

**O-049-19**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF INTERNATIONAL REGISTRATION NOS.  
1351755 & 1353839  
FOR THE TRADE MARKS:**

**O2vent**

**AND**

**OVENTUS O2VENT**

**AND**

**IN THE MATTER OF OPPOSITION THERETO  
UNDER NOS 410547 & 410600**

## **Background and pleadings**

1. These consolidated oppositions concern two international registrations (“the contested marks”) in the name of Oventus Medical Ltd (“the holder”). The details of the international registrations are as follows:

(i) IR 1351755: **O2vent**

International registration and designation date: 5 April 2017

Date of publication: 14 July 2017

Class 10 Apparatus for breathing purposes (artificial respiration); apparatus for the alleviation of breathing difficulties; apparatus for the treatment of breathing difficulties; connections for use with breathing apparatus for artificial respiration; inserts for breathing apparatus for medical use; inserts for breathing masks for medical use; medical apparatus for assisting breathing; medical apparatus for training breathing techniques; portable breathing apparatus for artificial respiration; protective breathing masks for artificial respiration; protective breathing masks for medical applications; protective breathing masks for surgical applications; protective breathing masks made of non-woven materials for medical applications; protective breathing masks made of non-woven materials for surgical applications; respiratory breathing apparatus, other than for medical use; self-contained breathing apparatus for artificial respiration; surgical breathing masks; ventilator breathing apparatus for artificial respiration; continuous positive airway pressure nasal apparatus for the treatment of sleep apnoea; medical masks.

(ii) IR 1353839: **OVENTUS O2VENT**

International registration and designation date: 5 April 2017

Date of publication: 21 July 2017

Class 10 Apparatus for breathing purposes (artificial respiration); apparatus for the alleviation of breathing difficulties; apparatus for the treatment of breathing

difficulties; connections for use with breathing apparatus for artificial respiration; inserts for breathing apparatus for medical use; inserts for breathing apparatus for surgical use; inserts for breathing masks for medical use; inserts for breathing masks for surgical use; medical apparatus for assisting breathing; medical apparatus for training breathing techniques; portable breathing apparatus for artificial respiration; protective breathing masks for artificial respiration; protective breathing masks for medical applications; protective breathing masks for surgical applications; protective breathing masks made of non-woven materials for medical applications; protective breathing masks made of non-woven materials for surgical applications; respiratory breathing apparatus, other than for medical use; self-contained breathing apparatus for artificial respiration; surgical breathing masks; ventilator breathing apparatus for artificial respiration; artificial sleep apparatus; continuous positive airway pressure nasal apparatus for the treatment of sleep apnoea; medical masks.

2. Notices of opposition were filed by O2 Worldwide Limited. (“the opponent”). The oppositions are based upon ss. 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”) and are identical for both oppositions. Under both grounds, the oppositions are directed against all of the goods in the application.

3. Under s. 5(2)(b), the opponent relies upon the following trade marks and goods and services. The relevant specifications can be found in full in the appendix to this decision:

- (i) European Union trade mark (“EUTM”) number 13108139 (“the 139 mark”)



The colour blue is claimed.

Filing date: 23 July 2014; date of entry in register: 14 January 2015

Registered in classes 9, 35, 36, 38, 41 and 42. All of the goods and services in classes 9, 35 and 42 for which the mark is registered are relied upon.

(ii) EUTM 9279456 **O<sub>2</sub>** (“the 456 mark”)

Filing date: 28 July 2010; date of entry in register: 20 December 2013

Registered in classes 1, 2, 4, 6, 7, 8, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 39, 42, 43, 44 and 45. The opponent relies upon all of the goods and services for which the mark is registered in classes 10, 11, 35, 42 and 44.

(iii) UK trade mark number 2279371 (“the 371 mark”)

The image shows the trade mark logo for the UK trade mark number 2279371. It consists of a large, bold, blue capital letter 'O' with a smaller, blue subscript '2' positioned directly below the bottom right of the 'O'.

The following mark description is provided: The applicant claims the colour blue (indigo) as an element of the mark.

Filing date: 31 August 2001; date of entry in register 6 February 2004

Registered in classes 9 and 38. All of the goods in class 9 for which the mark is registered are relied upon.

(iv) EUTM 15167307 (“the 307 mark”)

The image shows the trade mark logo for the EUTM 15167307. It consists of a large, bold, black capital letter 'O' with a smaller, black subscript '2' positioned directly below the bottom right of the 'O'.

The following mark description is provided: This mark consists of the capital letter "O" with a subscript "2".

Filing date: 29 February 2016; date of entry in register: 26 April 2017

Registered in classes 1, 2, 5, 7, 10, 11, 12, 13, 15, 17, 19, 20, 22, 23, 26, 27, 31, 37 and 40. The goods and services for which the mark is registered in classes 5, 10, 11, 37 and 40 are relied upon.

4. The opponent claims under s. 5(2)(b) that the marks are similar and that the goods and services are identical or similar, which will result in a likelihood of confusion, including the likelihood of association.

5. Under s. 5(3), the opponent relies upon the three trade marks identified at paragraph 3 (i) to (iii), above. It claims that the earlier marks have a reputation for the following goods and services:

The 139 mark: all goods and services for which the mark is registered

The 456 mark: all services in classes 35 and 36

The 371 mark: all goods and services for which the mark is registered.

6. The opponent claims that it has “a massive reputation” throughout the UK and Europe such that use of the contested mark would cause the relevant public to believe that there is an economic connection between the holder and the opponent, where no such connection exists. It claims that the earlier trade marks portray the opponent as “young, cool, trendy and high tech” and that the use of the contested marks would take unfair advantage of the reputation gained by the opponent. It claims that the holder would gain an unfair advantage because of the opponent’s positive reputation, which may lead to the consumer purchasing goods from the holder because the earlier marks are brought to mind. The opponent further claims that if the quality of the goods provided by the holder is poor, there could be damage to the distinctive character or reputation of the earlier marks.

7. Given their filing dates, all of the above marks are earlier trade marks in accordance with s. 6 of the Act. Only the 371 mark had been registered for five years or more at the date on which the opposed applications were published and that mark is, therefore, subject to the proof of use provisions contained in s. 6A of the Act. A statement was made in the notice of opposition that the mark has been used for all of the goods and

services relied upon. The relevant periods are 15 July 2017 to 14 July 2017 and 22 July 2017 to 21 July 2017.

8. The holder filed counterstatements in which it denies all of the grounds of opposition. I note in particular its claim that the only common element between the marks is non-distinctive and descriptive for the goods at issue. It denies that the use of the contested marks would be without due cause. It requested that the opponent provide evidence of use of the 371 mark and put the opponent to strict proof of a reputation.

9. Both parties filed evidence. A hearing took place before me on 22 November 2018, at which the opponents were represented by Julius Stobbs of Stobbs IP and the holder by Lee Curtis of HGF Limited.

10. Both parties request an award of costs.

### **Preliminary point**

11. In his skeleton argument, Mr Curtis pointed out that in opposition 410600, the opponent's notice of opposition indicated that it relied upon the 307 mark in class 35. However, the mark is not registered in class 35 but in class 37. Given that the opponent had identified the correct class in opposition 410547 and that it was an obvious error, Mr Curtis indicated that the holder had no objection to the amendment of the notice of opposition. At the hearing, I allowed the amendment. As it was an obvious error and the holder had apparently proceeded on that basis, my view was that there would be no prejudice to the holder in allowing the amendment, which I considered reasonable in the circumstances.

12. Although he noted in his skeleton argument apparent "inconsistencies" in the notices of opposition, at the hearing Mr Curtis, sensibly in my view, did not press this point. There were no obvious inconsistencies, bearing in mind the different requirements of ss. 5(2)(b) and 5(3) and it was clear from Mr Stobbs's skeleton

argument that the case pleaded was as the opponent intended. It is on that basis that I proceed.

## **Evidence**

13. I have read all of the evidence but intend only to summarise the most relevant material.

### Opponent's evidence

14. This consists of the witness statements of Blake Robinson, a legal representative of the opponent, and of Peter Holmes, "Director of Brand of one of the subsidiary companies which form part of the Telefónica Group of Companies" which includes the opponent.

15. Mr Robinson provides prints showing the composition of air and Earth's atmosphere.<sup>1</sup> The latter is dated 2001 and is said to show a copy of a GCSE science book which Mr Robinson relies upon to support his position that the average consumer would understand that the air they breathe is not pure oxygen.

16. Mr Robinson also provides a copy of the Health and Safety Executive's guide to Respiratory Protective Equipment ("RPE"), dated 2013.<sup>2</sup> Mr Robinson claims that this exhibit shows that respirators filter air, whilst powered respirators and breathing apparatus do provide air but not pure oxygen. He also exhibits a list of masks and respirators which he claims are covered by the specifications for which registration is sought.<sup>3</sup> With the exception of surgeons' face masks, these appear to be personal protective equipment proper to class 9, not 10.

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<sup>1</sup> Exhibits BR1 and BR2.

<sup>2</sup> BR3.

<sup>3</sup> BR4.

17. The final exhibit to Mr Robinson's statement is an article from *Wikipedia* regarding oxygen toxicity, which is only dated by its printing date in 2018.<sup>4</sup> The article describes the risks of breathing oxygen at increased partial pressures, which, it states, is of particular concern "for underwater divers, those on high concentrations of supplemental oxygen (particularly premature babies), and those undergoing hyperbaric oxygen therapy".

18. Mr Holmes explains the chain of companies and transfers of rights which led to the formation the opponent in 2015, which is supported by records from Companies House.<sup>5</sup> He states that all of the O2 group of companies use or have used "O2" as their main consumer brand.<sup>6</sup>

19. A list of "key milestones", as well as information about the company, dated 2009, is provided.<sup>7</sup> Both O2 and O<sub>2</sub> are visible. Events such as the launch of the new O2 broadband service (2007), the launch of iPhones exclusively on O2 (2007, 2008) and the roll-out of "O2 Airwave" to police forces (2003-2005) are noted. Various telecommunications services, such as mobile and broadband services, offered by the opponent in the UK, Germany, Ireland, the Czech Republic and Slovakia are mentioned. Mr Holmes explains that the opponent sold its businesses in Ireland, the Czech Republic and Slovakia in 2014, but that the latter two continue to trade under the O<sub>2</sub> mark, whilst Telefonica Germany trades under the O2 brand.<sup>8</sup> The opponent is also said to have traded under "O<sub>2</sub>" in the UK and Germany since 2002.<sup>9</sup>

20. The opponent is said to have had over 23 million active mobile customers each year in the period 2011 to 2014 and "currently" (the statement is dated April 2018) 25.5 million for the O2 group of companies.<sup>10</sup> The opponent operated broadband services

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<sup>4</sup> BR5.

<sup>5</sup> Exhibit PH1.

<sup>6</sup> §12.

<sup>7</sup> PH2.

<sup>8</sup> §10.

<sup>9</sup> §11.

<sup>10</sup> §§19, 13



from 2007, with a high of 663,800 customers reached in 2010, which declined to 560,100 in 2012, before the business was sold in 2013.<sup>11</sup>

21. UK turnover is provided only for 2002 to 2005 (increasing from £2.756 million to £4.030 million in that period), though Mr Holmes claims that “the O<sub>2</sub> business” has continued to grow year on year in the UK since 2006.<sup>12</sup> From 2006, “service revenue” figures are given, which exceed €6,000 million each year.<sup>13</sup> Mr Holmes does not explain what “service revenue” is but indicates that it has grown because of increases in the subscriber base and Average Revenue Per User (“ARPU”).<sup>14</sup> Mr Holmes states that ARPU means revenue generated by a user’s phone or mobile device per month as well as “the revenue generated from incoming calls, payable within the regulatory interconnection regime”.<sup>15</sup>

22. Press releases from 2001 to 2016 are provided.<sup>16</sup> Most are from the opponent’s own website and there is no information as to their eventual distribution.<sup>17</sup> I note, for example, a partnership in 2012 with Nike to provide a “Priority Sports” application and, in 2013, the “O<sub>2</sub> Refresh” tariff, designed to pay for a mobile phone, uncoupled from the cost of calls, texts and data, as well as encouragement to customers to purchase 4G-ready handsets, or obtain their 4G SIM from O<sub>2</sub> shops.<sup>18</sup> There is a press release concerning a contract signed by Telefónica UK, said to operate under the O<sub>2</sub> brand, for providing communications services worth £1.5 billion in relation to the introduction of smart meters in 2013. In addition to mobile and broadband services, other services are mentioned, such as the opponent’s partnership with NatWest to launch “O<sub>2</sub> Money” cash cards in 2009.<sup>19</sup> The evidence shows that O<sub>2</sub> has sponsored England Rugby since 1995, with reference to a new four-year contract with the RFU signed in 2013 and new

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<sup>11</sup> §21.

<sup>12</sup> §23.

<sup>13</sup> §24.

<sup>14</sup> §25.

<sup>15</sup> *Ibid.*

<sup>16</sup> PH3 – PH5.

<sup>17</sup> PH5, p. 100.

<sup>18</sup> PH5, pp. 120, 124, 127

<sup>19</sup> PH5, p. 102.

initiatives in 2014 and 2015.<sup>20</sup> The opponent also appears to have been Arsenal football club's sponsor and official mobile service provider between 2002 and 2012, and sponsor of Movistar Tour de France team since 2013.<sup>21</sup>

23. Various other goods and services said to have been provided by the opponent are listed in Mr Holmes's statement.<sup>22</sup> However, in the absence of any corroboratory evidence of how the marks may appear on or in relation to these goods and services, figures relating to quantities sold, distribution or revenue generated, or, in many cases, the dates of availability, this list does not assist.

24. Advertising spend for the period 2004 to 2014 is given at §37. From 2010, advertising across a range of media totalled in excess of £69 million. Some of the advertisements are visible at PH6, which shows both "O<sub>2</sub>" and, in the website address, o2.co.uk. A list of campaigns is included in Mr Holmes's statement, though only limited information is provided.<sup>23</sup> Advertising and brand awareness are put at around 30% for 2013-2014, with the opponent first, or second only to EE.<sup>24</sup>

25. The launch of the 23,000-capacity O2 arena in 2005, with a partner company, is in evidence, and there is evidence regarding the music and comedy acts, as well as TV spin-off tours, set to appear at the venue in 2009, the Brit Awards in 2011 and darts and tennis tournaments in 2010.<sup>25</sup> It appears that the O2 was in first position for ticket sales in the global industry arena list for each of the years 2008-2011. Mr Holmes's evidence is that it remained in first position until 2014.<sup>26</sup> Information is also provided about festivals in 2006 to 2009 sponsored under the O2/O<sub>2</sub> brands. Numbers of articles which appeared in national and regional press are provided. However, as there is no other information, such as the content of the articles, this evidence does not assist.

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<sup>20</sup> §46; PH5, pp. 118; PH8, p. 250.

<sup>21</sup> §57; PH8, pp. 251-254.

<sup>22</sup> §62. See also PH5, p. 104.

<sup>23</sup> §30.

<sup>24</sup> §41.

<sup>25</sup> PH5, p. 89; PH8.

<sup>26</sup> §50.

26. Awards won by the opponent between 2003 and 2008 are listed at PH7. These include, for example, awards in 2008 for the O2 Arena as winner of music venue awards in 2008 and, also in 2008, awards for Telefónica O2 UK in respect of its mobile network services. A report is produced which shows association with brand image but it is dated 2003 and there is no indication of how such responses came to be elicited from respondents. O<sub>2</sub> is named number 77 worldwide and number 4 in the UK in a global brand report dated 2009, and number 70 worldwide in 2010.<sup>27</sup>

#### Holder's evidence

27. This consists of the witness statement of Rachel Platts, a trainee Trade Mark Attorney at the holder's firm of professional representatives.

28. Ms Platt provides evidence regarding the definition of "O<sub>2</sub>", i.e. that it is an allotrope of the element "O" (oxygen) and a gas.<sup>28</sup>

29. Ms Platt also provides articles relating to oxygen therapy and sleep apnoea.<sup>29</sup> The first has a copyright date of 2017 but it appears to be directed at the US, given its focus on Americans and the use of US spelling. The remaining articles have dates in 2018, i.e. after the relevant period. Ms Platt also exhibits an article from a Belgian clinic regarding snoring and sleep apnoea, with a copyright date of 2018,<sup>30</sup> and an article, published in 1999, entitled "Effects of Nasal O<sub>2</sub> on Sleep-Related Disordered Breathing in Ambulatory Patients with Stable Heart Failure".<sup>31</sup> It regards an American study where patients were treated with O<sub>2</sub>.

30. Prints are provided from theoxygenstore.com, which appears to be a UK website,<sup>32</sup> and from Pure O2 Ltd.<sup>33</sup> Both sell oxygen-related goods but are dated 2018.

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<sup>27</sup> PH7, pp. 210-212.

<sup>28</sup> RP1.

<sup>29</sup> RP2.

<sup>30</sup> RP4.

<sup>31</sup> RP5.

<sup>32</sup> RP3.

31. That concludes my summary of the evidence, insofar as I consider it necessary.

### **Proof of use**

32. The 371 mark is subject to the proof of use provisions. However, it is identical to the 139 mark, which covers the identical goods and services, to which proof of use does not apply. For reasons which will become apparent, it is not necessary for me to decide whether there has been genuine use of the 371 mark. I will proceed on the basis that the opponent may rely upon all of its earlier marks, across their full specifications.

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

33. The opposition is based upon s. 5(2)(b) of the Act, which 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”.

34. 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*

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<sup>33</sup> RP4.

*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**

35. Mr Stobbs indicated in his skeleton and at the hearing that, although reliance on the other marks and specifications was not dropped, the opponent considers that its best case under s. 5(2)(b) rests in the 307 mark and its specification in class 10, and the 139 mark and its specification in class 9. I will proceed on that basis.

36. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court (“GC”) stated that:

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut fur Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

37. All of the goods in the contested specifications fall within the broad term “surgical, medical, dental and veterinary apparatus and instruments; parts and fittings for all the aforesaid goods” in class 10 of the 307 mark and are therefore identical.<sup>34</sup> Although Mr Stobbs suggested that the contested “respiratory breathing apparatus, other than for medical use” might not be identical to the earlier specification, I can see no reason why, medical use being excluded, such goods would not include respiratory breathing apparatus for surgical or veterinary use. The opponent argues that the contested goods are, in the alternative, highly similar to goods in class 9 of its 139 mark. For reasons of procedural economy, I will not undertake a full comparison of the goods listed above but will proceed on the basis that the contested goods are identical to those covered by the earlier trade marks. If the oppositions fail even where the goods are identical, it follows that the oppositions will also fail where the goods are only similar.

### **The average consumer and the nature of the purchasing act**

38. It is necessary for me to determine both who the average consumer is for the respective parties’ goods and the manner in which these goods are likely to be selected by the average consumer in the course of trade. 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”.

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<sup>34</sup> *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, at [29].

39. Mr Stobbs submitted that the contested goods are “mass consumption goods as well as some more technical goods for medical purposes”.<sup>35</sup> He submitted that the average consumer will include both members of the public and professionals. He accepted at the hearing that a slightly higher than average degree of attention may be paid to the purchase of the goods at issue.

40. Mr Curtis argued that the goods at issue are most likely to be purchased by specialists or doctors. He submitted that these purchasers are likely to exhibit a high or very high level of attention and that, if the average consumer extends to the general public, the purchase would require deliberation on the part of the consumer.

41. My view is that the vast majority of the goods at issue are specialist goods which are most likely to be purchased by a professional, whether a medical professional or a procurement professional in the relevant field. I do not consider that any of the goods at issue could properly be described as for mass consumption but I accept that goods specifically for the treatment of sleep apnoea may be both prescribed/purchased by professionals and bought directly by members of the public.

42. The identical goods at issue are concerned with breathing. Given the critical importance of breathing to human life, as well as factors such as sterility, technical adequacy and rates of airflow, combined with the potentially serious consequences of unsatisfactory goods, I consider that all of these goods, irrespective of the consumer group involved, will be purchased with at least a reasonably high degree of attention. In some cases (for example, ventilator breathing apparatus, or artificial sleep apparatus, which strikes me as relating to anaesthesia), a high degree of attention will be employed.

43. The goods at issue are most likely to be purchased following the inspection of catalogues and websites, with the result that the purchase is likely to be dominated by visual considerations. For both groups of consumer, however, there may also be an

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<sup>35</sup> Skeleton, §6.



aural aspect to the purchase, given that discussions with medical professionals or sales representatives may form part of the process.

### **Distinctive character of the earlier trade mark**

44. The distinctive character of the earlier marks must be assessed, as the more distinctive the earlier marks, either inherently or through use, the greater the likelihood of confusion (*Sabel* at [24]). In *Lloyd Schuhfabrik*, the Court of Justice of the European Union (“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-2779, 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)”.

45. The parties are agreed that “O<sub>2</sub>” means “oxygen” and that this is widely understood by the general public.<sup>36</sup> Where the parties diverge is the impact of this meaning on the distinctiveness of the earlier marks in relation to the identical goods at issue.

46. The holder’s position is that both “O<sub>2</sub>” and “O2” are descriptive and non-distinctive for the goods at issue. Mr Curtis argues in his skeleton that oxygen is a “key element or function applicable to the goods”.<sup>37</sup> At the hearing, he submitted that even where oxygen is not itself provided by the goods at issue, enhancing or increasing oxygen levels would be seen as a function of the goods, though he indicated that the earlier marks may have lesser significance in relation to masks.

47. Mr Stobbs appeared to accept that the contested specification does include goods which provide oxygen to a patient/consumer but he argued that the specification is not limited to products which only provide oxygen. He claimed that oxygen has no, or a much looser, relationship with many of the goods and that some were not concerned with the provision of air, let alone oxygen. He also pointed to the fact of registration of the earlier marks as justification for their distinctive character. There is no claim that the distinctiveness of the earlier marks has, in respect of the identical goods at issue, been enhanced through use.

48. Mr Stobbs is plainly right that I cannot find the earlier marks to be descriptive or non-distinctive.<sup>38</sup> That does not preclude me from finding that any distinctiveness is limited. The opponent attempted to show in its evidence that oxygen per se is never given to patients. I do not accept that the evidence shows any such thing. Indeed, the opponent’s own evidence discusses the risks of administering oxygen, including to premature babies, presumably in a hospital setting.<sup>39</sup> Moreover, the administering of oxygen by medical professionals or first aiders is a common sight on any number of

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<sup>36</sup> See, in particular, opponent’s skeleton §10.

<sup>37</sup> Holder’s skeleton, §7(b).

<sup>38</sup> *Formula One Licensing BV v OHIM*, Case C-196-11P, at [41] - [44].

<sup>39</sup> BR5.

mainstream dramas or documentaries about the emergency services or lifesaving associations and the general public is likely to be well aware of the practice.

49. Taking all of the above into account, it seems to me that “O<sub>2</sub>” is likely to be taken by the average consumer as highly allusive of a function of the goods, namely the provision of oxygen, and that it therefore has only a low degree of inherent distinctive character. Some of the goods, such as protective breathing masks, may have a weaker connection to the provision of oxygen. However, I consider that the average consumer is likely in those circumstances to perceive the reference to “O<sub>2</sub>” as suggesting, for example, effective or improved airflow. The distinctiveness of “O<sub>2</sub>” may be slightly improved in respect of such goods but it remains, in my view, fairly low.

50. The opponent’s position is that there is no material difference between O<sub>2</sub> and O<sub>2</sub>, though Mr Stobbs referred me to a previous decision of this tribunal in which a distinction was made.<sup>40</sup> Out of context and presented solus, I accept that O<sub>2</sub> is more likely to be construed by the average consumer as meaning the gas oxygen than O<sub>2</sub>. However, when the goods at issue are taken into account, my view is that any distinction between the two forms narrows. In short, I am not persuaded that the position in respect of “O<sub>2</sub>” is materially different than that elaborated above, even for those consumers who are members of the general public. Given the goods, all of which are concerned, albeit to varying degrees, with breathing, it seems to me that the consumer is likely to make the connection between “O<sub>2</sub>” and oxygen, resulting in a low to fairly low degree of inherent distinctive character.

### **Comparison of trade marks**

51. It is clear from *Sabel BV v Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual

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<sup>40</sup> O/658/18.






similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components.

52. 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”.

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

54. The trade marks to be compared are as follows:

<b>Earlier trade marks</b>	<b>Contested trade marks</b>
  	 

55. The opponent submits that the addition of the word “vent” in the contested “O2vent” mark is minor, due to “vent” meaning “an opening that allows air, gas, or liquid to pass out of or into a confined space”,<sup>41</sup> or an airway. It is, the opponent claims, non-distinctive. The opponent submits that “O2” is an independent distinctive and dominant element of the mark “O2vent” and that the inclusion of the whole of the earlier marks at the beginning of the “O2vent” mark results in a high degree of visual and aural similarity.

56. As regards the “OVENTUS O2VENT” mark, the opponent maintains that there is a significant degree of visual similarity and an average level of aural similarity. In his skeleton argument, Mr Stobbs submitted that the element “O2” had an independent distinctive role in the mark; at the hearing, he modified this submission into the proposition that “O2VENT” was an independent distinctive element similar to the earlier marks.

57. The first of the opponent’s marks consists of the capital letter “O”, in bold, presented alongside the number “2”, the latter being in subscript. Both elements are presented in blue. “O<sub>2</sub>” will be seen as a unit, which dominates the overall impression of the mark. The slight stylisation and colour play a very weak role.

58. The second of the earlier marks consists of the capital letter “O” next to a subscript “2”, whilst the third mark consists of the capital letter “O” presented alongside the number “2”. Each of these marks will be seen as a unit (“O<sub>2</sub>”/“O2”) in which the overall impression resides.

59. Turning to the contested marks, I accept that the word “vent” has little distinctiveness in relation to the goods at issue. However, it will be apparent from my consideration of the earlier marks’ distinctive character that I do not consider “O2” particularly distinctive either. In my view, any distinctiveness which “O2” might have is weakened when it appears in the combination “O2vent”. Neither “O2” nor “vent” is materially more dominant in the overall impression than the other. The mark is most

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<sup>41</sup> Skeleton, §20.

likely to be viewed as an invented whole, with its distinctiveness in that whole rather than its (at best) weakly distinctive parts, though I accept that the consumer will identify both elements.

60. The “OVENTUS O2VENT” mark consists of two distinct elements. Of these, “OVENTUS” is, in my view, the most dominant, being the first word and highly distinctive. “O2VENT” is highly allusive and plays a lesser role in the overall impression, though it is still clearly an important element.

(i)  <sub>2</sub>/O<sub>2</sub> v O2vent

61. The later mark shares the same initial letter as the earlier mark but there is a difference because the number 2 is presented in a normal rather than subscript typeface, and because of the addition of the word “vent”. As notional and fair use permits difference colours and typefaces, the differences arising from the different colour and font are not relevant. The marks are visually similar to a fairly low degree. Aurally, the “O<sub>2</sub>”/“O2” parts of both marks are likely to be articulated as “oh-two”. The difference created by the additional word “vent” results in a medium degree of aural similarity. Conceptually, both marks evoke the concept of oxygen, though that is tempered by the concept of ventilation in the later mark. They are conceptually similar to a medium degree.

(ii) O2 v O2vent

62. I consider that these marks are visually similar to a medium degree, due to the shared letter/number combination “O2” and its position in the later mark, set against the difference created by the addition of the word “vent” in the later mark. The aural and conceptual positions are the same as above: the marks are aurally and conceptually similar to a medium degree.

(iii) 

63. There is, in my view, a very low degree of visual and aural similarity between these marks, due to the dominance and position of the word “OVENTUS” (which is likely to be articulated as “oh-vent-us”) in the later mark. “OVENTUS” has no meaning; there remains a degree of conceptual similarity due to the shared notion of oxygen.

(iv) O2 v OVENTUS O2VENT

64. I do not consider that the position for these marks is materially different from the position outlined above in relation to the OVENTUS O2VENT mark. The marks are visually and aurally similar to a very low degree, and conceptually similar to the extent that both evoke oxygen.

### **Likelihood of confusion**

65. When determining whether there is a likelihood of confusion, a global assessment of the competing factors must be made (*Sabel* at [22]). I must consider the various factors from the perspective of the average consumer and decide whether they are likely to be confused. The factors considered above have a degree of interdependency (*Canon* at [17]), so, for example, a high degree of similarity between the marks may be offset by a lower degree of similarity between the goods, and vice versa. Confusion can be direct (where the average consumer mistakes one mark for the other) or indirect (where the average consumer realises the marks are not the same but puts the similarity that exists between the marks/goods down to the responsible undertakings being the same or related). In making my assessment, I must keep in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he has retained in his mind (*Lloyd Schuhfabrik* at [26]).

66. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), Arnold J. considered the impact of the CJEU's judgment in *Bimbo*, Case C-591/12P, on the court's earlier judgment in *Medion v Thomson*. The judge said:

“18 The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.

19 The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

20 The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).



21 The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors”.

67. In terms of potential confusion between the earlier “O2” mark and the contested “O2vent” (the most similar of the marks and the strongest position for the opponent), even for those consumers who will pay no more than a reasonably high level of attention and proceeding, as I have, on the basis of identical goods, I do not consider that there is a likelihood of confusion. Notwithstanding the weak distinctive character of the word “vent”, the visual and aural differences created by its presence in the mark and the conceptual meaning attributable to the mark as a whole are sufficient to avoid the mark being misremembered or otherwise directly confused with the earlier mark, even bearing in mind the effects of imperfect recollection.<sup>42</sup> It is clear from *Whyte & Mackay* that the principle in *Medion* is only engaged if the relevant part of the composite mark will be perceived as having distinctive significance independent of the whole. In that case, the consumer’s perception of “ORIGIN” as non-distinctive in the mark JURA ORIGIN resulted in no likelihood of confusion. I do not consider that “O2” would be given any independent distinctive significance in the later mark: it is likely to be perceived only as a reference to the function of the goods.<sup>43</sup> Nor am I persuaded that, if there is any distinctiveness in the element “O2”, it is sufficient to create a likelihood of indirect confusion, when viewed as part of the composite “O2vent”. If there is any bringing to mind at all, which I do not consider likely, my view is that the consumer will consider the use to be as a result of coincidence rather than economic connection.

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<sup>42</sup> Small differences have been held to be sufficient to distinguish marks of low distinctiveness on a number of occasions. See, for example, *Envirotecnic v Gutterclear UK Limited*, [2015] EWHC 3450 (Ch) and *Nicoventures Holdings Limited v The London Vape Company Ltd* [2017] EWHC 3393 (Ch).

<sup>43</sup> The requirement to accord the earlier trade mark a minimum level of distinctive character does not mean that I am required to regard the same element in the later complex trade mark as sufficiently independently distinctive to create a likelihood of confusion, despite them being manifestly descriptive: see the judgment of the GC in *Deutsche Post AG v EUIPO*, Case T-537/15, at paragraphs 67-76.

68. Nor do I consider that, in respect of the opponent's O<sub>2</sub> marks, there is a likelihood of confusion. The marks have less visual similarity and no greater aural or conceptual similarity to the contested mark than the "O2" mark considered above, and are no stronger in terms of their inherent distinctiveness. I do not consider that there is a likelihood of confusion, whether direct or indirect, for the same reasons as given above.

69. The opponent contends that its opposition under this ground to the "OVENTUS O2VENT" mark is a clear *Medion* case, with either "O2", or alternatively "O2VENT", playing an independent distinctive role sufficient to cause confusion with the earlier marks. I do not agree. In my view, "OVENTUS" so dominates the contested mark that there is no likelihood of direct confusion. In terms of indirect confusion, and for reasons similar to those given above, I consider that the distinctive character of the "O2" element of the later mark is too weak to send a trade mark message to the consumer which would result in that element alone, or the element "O2VENT", creating any connection with the earlier marks. For the avoidance of doubt, whilst I consider it unlikely that there will be any bringing to mind at all, if there is, it will be mere association not giving rise to confusion.

70. If there is no confusion in respect of identical goods, it follows that there is also no confusion in respect of goods which are only similar, bearing in mind that there is neither a claim to nor evidence of enhanced distinctiveness. I do not, therefore, need to consider the position under s. 5(2)(b) further, as it will not materially improve the opponent's position. The oppositions under s. 5(2)(b) are dismissed.

71. As I have found that there is no likelihood of confusion, there is no need to consider whether or not the 371 mark has been used, as it is irrelevant to the outcome.

### **Section 5(3)**

72. 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”.

73. 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 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*).

## Reputation

74. In *General Motors*, Case C-375/97, the CJEU held that:

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

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

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

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

75. As two of the earlier marks are EUTMs, I also keep in mind the guidance of the CJEU in *Pago International GmbH v Tirolmilch registrierte GmbH*, Case C-301/07, where the court held that:

“20. By its first question, the national court in essence asks the Court, first, to clarify the meaning of the expression ‘has a reputation in the Community’, by means of which, in Article 9(1)(c) of the regulation, one of the conditions is laid down which a Community trade mark must fulfil in order to benefit from the protection accorded by that provision and, second, to state whether that condition, from a geographical point of view, is satisfied in a case where the Community trade mark has a reputation in only one Member State.

21. The concept of ‘reputation’ assumes a certain degree of knowledge amongst the relevant public.

22. The relevant public is that concerned by the Community 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 (see, by way of analogy, *General Motors*, paragraph 24, with regard to Article 5(2) of the directive).

23. It cannot be required that the Community trade mark be known by a given percentage of the public so defined (*General Motors*, by way of analogy, paragraph 25).

24. The degree of knowledge required must be considered to be reached when the Community trade mark is known by a significant part of the public concerned by the products or services covered by that trade mark (*General Motors*, by way of analogy, paragraph 26).

25. In examining this condition, 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 (*General Motors*, by way of analogy, paragraph 27).

26. In view of the elements of the main proceedings, it is thus for the national court to determine whether the Community trade mark at issue is known by a significant part of the public concerned by the goods which that trade mark covers.

27. Territorially, the condition as to reputation must be considered to be fulfilled when the Community trade mark has a reputation in a substantial part of the territory of the Community (see, by way of analogy, *General Motors*, paragraph 28).

28. It should be noted that the Court has already ruled that, with regard to a Benelux trade mark, it is sufficient, for the purposes of Article 5(2) of the directive, that it has a reputation in a substantial part of the Benelux territory, which part may consist of a part of one of the Benelux countries (*General Motors*, paragraph 29).

29. As the present case concerns a Community trade mark with a reputation throughout the territory of a Member State, namely Austria, the view may be taken, regard being had to the circumstances of the main proceedings, that the territorial requirement imposed by Article 9(1)(c) of the regulation is satisfied.

30. The answer to the first question referred is therefore that Article 9(1)(c) of the regulation must be interpreted as meaning that, in order to benefit from the protection afforded in that provision, a Community trade mark must be known by a significant part of the public concerned by the products or services covered by that trade mark, in a substantial part of the territory of the Community, and that, in view of the facts of the main proceedings, the territory of the Member State in question may be considered to constitute a substantial part of the territory of the Community”.

76. In *Burgerista Operations GmbH v Burgista Bros Limited* [2018] EWHC (IPEC), HHJ Hacon considered whether an EU trade mark registered for restaurant services had a reputation under article 9(2)(c) of the EU Trade Mark Regulation (which is equivalent to s.10(3) of the Trade Marks Act). The judge summarised the law as follows:

“69. I draw the following from the judgments of the Court in *PAGO* and *Iron & Smith* and from the opinion of Advocate General Wahl in *Iron & Smith*:

- (1) An EU trade mark has a reputation within the meaning of art.9(2)(c) if it was known to a significant part of the relevant public at the relevant date.
- (2) The relevant public are those concerned by the products or services covered by the trade mark.
- (3) The relevant date is the date on which the defendant first started to use the accused sign.
- (4) From a geographical perspective, the trade mark must have been known in a substantial part of the EU at the relevant date.
- (5) There is no fixed percentage threshold which can be used to assess what constitutes a significant part of the public; it is proportion rather than absolute numbers that matters.
- (6) Reputation constitutes a knowledge threshold, to be assessed according to a combination of geographical and economic criteria.
- (7) All relevant facts are to be taken into consideration when making the assessment, 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 undertaking in promoting it.
- (8) The market for the goods or services in question, and from this the identity of the relevant public, ought to assume a paramount role in the assessment.
- (9) The territory of a single Member State (large or small) may constitute a substantial part of the EU, but the assessment must be conducted without consideration of geographical borders”.



77. The test for a qualifying ‘reputation’ is found in *General Motors* and is set out above. The earlier mark must be known by ‘a significant part’ of the relevant public. Some commentators have regarded this as setting a low threshold. In *Iron & Smith kft v Unilever NV*, Case C-125/14, the CJEU was asked whether a Community Trade Mark (now an EUTM) with a reputation ‘in the Community’ (now the European Union), but not in the Member State where infringement was alleged, was capable of being infringed under provisions of the Community Trade Mark Regulation (now the European Union Trade Mark Regulation) broadly equivalent to s. 5(3) of the Act. The court answered that:

“If the earlier [EUTM] has already acquired a reputation in a substantial part of the territory of the European Union, but not with the relevant public in the Member State in which registration of the later national mark concerned by the opposition has been applied for, the proprietor of the [EUTM] may benefit from the protection introduced by Article 4(3) of Directive 2008/95 where it is shown that a commercially significant part of that public is familiar with that mark, makes a connection between it and the later national mark, and that there is, taking account of all the relevant factors in the case, either actual and present injury to its mark, for the purposes of that provision or, failing that, a serious risk that such injury may occur in the future”.

78. An EUTM may therefore be known to “a significant part of the public concerned by the products or services covered by that trade mark” in the EU, without meeting that threshold in a particular Member State. Nevertheless, provided that the mark is known to “a commercially significant part of” the relevant public in the relevant Member State concerned, it may be entitled to extended protection in that Member State on account of its reputation in the EU. The distinction is clearer in the French version of the same judgment, which talks of a “commercially non-negligible” part of the relevant public in the Member State being aware of the earlier CTM (now EUTM) and making a link with the later national trade mark. A “commercially non-negligible” part of the relevant public therefore represents a lower threshold than the standard requirement. It follows that the standard requirement must be for more than a non-negligible or minimal level of

reputation. This makes sense because s. 5(3) is intended to provide more extensive protection to marks with a certain level of reputation. This suggests that the level of reputation required under s. 5(3) is more than minimal, and probably higher than that which is required in order to support a passing off right under the common law in the UK.

79. The holder makes no concessions regarding the reputation of the opponent, though Mr Curtis indicated his view that the opponent's best case was in respect of mobile telecommunications and entertainment services. I accept that the opponent had a reputation in mobile telecommunications and entertainment services at the relevant date. Whilst its evidence is not without defect, principally that much of it dates from, at best, the early part of the relevant periods, it is clear that the opponent was and remains a major player in the UK mobile telecommunication market, evidenced by its customer numbers, revenue, advertising figures and market position. Although there is some evidence of the provision of broadband services, with over 500,000 customers in 2012, the figures were by that point in decline and the opponent's operation of broadband services ceased in 2013. Given that this is some four years before the relevant dates, I am not persuaded, on the evidence before me, that the opponent's reputation at the relevant dates and in class 38 extended beyond mobile telecommunication services. The evidence in relation to entertainment services could certainly have been stronger but, on balance, I am satisfied that the opponent was known at the relevant dates by a commercially significant proportion of the relevant public for entertainment services, principally because of its operation of the O2 arena in London.

#### Link

80. My assessment of whether the public will make the required link between the marks must take into account all of the relevant factors. The factors identified in *Intel* are:

*(i) the degree of similarity between the marks*

I have assessed the similarity between the marks at paragraphs 61 to 64, above. I adopt those findings here.

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

I do not consider that there is any similarity between the contested goods and the services for which the opponent has a reputation. They differ in nature and purpose, channels of trade and method of use. Although there may be some overlap in their users, there is no competition and no complementarity.

*(iii) the strength of the earlier mark's reputation*

The reputation in mobile telecommunications is a strong one. The reputation in entertainment services is almost wholly because of the O2 arena, though the opponent still enjoys a moderate reputation in these services.

*(iv) the degree of the earlier mark's distinctive character, whether inherent or acquired through use*

The earlier marks have a normal level of inherent distinctiveness for the services in which there is a reputation. The extensive use which has been made is likely to have increased the distinctiveness of the mark to a high level.

*(vi) whether there is a likelihood of confusion*

I do not consider that there would be any likelihood of confusion between the earlier marks as relied upon under s. 5(3) and the contested marks. The differences between

the marks, bearing in mind the significance in the later mark of “O2” as indicating oxygen, when coupled with the weak distinctiveness of the earlier mark and the distance between the goods and services, are too great for the consumer to be confused, even indirectly.

81. Taking all of the above into account, I find that there would be no link. Even where the opponent’s marks have a strong reputation and a high level of distinctiveness, though I consider that the same applies to entertainment services, where there is a moderate reputation, the gap between the respective goods and services is too great for a link to be made. That is all the more the case given the non-distinctive character of the “O2” element in the contested marks, which further points away from a link being made. The oppositions under s. 5(3) fail at this point and the ground is dismissed.

## **Conclusion**

82. The oppositions have failed. Subject to appeal, the application will proceed to registration.

## **Costs**

83. The applicant has been successful and is entitled to an award of costs. Awards of costs are governed by Tribunal Practice Notice (“TPN”) 2/2016. The opponent’s broadly pleaded case will have had an impact on the applicant’s costs, particularly—and despite the duplication in the forms—at pleadings stage. Although the applicant’s own evidence was light, much of the opponent’s evidence dates from outside the relevant periods, all of which factors are borne in mind in making the award below. I award costs to the applicant on the following basis:

Considering the notices of opposition and preparing  
the counterstatements:

£500

Filing evidence and considering the other party's evidence:	£1000
Preparing for and attending a hearing:	£800
<b>Total:</b>	<b>£2,300</b>

84. I order O2 Worldwide Ltd to pay Oventus Medical Ltd the sum of **£2,300**. This sum is to 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 24th day of January 2019**

**Heather Harrison  
For the Registrar**

## **APPENDIX**

### **EUTM 13108139**

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; compact discs, DVDs and other digital recording media; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment, computers; computer software; fire-extinguishing apparatus; abacuses; accounting machines; accumulators, electric; acid hydrometers; acidimeters for batteries; acoustic conduits; acoustic couplers; actinometers; adding machines; aerials; aerometers; agendas (electronic -); air analysis apparatus; alarm bells, electric; alarms; alcoholmeters; alidades; altimeters; ammeters; amplifiers; amplifying tubes; anemometers; animated cartoons; anode batteries; anodes; answering machines; anti-glare glasses; anti-glare visors; anti-interference devices [electricity]; anti-theft warning apparatus; anticathodes; apertometers [optics]; armatures [electricity]; asbestos clothing for protection against fire; asbestos gloves for protection against accidents; asbestos screens for firemen; astronomy (apparatus and instruments for -); audiovisual teaching apparatus; automated teller machines [atm]; azimuth instruments; balances [steelyards]; balancing apparatus; bar code readers; barometers; batteries, electric; batteries, electric, for vehicles; batteries for lighting; battery boxes; battery chargers; battery jars; beacons, luminous; bells [warning devices]; betatrons; binoculars; blinkers [signalling lights]; blueprint apparatus; boiler control instruments; branch boxes [electricity]; breathing apparatus, except for artificial respiration; breathing apparatus for underwater swimming; buzzers; cabinets for loudspeakers; cables, electric; calculating disks; calculating machines; calibrating rings; calipers; camcorders; cameras [photography]; capacitors; capillary tubes; carpenters' rules; carriers for dark plates [photography]; cases especially made for photographic apparatus and instruments; cases fitted with dissecting instruments [microscopy]; cash registers; cassette players; cathodes; cathodic anti-corrosion apparatus; cell phone straps; centering apparatus for photographic transparencies; central processing units [processors]; chargers for electric batteries; chemistry apparatus and instruments; chips [integrated circuits]; choking coils [impedance]; chromatography apparatus for laboratory use; chronographs [time recording apparatus]; cinematographic cameras; cinematographic film, exposed; circuit breakers; circuit closers; cleaning apparatus for phonograph records; clinometers; clothing especially made for laboratories; clothing for protection against accidents, irradiation and fire; clothing for protection against fire; coaxial cables; coils, electric; coin-operated apparatus (mechanisms for -); coin-operated mechanisms for television sets; collectors, electric; commutation (electric apparatus for -); commutators; compact disc players; compact discs [audio-video]; compact discs [read-only memory]; comparators; compasses (directional -); compasses [measuring instruments]; computer game programs; computer keyboards; computer memory devices; computer operating

programs, recorded; computer peripheral devices; computer programmes [programs], recorded; computer programs [downloadable software]; computer software, recorded; computers; conductors, electric; connections for electric lines; connectors [electricity]; contact lenses; contacts, electric; containers for contact lenses; containers for microscope slides; control panels [electricity]; converters, electric; copper wire, insulated; correcting lenses [optics]; cosmographic instruments; counter-operated apparatus (mechanisms for -); couplers [data processing equipment]; couplings, electric; covers for electric outlets; crash test dummies; cupels [laboratory]; current rectifiers; cyclotrons; darkroom lamps [photography]; darkrooms [photography]; data processing apparatus; decompression chambers; demagnetizing apparatus for magnetic tapes; densimeters; densitometers; detectors; diagnostic apparatus, not for medical purposes; diaphragms [acoustics]; diaphragms for scientific apparatus; diaphragms [photography]; dictating machines; diffraction apparatus [microscopy]; discharge tubes, electric, other than for lighting; disk drives for computers; disks, magnetic; distance measuring apparatus; distance recording apparatus; distillation apparatus for scientific purposes; distribution boards [electricity]; distribution boxes [electricity]; distribution consoles [electricity]; divers' masks; diving suits; dna chips; dog whistles; dosimeters; downloadable image files; downloadable music files; downloadable ring tones for mobile phones; drainers for use in photography; dressmakers' measures; drying apparatus for photographic prints; drying racks [photography]; ducts [electricity]; dvd players; dynamometers; ear plugs for divers; editing appliances for cinematographic films; egg-candlers; electric door bells; electric installations for the remote control of industrial operations; electric loss indicators; electricity conduits; electricity mains (materials for -) [wires, cables]; electrified fences; electrified rails for mounting spot lights; electro-dynamic apparatus for the remote control of railway points; electro-dynamic apparatus for the remote control of signals; electrolyzers; electromagnetic coils; electronic notice boards; electronic pens [visual display units]; electronic pocket translators; electronic publications, downloadable; electronic tags for goods; encoded identification bracelets, magnetic; encoded magnetic cards; enlarging apparatus [photography]; epidiascopes; ergometers; exposure meters [light meters]; extinguishers; eyeglass cases; eyeglass chains; eyeglass cords; eyeglass frames; eyepieces; eyepieces (instruments containing -); facsimile machines; false coin detectors; fermentation (apparatus for -) [laboratory apparatus]; fibre [fiber (am)] optic cables; film cutting apparatus; films, exposed; filters for respiratory masks; filters for ultraviolet rays, for photography; filters [photography]; fire alarms; fire beaters; fire blankets; fire boats; fire engines; fire escapes; fire hose; fire hose nozzles; flash-bulbs [photography]; flashlights [photography]; floppy disks; fluorescent screens; fog signals, non-explosive; food analysis apparatus; frames for photographic transparencies; franking (apparatus to check -); frequency meters; furniture especially made for laboratories; fuse wire; fuses; galena crystals [detectors]; galvanic batteries; galvanic cells; galvanometers; garments for protection against fire; gas testing instruments; gasometers [measuring instruments]; gauges; glass covered with an electrical conductor; glazing apparatus for photographic prints; global positioning system [gps] apparatus; gloves for divers; gloves for protection against accidents; gloves for protection against x-rays for industrial purposes; goggles for sports; grids for batteries; hands free kits for phones; head cleaning tapes [recording]; headphones; heat

regulating apparatus; heliographic apparatus; hemline markers; high-frequency apparatus; holders for electric coils; holograms; horns for loudspeakers; hourglasses; hydrometers; hygrometers; identification sheaths for electric wires; identification threads for electric wires; identity cards, magnetic; igniting apparatus, electric, for igniting at a distance; incubators for bacteria culture; inductors [electricity]; integrated circuit cards [smart cards]; integrated circuits; intercommunication apparatus; interfaces for computers; inverters [electricity]; invoicing machines; ionization apparatus not for the treatment of air or water; jigs [measuring instruments]; juke boxes for computers; juke boxes, musical; junction boxes [electricity]; junction sleeves for electric cables; knee-pads for workers; laboratory centrifuges; laboratory trays; lactodensimeters; lactometers; laptop computers; lasers, not for medical purposes; leather (appliances for measuring the thickness of -); lens hoods; lenses for astrophotography; letter scales; levelling instruments; levels [instruments for determining the horizontal]; life belts; life buoys; life jackets; life nets; life saving apparatus and equipment; life-saving rafts; light conducting filaments [optical fibers fibres]; light dimmers [regulators], electric; light-emitting diodes [led]; light-emitting electronic pointers; lighting ballasts; lightning arresters; limiters [electricity]; locks, electric; logs [measuring instruments]; loudspeakers; magic lanterns; magnetic data media; magnetic encoders; magnetic tape units for computers; magnetic tapes; magnetic wires; magnets; magnets (decorative -); magnifying glasses [optics]; manometers; marine compasses; marine depth finders; marking buoys; marking gauges [joinery]; masts for wireless aerials; material testing instruments and machines; mathematical instruments; measures; measuring apparatus; measuring devices, electric; measuring glassware; measuring instruments; measuring spoons; mechanical signs; megaphones; mercury levels; metal detectors for industrial or military purposes; meteorological balloons; meteorological instruments; meters; metronomes; micrometer screws for optical instruments; micrometers; microphones; microprocessors; microscopes; microtomes; milage recorders for vehicles; mirrors for inspecting work; mirrors [optics]; modems; money counting and sorting machines; monitoring apparatus, electric; monitors [computer hardware]; monitors [computer programs]; motor fire engines; mouse [data processing equipment]; mouse pads; nautical apparatus and instruments; naval signalling apparatus; navigation apparatus for vehicles [on-board computers]; navigational instruments; neon signs; nets for protection against accidents; nose clips for divers and swimmers; notebook computers; objectives [lenses] optics; observation instruments; octants; ohmmeters; optical apparatus and instruments; optical character readers; optical condensers; optical data media; optical discs; optical glass; optical goods; optical lamps; optical lenses; oscillographs; ovens for laboratory use; oxygen transvasing apparatus; ozonisers [ozonators]; parking meters; particle accelerators; pedometers; peepholes [magnifying lenses] for doors; periscopes; personal stereos; petrol gauges; phonograph records; photocopiers [photographic, electrostatic, thermic]; photometers; phototelegraphy apparatus; photovoltaic cells; physics (apparatus and instruments for -); pince-nez; pipettes; plane tables [surveying instruments]; planimeters; plates for batteries; plotters; plugs, sockets and other contacts [electric connections]; plumb bobs; plumb lines; pocket calculators; polarimeters; portable media players; portable telephones; precision balances; precision measuring apparatus; pressure indicator plugs for valves; pressure indicators; pressure measuring apparatus; printed circuit boards; printed circuits; prisms [optics]; probes for



scientific purposes; projection apparatus; projection screens; protection devices against x-rays, not for medical purposes; protection devices for personal use against accidents; protective helmets; protective helmets for sports; protective masks; protective suits for aviators; protractors [measuring instruments]; punched card machines for offices; push buttons for bells; pyrometers; quantity indicators; radar apparatus; radio pagers; radiological apparatus for industrial purposes; radiology screens for industrial purposes; radios; radiotelegraphy sets; radiotelephony sets; railway traffic safety appliances; readers [data processing equipment]; receivers (audio-- and video- -); record player needles (apparatus for changing -); record players; reducers [electricity]; reflecting discs for wear, for the prevention of traffic accidents; refractometers; refractors; regulating apparatus, electric; relays, electric; remote control apparatus; resistances, electric; respirators for filtering air; respirators, other than for artificial respiration; resuscitation mannequins [teaching apparatus]; retorts; retorts' stands; revolution counters; rheostats; riding helmets; road signs, luminous or mechanical; rods for water diviners; rods [surveying instruments]; rulers [measuring instruments]; rules [measuring instruments]; saccharometers; safety restraints, other than for vehicle seats and sports equipment; safety tarpaulins; salinometers; satellite navigational apparatus; satellites for scientific purposes; scales; scanners [data processing equipment]; screens for photoengraving; screens [photography]; screw-tapping gauges; semi-conductors; sextants; sheaths for electric cables; shoes for protection against accidents, irradiation and fire; shutter releases [photography]; shutters [photography]; sighting telescopes for firearms; signal bells; signal lanterns; signalling buoys; signalling panels, luminous or mechanical; signalling whistles; signals, luminous or mechanical; signs, luminous; simulators for the steering and control of vehicles; sirens; skins (apparatus for measuring the thickness of -); slide calipers; slide projectors; slide-rules; slides [photography]; smoke detectors; socks, electrically heated; solar batteries; solderers' helmets; solenoid valves [electromagnetic switches]; sonars; sound alarms; sound locating instruments; sound recording apparatus; sound recording carriers; sound recording strips; sound reproduction apparatus; sound transmitting apparatus; sounding apparatus and machines; sounding leads; sounding lines; spark-guards; speaking tubes; spectacle cases; spectacle frames; spectacle glasses; spectacles [optics]; spectrograph apparatus; spectroscopes; speed checking apparatus for vehicles; speed indicators; speed measuring apparatus [photography]; speed regulators for record players; spherometers; spirit levels; spools [photography]; sprinkler systems for fire protection; stage lighting regulators; stands for photographic apparatus; starter cables for motors; steering apparatus, automatic, for vehicles; step-up transformers; stereoscopes; stereoscopic apparatus; stills for laboratory experiments; styli for record players; sulphitometers; sunglasses; surveying apparatus and instruments; surveying chains; surveying instruments; surveyors' levels; switchboards; switchboxes [electricity]; switches, electric; tachometers; tape recorders; taximeters; teaching apparatus; teeth protectors; telegraph wires; telegraphs [apparatus]; telemeters; telephone apparatus; telephone receivers; telephone transmitters; telephone wires; teleprompters; telerupters; telescopes; television apparatus; temperature indicators; terminals [electricity]; test tubes; testing apparatus not for medical purposes; theft prevention installations, electric; theodolites; thermionic tubes; thermometers, not for medical purposes; thermostats; thermostats for vehicles; ticket dispensers; time clocks [time recording devices]; time

recording apparatus; time switches, automatic; tires (automatic indicators of low pressure in vehicle -); tone arms for record players; totalizers; traffic-light apparatus [signalling devices]; transformers [electricity]; transistors [electronic]; transmitters of electronic signals; transmitters [telecommunication]; transmitting sets [telecommunication]; transponders; triodes; tripods for cameras; urinometers; usb flash drives; vacuum gauges; vacuum tubes [radio]; variometers; vehicle breakdown warning triangles; vehicle radios; verniers; vests (am) bullet-proof -; video cassettes; video game cartridges; video recorders; video screens; video telephones; videotapes; viewfinders, photographic; viscosimeters; voltage regulators for vehicles; voltage surge protectors; voltmeters; voting machines; wafers [silicon slices]; waling glasses; walkie-talkies; washing trays [photography]; water level indicators; wavemeters; weighbridges; weighing apparatus and instruments; weighing machines; weights; whistle alarms; wind socks for indicating wind direction; wire connectors [electricity]; wires, electric; word processors; workmen's protective face-shields; wrist rests for use with computers; X-ray apparatus not for medical purposes; X-ray films, exposed; X-ray photographs, other than for medical purposes; X-ray tubes not for medical purposes; X-rays producing apparatus and installations, not for medical purposes; apparatus for the transmission of sound and image; telecommunications apparatus; mobile telecommunication apparatus; mobile telecommunications handsets; computer hardware; computer application software; apps; computer software downloadable from the Internet; recorded computer software; software applications; mobile software applications, downloadable applications for multimedia devices; computer games; computer game software; computer games programs; PDAs (Personal Digital Assistants); pocket PCs; mobile telephones; telecommunications network apparatus; drivers software for telecommunications networks and for telecommunications apparatus; protective clothing; televisions; global positioning system [GPS] apparatus; satellite navigation devices; computer software recorded onto CD Rom; SD-Cards (secure digital cards); glasses; protective glasses and cases therefor; cameras; camera lenses; MP3 players; audio tapes, audio cassettes; audio discs; audio-video tapes; audio-video cassettes; audio-video discs; video tapes; video discs; CDs, DVDs; downloadable electronic publications; mouse mats; mobile telephone covers; mobile telephone cases; magnetic cards; encoded cards; mobile phone application software; software for telecommunication; software for the processing of financial transactions; parts and fittings for all the aforesaid goods.

Class 35: Advertising; business management; business administration; office functions; accounting; accounts (drawing up of statements of -); administrative processing of purchase orders; arranging newspaper subscriptions for others; arranging subscriptions to telecommunication services for others; auctioneering; auditing; bill-posting; business appraisals; business consultancy (professional -); business information; business inquiries; business investigations; business management and organization consultancy; business management assistance; business management consultancy; business management of performing artists; business management of sports people; business organization consultancy; business research; commercial administration of the licensing of the goods and services of others; commercial information agencies; commercial information and advice for consumers [consumer advice shop]; commercial or industrial

management assistance; compilation of information into computer databases; compilation of statistics; cost price analysis; data search in computer files for others; economic forecasting; efficiency experts; employment agencies; file management (computerized -); import/export agencies; invoicing; management (advisory services for business -); office machines and equipment rental; opinion polling; outsourcing services [business assistance]; payroll preparation; personnel management consultancy; personnel recruitment; photocopying services; price comparison services; procurement services for others [purchasing goods and services for other businesses]; psychological testing for the selection of personnel; public relations; relocation services for businesses; rental of advertising space; rental of advertising time on communication media; rental of photocopying machines; rental of vending machines; sales promotion for others; secretarial services; shop window dressing; shorthand; sponsorship search; systemization of information into computer databases; tax preparation; telephone answering for unavailable subscribers; transcription; typing; word processing; organisation, operation and supervision of loyalty and incentive schemes; arranging of competitions for advertising purposes; retail services and online retail services connected with 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, compact discs, DVDs and other digital recording media, mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment, computers, computer software, fire-extinguishing apparatus, apparatus for the transmission of sound and image, telecommunications apparatus, mobile telecommunication apparatus, mobile telecommunications handsets, computer hardware, computer application software, apps, computer software, computer software downloadable from the Internet, recorded computer software, software applications, mobile software applications, downloadable applications for multimedia devices, computer games, computer game software, computer games programs, 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, televisions, headphones, global positioning system [GPS] apparatus, satellite navigation devices, 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, downloadable electronic publications, mouse mats, magnets, mobile telephone covers, mobile telephone cases, magnetic cards, encoded cards, mobile phone application software, software for telecommunication, software for the processing of financial transactions, Paper, cardboard, printed matter, bookbinding material, photographs, stationery, adhesives for stationery or household purposes, artists' materials, paint brushes, typewriters and office requisites, instructional and teaching material, plastic materials for packaging, printers' type, printing blocks, arts, crafts and modelling equipment, pictures, portraits, paintings, drawings, figurines of

paper and cardboard, drawing instruments, drawing materials, modelling materials, packing bags of paper, packaging material, packaging materials made of paper, packaging materials made of cardboard, packaging material made of card, wrapping materials made of card, wrapping materials made of cardboard, wrapping materials made of paper, wrapping materials made of plastics, plastics for modelling, correcting and erasing implements, educational equipment, printing equipment, photo albums, writing implements, writing instruments, writing materials, writing or drawing books, writing pads, writing paper, stamping implements, books, catalogues, cards, instruction manuals, magazines, mail order catalogues, newspapers, pamphlets, periodical publications, calendars, decalcomanias, diaries, gift cards, labels, maps, printed publications, thesauri, dictionaries, personal organizers, postage stamps, postcards, posters, appointment books, industrial paper and cardboard, money clips of precious metals, disposable paper products, absorbent paper, bathroom tissue, bibs of paper, coasters of paper or cardboard, tissues of paper, towels of paper, hygienic paper, kitchen paper, napkins made of paper for household use, table cloths of paper, table mats of paper, table mats of cardboard, toilet paper, toilet rolls, printed tariffs, credit cards without magnetic coding, cards for use in connection with sales and promotional incentive schemes and promotional services, printed forms, savings stamps, adhesive tapes for stationery or household purposes, gift boxes, gift bags, photographic printing paper, clothing, footwear, headgear, household or kitchen utensils and containers, jewellery, precious stones, horological and chronometric instruments, musical instruments, apparatus for lighting, textiles and textile goods, leather and imitations of leather, handbags, rucksacks, purses, bags and sports bags, travel bags, backpacks, duffel bags, boot bags, holdalls, wallets, purses, credit card holders, games and playthings, gymnastic and sporting articles, meat, fish, poultry, game, coffee, tea, cocoa, sugar, rice, beers, mineral waters, aerated waters and other non-alcoholic drinks, alcoholic beverages, matches; retail services and online retail services relating to clothes shops, garden centres; retail services in relation to telecommunication goods; retail services and online retail services relating to foodstuffs, white goods, domestic electrical and electronic equipment; 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 relating to the aforesaid services provided over a telecommunications network.

Class 36: Insurance; financial affairs; monetary affairs; real estate affairs; accident insurance underwriting; actuarial services; analysis (financial -); antique appraisal; apartment house management; art appraisal; banking; brokerage; brokerage of carbon credits; business liquidation services, financial; charitable fund raising; check [cheque] verification; clearing, financial; credit bureaux; credit card services; customs brokerage; debit card services; debt collection agencies; deposits of valuables; evaluation of wool (financial -); exchanging money; factoring; fiduciary; financial consultancy; financial evaluation [insurance, banking, real estate]; financial information; financial management; financial sponsorship; financing services; fire insurance underwriting; fiscal assessments; fund investments; funds transfer (electronic -); guarantees; health insurance underwriting; hire-purchase financing; home banking; housing agents; instalment loans; insurance brokerage; insurance consultancy; insurance information;

insurance underwriting; issuance of credit cards; issue of tokens of value; issuing of travellers' checks [cheques]; jewelry appraisal; leasing of farms; leasing of real estate; lending against security; life insurance underwriting; loans [financing]; marine insurance underwriting; mortgage banking; mutual funds; numismatic appraisal; organization of collections; pawnbrokerage; provident fund services; real estate agencies; real estate appraisal; real estate management; rent collection; rental of offices [real estate]; renting of flats; repair costs evaluation [financial appraisal]; retirement payment services; safe deposit services; savings bank services; securities brokerage; stamp appraisal; stock exchange quotations; valuation of standing timber (Financial -); financial information and advice relating to tariffs; information and advice relating to finance and insurance; financial payment services; payment processing services; electronic payment services; automated payment services; payment collection agencies; processing of payment transactions via the Internet; money transfer services; electronic funds transfer services; bill payment services; Internet banking; mobile phone banking services; issuing of tokens of value relating to customer loyalty schemes; sponsorship of sports, sports teams and sporting events; issuing of gift vouchers, vouchers and coupons; 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 relating to the aforesaid services provided over a telecommunications network.

Class 38: Telecommunications; cable television broadcasting; cellular telephone communication; communications by computer terminals; communications by fiber [fibre] optic networks; communications by telegrams; communications by telephone; computer aided transmission of messages and images; electronic bulletin board services [telecommunications services]; electronic mail; facsimile transmission; information about telecommunication; message sending; paging services [radio, telephone or other means of electronic communication]; providing access to databases; providing internet chatrooms; providing telecommunication channels for teleshopping services; providing telecommunications connections to a global computer network; providing user access to global computer networks; radio broadcasting; rental of access time to global computer networks; rental of facsimile apparatus; rental of message sending apparatus; rental of modems; rental of telecommunication equipment; rental of telephones; satellite transmission; telecommunications routing and junction services; teleconferencing services; telegraph services; telephone services; television broadcasting; telex services; transmission of digital files; transmission of greeting cards online; transmission of telegrams; voice mail services; wire service; wireless broadcasting; 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; communications

services for accessing a database; leasing of access time to a computer database; providing access to computer databases; rental of access time to a computer database; operation of a network, being telecommunication services; providing electronic bulletin board services; providing access to weblogs; providing access to podcasts; chatroom services for social networking; providing online forums; forums for social networking; 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.

Class 41: Education; providing of training; entertainment; sporting and cultural activities; Academies [education]; Amusement parks; Amusements; Animal training; Arranging and conducting of colloquiums; Arranging and conducting of concerts; Arranging and conducting of conferences; Arranging and conducting of congresses; Arranging and conducting of seminars; Arranging and conducting of symposiums; Arranging and conducting of workshops [training]; Arranging of beauty contests; Boarding schools; Booking of seats for shows; Bookmobile services; Calligraphy services; Casino facilities [gambling] (Providing -); Cinema presentations; Circuses; Club services [entertainment or education]; Coaching [training]; Conducting fitness classes; Correspondence courses; Disc jockey services; Discotheque services; Dubbing; Education information; Educational examination; Electronic desktop publishing; Entertainer services; Entertainment information; Fashion shows for entertainment purposes (Organization of -); Film production, other than advertising films; Gambling; Game services provided on-line from a computer network; Games equipment rental; Golf facilities (Providing -); Gymnastic instruction; Health club services [health and fitness training]; Holiday camp services [entertainment]; Language interpreter services; Layout services, other than for advertising purposes; Lending libraries; Live performances (Presentation of -); Microfilming; Modelling for artists; Movie studios; Museum facilities (Providing -) [presentation, exhibitions]; Music composition services; Music-halls; News reporters services; Night clubs; Nursery schools; Operating lotteries; Orchestra services; Organization of balls; Organization of competitions [education or entertainment]; Organization of exhibitions for cultural or educational purposes; Organization of shows [impresario services]; Organization of sports competitions; Party planning [entertainment]; Personal trainer services [fitness training]; Photographic reporting; Photography; Physical education; Practical training [demonstration]; Production of music; Production of radio and television programmes; Production of shows; Providing amusement arcade services; Providing karaoke services; Providing on-line electronic publications, not downloadable; Providing sports facilities; Publication of books; Publication of electronic books and journals on-line; Publication of texts, other than publicity texts; Radio entertainment; Recording studio services; Recreation facilities (Providing -); Recreation information; Religious education; Rental of audio equipment; Rental of camcorders; Rental of cine-films; Rental of lighting apparatus for theatrical sets or television studios; Rental of movie projectors and accessories; Rental of radio and television sets; Rental of show scenery; Rental of skin diving equipment; Rental of sound recordings; Rental of sports equipment, except vehicles; Rental of sports grounds; Rental of stadium facilities; Rental of stage scenery; Rental of tennis courts;

Rental of video cassette recorders; Rental of videotapes; Scriptwriting services; Sign language interpretation; Sport camp services; Subtitling; Television entertainment; Theatre productions; Ticket agency services [entertainment]; Timing of sports events; Toy rental; Translation; Tuition; Videotape editing; Videotape film production; Videotaping; Vocational guidance [education or training advice]; Vocational retraining; Writing of texts, other than publicity texts; Zoological garden services; interactive entertainment services; electronic games services provided by means of any communications network; entertainment services provided by means of telecommunication networks; information services relating to education, training, entertainment, sporting and cultural activities provided by means of telecommunication networks; provision of news information; television production services; television programming services; television production and television programming services provided by means of Internet protocol technology; provision of musical events; entertainment club services; discotheque services; presentation of live performances; night clubs; rental of music venues and stadiums; casino services; ticket reservations for entertainment, sporting and cultural events; ticket information services for entertainment, sporting and cultural events; ticket agency services for entertainment, sporting and cultural events; provision of on-line computer games; rental of computer games programs; computer amusement services; provision of information, news and commentary in the field of computer games; arranging, organising and conducting computer game competitions; publishing services; providing on-line electronic publications, not downloadable; publication of books; publication of electronic books and journals on-line; publication of texts, other than publicity texts; arranging, organising and conducting of competitions, games and quizzes; arranging, organising and conducting of competitions, games and quizzes for entertainment, recreational, cultural and educational purposes; organisation of awards; conducting of phone-in competitions; issuing of tickets for entertainment, sporting and cultural events; 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.

Class 42: Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; Analysis for oil-field exploitation; Architectural consultation; Architecture; Authenticating works of art; Bacteriological research; Biological research; Calibration [measuring]; Chemical analysis; Chemical research; Chemistry services; Cloud seeding; Computer programming; Computer rental; Computer software consultancy; Computer software design; Computer software (Updating of -); Computer system analysis; Computer system design; Computer virus protection services; Construction drafting; Consultancy in the design and development of computer hardware; Consultancy in the field of energy-saving; Conversion of data or documents from physical to electronic media; Cosmetic research; Creating and maintaining web sites for others; Data conversion of computer programs and data [not physical conversion]; Design of interior decor; Digitization of documents [scanning]; Dress designing; Duplication of computer programs; Engineering; Evaluation of wool (Quality -

); Geological prospecting; Geological research; Geological surveys; Graphic arts designing; Handwriting analysis [graphology]; Hosting computer sites [web sites]; Industrial design; Installation of computer software; Laboratory (Scientific -) services; Land surveying; Maintenance of computer software; Material testing; Mechanical research; Monitoring of computer systems by remote access; Oil-field surveys; Oil prospecting; Oil-well testing; Packaging design; Physics [research]; Project studies (Technical -); Providing search engines for the internet; Provision of scientific information, advice and consultancy in relation to carbon offsetting; Quality control; Recovery of computer data; Rental of computer software; Rental of web servers; Research and development for others; Research in the field of environmental protection; Styling [industrial design]; Surveying; Technical research; Textile testing; Underwater exploration; Urban planning; Valuation of standing timber (Quality -); Vehicle roadworthiness testing; Water analysis; Weather forecasting; IT services; computer programming services; services of a programmer; recovery of computer data; consultancy in the field of computer hardware; computer programming; duplication of computer programs; computer rental; computer software design; installation of computer software; maintenance of computer software; updating of computer software; rental of computer software; rental of computer hardware; application service provider (ASP); computer system design; computer systems analysis; consultancy in the field of computer software; conversion of data or documents from physical to electronic media; creating and maintaining websites for others; data conversion of computer programs and data (not physical conversion); hosting computer sites (web sites); creating and maintaining blogs for others; services of engineers; expert advice and expert opinion relating to technology; rental of data processing apparatus and computers; technical services relating to projection and planning of equipment for telecommunications; services of information brokers and providers, namely product research for others; weather forecasting; research in the field of telecommunication technology; monitoring of network systems in the field of telecommunications; technical support services relating to telecommunications and apparatus; 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.

## **EUTM 9279456**

Class 10: Surgical, medical, dental and veterinary apparatus and instruments, none of the aforementioned being apparatus or instruments which administer, control or monitor the supply of gases for medical purposes; artificial limbs, eyes and teeth; Orthopedic articles; Suture materials.

Class 11: Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes; Acetylene flares; acetylene generators; air valves for steam heating installations; anti-splash tap nozzles; anti-glare devices for vehicles [lamp fittings]; aquarium filtration apparatus; ash boxes (furnace-); ash conveyor installations, automatic; ash pits for furnaces; atomic piles; barbecue grills



(lava rocks for use in-); bath fittings; bath fittings (hot air-); boiler pipes [tubes] for heating installations; brackets for gas burners; carbon for arc lamps; chimney blowers; chimney flues; chimneys (lamp-); chromatography apparatus [for industrial purposes]; coils [parts of distilling, heating or cooling installations]; condensers (gas-), other than parts of machines; dampers [heating]; diffusers (light-); disposable sterilization pouches; distillation apparatus; distillation columns; drinking water (filters for-); economizers (fuel-); expansion tanks for central heating installations; faucets for pipes (am); feeding apparatus for heating boilers; filters [parts of household or industrial installations]; filters for drinking water; fire bars; fittings (bath-); fittings, shaped, for furnaces; fittings, shaped, for ovens; flare stacks for use in the oil industry; flues for heating boilers; fountains; fountains (ornamental-); framework of metal for ovens; friction lighters for igniting gas; fuel economisers; furnace ash boxes; furnace grates; furnaces (loading apparatus for-); furnaces (shaped fittings for-); gas apparatus (regulating and safety accessories for-); gas burners (brackets for-); gas condensers [other than parts of machines]; gas generators [installations]; gas lighters; gas pipes (regulating and safety accessories for-); gas scrubbers [parts of gas installations]; generators (acetylene-); generators (gas-) [installations]; grates (furnace-); hot air bath fittings; humidifiers for central heating radiators; kiln furniture [supports]; lamp casings; lamp chimneys; lamp glasses; lamp globes; lamp mantles; lamp reflectors; lamp shades; lampshade holders; lava rocks for use in barbecue grills; level controlling valves in tanks; light diffusers; lighters; lighters (gas-); loading apparatus for furnaces; mixer taps for water pipes; nozzles (anti-splash tap-); nuclear fuel and nuclear moderating material (installations for processing-); nuclear reactors; oil-scrubbing apparatus; ornamental fountains; oven fittings made of fireclay; ovens (shaped fittings for-); pipe line cocks [spigots]; pipes [parts of sanitary installations]; polymerisation installations; pouches (disposable sterilization-); processing installations for fuel and nuclear moderating material; purification installations for sewage; radiator caps; reactors (nuclear-); refining towers for distillation; reflectors (lamp-); regulating accessories for water or gas apparatus and pipes; regulating and safety accessories for gas apparatus; regulating and safety accessories for gas pipes; regulating and safety accessories for water apparatus; safety accessories for water or gas apparatus and pipes; scrubbers [parts of gas installations]; seats (toilet-); sewage (purification installations for-); sockets for electric lights; soldering lamps; stacks (flare-)for use in oil refineries; structural plates for ovens; tanning apparatus [sun beds]; taps [cocks, spigots] [faucets (am)] for pipes; taps [faucets ]; thermostatic valves [parts of heating installations]; toilet seats; ultraviolet ray lamps, not for medical purposes; valves (level controlling-) in tanks; valves (thermostatic-) [parts of heating installations]; vehicles (anti-dazzle devices for-) [lamp fittings]; washers for water taps; water or gas apparatus and pipes (regulating accessories for-); water or gas apparatus and pipes (safety accessories for-); water-pipes for sanitary installations; anti-dazzle devices for automobiles [lamp fittings]; automobiles (anti-dazzle devices for) [lamp fittings]; vehicles (anti-dazzle devices for) [lamp fittings]; filters for air conditioning; lamp globes.

Class 35: Advertising; business management; business administration; office functions; retail services and online retail services connected with chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; with the

exception of gases for industrial purposes, unprocessed artificial resins, unprocessed plastics, manures, fire extinguishing compositions, tempering and soldering preparations, chemical substances for preserving foodstuffs, tanning substances, adhesives used in industry, paints, varnishes, lacquers, preservatives against rust and against deterioration of wood, colorants, mordants, raw natural resins, metals in foil and powder form for painters, decorators, printers and artists, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, industrial oils and greases, lubricants, dust absorbing, wetting and binding compositions, fuels (including motor spirit) and illuminants, candles and wicks for lighting, pharmaceutical and veterinary preparations; except gases for medical purposes, sanitary preparations for medical purposes, dietetic substances adapted for medical use, food for babies, plasters, materials for dressings, material for stopping teeth, dental wax, disinfectants, preparations for destroying vermin, fungicides, herbicides, common metals and their alloys, metal building materials, transportable buildings of metal, materials of metal for railway tracks, non-electric cables and wires of common metal, ironmongery, small items of metal hardware, pipes and tubes of metal, safes, goods of common metal not included in other classes, ores, badges, signs, machines and machine tools, motors and engines (except for land vehicles), machine coupling and transmission components (except for land vehicles), agricultural implements other than hand-operated, incubators for eggs, hand tools and implements (hand operated), cutlery, side arms, razors, shaving and personal grooming accessories, hair trimmers, 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, surgical, medical, dental and veterinary apparatus and instruments; except apparatus or instruments which administer, control or monitor the supply of gases for medical purposes, artificial limbs, eyes and teeth, orthopedic articles, suture materials, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying,

ventilating, water supply and sanitary purposes, vehicles, apparatus for locomotion by land, air or water, firearms, ammunition and projectiles, explosives, fireworks, precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes, jewellery, precious stones, horological and chronometric instruments, keyrings, cufflinks, musical instruments, paper, cardboard and goods made from these materials, printed matter, book binding material, photographs, stationery, adhesives for stationery or household purposes, artists' materials, paint brushes, typewriters and office requisites (except furniture), instructional and teaching material (except apparatus), plastic materials for packaging, printers' type, printing blocks, books, calendars, cards, catalogues, programmes, writing paper, envelopes, pads, notebooks, diaries, greeting cards, magazines, pamphlets, pens, pencils, postcards, posters, decalcomanias, stickers, tickets, beer mats, coasters of paper and cardboard, napkins of paper, tissues and towels of paper, bags of paper and/or plastic material, rubber, gutta-percha, gum, asbestos, mica and goods made from these materials and not included in other classes, plastics in extruded form for use in manufacture, packing, stopping and insulating materials, flexible pipes, not of metal, leather and imitations of leather, and goods made of these materials, animal skins, hides, trunks and travelling bags, umbrellas, parasols and walking sticks, whips, harness and saddlery, building materials (non-metallic), non-metallic rigid pipes for building, asphalt, pitch and bitumen, non-metallic transportable buildings, monuments, not of metal, furniture, mirrors, picture frames, goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics, household or kitchen utensils and containers (not of precious metal or coated therewith), combs and sponges, brushes (except paint brushes), brush-making materials, articles for cleaning purposes, steel wool, un-worked or semi-worked glass (except glass used in building), glassware, porcelain and earthenware, table mats, mugs, beer mugs, bottle openers, buckets, champagne buckets, ice buckets, coasters, cocktail stirrers, corkscrews, drinking glasses, shakers, tankards, toothbrushes, plastic water bottles, tableware, money boxes, ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes), padding and stuffing materials (except of rubber or plastics), raw fibrous textile materials, yarns and threads, for textile use, textiles and textile goods, bed and table covers, clothing, footwear, headgear, shirts, t-shirts, sweatshirts, skirts, jogging suits, trousers, jeans, pants, shorts, rainwear, cloth bibs, blouses, sweaters, jackets, coats, jumpers, gloves, neckties, scarves, hats, caps, sunvisors, boots, slippers, sneakers, sandals, shoes, lace and embroidery, ribbons and braid, buttons, hooks and eyes, pins and needles, artificial flowers, carpets, rugs, mats and matting, linoleum and other materials for covering existing floors, wall hangings (non-textile), games and playthings, gymnastic and sporting articles, decorations for Christmas trees, meat, fish, poultry and game, meat extracts, preserved, frozen, dried and cooked fruits and vegetables, jellies, jams, compotes, eggs, milk and milk products, edible oils and fats, coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, flour and preparations made from cereals, bread, pastry and confectionery, ices, honey, treacle, yeast, baking-powder, salt, mustard, vinegar, sauces (condiments), spices, ice, agricultural, horticultural and forestry products and grains not included in other classes, live animals, fresh fruits and vegetables, seeds, natural plants and flowers, foodstuffs for animals, malt, beers,

mineral and aerated waters and other non-alcoholic drinks, fruit drinks and fruit juices, syrups and other preparations for making beverages, alcoholic beverages (except beers), tobacco, smokers' articles, matches; 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 relating to the aforesaid services provided over a telecommunications network; Advertising space (rental of-); advice for consumers (commercial information and-) [consumer advice shop]; Auctioneering; business investigations; business research; commercial information agencies; commercial information and advice for consumers [consumer advice shop]; communication media (presentation of goods on-), for retail purposes; comparison services (price -); consumers (commercial information and advice for -)[consumer advice shop]; economic forecasting; evaluation of standing timber; evaluation of standing timber; evaluation of wool; exhibitions (organization of-) for commercial or advertising purposes; forecasting (economic-); grading of wool; import-export agencies; information agencies (commercial-); investigations (business-); marketing research; marketing studies; modelling for advertising or sales promotion; news clipping services; office machines and equipment rental; office machines and equipment rental; office machines and equipment rental; opinion polling; organization of exhibitions for commercial or advertising purposes; organization of trade fairs for commercial or advertising purposes; polling (opinion-); presentation of goods on communication media, for retail purposes; price comparison services; procurement services for others [purchasing goods and services for other businesses]; psychological testing for the selection of personnel; public relations; publicity material rental; rental (office machines and equipment-); rental (publicity material-); rental of advertising space; rental of advertising time on communication media; rental of photocopying machines; rental of vending machines; research (business-); retail purposes (presentation of goods on communication media, for-); shop window dressing; sponsorship search; timber (evaluation of standing-); timber (evaluation of standing-); trade fairs (organization of-) for commercial or advertising purposes; valuation of standing timber; vending machines (rental of-); psychological testing for the selection of personnel.

Class 36: Insurance; financial affairs; monetary affairs; real estate affairs; 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 in relation to the aforesaid services provided over a telecommunications network; charitable fund raising; collections (organization of-); consultancy (financial-); consultancy (insurance-); deposits of valuables; financial consultancy; financial information; financial sponsorship; fund raising (charitable-); information (financial-); information (insurance-); insurance consultancy; insurance information; organization of collections; safe deposit services; sponsorship (financial-); valuables (deposits of-).

Class 42: Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; IT services; computer programming services; services of a

programmer; recovery of computer data; consultancy in the field of computer hardware; computer programming; duplication of computer programs; computer rental; computer software design; installation of computer software; maintenance of computer software; updating of computer software; rental of computer software; rental of computer hardware; computer system design; computer systems analysis; consultancy in the field of computer software; conversion of data or documents from physical to electronic media; creating and maintaining websites for others; data conversion of computer programs and data (not physical conversion); hosting computer sites (web sites); services of engineers; expert advice and expert opinion relating to technology; rental of data processing apparatus and computers; technical services relating to projection and planning of equipment for telecommunications; services of information brokers and providers, namely product research for others; weather forecasting; research in the field of telecommunication technology; monitoring of network systems in the field of telecommunications; 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; technical support services relating to telecommunications and apparatus; information and advisory services in relation to the aforesaid services provided over a telecommunications network; Authenticating works of art; cloud seeding; computer hardware (consultancy in the field of-); computer rental; conversion of data or documents from physical to electronic media; design services (packaging-); designing (dress-); dress designing; graphic arts designing; packaging design; rental of computer software; rental of web servers.

Class 44: Medical services; veterinary services: hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry 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 in relation to the aforesaid services provided over a telecommunications network; design (landscape-); flower arranging; landscape design; pharmacists' services to make up prescriptions; pharmacy advice; rental of sanitation facilities; wreath making; farming equipment rental.

#### **UK trade mark 2279371**

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.

#### **EUTM 15167307**

Class 5: Dietetic food and substances adapted for medical or veterinary use, food for babies; dietary supplements for humans and animals; plasters, materials for dressings; material for stopping teeth, dental wax; preparations for destroying vermin; fungicides, herbicides; adhesive plasters; alcohol for pharmaceutical purposes; analgesics; babies'

diapers [napkins]; bacterial preparations for medical and veterinary use; bandages for dressings; biological preparations for medical purposes; biological preparations for veterinary purposes; chewing gum for medical purposes; compresses; cotton for medical purposes; cotton sticks for medical purposes; deodorants for clothing and textiles; dietetic beverages adapted for medical purposes; dietetic foods adapted for medical purposes; dietetic substances adapted for medical use; herbal teas for medicinal purposes; insecticides; mineral food supplements; nutritional supplements; sanitary pads; sanitary tampons; sanitary towels; tissues impregnated with pharmaceutical lotions; tobacco-free cigarettes for medical purposes; vitamin preparations.

Class 10: Surgical, medical, dental and veterinary apparatus and instruments; artificial limbs, eyes and teeth; orthopaedic articles; suture materials; condoms; contraceptives, non-chemical; cushions for medical purposes; diagnostic apparatus for medical purposes; feeding bottles; furniture especially made for medical purposes; gloves for medical purposes; ice bags for medical purposes; knee bandages, orthopaedic; massage apparatus; nursing appliances; orthodontic appliances; orthopaedic footwear; orthopaedic soles; physical exercise apparatus, for medical purposes; physiotherapy apparatus; plaster bandages for orthopaedic purposes; pulse meters; pumps for medical purposes; sex toys; splints, surgical; stretchers, wheeled; supportive bandages; surgical implants comprised of artificial materials; syringes for medical purposes; teething rings; teeth protectors for dental purposes; testing apparatus for medical purposes; thermal packs for first aid purposes; thermometers for medical purposes; parts and fittings for all the aforesaid goods.

Class 11: Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes; air conditioning apparatus; air cooling apparatus; air deodorising apparatus; air purifying apparatus and machines; barbecues; bath fittings; bath installations; beverage cooling apparatus; bicycle lights; burners; coffee machines, electric; cooking utensils, electric; cooling appliances and installations; disinfectant apparatus; drying apparatus; drying apparatus and installations; electric fans for personal use; electric lamps; electric lights for Christmas trees; fans [air-conditioning]; flares; hair dryers; hand drying apparatus for washrooms; heating apparatus; ice machines and apparatus; kettles, electric; lamps; lanterns for lighting; lamp shades; lighters; pocket torches, electric; torches for lighting; vehicle headlights; vehicle reflectors; parts and fittings for all the aforesaid goods.

Class 37: Building construction; installation, maintenance and repair of telecommunications installations, communications networks, computer networks and data networks; installation, maintenance and repair of telecommunications apparatus and equipment; installation, maintenance and repair of computer hardware; electric appliance installation and repair; machinery installation, maintenance and repair; photographic apparatus repair; telephone installation and repair; 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 relating to the aforesaid services provided over a telecommunications network.

Class 40: Bookbinding; cloth cutting; clothing alteration; custom tailoring; decontamination of hazardous materials; destruction of waste and trash; dressmaking; dyeing services; engraving; fabric waterproofing; food and drink preservation; framing of works of art; galvanization; grinding; key cutting; laminating; leather working; material treatment information; metal treating; paper treating; photographic printing; printing; production of energy; recycling of waste and trash; refining services; rental of air conditioning apparatus; soldering; textile treating; waste treatment [transformation]; welding services; woodworking; 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 relating to the aforesaid services provided over a telecommunications network.