

O-571-16

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION NO 3 115 773 FOR THE
TRADE MARK: SUDROID IN THE NAME OF FOSLER TRADE COMPANY
LIMITED

AND

IN THE MATTER OF OPPOSITION THERETO UNDER NO 405 309 BY GOOGLE
INC.

Background and pleadings

1. Fosler Trade Company Limited (the applicant) applied to register the trade mark SUDROID under No 3 115 773 in the UK on 01/07/2015. It was accepted and published in the Trade Marks Journal on 24/07/2015 in respect of the following goods in Class 09:

Protective covers for smartphones; protective covers and cases for tablet computers; fitted plastic films known as skins for covering and protecting electronic apparatus, namely, mobile phones, portable music players, personal digital assistants [excluding gaming apparatus]; data cables; set-top boxes; wire connectors; keyboard covers; couplers [data processing equipment]; computer mouse; tablet computers; computer hardware; masts for wireless aerials; satellite navigational systems, namely, global positioning systems (GPS); global positioning systems (GPS); cell phone straps; smartphones; cell phones; microphones; record players; camcorders; headphones; DVD players; portable media players; tripods for cameras; flashlights for use in photography; microscopes; telescopes; remote controls for radios, televisions, stereos; ear plugs for divers; sunglasses; battery chargers; accumulators.

2. Google Inc (the opponent) oppose the trade mark on the basis of Section 5(3) of the Trade Marks Act 1994 (the Act). This is on the basis of, amongst others,¹ its earlier European Union (formerly Community) Trade Marks ANDROID (Numbers 6 410 856 and 1 444 1414), which it claims have a reputation. In particular the opponent argues that (the applicant) will benefit from (the opponent's) investment in advertising, leading to unfair advantage. Further that the applicant will ride on its coat tails and will benefit from the power of attraction, reputation and prestige of the earlier marks. The opponent also claims that the later use will be out of its control and that poor quality or offensive goods will cause detriment to its valuable reputation and business. It claims that use of the later mark will dilute the distinctive character and

¹ The full list of trade marks relied upon is detailed in Annex 1 to this decision.

reputation of its marks. Finally, the opponent claims that there is no due cause for adoption of the opposed mark.

3. The opponent also opposes the application on the basis of Section 5(2)(b) of the Act on the basis that the trade mark applied for is similar to the earlier trade marks relied upon and is in respect of similar goods.
4. Finally, the opponent opposes on the basis of Section 5(4)(a) of the Act in that it claims to have generated goodwill in ANDROID and that the use of the later trade mark will lead to misrepresentation and damage to its earlier sign.
5. The applicant filed a counterstatement denying the claims made. In particular, under Section 5(3), it claims that a link is unlikely to be established and even if it could be, this would not have the impact of taking unfair advantage of the distinctive character of the earlier marks or be detrimental to the distinctive character or reputation. Under Section 5(2)(b), the applicant argues that the marks and goods are sufficiently different to avoid a likelihood of confusion. Under Section 5(4)(a), the applicant argues it has not made any misrepresentation by its use of the term SUDROID and so no damage will be caused to any goodwill.
6. Both sides filed evidence. This will be summarised to the necessary degree. A Hearing took place on 27th September 2016. The applicant did not attend but filed written submissions in lieu. These will not be summarised but have been taken into account in reaching this decision. The opponent was represented by Mr Jude Anthony of Field Fisher Waterhouse LLP.
7. Following a thorough perusal of the papers, written and oral submissions and skeleton arguments, it is considered that the decision should begin by looking at the ground of opposition based upon Section 5(3) and the remaining grounds will be considered as necessary.

Legislation

8. Section 5(3) states:

“(3) A trade mark which-

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

9. 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, *Addidas-Salomon*, [2004] ETMR 10 and 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 of the earlier mark; *L'Oreal v Bellure NV, paragraph 40*.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the

power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the 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*).

Reputation

10. It is noted that the applicant in these proceedings accepts that the opponent has a reputation, though this is (in its view) limited to a mobile operating system. Further it is noted that the opponent relies upon a previous decision of the Tribunal in respect of Opposition Number 402 793 in which it was held that the opponent enjoys a significant reputation in the ANDROID mark for operating systems for mobile devices. Bearing in mind the foregoing, the summary of the opponent's evidence will focus upon the key points in support together with any additional information considered directly relevant.

Evidence

Opponent's evidence

11. This is a witness statement from Gavin Charleston, Trade Mark Counsel of the opponent. He provides the following information regarding market share of ANDROID in the UK:

January 2012 – 49.3%

January 2013 – 56.2%

November 2014 – 49.7%

June 2015 – 53.2%

December 2015 – 51.9%

12. Further, details of UK marketing activities are provided as are numerous examples of press coverage in the UK. Finally, details of awards given to the opponent are outlined. All of this information supports the opponent's claim, the applicant's concession and the previous finding of this Tribunal: that ANDROID enjoys a significant reputation in the UK in respect of mobile operating systems.
13. There is a further notable piece of evidence is Exhibit GC26. This is a print out from the website of Amazon.co.uk, showing products bearing the name SUDROID also being described as ANDROID products. In its skeleton argument and at the Hearing, the opponent argued that this evidence of the applicant's actions which supports the opponent's case under Section 5(3) because the use of the opponent's trade mark in conjunction with the mark applied for, leads to a situation where the establishment of a link is inevitable.

Applicant's evidence

14. This is a witness statement from Matthew Gardner of The Trade Marks Bureau, the representative of the applicant in these proceedings. Much of the content of this witness statement is focussed upon rebutting the ground of opposition based upon Section 5(2)(b). This includes material regarding the meaning of the word DROID. In this regard, it is accepted that it refers to a robot. Mr Gardner also exhibits material showing use of DROID by others. Finally, Mr Gardner also includes in his evidence a copy of a decision from the EUIPO in respect of DRIOD and RUGGEDROID where the marks were considered similar only to the extent that they each contain DROID.

The Link

15. In assessing whether or not a link between SUDROID and ANDROID will be established, I bear in mind the following guidance:

In Case C-408/01, *Addidas-Salomon*, the CJEU held that:

“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).”

And also:

In *Intra-Press SAS v OHIM*, Joined cases C-581/13P & C-582/13P, the Court of Justice of the European Union stated (at paragraph 72 of its judgment) that:

“The Court has consistently held that the degree of similarity required under Article 8(1)(b) of Regulation No 40/94, on the one hand, and Article 8(5) of that regulation, on the other, is different. Whereas the implementation of the protection provided for under Article 8(1)(b) of Regulation No 40/94 is conditional upon a finding of a degree of similarity between the marks at issue so that there exists a likelihood of confusion between them on the part of the relevant section of the public, the existence of such a likelihood is not necessary for the protection conferred by Article 8(5) of that regulation. Accordingly, the types of injury referred to in Article 8(5) of Regulation No 40/94 may be the consequence of a lesser degree of similarity between the earlier and the later marks, provided that it is sufficient for the relevant section of the public to make a connection between those marks, that is to say, to

establish a link between them (see judgment in *Ferrero v OHMI*, C-552/09 P, EU:C:2011:177, paragraph 53 and the case-law cited).”

16. In making a direct comparison between SUDROID and ANDROID, it is noted that the marks are identical in terms of length. Further, that they coincide entirely in respect of five out of seven letters respectively. Though they have differing beginnings: SU and AN, each contain DROID. It is considered highly likely that DROID will be understood as being a kind of robot with ANDROID being known as a more human like robot. A highly similar idea is therefore conveyed. The marks are therefore considered to be similar, to a medium degree. It is noted that the applicant relies upon a decision of the EUIPO in respect of two marks containing the word DROID. However, it is noted that the marks in question in that decision were different from those in question here, where the respective marks are also identical in length. Further, the EUIPO decision is in respect of Section 5(2)(b) and the global assessment applicable thereto. Therefore the decision has little or no persuasive value per my considerations in these proceedings.

17. In respect of the goods, it is considered that many those applied for, are consumer electronics and accessories. These are clearly in the same general area of the market as mobile operating systems, for which the opponent enjoys a significant reputation. This factor also weighs in the opponent's favour in establishing a link.

18. Added to this is the marketing behaviour of the applicant as evidenced by the opponent, namely the printouts of the SUDROID products offered for sale on the Amazon website. It has already been described above but it is notable that the product is also described as being an ANDROID product. The opponent argues this has the effect of the applicant aligning itself with the ANDROID marks and so a link being established in the minds of the consumer is likely. I am persuaded by the opponent on this. It is considered highly likely that a link will be established in the minds of the consumer.

19. I stated earlier that consumer electronics and accessories comprise much of the applied for specification. There are however, several items included in the later specification that cannot be described in this manner. These are: sunglasses; ear plugs for divers; microscopes; telescopes; tripods for cameras; flashlights for use in photography. In respect of sunglasses, the opponent argued at the Hearing that wearable smart devices in the form of glasses are becoming more commonplace. However, there is no evidence on the point. Further, though it is accepted that ANDROID has a significant reputation, it is difficult to see how this can extend beyond the field of consumer electronics and the like. Finally, though the marks are similar, they are not so similar that they bridge the gap created by the distance in the respective goods. It is considered that in respect of sunglasses, ear plugs for divers, microscopes and telescopes; tripods for cameras; flashlights for use in photography therefore, that no link will be established in the mind of the relevant consumer. The ground of opposition under Section 5(3) therefore fails in respect of these goods.

Damage

20. The opponent also uses the evidence of SUDROID goods marketed as being ANDROID products to argue that the applicant, in using SUDROID in conjunction with ANDROID in a manner that is clearly taking unfair advantage of the reputation of ANDROID. The nature of the advantage is explained by the CJEU in Case C-487/07, *L’Oreal v Bellure*:

“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 to 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 the 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.”

21. The opponent has provided evidence showing some of the use made by the applicant of its mark in conjunction with the opponent's on the Amazon website. This use conveys the message that the applicant's goods are ANDROID goods or otherwise operate on the android operating system. It is considered that it is reasonable to infer that the applicant's aim is to capitalise on the opponent's reputation for high accessibility in order to promote its own goods as being compatible with that technology. This is clearly using the extensive efforts of the opponent's in marketing and development of ANDROID to its own advantage. It is concluded that the ground of opposition based upon Section 5(3) succeeds because the applicant's use of SUDROID would take unfair advantage of the earlier ANDROID. The exception to this is in respect of *sunglasses; ear plugs for divers; microscopes; telescopes; tripods for cameras; flashlights for use in photography*.

22. In respect of the surviving goods, it is not forgotten that the opponent also relies upon additional earlier trade marks and signs and other grounds based upon Section 5(2)(b) and 5(4)(a). In respect of the former, most of the goods are dissimilar to those of the earlier trade marks (and the similarity of goods and services is a requirement for the ground to bite)². For those goods for which there is similarity (tripods for cameras versus cameras), it is considered that

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SUDROID and ³are not similar enough that when considering the global assessment required by Section 5(2)(b), a likelihood of confusion will be found. This ground of opposition therefore fails.

23. In respect of Section 5(4)(a), it is accepted that ANDROID had established a significant goodwill. However, the extent of the goodwill is limited to that in respect of mobile operating systems. This is a different field of activity from those of the surviving goods of the application. In this regard, the following guidance is taken into account:

² *Waterford Wedgwood plc v OHIM* – C-398/07 P (CJEU); *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA.

³ See details attached at Annex 1.

In *Harrods Limited v Harrodian School Limited* [1996] RPC 697 (CA), Millet L.J. made the following findings about the lack of a requirement for the parties to operate in the a common field of activity, and about the additional burden of establishing misrepresentation and damage when they do not:

“There is no requirement that the defendant should be carrying on a business which competes with that of the plaintiff or which would compete with any natural extension of the plaintiff's business. The expression “common field of activity” was coined by *Wynn-Parry J. in McCulloch v. May* (1948) 65 R.P.C. 58, when he dismissed the plaintiff's claim for want of this factor. This was contrary to numerous previous authorities (see, for example, *Eastman Photographic Materials Co. Ltd. v. John Griffiths Cycle Corporation Ltd.* (1898) 15 R.P.C. 105 (cameras and bicycles); *Walter v. Ashton* [1902] 2 Ch. 282 (The Times newspaper and bicycles) and is now discredited. In the *Advocaat* case Lord Diplock expressly recognised that an action for passing off would lie although “the plaintiff and the defendant were not competing traders in the same line of business”. In the *Lego case Falconer J.* acted on evidence that the public had been deceived into thinking that the plaintiffs, who were manufacturers of plastic toy construction kits, had diversified into the manufacture of plastic irrigation equipment for the domestic garden. What the plaintiff in an action for passing off must prove is not the existence of a common field of activity but likely confusion among the common customers of the parties.

The absence of a common field of activity, therefore, is not fatal; but it is not irrelevant either. In deciding whether there is a likelihood of confusion, it is an important and highly relevant consideration

‘...whether there is any kind of association, or could be in the minds of the public any kind of association, between the field of activities of the plaintiff and the field of activities of the defendant’:

Annabel's (Berkeley Square) Ltd. v. G. Schock (trading as Annabel's Escort Agency) [1972] R.P.C. 838 at page 844 per Russell L.J.

In the *Lego* case *Falconer J.* likewise held that the proximity of the defendant's field of activity to that of the plaintiff was a factor to be taken into account when deciding whether the defendant's conduct would cause the necessary confusion.

Where the plaintiff's business name is a household name the degree of overlap between the fields of activity of the parties' respective businesses may often be a less important consideration in assessing whether there is likely to be confusion, but in my opinion it is always a relevant factor to be taken into account.

Where there is no or only a tenuous degree of overlap between the parties' respective fields of activity the burden of proving the likelihood of confusion and resulting damage is a heavy one. In *Stringfellow v. McCain Foods (G.B.) Ltd.* [1984] R.P.C. 501 Slade L.J. said (at page 535) that the further removed from one another the respective fields of activities, the less likely was it that any member of the public could reasonably be confused into thinking that the one business was connected with the other; and he added (at page 545) that

‘even if it considers that there is a limited risk of confusion of this nature, the court should not, in my opinion, readily infer the likelihood of resulting damage to the plaintiffs as against an innocent defendant in a completely different line of business. In such a case the onus falling on plaintiffs to show that damage to their business reputation is in truth likely to ensue and to cause them more than minimal loss is in my opinion a heavy one.’

In the same case Stephenson L.J. said at page 547:

‘...in a case such as the present the burden of satisfying Lord Diplock's requirements in the *Advocaat* case, in particular the fourth and fifth requirements, is a heavy burden; how heavy I am not sure the judge fully appreciated. If he had, he might not have granted the respondents

relief. When the alleged “passer off” seeks and gets no benefit from using another trader's name and trades in a field far removed from competing with him, there must, in my judgment, be clear and cogent proof of actual or possible confusion or connection, and of actual damage or real likelihood of damage to the respondents' property in their goodwill, which must, as Lord Fraser said in the *Advocaat* case, be substantial.’ ”

24. Bearing in mind the foregoing, it is difficult to see how there can be a misrepresentation here. This ground of opposition therefore also fails.

25. The sum of all this is the opposition is successful for the most part, but the following goods can proceed to registration:

26. *Sunglasses; ear plugs for divers; microscopes; telescopes. tripods for cameras; flashlights for use in photography.*

COSTS

27. The opponent has been successful in the main and is entitled to a contribution towards its costs. In the circumstances I award the opponent the sum of £1100 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Opposition fee - £200

Preparing a statement and
Considering the counterstatement - £300

Filing evidence - £300

Attendance at hearing - £300

TOTAL £1100

28. I therefore order Fosler Trade Company Limited to pay Google Inc the sum of £1100. The above sum should be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 5th day of December 2016

**Louise White
For the Registrar,
The Comptroller-General**

Annex 1

Additional trade marks/signs relied upon by the opponent:

1. UK trade mark Registration No 2 530 935 ANDROID:

Class 09:

Hardware and software; telecommunications apparatus and instruments; mobile devices and peripherals; mobile phones, cell phones, smart phones, personal digital assistants (PDAs), mobile computers, wireless handhelds, and portable phones; peripherals for mobile phones, cell phones, smart phones, personal digital assistants (PDAs), mobile computers, wireless handhelds, and portable phones; parts and fittings for all the aforesaid.

2. European Union Trade Mark Registration No 1 375 4742 ANDROIDIFY in Class 09 and 42:

Class 09:

Software for creating, viewing, manipulating, editing, and storing graphic images and text; software for transferring and exchanging graphic images and text over computer networks, wireless networks, and global communication networks; software to enable uploading, accessing, posting, displaying, tagging, blogging, linking, sharing or otherwise providing images, information, data and electronic media over the Internet or other communications networks; software which facilitates on-line services for social networking; video game software.

Class 42:

Computer services, namely, creating an on-line community for registered users to communicate and interact with others, participate in discussions, get feedback from their peers, form virtual communities, and engage in social networking in the field of general interest; computer services, namely,

interactive hosting services which allow the user to publish and share their own content and images on-line; providing a web site featuring technology that enables users to upload and share text and graphics; providing a web site featuring technology that enables on-line users to create personal profiles featuring social networking information.

3. European Union Trade Mark Registration No 8 458 309 ANDROID:

Class 09:

mobile devices, namely cell phones, mobile phones, smart phones and handheld personal digital assistants (PDAs), and peripherals for same; computer software for use in connection with mobile devices, namely cell phones, mobile phones, smart phones and handheld personal digital assistants (PDAs)

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4. European Union Trade Mark Registration No 1 040 2808:

Class 09:

Computer software, computer hardware, mobile phones, mobile peripherals, computers, tablet computers, netbook computers, laptop computers, integrated circuit chips, microchips, camera cases, camcorder cases, thermostats, radios, telephones, remote controls for radios, televisions and stereos, video game consoles, DVD players, video cassette recorders, digital video recorders, MP3 players, audio amplifiers, computer servers, printers, scanners, photocopying machines, computer monitors, fax machines, network routers, keyboards, computer mice, external computer hard drives, camcorders, cameras, calculators, gps navigation devices, audio components, headphones, audio speakers, audio receivers and video receivers, personal digital assistants (PDA), set-top boxes, home theater systems, video projectors, movie projectors, security alarms, fire alarms, fire and smoke detectors, radar detectors, audio and video equipment for

vehicles, battery chargers, adapters (electricity), answering machines, headsets, electric light switches.

Class 11:

Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes; light bulbs, microwave ovens, refrigerators, freezers, electric appliances namely refrigerators, freezers, toasters, toaster ovens, cooking ranges, microwave ovens, cooking ovens, convection ovens, cooking stoves, coffee machines, kettles, hot plates, popcorn makers, rice cookers, food steamers, rotisseries, bread makers, deep fryers, griddles, grills, waffle irons, food steamers, ice cream makers, roasters, ice makers, food warmers, dehydrators, clothes dryers, air conditioning apparatus, heaters, fans, water ionizers, air purifiers, air filters, furnaces, hair dryers, humidifiers, vaporizers, space heaters and beverage coolers, cooking ranges, cooking ovens, electric stoves, electric lamps, ceiling lights, wall lights, clothes dryers, air conditioning apparatus, electric heaters, electric fans, ceiling fans, furnaces.

Class 16:

Books, magazines, newsletters, manuals; notebooks, notepads, pens, greeting cards, stickers, decals, sticky notes, stationery, organizers; pencils, mechanical pencils, pencil-sharpeners, correction fluid; postcards; adhesives; pencil cases; paper clips; staplers; paper staples, clipboards, desk sets, posters, memo pads, paperweights, calendars, book covers:.

Class 28:

Collectable toy figures, doll toys; hand-held units for playing electronic games; playing cards.

Class 35:

Advertising services; online retail services with regard to software, music, books, movies, games and digital media.

Class 38:

Telecommunications services; transmission of data by global computer network; streaming of audio, visual and audiovisual material via a global computer network; providing online resources for software developers, namely providing discussion groups.

Class 41:

Providing online resources for software developers, namely, providing documentation, articles, videos, blogs, tutorials and lessons relating to software development and software troubleshooting; providing guides for software developers; providing online journals, namely, blogs in the field of software development; online game services; mobile game services.

Class 42:

Application services provider (ASP), namely, hosting computer software applications of others; computer services, namely, creating an on-line community for registered users to participate in discussions, get feedback from their peers, form virtual communities, and engage in social networking in the field of software development; providing temporary use of non-downloadable software; providing online resources for software developers, namely providing software and sample codes.

5. Earlier Unregistered Trade Mark: ANDROID. Used in the UK since 5th November 2007 in respect of:

Hardware and software; telecommunications apparatus and instruments; mobile devices and peripherals; mobile phones, cell phones, smart phones, personal digital assistants (PDAs), mobile computers, wireless handhelds and portable phones; peripherals for mobile phones, cell phones, smart phones, PDAs, mobile computers, wireless handhelds and portable phones; operating

system for mobile devices, smart phones, tablet computers, televisions, cars, watches, games console, digital cameras and other electronic devices; parts and fittings for all the aforesaid.