

O/1215/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004026090

**BY UK TECHNOLOGY LIMITED
TO REGISTER THE FOLLOWING TRADE MARK:**



IN CLASSES 9, 11 AND 35

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. OP000448437**

BY ORBIS PROTECT LIMITED

Background and pleadings

1. On 14 March 2024, UK TECHNOLOGY LIMITED (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the UK. The application was published on 5 April 2024 for goods and services in classes 9, 11 and 35 as outlined in Annex A of this decision.

2. On 4 July 2024, Orbis Protect Limited (“the opponent”) partially opposed the application on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The full list of applied for goods and services are outlined in Annex A of this decision. The opposed goods and services are as follows:

Class 9: Home automation software; Home automation devices; Home automation systems; Home automation hubs; Servers for home automation; Home remote controls; Smart padlocks; Smart locks; Smart card readers; Encoded smart cards; Blank smart cards; Smart manufacturing software; Smart door locks; Smart house software; Smart home software; Smart home hubs; Smart manufacturing system controls; Smartphone software applications, downloadable; Docking stations for smartphones; Power supplies for smartphones; Wireless headsets for smartphones; Integrated circuit cards [smart cards]; Encoded, magnetic and smart cards; Fire detectors; Closed circuit television systems (CCTV); Closed circuit TV [CCTV] software; Software for the planning, integration and optimisation of smart city applications; Software for the planning, integration and optimization of Smart City applications; Electrical locks; Electric locks; Electronic locks; Wireless locks; Smart locks; Electromagnetic locks; Biometric locks; Electronic lock assemblies; Wireless lock assemblies; Electronic door locks; Digital door locks; Fingerprint door locks; Smart door locks; Electronic locking apparatus; Wireless locking mechanisms; Electronic locking systems; Radio-frequency controlled locks; Combination locks (metal -) [electric]; Card operated electronic locks; Locks [electric] with alarms; Electric locks for vehicles; Biometric fingerprint door locks; Motor vehicle power locks; Electronic finger vein locks; Radio operated door lock controls; Releasable locking devices [electric]; Central door

locking apparatus; Safety locking devices [electric]; Combination locks (non-metallic -) [electric]; Electronic locking mechanisms for safes; Security cameras; Security alarms; Security software; Electronic security tags; Security control apparatus; Security warning apparatus; Personal security alarms; Security tokens [encryption devices]; Downloadable computer security software; Keypads for security alarms; Motion sensors for security lights; Control panels for security alarms; Utility, security and cryptography software; Electronic security systems for home network; Software for network and device security; Software; Operating software; Platform software; Encryption software; Interface software; Software applications; Authentication software; Maintenance software; Multimedia software; Industrial software; Utility software; Sensory software; Adaptive software; Smart house software; Intelligent distance recorders; Intelligent gateways for communication; Smoke detectors; Electric smoke detectors; Decorative covers for smoke detectors; Apparatus for testing smoke detectors using an aerosol spray; Combination carbon monoxide and smoke detectors; Electric smoke sensors; Smoke alarms; Electronic carbon dioxide recorders [other than for medical purposes]; Carbon dioxide detectors; Electronic carbon dioxide monitors [other than for medical purposes]; Smart smoke detectors; Smart Carbon dioxide detectors.

Class 35: Retail and wholesale services in relation to Home automation software, Home automation devices, Home automation systems, Home automation hubs, Servers for home automation, Home remote controls, Smart padlocks, Smart locks, Smart card readers, Encoded smart cards, Blank smart cards, Smart manufacturing software, Smart door locks, Smart house software, Smart home software, Smart home hubs, Smart manufacturing system controls, Smartphone software applications, downloadable, Integrated circuit cards [smart cards], Encoded, magnetic and smart cards, Fire detectors, Closed circuit television systems (CCTV), Closed circuit TV [CCTV] software, Software for the planning, integration and optimisation of smart city applications, Software for the planning, integration and optimization of Smart City applications, Electrical locks, Electric locks, Electronic locks, Wireless locks, Smart locks, Electromagnetic locks, Biometric locks, Electronic lock assemblies, Wireless lock assemblies, Electronic door locks, Digital door locks,

Fingerprint door locks, Smart door locks, Electronic locking apparatus, Wireless locking mechanisms, Electronic locking systems, Radio-frequency controlled locks, Combination locks (metal -) [electric], Card operated electronic locks, Locks [electric] with alarms, Electric locks for vehicles, Biometric fingerprint door locks, Motor vehicle power locks, Electronic finger vein locks, Radio operated door lock controls, Releasable locking devices [electric], Central door locking apparatus, Safety locking devices [electric], Combination locks (non-metallic -) [electric], Electronic locking mechanisms for safes, Security cameras, Security alarms, Security software, Electronic security tags, Security control apparatus, Security warning apparatus, Personal security alarms, Security tokens [encryption devices], Downloadable computer security software, Keypads for security alarms, Motion sensors for security lights, Control panels for security alarms, Utility, security and cryptography software, Electronic security systems for home network, Software for network and device security, Software, Operating software, Platform software, Encryption software, Interface software, Software applications, Authentication software, Maintenance software, Multimedia software, Industrial software, Utility software, Sensory software, Adaptive software, Smart house software, Intelligent distance recorders, Intelligent gateways for communication, Smoke detectors, Electric smoke detectors, Decorative covers for smoke detectors, Apparatus for testing smoke detectors using an aerosol spray, Combination carbon monoxide and smoke detectors, Electric smoke sensors, Smoke alarms, Electronic carbon dioxide recorders [other than for medical purposes], Carbon dioxide detectors, Electronic carbon dioxide monitors [other than for medical purposes], Smart smoke detectors, Smart Carbon dioxide detectors, enabling customers to view and purchase these goods on-line and in a physical store.

3. The opponent relies upon the following mark:

ORBIS

UKTM no. UK000912427324¹

¹ Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right holders with an existing registered EUTM or International

Filing date: 13 December 2013

Registration date: 20 May 2016

4. The opponent relies upon on a variety of goods and services in classes 6, 9, 19, 36, 36 and 45 as set out at paragraph [38] of this decision.

5. The opponent claims that the marks are similar and that the respective goods and services are identical or highly similar, with the result that there is a likelihood of confusion.

6. The trade mark relied upon by the opponent qualifies as an earlier trade mark pursuant to section 6 of the Act. The opponent's mark had completed its registration process more than 5 years prior to the application date of the mark at issue and, as above, the applicant has requested proof of use. As a result, the opponent's mark is subject to proof of use pursuant to section 6A of the Act.

7. The applicant filed a counterstatement denying the opponent's claims, putting the opponent to proof of use in respect of its earlier mark.

8. The opponent is represented by Barker Brettell LLP and the applicant is represented by GCS Europe Ltd.

9. Only the opponent filed evidence in these proceedings. This will be summarised to the extent that it is considered appropriate. No hearing was requested however the opponent filed submissions in lieu of the same. This decision is taken following careful consideration of the papers.

10. 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

Registration designating the EU. As a result, the opponent's earlier mark was converted into a comparable UK trade mark. Comparable UK marks are now recorded in the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and the original filing dates remain the same.

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

11. The opponent filed evidence in the form of the witness statement of Benjamin Howard dated 10 February 2025. Mr Howard is the CEO of Orbis Protect Limited. The witness statement is accompanied by exhibits BH1-BH16. The purpose of the evidence is to demonstrate that the earlier mark has been put to genuine use for the goods and services on which the opponent relies.

12. Whilst I do not intend to summarise the evidence here, I have taken it into consideration in reaching my decision and I will refer to it below where necessary.

DECISION

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

“5(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 of association with the earlier trade mark.”

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

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

Proof of use

15. I will begin by assessing whether and to what extent the evidence supports the opponent's statement that it has made genuine use of the mark in relation to the services relied upon.

16. The relevant statutory provisions are set out in Section 6A of the Act, which states:

“(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. As the earlier mark is a comparable mark, paragraph 7 of Part 1, Schedule 2A of the Act is also relevant. It reads:

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

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

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

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

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

—

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

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

18. Section 100 is also relevant, which reads:

“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.”

19. Pursuant to section 6A of the Act, the relevant period for assessing whether there has been genuine use of the earlier mark is the five-year period ending with the filing date of the application at issue i.e., **15 March 2019 to 14 March 2024**.

Relevant case law

20. 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 Bundervsvereinigung 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].”

21. As regards the territorial scope of the use of an EUTM, in *Walton International*,² Arnold J (as he then was), after setting out the eight applicable principles when assessing genuine use (which are the same as the eight principles he subsequently set out in *easyGroup Ltd*),³ added the further three principles when assessing genuine use in the EU:

“118. *The law with respect to genuine use in the Union.* Whereas a national mark needs only to have been used in the Member State in question, in the case of a EU trade mark there must be genuine use of the mark “in the Union”. In this regard, the Court of Justice has laid down additional principles to those summarised above which I would summarise as follows:

(9) The territorial borders of the Member States should be disregarded in the assessment of whether a trade mark has been put to genuine use in the Union: *Leno* at [44], [57].

(10) While it is reasonable to expect that a EU trade mark should be used in a larger area than a national trade mark, it is not necessary that the mark should be used in an extensive geographical area for the use to be deemed genuine, since this depends on the characteristics of the goods or services and the market for them: *Leno* at [50], [54]–[55].

(11) It cannot be ruled out that, in certain circumstances, the market for the goods or services in question is in fact restricted to the territory of a single

² *Walton International Ltd & Anor v Verweij Fashion BV*, [2018] EWHC 1608 (Ch), (which is also a decision by Arnold LJ, or Arnold J as he then was, that predates his decision in *easyGroup Ltd*).

³ *Ibid.*, paragraphs 114 and 115.

Member State, and in such a case use of the EU trade mark in that territory might satisfy the conditions for genuine use of a EU trade mark: *Leno* at [50].

22. Proven use of a mark which fails to establish that “the commercial exploitation of the mark is real” because the use would not be “viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services protected by the mark” is not, therefore, genuine use.⁴

Form of the mark

23. Before I move on to assess if the opponent has shown genuine use, I must first consider if I find the use of the mark as shown in the evidence to be use of the mark as registered.

24. The opponent’s registration is for the word mark “ORBIS”; however, most of the evidence displays the mark shown below:



25. I first acknowledge that where a registered mark is used as part of another mark or with additional matter, this may still constitute acceptable use of the mark as registered, where this element continues to act independently as an indicator of origin.⁵ With this in mind, I do not find that the additional wording or stylization elements shown above alter the distinctive character of the mark as registered. I say this because the word 'ORBIS' is still the prominent verbal element, and the words “property and people protection 24/7” are much smaller and will be perceived as a slogan indicating the nature of the goods and services offered by the opponent.

⁴ *Intermar Simanto Nahmias v Nike Innovate C.V.*, BL O/222/16

⁵ *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12

Accordingly, the use as shown above is still use of the mark 'ORBIS' as registered and it continues to indicate origin so the example above is use on which the opponent can rely.⁶

Use of the mark

26. I take the following from the opponent's evidence:

i. I note from the outset that all of the opponent's evidence relates solely to the UK.

ii. The opponent is a national provider of vacant property protection, security technology, and people protection services, operating since 1981. They employ over 800 staff, operate 25 offices, and maintain a fleet of over 250 vehicles.

iii. The opponent has adopted the name "Orbis" as its core brand name since 1997.

iv. The opponent has generated the following revenue throughout the relevant period:

Year	Total
2020	£38,188,653.00
2021	£46,618,300.72
2022	£56,964,901.33
2023	£80,281,053.31
2024	£96,474,583.71

v. For the purposes of internal record keeping, the opponent categorizes its goods and services using various reference names which the opponent has provided in paragraph 19 of its witness statement. The list of relevant goods and services along with their reference names are as follows:

⁶ See *Lactalis McLelland Limited v Arla Foods AMBA*, BL O/265/22.

Class	Goods/services	Orbis reference name
6	Metal doors; Metal fire and security doors; Screens; Locks	Steel
6	Fencing	Perimeter
6	Bollards and security panels and screens	Other security/steel
9	CCTV apparatus and instruments	Technology
19	Fencing	Perimeter
19	Bollards and security panels and screens	Other security/steel
36	Property management services	Property services
37	Installation and repair of locks; Repair and installation of doors & shutters	Steel
37	Repair and installation of fencing	Perimeter
37	Repair and installation of bollards, security panels and security screens	Other security/steel
37	Cleaning services; Pest control services; Infection control services	Property services
37	Glazing services	Other security/steel
45	Security and surveillance services; CCTV monitoring services;	Technology (CCTV and alarms), Monitoring and alarm response
45	Property security, surveillance, guarding, inspection and monitoring services	Property services, guarding, inspections, other security and monitoring
45	Property live-in guardian services	Guarding (security in residence)

45	Alarm services; alarm and electronic surveillance supervision; lease and rental of alarm and security devices	Technology (alarms)
45	Monitoring and management of access to, and the security of, buildings and commercial premises	Inspections, monitoring, other security, technology, alarm response
45	Locksmiths' services	Other security
45	Key management services	Inspections, monitoring
45	Body guarding services	Guarding (specialist provision)
45	Forensic services; Police support services	Property services (specialist provision)
45	Provision of security patrols and security guards	Guarding
45	Provision of bailiffs	Other security (eviction support)
45	Safety management services.	Other security (specialist provision)

vi. At exhibit BH02, the opponent has broken down its revenue figures into its different reference names. The total revenue for each category from 2020 to 2024 is as follows:

Category	Total
Technology	£46,229,828.45
Alarm response	£4,101,849.39
Monitoring and people protection	£13,693,220.97
Steel	£23,616,573.31
Perimeter and security fencing	£5,154,993.19
Property inspections	£7,310,127.95
Other security services	£17,769,098.09

Man guarding, security in residence, evictions and keyholding	£116,664,942.68
Property services including re-let cleaning and pest control	£83,986,858.04

vii. These categories have also been cross-referenced in the invoices⁷ to demonstrate use of the different goods and services. I note that some of the invoice dates are after the relevant period, however, these invoices concern goods and services that were provided during the relevant period. For example, invoice no. C1222524 is dated 31 December 2024, but covers services from February 2021 to April 2024 as shown on the “fit date/removal date”.

viii. Exhibit BH04 comprises a catalogue outlining the range of goods and services offered by the opponent. These include, inter alia, CCTV towers, gates, fencing, padlocks, the installation and removal of such items, pest control, security services and locksmith services. The opponent submits that the pricing structure for these goods and services is complex and varies according to the duration for which they are provided. Consequently, it claims that it has been unable to supply a fixed price list. I do not consider this omission to be detrimental to the opponent’s case, as revenue figures have been provided and individual prices are clearly reflected within the invoices submitted.

ix. Printouts of the opponent’s website are included in exhibit BH05. The pages provided include customer testimonials from companies such as Deloitte, Aviva and National Trust. The website also lists the opponent’s credentials in relation to security, health and safety, ‘lone worker’ related credentials and pest control. The website printouts also contain information regarding the goods and services offered. I note that this includes security services, vacant property services, fencing, gates, locks, screens and CCTV towers. The opponent designs and manufactures its own CCTV

⁷ Exhibit BH03

towers in-house. They also install and maintain the towers and provide security services by way of a 24/7 in-house alarm-receiving centre.

- x. From 2019 to 2024, the opponent has spent a total of £66,776.96 on advertising their trade mark in the UK. The opponent utilizes various forms of advertising including their website, social media, shows and events, Google ads, flyers, newspapers and magazines, email advertising and decals on employee vehicles. The opponent has provided invoices for its Google ads during the relevant period and examples of flyers, employee vehicles and packaging and labelling containing the earlier mark.⁸
- xi. Further examples of the opponent's marketing campaigns are shown in exhibits BH11-14. These include emails promoting the opponent's infection control services, pest control services and security services and are dated September 2020, January 2022, October 2023 and December 2023.
- xii. The opponent also uses several social media platforms to promote its goods and services. I note that the opponent has 5,466 followers on LinkedIn, 1,352 followers on X and 19,731 YouTube video views.
- xiii. The opponent has received several awards, endorsements and reviews since it was founded. Specifically, during the relevant period, the opponent was a finalist for the "Security Project of the Year" award at the Security X awards in December 2023; they received the "Highly Commended Award" within the "Supplier of the Year" category at the VINCI Facilities Supply Chain Awards 2022; and a "Commemorative Award" for 25 years of membership with the British Security Industry Association in January 2022. In 2020, the opponent was ranked EEM's⁹ first choice contractor in all categories and regions for their Vacant Property Services procurement framework. The opponent was also a finalist for Tomorrow's Facilities Management Awards 2021 in relation to its red alert lone worker services.

⁸ Exhibits BH08, BH09, BH15 and BH16

⁹ EEM is a non-profit organisation offering cost and efficiency savings to the public sector.

Images and social media posts in relation to these awards are included in exhibit BH07.

xiv. Coverage of the opponent's goods and services have appeared in UK newspapers and magazines during the relevant period. Extracts of nine articles are shown in exhibit BH10 and include the following:

- Orbis Protect and Defendec Inc. partner to provide UK clients with military grade security equipment, Sourcesecurity.com, 04 March 2020.
- Wiltshire's Veritas Property Management acquired by Orbis Protect, The Business Magazine, 31 August 2022.
- Orbis Protect acquires Secure Site UK, Martin Read, Facilitate Magazine, 01 March 2023.

27. That concludes my summary of the opponent's evidence to the extent that I consider it necessary.

Genuine Use

28. An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each piece of evidence shows use by itself.¹⁰ Genuine use depends upon a variety of factors, including the nature of the services and the characteristics of the market, the consistency of sales over time and whether the use is warranted to create or maintain a share in that market.

29. In considering the evidence as a whole, I am satisfied that it demonstrates genuine use of the opponent's mark in relation to all of its goods and services. Whilst the invoices provided do not demonstrate use in relation to all of the goods and services relied upon, the turnover figures are substantial and itemised according to the nature of the goods and services supplied by the opponent. The opponent acknowledges in its witness statement that only a selection of invoices has been filed

¹⁰ *New Yorker SHK Jeans GmbH & Co. KG v OHIM*, General Court of the European Union, Case T-415/09

for reasons of procedural economy.¹¹ I appreciate that parties are expected to limit the volume of evidence submitted, in line with Tribunal Practice Notice (TPN) 1/2015, and I do not regard this approach as detrimental to the opponent's case. Instead, I find it reasonable to infer that a proportion of these turnover figures are in relation to goods and services that have not been included in the invoices.

30. In this instance, I find that the use made by the opponent by way of its turnover figures, invoices, promotional activities and UK press coverage during the relevant period is more than merely token and is clearly an attempt to create or maintain a market for the goods and services relied upon. Accordingly, the opponent has established genuine use and may rely on those goods and services.

Section 5(2)(b) - Case law

31. The following principles are gleaned from the decisions of the courts of the *European Union 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.*

The principles:

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

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

¹¹ At paragraph 22

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

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

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

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

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

(g) a lesser degree of similarity between the goods or services may be offset by a 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;

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

Comparison of goods and services

32. In *Canon*, the Court of Justice of the European Union (“CJEU”) stated at paragraph 23 of its judgment:

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

33. Guidance on this issue has also come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

- a) The respective users of the respective goods or services;
- b) The physical nature of the goods or acts of services;
- c) The respective trade channels through which the goods or services reach the market;
- d) 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;
- e) 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.

34. In *Gérard Meric v OHIM*, 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.”

35. 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”.¹² Complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity,¹³ and it can be clearly distinguished from ‘use in combination’ – the latter being where goods/services are merely used together, whether by choice or convenience (e.g. wine and wine glasses),¹⁴ this means that they are not essential for each other.

36. In relation to the retail services covered by the application, I note that in *Oakley, Inc v OHIM*, Case T-116/06, at paragraphs 46-57, the GC held that although retail services are different in nature, purpose and method of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree.

37. Further, on the basis of the European courts’ judgments in *Sanco SA v OHIM*, Case C-411/13P and *Assembled Investments (Proprietary) Ltd v. OHIM*, Case T-105/05, at paragraphs [30] to [35] of the judgment, upheld on appeal in *Waterford*

¹² *Boston Scientific Ltd v OHIM*, Case T-325/06, paragraph 82

¹³ *Kurt Hesse v OHIM*, Case C-50/15 P

¹⁴ As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amalia Mary Elliot v LRC Holdings Limited*, BL O/255/13 - “It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes.”

Wedgewood Plc v. Assembled Investments (Proprietary) Ltd Case C-398/07P, Mr Hobbs concluded that:

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

ii) In making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it is necessary to envisage the retail services normally associated with the opponent's goods and then to compare the opponent's goods with the retail services covered by the applicant's trade mark;

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

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

38. The opposed goods and services are outlined in paragraph 2 of this decision. The relied upon goods and services are as follows:

Class 6: Metal doors, fencing, bollards and security panels and screens; metal fire and security doors, screens; locks.

Class 9: CCTV apparatus and instruments.

Class 19: Fencing, bollards and security panels and screens.

Class 36: Property management services.

Class 37: Installation and repair of locks; repair and installation of doors, shutters, fencing, bollards, security panels and security screen; cleaning services; pest control services; infection control services; glazing services; none of the aforesaid services provided in relation to the hospitality industry.

Class 45: Security and surveillance services; CCTV monitoring services; property security, surveillance, guarding, inspection and monitoring services; property live-in guardian services; alarm services; alarm and electronic surveillance supervision; lease and rental of alarm and security devices; monitoring and management of access to, and the security of, buildings and commercial premises; locksmiths' services; key management services; body guarding services; forensic services; police support services; provision of security patrols and security guards; provision of bailiffs; safety management services.

39. The opponent has provided submissions wherein it has grouped the opposed goods and services together for the purpose of comparing them to its earlier goods and services. Whilst I do not intend to reproduce the submissions in full, I have read their contents and have taken them into consideration during my assessment.

Class 9

Home automation software; Home automation devices; Home automation systems; Home automation hubs; Servers for home automation; Home remote controls; Smart house software; Smart home software; Smart home hubs; Smart house software.

40. The above terms are devices or software that can be monitored or controlled remotely. The devices or software would involve the controlling or monitoring of various functions such as security, lighting, heating and entertainment within a home. In comparing these terms to *CCTV apparatus and instruments*, I find their nature to be different however, I find there to be a broad overlap in purpose to the extent that the applied-for goods are sufficiently broad to encompass the provision of security and monitoring for the home. In view of this, the respective goods would be likely to share the same trade channels and overlap in users. Moreover, I find the goods to share a

complementary relationship as it is not uncommon for the opposed goods and CCTV *apparatus and instruments* to be used in conjunction with one another (and even reliant on one another) and this would be to the extent that users believe they are derived from the same undertaking. Overall, there is a medium degree of similarity.

Smart padlocks; Smart locks; Smart door locks; Electrical locks; Electric locks; Electronic locks; Wireless locks; Smart locks; Electromagnetic locks; Biometric locks; Electronic lock assemblies; Wireless lock assemblies; Electronic door locks; Digital door locks; Fingerprint door locks; Smart door locks; Electronic locking apparatus; Wireless locking mechanisms; Electronic locking systems; Radio-frequency controlled locks; Combination locks (metal -) [electric]; Card operated electronic locks; Locks [electric] with alarms; Electric locks for vehicles; Biometric fingerprint door locks; Motor vehicle power locks; Electronic finger vein locks; Radio operated door lock controls; Releasable locking devices [electric]; Central door locking apparatus; Safety locking devices [electric]; Combination locks (non-metallic -) [electric]; Electronic locking mechanisms for safes.

41. In comparing the above terms to *locks* in class 6, I accept that by virtue of these terms being found in different classes, they are not identical. That being said, I consider the terms to be highly similar. This is because they overlap in nature save for the fact that the applicant's goods are all types of electronic locks. The goods also have the same purpose and would share the same users and trade channels. I also consider the goods to have a competitive relationship, though I do not consider there to be a complementary relationship.

Smart card readers; Encoded smart cards; Blank smart cards; Integrated circuit cards [smart cards]; Encoded, magnetic and smart cards.

42. The opponent submits that smart cards are commonly used as key cards which serve as an alternative to traditional keys. I agree. I also consider that smart card readers can be used as part of an electronic locking system. As such, there is a similar purpose to these goods and the opponent's *locks*. There is also a degree of competition, and the goods may share the same distribution channels. I do not consider the goods to share a complementary relationship. I consider these goods to

have a low to medium degree of similarity, with the 'cards' themselves sitting at the lower end of that scale.

Software; Smartphone software applications, downloadable; Software applications.

43. I compare these terms to *CCTV apparatus and instruments*. The software goods shown above have not been limited into any subcategory and they could therefore include software to be used alongside *CCTV apparatus and instruments*. It is not uncommon for the respective goods to be sold alongside one another to the same users. For example, a CCTV camera may be sold with its own bespoke software in the form of an app to allow users to access the CCTV footage from an electronic device such as a smartphone or tablet. In view of this, I consider there to be a complementary relationship between these goods. I consider these goods to be similar to a low to medium degree.

Closed circuit television systems (CCTV); Closed circuit TV [CCTV] software; Security cameras.

44. The opponent submits that these terms are identical to its *CCTV apparatus and instruments*. I agree that *Closed circuit television systems (CCTV)* and *Security cameras* are identical to the opponent's terms albeit worded slightly different.

45. I consider that the opponent's *CCTV apparatus and instruments* would encompass *Closed circuit TV [CCTV] software* and accordingly, these terms are identical based on the *Merix* principle. If I am wrong on this point, I consider the terms to be highly similar on account of their shared purpose, users and trade channels. I also find these terms to share a complementary relationship as *CCTV apparatus and instruments* is important and indispensable to *CCTV software* and users would believe that they are provided by the same undertaking.

Security alarms; Security software; Security control apparatus; Security warning apparatus; Electronic security systems for home network; Electronic security tags; Personal security alarms; Keypads for security alarms; Motion sensors for security lights; Control panels for security alarms.

46. I compare the above terms to *lease and rental of alarm and security devices*. These goods and services have a different nature and method of use however, their end purpose broadly speaking is to provide security to a property or person. As such, users and trade channels would overlap. I also consider there to be an important relationship between the goods and services, and this would be to the extent that users would believe they are derived from the same undertaking. There may also be a degree of competition in circumstances where users would either opt to purchase an alarm/security device or to rent the device instead. Overall, I find there is a medium degree of similarity.

Fire detectors; Smoke detectors; Electric smoke detectors; Decorative covers for smoke detectors; Apparatus for testing smoke detectors using an aerosol spray; Combination carbon monoxide and smoke detectors; Electric smoke sensors; Smoke alarms; Electronic carbon dioxide recorders [other than for medical purposes]; Carbon dioxide detectors; Electronic carbon dioxide monitors [other than for medical purposes]; Smart smoke detectors; Smart Carbon dioxide detectors.

47. The opponent claims that the above terms have a similar method of use to CCTV cameras as they will alert of any dangers the same way a CCTV camera will and will protect against any dangers in the same way fire doors and fencing will. They also submit that the above goods could be sold alongside fire doors for maximum safety and as such they share the same trade channels and are usually sold by the same undertaking. I find the opponent's strongest line of argument here is the comparison between the above terms and *fire doors*. There is a difference in nature and method of use however, the broad purpose is to provide safety to a property and to prevent a fire or gas leak from spreading. Users and trade channels would also overlap. There is no competition or complementary relationship to be found. I find these goods to have a low degree of similarity.

Intelligent distance recorders.

48. The opponent submits that *intelligent distance recorders* are highly similar to *CCTV apparatus and instruments* because CCTV apparatus can include intelligent distance recorders to make audio recordings as well as visual recordings. Therefore, they share a similar purpose (to make recordings for security purposes), method of use (as they form part of the same device), they are complementary because they work together to capture audio and visual footage, and it follows that they could be supplied by the same undertakings. I remind myself that the mere fact that a particular good is used as a part, element or component of another does not suffice in itself to show that the finished goods containing those components are similar since, in particular, their nature, intended purpose and the customers for those goods may be completely different. In the present case, the goods have a different nature although I accept that the goods can be used for security reasons and therefore have a broad overlap in purpose. I find that trade channels and users would overlap however, I do not find the goods to be in any competition, nor are they complementary. On balance, there is a low degree of similarity.

Software for the planning, integration and optimisation of smart city applications.

49. The above term is software that help cities run more efficiently by connecting different systems such as traffic sensors to help manage traffic flow. In comparing this term to the opponent's earlier goods and services, I find there to be no overlap in nature, purpose or method of use. Further, there is no overlap in user or trade channels. The above software is not in any competition with any of the opponent's goods and services, nor is it complementary. Consequently, I consider there to be no similarity.

Operating software; Platform software.

50. Operating software is the core software that makes a computer or device work such as Windows, MacOS or Android. Platform software provides an environment for other applications to run such as web browsers for web apps and cloud platforms for hosting apps. The opponent claims that the above goods can be used to control and

monitor its earlier goods such as *locks*, *CCTV* and *bollards*. I do not agree with this line of argument because the above software terms have very distinct purposes that do not include the monitoring and control of goods such as CCTV cameras. I accept that goods such as CCTV cameras will have their own built-in software, which may well be compatible with various operating and platform software, however, that is merely use in combination rather than a complementary use that would suggest a common origin. Furthermore, although the CCTV cameras may have built-in software, that does not in itself render the competing goods similar, in this regard I bear in mind that the mere fact that a particular good is used as a part, element or component of another does not suffice in itself to show that the finished goods containing those components are similar since, in particular, their nature, intended purpose and the customers for those goods may be completely different.¹⁵ In this case, the nature, purpose and method of use differs. Further, there is no overlap in channels of trade or competition. With this in mind, I consider these goods to be dissimilar.

Interface software; Maintenance software; Industrial software; Utility software; Adaptive software; Sensory software; Multimedia software; Authentication software.

51. The opponent contends that the above goods are similar to its *locks*, *CCTV* and *bollards* as they can be used alongside one another. In considering the above terms, my reasoning in the preceding paragraph also applies here. Whilst I note the opponent's assertions that the goods would be used together, there is no evidence to support this, furthermore, as previously stated, the mere fact that goods can be used together is not sufficient to find they are complementary to suggest a common origin.. At the very best, I could conceive that some of the software such as sensory software may be integrated into CCTV equipment however, the goods have a different nature, purpose and method of use. They would be sold via different trade channels and are not in any competition. Further, they would not be provided by the same undertaking and there is no complementary relationship. Taking all the foregoing into account, I do not consider these goods to be similar.

¹⁵ *Les Éditions Albert René v OHIM*, Case T-336/03 paragraph 61

Smart manufacturing system controls.

52. The opponent submits that the above term encompasses the technologies and methods used to monitor, manage and optimize processes in a connected digital environment. They further state that the above term is similar to their goods in classes 6, 9 and 19 because *smart manufacturing system controls* could be used in the manufacturing of the opponent's goods and as such have a complementary relationship. I am of the view that the opponent's goods in classes 6, 9 and 19 all have a different physical nature and purpose to *smart manufacturing system controls*. There is no overlap in users or trade channels nor is there any competitive relationship. Whilst I accept that the applicant's term may be used to facilitate the manufacturing of the opponent's goods, this does not mean they have a complementary relationship; one is not important or indispensable to another to the extent that users would believe they are derived from the same undertaking. I do not consider these goods to be similar to any of the opponent's earlier goods or services.

Smart manufacturing software.

53. In light of the opponent's submissions on the interpretation of "Smart manufacturing system controls", I interpret the above term to be software that is used to monitor, manage and optimize processes in a connected digital environment. As such, my reasoning in the previous paragraph also applies here. This term differs in respect of nature, purpose and method of use compared to the opponent's earlier goods and services. There is no overlap in user or channels or trade. Further, there is no competitive or complementary relationship to be found. Consequently, I do not consider these goods to be similar to any of the opponent's earlier goods or services.

Encryption software; Security tokens [encryption devices]; Downloadable computer security software; Utility, security and cryptography software; Software for network and device security.

54. The above terms are all, broadly speaking, goods that pertain to computer security. For example, utility software helps maintain and optimize computer performance, security software would include firewalls, anti-virus and anti-malware

programs and cryptography software secures data by encrypting it. Security tokens are physical or virtual devices used to provide secure authentication and encryption in digital systems such as two-factor authentication. Accordingly, these goods all have a different nature, purpose and method of use compared to the opponent's goods and services. As the applicant's goods are for computer security whereas the opponent's goods and services are (broadly speaking) in relation to the security of property, users and trade channels would also differ. There is no complementary relationship with the opponent's goods and services, nor is there any competition between the same. Consequently, the above goods are dissimilar.

Intelligent gateways for communication.

55. The opponent submits that the above term is similar to its earlier goods and services because they can be used alongside one another. For example, an intelligent gateway could allow communication between software and locks, CCTV, bollards operation, alarm control etc. They therefore claim that there is a complementary relationship and a shared purpose. Even though I do not discount that the applicant's goods may be used in the way the opponent has described, I nonetheless consider that the intelligent gateways would be an intermediary system that works between software and the opponent's goods such as *CCTV apparatus*. Therefore, the respective goods have a different nature and method of use. I do not agree with the opponent's assertions that the goods have a shared purpose. Broadly speaking, the opponent's goods are for the purposes of keeping a property secure whereas intelligent gateways are for the flow of data between different networks and devices. Even if the goods were used in combination, there is nothing before me in the evidence to suggest that they would be provided by the same undertaking. As such, I consider these goods to be dissimilar.

Class 35

Retail and wholesale services in relation to Home automation software, Home automation devices, Home automation systems, Home automation hubs, Servers for home automation, Home remote controls, Smart house software, Smart home

software, Smart home hubs, enabling customers to view and purchase these goods on-line and in a physical store.

56. The applicant's services consist of retail and wholesale services for smart home automation goods, including hubs, software and related devices. I consider the closest comparator to these services to be the opponent's *CCTV apparatus and instruments*. The goods and services differ in nature and purpose, however, they operate within the same smart-home and security sector and are aimed at a similar consumer base, such as homeowners and property managers. CCTV products are commonly retailed by smart-home outlets and online platforms that also sell hubs, servers and related software, and many undertakings would likely sell CCTV alongside smart-home systems, they may therefore be distributed through the same trade channels. Overall, I find that the applicant's services and the opponent's goods are similar to a low degree.

Retail and wholesale services in relation to Smart padlocks, Smart locks, Smart door locks, Electrical locks, Electric locks, Electronic locks, Wireless locks, Smart locks, Electromagnetic locks, Biometric locks, Electronic lock assemblies, Wireless lock assemblies, Electronic door locks, Digital door locks, Fingerprint door locks, Smart door locks, Electronic locking apparatus, Wireless locking mechanisms, Electronic locking systems, Radio-frequency controlled locks, Combination locks (metal -) [electric], Card operated electronic locks, Locks [electric] with alarms, Electric locks for vehicles, Biometric fingerprint door locks, Motor vehicle power locks, Electronic finger vein locks, Radio operated door lock controls, Releasable locking devices [electric], Central door locking apparatus, Safety locking devices [electric], Combination locks (non-metallic -) [electric], Electronic locking mechanisms for safes, enabling customers to view and purchase these goods on-line and in a physical store.

57. The applicant's services include retail and wholesale services relating to a wide range of smart and electronic locking devices, including smart padlocks, smart door locks, biometric locks, electronic locking systems and related assemblies. I find the closest comparator to these services to be *locks* in class 6. The competing terms differ in nature by virtue of the applicant's being services and the opponent's being goods. They also differ in purpose and method of use. I accept however that the goods and

services are directed at the same end users, such as homeowners and businesses. Locks of the type covered by the opponent's specification are frequently sold through retail channels that also offer smart and electronic locking products, and undertakings in the security sector often provide both traditional and smart locking solutions. There is also a degree of complementarity, as consumers may expect a single undertaking to offer a range of locking products, including conventional and smart options, through retailers. Overall, I find there to be a low degree of similarity.

Retail and wholesale services in relation to Smart card readers, Encoded smart cards, Blank smart cards, Integrated circuit cards [smart cards], Encoded, magnetic and smart cards, enabling customers to view and purchase these goods on-line and in a physical store.

58. As previously discussed in this decision, I accept that smart cards are commonly used as key cards which serve as an alternative to traditional keys. In view of this, my reasoning in the previous paragraph also applies here. The above services differ in nature and purpose to the opponent's *locks* however, users would overlap and there is a complementary relationship between these goods and services. As such, there is a low degree of similarity.

Retail and wholesale services in relation to Software, Smartphone software applications, downloadable, Software applications, enabling customers to view and purchase these goods on-line and in a physical store.

59. The opponent's earlier specification includes *CCTV apparatus and instruments*. The competing terms are different in terms of nature and purpose however, I accept that the smartphone software applications being sold by the applicant may include software to be used in conjunction with *CCTV apparatus and instruments*. As such, the goods and services may overlap in user and trade channels. There is no competitive relationship however there may be some degree of complementarity. I find there is a low degree of similarity.

Retail and wholesale services in relation to Closed circuit television systems (CCTV), Closed circuit TV [CCTV] software, Security cameras, enabling customers to view and purchase these goods on-line and in a physical store.

60. I consider the above terms to have a complementary relationship with the opponent's *CCTV apparatus and instruments*. There is a close relationship between the competing terms and this would be to the extent that users would believe that they are derived from the same undertakings. There is also an overlap in user and trade channels however I accept that the nature, purpose and method of use differ. Overall, I find there to be a medium degree of similarity.

Retail and wholesale services in relation to Security alarms, Security software, Electronic security tags, Security control apparatus, Security warning apparatus, Personal security alarms, Keypads for security alarms, Motion sensors for security lights, Control panels for security alarms, Electronic security systems for home network, Software for network and device security, Fire detectors, Smoke detectors, Electric smoke detectors, Apparatus for testing smoke detectors using an aerosol spray, Combination carbon monoxide and smoke detectors, Electric smoke sensors, Smoke alarms, Electronic carbon dioxide recorders [other than for medical purposes], Carbon dioxide detectors, Electronic carbon dioxide monitors [other than for medical purposes], Smart smoke detectors, Smart Carbon dioxide detectors, enabling customers to view and purchase these goods on-line and in a physical store.

61. When compared to the opponent's earlier goods and services such as *CCTV apparatus* and *locks*, the above services differ in terms of nature, purpose and method of use. However, the above goods are likely to be sold by undertakings that provide the above services so there will be an overlap in user and trade channels. I find there is a low degree of similarity.

Retail and wholesale services in relation to Intelligent distance recorders, enabling customers to view and purchase these goods on-line and in a physical store.

62. Bearing in mind my previous findings in relation to 'intelligent distance recorders', I consider that undertakings that provide retail services in relation to these goods are also likely to sell goods covered by the earlier specification such as *CCTV*

apparatus. As such, there is an overlap in user and trade channels. I accept however that there is a difference in nature, purpose and method of use. I consider there to be a low degree of similarity.

Retail and wholesale services in relation to Software for the planning, integration and optimisation of smart city applications, Operating software, Platform software, Encryption software, Interface software, Authentication software, Maintenance software, Multimedia software, Industrial software, Utility software, Sensory software, Adaptive software, Smart manufacturing system controls, Smart manufacturing software, Security tokens [encryption devices]; Downloadable computer security software; Utility, security and cryptography software; Software for network and device security, Intelligent gateways for communication, enabling customers to view and purchase these goods on-line and in a physical store.

63. The above terms are all retail services in relation to goods that I have found to be dissimilar to the opponent's earlier goods and services. It therefore follows that there is no similarity between the above services and the opponent's goods and services. The nature, purpose and method of use all differ. There is no competition, nor is there any complementarity. I also consider that the trade channels and user would be different.

64. If there is no similarity between the goods and services, there can be no likelihood of confusion under section 5(2)(b): see *eSure Insurance Limited v Direct Line Insurance Plc* [2008] EWCA Civ 842 CA, paragraph 49. The opposition fails under section 5(2)(b) with respect to the following goods and services:

Class 9: Software for the planning, integration and optimisation of smart city applications; Operating software; Platform software; Interface software; Maintenance software; Industrial software; Utility software; Adaptive software; Sensory software; Multimedia software; Authentication software; Smart manufacturing system controls; Smart manufacturing software; Encryption software; Security tokens [encryption devices]; Downloadable computer

security software; Utility, security and cryptography software; Software for network and device security; Intelligent gateways for communication.

Class 35: Retail and wholesale services in relation to Software for the planning, integration and optimisation of smart city applications, Operating software, Platform software, Encryption software, Interface software, Authentication software, Maintenance software, Multimedia software, Industrial software, Utility software, Sensory software, Adaptive software, Smart manufacturing system controls, Smart manufacturing software, Security tokens [encryption devices]; Encryption software; Downloadable computer security software; Utility, security and cryptography software; Software for network and device security, Intelligent gateways for communication, enabling customers to view and purchase these goods on-line and in a physical store.

The average consumer and the purchasing act

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

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

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

67. The average consumer for the goods and services at issue will comprise members of the general public and, in the context of security and surveillance for commercial premises, business users. Although the cost of these goods and services may vary considerably, the purpose and nature of the offerings mean that both consumer groups will be highly concerned about the safety and security of their premises. Consequently, I consider that both members of the public and business users will exercise a medium to high degree of attention during the purchasing process.

68. The goods and services are likely to be selected through perusal of brochures, websites and advertisements, so the visual element will be important. However, I do not discount aural considerations, since the services may be acquired through word-of-mouth recommendations or following initial meetings with potential providers.

Comparison of trade marks


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

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

70. It would be wrong, therefore, to dissect the trade marks artificially, although it is necessary to take into account the distinctive and dominant components of the

marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

71. The respective trade marks are shown below:

Opponent's mark	Applicant's mark
ORBIS	

72. The opponent's mark is in word-only format and consists of the word "ORBIS" presented in an upper-case font. The overall impression lies in the word itself.

73. The applicant's mark comprises the word "ORBIS" presented in a standard upper-case font. Concentric circular lines emanate from the letter "O". The centre of letter "O" is grey. Beneath this is the word "TECHNOLOGY" presented in a smaller standard font. The word 'TECHNOLOGY' is descriptive or at least non-distinctive in relation to the goods and services for which the applicant seeks registration and, whilst not being negligible, has little weight in the overall impression. Likewise, the stylisation of the letter "O" within the word "ORBIS", is fairly banal. Neither of those elements will detract from the word 'ORBIS', which is the dominant and most distinctive element of the mark.

Visual comparison

74. Visually, the marks overlap through use of the word "ORBIS". This is the entirety of the earlier mark and the dominant and distinctive feature of the applicant's mark. I note that the earlier mark is filed as a word mark which protects the words contained in the mark, whatever form, colour or typeface are used,¹⁶ however it is not legitimate to perform a comparison between a word mark and a stylised mark by considering

¹⁶ *LA Superquimica v EUIPO*, Case T-24/17, paragraph 39

specific ways in which the words might be presented,¹⁷ the key point is that the stylisation of ‘ORBIS’ in the applicant’s mark does not provide a point of distinction when compared to ‘ORBIS’ registered as a word-only mark. Differences arise between the earlier mark and the applicant’s mark by way of the device element and the word “TECHNOLOGY” which appears in the applicant’s mark but has no counterpart in the earlier mark. Considered as a whole and taking into account what I have said about the overall impressions of each mark, I find the earlier mark to be visually similar to the applicant’s mark to a medium to high degree.

Aural comparison

75. The “ORBIS” element will be pronounced identically in both marks. The word “Technology” in the applicant’s mark has no counterpart in the earlier mark. However, I note this element is descriptive and/or non-distinctive and may not be voiced by the average consumer. For those consumers who do not articulate this element, the marks are aurally identical. That said, I have borne in mind the decision of Mr Philip Harris, sitting as the Appointed Person, in *Purity Hemp Company Improving Life as Nature Intended*.¹⁸ At paragraph 31, he said that the descriptiveness of an element does not in itself render that element negligible or “*aurally invisible*”. For those consumers who do articulate the word “Technology”, the beginning of the marks is aurally identical; however the remainder contains an additional four syllables from the word “Technology”, which has no replication in the earlier mark. For these consumers, the marks are aurally similar to a medium degree overall.

Conceptual comparison

76. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM*.¹⁹ The assessment must, therefore, be made from the point of view of the average consumer.

¹⁷ See *HERNO S.p.A. v Miss Sparrow Ltd*, BL O/954/22, paragraph 23

¹⁸ BL O/115/22

¹⁹ [2006] ECR I-643; [2006] E.T.M.R 29

77. The opponent submits that the marks' common component "ORBIS" means "sphere", "circular" or "planet" in Latin. It also means "of the eye" in Greek. I am of the view that some consumers will be aware of these meanings (in which case the competing marks are conceptually identical with regard to that element), however, I consider that to a significant proportion of the relevant public, the term "ORBIS" in both marks will be viewed as an invented word and will not convey any meaning. As such, this element is rendered conceptually neutral to a significant proportion of consumers.

78. The word "TECHNOLOGY" in the applicant's mark will convey a clear meaning to consumers however, it is descriptive and/or non-distinctive in respect of the goods and services at issue and therefore does not create a distinctive conceptual difference between the two marks.

Distinctive character of the earlier mark

79. 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).”

80. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods and services, 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 that has been made of it.

81. I will begin by initially assessing the inherent distinctiveness of the opponent’s mark.

82. I have set out under my conceptual comparison of the marks above that “ORBIS” will be viewed by a significant proportion of consumers as an invented word; as such, it has a high degree of inherent distinctiveness. Where the average consumer understands the meaning of the word, its inherent distinctiveness is slightly lower (to between a medium and high degree), although not significantly lower since it has no allusive qualities in respect of the goods and services relied on.

83. I will now consider whether the evidence filed by the opponent demonstrates that the distinctiveness of the earlier mark has been enhanced through use. I rely on the summary of the opponent’s evidence that I provided in points i-xiv in paragraph 26 earlier in this decision. I do not intend to reproduce that evidence in full but have borne it in mind in reaching my decision on enhanced distinctiveness. The relevant date for this assessment is the filing date of the applicant’s mark being 14 March 2024 and the relevant market for assessing enhanced distinctiveness is the UK market.

84. Whilst I have no information regarding the opponent’s market share within the security and property management sector, I consider the turnover and advertising expenditure figures to be substantial. The news articles dated within the relevant period along with the advertising campaigns and customer testimonials demonstrate consistent use of the earlier mark throughout the relevant period. I consider the evidence presented to be sufficient to enhance the distinctive character of the earlier

mark. Although the distinctive character of the earlier mark is already inherently high, the enhancement of its distinctiveness can only mean that any likelihood of confusion would be enhanced as a result and therefore it has been enhanced to the highest degree. In the alternative, if the starting point is a medium to high degree of inherent distinctiveness (due to alternative consumer perception), the evidence elevates that distinctiveness to the upper end of that scale.

Likelihood of confusion

85. In assessing the likelihood of confusion, I must adopt the global approach advocated by case law and take into account the fact that marks are rarely recalled perfectly, the consumer relying instead on the imperfect picture of them that they have kept in mind.²⁰ I must also consider the average consumer of the services, the nature of the purchasing process and bear in mind that a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa.²¹

86. Making an assessment as to the likelihood of confusion is a matter of considering the relevant factors from the viewpoint of the average consumer and determining whether they are likely to be confused. The global assessment is supposed to emulate what happens in the mind of the average consumer on encountering the later mark with an imperfect recollection of the earlier mark in mind. It is not a process of analysis or reasoning, but an impression or instinctive reaction.²² The relative weight of the factors is not laid down by law but is a matter of judgement for the tribunal on the particular facts of each case.²³

87. It is well established that confusion can be direct, which is a simple matter of the consumer mistaking one mark for another, or indirect. Indirect confusion arises where the consumer recognises that one mark is different from the other, but because

²⁰ *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.*, Case C-342/97, paragraph 27

²¹ *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, Case C-39/97, paragraph 17

²² *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, paragraph 81

²³ See paragraph 33 of the Appointed Person's decision in Case No. O/049/17, (*Rochester Trade Mark*).

of the marks' similarities, believes that the goods or services bearing the later mark come from the same undertaking or from an economically linked undertaking.²⁴ For example, they conclude that the later mark is another brand of the owner of the earlier mark because they share a common element.²⁵ In *L.A. Sugar Limited v By Back Beat Inc*,²⁶ Mr Iain Purvis Q.C., as the Appointed Person, explained that instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:²⁷

“(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).”

88. Confusion can also be 'right way round' or 'wrong way round', which in essence is nothing more meaningful than the order in which the consumer happened to come across the earlier mark and the later mark,²⁸ i.e. 'wrong way round' confusion embraces situations where the average consumer comes across the later mark first

²⁴ *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, paragraph 10

²⁵ *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10, paragraphs 16-17

²⁶ *Ibid.*

²⁷ In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ approved Mr Purvis's formulation but added at [12] that it 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.

²⁸ *Comic Enterprises v Twentieth Century Fox* [2016] EWCA 41, paragraph 80.

and believes that the services denoted by the earlier trade mark come from the same undertaking.²⁹

89. Earlier in this decision I concluded that the relevant goods and services still in issue are either identical to the opponent's goods and services or similar to varying degrees. I concluded that the average consumer would be both business and members of the general public who will both between a medium and high degree of attention. I found that the goods and services would be selected primarily by visual means, although I did not discount an aural aspect to the purchasing process. I found the respective marks to be visually similar to a medium to high degree, with the distinctive and dominant component of the applicant's mark (the word 'ORBIS') being identical to the opponent's mark. I found the marks to be either aurally identical or similar to a medium degree depending on how the later mark is articulated. I found that the additional wording in the later mark will give rise to a point of conceptual difference between the marks, although this will not be a distinctive point of difference given the goods and services at play. I found the earlier mark holds a high degree of inherent distinctiveness that has been elevated to the highest degree through the use made of it. Alternatively, where the average consumer understands the meaning of the word, its inherent distinctiveness is slightly lower (to between a medium and high degree) and the evidence elevates that distinctiveness to the upper end of that scale.

90. I am conscious not to artificially dissect the competing marks and I acknowledge that the average consumer tends to perceive trade marks as wholes. I first note that the respective marks share the same dominant and highly distinctive element ("ORBIS") with the only difference between the marks being the presence of the descriptive and/or non-distinctive wording "Technology" in the applicant's mark, and the stylistic elements. The word "ORBIS" is the sole element of the opponent's mark and appears at the beginning of the applicant's mark, a position which is generally considered to have more impact.³⁰ During the purchasing process, visual elements are likely to dominate, though I acknowledge that aural considerations also apply, and I have already noted that some consumers may only articulate the "ORBIS"

²⁹ *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207 paragraph 14.

³⁰ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

element of the applicant's mark which would render the parties' marks aurally identical. Even for goods which command a higher level of attention and are of a low level of similarity, I find that there will be a likelihood of confusion because there is so little to tell the marks apart; the additional wording is descriptive and/or non-distinctive, and is therefore unlikely to do the job of distinguishing the parties' marks from one another. The marks will be imperfectly recalled as the "ORBIS" marks and the average consumer will be directly confused as a result.

91. Even if the differences between the marks are identified, the common presence of the word "ORBIS" is likely to lead a significant proportion of average consumers to conclude that the marks originate from the same or economically linked undertakings. I remind myself that I have found that the overall impression of the earlier mark lies solely in the word "ORBIS", and I have found this word possesses a very high degree of distinctiveness. This word also plays a more dominant and distinctive role in the overall impression of the applicant's word mark with the additional wording being non-distinctive of the goods and services at issue. On that basis, it is my view that categories (a) and (b) as set out in *L.A Sugar* applies here. If consumers recognise the differences between the marks, they will not, in this case, be put down to coincidence. Rather, they will attribute the additional wording and stylisation as denoting a sub-brand or a brand extension. In such circumstances, I consider there to be a likelihood of indirect confusion.

Conclusion

92. The opposition under section 5(2)(b) of the Act has been partially successful. Subject to any successful appeal against my decision, the application will be refused for the following goods and services:

Class 9: Home automation software; Home automation devices; Home automation systems; Home automation hubs; Servers for home automation; Home remote controls; Smart padlocks; Smart locks; Smart card readers; Encoded smart cards; Blank smart cards; Smart door locks; Smart house software; Smart home software; Smart home hubs; Smart manufacturing

system controls; Smartphone software applications, downloadable; Integrated circuit cards [smart cards]; Encoded, magnetic and smart cards; Fire detectors; Closed circuit television systems (CCTV); Closed circuit TV [CCTV] software; Electrical locks; Electric locks; Electronic locks; Wireless locks; Smart locks; Electromagnetic locks; Biometric locks; Electronic lock assemblies; Wireless lock assemblies; Electronic door locks; Digital door locks; Fingerprint door locks; Smart door locks; Electronic locking apparatus; Wireless locking mechanisms; Electronic locking systems; Radio-frequency controlled locks; Combination locks (metal -) [electric]; Card operated electronic locks; Locks [electric] with alarms; Electric locks for vehicles; Biometric fingerprint door locks; Motor vehicle power locks; Electronic finger vein locks; Radio operated door lock controls; Releasable locking devices [electric]; Central door locking apparatus; Safety locking devices [electric]; Combination locks (non-metallic -) [electric]; Electronic locking mechanisms for safes; Security cameras; Security alarms; Security software; Electronic security tags; Security control apparatus; Security warning apparatus; Personal security alarms; Keypads for security alarms; Motion sensors for security lights; Control panels for security alarms; Electronic security systems for home network; Software applications; Smart house software; Intelligent distance recorders; Intelligent gateways for communication; Electric smoke detectors; Decorative covers for smoke detectors; Apparatus for testing smoke detectors using an aerosol spray; Combination carbon monoxide and smoke detectors; Electric smoke sensors; Smoke alarms; Electronic carbon dioxide recorders [other than for medical purposes]; Carbon dioxide detectors; Electronic carbon dioxide monitors [other than for medical purposes]; Smart smoke detectors; Smart Carbon dioxide detectors.

Class 35: Retail and wholesale services in relation to Home automation software, Home automation devices, Home automation systems, Home automation hubs, Servers for home automation, Home remote controls, Smart padlocks, Smart locks, Smart card readers, Encoded smart cards, Blank smart cards, Smart door locks, Smart house software, Smart home software, Smart home hubs, Smartphone software applications, downloadable, Integrated

circuit cards [smart cards], Encoded, magnetic and smart cards, Fire detectors, Closed circuit television systems (CCTV), Closed circuit TV [CCTV] software, Electrical locks, Electric locks, Electronic locks, Wireless locks, Smart locks, Electromagnetic locks, Biometric locks, Electronic lock assemblies, Wireless lock assemblies, Electronic door locks, Digital door locks, Fingerprint door locks, Smart door locks, Electronic locking apparatus, Wireless locking mechanisms, Electronic locking systems, Radio-frequency controlled locks, Combination locks (metal -) [electric], Card operated electronic locks, Locks [electric] with alarms, Electric locks for vehicles, Biometric fingerprint door locks, Motor vehicle power locks, Electronic finger vein locks, Radio operated door lock controls, Releasable locking devices [electric], Central door locking apparatus, Safety locking devices [electric], Combination locks (non-metallic -) [electric], Electronic locking mechanisms for safes, Security cameras, Security alarms, Security software, Electronic security tags, Security control apparatus, Security warning apparatus, Personal security alarms, Security tokens [encryption devices], Keypads for security alarms, Motion sensors for security lights, Control panels for security alarms, Utility, security and cryptography software, Electronic security systems for home network, Software for network and device security, Software, Software applications, Smart house software, Intelligent distance recorders, Smoke detectors, Electric smoke detectors, Decorative covers for smoke detectors, Apparatus for testing smoke detectors using an aerosol spray, Combination carbon monoxide and smoke detectors, Electric smoke sensors, Smoke alarms, Electronic carbon dioxide recorders [other than for medical purposes], Carbon dioxide detectors, Electronic carbon dioxide monitors [other than for medical purposes], Smart smoke detectors, Smart Carbon dioxide detectors, enabling customers to view and purchase these goods on-line and in a physical store.

93. The application will proceed to registration in respect of the unopposed goods and services and the goods and services that I have found to be dissimilar.

COSTS

94. Both parties have achieved a level of success but the opponent significantly more-so than the applicant. The opponent has been successful and is entitled to a contribution towards its costs. Awards of costs in proceedings commenced on or after 1 February 2023 are governed by Annex A of Tribunal Practice Notice ('TPN') 1 of 2023. Using the TPN as a guide, I award costs to the opponent on the following basis including a 20% reduction on costs to account for the applicant's partial success:

Official fee:	£100
Preparing a statement and considering the other side's statement:	£250
Preparing and filing evidence:	£600
Filing written submissions:	£350
Total including 20% reduction:	£1,040

95. I therefore order UK TECHNOLOGY LIMITED to pay the sum of £1,040 to Orbis Protect Limited. This amount should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 23rd day of December 2025

Catrin Williams
For the Registrar

Annex A- Applicant's goods and services

(Opposed goods and services are underlined)

Class 9: Home automation software; Home automation devices; Home automation systems; Home automation hubs; Servers for home automation; Home remote controls; Smartbands; Smartglasses; Smartwatches; Smart bracelets; Smart padlocks; Smart locks; Smart meters; Smart speakers; Smart watches; Smartphones; Smart card readers; Encoded smart cards; Blank smart cards; Smart manufacturing software; Smart door locks; Smart house software; Smart home software; Smart home hubs; Smart manufacturing system controls; Smartphone software applications, downloadable; Docking stations for smartphones; Power supplies for smartphones; Wireless headsets for smartphones; Integrated circuit cards [smart cards]; Encoded, magnetic and smart cards; Wireless charging pads for smartphones; Watchbands that communicate data to smartphones; Light emitting diodes (LEDs); LED displays; LED monitors; LED drivers; LED display panels; LED screen displays; LED position sensors; Light-emitting diodes [LED]; Electronic control gears [ECGs] for LED lamps and light fixtures; Fire detectors; Closed circuit television systems (CCTV); Closed circuit TV [CCTV] software; Chips [integrated circuits]; Integrated circuit chips; Integrated circuit memories; Integrated circuit boards; Integrated electric circuits; Electronic integrated circuits; Integrated software packages; Cards with integrated circuits; Blank integrated circuit cards; Large scale integrated circuits; Application specific integrated circuits; Encoded integrated circuit cards; Integrated circuit memory cards; Thick film hybrid integrated circuits; Electronic memory integrated circuit chips; Labels with integrated RFID chips; Integrated chip (IC) voice recorders; Electronic components for integrated circuit cards; Integrated circuits for enhancing graphical and video display; Software for operating and managing integrated circuit components; Computer software for use in integrated circuit design; Software for the planning, integration and optimisation of smart city applications; Software for the planning, integration and optimization of Smart City applications; Fast chargers for mobile devices; Wireless remote controls for portable electronic devices and computers; Electrical locks; Electric locks; Electronic locks; Wireless locks; Smart locks; Electromagnetic locks; Biometric locks; Electronic lock assemblies; Wireless lock assemblies; Electronic door locks; Digital door locks; Fingerprint door locks; Smart

door locks; Electronic locking apparatus; Wireless locking mechanisms; Electronic locking systems; Radio-frequency controlled locks; Combination locks (metal -) [electric]; Card operated electronic locks; Locks [electric] with alarms; Electric locks for vehicles; Biometric fingerprint door locks; Motor vehicle power locks; Electronic finger vein locks; Radio operated door lock controls; Releasable locking devices [electric]; Central door locking apparatus; Safety locking devices [electric]; Combination locks (non-metallic -) [electric]; Electronic locking mechanisms for safes; Security cameras; Security alarms; Security software; Electronic security tags; Security control apparatus; Security warning apparatus; Personal security alarms; Security tokens [encryption devices]; Downloadable computer security software; Keypads for security alarms; Motion sensors for security lights; Control panels for security alarms; Utility, security and cryptography software; Electronic security systems for home network; Software for network and device security; Software; Operating software; Platform software; Encryption software; Interface software; Software applications; Authentication software; Maintenance software; Multimedia software; Industrial software; Utility software; Sensory software; Adaptive software; Smart house software; Intelligent distance recorders; Intelligent gateways for communication; Electric plugs; Safety contact plugs; Converters for electric plugs; Travel adaptors for electric plugs; Sockets, plugs and other contacts [electric connectors]; Plug adaptors; Current plugs; Electric plug adapters; Smart Plugs; Light switches; Electric light switches; Dimmer switches for lights; Wall lights (fittings for -) [switches]; Light sensors; Light modulators; Light dimmers; Computer software for the remote control of electric lighting apparatus; Application software to control lighting; Computer software for the control of lighting; Software for the control of stage lighting apparatus and instruments; Lighting control software for use in commercial and industrial facilities; Light emitting diode [LED] displays; Smart Light Switches; Home theater projectors; Projectors; Picture projectors; Image projectors; Movie projectors; Film projectors; Cinematographic projectors; Slide projectors; Overhead projectors; Photographic projectors; LCD projectors; Video projectors; Cine projectors; Mini projectors; Portable projectors; Holographic projectors; Digital projectors; Multimedia projectors; Motion picture projectors; Lenses for projectors; Mini beam projectors; Batteries for projectors; Automatic focusing projectors; Slides for overhead projectors; Self-acting focussing projectors; Remote controls for projectors; Power cables for projectors; Projectors for the entertainment industry; High definition multimedia

interface cables for projectors; Bags specially adapted for projectors; Smart Home Projectors; Home theatre systems; Home cinema systems; Liquid crystal displays [LCDs] for home theaters; Smoke detectors; Electric smoke detectors; Decorative covers for smoke detectors; Apparatus for testing smoke detectors using an aerosol spray; Combination carbon monoxide and smoke detectors; Electric smoke sensors; Smoke alarms; Electronic carbon dioxide recorders [other than for medical purposes]; Carbon dioxide detectors; Electronic carbon dioxide monitors [other than for medical purposes]; Smart smoke detectors; Smart Carbon dioxide detectors.

Class 11: Smart home air cleaner devices; Electronic air cleaner devices; Wireless air cleaner devices.

Class 35: Retail and wholesale services in relation to Home automation software, Home automation devices, Home automation systems, Home automation hubs, Servers for home automation, Home remote controls, Smartbands, Smartglasses, Smartwatches, Smart bracelets, Smart padlocks, Smart locks, Smart meters, Smart speakers, Smart watches, Smartphones, Smart card readers, Encoded smart cards, Blank smart cards, Smart manufacturing software, Smart door locks, Smart house software, Smart home software, Smart home hubs, Smart manufacturing system controls, Smartphone software applications, downloadable, Docking stations for smartphones, Power supplies for smartphones, Wireless headsets for smartphones, Integrated circuit cards [smart cards], Encoded, magnetic and smart cards, Wireless charging pads for smartphones, Watchbands that communicate data to smartphones, Light emitting diodes (LEDs), LED displays, LED monitors, LED drivers, LED display panels, LED screen displays, LED position sensors, Light-emitting diodes [LED], Electronic control gears [ECGs] for LED lamps and light fixtures, Fire detectors, Closed circuit television systems (CCTV), Closed circuit TV [CCTV] software, Chips [integrated circuits], Integrated circuit chips, Integrated circuit memories, Integrated circuit boards, Integrated electric circuits, Electronic integrated circuits, Integrated software packages, Cards with integrated circuits, Blank integrated circuit cards, Large scale integrated circuits, Application specific integrated circuits, Encoded integrated circuit cards, Integrated circuit memory cards, Thick film hybrid integrated circuits, Electronic memory integrated circuit chips, Labels with integrated RFID chips, Integrated chip (IC) voice recorders, Electronic components for integrated circuit

cards, Integrated circuits for enhancing graphical and video display, Software for operating and managing integrated circuit components, Computer software for use in integrated circuit design, Software for the planning, integration and optimisation of smart city applications, Software for the planning, integration and optimization of Smart City applications, Fast chargers for mobile devices, Wireless remote controls for portable electronic devices and computers, Electrical locks, Electric locks, Electronic locks, Wireless locks, Smart locks, Electromagnetic locks, Biometric locks, Electronic lock assemblies, Wireless lock assemblies, Electronic door locks, Digital door locks, Fingerprint door locks, Smart door locks, Electronic locking apparatus, Wireless locking mechanisms, Electronic locking systems, Radio-frequency controlled locks, Combination locks (metal -) [electric], Card operated electronic locks, Locks [electric] with alarms, Electric locks for vehicles, Biometric fingerprint door locks, Motor vehicle power locks, Electronic finger vein locks, Radio operated door lock controls, Releasable locking devices [electric], Central door locking apparatus, Safety locking devices [electric], Combination locks (non-metallic -) [electric], Electronic locking mechanisms for safes, Security cameras, Security alarms, Security software, Electronic security tags, Security control apparatus, Security warning apparatus, Personal security alarms, Security tokens [encryption devices], Downloadable computer security software, Keypads for security alarms, Motion sensors for security lights, Control panels for security alarms, Utility, security and cryptography software, Electronic security systems for home network, Software for network and device security, Software, Operating software, Platform software, Encryption software, Interface software, Software applications, Authentication software, Maintenance software, Multimedia software, Industrial software, Utility software, Sensory software, Adaptive software, Smart house software, Intelligent distance recorders, Intelligent gateways for communication, Electric plugs, Safety contact plugs, Converters for electric plugs, Travel adaptors for electric plugs, Sockets, plugs and other contacts [electric connectors], Plug adaptors, Current plugs, Electric plug adapters, Smart Plugs, Light switches, Electric light switches, Dimmer switches for lights, Wall lights (fittings for -) [switches], Light sensors, Light modulators, Light dimmers, Computer software for the remote control of electric lighting apparatus, Application software to control lighting, Computer software for the control of lighting, Software for the control of stage lighting apparatus and instruments, Lighting control software for use in commercial and industrial facilities, Light emitting diode [LED] displays, Smart Light

Switches, Home theater projectors, Projectors, Picture projectors, Image projectors, Movie projectors, Film projectors, Cinematographic projectors, Slide projectors, Overhead projectors, Photographic projectors, LCD projectors, Video projectors, Cine projectors, Mini projectors, Portable projectors, Holographic projectors, Digital projectors, Multimedia projectors, Motion picture projectors, Lenses for projectors, Mini beam projectors, Batteries for projectors, Automatic focusing projectors, Slides for overhead projectors, Self-acting focussing projectors, Remote controls for projectors, Power cables for projectors, Projectors for the entertainment industry, High definition multimedia interface cables for projectors, Bags specially adapted for projectors, Smart Home Projectors, Home theatre systems, Home cinema systems, Liquid crystal displays [LCDs] for home theaters, Smart home air cleaner devices, Electronic air cleaner devices, Wireless air cleaner devices, Smoke detectors, Electric smoke detectors, Decorative covers for smoke detectors, Apparatus for testing smoke detectors using an aerosol spray, Combination carbon monoxide and smoke detectors, Electric smoke sensors, Smoke alarms, Electronic carbon dioxide recorders [other than for medical purposes], Carbon dioxide detectors, Electronic carbon dioxide monitors [other than for medical purposes], Smart smoke detectors, Smart Carbon dioxide detectors, enabling customers to view and purchase these goods on-line and in a physical store.