

O-189-15

TRADE MARKS ACT 1994

**TRADE MARK REGISTRATION NO. 3000198
FOR A SERIES OF TWO TRADE MARKS**



AND

**TRADE MARK REGISTRATION NO. 3000201
FOR THE MARK**

GO2Telecom

**BOTH IN CLASSES 9, 35, 37 AND 38
IN THE NAME OF GO2 TELECOM LIMITED**

AND

**THE APPLICATIONS FOR DECLARATIONS OF INVALIDITY THERETO
UNDER NOS. 500344 AND 500345
BY O2 HOLDINGS LIMITED**

Background and pleadings

1. go2 telecom limited (“the proprietor”) owns the two trade mark registrations shown below, which were both applied for on 2 April 2013 and registered on 16 August 2013 for a range of telecommunications equipment and services, and for retail and repair services relating to telecommunications goods, in classes 9, 35, 37 and 38:

No. 3000198



No. 3000201

GO2Telecom

2. Registration no 3000198 is for a series of two trade marks. For convenience, I will refer to the series of marks as “the composite mark” and to GO2Telecom as “the word mark”.

3. O2 Holdings Limited (“the applicant”) contends that these two trade mark registrations should never have been accepted for registration and has applied to have the registrations declared invalid under section 47(2) of the Trade Marks Act 1994 (“the Act”); specifically, under sections 5(2)(b) and 5(3) of the Act on the basis of earlier marks owned by the applicant, which it claims are similar. The applicant claims that there is a likelihood of confusion between the parties’ marks and that, owing to the applicant’s reputation in its marks, the use of the registrations takes unfair advantage of or would be detrimental to the distinctive character or repute of the earlier marks. In particular, it is claimed that the earlier marks (various “O2” marks) carry a “young, trendy, cool and high tech” brand image.

4. The applicant’s applications for invalidation for each registration are identical. The application forms TM26(l) and statements of grounds each relied upon some

nineteen earlier rights and a multitude of disparate goods and services¹; many of which, by any stretch of the imagination, could not be said to be similar to the proprietor's goods and services. Some of the earlier rights were for O2 and O₂, but others were for variations on indigO₂.

5. The proprietor's counterstatements denied the grounds. The proprietor put the applicant to proof for the many goods and services for which blanket statements of use had been made, but did not require proof of use for several goods and services in classes 9, 35, 36, 39, 40 and 41, and accepted use across the board for the applicant's class 38 services. Further, the proprietor accepted in its counterstatements that the mark O₂ "has a substantial reputation in the UK and at least part of the EU in relation to some goods and services in class 38 relating to telecommunication services."

6. Despite these useful concessions, the applicant's evidence showed no sign of having taken them into account. Furthermore, although the proceedings were consolidated after the defences had been filed (i.e. before the evidence had been filed), the applicant still filed two sets of (identical) evidence. I will say more about this and about the content of the evidence later in this decision. As a consequence of the lack of particularisation of the applicant's pleadings, the applicant was directed, two months before the substantive hearing took place, to refine its pleadings to those marks which presented the applicant's best case, and to particularise those goods and services which it considered to be identical or similar. The applicant complied, for the most part, with the direction, reducing the number of earlier mark significantly. Whilst not actually particularising individual items in its specifications, the applicant restricted the classes relied upon to classes 9, 35, 37 and 38 which, of course, are the only classes covered by the two attacked registrations. The marks and classes now relied upon are shown below²:

Section 5(2)(b)


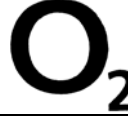
Mark	Number	Classes relied upon
O ₂	CTM 4949376	9, 35, 37,38
O2	UK 2415862	35, 37, 38
O2	UK 2560871	9, 38

Section 5(3)

Mark	Number	Classes relied upon
O ₂	CTM 4949376	9, 38
O2	UK 2415862	38
O2	UK 2560871	9, 38

¹ E.g. lace, embroidery, decorations for Christmas trees, metal for railway tracks, dating services, forestry services and incubators for eggs.

² These classes reflect an adjustment made by Mr Stobbs at the hearing.

	UK 2279371	9, 38
	UK2296255	9, 38

7. Both sides filed evidence and the matter came to be heard by me via video conference on 11 March 2015. Mr Julius Stobbs, of Stobbs IP Limited, represented the applicant. Mr Jonathan Hill of counsel, instructed by Carpmaels & Ransford LLP, represented the proprietor.

Evidence

8. The applicant's evidence comes from Amanda Clay. Ms Clay explains that she is Head of Brand Experience for the applicant, which is part of the Telefónica group of companies operating under the O2 brand. She states she has been "associated with Telefónica Europe plc for eleven years" and that the facts in her witness statement, which is dated 29 August 2014, come from her personal knowledge or from the applicant's books and records.

9. The relevant date in these proceedings is the date of application of the two registrations, 2 April 2013. The content of Ms Clay's witness statement goes back as far as 2002 and does not extend past 2010. There are no turnover figures after 2007 and no market share figures after 2009. A good deal of the content deals with telecommunications services for which the proprietor has stated it does not require proof of use and for which it accepts the applicant has a substantial reputation in the UK and EU. The applicant did not, therefore, need to file a lot of its evidence; evidence which, in any event, is rather old considering the relevant date. Mr Stobbs submitted that the evidence was intended to support a claim to the nature of the applicant's reputation, that it is known for being young, trendy, cool and high tech. I will say more about this later but I note here that, if this was the applicant's intention, reading the evidence leaves one with the impression that it is evidence which has been used in prior proceedings, with no particular care given to ensure it fits the current proceedings. This impression is reinforced by the following statement from Ms Clay, who signed her witness statement on 29 August 2014 (my emphasis):

"Sporting events include the 2009 Artistic Gymnastics World Championships and the future 2012 Olympic Gymnastics and Basketball events."

10. This is a curious statement from a witness in 2014. It causes me to wonder whether Ms Clay has read her statement, or if she has merely signed something already used before, perhaps prepared for a different witness. The statement does not go past 2010, so probably dates from then. I am left to wonder how much she knows about the facts in her statement. Was she the witness in 2010? She does not state how long she has been in her role as Head of Brand Experience, only that she has been 'associated' with Telefónica Europe plc for eleven years. The combination of old facts and the significant anachronistic reference to the future 2012 Olympics affects the weight which I can give Ms Clay's statement. I will not

give an in depth summary of her evidence, but will pick out a few highlights which are relevant to this decision. Press releases from 2008 to 2010 show:

- 2008 - O2 iPhone tariffs cost between £35 and £75 per month. O2 won a contract to provide Network Rail's corporate mobile telecommunications services. O2 joined forces with Napster to offer the UK's largest mobile music download service, through "O2 Active". O2 and Apple launched iPhone 3G in the UK. O2 signed a four-year sponsorship deal with the English Rugby Football Union. O2 had 18.7 million mobile customers and 190,000 fixed broadband customers in the UK. O2 had more customers than any other UK mobile network. O2 was the first mobile operator in the UK to enable mobile phones to work underground (in Glasgow's Subway stations). O2 music venues (O2 Academies) were rolled out across the country (the London O2 arena was now a year old).
- 2009 - O2 ranked highest in the UK for mobile and fixed broadband services. The iPhone 3G S launches in the UK exclusively to O2. O2 had 20.8 million mobile customers and 404,000 fixed broadband customers in the UK. London's O2 arena was the world's number one entertainment venue, selling 2.34 million tickets in 2009.
- 2010 - O2 grew in the UK by 3.5%, reaching 6,512 million Euros revenue. O2 launched a £5 million youth social action programme, giving youngsters grants to run local projects for communities.

11. Annual revenues generated per UK customer averaged about £540 for contract customers and £140 for pre-pay customers in 2005. In 2008, the applicant's average contract customer spent 40.8 Euros per month. Ms Clay gives details of UK TV advertising which has taken place regularly since 2002, including a campaign advertising the London O2 arena in 2007. She makes several references to the use of bubble imagery, which is not relevant to these proceedings. In 2008, the applicant's advertising spend was £75,824,700 (although this is likely to involve all of the applicant's various trade marks).

12. Ms Clay refers to several industry awards:

- 2003 and 2004 – O2 (as a company) was awarded Business Superbrand status by the Superbrands organisation (supported by the British Brands Group, amongst others). Again, Ms Clay refers to the bubble trade mark, which is not relevant to this decision.
- The Cool Brand Leaders award in 2004 – again referring to bubbles. The 2004 edition of the Cool Brand Leaders book says "At launch in May 2002, it began its high-profile brand building campaign, using the visually striking oxygen bubbles in blue water image that has become its trade mark symbol. By the end of the launch phase, which involved advertising across TV, print and poster media supported by direct marketing, O₂ had become a well-known brand, achieving levels of recognition on a par with its rivals." Ms Clay states that the applicant's primary target market has always been the 16 to 34

age group because this group uses mobile phones frequently and because they tend to be particularly style conscious.

- Exhibit 7 shows a page listing various mobile telecommunications industry awards from 2002 to 2008. There is nothing after 2008.
- Brandz Top 100 ranked the applicant as the 4th most valuable brand in the UK, after Vodafone, Tesco and HSBC, 2009-10.

13. The applicant has sponsored a number of events and entities, including the England rugby team, music festivals in major cities in 2005, 2006, 2007 and 2008, the London O2 arena and the UK-wide O2 Academies, and the David Beckham Academy (football for children).

14. Ms Clay closes her statement by quoting from a number of Trade Mark Registry decisions which found that O2 has a reputation for telecommunications. The proprietor in the current proceedings accepted that fact in its counterstatements, so there was no need to include these references. Ms Clay also makes reference to the judgment of Lewison J in *O2 Holdings Limited and anor. v Hutchison 3G Limited* [2006] EWHC 534 (Ch). This was a case about the applicant's bubble trade marks, so does not help with the issues I have to decide.

15. The proprietor's evidence comes from Julie Kilbride, who is a joint director and shareholder of the proprietor. She gives evidence about the choice of mark, which is also the proprietor's name:

"2. The Owner was incorporated on 26 June 2003, under its current name. Alison Taylor and I chose the name with the acronym GOT (i.e. "Girls On Top") in mind. We were two women looking to succeed in a very male-dominated industry. GOT can also be an acronym for Go2 Telecom. We also had in mind that we hoped that our company would be seen as the place to "go to" for the goods and services it provides, hence Go2 Telecom. We decided on this name in January 2003."

16. Ms Kilbride states that the proprietor has used the mark "Go2 Telecom" since shortly after incorporation, distributing telecommunications products, associated repair and maintenance services. The mark was advertised from 11 April 2004 on a website called go2telecom.co.uk and has turned over more than £15 million since then, with a considerable amount of repeat business. Ms Kilbride states that she, Ms Taylor (her business partner) and other members of the proprietor's staff have dealt with the applicant in the past as the proprietor was trying to supply the applicant with headsets for the applicant's contact centres. The parties had several discussions over the five years prior to the date of Ms Kilbride's witness statement (dated 19 November 2014) at the applicant's offices in Preston Brook and Glasgow without confusion or objection from the applicant either to the name Go2 Telecom, or to the two trade marks the subject of these proceedings. Ms Kilbride concludes her statement by stating:

“9. I have read the witness statement of Amanda Clay filed by the Applicant in support of its two applications. I do not disagree when she says that the O2 brand is a very well known brand in relation to telecommunications services: the Owner has never disputed this. As for the details of the Applicant’s trade marks and business given in her witness statement, I am not in a position to comment, except that I should note that the statement appears to be considerably out of date and to have been adapted from an earlier witness statement, judging by its reference to the “future 2012 Olympic Gymnastics and Basketball events” in paragraph 47.”

Decision

17. Section 5(2)(b) of the Act states that:

“(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.”

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

The principles

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

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

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

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

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

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

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

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

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

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

(k) if the association between the marks creates a risk that the public 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

19. The specifications of the proprietor's two registrations are identical. I have reproduced the parties' specifications (as now relied upon) in an annex. The proprietor accepted in its counterstatements that the applicant has used its marks on the following goods and services:

Class 9: hardware and software relating to telecommunications, mobile telecommunications and internet networking.

Class 35: retail and online retail services connected with telecommunications, mobile telecommunications and internet networking hardware and software; information and advisory services relating to the foregoing (however provided).

Class 36: insurance for mobile telephones; information and advisory services relating to the foregoing (however provided).

Class 38: *all services listed.*

Class 39: *provision of information relating to travel, transport provided over a telecommunications network.*

Class 40: *provision of information relating to travel, transport; information and advisory services relating to the foregoing (however provided).*

Class 41: *entertainment; sporting and cultural activities; information services relating to the foregoing (however provided).*

20. Earlier mark 2415862 (classes 35, 37 and 38 relied upon) is subject to proof of use (the other two marks relied upon for section 5(2)(b) are not) because it had been registered for more than five years at the date on which the applicant filed its applications for declarations of invalidity. Mr Stobbs said that the applicant would rely upon 2415862 only for those services for which the proprietor had accepted use; that is:

Class 35: retail and online retail services connected with telecommunications, mobile telecommunications and internet networking hardware and software; information and advisory services relating to the foregoing (however provided).

Class 38: *all services listed.*

21. I will proceed on the basis of Mr Hill's helpful concession that the parties' goods and services are identical, or nearly so.

Average consumer

22. 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.*

23. Mr Stobbs submitted that mobile phones (and the telecommunications services accessed through them) would cause an average degree of care during purchase. In his view, more people were likely to buy a £15 per month contract, with the phone included, by asking e.g. Carphone Warehouse what deals they had for that amount, than to pay up to £600 up front for the phone, without a contract. However, the evidence shows that, in 2008, the applicant's average contract customer spent 40.8 Euros per month, not £15³.

24. As Mr Stobbs submitted, mobile phones are an everyday item. That is so, but they are not bought every day. When buying a mobile phone contract, which appears to be the more usual purchasing choice according to Mr Stobbs, one is tied

³ Exhibit 8, page 317.

to the contract/phone for at least 18 months, if not 2 years. If, as Ms Clay states, that the applicant's target group of consumers is particularly style conscious, I would have thought that the combination of a lengthy commitment to a particular phone and to the network provider of that phone would cause an above average degree of care to be paid to selection. Mr Stobbs submitted that the aural perception of the marks is likely to feature significantly during the purchasing process, basing this on the prevalence of third party providers telephoning users as their contracts come to an end in an attempt to gain their custom when taking out a new contract. There is no evidence of that, and this is not my experience. Although I do not ignore the potential for aural reference to marks during purchase, mobile phones and service providers are a visual purchase, whether that is by visiting a physical store or an online store.


Comparison of marks

25. 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.”

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.

26. The respective marks are:

Earlier marks	Proprietor's marks
<p style="text-align: center;">O2</p> <p style="text-align: center;">O₂</p>	<div style="text-align: center;">  <p style="margin-top: 20px;">GO2Telecom</p> </div>

27. At the hearing, Mr Stobbs submitted that there was no huge distinction between O2 and O₂. Mr Hill said that there is no distinction to be drawn between the two for the purposes of this case. This leaves me in the slightly odd position of having to find that the applicant's earlier marks convey the same overall impression, even though one is more clearly a reference to the chemical symbol for oxygen than the other, the overall impression of which is the combination of a capital O and the numeral 2.

28. The proprietor's composite mark is complex. The circular device (coloured pink in the first mark in the series) will be perceived by the average consumer as a background for the words and numeral which are superimposed upon it. The 'go2' part of the mark is far more dominant than the word telecom, which is descriptive of the goods and services for which the mark is registered. The go2 element carries the greatest weight, both in terms of distinctiveness, size and position, relative to the word telecom. In contrast, whilst there is no physical separation between the various parts in the word mark, the overall impression of this mark is of a phrase which approximates to "Go to telecom."

29. There is less visual similarity between the applicant's O₂ mark and the proprietor's marks than there is in relation to the O2 mark. This is because the subscript is not found in either of the attacked marks. In fact, the numeral in the composite mark is larger than the word go. There is little visual similarity between the subscript mark and the proprietor's marks. There is a low degree of visual similarity between the O2 mark and the proprietor's marks: they contain the letter and numeral O2, but they are subsumed visually and, again, in the composite mark the 2 is larger than the 'o' of the word go. The word telecom presents a further point of visual difference and although descriptive, has a conceptual part to play in the phrase 'go to telecom', as I discuss below.

30. There is a reasonable degree of aural similarity (O2 and go2 rhyme), but articulation of the proprietor's marks will cause the consumer to recognise the word 'go' as the first spoken element of the mark, putting aural distance between the marks because the initial g sound will be heard.

31. The conceptual significance of the earlier marks is that of the chemical symbol of oxygen and/or a capital O and a numeral 2. Despite the presence of an O and a 2 in the proprietor's marks, they do not share this conceptual significance. It would be artificial to separate the O and the 2 from the G: the letter O clearly belongs to the word 'go'. Consumers will make sense of the 2 preceding the word telecom as approximating the word 'to', as is the modern fashion. The meaning of the proprietor's marks is the phrase 'go to telecom', i.e. the natural, primary choice for telecommunications (as in my 'go to' coffee shop, my 'go to' quick meal choice etc), or the place to "go to" for the goods and services provided.

32. Overall, there is very little similarity between the marks.

Distinctive character of the earlier marks

33. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*⁴ 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).”

34. I remind myself that the classes of the earlier marks relied upon for the purposes of the section 5(2)(b) ground are 9, 35, 37 and 38. This means that I cannot take into account the evidence relating to music venues or to sports sponsorship. There is no evidence of a reputation in relation to class 37 services. There is also no direct evidence in relation to Class 35 or to class 9 goods, although I am prepared to infer that the ‘substantial reputation’, conceded by the proprietor, for telecommunications services is likely to mean that the applicant’s mobile phones (covered by earlier mark 2560871) benefit from a spill-over from the reputation for telecommunications services.

35. The earlier marks do not describe or allude to any characteristic of the goods or services where the applicant’s best case lies (they have cover, notionally, for scientific goods in class 9 which could relate to oxygen, but these are far removed from their best case). The marks are inherently distinctive and are highly distinctive, through their use, for telecommunications services in class 38. Further, to some extent the good level of inherent distinctive character in respect of mobile phones has been enhanced by the close connection with the applicant’s telecommunications services, e.g. through contract purchase of phones with the telecommunications services.

⁴ Case C-342/97.

Likelihood of confusion

36. Deciding whether there is a likelihood of confusion is a matter of considering all the factors, weighing them and looking at their combined effect, in accordance with the authorities set out earlier in this decision. One of the principles in the authorities states that a lesser degree of similarity between goods and services may be offset by a greater degree of similarity between the trade marks, and vice versa (*Canon*). The parties' goods and services are identical, or nearly so, as conceded by the proprietor, and the applicant has a substantial reputation for telecommunications services, also conceded by the proprietor. Despite this, I come to the conclusion that there is no likelihood of confusion. This is because although the average consumer rarely has the opportunity to compare marks side by side, and therefore retains an imperfect picture of marks in his mind, in this case the pictures will be entirely different. The conceptual hook upon which the imperfect recollection of the applicant's mark will hang is of a mark redolent of oxygen, or of the letter O and the numeral 2. The imperfect picture kept in mind of the proprietor's marks will be wholly different, that of the phrase 'go to telecom'. In *The Picasso Estate v OHIM*, Case C-361/04 P, the Court of Justice of the European Union found that:

"20. By stating in paragraph 56 of the judgment under appeal that, where the meaning of at least one of the two signs at issue is clear and specific so that it can be grasped immediately by the relevant public, the conceptual differences observed between those signs may counteract the visual and phonetic similarities between them, and by subsequently holding that that applies in the present case, the Court of First Instance did not in any way err in law."

The levels of visual similarity between the marks are low. Although aural similarity is higher (a reasonable degree), the goods and services are purchased primarily visually, where the different concepts will be readily apparent to an average consumer paying an above average degree of attention to the purchase. I would find no likelihood of confusion even if I were to accept Mr Stobbs' submission that only an average degree of attention would be paid to the purchase. The applicant's claim relies too much on dissection of the marks, whereas marks are perceived by the average consumer as wholes. **The ground under section 5(2)(b) fails.**

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

"A trade mark which—

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

38. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, [1999] ETMR 950, Case 252/07, *Intel*, [2009] ETMR 13, Case C-408/01, *Adidas-Salomon*, [2004] ETMR 10 and Case C-487/07,

L'Oreal v Bellure [2009] ETMR 55 and Case C-323/09, *Marks and Spencer v Interflora*. The law appears to be as follows.

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

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

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

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

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

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

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

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

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any

financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

39. The conditions of section 5(3) are cumulative. Firstly, the applicant must show that its earlier marks (O2 and O₂) have achieved a level of knowledge/reputation amongst a significant part of the public. Secondly, the applicant must establish that the level of reputation and the similarities between the parties' marks will cause the public to make a link between the marks, in the sense of the earlier marks being brought to mind by the later marks. Thirdly, assuming that the first and second conditions have been met, section 5(3) requires that one or more of three types of damage claimed by the applicant will occur. It is unnecessary for the purposes of section 5(3) that the goods and services be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks. In these proceedings, the applicant (following amendment of its pleadings at the hearing) relies only upon classes 9 and 38 for a reputation, and the proprietor concedes that the goods and services of the parties are identical, or nearly so.

40. The first condition is reputation. The CJEU gave guidance in relation to assessing reputation in *General Motors*:

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

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

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

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

41. The proprietor concedes that the applicant has a substantial UK and EU reputation in its earlier marks for telecommunications services, which I would have taken, in any case, as a notorious fact, at least in relation to mobile telecommunications services. The applicant clearly satisfies the test that its marks were known to a significant part of the relevant public on 2 April 2013 in respect of

telecommunications services. It is not necessary to make a finding about reputation in respect of the class 9 goods, although the applicant's mobile phones (covered by earlier mark 2560871) are likely to benefit from a spill-over from the reputation for telecommunications services.

42. The applicant's claim in its pleadings is that the applicant's marks have a reputation for being "young, trendy, cool and high tech". The evidence includes reference to the 2004 Cool Brands Awards, some nine years before the relevant date. There is no evidence which shows that the applicant's marks for its class 9 and 38 goods and services are particularly perceived this way. Mr Stobbs accepted that the evidence was lacking in proving the nature of reputation, as opposed to the fact that there is a reputation (conceded by the proprietor).

43. The next stage is to decide whether the public will make a link between the parties' marks. The assessment of the marks is carried out with regard to visual, aural and conceptual similarities, as per the CJEU's judgment in Case C-408/01, *Adidas-Salomon*:

"28. The condition of similarity between the mark and the sign, referred to in Article 5(2) of the Directive, requires the existence, in particular, of elements of visual, aural or conceptual similarity (see, in respect of Article 5(1)(b) of the Directive, Case C-251/95 *SABEL* [1997] ECR I-6191, paragraph 23 in fine, and Case C-342/97 *Lloyd Schuhfabrik Meyer* [1999] ECR I-3819, paragraphs 25 and 27 in fine).

29. The infringements referred to in Article 5(2) of the Directive, where they occur, are the consequence of a certain degree of similarity between the mark and the sign, by virtue of which the relevant section of the public makes a connection between the sign and the mark, that is to say, establishes a link between them even though it does not confuse them (see, to that effect, Case C-375/97 *General Motors* [1999] ECR I-5421, paragraph 23)."

44. There must be some similarity between the marks and, although there does not have to be a likelihood of confusion for there to be a link⁵, the fact that there is not a likelihood of confusion is also a relevant factor to be considered (*Intel*, paragraph 42), together with the strength of reputation of the earlier marks.

45. I have found that there is very little overall similarity between the marks; that the applicant's enhanced level of distinctive character did not militate against the lack of similarity, even for identical goods and services; and that there is no likelihood of confusion. I also consider that there would be no link made, despite the enormity of the applicant's reputation for mobile telecommunications because the levels of dissimilarity between the parties' marks are too great for the applicant's marks to be called to mind by the average consumer, paying even only an average degree of attention to the purchase. However, in case I am wrong, and a link would be made, I will go on to consider whether there would be one or more of the three heads of

⁵ *Intra-Press SAS v OHIM*, Joined cases C-581/13P & C-582/13P.

damage. A link between the marks does not automatically mean that damage would follow.

46. Mr Stobbs' submissions in relation to damage were focussed upon detriment to repute ('tarnishing') and unfair advantage. The case for detriment to distinctive character appeared to stand or fall with the section 5(2)(b) claim. Under the circumstances, there is no need for me to consider this head of damage any further. Taking the tarnishing claim firstly, this was entirely predicated upon the hypothetical possibility of the proprietor's goods and services "not being of a suitable quality", and that the applicant would have no control over quality. Without evidence that the proprietor has already been selling poor quality goods and services⁶, this is not a sound basis for a detriment to repute claim; otherwise, all claims which surmounted the reputation and link hurdles would succeed by such crystal-ball gazing. I reject the claim of detriment to repute.

47. Mr Stobbs referred to the fact that the proprietor has traded for ten years on a small scale in relation to the retail of third party equipment, but not in classes 9 or 38. I note that the proprietor commenced trading under the go2 telecom name in 2003, a year after the applicant was launched (1 May 2002). The applicant established its O2/O₂ marks very quickly, so much so that the marks would have been known to a significant proportion of the UK public by 2003. It had revenue of £1,331 million by November 2002. Its reputation was sizeable enough that, in theory, it could have been taken advantage of unfairly in 2003 and later. The question is, though, would use of the proprietor's marks take unfair advantage of the applicant's reputation in its earlier marks.

48. The CJEU defined the concept of unfair advantage in Case C-487/07, *L'Oréal v Bellure* (my emphasis):

"41. As regards the concept of 'taking unfair advantage of the distinctive character or the repute of the trade mark', also referred to as 'parasitism' or 'free-riding', that concept relates not to the detriment caused to the mark but to the advantage taken by the third party as a result of the use of the identical or similar sign. It covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation.

...

"The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an advantage taken unfairly by that third party of the distinctive character or the repute of that mark where that party **seeks by that use to ride on the coat-tails of the mark with a reputation in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the**

⁶ *Unite The Union v The Unite Group Plc*, Case BL O/219/13, Ms Anna Carboni as the Appointed Person, paragraph 47.

marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image."

49. There is some debate as to whether the CJEU means that an advantage gained by the user of a junior mark is only unfair if there is an intention to take advantage of the senior mark, or some other factor is present which makes the advantage unfair. The English Court of Appeal has considered this matter three times. Firstly, in *L'Oreal v Bellure* [2010] RPC 23 when that case returned to the national court for determination. Secondly, in *Whirlpool v Kenwood* [2010] RPC 2: see paragraph 136. Thirdly, in *Specsavers v Asda Stores Limited*⁷ [2012] EWCA Civ 24: see paragraph 127. On each occasion the court appears to have interpreted *L'Oreal v Bellure* as meaning that unfair advantage requires something more than an advantage gained without due cause. However, the absence of due cause appears to be closely linked to the existence of unfair advantage⁷.

50. The proprietor in these proceedings set out in its counterstatements its reasons for choosing its name, and its trade marks, in 2003. This is not a case where there is an absence of explanation. Whilst I find the GOT (Girls on Top) reference slightly impenetrable, that is not to say that it should be disbelieved. The other reason for choosing the marks was to convey the idea of the place to "go to" for the goods and services provided. Neither of these betray any reference to the applicant's marks which, as I have said earlier, are subsumed within the marks and would only become apparent upon an artificial dissection.

51. In *Jack Wills Limited v House of Fraser (Stores) Limited* [2014] EWHC 110 (Ch) Arnold J. considered the earlier case law and concluded that:

"80. The arguments in the present case give rise to two questions with regard to taking unfair advantage. The first concerns the relevance of the defendant's intention. It is clear both from the wording of Article 5(2) of the Directive and Article 9(1)(c) of the Regulation and from the case law of the Court of Justice interpreting these provisions that this aspect of the legislation is directed at a particular form of unfair competition. It is also clear from the case law both of the Court of Justice and of the Court of Appeal that the defendant's conduct is most likely to be regarded as unfair where he intends to benefit from the reputation and goodwill of the trade mark. In my judgment, however, there is nothing in the case law to preclude the court from concluding in an appropriate case that the use of a sign the objective effect of which is to enable the defendant to benefit from the reputation and goodwill of the trade mark amounts to unfair advantage even if it is not proved that the defendant subjectively intended to exploit that reputation and goodwill."

52. Even if the proprietor had not offered any explanation for the genesis of its name and trade marks, the differences between the marks would only, at best, cause a fleeting, weak link which would not be enough to cause the proprietor's customers to be more likely, than without the link, to buy its goods and services. There is no evidence of any particular image to be transferred, and the link is too weak for an

⁷ See paragraph 36 of the opinion of Advocate General Kokott in Case C-65/12 *Leidseplein Beheer and Vries v Red Bull*.

unfair 'leg-up' to be gained from the applicant's marketing efforts. I also bear in mind, although not determinative *per se*, that the first mark in the proprietor's series is pink (perhaps referencing the idea of girls in GOT (Girls on Top)), which is not at all the colour which the applicant's evidence shows it uses (i.e. blue). Additionally, if there was an intention to piggy-back on the applicant's reputation, it would appear counter-intuitive for the proprietor to have the applicant over the past five years to negotiate supply contracts. Viewing all the factors, there is not enough to say that there would be an objective effect of unfair advantage. To do so would be to speculate, whereas for damage there must be a risk which is not hypothetical⁸. The ground is not made out. **The section 5(3) ground fails.**

Outcome

53. The applications for declarations of invalidity fail. The proprietor's marks are to remain registered.

Costs

54. The proprietor has been successful and is entitled to an award of costs. The Registrar usually awards costs according to the published scale in Tribunal Practice Notice 4/2007. I referred at the beginning of this decision to the burdensome nature of the pleadings and that, when pressed, the applicant was able to reduce its pleadings to a handful of earlier marks and to classes which were pertinent.

55. In a decision for the Registrar⁹, dated 23 June 2014, in which the present applicant was the opponent, *O2 Holdings Limited v Avon Products Inc.*, the Hearing Officer said:

"4) The fact that concessions were made at the hearing, whilst welcome, does not mitigate for the work caused to the applicant, even if this was simply having to compare the specifications to realise that there was no likelihood of the Tribunal ever agreeing with the opponent's pleadings regarding similarity. It is the opponent's role to hone its pleadings to those where it can, at the very least, put forward an arguable case. If it cannot meet this very basic requirement then the goods or services in question should not be included in the pleading.

5) Turning to the evidence filed by the opponent. It was clear from the responses to my queries at the hearing that the evidence was "stock" evidence that was altered slightly to better reflect the position in the instant case. However, in altering the evidence much was left in, such as references to relevant dates, which bore no relation to anything within the instant case. Similarly, when the evidence was prepared it should have been obvious to the opponent that it did not show proof of use of two of the earlier marks relied upon. Despite this no change was made to the pleadings even when clarification was sought by the Registry. I fully agree with the views of the

⁸ CJEU *Aktieselskabet af 21. november 2001 v OHIM*, Case C-197/07P.

⁹ BL O/278/14.

applicant who described the statement of Mr Holmes as “a sloppy cut and paste job”.

6) In its submissions on cost the opponent also stated:

“We look forward to hearing from the Hearing Officer in relation to the issue of costs, and naturally will respect whatever decision is made in this regard and will take this into account in relation to future conduct of opposition cases.”

56. Although its applications for a declaration of invalidity were filed two months prior to this, by the time the defences and counterstatements were filed, containing the concessions as to proof of use and reputation, the applicant would already have received the decision which I have quoted. In the current proceedings, it does not appear to have taken on board the previous decision (in which it was the successful opponent, but was not awarded any costs because of the way it had filed its pleadings and evidence). In these proceedings, nineteen earlier rights were filed across the two pleaded grounds. Although I appreciate that some of the pages attached to the statutory forms were prints of the earlier rights, the proprietor still had to look (twice) at all 251 pages of pleadings. Further, despite the proceedings being consolidated prior to the evidence rounds, the applicant filed two sets of evidence, at 505 pages apiece¹⁰. Again, I appreciate that these were identical. However, if proceedings are consolidated, then (a) the whole point of that is to reduce costs by only having to consider one set of evidence; and (b) if proceedings are consolidated and yet two sets of evidence are filed, the other party will wonder why; perhaps assume that there is a difference and, at any rate, have to look to see if there are differences.

57. Mr Hill submitted that I should depart from the scale of costs in relation both to the pleadings and to the evidence. Mr Stobbs replied that the applicant owns something in the region of 200 to 300 earlier rights for the O2 mark and that they had been reviewed and the nineteen selected. This is to keep options open in cases which can take a year (or more), during which time the basis and validity of some or all of the earlier rights can alter.

58. I understand these submissions in relation to shifting statuses of earlier rights, although I still question whether, having come down to less than a handful of earlier rights, it was really necessary to have pleaded all nineteen to start with. These should have been reviewed once the defences and concessions were served. However, what I have less sympathy for is the vast array of ‘similar’ goods and services pleaded, together with statements of use that there has been genuine use, as per *Ansul*¹¹, all signed off by a statement of truth. Further, I disagree with Mr Stobbs that the proprietor should have disregarded swathes of goods and services as being obviously dissimilar for the purposes of section 5(2)(b); if the applicant raises a claim, it is assumed it believes it to be true. That is the purpose of pleadings

¹⁰ There is now a limit of 300 pages for evidence in chief: Tribunal Practice Notice 1/2015, which was not in force when the evidence in this case was filed.

¹¹ Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439.

and it would be a risk for the adversary to say, "I don't think they mean that, so I'll ignore that particular claim".

59. Tribunal practice notice, TPN 4/2000, says "The statement should also set out, as appropriate, those goods or services which the opponents contend are similar or identical to those covered by the earlier trade marks." In *Club Europe Trade Mark* [2000] R.P.C. 329, the Vice Chancellor observed that:

"It is the function of pleadings to define the issues between the parties. Notices of opposition and counterstatements play the part of pleadings in contested trademark registration applications.

Mr Geoffrey Hobbs Q.C., sitting as the appointed person, said in *Demon Ale Trade Mark* [2000] R.P.C. 345, at 357:

"Considerations of justice, fairness, efficiency and economy combine to make it necessary for the pleadings of the parties in Registry proceedings to provide a focussed statement of the grounds upon which they intend to maintain that the tribunal should or should not do what it has been asked to do. The statement should not be prolix. It should, however, be full in the sense indicated by Mr Simon Thorley Q.C. in Coffeemix Trade Mark [1998] R.P.C. 717 at 722:

"It must be full in the sense that it must outline each of the grounds...relied upon and state the case relied upon in support of those grounds. It should be as succinct as possible, but it must be complete."

60. Mr Hill submitted:

"... what this evidence clearly showings is that O2 does not spend any money in really putting together these burdensome cases. It does everything on a shoestring by resurrecting old evidence, without any due care and attention. That is the burden. It is not spending the money. It then sends off the evidence to be considered by people who have never seen it before and have to work out what is important in it. That is the vice."

61. I agree with Mr Hill. The applicant is entitled to recompense for the extra burdens to which it has been put. Rather than an off-scale award, such recompense can be made by awarding costs at the top of the scale. In addition to the award made for the evidence, I will add an award of 25% of that amount for the fact that the applicant ignored the consolidation and filed another set of 505 pages of evidence. The award breakdown is:

Considering the two applications and preparing and filing two counterstatements	£1200
Preparing evidence and considering and the other sides' evidence	£2500

Preparing for and attending a hearing £1500

Total £5200

62. I order O2 Holdings Limited to pay go2 telecom limited the sum of £5200 which, in the absence of an appeal, should be paid within seven days of the expiry of the appeal period.

Dated this 22nd day of April 2015

**Judi Pike
For the Registrar,
the Comptroller-General**

Annex

The proprietor's goods and services, which are the same for the two registrations:

Class 9

Telecommunications equipment; headsets; corded headsets; cordless and wireless headsets, mobile headsets; headset amplifiers; headphones; parts and fittings for headsets; video and audio conferencing equipment; conferencing units, conferencing telephones, videophones, mediaphones, speakerphones; microphones, amplifiers, speakers for video and audio conferencing; parts and fittings for video and audio conferencing equipment; telephones; system phones; cordless and DECT telephones; payphones; answering machines; parts and fittings for telephones; telephone call recording equipment; computer software for use in recording telephone calls and telephone training; telephone training simulators; cassette tapes; handset lifters; training switches and mute buttons; fax machines; printers; computer monitors; computer keyboards; notebook computers, netbook computers, laptop computers, tablet computers; cameras; camcorders; projectors; televisions; cases and skins for mobile telephones and mobile computer devices; batteries; power adaptors; battery chargers; data storage media devices, CDs, DVDS and digital recording media; cables, couplers and plugs for telecommunications equipment.

Class 35

Retail and wholesale services connected with the sale of telecommunications equipment, headsets, corded headsets, cordless and wireless headsets, mobile headsets, headset amplifiers, headphones, parts and fittings for headsets, video and audio conferencing equipment, conferencing units, conferencing telephones, videophones, mediaphones, speakerphones, microphones, amplifiers, speakers for video and audio conferencing, parts and fittings for video and audio conferencing equipment, telephones, system phones, cordless and DECT telephones, payphones, answering machines, parts and fittings for telephones, telephone call recording equipment, computer software for use in recording telephone calls and telephone training, telephone training simulators, cassette tapes, handset lifters, training switches and mute buttons, fax machines, printers, computer monitors, computer keyboards, notebook computers, netbook computers, laptop computers, tablet computers, cameras, camcorders, projectors, televisions, cases and skins for mobile telephones and mobile computer devices, batteries, power adaptors, battery chargers, data storage media devices, CDs, DVDS and digital recording media, cables, couplers and plugs for telecommunications equipment.

Class 37

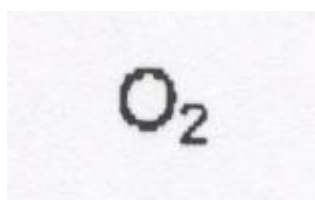
Repair and maintenance of telecommunications equipment; repair and maintenance of computer equipment; information and advisory services relating to the aforesaid services.

Class 38

Telecommunication services; information and advisory services relating to the aforesaid services.

The applicant's specifications

CTM 4949376



Class 9

Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; CD discs, Hard software for computers, DVDs, Disks, magnetic, Floppy disks, Magnetic tapes, Game software, Videotapes, Magnetic recording carriers, Phonograph records; Optical readers; Cash registers, calculating machines, fire-extinguishing apparatus; Apparatus for the transmission of sound and image; Computers; Computer software downloadable from the Internet; Drivers software for telecommunications networks and for telecommunications apparatus; Computer software onto CD Rom, SD-Card; Protective clothing, protective helmets; Parts and fittings for all the aforesaid.

Class 35

Advertising; business management; business administration; office functions; Retailing and online retailing of compact discs, DVDs, magnetic discs, floppy disks, magnetic tapes, video games software, apparatus for transmission of sound or images; information and advisory services relating to the aforesaid services; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; Information and advisory services provided over a telecommunications network.

Class 37

Building construction; repair; installation services; information and advisory services relating to the aforesaid services; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services provided over a telecommunications network.

Class 38

Telecommunications services; mobile telecommunications services; telecommunications portal services; Internet portal services; mobile telecommunications network services; Internet access services; email and text messaging service, support services relating to telecommunication networks and apparatus; monitoring services relating to telecommunications networks and apparatus; information and advisory services relating to the aforesaid services; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services provided over a telecommunications network; information services relating to telecommunications, provided by means of telecommunications networks; operation of a network, being telecommunications services; services of information broker and providers, namely rental of access time to data networks and databases, in particular the Internet; provision of information relating to the aforesaid; provision of access time to data networks and banks, providing access to the Internet; providing access to database; rental of access time for data networks and data banks, Internet.

UK 2415862

O2

Class 35

Retail and online retail services connected with telecommunications, mobile telecommunications and internet networking hardware and software; information and advisory services relating to the foregoing (however provided)¹²

Class 38

Handling and rental of access time for data networks and data banks and the Internet; services of network operating company, information broker and provider, namely rental of access time to data networks and databases.

UK 2560871

O2

Class 9

Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin operated apparatus; cash registers; calculating machines, data processing equipment and computers; fire-extinguishing apparatus; apparatus for the transmission of sound and image; telecommunications apparatus; mobile telecommunication apparatus; mobile telecommunications handsets; computer hardware; computer software; computer software downloadable from the Internet; PDAs (Personal Digital Assistants), pocket PCs, mobile telephones, laptop computers; telecommunications network apparatus; drivers software for telecommunications networks and for telecommunications apparatus; protective clothing; protective helmets; computer software recorded onto CD Rom; SD-Cards (secure digital cards); glasses, spectacle glasses, sunglasses, protective glasses and cases therefor; contact lenses; cameras; camera lenses; MP3 players; audio tapes, audio cassettes, audio discs; audio-video tapes, audio-video cassettes, audio-video discs; video tapes, video cassettes, video discs; CDs, DVDs; electronic publications (downloadable); mouse mats; magnets; mobile telephone covers, mobile telephone cases; magnetic cards; encoded cards; parts and fittings for all the aforesaid goods.

Class 38

Telecommunications; telecommunications services; mobile telecommunications services; telecommunications portal services; Internet portal services; mobile telecommunications network services; fixed line telecommunication services; provision of broadband telecommunications access; broadband services; broadcasting services; television broadcasting services; broadcasting services relating to Internet protocol TV; provision of access to Internet protocol TV; Internet access services; email and text messaging services; information services provided by means of telecommunication networks relating to telecommunications; services of a network provider, namely rental and handling of access time to data networks and databases, in particular the Internet; provision of access time for data networks and data banks, in particular the Internet; communications services for accessing a database; leasing of access time to a computer database; providing access to computer databases;

¹² This represents the concession made by the proprietor: these services are covered by the applicant's registered specification.

rental of access time to a computer database; support services relating to telecommunications and apparatus; operation of a network, being telecommunication services; expert advice and opinion relating to telecommunications; planning relating to telecommunications equipment; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

UK 2279371



The applicant claims the colour blue (indigo) as an element of the mark.

Class 9

Mobile telecommunications apparatus; mobile telecommunications headsets.

Class 38

Mobile telecommunications services; telecommunications portal services; Internet portal services; mobile telecommunications network services; Internet access services; applications services provision.

UK 2296255



Class 9

Mobile communications apparatus; mobile communications handsets; mobile communications headsets; parts and fittings for the aforesaid goods.

Class 38

Telecommunication and data communication services provided by a mobile telephone company; operation of a digitalized media platform for the exchange of messages and information; WAP (wireless application protocol) services; electronic postal services, namely transmission and forwarding of electronic mail, SMS (short message services), facsimiles, WAP (wireless application protocol) services; collection and delivery of news and general information; transmission of information in the field of entertainment, general information, economy and finance, sport and cultural activities in digital networks; monitoring, processing, sending and receiving data, sounds, images and/or signals and information processed by computers or by telecommunication apparatus and instruments.