

O-277-20

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION NO. 3259395
BY WE BUY TEK LIMITED TO REGISTER THE TRADE
MARK**



IN CLASSES 9 AND 35

**AND IN THE MATTER OF OPPOSITION THERETO UNDER NO. 411031 BY
GROUP CEX LIMITED**

AND

**IN THE MATTER OF REGISTRATION NO. 3139077 IN THE NAME OF GROUP
CEX LIMITED IN RESPECT OF THE TRADE MARK IN CLASSES 9 AND 41**

WEBUY.COM

**AND AN APPLICATION FOR A DECLARATION OF INVALIDITY THERETO
UNDER NO. 502386 BY WE BUY TEK LIMITED**

Background and pleadings

1) These proceedings relate to an opposition against a trade mark application and an application for invalidation against the earlier trade mark registration relied upon in the opposition. The contested application in the opposition was filed by We Buy Tek Limited (“Party B”) and the relevant details of that application are shown below:

Application No.	3259395
Mark:	
Filing Date:	26 September 2017
List of goods and services:	
	Class 9: <i>Mobile phones</i>
	Class 35: <i>Provision of an on-line marketplace for buyers and sellers of goods and services.</i>

2) The application is opposed by Group CEX Limited (“Party A”). The grounds of opposition are sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”) and the first two of these grounds are based upon the following registration:

Registration No.	3139077
Mark:	WEBUY.COM
Filing Date:	3 December 2015
Registration Date:	29 April 2016

3) Party A relies on all the goods and services in the registration that variously fall into classes 3, 9, 14, 18, 21, 25, 35, 36 and 45. A full list of these is provided in an annex to this decision. The pleadings relating to each ground are:

Section 5(2)(b): the contested goods and services are identical or similar to the goods and services of the earlier mark; the WE BUY element of the contested mark are identical to the first and dominant element of the earlier mark; because of the get-up of Party A's mark, the WE BUY element is the dominant and distinctive part of its mark; the conclusion is that there is a likelihood of confusion.

Section 5(3): Party A's mark enjoys a substantial reputation with approximately 10 years use and with over 600 stores in the UK; Party A's customers are likely to believe that there is a connection between the parties; use of Party B's mark will take unfair advantage of or be detrimental to the distinctive character or repute of Party A's mark, leading to free-riding, tarnishment and dilution.

Section 5(4)(a): Party A enjoys a long-standing and substantial goodwill and reputation; use of Party B's mark would be a misrepresentation calculated to damage Party A's goodwill.

4) Party B subsequently applied to invalidate Party A's earlier mark relied upon in the opposition. The grounds for invalidation are:

Section 3(1)(b): the English words WE BUY have a clear meaning providing an immediate message to the consumer and the mark is, therefore, incapable of distinguishing goods and services of one undertaking from another; the mark is a mere promotional message and will not be perceived as a trade mark; the mark is a banal slogan with a clear and laudatory message.

Section 3(1)(c): the words WE BUY describe immediately and obviously the services or at least characteristics of the services in Class 35; for the remaining classes, the mark will serve to describe characteristics, namely, goods that Party A will "buy".

5) The parties both filed counterstatements denying each other's respective claims.

6) The parties both filed evidence and written submissions in these proceedings. The evidence will be summarised to the extent that it is considered necessary and I will keep the submissions in mind. A Hearing took place on 25 February 2020, with Party A represented by Ian Silcock of Council, instructed by Birkett Long LLP and Party B represented by Andrew Marsden for Wilson Gunn.

Party B's Evidence

7) Party B's evidence takes the form of a witness statement by Mr Marsden in his capacity as Trade Mark Attorney of Wilson Gunn LLP and Party B's representative.

Party A's evidence

8) This takes the form of a two witness statements by Frank Orchard, Director of Party A.

DECISION

Approach

9) Party A's opposition (insofar as it relies upon section 5(2)(b) and section 5(3)) relies upon a single earlier mark that is the subject of Party B's invalidation action. Therefore, the invalidation proceedings have the potential to impact upon the opposition and, consequently, I will begin by considering the invalidation proceedings.

Party B's Invalidation proceedings

10) In respect of invalidation proceedings, grounds based upon section 3(1) of the Act are relevant because of the provisions set out in section 47 of the Act, the relevant parts being as follows:

“47. - (1) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 3 or any of the

provisions referred to in that section (absolute grounds for refusal of registration).

[...]

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made.

Provided that this shall not affect transactions past and closed.

Section 3(1)(c)

11) Section 3(1)(c) reads:

“3. - (1) The following shall not be registered -

(a) ...

(b) ...

(c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services,

(d) ...

Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.”

12) The case law under section 3(1)(c) (corresponding to article 7(1)(c) of the EUTM Regulation, formerly article 7(1)(c) of the CTM Regulation) was set out by Arnold J.

in *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2012] EWHC 3074 (Ch) as follows:

“91. The principles to be applied under art.7(1)(c) of the CTM Regulation were conveniently summarised by the CJEU in *Agencja Wydawnicza Technopol sp. z o.o. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-51/10 P) [2011] E.T.M.R. 34 as follows:

“33. A sign which, in relation to the goods or services for which its registration as a mark is applied for, has descriptive character for the purposes of Article 7(1)(c) of Regulation No 40/94 is – save where Article 7(3) applies – devoid of any distinctive character as regards those goods or services (as regards Article 3 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40 , p. 1), see, by analogy, [2004] ECR I-1699 , paragraph 19; as regards Article 7 of Regulation No 40/94 , see *Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) v Wm Wrigley Jr Co* (C-191/01 P) [2004] 1 W.L.R. 1728 [2003] E.C.R. I-12447; [2004] E.T.M.R. 9; [2004] R.P.C. 18, paragraph 30, and the order in *Streamserve v OHIM* (C-150/02 P) [2004] E.C.R. I-1461, paragraph 24).

36. ... due account must be taken of the objective pursued by Article 7(1)(c) of Regulation No 40/94. Each of the grounds for refusal listed in Article 7(1) must be interpreted in the light of the general interest underlying it (see, inter alia, *Henkel KGaA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-456/01 P) [2004] E.C.R. I-5089; [2005] E.T.M.R. 44, paragraph 45, and *Lego Juris v OHIM* (C-48/09 P), paragraph 43).

37. The general interest underlying Article 7(1)(c) of Regulation No 40/94 is that of ensuring that descriptive signs relating to one or more characteristics of the goods or services in respect of which registration as a mark is sought may be freely used by all traders offering such

goods or services (see, to that effect, *OHIM v Wrigley*, paragraph 31 and the case-law cited).

38. With a view to ensuring that that objective of free use is fully met, the Court has stated that, in order for OHIM to refuse to register a sign on the basis of Article 7(1)(c) of Regulation No 40/94, it is not necessary that the sign in question actually be in use at the time of the application for registration in a way that is descriptive. It is sufficient that the sign could be used for such purposes (*OHIM v Wrigley*, paragraph 32; *Campina Melkunie*, paragraph 38; and the order of 5 February 2010 in *Mergel and Others v OHIM* (C-80/09 P), paragraph 37).

39. By the same token, the Court has stated that the application of that ground for refusal does not depend on there being a real, current or serious need to leave a sign or indication free and that it is therefore of no relevance to know the number of competitors who have an interest, or who might have an interest, in using the sign in question (*Joined Cases C-108/97 and C-109/97 Windsurfing Chiemsee [1999] ECR I-2779*, paragraph 35, and *Case C-363/99 Koninklijke KPN Nederland [2004] ECR I-1619*, paragraph 38). It is, furthermore, irrelevant whether there are other, more usual, signs than that at issue for designating the same characteristics of the goods or services referred to in the application for registration (*Koninklijke KPN Nederland*, paragraph 57).

And

46. As was pointed out in paragraph 33 above, the descriptive signs referred to in Article 7(1)(c) of Regulation No 40/94 are also devoid of any distinctive character for the purposes of Article 7(1)(b) of that regulation. Conversely, a sign may be devoid of distinctive character for the purposes of Article 7(1)(b) for reasons other than the fact that it may be descriptive (see, with regard to the identical provision laid down

in Article 3 of Directive 89/104, *Koninklijke KPN Nederland*, paragraph 86, and *Campina Melkunie*, paragraph 19).

47. There is therefore a measure of overlap between the scope of Article 7(1)(b) of Regulation No 40/94 and the scope of Article 7(1)(c) of that regulation (see, by analogy, *Koninklijke KPN Nederland*, paragraph 67), Article 7(1)(b) being distinguished from Article 7(1)(c) in that it covers all the circumstances in which a sign is not capable of distinguishing the goods or services of one undertaking from those of other undertakings.

48. In those circumstances, it is important for the correct application of Article 7(1) of Regulation No 40/94 to ensure that the ground for refusal set out in Article 7(1)(c) of that regulation duly continues to be applied only to the situations specifically covered by that ground for refusal.

49. The situations specifically covered by Article 7(1)(c) of Regulation No.40/94 are those in which the sign in respect of which registration as a mark is sought is capable of designating a 'characteristic' of the goods or services referred to in the application. By using, in Article 7(1)(c) of Regulation No 40/94, the terms 'the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service', the legislature made it clear, first, that the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service must all be regarded as characteristics of goods or services and, secondly, that that list is not exhaustive, since any other characteristics of goods or services may also be taken into account.

50. The fact that the legislature chose to use the word 'characteristic' highlights the fact that the signs referred to in Article 7(1)(c) of Regulation No 40/94 are merely those which serve to designate a property, easily recognisable by the relevant class of persons, of the

goods or the services in respect of which registration is sought. As the Court has pointed out, a sign can be refused registration on the basis of Article 7(1)(c) of Regulation No 40/94 only if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of those characteristics (see, by analogy, as regards the identical provision laid down in Article 3 of Directive 89/104, *Windsurfing Chiemsee*, paragraph 31, and *Koninklijke KPN Nederland*, paragraph 56).”

92. In addition, a sign is caught by the exclusion from registration in art.7(1)(c) if at least one of its possible meanings designates a characteristic of the goods or services concerned: see *OHIM v Wrigley* [2003] E.C.R. I-12447 at [32] and *Koninklijke KPN Nederland NV v Benelux-Merkenbureau* (C-363/99 [2004] E.C.R. I-1619; [2004] E.T.M.R. 57 at [97].”

13) I also note that section 3(1)(c) pursues an aim which reflects the public interest in ensuring that descriptive signs or indications may be freely used by all¹. I also note that a descriptive word or words combined with “.COM” may be caught by the provisions of section 3(1)(c)².

14) Mr Marsden’s evidence includes extracts from the UKIPO’s manual on examination practice³. Whilst the manual is not binding upon me, I note that it states that top level domain names such as “.com” “are considered to be totally non-distinctive”. It goes on to note that

“... domain names presented in their entirety ... can be registered as trade marks provided that they are distinctive in totality. As a general rule, one should consider whether the remainder of the mark ... is descriptive or non-distinctive. If so, there is likely to be an objection under sections 3(1)(b) and (c)”

¹ *Wm Wrigley Jr v OHIM (Doublemint)*, C-191/01P, para 31

² See *salesforce.com v EUIPO*, Case T-134/15

³ Provided at Exhibit AM1

15) The manual references “cars.com” and “www.soap.com” as examples of unacceptable marks. In its written submissions, Party B claims that Party A’s mark falls into the same category of these marks. These internet addresses describe the provision of cars/soap online. It submits that the contested mark falls into the same category because Party A’s services are self-evidently the buying of third party goods. Party A points to the fact that its mark is registered and that no objection was raised during examination of the application to register the mark. Further, it points out that its mark is registered in a number of territories around the world.

16) Party A’s submissions have no impact upon my considerations because:

- (i) I must evaluate the mark independently of the assessment undertaken by the examiner during the registration process, and;
- (ii) I am not aware of the circumstances surrounding registration of the mark in other parts of the world.

17) Whilst Party A’s submissions fail to assist its case, I am not persuaded by Party B submissions. Mr Marsden further submitted that the absence of a space between the words “WE” and “BUY” does not assist, claiming that the term is a “simple, direct and obvious reference” to Party A’s activities, namely the services of buying goods (and services) from customers. I accept that the absence of the space between the words “WE” and “BUY” will have no impact upon the impression created by the mark, but I am not persuaded by the second limb of this submission.

18) The use of the pronoun “WE” is a reference to the goods or services provider and not to a characteristic of those goods and services. Further, the term WEBUY presents as an incomplete statement leaving a question in the mind of the consumer as to what is bought or sold. Finally, combining this term with the high level domain name “.COM” has the effect of highlighting the incomplete nature of the term WEBUY. Whilst the mark, when viewed as whole, alludes to the user of the mark providing a buying service, its construction and content is such as to be sufficient, when combined with the high-level domain name “.COM”, to create a sign that is not likely to be perceived as a description of a characteristic of goods or services. I agree with Mr Silcock when he submitted that the mark, when viewed as a whole, is

“syntactically unusual”. Taking all of this together, I reject Mr Marsden’s submission that the mark is a “simple, direct and obvious reference” to Party A’s activities.

19) I conclude that the grounds fails insofar as they are based upon section 3(1)(c) of the Act.

Section 3(1)(b)

20) Section 3(1)(b) states:

“3. - (1) The following shall not be registered -

(a) ...

(b) trade marks which are devoid of any distinctive character,

...

Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.”

21) The principles to be applied under article 7(1)(b) of the CTM Regulation (which is now article 7(1)(b) of the EUTM Regulation, and is identical to article 3(1)(b) of the Trade Marks Directive and s.3(1)(b) of the Act) were conveniently summarised by the CJEU in *OHIM v BORCO-Marken-Import Matthiesen GmbH & Co KG* (C-265/09 P) as follows:

“29..... the fact that a sign is, in general, capable of constituting a trade mark does not mean that the sign necessarily has distinctive character for the purposes of Article 7(1)(b) of the regulation in relation to a specific product or service (Joined Cases C-456/01 P and C-457/01 P *Henkel v OHIM* [2004] ECR I-5089, paragraph 32).

30. Under that provision, marks which are devoid of any distinctive character are not to be registered.

31. According to settled case-law, for a trade mark to possess distinctive character for the purposes of that provision, it must serve to identify the product in respect of which registration is applied for as originating from a particular undertaking, and thus to distinguish that product from those of other undertakings (*Henkel v OHIM*, paragraph 34; Case C-304/06 P *Eurohypo v OHIM* [2008] ECR I-3297, paragraph 66; and Case C-398/08 P *Audi v OHIM* [2010] ECR I-0000, paragraph 33).

32. It is settled case-law that that distinctive character must be assessed, first, by reference to the goods or services in respect of which registration has been applied for and, second, by reference to the perception of them by the relevant public (*Storck v OHIM*, paragraph 25; *Henkel v OHIM*, paragraph 35; and *Eurohypo v OHIM*, paragraph 67). Furthermore, the Court has held, as OHIM points out in its appeal, that that method of assessment is also applicable to an analysis of the distinctive character of signs consisting solely of a colour per se, three-dimensional marks and slogans (see, to that effect, respectively, Case C-447/02 P *KWS Saat v OHIM* [2004] ECR I-10107, paragraph 78; *Storck v OHIM*, paragraph 26; and *Audi v OHIM*, paragraphs 35 and 36).

33. However, while the criteria for the assessment of distinctive character are the same for different categories of marks, it may be that, for the purposes of applying those criteria, the relevant public's perception is not necessarily the same in relation to each of those categories and it could therefore prove more difficult to establish distinctiveness in relation to marks of certain categories as compared with marks of other categories (see Joined Cases C-473/01 P and C-474/01 P *Proctor & Gamble v OHIM* [2004] ECR I-5173, paragraph 36; Case C-64/02 P *OHIM v Erpo Möbelwerk* [2004] ECR I-10031, paragraph 34; *Henkel v OHIM*, paragraphs 36 and 38; and *Audi v OHIM*, paragraph 37)."

22) Mr Marsden submitted that the elements "WEBUY" and ".COM" are both non-distinctive and the totality will be perceived as simply a domain name address. As mentioned in paragraph 14, above, Party B's evidence includes extracts from the

Registry's Work Manual⁴. The manual refers to the findings of the CJEU in *PHOTOS.COM*, C-70/13, the general points from which can be summarised as:

- (i) It is appropriate to examine the word sign PHOTOS.COM as a whole;
- (ii) Marks of this type may, in part, be assessed by reference to its separate elements that can then be factored into the appraisal of the composite whole;
- (iii) The mere fact that the individual element are devoid of any distinctive character does not mean that, in combination, they cannot present a distinctive character.

23) The CJEU went on to find that the combining of the non-distinctive word "PHOTOS" and ".COM" does not create a distinctive whole. Therefore, when applying the guidance to the current case, the correct assessment is not what ".com" adds but what it creates when added to the words "WEBUY".

24) Mr Silcock referred to the comments of the General Court ("the GC")⁵ where it stated that the mere fact that a mark is also a domain name does not mean that it must be devoid of distinctive character nor that it cannot function as a trade mark. I do not understand the other side to be challenging this.

25) Each case must be judged on its merits. In the current case, I accept that the element ".com" immediately informs the relevant public that the mark is referring to an internet address and is, consequently, devoid of any distinctive character. The first element is the conjoined words "WEBUY". I have already acknowledged that the conjoining of the two words does not create something more than the sum of these two words and does not impact upon the impression created by the mark as a whole. This is especially so when it is kept in mind that internet addresses are commonly presented in a conjoined way. Nevertheless, as already noted, the use of the pronoun "we" together with the word "buy" creates a term that strikes as being

⁴ Exhibit AM1

⁵ In *Getty Images (US), Inc v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-338/11.

incomplete and leaves the reader to wonder “we buy what?”. This characteristic together with the use of the pronoun “we” elevates the phrase above the purely non-distinctive. Again, as already noted, when this is combined with the “.com” element the incompleteness of the statement is highlighted because instead of “we buy” being followed by an indication of what is being bought, it is followed by something unrelated to the term, namely, a high level domain name.

26) The phrase “we buy” when it is combined with the “.com” element, creates a whole that is, as Mr Silcock described, syntactically unusual. I agree with his submission that the mark “cannot be fairly be regarded as falling within the same category as marks/domain names such as CARS.COM or SOAP.COM.” This is because SOAP and CARS are wholly descriptive and non-distinctive. According to the law relating to section 3(1)(b)⁶, it is appropriate to consider whether the mark would be understood by the relevant public as being origin neutral or origin specific in relation to the products concerned. The mark at issue here, because of its characteristics identified above, functions as a sign that is origin specific.

27) I find that the relevant public will be able to distinguish the goods and services covered by Party A’s mark from the goods and services of third parties. The fact that the relevant public will also perceive the sign as an internet address does not disrupt such a finding. This is so, even where the relevant public is no more than reasonably attentive.

28) Mr Marsden’s evidence also included numerous extracts from the UK register showing trade mark registrations that incorporate the words “We buy” in an attempt to illustrate that the phrase is non-distinctive. As Mr Silcock pointed out at the hearing, such “state of the register” evidence is irrelevant because it sheds no light on how or if the marks are used in the market place, nor is it known what the circumstances were that led to their registration⁷.

⁶ Mr Silcock directed me to the summary of the law set out by Prof. Ruth Annand, sitting as the Appointed Person in *Mariage Frères SA v TWG Tea Company Pte Ltd*, BL O-146-19

⁷ See *British Sugar Plc v James Robertson & Sons Ltd* [1996] RPC 281 at p. 305

29) Mr Marsden's Exhibit AM4 consists of a letter from the EUIPO in respect of Party A's attempt to register its mark as an EU trade mark. The EUIPO found that the mark was *prima facie* non-distinctive. I note this, but I am not bound by decisions of the EUIPO and for the reasons set out above, find that the mark has the necessary level of distinctive character. This distinctive character may only be very low (and I will discuss the implications of this later), but it is sufficient for the purposes of defeating the ground based upon section 3(1)(b).

30) In summary, I find that Party B's application for invalidation fails, insofar as it relates to grounds based upon section 3(1)(b) of the Act.

Acquired distinctive character

31) I have found that Party B's invalidation fails in respect of both grounds based upon section 3(1)(b) and section 3(1)(c). Consequently, it is not necessary that I consider Party A's fallback position that its mark has acquired distinctive character by reason of the use made of it.

Party A's opposition

32) Party A's mark has survived Party B's invalidation action and it can, therefore, be relied upon as an earlier mark for the purposes of sections 5(2)(b) and 5(3) of the Act. I now consider Party A's opposition relying upon this earlier mark.

Section 5(2)(b)

33) Section 5(2)(b) states:

“5. - (1) ...

(2) A trade mark shall not be registered if because –

(a) ...

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

Comparison of goods and services

34) In the judgment of the Court of Justice of the European Union (“the CJEU”) in *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, Case C-39/97, the court stated at paragraph 23 of its judgment that:

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

35) The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the

goods or services in the same or different sectors.

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

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

Class 9

37) Party B’s specification is in respect of the single term *mobile phones*. The same term is present in Party A’s Class specification. The respective goods are identical.

Class 35

38) Party B’s specification is in respect of the following:

Provision of an on-one marketplace for buyers and sellers of goods and services

39) Party A’s Class 35 specification includes the following services:

*compilation of advertisements for the use as web pages on the Internet;
presentation of goods on communications media for retail purposes;
advertising and information distribution services namely providing classified advertising space via a global computer network; promoting the goods and services of others over the Internet*

40) Although expressed in different terms to Party B’s services, Party A’s terms describe services that can include online marketplaces for goods and services and,

therefore, when applying the guidance in *MERIC* the respective services are identical.

41) These findings are accepted by Party B in its counterstatement⁸

Comparison of marks


42) It is clear from *Sabel BV v. Puma AG*, Case C-251/95 (particularly paragraph 23), Case C-251/95, that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

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

44) The respective marks are:

⁸ Under “Section 5(2)(b)”, para 2

Party B's mark	Party A's mark
WEBUY.COM	

45) Party B's mark consists of the words "WE" and "BUY" conjoined and appearing directly before the high level domain name ".COM". As discussed earlier, the ".COM" merely indicates that the mark consists of an internet address and the absence of a space between the words "WE" and "BUY" does not create any additional distinctive character. Whilst the distinctive character of "WEBUY" alone is very low, I find that the distinctive character of the mark resides in the combination of this term and the ".COM" element. Party A's mark consists of an internet address and a device that, in context, is likely to be perceived as an electronic device such as a mobile phone. The mark is presented in such a way as to have three distinct visual elements. The first is the words WE and BUY conjoined, the second is the words "TEK.CO.UK" in white letters placed in a blue rectangular background and the third is the device. This get-up contributes to the distinctive character of the mark. The distinctive character of the verbal elements is only low, but none the less, it is these two elements that are dominant to an equal measure within the mark.

46) Visually, both marks present as internet addresses and both share the conjoined words "WEBUY". They differ in that the get-up of Party A's mark is absent in Party B's mark as is the device. Further, they differ in that they include different high level domain names, namely ".COM" and ".CO.UK" respectively. As I noted above the get-up of Party A's mark results in the conjoined "WEBUY" forming one of three visual elements. Taking all of this into account, I conclude that they share a medium level of visual similarity.

47) Aurally, the marks are both likely to be referred to as the internet addresses “we buy dot com” and “we buy tech dot co dot uk”. Consequently, they share the same first two syllables and the third syllable of Party B’s mark also occurs in Party A’s mark (as the fourth and sixth syllables). However, they are different in length, one containing four syllables, the other seven. The get-up of Party A’s mark will not contribute to its aural characteristics. Taking all of this into account, I conclude that they share a medium level of aural similarity.

48) Conceptually, both marks present as an internet address, albeit with different high-level domain names. The “.co.uk” high-level domain name carries with it a message that the trader is a UK company. The “.com” high level domain name carries with it a message that the trader is a company, but any indication to location is absent. The presence of the high-level domain names identifies both marks as referring to online traders. Party B’s mark creates a general message that the trader buys things. Party A’s mark imparts a similar but more focussed message that the trader buys tech(nology). This is reinforced by the device of a technological item, possibly a mobile phone. Taking account of these similarities and differences, I conclude that the respective marks share a medium level of conceptual similarity.

Average consumer and the purchasing act

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

50) 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.”

51) The relevant respective goods, namely, mobile phones are goods commonly purchased by the general public. Whilst they are not every day purchases, they are often purchased at regular intervals when contracts expire. There is often a slightly heightened level of care and attention to ensure that a mobile phone has the desired functions and features. The relevant respective services are also commonly used by the general public to purchase goods and services online. The level of care and attention when considering which online services to use is not likely to be any lower or higher than normal. The purchasing process for both these goods and services is likely to be primarily visual in nature, but I do not discount that aural considerations may play a part.

Distinctive character of Party A’s earlier mark

52) In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically

widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

53) Part A’s mark consists of the internet address WEBUY.COM. The “WEBUY” element indicates, in a general sense, what the trader does. The addition of the high-level domain name merely places these services online. Therefore, the WEBUY element has only a very low level of distinctive character. When joined to the “.COM” element, it creates a mark endowed with a low level of inherent distinctive character.

54) Party A submits that its mark also benefits from an enhanced level of distinctive character associated with its extensive reputation as a high street brand. Its evidence illustrates that:

- It has been trading since 1992⁹;
- It operates under its company name and the mark CEX¹⁰;
- Its primary services are the buying, selling and exchanging of technology and entertainment products¹¹;
- It is a market leader in terms of both turnover and number of stores¹² with there being more than 350 stores across the UK¹³;
- Turnover in the UK are expressed as “not less than” £94 million to “not less than” £134 million in the years 2012/13 to 2016/17¹⁴. Marketing and advertising expenditure over the same period has ranged between not less than £914,000 and not less than £2.2 million¹⁵;

⁹ Mr Orchard’s first witness statement, para 2

¹⁰ Ditto, para 3

¹¹ Ditto

¹² Ditto, para 4

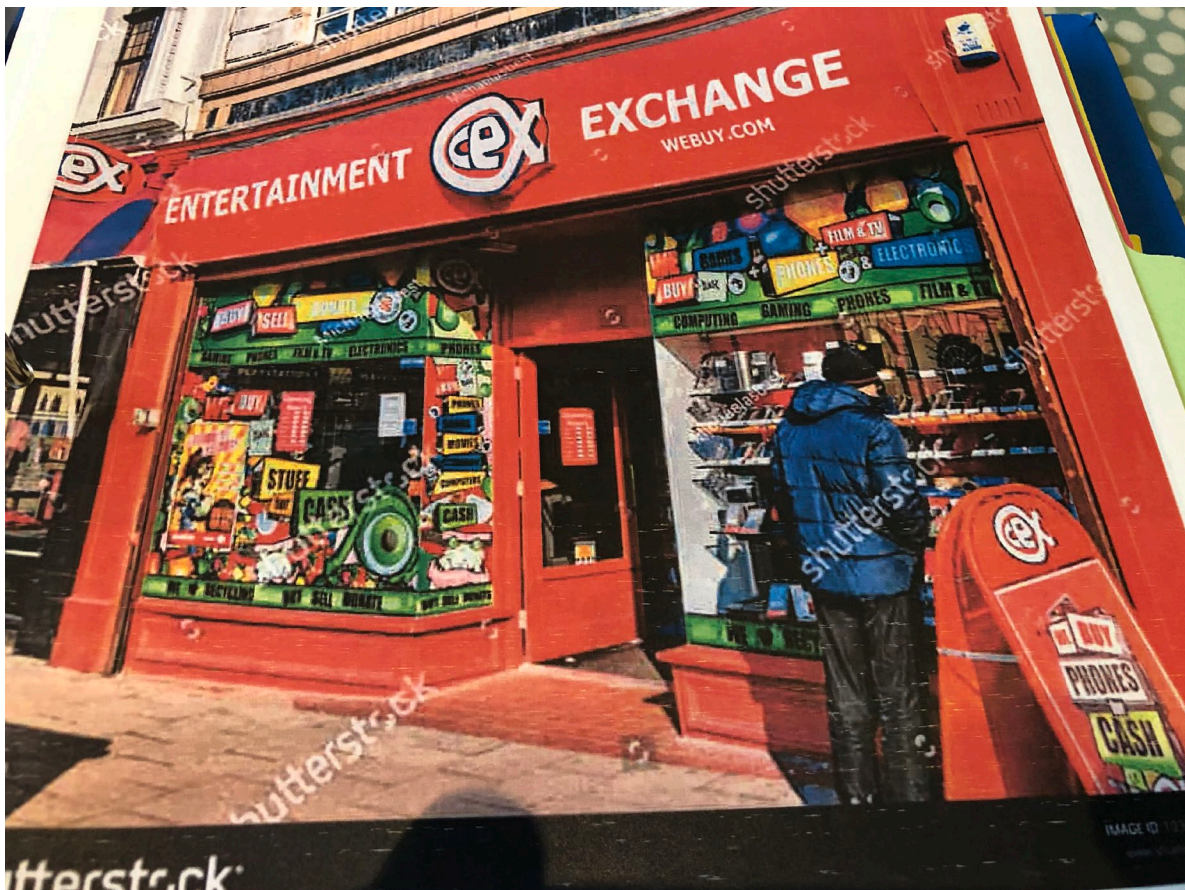
¹³ Ditto, para 12

¹⁴ Ditto, para 10

¹⁵ Ditto, para 11

- Its mark was secured as a domain name in 1997 and its website went live in late 1998 and has been used continually since then¹⁶;
- Extracts from its website show the mark “CEX” appearing prominently and consistently but do not feature WEBUY.COM¹⁷;
- It is stated that “whilst [Party B’s] brand and company name is CEX, [it has] actively promoted [its] trade mark WEBUY.COM”¹⁸ and is promoted independently from the CEX mark being identified separately on the hoardings of its shops¹⁹. Examples of promotional material show a prominent CEX device mark that sometimes has WEBUY.COM appearing in smaller text directly below it and in other examples WEBUY.COM appears at the bottom right of the page²⁰. Examples of the nature of the use are shown below:

A typical shop front²¹:



¹⁶ Ditto, para 5

¹⁷ Exhibit FO1

¹⁸ Mr Orchard’s first witness statement, para 7

¹⁹ Ditto, para 8

²⁰ Exhibit FO4

²¹ Exhibit FO03

Promotional material²²:



And appearing in the top corner of some promotional material:



²² Exhibit FO04

55) Mr Orchard, in his evidence, also relied upon the fact that the EUIPO and accepted Party B's mark on the basis of acquired distinctiveness, stating that "[t]he evidence of use submitted is sufficiently convincing to support a finding of acquired distinctiveness..."²³. The evidence presented to the EUIPO, dated 3 August 2018, is also provided²⁴. This evidence related to use across the EU, however, the highlights of this (insofar as it relates specifically to the UK and supplements the evidence already referred to) are summarised below:

- There is a part of its website that focuses on the UK: UK.WEBUY.COM;
- It has (at that time) 366 UK stores;
- Party B operates a *YouTube* channel that has had over 45 million views since 3 October 2013. A screen shot shows its stylised CEX mark appearing on the top left of the screen with "WEBUY.COM" appearing directly underneath;
- In the UK, Party B's website receives 20 million visits per year (according to Google Analytics)

56) Party B claims that whilst its brand and company name is CEX, it has actively promoted its mark WEBUY.COM. The evidence does not support a claim that it has been promoted as anything other than as an internet address. Merely because it appears independently to its CEX mark on hoardings does not necessarily indicate that it is intended to function as a mark or that it is perceived by the relevant public as anything other than internet address of Party B. In respect of the promotional material WEBUY.COM often appears at the bottom right corner of the page in the position where contact details are often located. Such use reinforces use as being in the form of an internet address. Finally, there is no use shown other than with or in proximity of Party B's CEX mark. Whilst this, in itself, does not necessarily preclude a sign performing as a secondary mark (in this case, secondary to the CEX mark) the manner of the use and the nature of the mark as an internet address leads me to conclude that, in this case, it has not functioned independently as a trade mark but rather as an address from which Party B provides its CEX branded services.

²³ See letter from the EUIPO at Exhibit FO201

²⁴ At Exhibit FO202

Consequently, I am unable to conclude that the opponent's use translates to its earlier mark having achieved an enhanced level of distinctive character.

GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion

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

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

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

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

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

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

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

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

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

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

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

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

58) The factors assessed so far have a degree of interdependency (*Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, paragraph 17), a global assessment of them must be made when determining whether there exists a likelihood of confusion (*Sabel BV v. Puma AG*, paragraph 22). These factors must be assessed from the viewpoint of the average consumer. Confusion can be direct (which occurs when 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 and goods down to the responsible undertakings being the same or related).

59) I have found that:

- The respective goods and services are identical;
- the distinctive character of the WEBUY element of Party B's mark is very low and the marks distinctive character resides in its totality. Party A's mark is presented in such a way as to have three distinct visual elements. The first is the words WE and BUY conjoined, the second is the words "TEK.CO.UK" and the third is the device. This get-up contributes to the distinctive character of the mark. The distinctive character of the verbal elements is only low but they are the dominant and distinctive elements;
- the respective marks share a medium level of visual, aural and conceptual similarity;
- there is a slightly heightened level of care and attention in respect of mobile phones but in respect of the services, it is not likely to be any lower or higher than normal;
- the purchasing process is likely to be primarily visual in nature, but I do not discount aural considerations;
- the earlier mark has a low level of inherent distinctive character and this is not endowed through use.

60) Firstly, the additional get-up present in Party A's mark is sufficient to avoid a likelihood of direct confusion. These visual differences will be immediately noticed by the relevant public and it is not likely that one mark will be mistaken for the other. This finding does not appear to be challenged by Party B and at the hearing, Mr Silcock focused his submissions on the likelihood of indirect confusion.

61) Mr Silcock pointed to Party B's mark having the status as a high street brand and argued that this increases the likelihood of confusion. I have found that its mark does not benefit from an enhanced level of distinctive character and, therefore, this argument does not assist Party B.

62) Mr Silcock also pointed out that it is well-established that the average consumer normally pays more attention to the beginning of marks²⁵ and that the first part of both marks is the “WEBUY” element. Further, he also pointed out that where a mark consists of both verbal and graphic elements, the former will generally be regarded as dominant. I accept both of these propositions.

63) Mr Silcock asked that I take judicial notice that consumers often associate “.co.uk” domain names with “.com” domain names with the expectation that “.co.uk” will be a UK-specific or UK-focussed version of the “.com” website. I decline to take judicial notice of this but, as an ordinary consumer who makes online purchases, I concede that at least a proportion of consumers may believe this.

64) I keep all of the above into account. However, whilst I accept some of Mr Silcock’s submissions, I disagree with the impact they have on determining the issue of confusion. It is established by the courts²⁶ that it is the distinctiveness of the common element that is key when considering likelihood of confusion. Further, I keep in mind the comments of Arnold J in *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch)²⁷ when considering the application of the principle set out in *Medion* that when “...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”.

65) In the current case, the element common to both marks i.e. WE BUY is of a very low level of distinctive character and this points away from a finding of likelihood of confusion. Despite the fact that this element is presented differently to the second verbal element of the applicant’s mark in a way that increases its prominence in the mark, it will nonetheless be perceived as part of the internet address webuytek.co.uk. This creates a difference between the respective marks that results in the “WEBUY” element in the applicant’s mark losing any significance it may have as an individual element created by the visual presentation.

²⁵ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, [81] as well as others listed in Mr Silcock’s skeleton argument (his footnote 30)

²⁶ See *Kurt Geiger v A-List Corporate Limited*, BL O-075-13, Mr Iain Purvis Q.C. [38], [39]

²⁷ At [21]

66) Factoring the above into considering the respective marks as a whole, even though identical goods and services are involved, I find that the combination of the differences between the marks and the very low level of distinctive character of the common element is sufficient for me to reach the conclusion that there is no likelihood of indirect confusion. Whilst the use of the pronoun “WE” gives the element “WEBUY” a scintilla of distinctive character it, nevertheless, consists of words that when combined with other words that describe the object of the buying services, creates a mark with a different (but equally weak) character and this creates a different impression in the mind of the consumer. This different impression is sufficient that the consumer is not likely to believe that the respective goods and services originate from the same or linked undertaking.

67) In summary, having taken account of all the factors necessary for the global analysis, I find that the section 5(2)(b) ground succeeds in its entirety.

68) In light of this finding, I will comment only briefly on the remaining grounds.

Section 5(4)(a)

69) Section 5(4)(a) states:

“A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

(b) [.....]

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark.”

70) When considering the issue of enhanced distinctive character, I found that the nature of the use combined with the nature of the mark itself was such that the relevant public is likely to perceive the mark as an internet address and not as an indicator of origin. For the same reasons, Party B's undoubted goodwill does not attach to the earlier mark. For this reason, the ground based upon section 5(4)(a) fails.

Section 5(3)

71) Section 5(3) of the Act states:

“5. - (1) ...

(2) ...

(3) A trade mark which –

(a) is identical with or similar to an earlier trade mark,

(b) (repealed)

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 (EU) 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.”

72) I keep in mind that:

- a 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*, Case 252/07 [24], and;
- 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*, Case C-487/07 [29] and *Intel*, Case C-408/01 [63].

73) Therefore, the mark must have established a reputation by the relevant date and the challenged mark must create a link before detriment or unfair advantage can occur. In the current case, the ground falls at the first hurdle. I found earlier that the use and nature of the earlier mark is in a manner where I was unable to conclude that it benefitted from an enhanced level of distinctive character. Again, for the same reasons, the use shown is insufficient to demonstrate that the earlier mark has acquired the requisite reputation.

74) In light of this finding, I conclude that the grounds based upon section 5(3) fail in their entirety.

Summary

75) Party A's application to invalidate Party B's mark failed in its entirety. Party B's opposition to Party A's application to register its mark has also failed in its entirety and Party A's application may proceed to registration.

COSTS

76) As both sides have achieved an equal measure of success, both sides are to bear their own costs and I decline to make an award.

Dated this 12th day of May 2020

Mark Bryant

For the Registrar

The Comptroller-General

ANNEX

Full list of the goods and services covered by the earlier mark, no. 3139077

Class 3: *Bleaching preparations and other substances for laundry use, cleaning, polishing, degreasing and abrasive preparations, cleaning preparations, oils for cleaning purposes, preservatives for leather (waxes), leather bleaching preparations, polishing creams, creams for leather, shoe waxes, shoe polishes, waxes, wax for cobblers; perfumery; perfumes; toilet water; perfume waters, cologne waters, bases for perfumes, flower extracts, essential oils; air perfumes, scented pots-potpourris, incense; cosmetic preparations for skin and lip care; cosmetic preparations for slimming purposes; lotions for cosmetic use, beauty masks, cosmetic products for the hands, face and body; products for hair care, conditioning products, hair lotions, hair bleaches, hair dyes, hair styling creams or gels, hair sprays; depilatory creams, hair removing waxes; shaving products, shaving soap, shaving foam, after-shave products; sun-screen products for cosmetic use, skin sun-tanning preparations for cosmetic use, self-tanning preparations for cosmetic use; toiletry products, dentifrices, soaps, shampoos, shower gels, bath gels, bath oils, bath salts, foaming bath products, bath pearls, talcum powder for toiletry use, toiletry milks, deodorants; make-up products, lips sticks, mascara for eyelashes, blushes, make-up powder, eye shadow, make-up pencils, make-up removing products; decorative patterns for cosmetic use, temporary tattoos for the body and nails, make-up kits, nail care and beauty products, nail polish, nail protectors, nail lacquers, nail product thinners, false nails for the hands and feet, false nail kits, adhesive for false nails.*

Class 9: *Scientific, photographic, cinematographic, and optical apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; compact discs, DVDs and other digital recording media; data processing equipment, computers; laptops; notebook computers; tablet computers; computer devices; laptops; laptop accessories; desktop personal computers; desktop accessories; tablets; tablet accessories; data storage devices; hard drives; flash drives; USB drives; computer peripherals; speakers; web cameras; graphics cards; memory cards; internal memory; optical drives; processors; cables; wireless peripheral devices; keyboards; mice; wireless*

*routers; wireless cards; wireless adapters; computer monitors, keyboards, modems, printers, disk drives, adapters, connector and computer drives; computer hardware; disk drive; computer memory; CPUs; disk; tape; magnetic and optical discs; amplifiers; optical character readers; disk sorting boxes; internet devices; stylus; word processors; network cards; computer motherboards; computer adapter; graphics card; computer protective covers, sleeves and cases; cables; antennas; sound cards; plugs and sockets; remote control apparatus and devices; audio and video receivers; sound and video transmitter; video monitors; portable and handheld digital electronic communication and computer apparatus and devices; electronic memory card reader; computer mouse; universal serial bus drive; flash memory cards; optical pen; cd burner; pre-recorded disks and tapes; portable computer drives; routers, computer touch pads; computer trackball pad; computer base and charging cradle; universal serial bus connector; media readers; portable or handheld digital electronic devices; headsets and headphones; microprocessors; memory boards; hard drives; data storage devices; blank computer storage media; pre-recorded computer programs and software; random access memory devices; read only memory devices; solid state memory; mouse pads; batteries; chargers; cameras; personal digital assistants; digital audio and video media players; digital cameras; portable and hand-held computing devices; global positioning system devices; electronic communications equipment; telecommunications equipment and apparatus; telephones; video recorder and player; cd burner and player, digital audio cd burner and player; digital tape record-ers and players; sound recording and reproduction device; loudspeakers; radios; radio transmitters; radio receivers; record players; tape players; tape recorders and sound reproduction devices; micro-phones; digital sound and/or video mixers; automotive audio speakers; electronic publications available for downloading; computer software; computer games entertainment software; Computer hard-ware for use with video game consoles; computer peripherals for use with video game consoles; video game interactive remote control units; memory cards for use with video game consoles; hard drives for computers and video game consoles; battery chargers and batteries; headsets for use with computers and video game consoles; audio-visual computer cables; wireless computer network adapters; webcams; **mobile phones**; phone chargers; network packages; usb cables; USB plugs; earphones; phone cables; mobile phone accessories; mobile phone ear pods; mobile phone stylus; wireless chargers;*

charging docks; wireless charging units; mobile phone cases; mobile phone covers; mobile phone car kits; phone docks; power banks; phone headsets; wireless headphones; wireless mouse; wireless keyboards; adapters; smart sticks; memory sticks; camera grips; wireless headsets; wireless games pad; power packs; camera for phones; camera for tablets; wireless speakers; mobile phone speakers; HDTV adapter; portable battery pack; phone console; phone stands incorporating charging functionality; wireless earpieces; camera lens; in-car wireless phone kit; 3D virtual reality glasses; 3G router; 4G router; backup drives; flash drives; interactive wireless enabled electronic data processing equipment and computers; Photographic equipment and apparatus; interactive multimedia electronic devices; smart phone compatible Watches (phone accessories); portable music storage apparatus; Digital Cameras; Memory Stick DUO Cards; Media Players; Digital SLR Cameras; Secure Digital (SD) Cards; e-Readers; Camera Accessories; Secure Digital Micro Cards; wireless smart watches; wireless activity tracker; smart bands; smart band straps; multi-media players; portable DVD players; flash memory cards; GPS equipment and apparatus; satellite navigation apparatus and equipment; multifunctional electronic devices being wireless activity trackers for monitoring, measuring, tracking, displaying and uploading to the Internet information selected by the user; optical and magneto-optical discs; Entertainment equipment and apparatus; High Definition Entertainment equipment and apparatus; audio interfaces; DJ decks and mixers; music controllers; music keyboards; music synthesiser apparatus and equipment; electronic composing apparatus and equipment; TV media players; DVD players; optical and magneto-optical disc players; juke boxes, musical; projectors; cinema equipment and apparatus; home cinema equipment; HDMI cables; games consoles; 3D active glasses; 3D glasses; sunglasses; HDMI streaming stick; HD TV apparatus and equipment; parts and fittings for the aforesaid goods.

Class 14: *Precious metals and their alloys; jewellery, costume jewellery, precious stones; amulets, charms, lock-ets and trinkets; horological and chronometric instruments, clocks and watches; watch straps and watch bands; statues and works of art of precious metal and/or precious stones; cufflinks; boxes of precious metals; presentation cases; tie clips; tie pins; pins (jewellery); cases for the aforesaid; jewellery cases, caskets, boxes or rolls; parts and fittings for the aforesaid.*

Class 18: *Leather and imitation leather; trunks and suitcases; garment bags for travel; traveling bags, sports bags; handbags, backpacks; beach bags, school bags, satchels, shopping bags; traveling trunks; travel bags for clothing and shoes; attaché cases and document holders, document cases, briefcases (leather goods); purses, wallets, card holders (wallets), coin purses not of precious metal, key cases (leather goods); boxes of leather or imitation leather; traveling sets (leather goods), boxes intended for toiletry articles; vanity cases; pouches of leather, clutch bags (evening handbags); parasols; umbrellas; clothing for ani-mals, bags for carrying animals; game bags (hunting accessories); walking sticks; parts and fittings for the aforesaid.*

Class 21: *Articles for cleaning; brushes (except paint brushes); brushes for cleaning; combs and sponges; cleaning instruments, hand-operated; cleaning mitts of fabric; cleaning sponges, cloths and pads; apparatus for wax-polishing, non-electric; boot jacks; boot trees (stretchers); brushes for footwear; leather cleaning implements; leather care cleaning and polishing implements; leathers for cleaning or polishing purposes; polishing gloves; scrubbing brushes; shoe brushes; shoe cloths; shoe horns; shoe polishers, non-electric; shoe polishing mitts; shoe scrapers; shoe scrapers incorporating brushes; shoe shine cloths; shoe stretchers; shoe trees; wax-polishing appliances, non-electric, for shoes; works of art of porcelain, ceramic, earthenware or glass.*

Class 25: *Clothing, pullovers, vests, shirts, tee-shirts, trousers, jackets, suits, coats, raincoats, overcoats, parkas, skirts, dresses, shorts; pyjamas, house coats, night shirts, dressing gowns; furs (clothing); hats, caps; gloves (clothing), neckties, belts (clothing), leather belts, scarves, pocket squares (clothing), sashes for wear, shawls, stockings, socks, tights, suspenders, hosiery, stoles; underwear, lingerie; bathing suits; footwear, shoes, slippers, boots and half-boots.*

Class 35: *Advertising, marketing and promotional services; business management services; professional business consultation relating to the operation of businesses; auctioneering; **buyer to supplier matching services**; organisation, administration, operation and supervision of loyalty schemes, incentive schemes, promotional schemes, share schemes, savings schemes and reward schemes; display presentation services; demonstration of goods; **sales promotion for others**; import-*

*export agencies; cost price analysis; **compilation of advertisements for the use as web pages on the Internet; presentation of goods on communications media for retail purposes; advertising and information distribution services namely providing classified advertising space via a global computer network; promoting the goods and services of others over the Internet;** retail services connected with the sale of domestic electrical and electronic equipment and associated peripheral devices; retail store services featuring computers, computer software, computer peripherals, amplifiers, portable and/or handheld electronic digital electronic communication and computer apparatus and devices and demonstration of products relating thereto; online retail store services provided via a global computer network featuring computers, computer software, computer peripherals, portable and/or handheld digital electronic communication and computer apparatus and devices and demonstration of products relating thereto; retail services in the field of entertainment featuring pre-recorded musical and audio visual works provided via the internet and other electronic and communications networks; electronic retailing services via a global computer network featuring digital music, phonograph records, digital video, multimedia soft-ware and text, audio, graphics, animation, computer games, musical juke boxes and video recorded on communications media; retail services featuring sunglasses, spectacles and parts and fitting and containers therefore; retail services featuring magnetic data carriers, recording discs, compact discs, DVDs and other digital recording media, data processing equipment, computers, laptops, notebook computers, tablet computers, computer devices, laptops, laptop accessories, desktop personal computers, desktop accessories, tablets, tablet accessories, data storage devices, hard drives, flash drives, usb drives, computer peripherals, speakers, web cameras, graphics cards, memory cards, internal memory, optical drives, processors, cables, wireless peripheral devices, keyboards, mice, wireless routers, wireless cards, wireless adapters, computer monitors, keyboards, modems, printers, disk drives, adapters, connector and computer drives, computer hardware, disk drive, computer memory, cpu, disk, tape, magnetic and optical discs, optical character readers, disk sorting boxes, internet devices, stylus, word processors, network cards, computer motherboards, computer adapter, graphics card, computer protective covers, sleeves and cases, cables, antennas, sound cards, plugs and sockets, remote control apparatus and devices, audio and video receivers, sound and video*

transmitter, video monitors, portable and handheld digital electronic apparatus and devices, electronic memory card reader, computer mouse, universal serial bus drive, flash memory, optical pen, cd burner, pre-recorded disks and tapes, portable computer drives, routers, computer touch pads, computer trackball pad, computer base and charging cradle, universal serial bus connector, media readers, portable or handheld digital electronic devices, headsets and headphones, microprocessors, memory boards, hard drives, data storage devices, blank computer storage media, pre-recorded computer programs and software, random access memory devices, read only memory devices, solid state memory, mouse pads, batteries, chargers, cameras, personal digital assistants, digital audio and video media players, digital cameras, portable and hand-held computing devices, global positioning system devices, electronic communications equipment, telecommunications equipment and apparatus, telephones, video recorder and player, cd burner and player, digital audio cd burner and player, digital tape recorders and players, sound recording and reproduction device, loudspeakers, radios, radio transmitters, radio receivers, record players, tape players, tape recorders and sound reproduction devices, microphones, digital sound and/or video mix-ers, automotive audio speakers, electronic publications available for downloading, computer software, computer games entertainment software, Computer hardware for use with video game consoles, computer peripherals for use with video game consoles, video game interactive remote control units, memory cards for use with video game consoles, hard drives for computers and video game consoles, battery chargers and batteries, headsets for use with computers and video game consoles, gaming controllers, joysticks for computer and video games, steering and racing wheels for computer and video games, audio-visual computer cables, wireless computer network adapters, webcams, covers for computer game consoles, mobile phones, phone chargers, network packages, USB cables, USB plugs, earphones, phone cables, mobile phone accessories, mobile phone ear pods, mobile phone stylus, wireless chargers, charging docks, wireless charging units, mobile phone cases, mobile phone covers, mobile phone car kits, phone docks, power banks, phone headsets, wireless headphones, wireless mouse, wireless keyboards, adapters, smart sticks, memory sticks, camera grips, wireless headsets, wireless games pad, power packs, camera for phones, camera for tablets, wireless speakers, mobile phone speakers, HDTV adapter, portable battery pack, phone console, phone stands incorporating charging

functionality, wireless earpieces, camera lens, in-car wireless phone kit, 3D virtual reality glasses, 3G router, 4G router, backup drive, flash drive, gaming controller, interactive wireless enabled electronic data processing equipment and computers, Photographic equipment and apparatus, interactive multimedia electronic devices, smart phone compatible Watches (phone accessories), portable music storage apparatus, Digital Cameras, Memory Stick DUO Cards, Media Players, Digital SLR Cameras, Secure Digital (SD) Cards, e-Readers, Camera Accessories, Robots & Drones, carpet cleaning robot, grass cutting robot, Secure Digital Micro Cards, wireless smart watches, wireless activity tracker, smart bands, smart band straps, multi-media players, portable DVD players, flash memory cards, GPS equipment and apparatus, satellite navigation apparatus and equipment, multifunctionable electronic devices being wireless activity trackers for monitoring, tracking, displaying and uploading to the Internet information selected by the user, optical and magneto-optical discs, Entertainment equipment and apparatus, High Definition Entertainment equipment and apparatus, audio interfaces, DJ decks and mixers, music controllers, music keyboards, music synthesiser apparatus and equipment, electronic composing apparatus and equipment, TV media players, DVD players, optical and magneto-optical disc players, pro-projectors, cinema equipment and apparatus, home cinema equipment, HDMI cables, games consoles, 3D active glasses, 3D glasses, HDMI streaming stick, HD TV apparatus and equipment, spare parts for the aforesaid; provision of an on-line marketplace for buyers and sellers of goods and services; retail and on-line retail services connected with the sale of soaps, perfumery, essential oils, cosmetics, hair lotions, body lotions, foot lotions, dentifrices, shoe cream, shoe polish, shoe wax, nail care preparations, nail varnish, nail polish, nail varnish and polish removing preparations, talcum powder, sunscreen preparations, sun-tanning preparations, pumice stone, emery boards, candles and wicks for lighting, Christmas tree candles, nightlights (candles), scented candles, beeswax, grease for shoes, oil for the preservation of leather, small items of metal hardware, buckles, metal name plaques, key rings, key fobs, sunglasses, spectacles, sunglasses and spectacles cases and frames, encoded bank cards, bags made of leather or imitations of leather adapted for electrical apparatus and instruments, electrical apparatus and instruments, apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs, pre-recorded CD's CD ROM's, tapes and discs, protective footwear, precious metals and

their alloys, jewellery, costume jewellery, precious stones, horological and chronometric instruments, leather and imitations of leather, trunks, travelling bags, handbags, purses, wallets, hat boxes, umbrellas, parasols, walking sticks, textile piece goods, towels, bath linen, face towels of textile, napkins or tissues of textile for removing make-up, handkerchiefs of textile, bed linen, bed spreads, mattress covers, pillow cases, quilts, sheets, table linen, table napkins, table runners, table mats, table cloths, travelling rugs, furniture covers, shower curtains, fabric for boots and shoes, lingerie fabric, clothing, footwear and headgear; advice and assistance in the selection of goods; including, but not limited to, all the aforesaid services provided via the Internet, the world wide web and/or via communications networks; advertising services and promotional services by electronic means; rental of advertising space; publication of advertising texts; direct mail advertising; on-line advertising on a com-puter network; opinion polling services; marketing studies; services relating to commercial promotion activity of all kinds, namely, sponsorship, sponsoring services, and promotional information campaigns; advertising, marketing and promotional services; business advice and assistance relating to franchising; management advisory services relating to franchising; advisory services relating to the establishment and operation of franchises; services rendered by a franchisor, namely, assistance in the running and management of industrial or commercial enterprises; information, advisory and consultancy services in relation to the aforesaid.

Class 36: *Brokerage services; electronic commerce payment services; arranging of shared ownership and/or shared rental of real or personal property; share exchange schemes; asset management services; on-line financial trading services; discount card services; automated payment services; issuing of tokens of value; issue and redemption tokens and vouchers; surety services; financial evaluation services; appraisal services; repair costs evaluation services (financial appraisal); pawn brokerage; financial advice in the field of franchising; information, advisory and consultancy services in relation to the aforesaid.*

Class 37: *Licensing of intellectual property; licensing of franchise concepts; legal advice relating to franchising; consultancy services relating to trade mark licensing; information, advisory and consultancy services in relation to the aforesaid.*