

**O-100-18**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. 3124272 BY  
PLATINUM FILMS LIMITED**

**TO REGISTER THE TRADE MARK:**

**Planet Cook**

**FOR GOODS AND SERVICES  
IN CLASSES 9, 16, 21, 30 AND 41**

**AND**

**IN THE MATTER OF OPPOSITION TO ITS REGISTRATION  
IN CLASSES 9, 16 AND 41  
UNDER NO. 405721  
BY  
GROUPE CANAL+, SA**

## Background

1) On 26 August 2015 Platinum Films Limited (“the Applicant”) applied to register the following trade mark:

### Planet Cook

The application was published for opposition purposes on 2 October 2015. Registration is sought for goods and services in Classes 9, 16, 21, 30 and 41.

2) The application is opposed by Groupe Canal+, SA (“the Opponent”). Originally all the goods and services for which registration is sought were opposed, but during the course of these proceedings the Opponent limited the scope of the opposition to the goods and services applied for in Classes 9, 16 and 41, as shown in **Annex A** to this decision. The opposition is based on section 5(2)(b) of the Trade Marks Act 1994 (“the Act”), for the purposes of which the Opponent relies on European Union trade mark no. 9781791 for the following mark (“the earlier mark”):



The earlier mark is registered for the goods and services shown in **Annex B** to this decision, all of which are relied on for the purposes of this opposition. The earlier mark was filed on 3 March 2011 and registered on 26 December 2012. The significance of these dates is that (1) the Opponent’s mark constitutes an earlier mark in accordance with section 6 of the Act, and (2) it is not subject to the proof of use conditions contained in section 6A of the Act, its registration process having been completed less than five years before the publication of the Applicant’s mark.

3) The Opponent is represented by D Young & Co. The Applicant is represented by Groom, Wilkes & Wright LLP. The Opponent claims that the mark applied for is similar to the earlier mark, that its registration is sought for goods and services which

overlap with, or are similar to, those of the earlier mark, and that there consequently exists a likelihood of confusion, including a likelihood of association between the marks. The Applicant filed a notice of defence and counterstatement, denying the grounds of opposition. During the evidence rounds the Applicant filed evidence and submissions and the Opponent filed submissions. Neither side requested a hearing and the Opponent filed written submissions in lieu of a hearing. I therefore give this decision after a careful review of all the papers before me.

### **The Evidence**

4) The Applicant submitted evidence in the form of a witness statement of 11 September 2017 of Mr Trevor Alfred Wright. Mr Wright states that he is a Trade Mark Attorney and Director of the firm representing the Applicant. His evidence consists of the results of research conducted by him on the internet. He states that Exhibit TV1 to his witness statement consists of the search results obtained by him when searching the "The Internet Movie Database" website for the word PLANET among the names of companies including those involved in the production and distribution of TV programmes and films, and lists those which he says are based in the UK with "planet" included in their name. He states that he also searched for the word "planet" within the titles of TV programmes and films, which produced a long list of titles which he attaches as Exhibit TW2. He next states that he visited the website [www.radiotimes.co.uk](http://www.radiotimes.co.uk) and carried out a search for titles incorporating the word "planet", this producing a list several pages long which he attaches as Exhibit TW3.

5) There are two reasons why this evidence, which purports to show that the word PLANET is commonly used in relation to media titles, programmes and television channels, has not assisted me. Firstly, the Applicant submits that as a result of common use consumers in the relevant fields are not confused by trade marks which contain PLANET along with other matter, consumers being used to differentiating between such trade marks. For reasons which I will explain fully later in this decision, however, I do not accept that the average consumer of the relevant goods and services will confuse the words PLANET and PLANETE in the respective marks. Even if the degree of distinctiveness of the familiar word PLANET were weakened by

common use, this would not affect the ability of the average consumer to differentiate it from the unfamiliar PLANETE.

6) Secondly, even if I had considered that evidence that the word PLANET is commonly used in trade marks in the fields concerned was relevant to my assessment, the evidence submitted in Mr Wright's witness statement would in any case not have established this. The list of companies based in the UK and listed on the IMDB database does not in itself show whether these companies were actively trading in the UK market when the opposed mark was applied for, so as to show that the word was in common use in the industry. Moreover, even if I were to accept that the historic IMDB list of films and programmes or the Radio Times website historic list of TV and Radio programmes were to show common use of the word "planet" in films or radio and television programmes when the opposed mark was applied for, I cannot see that this would have had any material bearing on the ability of the consumer to differentiate between trade marks containing the word PLANET as marks of origin in the marketplace at the relevant time.

### **Section 5(2)(b)**

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

"5(2) A trade mark shall not be registered if because – [...]

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark".

8) The following principles are gleaned from the decisions of the Court of Justice of the European Union ("CJEU") in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel 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:

(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**

9) In its counterstatement the Applicant accepts that the goods and services for which it seeks protection are the same as, or similar to, the goods and services for which the earlier mark is protected. Though the Applicant does not explicitly specify which goods and services it concedes are the same, and which simply similar, or the degree of their similarity, for reasons of procedural economy I shall not undertake a comparison of the goods and services in the competing specifications. My assessment will proceed on the basis that the contested goods and services are identical to those covered by the earlier mark. If the opposition fails, even where the goods are identical, it follows that the opposition will also fail where the goods or services are only similar.

### **The average consumer and the purchasing process**

10) 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*. In *Hearst Holdings Inc, Fleischer Studios Inc v*

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

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

11) As I am proceeding on the basis that the respective goods and services are identical, the average consumer would also be the same. For the majority of the goods and services, the consumer, as the Opponent submits, will be the general public, though I recognise that some will also be bought by commercial or professional users, e.g. *measuring instruments* in Class 9 or *providing of training* in class 41. Some commercial contracts for the purchase of items such as, for example, commercial training courses, may involve some oral negotiation, though they will also normally involve a higher degree of care and attention and written dealings. Apart from that, I consider all the goods and services of the respective specifications to be ones more likely to be selected by the eye (in stores, through websites, brochures, advertisements, etc.) than by oral request, though I do not ignore the possibility of discussion with sales assistants, for example, and aural aspects will not be overlooked in my comparison. The cost of the goods and services concerned may vary but they are not, generally speaking, highly expensive purchases, consisting mostly of routine consumer purchases. While a higher degree of attention may be paid when selecting more expensive goods and services, overall, consumers will normally pay a reasonable degree of attention, neither higher nor lower than the norm, to their selection.


## Comparison of the marks

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

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

It would be wrong, therefore, to dissect the trade marks artificially, although, it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

13) The marks to be compared are shown below:

The opposed mark	The earlier mark
<b>Planet Cook</b>	

14) “Planet” and “Cook” are both plain English words with straightforward meanings which will be understood by all. “Cook” may be understood either as a noun or as a



verb. It can also be seen as a name. Where the relevant goods or services concerned relate to cookery in some way (as, for example, with the Applicant's *cookery books* in Class 16 or *cooking instruction* in Class 41) the word Cook can be seen as having a descriptive quality. However, I consider that combining the word "planet" with "cook" creates a rather unusual and whimsical phrase suggesting an area of interest relating to cookery. Though Planet may perhaps still bear more distinctive weight, I consider that the phrase "Planet Cook" remains distinctive as a whole. I also bear in mind that the General Court has held that the weak distinctive character of an element of a composite mark does not necessarily imply that that element cannot constitute a dominant element<sup>1</sup>. Where the word "cook" has no descriptive quality and, as here, it follows the word "planet", the obvious inference is that "Planet Cook" is intended to represent the name of a (presumably imaginary) planet. Neither word dominates the other and the phrase as a whole is distinctive of the goods and services for which protection is sought.

15) While the graphic and figurative elements of the Opponent's mark are individually unremarkable, in combination I consider that their effect is not negligible; they do make some contribution to the mark's distinctiveness. It is the combination of the word PLANETE followed by the + sign, however, which dominates the mark. In addition to its primary meaning of "in addition to" or (of figures) "above zero", "plus" is often used in marketing goods and services to indicate an additional feature, quality or benefit, so it may be seen as having a descriptive or laudatory quality, with the result that the consumer may place more distinctive weight on PLANETE. Nevertheless, PLANETE + will be seen as together forming a significant combination dominating the mark.

16) Visually, the opposed mark consists of the words "Planet Cook" in lower case with initial capitals. The earlier mark consists of the word PLANETE in capitals and plain font, immediately followed by the + sign, in white against a dark rectangular strip, which is in turn superimposed, though projecting at both ends, over a red disc with highlighting suggesting a sphere. Colours are claimed. In its statement of grounds the Opponent contends that "*The element + is only one character and*

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<sup>1</sup> See *Globo Media v EUIPO - Globo Comunicacao e Participações* T-262/16 at paragraph 34.

*therefore clearly visually and aurally insignificant for the purposes of comparing the marks*". I disagree. I consider that the average consumer will see the prominent plus sign as part of the central line of text.

17) In making my comparison I bear in mind that notional and fair use of the opposed mark would also cover its use in capitals and plain font<sup>2</sup> and that, not being limited to colour, it is registered in respect of all colours<sup>3</sup>. The Opponent submits that "the eye of the relevant consumer would immediately be drawn to the almost identical word elements PLANET/PLANETE since these are the first word elements of the two marks". There is a rough rule of thumb that the consumer normally attaches more importance to the beginnings of word marks, though each case must be considered on its merits. My assessment must take account of the overall impression created by the marks<sup>4</sup>. I bear in mind that in this case it is the more similar element which appears at the beginning of the respective marks, and the similarity of these initial words does make a significant contribution to the overall impression of the marks. Nevertheless, the word PLANET is a very familiar one, and the additional E at the end of PLANETE in the Opponent's mark is not insignificant, creates a whole which is not a word in the English language, and will be remarked by the average consumer. Moreover, COOK and + are both prominent visually in their respective marks. They will not be overlooked, and represent further significant elements of difference. Finally, the figurative element of the Opponent's mark also creates some difference. Overall, there is not more than a medium degree of visual similarity between the marks.

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<sup>2</sup> See *Peek & Cloppenburg v OHIM* T-386/07 at paragraph 47 and *S.A. Société LTJ Diffusion v. Sadas Vertbaudet SA*, Case C-291/0 at paragraph 54.

<sup>3</sup> See *Specsavers International Healthcare Ltd v Asda Stores Ltd* [2014] EWCA Civ 1294 at paragraph 5 and *Starbucks v EUIPO* T-398/16 at paragraphs 53-54.

<sup>4</sup> Cf. *Spa Monopole, compagnie fermière de Spa SA/NV v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-438/07:

"23 Admittedly, the consumer normally attaches more importance to the first part of words (Joined Cases T-183/02 and T-184/02 *El Corte Inglés v OHIM – González Cabello and Iberia Líneas Aéreas de España (MUNDICOR)* [2004] ECR II-965, paragraph 81). However, that argument cannot hold in all cases (see judgment of 16 May 2007 in Case T-158/05 *Trek Bicycle v OHIM – Audi (ALL TREK)*, not published in the ECR, paragraph 70 and the case-law cited) and does not, in any event, cast doubt on the principle that the assessment of the similarity of marks must take account of the overall impression created by them."

18) Figurative elements of a mark are not normally expressed orally. Both words in the Applicant's mark will be spoken. PLANET and COOK are very familiar English words, and will be pronounced in the normal way. Though both sides made submissions on the putative pronunciation of PLANETE by the average consumer, neither filed any evidence on the point, so I must make my own assessment. The final E in the Opponent's PLANETE will give the word a foreign, or at least unfamiliar, look. Some consumers may see it as a foreign (perhaps the French) word for "planet", and pronounce it accordingly, while others may wonder whether the final E should be pronounced, as it might be if it were, for example, an Italian word. I consider it unlikely, however, that such consumers will represent a significant proportion of the relevant public. I think that the most likely reaction of the average consumer in the UK, perhaps after some initial hesitancy, will be simply to disregard the final E and pronounce PLANETE like "planet" (while simultaneously noting, however, that it is not "planet"). This would represent an element of aural similarity between the marks. The Opponent's + will be pronounced as the English word "plus"; this and the word COOK in the Applicant's mark represent significant elements of aural difference. Overall, there is a medium degree of aural similarity between the marks.

19) PLANETE will strike the average UK consumer as a foreign or unfamiliar word. It will be immediately apparent to him or her that it is not the familiar and instantly recognisable word "planet". Some consumers may wonder whether it is simply a name or whether it has any meaning, without the concept "planet" entering their minds at all. Others may register a visual similarity with the word "planet", while dismissing the idea that it may represent the same concept. Some may speculate as to whether it might represent a foreign version of the word "planet", and some may see it as the French word for "planet", but I think it unlikely that these will constitute a significant proportion of the relevant public. Nor do I consider that the red sphere is a sufficiently distinct visual cue to suggest specifically the concept of a planet to those who are not already pondering this possibility, or to confirm positively the speculations of those who are.

20) In short, the average consumer in the UK will either not recognise a conceptual link between PLANET and PLANETE or will, at best, speculate as to whether there might be a potential link. The + in the earlier mark will be recognised as representing the word “plus”. Although it may be seen as having a descriptive or laudatory quality, I bear in mind that the assessment of conceptual similarity requires considering the signs as a whole and disregarding the degree of distinctive character<sup>5</sup>. The “plus” concept is missing from the opposed mark. Similarly, the concept behind the word COOK, whether seen as a name, a common noun or a verb, is missing from the earlier mark. These constitute elements of conceptual difference. Overall, there is either no conceptual similarity between the marks or, at best, an element of tentative conceptual association accompanied by conceptual differences.

### **The distinctiveness of the earlier mark**

21) The degree of distinctiveness of the earlier mark must be assessed. This is because the more distinctive the earlier mark, either on the basis of inherent qualities or because of use made, the greater the likelihood of confusion (see *Sabel BV v. Puma AG*, paragraph 24). In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97, the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *WindsurfingChiemsee 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

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<sup>5</sup> See *Perfetti Van Melle Benelux BV v OHIM*, T-491/13, at paragraph 108.

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).”

22) I have no evidence of acquired distinctiveness to consider. This leaves the question of inherent distinctive character. Although + will be read as “plus”, and may thus be seen as having a descriptive or laudatory quality, PLANETE has no meaning in English, and cannot therefore be descriptive of any of the goods or services of the earlier mark. PLANETE + will be seen as together forming a significant combination. The distinctive weight of the mark lies in the word element. The figurative and graphic elements, however, are not negligible, and also make some contribution to the distinctive character of the mark. Overall, the mark has a normal degree of inherent distinctive character.

### **Likelihood of Confusion**

23) The Opponent draws my attention to a 2009 decision of the EUIPO Opposition Division (in Opposition No. 0941791). I have noted this decision but, as the Opponent acknowledges, decisions before OHIM are not binding on the Registrar, and I am not bound to reach the same conclusions. As territorial scope differs, so also do issues, factual backgrounds, cultural perceptions and linguistic factors. I must reach my decision in the present proceedings on the particular facts of the present case and on the particular marks that are before me, perceived from the point of view of the average consumer in the UK.

24) The factors assessed so far have a degree of interdependency (*Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, paragraph 17); a global assessment of them must be made when determining whether there exists a likelihood of

confusion (*Sabel BV v. Puma AG*, paragraph 22). There is no scientific formula to apply, however. It is a matter of considering the relevant factors from the viewpoint of the average consumer and determining whether they are likely to be confused.

25) My assessment will proceed on the basis that the contested goods and services are identical to goods and services covered by the earlier mark. I have found the earlier mark to have a normal degree of distinctive character. I have found the competing marks to have not more than a medium degree of visual similarity, a medium degree of aural similarity, and that, overall, there is either no conceptual similarity between them or, at best, an element of tentative conceptual association accompanied by conceptual differences. Given my findings on the average consumer, and bearing in mind the principle of imperfect recollection, I do not consider that the average consumer would mistake the Applicant's mark for the earlier mark (direct confusion), even when considered in relation to identical goods or services. There are too many non-negligible differences which the average consumer would notice.

26) That leaves the possibility of indirect confusion to be considered, and this connection it is helpful to bear in mind the observations of Mr Iain Purvis QC, sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10 ("L.A. Sugar"), where he noted that:

"Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: "The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark" ".

27) In order to find indirect confusion in this case it would be necessary to conclude that the average consumer will see in PLANETE and PLANET respectively an element in common between the marks, leading him or her, taking account of the element PLANET in the context of the opposed mark, to the conclusion that it is another brand of the owner of the earlier mark.

28) Aurally, it is true, I have found that the average consumer in the UK, perhaps after some initial hesitancy, will most likely simply disregard the final E in PLANETE and pronounce it like “planet” – but I have also found that, in so doing, he or she will also note that the word is not PLANET. Moreover, I have found that the purchasing process will be primarily a visual one, that the word PLANET is a very familiar one, and that the additional E at the end of PLANETE in the Opponent’s mark will be remarked by the average consumer. Whether or not the average consumer ponders whether there might be any conceptual link between these words, PLANETE will in any case strike him or her as either a foreign or an unfamiliar word. It will be immediately apparent that it is not the familiar and instantly recognisable word PLANET. For this reason, despite the degree of similarity between PLANET and PLANETE, I do not think that their respective presence in the marks will cause the relevant public to associate the marks in such a way that they might wrongly believe that the respective goods or services come from the same or economically-linked undertakings. There is thus no likelihood of either direct or indirect confusion, even in the case of identical goods or services. It follows that there will be no confusion in respect of goods or services for which the degree of similarity is less than identity.

## **Outcome**

29) The opposition fails in its entirety.

## **Costs**

30) The Applicant been successful and is entitled to a contribution towards its costs. Since the proceedings were commenced before 1 July 2016 the costs are to be awarded in accordance with the scale published in Tribunal Practice Notice 4/2007. In making my calculation I have borne in mind that the Applicant's written submissions, which were filed in the evidence rounds, were brief and straightforward, that the Opponent did not file evidence, and that I did not find the Applicant's evidence of material assistance. I hereby order Groupe Canal +, SA to pay Platinum Films Limited the sum of £750. This sum is calculated as follows:

Preparing a statement and considering the other side's statement	£250
Preparing evidence	£200
Preparing written submissions	£300

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 14<sup>th</sup> day of February 2018**

**Martin Boyle  
For the Registrar,  
The Comptroller-General**



## **Annex A – The Opposed Goods and Services**

**Class 9:** *Measuring, detecting and monitoring instruments, indicators and controllers; Recorded content; Information technology and audiovisual equipment; Software applications for use with mobile devices; Programs (Computer game -); Computer game software; Computer game programmes; Computer games software; Computer game programs; Video game computer programs; Interactive computer game programs; Downloadable computer game software; Computer games programmes [software]; Computer games entertainment software; Downloadable computer game programs; Interactive multimedia computer game program; Video and computer game programs; Interactive multimedia computer game programs; Computer programs for playing games; Computer game software downloadable from a global computer network; Computer programs for pre-recorded games; Games software for use with computers; Computer games programmes downloaded via the internet; Computer game software for use on mobile and cellular phones; Computer programmes for interactive television and for interactive games and/or quizzes; Food timers; Egg timers [sandglasses]; Mechanical egg timers; Digital egg timers; Kitchen weighing scales; Audio books; E-books; Interactive DVDs; pre-recorded audio and audio-video recordings featuring children's programmes.*

**Class 16:** *Cardboard; educational supplies; Printed matter; Cook books; Activity books; Sticker activity books; Children's activity books; Printed recipe cards; Pens; Colouring pens; Ballpoint pens; Fibertip pens; Marker pens; Crayons; Pencils; Pencil boxes; Pencil cases; Colouring pencils; Greeting cards; Trivia cards; Crossword puzzles; Paper napkins; Notebooks; Posters; Printed menus; Sandwich bags; Children's storybooks; Gift wrapping paper; Paper gift tags; Recipe books; Printed recipes sold as a component of food packaging; Periodical magazines; Comic magazines; Booklets; Bookmarks; Gift books; Colouring books; Cookery books; Activity books; Story books; Picture books.*

**Class 41:** *Education, entertainment and sports; Providing on-line computer games; Providing an on-line computer game; Provision of on-line computer games; Games services provided on-line from a computer network; Games offered on-line (on a computer network); Providing interactive multi-player computer games via the internet and electronic communication networks; Television production; Entertainment; Interactive entertainment; Live entertainment; Theatre entertainment; On-line entertainment; Radio and television entertainment; Children's entertainment services; Entertainment services for children; Entertainment in the nature of live performances and personal appearances by a costumed character; Amusement parks; Entertainment services in the nature of an amusement park show; Cooking instruction; Fan clubs; Fan club organisation; Entertainment services in the nature of ongoing television programmes in the field of children's entertainment.*

## **Annex B – The Goods and Services of the Earlier Mark**

**Class 9:** *Scientific (except for medical purposes), nautical, surveying, photographic, cinematographic, optical and electro-optical, weighing, measuring, signalling, checking (supervision) and life-saving apparatus and instruments; Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; Decoders; Electronic apparatus for data processing; Electric measuring devices and Electronic checking (supervision); Teaching apparatus and instruments; Apparatus and instruments for recording, transmission, reproduction, storage, encoding, decoding, conversion and processing of sound or images; Communications and telecommunications apparatus; Audiovisual, telecommunications, data transmission, television apparatus and instruments, remote controls; Cassette recorders; Video recorders, Film cameras; Telephones, mobile telephones; Personal organisers (PDAs); Electronic diaries; Radio sets, Personal stereos; Projectors (projection apparatus); Antennas, aerials, satellite dishes; Speakers, amplifiers; Computers, computer screens, computer keyboards, peripheral devices for computers, modems, decoders, encoders; Access devices (apparatus) and access control devices for data processing apparatus; Authentication apparatus for use in telecommunications networks; Apparatus for scrambling and descrambling signals and retransmissions; Digital terminals; Video films; CD-ROMs, recording discs, digital video discs (DVDs), video discs and audio discs, digital discs, video tapes; CD players, DVD players, digital disc players, magnetic disc players, video and audio disc players, recording disc players; Video game cartridges; Video game software; Video games adapted for use with a television screen; Magnetic data carriers; Magnetic cards, Chip cards, Electronic cards; Integrated circuits and microcircuits; Card readers; Electronic components; Worldwide computer network data reception monitors; Automatic vending machines and mechanisms for coin-operated apparatus; Calculating machines and data processing equipment; Satellites for scientific and telecommunications use; Spectacles (optics); Optical goods, spectacle cases; Smart cards, cards with microprocessors; Electronic radio and television programme guide; Apparatus and instruments for programming and selection of television programmes; Interactive television apparatus and instruments; Television screens; Computer software*

*(recorded programs); Fibre-optic cables and optical cables; Electric batteries and cells.*

**Class 14:** *Jewellery; Jewellory; Horological and chronometric instruments; Precious metals and their alloys; Precious stones; Cuff links of precious metal; Tie pins; Key rings; Boxes of precious metal; Sundials; Watches and watch straps; Diving watches; Watch cases.*

**Class 16:** *Paper and cardboard (untreated, semi-finished); Stationery; Printed matter; Engravings; Lithographic works of art; Tickets; Photographs; Catalogues, newspapers, periodicals, magazines, journals, books, bookmarks, manuals (paper), albums, brochures; Artists' materials; Paint brushes; Typewriters and office requisites (except furniture); Instructional and teaching material (except apparatus); Bags (enveloppes, pouches) of paper or plastics for packaging; Adhesive tape for stationery or household use; Membership cards (not magnetic); Credit cards (not magnetic); Printers' type; Printing blocks; Writing implements and pens; Business cards, Postcards, Notebooks, Note pads; Note books; Cheque books; Holders for cheque books; Penholders, Nibs, Drawing pens; Posters; Calendars; Letter trays; Radio and television programme guide; Table linen and Paper napkins; Paper table covers; Toilet paper; Paper handkerchiefs; Face towels of paper; Paper flags; Stickers (items of stationery); Postage stamps; Boxes of cardboard or paper; Envelopes (stationery), announcements (stationery); School supplies; Note papers.*

**Class 18:** *Leather and imitations of leather; Trunks; Handbags; Shopping bags; Wheeled shopping bags; Bags for climbers; Bags for campers; Beach bags; Travel bags; School bags; Sports bags; Rucksacks, backpacks; School bags; Suitcases; Umbrellas; Umbrellas, parasols; Walking sticks; Whips, harness and saddlery; School bags; Card cases [notecases]; Wallets; Change purses; Thongs.*

**Class 25:** *Clothing; Sports clothing; T-shirts; Shoes; Headgear; Clothing made from leather or imitation leather; Belts (clothing); Furs (clothing); Gloves (clothing); Scarves, sashes for wear; Ties; Hosiery; Socks; Slippers; Beach, skiing, sports shoes; Underwear; Swimsuits; Tights; Suits.*

**Class 28:** *Games; Board games; Toys; Decorations for Christmas trees (except illumination articles); Fishing tackle; Gaming balls; Billiard tables, cues and balls; Card games or board games; Ice skates and roller skates; Scooters (toys); Sailboards, skateboards and surfboards; Bats for games; Skis; Protective paddings being parts of sports suits; Video game machines; Amusement machines, automatic and coin-operated.*

**Class 34:** *Smokers' articles; Cases and Cigar humidors, Tobacco pipes, Matches, cigarettes; Lighters; Ashtrays not of precious metals.*

**Class 35:** *Business consultancy; Professional business organisation and management assistance and consultancy for industrial and commercial companies; Business information and advice; Commercial advice for consumers (namely consumer information) relating to the choice of computer and telecommunications equipment; Advertising; Rental of advertising space; Dissemination of advertisements; Organisation of promotional and advertising operations to obtain customer loyalty; Publicity columns preparation; Direct mail advertising (tracts, prospectuses, printed matter, samples); Mail-order advertising; Subscriptions to audiovisual programmes, to audio and radio programmes, to newspapers; Subscriptions to video recordings, to sound recordings, to audio and audiovisual media of all kinds; Arranging subscriptions to all information, text, sound and/or image media and in particular in the form of electronic or non-electronic digital publications, multimedia products; Arranging subscriptions to a television channel; Arranging subscriptions to a telephone or computer services (the Internet); Consultancy in the field of data acquisition on the Internet; Publication of publicity texts; Radio and television advertising; Interactive advertising; Business management; Business administration; Office functions; On-line advertising on a computer network; Business information or enquiries; Business research; Commercial or industrial management assistance; Employment agencies; Business or industrial appraisals; Accounting; Document reproduction; Computerized file management; Database management services; Data entry and processing, namely*

*entry, collation, systematic ordering of data; Arranging exhibitions and events for commercial or advertising purposes; Sales promotion (for others); Marketing research; Auctioning; Television promotion with sales offers (sales promotion for others); Administrative management of exhibition sites for commercial or advertising purposes; Public relations; Rental of advertising time (on all means of communication); Retail and wholesale trading of clothing, leather goods, jewellery, pens, stationery, games, playthings, sporting articles; Retailing and wholesaling of audiovisual, computer and telecommunications goods, namely videotapes, televisions, video cassette recorders, personal stereos, tape recorders, radios, hi-fi equipment; Decoders, mobile phones, computers, magnetic tapes, juke boxes for computers, printed circuits, integrated circuits, computer keyboards, compact discs (audio-video), compact discs (read-only memory), couplers (data processing equipment), floppy disks, magnetic data carriers, video screens, scanners, printers for use with computers, interfaces for computers, readers (data processing equipment), computer software (recorded programs), microprocessors, modems, monitors (computer hardware), monitors, computer programs, computers, computer memories, computer peripheral devices, computer programs, recorded, processors (central processing units), computer operating programs, recorded, chips (integrated circuits), retail of aerials; Newsclipping services.*

**Class 38:** *Telecommunications services; Communications by computer terminals or by optical fibres; Information about telecommunications; News and information agencies; Radio communications, communications by telegrams, by telephones or video phones, by television, by personal stereo, by personal video player, by interactive videography; Broadcasting (television -); Transmission of information by data transmission; Transmission of messages, telegrams, images, videos, mail; Transmission of information by teleprinter; Data communications; Radio and television broadcasting; Broadcasting of programmes by satellite, by cable, by computer network (in particular via the Internet), by radio networks, by radio-telephone networks and by radio link; Broadcasting of audio, audiovisual, cinematographic or multimedia programmes, text and/or still or moving images and/or sound, whether musical or not, ringtones, whether or not for interactive purposes; Electronic advertising (telecommunications); Rental of telecommunications equipment and apparatus; Rental of data transmission*

*apparatus and instruments namely telephones, facsimile machines, apparatus for transmitting messages, modems; Rental of aerials and satellite dishes; Rental of devices (apparatus) for access to interactive audiovisual programmes; Leasing access time to telecommunications networks; Providing services to download video games, Digital data, Communications (transmission) on open (Internet) or closed (intranet) global computer networks; Online downloading of films and other audio and audiovisual programmes; Transmission of programmes and selection of television channels; Providing access to a computer network; Providing connections to telecommunications services, to Internet and database services; Routing and connecting services for telecommunications; Connection by telecommunications to a computer network; Telecommunications consultancy; Professional consultancy relating to telephony; Consultancy in the field of video programme broadcasting; Consultancy relating to the transmission of data via the Internet; Consultancy relating to providing access to the Internet; Sending and receiving video images via the Internet using a computer or mobile telephone; Telephone services; Cellular telephone services; Cellular telephone communication; Paging by radio; Voice messaging, call forwarding, electronic mail, electronic message transmission; Video-conferencing services; Video messaging services; Video-telephone services; Answering machines (telecommunications); Providing access to the Internet (Internet service provider); Electronic mail exchange, e-mail services, instant electronic messaging services, non-instantaneous electronic messaging services; Transmission of information via the Internet, an extranet and an intranet; Transmission of information via secured messaging systems; Providing access to electronic conferencing and discussion forums; Providing access to Internet websites containing digital music or audiovisual works of all kinds; Providing access to telecommunications infrastructures; Providing access to search engines on the Internet; Transmission of electronic publications online; Rental of decoders and encoders.*

**Class 41:** *Providing of training; Providing of training; Entertainment; Radio and television entertainment on media of all kinds, namely television, computer, personal stereo, personal video player, personal assistant, mobile phone, computer networks, the Internet; Leisure services; Sporting and cultural activities; Animal training; Production of shows, films and television films, of television broadcasts, of*

*documentaries, of debates, of video recordings and sound recordings; Rental of video recordings, films, sound recordings, video tapes; Motion picture rental; Rental of movie projectors; Audiovisual apparatus and instruments of all kinds, radios and televisions, audio and video apparatus, cameras, personal stereos, personal video players; Theater decorations; Production of shows, films, audiovisual, radio and multimedia programs; Movie studios; Arranging competitions, shows, lotteries and games relating to education or entertainment; Production of audiovisual, radio and multimedia programs, text and/or still or moving images, and/or sound, whether musical or not, and/or ring tones, whether or not for interactive purposes; Arranging exhibitions, conferences, seminars for cultural or educational purposes; Booking of seats for shows; News reporter services; Photography, namely photographic services, photographic reporting; Videotaping; Consultancy relating to the production of video programs; Game services provided online from a computer network, gaming; Casino facilities; Editing and publication of text (except publicity texts), sound and video media, multimedia (interactive discs, compact discs, storage discs); Electronic online publication of periodicals and books; Publication and lending of books and texts (except publicity texts); Providing movie theatre facilities; Micro publishing.*

**Class 42:** *Research and development of new products (for others); Technical research; Expertise (engineering), professional consultancy relating to computers; Providing Internet search engines; Design, upgrading and rental of computer software; Rental of computer apparatus and instruments, namely screens; Consultancy in the field of computer hardware, computer rental; Design (creation) of systems for encrypting and decrypting and for controlling access to television or radio programmes, in particular nomad systems and data transmission systems of all kinds; Design (creation) of computer systems and software; Drawing up technical standards (standardisation), namely drawing up (design) of technical standards for manufactured products and telecommunications services; Weather information services; Research and development, for others, of electronic, computer and audiovisual, scrambling and access control systems in the fields of television, data processing, telecommunications and audiovisual technology; Authentication (origin searches) of electronic messages; Rental of computer files; Information about computing applied to telecommunications.*