control apparatus and instruments for motor vehicles and engines; electrical sensors; fire extinguishing apparatus; gauges; lenses for lamps; printed electrical circuits; electric relays; electric switches; electric wiring harnesses; testing apparatus; apparatus for recording, transmission or reproduction of sound and images; remote controls for motors; remote control starters for vehicles; emergency warning lights; emergency notification system; electronic interface modules sold as an integral part of a vehicle; display panels for vehicles; electronic driver display systems for vehicles; audio, audio-visual or telecommunications equipment; radio apparatus; in-car entertainment systems; sound reproducing equipment; televisions; radios; CD players; loud speakers; headphones; personal digital assistants; tablet computers; multimedia devices; MP3 or MP4 apparatus and equipment; mobile hard drives; Universal Serial Bus drives; cases and holders for mobile phones, smartphones, computers, personal digital assistants, laptops, notebook computers; chargers for mobile phones, smartphones, laptop and tablet computers; telephones; mobile telephones; mobile phone and tablet computer headsets and accessories; straps for telephone handsets; screensavers for phones and tablets; car telephone installations; recording media; highway emergency warning equipment; thermometers; compasses; calculators; magnets; tape measures; eyewear, glasses, sunglasses, driving glasses, skiing goggles; cases for eyeglasses, sunglasses or skiing goggles; drivers helmets; racing driver protective clothing; apparatus, gloves and clothing, all for use in protection against accident or injury; global positioning system (GPS); navigational systems, comprising electronic transmitters, receivers, circuitry, microprocessors, cellular telephone and computer software all for use in navigation and all integrated into a motor vehicle; downloadable electronic maps; wireless transmission and receiving equipment; interactive multimedia software; electric connections; wireless controllers to remotely monitor and control the function and status of other electrical, electronic, signalling systems and mechanical devices for use in connection with vehicles and engines for vehicles; communications apparatus to transmit and receive communications via vehicles; computer hardware and software for tracking driver behaviour;

sensors, computers and wireless transceivers to provide connectivity within the vehicle, between vehicles, with cell phones, and with data centres; computer hardware, software and electrical apparatus to provide tactile, audible and visual interfaces to interact with occupants of the vehicle; wireless transmission and receiving equipment for use in connection with remote computers for use in automobiles for tracking, monitoring and diagnosing maintenance for vehicles and for providing information to drivers; computer application software for use by drivers and passengers of vehicles for accessing, viewing, and interacting with and downloading information and entertainment content; downloadable software and on-board computer software that provides users with remote and in-vehicle access to motor vehicle functions and functions relating to driver safety, convenience, communication, entertainment, and navigation; diagnostic apparatus consisting of sensors for use in testing vehicle function and in diagnosing vehicle electrical and mechanical problems; software and software applications to allow users to track and locate stolen vehicles, charge electronics, and store and synchronize collected personalized user and vehicle information; electronic interface modules for wired and wireless interface of mobile phones and electronic media players with an automotive electrical system; integrated electronic automated systems for vehicles; downloadable mobile applications; application software for use in or in relation to vehicles; computer games, computer games software; databases, data sets, data files and software relating to 3D printing; databases, data sets, data files and software relating to design and manufacture of vehicles and parts and accessories therefor; databases, data sets, data files and software relating to design and manufacture of replica or model vehicles and parts and accessories therefor; computer-aided design (CAD) software and data files; downloadable image files; electronic databases containing image files; databases, data sets, data files and software relating to car sharing schemes; databases, data sets, data files and software relating to vehicle driver behaviour; simulators for simulating the operation of land vehicles; virtual models of vehicles or vehicle interiors; virtual reality software and hardware; augmented reality software and hardware; parts and fittings for any of the aforesaid goods.

UKTM No. 917879825 (“the 825 mark”)

RANGE ROVER

Application date: 23 March 2018

Registration date: 13 September 2018

Class 40

Energy production; printing, photographic and cinematographic development; Customisation of motor vehicles; customisation of bicycles; Custom manufacture of motor vehicles; custom manufacture of bicycles; custom manufacture of remotely-operated vehicles; custom manufacture of toy vehicles; custom manufacture of unmanned aerial vehicles; Custom manufacture of body panels, parts and fittings of vehicles for use in restoration of vehicles; Manufacture of parts, panels and fittings of vehicles to order and specification of vehicle restorers; Manufacture of vehicles to order and specification of vehicle restorers; Treatment of vehicles, vehicle body panels, engine parts and fittings, vehicle parts and fittings for vehicle restoration; Treatment of metal, fabric, leather, wood, wool or plastic; Coating of metal surfaces, fabric, leather, wood, glass or plastic surfaces; Applying finishes to metal surfaces, fabric, leather, wood, glass or plastic surfaces; Treatment of metal to avoid corrosion; Preservative treatment of metal, wood, fabric, leather or plastic (other than painting); moulding of parts and fittings for use in vehicle restoration; sewing of vehicle interiors; deodorising and dehumidifying of vehicle interiors; treatment of vehicle interiors against fungus and mold; custom assembly of motor vehicles and modified motor vehicles; custom assembly of bicycles and modified bicycles; applying finishes to vehicles; printing of images from digital media; custom printing onto plastic, fabric, leather, metal, glass or wood; leather working; embossing of leather; dyeing of fabric or leather; etching; metal working; metal polishing; metal fabrication and finishing services; plating of vehicle parts and fittings; custom assembly of electronic components for use in vehicles; custom assembly of lighting for vehicles; disassembly of vehicles prior to treatment and reassembly; disassembly of

vehicle engines prior to treatment and reassembly; key cutting; processing of used exhaust catalyts for recovery of noble metals; Custom assembling of vehicles for others; Custom assembling of remotely-operated devices for others; Monogramming of clothing, vehicle interior trim, vehicle accessories; 3D-printing services; 3-D reproduction services; Information, advice and consultancy relating to any of the aforesaid services.

Class 42

Scientific and technological services and research and design relating thereto; Industrial analysis and research services; Design and development of computer hardware; Design and development of computer software; Engineering services; Automotive research, design and development services; automotive engineering services; design of car parts; Research, design and development in the field of remotely-operated vehicles and devices, including drones; design of accessories for vehicles; design of the interior of vehicles; design of bicycles and accessories for bicycles; conducting technical tests and analysis in the automotive industry; providing virtual computer systems and virtual computer environments through cloud computing for use in connection with motor land vehicles; providing augmented reality computer systems for use in connection with vehicles or remotely-operated devices; Vehicle diagnostic services, namely, providing vehicle diagnostic information, vehicle mileage, vehicle maintenance needs, vehicle diagnostic readings and diagnostic trouble codes to drivers and car dealers regarding vehicles via cellular technology; Research, development and testing of new products and materials, advisory and consultancy services relating to research, development and testing of new materials; Commercial and industrial research; Rental of computers and computer software; Laboratory services, material testing; Computer programming; Software development, programming, updating and implementation; programming, updating and implementation of computer hardware, software and data files relating to autonomous and semi-autonomous driving; Development, programming, updating and implementation of computer hardware, software and data files relating to remotely-operated vehicles and devices, including automobiles and drones;

Development, programming, updating and implementation of computer hardware, software and data files relating to 3-D printing; Hosting of computer sites (websites); IT services; Hosting an online community website featuring information about vehicles and remotely-operated devices; Online system management services that allow users to remotely view, monitor, program, operate and control motor vehicle systems for others; Remote monitoring of electric battery charging systems used in land vehicles; Providing an inspection program for pre-owned vehicles; Automobile diagnostic services, namely, providing interactive information concerning the status and power of vehicles via mobile phones and computer networks and monitors; on-line system management services that allow users to remotely program the time for turning on heating or air conditioners and other features in vehicles via mobile phones and the Internet; Information, consultancy and advice relating to any of the aforesaid services; Environmental consultancy services; professional consultancy in relation to the conservation of energy; providing advice on environment related issues; development of programmes and campaigns to the public regarding environmental and conservation issues; environmental monitoring services; accreditation and consultancy services relating to environmental issues and compliance with environmental requirements; Clothing design; Design of protective clothing; design of sports clothing; Graphic design services; Information, advice and consultancy relating to any of the aforesaid services.

4. The opponent claims that “RAGE OVER” is the dominant element of the contested mark and that this is visually and aurally similar to the earlier marks. It also claims that the goods and services are similar and so there is a likelihood of confusion on the part of the public.

5. Under section 5(3), the opponent claims that the 413 mark has a reputation for *Motor land vehicles* in Class 12. It argues that the mark has “a strong image”, projecting characteristics of “*quality, durability, decades of manufacturing expertise and world famous market success*”, and that use of the contested mark would take unfair advantage of, or be detrimental to, the distinctive character and/or reputation of the 413 mark. In particular, it asserts that:

- The 413 mark has been in use in the UK in relation to vehicles since at least 1970. A link between the marks would lead to an unfair advantage for the applicant in making advertising and marketing its products much easier than it would otherwise be;
- There is also a risk that the strong image of the earlier mark in terms of quality, durability, manufacturing expertise and market success would transfer onto the goods and services of the applicant. The opponent argues that this would damage the reputation of the 413 mark, as images and customer expectations are transferred to products and services that do not originate from it;
- There is a risk of dilution of the exclusivity and attractive power of the opponent's mark and its business, including its licensing business; and
- The reputation of the 413 mark would be tarnished if it were used in relation to goods or services incompatible with the opponent's brand and cause the public to think badly of the opponent.

6. The applicant filed a defence and counterstatement. While he accepted that the words "RANGE ROVER" and "RAGE OVER" are phonetically similar, he claimed that the overall impression of the marks was significantly different as a result of their different meanings and connotations. He also argued that, while the two parties operated within the same trade mark classes, the specific goods and services sold catered to distinct segments of the market, saying that *"The goods and services covered by 'Rage Over' are uniquely tailored towards off-grid recreational vehicles, emphasizing sustainability and independence. This marks a clear departure from the offerings of Range Rover."* Finally, he added that there was no evidence of any confusion between the brands. The applicant did not put the opponent to proof of use of the mark; neither did he deny that the opponent had a reputation, or that there would be damage under section 5(3).

7. The opponent requested a hearing, which was held on 11 December 2024 via videolink. The opponent was represented by Alaina Newnes of Counsel, instructed by CMS Cameron McKenna Nabarro Olswang LLP. The applicant represented himself.

RELEVANCE OF EU LAW

8. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

EVIDENCE AND SUBMISSIONS

9. The opponent filed evidence in the form of a witness statement dated 11 January 2024 from Benjamin Wright, Head of Intellectual Property Strategy at Jaguar Land Rover Limited, a position he has held since 1 June 2023. He has been employed by the opponent since 2015. The witness statement is accompanied by 29 exhibits and goes to the use of the earlier marks and the claim to reputation.

10. Mr Vassilev filed written submissions on 1 February 2024 covering the comparison of the marks and the position of each party in their respective markets.

11. The opponent was permitted to file evidence in reply. This comes in the form of a witness statement dated 3 June 2024 from Sarah Wright, Partner at the opponent's legal representative. The witness statement responds to statements in the applicant's written submissions.

12. I confirm that I have read the evidence and submissions in full. I shall refer to it where appropriate in the decision that follows.

PROCEDURAL ISSUES

13. When a defence is not fully particularised, the Registry usually writes to the party concerned informing them of the consequence of silence on points pleaded by the other side. Tribunal Practice Notice ("TPN") 4/2000 states that:

"19. A defence should comment on the facts set out in the statement of case and should state which of the grounds are admitted and those which

the applicant is unable to admit or deny but which he requires the opponent to prove.”

If the counterstatement is not amended, the Registry may move to strike out parts of the defence that are not adequately particularised.

14. While preparing for the hearing, I noticed that, on this occasion, this practice had not been followed. In *SKYCLUB*, BL O/044/21, Professor Phillip Johnson, sitting as the Appointed Person, held that it was wrong for the Hearing Officer to proceed on the basis that matters that had not been addressed in the defence were actually in issue, in the absence of a request to amend the counterstatement. He also said that a Hearing Officer has the power to request clarifications from a party to proceedings under Rule 62(1)(a) of the Trade Marks Rules 2008 (“the Rules”) and may also invite a party to apply to amend its pleadings.

15. The Registry therefore wrote to the parties on 9 December 2024. I invited the applicant to inform the Registry as soon as possible whether he wished to apply to amend the pleadings and gave a deadline of 12 noon on 10 December 2024, the day before the hearing, for a response. I said that, if a response were not received, the case would proceed on the basis of the defence set out in the Form TM8 dated 20 June 2023. I saw no reason not to go ahead with the hearing, given that the opponent had filed evidence of fact going to the use and reputation of the earlier marks. No response was received and the applicant confirmed at the start of the hearing that he did not wish to amend the pleadings.

16. On 9 December 2024, the applicant filed a set of documents. These were marked “Skeleton Argument”, “Witness Statement” and “Exhibits 1 & 2”. The second of these documents provides background information on the applicant’s brand and also states that the applicant holds a trade mark for **Age Over**. The applicant said that he considered it would be helpful to put all the arguments in a single document. I noted that there were some parts of the document that contained new information, for example, about the vehicle that was the basis for the applicant’s vehicles, information about communications between the parties, the mark **Age Over** and the domain name. I asked the applicant to explain why this information had not been filed during the

evidence rounds. The applicant acknowledged that he had misunderstood the process and that it was important that this information be taken into account.

17. Ms Newnes submitted that it had been filed very late in the proceedings and that, while it was appreciated that the applicant had no legal representation, the correspondence from the Registry clearly set out the deadlines. Although there had not been sufficient time to look at the documents in detail, she considered it likely that some, if not all, of the information about the communications between the parties was without prejudice. In her view, the other matters in the witness statement were either a repetition of points already made or did not take the applicant's case any further.

18. A party may ask to file additional evidence. The factors that are to be taken into account when assessing such a request were set out in *Property Renaissance Ltd t/a Titanic Spa v Stanley Dock Hotel t/a Titanic Hotel Liverpool & Ors*, [2016] EWHC 3103 (Ch) at paragraph 34 and are as follows:

- "i) The materiality of the evidence in question to the issues the Registrar has to determine;
- ii) The justice and fairness of subjecting the opposite party to the burden of the evidence in question at the stage that the registry proceedings have reached, including the reasons why the evidence was not filed earlier;
- iii) Whether the admission of the further evidence would prejudice the opposite party in ways that cannot be compensated for in costs (e.g. excessive delays); and
- iv) The fairness to the applicant of excluding the evidence in question, including prejudice to the applicant if it is unable to rely on such evidence."

19. I shall deal with these points in turn.

20. The particular activities of the applicant's business are not relevant to the decision I have to make. The applicant stresses the different markets targeted by each of the parties, but the terms he has applied for are general ones. If the mark were to proceed to registration, it could be used for any good described by those terms, whether they are aimed at the luxury part of the market, or a more low-cost, environmentally

conscious segment. Furthermore, when I consider the claims made under section 5(3) of the Act, a finding of damage does not depend on an intention on the part of the applicant to take unfair advantage of, or to cause detriment to, a reputation. The **Age Over** mark is not relevant to these proceedings. Other parts of the document repeat submissions the applicant has made elsewhere. Finally, I consider that section 7 on the communications between the parties discloses without prejudice information. In *Unilever PLC v The Procter & Gamble Company* [1999] EWCA Civ 3027, Walker LJ said:

“16. In *Rush v Tompkins v Greater London Council* [1989] AC 1299, Lord Griffiths said:

‘The “without prejudice” rule is a rule governing the admissibility of evidence and is founded upon the public policy of encouraging litigants to settle their differences rather than litigate them to a finish. It is nowhere more clearly expressed than in the judgment of Oliver LJ in *Cutts v Head* [1984] Ch. 290, 306:

“That the rule rests, at least in part, upon public policy is clear from many authorities, and the convenient starting point of the inquiry is the nature of the underlying policy. It is that parties should be encouraged so far as possible to settle their disputes without resort to litigation and should not be discouraged by the knowledge that anything that is said in the course of such negotiations (and that includes, of course, as much the failure to reply to an offer as an actual reply) may be used to their prejudice in the course of the proceedings. They should, as it was expressed by Clauson J in *Scott Paper Co v Drayton Paper Works Ltd* [1927] 44 RPC 151, be encouraged fully and frankly to put their cards on the table ... The public policy justification, in truth, essentially rests upon the desirability of preventing statements or offers made in the course of

negotiations for settlement being brought before the court of trial as admissions on the question of liability.”

The rule applies to exclude all negotiations genuinely aimed at settlement whether oral or in writing from being given in evidence.’

17. This well-known passage recognises the rule as being based at least in part on public policy. Its other basis or foundation is in the express or implied agreement of the parties themselves that communications in the course of their negotiations should not be admissible in evidence if, despite the negotiations, a contested hearing ensues.”

21. In summary, then, I find that the witness statement of the applicant is not material to the issues on which I must make a decision. It would therefore be unfair to subject the opponent to the burden of addressing this additional evidence, given the late stage of the proceedings, particularly as this information was available during the evidence rounds. While Ms Newnes did not argue that the opponent would be prejudiced if the late evidence were admitted, I consider that the applicant would not benefit. I appreciate that the applicant is a litigant-in-person, but agree with Ms Newnes that the deadlines are clearly set out in the correspondence from the Registry. For these reasons, I refused admission of the witness statement and exhibits.

DECISION

Section 5(2)(b)

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

“A trade mark shall not be registered if because—

...

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

23. In considering the opposition under this section, I am guided by the following principles, gleaned from the decisions of the Court of Justice of the European Union (“CJEU”) in *SABEL BV v Puma AG* (Case C-251/95), *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* (Case C-39/97), *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV* (Case C-342/97), *Marca Mode CV v Adidas AG & Adidas Benelux BV* (Case C-425/98), *Matratzen Concord GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (Case C-3/03), *Medion AG v Thomson Multimedia Sales Germany & Austria GmbH* (Case C-120/04), *Shaker di L. Laudato & C. Sas v OHIM* (Case C-334/05 P) and *Bimbo SA v OHIM* (Case C-519/12 P):

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

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

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

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

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

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

Comparison of goods and services

24. It is settled case law that I must make my comparison of the goods and services on the basis of all relevant factors. These include the nature of the goods and services, their purpose, their users and method of use, the trade channels through which they reach the market, and whether they are in competition with each other or are complementary: see *Canon*, paragraph 23, and *British Sugar Plc v James Robertson & Sons Limited (TREAT Trade Mark)* [1996] RPC 281 at [296]. As the General Court (“GC”) said in *Boston Scientific Ltd v OHIM*, Case T-325/06, goods and services are complementary when

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

25. The applicant has not denied that the goods and services are identical or similar. Rather, he has argued that the two parties are catering to different segments of the market. I have already explained why this argument is misguided.

26. Many of the goods and services in the contested specification are identical to goods and services covered by one of the opponent's earlier marks. This is because they are either worded in the same way or are synonymous, or because a term in one party's specification is included in a broader term from the other party's specification. The GC said in *Gérard Meric v OHIM*, Case T-133/05, at paragraph 29, that in such circumstances the goods (or services) were to be considered identical. The table below shows where I have found identity:

Class	Contested goods/services	Earlier goods/services
9	<i>Vehicle stereos; Vehicle radios; Radios (Vehicle -)</i>	<i>Sound reproducing equipment</i> (293 mark)
	<i>Vehicle batteries</i>	<i>Electric batteries</i> (293 mark)
	<i>Vehicle fuses</i>	<i>Electric fuses</i> (293 mark)
11	<i>Vehicle headlights; Vehicle taillights; Vehicle headlamps; Motor vehicle lamps; Vehicle lights; Vehicle brake lights</i>	<i>Automobile lights</i> (413 mark)
	<i>Reflectors (Vehicle -); Vehicle reflectors</i>	<i>Reflectors for vehicles</i> (413 mark)
12	<i>Vehicle tires; Vehicle chassis; Chassis (Vehicle -); Vehicle windshields; Bodywork (Vehicle -); Vehicle wheels; Wheels</i>	<i>Parts and fittings for all the aforesaid goods [motor land vehicles]</i>

Class	Contested goods/services	Earlier goods/services
	<p><i>(Vehicle -); Underbodies of vehicle; Vehicle windscreens; Vehicle tyres; Vehicle trailers; Vehicle sunroofs; Vehicle bumpers; Bumpers (Vehicle -); Motor vehicle horns; Vehicle cabs; Motor vehicle bodies; Seats (Vehicle -); Vehicle seats; Wheel tires (Vehicle -); Vehicle wheel tires; Vehicle trolleys; Vehicle propellers; Vehicle mirrors; Vehicle bodies; Vehicle doors; Vehicle seatings; Vehicle wheel tyres; Wheel tyres (Vehicle -); Vehicle hoods; Vehicle windows; Vehicle seat subsystems; Tyres for motor vehicle wheels; Motor land vehicle engines; Vehicle joysticks; Tires for vehicle wheels; Tyres for two-wheeled motor vehicles; Chassis for motor vehicles; Motor vehicles (Chassis for -); Vehicle body hardware; Bonnets for vehicle engine; Vehicle partitions; Tyres for vehicle wheels; Vehicle axle assemblies; Vehicle safety seats; Valves for vehicle tyres.</i></p>	<p>(413 mark)</p>
	<p><i>Passenger motor vehicles; Vehicles; Towed vehicles; Airplane towing vehicles; Motor vehicles; Self-propelled electric</i></p>	<p><i>Motor land vehicles</i></p> <p>(413 mark)</p>

Class	Contested goods/services	Earlier goods/services
	<i>vehicle; All-terrain vehicles; Motor car derived vans; Off-road vehicles; Autonomous motor vehicles; Automotive vehicles; Two-wheeled motor vehicles</i>	
39	<i>Truck and vehicle rental; Vehicle rental; Motor vehicle rental; Passenger vehicle hire; Automobile vehicle leasing services; Automobile vehicle renting services; Rental of vehicle parts; Vehicle hire; Rental of motor road vehicles; Rental of motor vehicles; Motor land vehicle renting; Rental of traction vehicle and trailers; Leasing of motor vehicles; Arrangement of vehicle rental; Vehicle rental services.</i>	<i>Rental, leasing or hiring of vehicles</i> (413 mark)
42	<i>Design of motor vehicle parts; Design of vehicle transporters; Design of vehicles and vehicle parts and components.</i>	<i>Automotive research, design and development services</i> (825 mark)

27. This leaves a few remaining terms to compare. I shall start with *Vehicle dipsticks* in Class 9. Vehicle dipsticks are measuring devices, used to check on the oil level in a vehicle. Ms Newnes submits that these are highly similar to *Parts and fittings for all the aforesaid goods [motor vehicles]* in Class 12. I consider that they are likely to be sold through the same trade channels as other parts and fittings for motor vehicles to the same users, who are tradespeople repairing vehicles or members of the general public requiring replacement parts. There is likely to be a degree of complementarity with other motor vehicle parts, such as the oil pan or reservoir that stores the oil. The

dipstick is essential for the safe use of the oil pan or reservoir, as the user can check whether it needs to be filled. It will need to fit the car engine and in my view the average consumer would assume that the goods are the responsibility of the same undertaking. There is no competition between the goods. I find that *Vehicle dipsticks* are highly similar to *Parts and fittings for all the aforesaid goods [motor land vehicles]*.

28. The rest of the terms I need to consider are all in Class 39. They are as follows: *Vehicle storage; Vehicle parking; Towing of motor vehicles; Towing of vehicles; Vehicle towing services; Arranging vehicle towing; Armoured vehicle transport; Vehicle recovery; Recovery (Vehicle -); Towing of road vehicles; Motor vehicle transport services; Towing by motor vehicles; Vehicle parking services; Towing and transport of cars as part of vehicle breakdown services.*

29. In *SEPARODE Trade Mark*, BL O-399-10, Mr Geoffrey Hobbs QC, sitting as the Appointed Person, said that it was permissible to group goods or services together for the purposes of the comparison “*if and to the extent that the list includes goods which are sufficiently comparable to be assessable for registration in essentially the same way for essentially the same reasons*”: see paragraph 5. The first group I shall consider is *Towing of motor vehicles; Towing of vehicles; Vehicle towing services; Arranging vehicle towing; Vehicle recovery; Recovery (Vehicle -); Towing of road vehicles; Motor vehicle transport services; Towing by motor vehicles; Towing and transport of cars as part of vehicle breakdown services.* I shall compare them to *Parts and fittings for all the aforesaid goods [motor land vehicles]* in Class 12 of the 413 mark. The goods and services will be targeted towards the same users and I consider that there may be some overlap in trade channels, as it is likely that there will be some undertakings offering recovery and breakdown services and their own-branded parts and fittings. The nature and method of use of the goods and services are different, as is the intended purpose. I do not find there to be any competition or complementarity. Overall, I find that these services are similar to *Parts and fittings* to a low degree.

30. I do not see any obvious similarity between the opponent’s services and *Vehicle storage; Vehicle parking; Armoured vehicle transport; Vehicle parking services.* In the Annex to her skeleton argument, Ms Newnes has presented three possible comparisons. The first is with the Class 39 services, *Rental, leasing or hiring of vehicles.* She submits that the parties’ respective services are similar but does not give

any reasons. The second is with the Class 12 goods *Motor land vehicles; parts and fittings for all the aforesaid goods*. Here, Ms Newnes submits that the parties' goods are likely to be offered by the same traders (such as mechanics and car repair workshops) and promoted and offered for sale through the same types of publications. While I agreed with this submission in respect of the services considered in the previous paragraph, I find it unpersuasive here. The final comparison is with the Class 42 services *Online system management services that allow users to remotely view, monitor, program, operate and control motor vehicle systems for others*. The explanation given is that the services are complementary and may be offered to consumers who are having their vehicles restored, treated or fixed. I am not convinced that the Class 42 services would be offered to such consumers. However, because the applicant has not denied that the goods and services are similar, I will proceed on the basis that *Vehicle storage; Vehicle parking; Armoured vehicle transport and Vehicle parking services* are similar to the Class 12 goods to a very low degree.

Average consumer and the purchasing process

31. The average consumer is deemed to be reasonably well informed and reasonably circumspect: see *Hearst Holdings Inc & Anor v A.V.E.L.A. Inc & Ors*, [2014] EWHC 439 (Ch), paragraph 60. For the purposes of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods and services in question: see *Lloyd Schuhfabrik*, paragraph 26.

32. Ms Newnes submitted that the average consumer was a vehicle owner, someone who wanted to own a vehicle, or someone who requires transportation services. In my view, the average consumer of the goods and services is not the same across the board, and so I shall divide the goods and services into groups.

33. The first of these is *Motor land vehicles* in Class 12. In my view, the average consumer of these goods is likely to be a member of the general public, a professional or an organisation, such as a vehicle rental company or a provider of transport services. Ms Newnes accepted that the level of attention paid would be higher than average. I agree. These are expensive purchases that, in the case of the general public, are made relatively infrequently. In my view, the purchasing process will be

highly considered and is likely to be largely visual. The average consumer will inspect the vehicle or an identical model before purchasing and may have seen promotional material, read reviews or browsed websites. I accept that they may also receive word-of-mouth recommendations, but I consider that the aural element of the mark will be less important than the visual element for these goods.

34. The average consumer of the rest of the goods, which can be characterised as parts and fittings and accessories for vehicles, is also, in my view a member of the general public, a professional or an organisation. The goods are also likely to be purchased by intermediaries, such as car service centres or mechanics. Ms Newnes submitted that the end consumer was unlikely to see the goods or their packaging. In my view, there will be instances where the average consumer sees the marks. For example, they may purchase goods such as wiper blades, tyres or vehicle lights from a retailer or website and fit them themselves or purchase the fitting separately. However, I also agree that there will be instances where the end user does not see the goods at all but discusses them with a mechanic or assistant at a service centre. Therefore, I consider that the purchasing process for these goods may either be predominantly aural or visual. The level of attention paid is likely to be medium.

35. Ms Newnes submitted that the Class 39 services are often purchased at a time of emergency, such as a breakdown, over the telephone. She added that they may also be purchased orally from a mechanic, car repairer or servicer. I agree that towing and transportation services are likely to be purchased at a time of emergency, although they may well be acquired by a third party, such as a breakdown service provider or a car repairer. In other circumstances, the end-user would be likely to search the internet for local businesses supplying such services. In my view, the purchasing process will be largely visual, although there is also likely to be some role for the aural aspects of the mark. I consider that the level of attention paid is medium.

36. The average consumer of vehicle rental, parking and storage services is likely to be a member of the general public or an organisation. In my view, parking services will be purchased fairly frequently. The average consumer will see the mark, on websites or booking apps if they are arranging the parking in advance, or on signage at the parking site itself. In my view, the level of attention paid is likely to be medium. Rental and storage services would be expected to be purchased less frequently and in my

view the level of attention paid would be medium. I consider that the average consumer would see the mark in use on websites, promotional material or physical premises. The purchasing process is likely to be predominantly visual, although there may also be a role for word-of-mouth recommendations.

37. Finally, I come to the Class 42 design services. Ms Newnes has given me no specific submissions on the identity of the average consumer for these services. I consider that they are likely to be a motor vehicle manufacturer or company that alters vehicles. In addition, there may be some members of the general public who use these services. The purchasing process will, in my view, be a considered one, given the possible impact of alterations on the performance of a vehicle, and be predominantly visual, as the average consumer would see the mark in use in promotional material or on websites. As with the services discussed in the previous paragraph, there is also likely to be some role for oral recommendations. The level of attention paid will be fairly high.


Comparison of marks

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

“34. ... it is necessary to ascertain in each individual case, the overall impression made on the target public by the sign for which the 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.”

39. Artificial dissection of the marks would therefore be wrong, although it is necessary for me to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

40. The respective marks are shown below:

Contested mark	Earlier marks
	<p>RANGE ROVER (413 and 825 marks)</p> <p>RANGE ROVER (293 mark)</p>

41. The contested mark is a black rectangle, with the word “RAGE” at the top and the word “OVER” at the bottom. In between these words, there is a device which is made up of a single thick line that changes direction in an angular fashion. Both the verbal element and the device are white, and the letters are in upper case. Verbal elements tend to be regarded as more distinctive than figurative elements: see *Migros-Genossenschafts-Bund v European Union Intellectual Property Office (EUIPO) (CReMESPRESSO)*, Case T-68/17, paragraph 52. I consider that this would be the case for the contested mark. The words “RAGE OVER” would be read together and in my view it is the combination of these words that makes the greatest contribution to the overall impression of the mark, with the device playing a smaller role.

42. The 413 and 825 marks are word marks. In *LA Superquimica v EUIPO*, Case T-24/17, the General Court (“GC”) held that such plain word marks protected the word or words contained in the mark which may be used in any form, colour or typeface: see paragraph 39 of that judgment. It is my view that both words will be read together and that the overall impression of the mark lies in the combination of them. I also consider that the same applied for the 293 mark, which is an International Registration.

Visual comparison

43. The verbal elements of the parties’ marks consist of two words, both of four letters in the case of the contested mark and both of five letters in the case of the earlier marks. All the letters of the earlier marks appear in the contested mark, with the exception of the third letter of the first word (“N”) and the first letter of the second word

("R"). The device is a point of difference and, while it plays a smaller role in the overall impression of the contested mark, it cannot be ignored. I find that the marks are visually similar to a medium to high degree.

Aural comparison

44. The applicant accepted in his pleadings that the marks are aurally similar. The device will not be articulated. I do not agree with the applicant that the letter "A" will be pronounced differently in the first word of each mark. The usual pronunciation of those words in English has the same vowel sound. The differences are minor, and I agree with Ms Newnes that the marks are aurally highly similar.

Conceptual comparison

45. Ms Newnes submitted that the earlier marks would be viewed as "*the famous brand RANGE ROVER*".¹ In *Retail Royalty Company v Harringtons Clothing Limited*, BL O/593/20, Mr Philip Harris, sitting as the Appointed Person, explained why such submissions are generally misguided:

"74. The Opponent is trying to equate reputation in a trade mark sense with conceptual meaning. They are not the same thing. Reputation can mean different things, and in trade mark law the term is sometimes used loosely, but in this context, it concerns the factual extent to which a sign is recognised by a significant part of the public as a *trade mark*.

75. In contrast conceptual meaning is, in simple terms, something akin to recognition in dictionaries (beyond a mere trade mark acknowledgement) or a level of immediately perceptible notoriety/independent meaning, outside the confines of a purely trade mark context, of which judicial notice can be taken. Whilst a trade mark's reputation might evolve or be converted into a conceptual meaning (possibly to its detriment in terms of genericity), it needs to be properly proven.

76. It is true that there are cases where an extensive reputation has been parlayed into a conceptual meaning (for example C-361/04 P *PICASSO*/

¹ Transcript, page 9.

PICARO and C-449/18 *MESSI*) but these are the exception rather than the rule and depend on their own facts. Furthermore, the 'reputation' element in those cases related to the fame attached to the names of the individuals for their roles in society, rather than specifically to a trade mark function. In other words, it was a different sort of reputation."

46. I do not consider that this is a situation where any reputation of "RANGE ROVER" has been "*parlayed into a conceptual meaning*".

47. The applicant's position is that the contested mark conveys a message of adventure, exploration and sustainability. At the hearing, he submitted that RAGE OVER tells a story of rebellion against the mainstream, while the opponent's focus is on luxury. The latter submission is another instance of an attempt to equate the conceptual meaning with reputation as a trade mark. Ms Newnes disagreed that the contested mark told a clear story. The applicant also submitted that the device would be understood as the symbol for infinity. Ms Newnes disagreed, noting that infinity was usually a figure of eight on its side. I agree with Ms Newnes and take the view that the device would be seen as a graphic with no meaning.

48. Ms Newnes also submits that some consumers would see the contested mark as a play on the earlier marks "RANGE ROVER". I see this submission as a variant of the argument already discussed in the previous paragraphs.

49. In my view, the word "ROVER" in the earlier marks would bring to the mind of the average consumer a person or object who travels. The addition of "RANGE" at the beginning suggests that the person or object may travel a long distance. The contested mark may be understood as referring to a state of calm after a period of anger. There may also be some consumers who think it means anger about something, but the cause of the anger is unspecified. However, I agree with Ms Newnes that the contested mark does not have a clear and obvious meaning. There is no conceptual similarity between the marks.

Distinctive character of the earlier marks

50. Distinctive character is a measure of how strongly a mark distinguishes the goods or services of one undertaking from those of others. The factors that I must take into

account in assessing the level of distinctive character were set out by the CJEU in *Lloyd Schuhfabrik Meyer*.

“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).”

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

52. Given my findings on the conceptual message of the earlier marks, I find that they are mildly allusive of travel. That said, the combination of “RANGE” and “ROVER” is not found in standard English. I find that the earlier marks have a medium degree of inherent distinctive character. Ms Newnes submitted that the use made of the marks had increased the distinctive character to high.

53. Mr Wright has given evidence on the use of the RANGE ROVER word mark in relation to motor vehicles. He refers to long-standing use (since 1970) and strong sales figures, as shown in the table below.² I note that Mr Wright attributes the drop in sales in 2020-2022 to supply issues caused by the Covid-19 pandemic.

² Paragraph 11.

Year (Jan-Dec)	RANGE ROVER	RANGE ROVER EVOQUE	RANGE ROVER VELAR	RANGE ROVER SPORT	RR Brand Total
2017	6,157	24,906	4,538	11,625	47,226
2018	6,900	17,434	12,423	12,996	49,753
2019	6,251	23,304	9,973	12,946	52,474
2020	4,385	18,509	5,450	9,009	37,353
2021	4,630	14,264	4,806	9,641	33,341
2022	4,780	11,202	4,247	6,988	27,217
Total	33,103	109,619	41,437	63,205	247,364

54. In the years 2017-2022, the opponent enjoyed a share of the UK new car market of between 1.69% and 2.29%.³

55. Between 2018 and 2022, the opponent spent £21,311,867 on UK advertising.⁴ Mr Wright says that references to the RANGE ROVER brand are frequently made in UK media. A search for articles returned 433 for December 2017, 8897 for 2018, 9151 for 2019, 6673 for 2020, 8672 for 2021 and 8896 for 2022.⁵ The opponent's RANGE ROVER cars have also featured in James Bond films *Quantum of Solace*, *Skyfall*, *SPECTRE* and *No Time to Die*.⁶ They have also appeared in TV programmes *Succession*, *The Crown* and *Top Gear*.

56. Ms Newnes also drew my attention to the results of a study run by YouGov in 2023, which found that the Range Rover was the most known car model in the UK with a "fame score" of 97%.⁷ I do not have any information on the methodology used in this study and also note that it was run after the relevant date in these proceedings, which is the date of application for the contested mark (2 December 2022). Ms Newnes submitted that evidence dated after the relevant date was capable of throwing light backwards on the position as at the relevant date. She referred me to the decision of the High Court in *Thom Browne Inc v Adidas AG* [2024] EWHC 2990, where the point

³ Paragraph 13.

⁴ Annex BW-7.

⁵ Paragraph 25.

⁶ Paragraph 27.

⁷ Exhibit BW-1.

was made in relation to evidence of confusion: see paragraph 380.⁸ However, even without this evidence, I find that the use of the 413 mark over a long period is such as to increase the level of distinctive character to very high for *Motor land vehicles*, namely cars.

Conclusions on likelihood of confusion

57. Making an assessment of the likelihood of confusion is a matter of considering the relevant factors from the viewpoint of the average consumer of the goods and services at issue and determining whether they are likely to be confused. When doing this, I am required to bear in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely on the imperfect picture of them that they have in their mind. This means that the global assessment emulates what happens in the mind of the average consumer on encountering the later mark with an imperfect recollection of the earlier mark. The courts have not said what weight should be attached to each of the factors or provided a formula that can be applied to any set of circumstances. However, I am required to take account of the interdependency principle, i.e. that a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services or vice versa.

58. There are two types of confusion: direct and indirect. In *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10, Mr Iain Purvis QC, sitting as the Appointed Person, explained that:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognised 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

⁸ Skeleton argument, paragraph 19.

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)."

59. In *Liverpool Gin Distillery Limited & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ commented that:

"12. This is a helpful explanation of the concept of indirect confusion, which has frequently been cited subsequently, but as Mr Purvis made clear it was not intended to be an exhaustive definition.

13. As James Mellor QC sitting as the Appointed Person pointed out in *Cheeky Italian Ltd v Sutaria* (O/291/16) at [16] 'a finding of likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion'. Mr Mellor went on to say that, if there is no likelihood of direct confusion, 'one needs a reasonably special set of

circumstances for a finding of a likelihood of indirect confusion'. I would prefer to say that there must be a proper basis for concluding that there is a likelihood of indirect confusion given that there is no likelihood of direct confusion.”

60. The applicant submitted that the difference between the conceptual content of the marks would decrease the rise of any confusion. While it may sometimes be the case that conceptual distinctions counteract visual and aural similarities, this is relatively unusual and requires at least one of the signs to have a clear and specific meaning for the relevant public, so that they are capable of grasping it immediately: see *Ruiz-Picasso & Ors v OHIM*, Case C-361/04 P, paragraph 20. In my view, neither of the marks at issue fall into that category.

61. Ms Newnes referred me to the decision of the Court of Appeal in *TVIS Limited v Howserv Services Limited* [2024] EWCA Civ 1103. In it, Arnold LJ said:

“49. ... TVIS argues that, perhaps due to the inconsistency of his reasoning with respect to the acquired distinctive character of the Trade Mark, the judge failed to consider likelihood of confusion from the perspective of consumers amongst whom VETSURE has a reputation. As is well known, the human eye has a tendency to see what it expects to see and the human ear to hear what it expects to hear. Accordingly, consumers who are familiar with VETSURE may misread and/or mishear PETSURE as VETSURE. Mishearing is particularly likely because PETSURE is so close in sound to VETSURE.”

62. She submitted that the same could be said for consumers who are familiar with RANGE ROVER, given the similarity between the marks. Where the purchasing process is more considered, namely with *Motor land vehicles* in Class 12 and the Class 42 services, I take the view that the greater the level of attention paid means that it is less likely that the average consumer will misread or mishear the mark. Consequently, I find that there is no likelihood of direct confusion in respect of these goods and services.

63. Ms Newnes also submitted that there was a likelihood of indirect confusion, as the average consumer would assume that only the opponent would use a mark “so similar

to the strikingly distinctive ‘RANGE ROVER’” in relation to vehicle-related goods and services.⁹ This is where the submission that the contested mark may be perceived as a play on words comes in. Consumers who have encountered the earlier marks are likely to be reminded of them when faced with the contested mark, but I am not persuaded that they would think that the marks belong to the same undertaking or to economically connected undertakings, particularly where the average consumer is paying a high degree of attention during the purchasing process. I find no likelihood of indirect confusion.

64. Where I have found there to be a lower level of attention and a significant role in the purchasing process for the oral aspect of the mark, I consider that there is a likelihood of direct confusion. In my view, this applies to the goods in Classes 9 and 11 and to the *Parts and fittings* for motor vehicles in Class 12. Fair use of the contested mark would cover parts, fittings and accessories that would fit RANGE ROVER cars. I have taken into account the higher degree of distinctive character of the 413 mark for cars. The exception to this is *Tyres for two-wheeled motor vehicles*, as the evidence does not show that the earlier marks have an enhanced distinctive character for anything other than four-wheeled motor vehicles.

65. I found that the contested vehicle rental services were identical to services covered by the 413 mark. I have no evidence to suggest that the 413 mark has been used for these services and so was unable to find that the distinctive character of the mark had been enhanced for them. I will come to the question of reputation later, but I note that the opponent has not claimed that it has a reputation for these services. I will come back to the question of likelihood of confusion in relation to the goods for which reputation is claimed later in my decision. For the moment, I find that the differences between the marks are such that the average consumer is not likely to be directly confused.

66. I found the towing and recovery services to be similar to *Parts and fittings* to a low degree and, if there was any similarity between the transportation, parking and storage services and the opponent’s goods and services, it was also low. In my view, the

⁹ Skeleton argument, paragraph 45.

differences between the marks are such that the average consumer is not likely to be directly confused.

67. Turning now to the submissions on indirect confusion, I do not consider that the earlier marks are so distinctive that the average consumer would assume that, if they encountered the contested mark being used for the Class 39 services, it belongs to the opponent or an economically connected undertaking.

68. The section 5(2)(b) ground is successful in relation to the following goods:

Class 9

Vehicle stereos; Vehicle batteries; Vehicle radios; Radios (Vehicle -); Vehicle fuses; Vehicle dipsticks.

Class 11

Vehicle headlights; Vehicle taillights; Vehicle headlamps; Motor vehicle lamps; Vehicle lights; Reflectors (Vehicle -); Vehicle reflectors; Vehicle brake lights.

Class 12

Vehicle tires; Vehicle chassis; Chassis (Vehicle -); Vehicle windshields; Bodywork (Vehicle -); Vehicle wheels; Wheels (Vehicle -); Underbodies of vehicle; Vehicle windcreens; Vehicle tyres; Vehicle trailers; Vehicle sunroofs; Vehicle bumpers; Bumpers (Vehicle -); Motor vehicle horns; Vehicle cabs; Motor vehicle bodies; Seats (Vehicle -); Vehicle seats; Wheel tires (Vehicle -); Vehicle wheel tires; Vehicle trolleys; Vehicle propellers; Vehicle mirrors; Vehicle bodies; Vehicle doors; Vehicle seating; Vehicle wheel tyres; Wheel tyres (Vehicle -); Vehicle hoods; Vehicle windows; Vehicle seat subsystems; Tyres for motor vehicle wheels; Motor land vehicle engines; Vehicle joysticks; Tires for vehicle wheels; Chassis for motor vehicles; Motor vehicles (Chassis for -); Vehicle body hardware; Bonnets for vehicle engine; Vehicle partitions; Tyres for vehicle wheels; Vehicle axle assemblies; Vehicle safety seats; Valves for vehicle tires.

Section 5(3)

69. Section 5(3) of the Act is as follows:

“A trade mark which–

(a) is identical with or similar to an earlier trade mark,

[...]

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

70. The mark relied on under this section, i.e. the 413 mark, is a comparable mark, created pursuant to section 7A of the European Union (Withdrawal) Act 2018, which gave effect to Article 54 of the Withdrawal Agreement. The mark has the same legal status as if it had been applied for and registered under UK law and retains the original filing and registration dates of the EU Trade Mark from which it was created. Paragraph 10 of Part 1, Schedule 2A of the Act is therefore relevant. It is as follows:

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

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

(a) the reputation of the mark are to be treated as references to the reputation of the corresponding EUTM, and

(b) the United Kingdom includes the European Union.”

71. The relevant case law can be found in the following judgments of the CJEU: *General Motors Corp v Yplon SA* (Case C-375/97), *Intel Corporation Inc v CPM United Kingdom Ltd* (Case C-252/07), *Adidas Salomon AG v Fitnessworld Trading Ltd* (Case C-408/01), *L’Oréal SA & Ors v Bellure & Ors* (Case C-487/07), *Interflora Inc & Anor v Marks and Spencer plc & Anor* (Case C-323/09) and *Environmental Manufacturing LLP v OHIM* (Case C-383/12 P). 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 and/or services, the extent of the overlap between the relevant consumers for those goods and/or 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 that there is a serious likelihood that such an injury will occur in the future; *Intel*, paragraph 68. Whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel*, paragraph 79.
- f) The more immediately and strongly the earlier mark is brought to mind by the later mark, the greater the likelihood that use of the latter will take unfair advantage of, or will be detrimental to, the distinctive character or the repute of the earlier mark; *L'Oréal*, paragraph 44.
- g) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods and/or 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 and/or services for which the earlier mark is registered, or a serious risk that this will happen in the future; *Intel*, paragraphs 76 and 77, and *Environmental Manufacturing*, paragraph 34.

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

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

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

Reputation

72. In *General Motors*, the CJEU held that:

“24. The public amongst which the earlier trade mark must have acquired a reputation is that concerned by that trade mark, that is to say, depending on the product or services marketed, either the public at large or a more specialised public, for example traders in a specific sector.

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

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

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

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

73. The applicant confirmed at the hearing that the opponent's claim to a reputation is not in dispute.¹⁰ In paragraph 5 above, I say that the opponent pleads that the 413 mark has "*a strong image*", projecting characteristics of "*quality, durability, decades of manufacturing expertise and world famous market success*". Even if this had not been admitted by the applicant, I would have made a finding of a very strong reputation for *Motor land vehicles, namely cars* based on Mr Wright's evidence that I have briefly summarised earlier in my decision when I considered the distinctive character of the earlier marks. I shall proceed on the basis that the opponent has a reputation for *Motor land vehicles* in general, given the applicant's admission.

Link

74. In assessing whether the public will make the required mental link between the marks, I must take account of all relevant factors, which were identified by the CJEU in *Intel* at paragraph 42 of its judgment. I shall consider each of them in turn.

¹⁰ Transcript, page 16.

The degree of similarity between the conflicting marks

75. I found that the marks are visually similar to a medium to high degree and aurally highly similar, and have no conceptual similarity.

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

76. All the goods and services for which the contested mark is proposed to be registered are related to motor land vehicles. The relevant public for the goods are likely to be members of the general public, although I accept that there will also be some trade customers, such as mechanics or fleet managers. Some of the services, such as vehicle transport services and design services, are more likely to be purchased by trade customers, such as motor dealers and manufacturers.

77. The goods are the vehicles themselves or parts and fittings for those vehicles. In my view, these goods are either identical or similar to at least a medium degree to the goods for which the earlier mark has a reputation. This is on the basis of shared trade channels, shared users and complementarity. I have already dismissed the applicant's submission that the goods are different because they are targeted towards a different section of the market: see paragraph 20 above.

78. The contested Class 39 services include rental and leasing services, towing, recovery and transport services, storage and parking services. I consider that the similarity between the *Motor land vehicles* and the rental and leasing services is at a medium level. (These are *Truck and vehicle rental; Vehicle rental; Motor vehicle rental; Passenger vehicle hire; Automobile vehicle leasing services; Automobile vehicle renting services; Rental of vehicle parts; Vehicle hire; Rental of motor road vehicles; Rental of motor vehicles; Motor land vehicle renting; Rental of traction vehicles and trailers; Leasing of motor vehicles; Arrangement of vehicle rental; Vehicle rental services*.) There is some competition between the goods and the services, as the average consumer may choose whether to buy or to lease a vehicle, and they are also complementary.

79. The similarity between the opponent's goods and the remaining Class 39 services is lower. Ms Newnes submits in the Annex to her skeleton argument that these services are similar to *Motor land vehicles; parts and fittings for all the aforesaid goods* as they are likely to be offered by the same traders (such as mechanics or car repair workshops) and promoted and sold through the same publications. I consider that this argument would be more convincing if I were to compare the Class 39 services to parts and fittings, but those are not the goods for which the opponent has claimed reputation. I have no evidence to suggest that the same traders are responsible for the vehicles and for these services. If there is any similarity, it is at a low level, although I do appreciate that the services relate to vehicles.

80. Ms Newnes submits in the same Annex that the Class 42 services are similar to *Motor land vehicles; parts and fittings for all the aforesaid goods*, as they are complementary and likely to be offered by the same providers to the same public, namely those who wish to own or modify a vehicle, and promoted and sold through the same publications. Again, this is to my mind a more persuasive comparison for parts and fittings. If there is an overlap in the public for the services and for *Motor land vehicles*, I consider that it will be fairly small. The design services are likely to be offered to manufacturers of the motor vehicles or parts for such vehicles, rather than the end-user. As with the services considered in the previous paragraph, it is my view that if there is any similarity, it is at a low level, although the services still relate to vehicles.

The strength of the earlier mark's reputation

81. As discussed above, the applicant has not denied the opponent's pleadings on reputation. I would in any case have found a very strong reputation for cars on the basis of the evidence filed.

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

82. I have found that the 413 mark has a very high degree of distinctive character for motor cars and medium for other vehicles.

Whether there is a likelihood of confusion

83. I have already found a likelihood of confusion for some of the goods under section 5(2)(b). I have considered whether there is a likelihood of confusion under section 5(3) for the remaining goods and services, given the very strong reputation and the high distinctive character. Section 5(3) provides additional protection to marks with a reputation, so my finding of no likelihood of confusion under section 5(2)(b) for certain goods and services does not preclude a finding of a likelihood of confusion under section 5(3). Ms Newnes submitted that some consumers may see “RAGE OVER” as a play on “RANGE ROVER”. In my view, the reputation and distinctiveness of the 413 mark for cars is such that members of the public who are familiar with the 413 mark may believe that the contested mark is a playful use by the opponent itself, or by an economically connected undertaking, if the mark were to be used for cars or for services related to cars. I do not consider that the risk will be removed by the relatively high degree of attention paid by the purchasers of some of these goods and services. Consequently, I find that there is a likelihood of confusion if the contested mark were to be used for the following goods and services, which are related to cars or include goods and services related to cars:

Class 12

Passenger motor vehicles; Towed vehicles; Motor vehicles; Self-propelled electric vehicle; All-terrain vehicles; Motor car derived vans; Off-road vehicles; Autonomous motor vehicles; Automotive vehicles.

Class 39

... vehicle rental; Vehicle rental; Motor vehicle rental; Vehicle parking; Passenger vehicle hire; Vehicle storage; Automobile vehicle leasing services; Towing of motor vehicles; Automobile vehicle renting services; Towing of vehicles; Vehicle towing services; Rental of vehicle parts; Arranging vehicle towing; Vehicle hire; Vehicle recovery; Recovery (Vehicle -); Rental of motor road vehicles; Rental of motor vehicles; Motor land vehicle renting; Towing of road vehicles; Motor vehicle transport services; Leasing of motor vehicles; Arrangement of vehicle rental; Towing by motor vehicles; Vehicle parking services; Towing and transport of cars as part of vehicle breakdown services; Vehicle rental services.

Class 42

Design of motor vehicle parts; Design of vehicle parts and components.

84. I do not find a likelihood of confusion for the following goods and services:

Class 12

Airplane towing vehicles; Tyres for two-wheeled motor vehicles; Two-wheeled motor vehicles.

Class 39

Truck ... rental; Armoured vehicle transport; Rental of traction vehicle and trailers.

Class 42

Design of vehicle transporters.

Conclusions on link

85. Where I have found there to be a likelihood of confusion, there is automatically a link. Even if I am wrong on confusion, I consider that the reputation and distinctive character of the 413 mark are so high that a link would be created in the mind of the consumer for all the goods and services in the applicant's specification.

Damage

86. The applicant did not deny the opponent's claim that there would be damage. At the hearing, he argued that this was a hypothetical point and that, in order to assess whether there would be damage, a "*large-scale study*" needed to be undertaken.¹¹ He then returned to his position that the two parties served different segments of the market. I have already explained why this argument cannot succeed.

87. The claim under section 5(3) is wholly successful.

Final remarks on section 5(3)

88. Even if the applicant had denied the opponent's claims, damage follows where there is a likelihood of confusion. It gives an unfair advantage to the later mark, as it

¹¹ Transcript, page 17.

benefits from the reputation of the earlier mark and the investment in marketing made by the proprietor of that earlier mark.

OUTCOME

89. The opposition has succeeded. Subject to a successful appeal, Application No. 3855523 is refused registration.

COSTS

90. The opponent has been successful and is entitled to a contribution towards its costs in line with the scale set out in TPN 1/2023. In the circumstances, I make the following award:

£300 for preparing a statement and considering the other side's statement;

£1000 for preparing evidence and considering and commenting on the other side's submissions;

£700 for preparing for and attending a hearing;

£200 for official costs for filing the opposition.

£2200 in total

91. I therefore order Plamen Vassilev to pay Jaguar Land Rover Limited the sum of £2200. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 22nd day of December 2025

Clare Boucher
For the Registrar,
Comptroller-General