

**O/402/21**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. UK00003305826  
BY MILES-BRAMWELL EXECUTIVE SERVICES LIMITED  
TO REGISTER:**

**LIFELINES**

**AS A TRADE MARK IN CLASSES 9 AND 35**

**AND**

**IN THE MATTER OF OPPOSITION THERETO  
UNDER NO. 413953 BY  
MEDION AG**

## BACKGROUND AND PLEADINGS

1. On 23 April 2018, Miles-Bramwell Executive Services Limited (“the applicant”) filed an application to register the trade mark shown on the cover of this decision (“the applicant’s mark”) in the UK for the goods and services set out in the **Annex 1** to this decision.
2. The applicant’s mark was published for opposition purposes on 6 July 2018 and on 5 October 2018, it was opposed by Medion AG (“the opponent”). The opposition is based on section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opponent relies on the following marks:

life

EUTM no. 016673171<sup>1</sup>

Filing date 28 April 2017; registration date 13 January 2020

(“the opponent’s first mark”);

LIFE

EUTM no. 04585295

Filing date 10 August 2005; registration date 9 February 2015

(“the opponent’s second mark”);

3. The goods and services upon which the opponent relies are set out in **Annex 2** to this decision.
4. The opponent claims that as the marks are confusingly similar and the goods and services are identical and/or similar, there exists a likelihood of confusion between them. The applicant filed a counterstatement denying the claims made.
5. Due to ongoing proceedings between the parties at the European Union’s Intellectual Property Office (‘the EUIPO’), these proceedings were suspended on 12 November 2019. On 24 November 2020, the opponent’s representative

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<sup>1</sup> Although the UK has left the EU and the transition period has now expired, EUTMs, and International Marks which have designated the EU for protection, are still relevant in these proceedings given the impact of the transitional provisions of The Trade Marks (Amendment etc.) (EU Exit) Regulations 2019 – please see Tribunal Practice Notice 2/2020 for further information.

confirmed to the Tribunal that the proceedings at the EUIPO had concluded and, on 29 December 2020, the Tribunal wrote to the parties confirming that these proceedings were to be resumed.

6. The opponent is represented by Stratagem Intellectual Property Management Limited and the applicant is represented by Swindell & Pearson Limited. Neither party filed evidence. Prior to the suspension of these proceedings, both parties filed written submissions. Upon resumption of the proceedings, no hearing was requested and only the opponent filed written submissions in lieu. I have taken the written submissions into consideration and will refer to them below where necessary. This decision is taken following a careful perusal of the papers.
7. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

## **DECISION**

### **Section 5(2)(b): legislation and case law**

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

“(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 or association with the earlier trade mark.”

9. Section 5A of the Act states as follows:

“Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

10. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

“(6)(1) In this Act an “earlier trade mark” means –

(a) a registered trade mark, international trade mark (UK) or Community trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks.

11. The opponent’s marks qualify as earlier trade marks under the above provisions. As the opponent’s marks had not completed their registration process more than 5 years before the application date of the applicant’s mark, they are not subject to proof of use pursuant to section 6A of the Act. The opponent can, therefore, rely on all goods and services for which its marks are registered.

12. 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 Office for Harmonization in the Internal Market (Trade Marks and Designs) (“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.

### **Comparison of goods and services**

13. The applicant's goods and services are set out in **Annex 1** of this decision. The opponent's goods and services are set out in **Annex 2** to this decision.

14. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union ("CJEU") in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

"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".

15. 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.

16. The General Court (“the GC”) confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, that, even if goods or services are not worded identically, they can still be considered identical if one term falls within the scope of another or (vice versa):

“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”.

17. I have read the detailed submissions from the parties regarding the similarity of the goods and services. However, I note that the applicant’s submissions were made pending the outcome of the EUIPO proceedings. While I do not intend to reproduce these here, I have taken them into account in making my assessment.

#### Class 9 goods

18. “Electrical and electronic measuring [...] apparatus, appliances, equipment and instruments”, “electrical and electronic weighing apparatus, appliances, equipment and instruments”, “electrical and electronic scales” in the applicant’s specification fall within the broader category of “measuring devices, electric” in the opponent’s second mark. These goods are, therefore, identical under the principle outlined in *Merici*.

19. Despite containing a limitation that they will be used for specific purposes, I find that “electrical and electronic measuring [and] weighing [...] devices, appliances, instruments, apparatus and systems, all for use in slimming, weight control, weight management, diet, dieting, foods, beverages, nutrition and exercise” and “electrical, electronic and computer measuring [and] monitoring [...] devices for use in relation to slimming, weight control, weight management, diet, dieting, exercise,

health, fitness, recreation, lifestyle, eating habits, foods, beverages, nutrition and well being” in the applicant’s specification fall within the broader category of “measuring devices, electric” and “monitoring apparatus, electric” in the opponent’s second mark. These goods are, therefore, identical under the principle outlined in *Meric*.

20. “Electrical and electronic [...] pedometers, diaries and planners” in the applicant’s specification describes an electronic device that will be used to track and diarise how many steps the user takes and to plan walks. I consider that this falls within the broader categories of “navigation, guidance, tracking, targeting and map making devices” in the opponent’s first mark and “measuring devices, electric” and “electronic organisers” in the opponent’s second mark. These goods are, therefore, identical under the principle outlined in *Meric*.

21. “Electrical and electronic apparatus, appliances, equipment and instruments for monitoring physical activity” in the applicant’s specification falls within the category of “monitoring apparatus, electric” in the opponent’s second mark’s specifications. These goods are, therefore, identical under the principle outlined in *Meric*.

22. Without any submissions or evidence to the contrary, I consider that “electrical and electronic apparatus, appliances, equipment and instruments for food and beverage analysis” in the applicant’s specification describes electronic devices which the user uses to analyse the nutritional information of their foods and beverages. It is, in my view, a device that measures or monitors the food and beverage intake of the user. As a result, I consider that these goods fall within the categories of “monitoring apparatus, electric” and “measuring devices, electric” in the opponent’s second mark’s specification. These goods are, therefore, identical under the principle outlined in *Meric*.

23. “Computer software” and “downloadable software” in the applicant’s specification fall within the category of “computer software [recorded] and computer programs” in the opponent’s second mark’s specification. These goods are, therefore, identical under the principle outlined in *Meric*.

24. “Computer firmware” describes a specific class of computer software that relates to the running of the computer’s hardware. As it is a type of software, it falls within the broader category of “computer software [recorded] and computer programs” in the opponent’s second mark’s specification. These goods are, therefore, identical under the principle outlined in *Meric*.
25. “Downloadable electronic publications”, “data processing equipment”, “data processing equipment and accessories”, “computers”, “computer peripheral devices” and “information technology and audio visual equipment” in the applicant’s specification have direct counterparts in the opponent’s specifications, albeit the first three terms are expressed slightly differently in the opponent’s second mark’s specification (“electronic publications [downloadable]” in respect of the first term and “data-processing apparatus” in respect of the second and third terms). These goods are identical.
26. While the term “downloadable publications” in the applicant’s specification does not include the word ‘electronic’, it will still be an electronic publication as it will be one that is downloaded on an electronic device or computer and will, therefore, be identical to “electronic publications [downloadable]” in the opponent’s second mark’s specification.
27. “Electronic publications [downloadable]” in the opponent’s second mark’s specification falls within the broader category of “electronic publications” in the applicant’s specification. These goods are, therefore, identical under the principle outlined in *Meric*.
28. “Compact discs, DVDs and other digital recording media” and “prerecorded compact discs, DVDs and other recording media” in the applicant’s specification include different types of optical storage media and other types such as video or tape cassettes. The opponent’s second mark’s specification contains “optical data media”, “compact discs (read-only memory)” and “compact discs (audio-video)”, all of which fall within the applicant’s broader term. These goods are, therefore, identical under the principle outlined in *Meric*.

29. “Prerecorded digital recording media” in the applicant’s specification includes audio or video recordings such as music and videos. The terms “downloadable digital music” and “downloadable video recordings featuring music” in the opponent’s second mark’s specification fall within the applicant’s term. As a result, these goods are identical under the principle outlined in *Meric*.
30. “Computer hardware” in the applicant’s specification describes the physical parts of computers. This can include keyboards, processors, disc drives and storage drives. The opponent’s second mark’s specification contains a number of different computer hardware goods such as “processors (central processing units)”, “computer keyboards”, “floppy disc drives” and “magnetic data carriers”. These goods fall within the broader category of “computer hardware” and are, therefore, identical under the principle outlined in *Meric*.
31. “Weighing apparatus” in the applicant’s specification are used for measuring weight and can be either digital or analog. Where the applicant’s term covers digital weighing apparatus, it is an electronic measuring device and, therefore, falls within the category of “measuring devices, electronic” in the opponent’s second mark’s specification. As a result, these goods are identical under the principle outlined in *Meric*.
32. “Weighing scales, weighing balances, weighing platforms, all for weighing the human body” in the applicant’s specification describes the same device as the applicant’s term referred to at paragraph 31 above, albeit for the purpose of weighing the human body. Where the applicant’s term covers digital weighing apparatus, it is an electronic measuring device and, therefore, falls within the category of “measuring devices, electronic” in the opponent’s second mark’s specification. As a result, these goods are identical under the principle outlined in *Meric*.
33. “Electrical and computer apparatus and devices, namely, digital weighing scales, [...] for use in relation to slimming, weight control, weight management, diet, dieting, foods, beverages, nutrition exercise, health, fitness, recreation, lifestyle, eating habits and well-being” in the applicant’s specification, despite their limitation, fall within the broader category of “measuring devices, electronic” in the opponent’s

second mark's specification meaning that these goods are identical under the principle outlined in *Meric*.

34. Without any submissions or evidence to the contrary, I consider that “electrical and computer apparatus and devices, namely [...] digital balances, digital platforms for use in relation to slimming, weight control, weight management, diet, dieting, foods, beverages, nutrition exercise, health, fitness, recreation, lifestyle, eating habits and well-being” describes types of devices that, while looking like weighing scales, are not. Instead, they are platforms that vibrate when a user is standing on them. The user will then try to maintain balance on the device while it is vibrating in order to assist them in developing muscle and, therefore, aiding in weight loss. I do not consider that these goods share any obvious level of similarity with any of the opponent's goods and services. These goods are, therefore, dissimilar.

35. When making my comparison in relation to “computer software for controlling weighing apparatus, appliances, instruments and devices, for use in database management in the fields of slimming, weight control, weight management, diet, dieting, exercise, health, fitness, recreation, lifestyle, eating habits, foods, nutrition and well-being”, “computer programs for use in data management in the fields of slimming, weight control, weight management, diet, dieting, exercise, health, fitness, foods, beverages, nutrition, recreation, lifestyle, eating habits and well being”, “downloadable computer software and computer programs for controlling weighing apparatus, appliances, instruments and devices, for use in data management in the fields of slimming, weight control, weight management, diet, dieting, foods, nutrition, exercise, health, fitness, recreation, lifestyle, eating habits and well-being” and “software and programs for managing, assisting, monitoring and weighing, in particular for weight loss, diet, dieting, exercise, health, fitness, nutrition and well-being of humans” in the applicant's specification, I am mindful of the more restrictive approach signalled by the case of *Sky v Skykick* [2020] EWHC 990 (Ch). While I note that the applicant has submitted that the opponent's terms “computer software [recorded] and computer programs” are too broad to justify a valid ground of opposition, I do not consider this to be the case. While I appreciate that computer software is broad, it is not too broad so as to be incapable of comparison with the applicant's terms, which are types of software with a specific

purpose. The opponent's term does not contain a similar limitation as contained in the applicant's specification and is, therefore, capable of being used as software in the fields of slimming, weight control and so on. As a result, I consider that the applicant's goods all fall within "computer software [recorded] and computer programs" in the opponent's second mark's specification and are, therefore, identical under the principle outlined in *Meric*.

36. "Measuring, detecting and monitoring apparatus and instruments" in the applicant's specification can include both digital and analog apparatus and instruments. Therefore, "measuring devices, electric" and "monitoring apparatus, electric" in the opponent's second mark's specification fall within the applicant's term and are, therefore, identical under the principle outlined in *Meric*.

37. I do not consider that "calculators", "electrical and electronic [...] calculating apparatus, appliances, equipment and instruments", "electrical and electronic [...] calculating devices, appliances, instruments, apparatus and systems, all for use in slimming, weight control, weight management, diet, dieting, foods, beverages, nutrition and exercise", "electrical, electronic and computer [...] calculating devices for use in relation to slimming, weight control, weight management, diet, dieting, exercise, health, fitness, recreation, lifestyle, eating habits, foods, beverages, nutrition and well being" and "electrical and electronic calculators" in the applicant's specification to fall within any category of the opponent's goods or services. Neither do I consider there to be any obvious level of similarity between these goods and any of the opponent's goods or services. Therefore, I find that these goods are dissimilar.

#### Class 35 services

38. In its submissions, the opponent accepted that the following class 35 services are dissimilar:

The bringing together, for the benefit of others, of a variety of goods relating to or for use in the fields of slimming, weight control, weight management, diet, dieting, exercise, health, fitness, recreation, lifestyle, eating habits, foods, beverages, nutrition and well being enabling customers to conveniently view

and purchase those goods and services from an internet website, on intranet website, or any other computer network, from a virtual retail or wholesale store or outlet, a retail or wholesale store or outlet, through a television shopping channel, by mail order, by means of telecommunications, said goods comprising [...] clothing, footwear and headwear [...] pharmaceuticals, dietary supplements, nutraceuticals, supplements, dietary supplements, vitamins, minerals, dietetic food and substances, food and food products, snack foods, prepared and packaged meals and food, agricultural, horticultural and forestry products, fresh fruits, vegetables, nuts, herbs, seeds, grains, salad vegetables, fungi and legumes, garden salads, unprocessed fruits, vegetables, nuts, herbs, seeds, grains, salad vegetables, fungi and legumes, raw fruits, vegetables, nuts, herbs, seeds, grains, salad vegetables, fungi and legumes, seeds, 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 beer), preparations for making alcoholic beverages; the bringing together, for the benefit of others, of a variety of services relating to slimming, weight control, weight management, diet, dieting, food, nutrition, exercise, health, fitness, recreation, lifestyle, eating habits and well-being, said services comprising education services, training services, arranging and conducting education seminars, lectures, symposia, colloquiums, conferences and workshops, coaching services, online education services, provision of online training services, online education services, arranging of lectures, seminars, symposia and workshops, health club services, fitness club services, health and fitness services, exercise services, information services and counselling services relating to exercise(fitness), education services and education advice relating to physical fitness, exercise, instruction services relating to fitness and exercise, fitness and exercise training services, provision of exercise and fitness classes.

39. In the case of *Oakley, Inc v OHIM*, Case T-116/06, the GC held that although retail services are different in nature, purpose and method of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore, similar to a degree. For example, an electronic goods producer will commonly run and operate their own sales websites

or outlet stores to sell their own goods. The average consumer will be aware of the complementary relationship between a producer of electronic goods and the retailing of such goods. For the goods that I have found identical in my class 9 goods comparison above, it follows that a medium degree of similarity exists between the opponent's goods and the following services within the applicant's class 35 specification:

"The bringing together, for the benefit of others, of a variety of goods relating to or for use in the fields of slimming, weight control, weight management, diet, dieting, exercise, health, fitness, recreation, lifestyle, eating habits, foods, beverages, nutrition and well being enabling customers to conveniently view and purchase those goods and services from an internet website, on intranet website, or any other computer network, from a virtual retail or wholesale store or outlet, a retail or wholesale store or outlet, through a television shopping channel, by mail order, by means of telecommunications, said goods comprising electrical and electronic measuring [...] apparatus, appliances, equipment and instruments, electrical and electronic weighing apparatus, appliances, equipment and instruments, electrical and electronic scales [...], pedometers, diaries and planners, electrical and electronic measuring, weighing [...] devices, appliances, instruments, apparatus and systems, electrical and electronic apparatus, appliances, equipment and instruments for monitoring physical activity, [...] apparatus, appliances, equipment and instruments for monitoring physical activity, [...] compact discs, DVDs and other digital recording media, prerecorded compact discs, DVDs and other recording media, data processing equipment, computers, computer hardware, computer firmware, computer peripheral devices, weighing scales, weighing balances, weighing platforms, all for weighing the human body, digital weighing scales, digital balances, digital platforms, [...] data processing equipment and accessories [and] measuring, detecting and monitoring apparatus and instruments.

40. I have found above that the applicant's calculator goods are dissimilar to the opponent's goods and services. I do not consider that the retail of goods such as calculators will be similar to the retail services in the opponent's first mark's

specification. Therefore, I find “the bringing together, for the benefit of others, of a variety of goods relating to or for use in the fields of slimming, weight control, weight management, diet, dieting, exercise, health, fitness, recreation, lifestyle, eating habits, foods, beverages, nutrition and well being enabling customers to conveniently view and purchase those goods and services from an internet website, on intranet website, or any other computer network, from a virtual retail or wholesale store or outlet, a retail or wholesale store or outlet, through a television shopping channel, by mail order, by means of telecommunications, said goods comprising [...] calculating apparatus, [...] electrical and electronic calculators, [...] calculating devices” to be dissimilar to the goods or services in the opponent’s marks’ specification

41. “The bringing together, for the benefit of others, of a variety of goods relating to or for use in the fields of slimming, weight control, weight management, diet, dieting, exercise, health, fitness, recreation, lifestyle, eating habits, foods, beverages, nutrition and well being enabling customers to conveniently view and purchase those goods and services from an internet website, on intranet website, or any other computer network, from a virtual retail or wholesale store or outlet, a retail or wholesale store or outlet, through a television shopping channel, by mail order, by means of telecommunications, said goods comprising [...] computer software, downloadable software, [...] computer software for controlling weighing apparatus, appliances, instruments and devices, for use in database management, computer programs for controlling weighing apparatus, appliances, instruments and devices for use in data management, downloadable computer software and computer programs for controlling weighing apparatus, appliances, instruments and devices for use in data management [and] software and programs for managing, assisting, monitoring and weighing [...] electronic publications, downloadable electronic publications [...] printed matter, publications, photographs, stationery, books, booklets, directories, recipes, pamphlets, diaries, charts, greetings cards, magazines, periodical publications, instructional and teaching materials, posters, plans, pads, postcards, catalogues, newsletters, printed forms, flyers, printed publications, handbooks, manuals, advertisement boards, cards, calendars, notebooks, calculating tables, writing materials, writing instruments, signs, cookbooks [and] information technology and audio visual equipment” in the

applicant's specification fall within the categories of "retail services in relation to computer software", "retail services in relation to downloadable electronic publications", "retail services in relation to printed matter" and "retail services in relation to audio-visual equipment" in the opponent's first mark's specification. These services are, therefore, identical under the principle outlined in *Meric*.

42. I do not consider that "the bringing together, for the benefit of others, of a variety of goods relating to or for use in the fields of slimming, weight control, weight management, diet, dieting, exercise, health, fitness, recreation, lifestyle, eating habits, foods, beverages, nutrition and well being enabling customers to conveniently view and purchase those goods and services from an internet website, on intranet website, or any other computer network, from a virtual retail or wholesale store or outlet, a retail or wholesale store or outlet, through a television shopping channel, by mail order, by means of telecommunications, said goods comprising [...] exercise apparatus, equipment and devices, fitness apparatus, equipment and devices, exercise bicycles, body training and toning equipment, apparatus and devices, computer controlled exercisers, fitness apparatus and equipment, gymnastic and sporting articles" in the applicant's specification has any obvious level of similarity with the opponent's goods or services. While the opponent has submitted that these services are similar to "retail services relating to smartphones", "retail services relating to smartwatches", "retail services relating to wearable computers" and "retail services in relation to navigation devices", I do not consider this to be the case. While some large retailers may sell all of these types of goods, they will be separated into different departments, and I do not consider that this is sufficient to warrant a finding of similarity between the services. Therefore, I consider these services to be dissimilar.

43. The opponent has submitted that "publication of publicity texts", "on-line advertising on a computer network" and "dissemination of advertising matter" in its first mark's specification are identical to "the bringing together, for the benefit of others, of a variety of services relating to slimming, weight control, weight management, diet, dieting, food, nutrition, exercise, health, fitness, recreation, lifestyle, eating habits and well-being, said services comprising [...] publishing services in relation to electronic publications, publishing services in relation to downloadable

publications, publishing services relating to electronic magazines, journals, books and other written materials [and] publishing services in relation to texts, publishing services in relation to books” in the applicant’s specification. I do not agree that these services are identical to the opponent’s terms, however, there is a level of similarity with “publication of publicity texts”. This is because there is an overlap in nature and method of use in that both are publication services. Further, there will be a general overlap in purpose as both are publishing services, even if the end purposes are different. The users will differ as the user of the opponent’s service will be looking for publicity whereas the user of the applicant’s service will not. I do not consider that there will be an overlap in trade channels or any competitive relationship between the services. Overall, I consider that these services are similar to a medium degree.

44. I do not consider that there is any obvious level of similarity between “the bringing together, for the benefit of others, of a variety of services relating to slimming, weight control, weight management, diet, dieting, food, nutrition, exercise, health, fitness, recreation, lifestyle, eating habits and well-being, said services comprising [...] information services and counselling services relating to fitness, recreation, information services in the fields of fitness, exercise and recreation, online information services and counselling services relating to fitness, exercise and recreation, web based information services and counselling services relating to fitness, exercise and recreation, educational services namely provision of correspondence courses [...] information and counselling services, online information and counselling services, beauty care services, slimming salon services, slimming treatment services, weight control evaluation, weight control treatment, weight management evaluation, weight management treatment, weight management services, supervision services in the field of weight management, providing weight loss programme services, providing weight management programme services, providing nutritional information about food and drink for weight loss, weight control and weight management purposes and health care services, enabling customers to conveniently view and purchase those services from an internet website, an intranet website, or any other computer network, from an online retail store or outlet, from an online wholesale store or outlet, a retail store or outlet, a wholesale store or outlet, through a television shopping channel, by

mail order, or by means of telecommunications” in the applicant’s specification and any of the goods and services in the opponent’s marks’ specifications. These services are, therefore, dissimilar.

45. As some degree of similarity between goods and services is necessary to engage the test for likelihood of confusion, my findings above mean that the opposition aimed against those goods and services I have found to be dissimilar will fail.<sup>2</sup> For ease of reference, the opposition fails against the following goods and services in the applicant’s specification:

Class 9: Electrical and computer apparatus and devices, namely [...] digital balances, digital platforms for use in relation to slimming, weight control, weight management, diet, dieting, foods, beverages, nutrition exercise, health, fitness, recreation, lifestyle, eating habits and well-being; calculators; electrical and electronic [...] calculating apparatus, appliances, equipment and instruments; electrical and electronic [...] calculating devices, appliances, instruments, apparatus and systems, all for use in slimming, weight control, weight management, diet, dieting, foods, beverages, nutrition and exercise; electrical, electronic and computer [...] calculating devices for use in relation to slimming, weight control, weight management, diet, dieting, exercise, health, fitness, recreation, lifestyle, eating habits, foods, beverages, nutrition and well being; electrical and electronic calculators

Class 35: The bringing together, for the benefit of others, of a variety of goods relating to or for use in the fields of slimming, weight control, weight management, diet, dieting, exercise, health, fitness, recreation, lifestyle, eating habits, foods, beverages, nutrition and well being enabling customers to conveniently view and purchase those goods and services from an internet website, on intranet website, or any other computer network, from a virtual

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<sup>2</sup> *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

retail or wholesale store or outlet, a retail or wholesale store or outlet, through a television shopping channel, by mail order, by means of telecommunications, said goods comprising [...] calculating apparatus, [...] electrical and electronic calculators, [...] calculating devices [...] clothing, footwear and headwear [...] pharmaceuticals, dietary supplements, nutraceuticals, supplements, dietary supplements, vitamins, minerals, dietetic food and substances, food and food products, snack foods, prepared and packaged meals and food, agricultural, horticultural and forestry products, fresh fruits, vegetables, nuts, herbs, seeds, grains, salad vegetables, fungi and legumes, garden salads, unprocessed fruits, vegetables, nuts, herbs, seeds, grains, salad vegetables, fungi and legumes, raw fruits, vegetables, nuts, herbs, seeds, grains, salad vegetables, fungi and legumes, seeds, 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 beer), preparations for making alcoholic beverages [...] exercise apparatus, equipment and devices, fitness apparatus, equipment and devices, exercise bicycles, body training and toning equipment, apparatus and devices, computer controlled exercisers, fitness apparatus and equipment [and] gymnastic and sporting articles; the bringing together, for the benefit of others, of a variety of services relating to slimming, weight control, weight management, diet, dieting, food, nutrition, exercise, health, fitness, recreation, lifestyle, eating habits and well-being, said services comprising education services, training services, arranging and conducting education seminars, lectures, symposia, colloquiums, conferences and workshops, coaching services, online education services, provision of online training services, online education services, arranging of lectures, seminars, symposia and workshops, health club services, fitness club services, health and fitness services, exercise services, information services and counselling services relating to

exercise(fitness), education services and education advice relating to physical fitness, exercise, instruction services relating to fitness and exercise, fitness and exercise training services, provision of exercise and fitness classes [...] information services and counselling services relating to fitness, recreation, information services in the fields of fitness, exercise and recreation, online information services and counselling services relating to fitness, exercise and recreation, web based information services and counselling services relating to fitness, exercise and recreation, educational services namely provision of correspondence courses [...] information and counselling services, online information and counselling services, beauty care services, slimming salon services, slimming treatment services, weight control evaluation, weight control treatment, weight management evaluation, weight management treatment, weight management services, supervision services in the field of weight management, providing weight loss programme services, providing weight management programme services, providing nutritional information about food and drink for weight loss, weight control and weight management purposes and health care services, enabling customers to conveniently view and purchase those services from an internet website, an intranet website, or any other computer network, from an online retail store or outlet, from an online wholesale store or outlet, a retail store or outlet, a wholesale store or outlet, through a television shopping channel, by mail order, or by means of telecommunications.

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

46. The case law, as set out earlier, requires that I determine who the average consumer is for the respective parties' goods. I must then decide 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.”

47. I consider that the users of the goods and services at issue are either members of the general public (for goods such as electronic weighing scales) or business users (for services such as publishing services). The goods and services at issue are most likely to be sold through a range of retail shops and their online equivalents or through specialist retailers and their online equivalents. At retailers, the goods will be displayed on shelves and the services will be displayed on placards or on signs, where they will be viewed and self-selected by the consumer. A similar process will apply to websites, where the consumer will select the goods or services having viewed an image displayed on a webpage. As for retail services, these are likely to be selected after having seen signage on store fronts or, if selected online, having seen the services listed on retailers’ websites or via search engines. I find that the selection of the goods and services will be primarily visual, however, I do not discount aural consideration in the form of word of mouth recommendations and advice sought from shop assistants.

48. The goods and services will range from inexpensive items such as software applications that assist with weight loss to relatively expensive services such as publishing services. The goods and services are likely to range from being purchased/selected frequently to infrequently, depending on what is being purchased/selected. As for the level of attention paid, the average consumer will bear in mind several factors that will be different depending on the type of good or service being selected. For example, for weighing scales that aid in weight loss, the average consumer will consider factors such as accuracy of the scales and

ease of use. On the other hand, for publishing services in relation to books, the average consumer is likely to consider quality of the printing, quality of the materials used and the volume and speed at which the service can be provided. The level of attention paid by both the member of the general public and business user will generally be medium for the majority of the goods and services, although I recognise that it will also range to a higher than medium degree of attention for services such as publishing services.

### **Distinctive character of the opponent's mark**

49. 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).”

50. Registered trade marks possess various degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use made of it. In this case, the opponent has not pleaded that its marks have acquired enhanced distinctiveness through use in the UK, nor has it filed any evidence to that effect. Consequently, I have only the inherent position to consider.

51. The opponent's marks both consist of the word 'LIFE', albeit presented differently in that the opponent's first mark is in lower case whereas the second mark is in uppercase. I do not consider that this difference will affect the distinctive character of either mark and I will, therefore, consider the marks together. While the word 'LIFE' in respect of the goods and services for which the opponent's marks are registered is neither allusive nor descriptive, it is not particularly remarkable either. Overall, I consider that the opponent's marks enjoy a medium level of distinctive character.

### **Comparison of marks**

52. It is clear from *Sabel 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 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.

53. 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.”

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

55. The respective trade marks are shown below:

The opponent's marks	The applicant's mark
life ("the opponent's first mark")  LIFE ("the opponent's second mark")	LIFELINES

56. I have submissions from both parties regarding the comparison of the marks. I do not intend to reproduce these here but will refer to them below, if necessary.

57. In respect of the overall impression of the applicant's mark, the opponent submits that "the 'LINES' element [...] does not add any distinctiveness since it is secondary to the distinctive LIFE component." I disagree with these submissions on the basis that the average consumer will not artificially dissect the applicant's mark and will, instead, perceive it as one word with a well-known meaning, which I will come to assess below when considering conceptual similarity below. Therefore, I find that the overall impression of the applicant's mark lies in the word 'LIFELINES' as a whole and there are no other elements that contribute to its overall impression. As for the opponent's marks, both of these are word only marks and consist of different presentations of the word 'LIFE'. There are no other elements that contribute their overall impressions, which lies in the word itself.

58. The opponent's marks consist entirely of the word 'LIFE', which also appears in the applicant's mark. This is the single point of visual similarity between the marks. The

marks differ in the presence of 'LINES' in the applicant's mark, which has no counterpart in the opponent's marks. While the similarities sit at the beginning of the marks, being where the average consumer tends to focus,<sup>3</sup> the difference cannot be overlooked given its contribution to the overall impression of the applicant's mark. Overall, I consider that the marks are visually similar to a medium degree.

59. The parties' marks will be pronounced in the ordinary way. As above, 'LIFE' is the single point of similarity in the aural pronunciation of the marks with 'LINES' in the applicant's mark, being the single point of difference. Applying the same reasoning I have used in the visual comparison above, I consider that the marks are aurally similar to a medium degree.

60. The conceptual message of the opponent's marks is the word 'LIFE', which refers to the period of time during which someone or something is alive. This will be well known by the average consumer. Turning to the applicant's mark, the opponent submits that:

“[T]he word “LINES” makes reference to the nature of the goods and services concerned i.e. consumers are likely to perceive “LINES” as non-distinctive in the context of IT related goods and services i.e. computers are connected by lines; software code is written in lines; computers have data lines and are also referred to as being “on-line”.”

61. I disagree with these submissions. Firstly, I do not consider that the average consumer would dissect the mark to the point where it would view LIFE and LINES separately and then make a connection between LINES and IT related goods and services on the basis put forward by the opponent. Secondly, 'LIFELINES' is a well-known word in the English language and its concept is immediately graspable by average consumers in the UK. I am of the view that 'LIFELINES' will be seen by the average consumer as a means of survival such as, for example, devices upon which someone relies on in order to survive. Overall, even though the parties'

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<sup>3</sup> *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

marks both contain the word 'LIFE', I consider that, conceptually, they are dissimilar.

### **Likelihood of confusion**

62. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the fact 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 that he has retained in his mind.

63. For the most part, the parties goods and services are identical, however, I have found some goods and services to be similar to a medium degree or dissimilar. I have found that the average consumers for the parties' goods and services is either a member of the general public or a business user, depending on the goods or services being selected. I have found that the purchase/selection process of the goods and services is primarily visual, however, I do not discount an aural component. I have concluded that, generally, the average consumer will pay a medium degree of attention, although I acknowledge that for some goods and services, this will be higher than medium. I have found that the opponent's marks enjoy a medium degree of distinctive character. I have found the marks to be visually and aurally similar to a medium degree and conceptually dissimilar. I have taken these factors into account in my assessment of the likelihood of confusion between the marks.

64. Notwithstanding the principle of imperfect recollection and taking all of the above factors into account, I consider that the presence of 'LINES' in the applicant's mark will be sufficient to enable the consumer to differentiate between the marks. This is particularly the case given the importance of the visual components in the selection of the goods and services at issue. Further, the aural and conceptual differences created by the addition of 'LINES' will not be overlooked or misremembered by the average consumer. Consequently, I do not consider there to be a likelihood of direct confusion between the marks, even on goods and services that are identical.

65. It now falls to me to consider whether there is a likelihood of indirect confusion. Indirect confusion was described in the following terms by Iain Purvis Q.C., sitting as the Appointed Person in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10.

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

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one

else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (“26 RED TESCO” would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as “LITE”, “EXPRESS”, “WORLDWIDE”, “MINI”, etc.). BL O/375/10 Page 15 of 16

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (“FAT FACE” to “BRAT FACE” for example).”

66. The marks share the common element of ‘LIFE’, which, as the only element of the opponent’s marks, is their dominant and distinctive element. However, I do not find this to be the case with the applicant’s mark, which is dominated by ‘LIFELINES’ as a whole. While the marks share a common element, I do not consider that the differences between the marks would fall within one of the categories set out by Mr Purvis QC in the case of *L.A Sugar* (cited above). While I note that these categories are not exhaustive and are instead intended to be illustrative of the general approach, I can see no additional reasons as to why the average consumer would be indirectly confused by the marks. This is because the common element is not so strikingly distinctive to the point where the average consumer would consider that only the opponent would use it. Further, I am reminded of the fact that a finding of indirect confusion should not be made merely because the two marks share a common element and that it is not sufficient that a mark merely calls to mind another mark.<sup>4</sup> This is mere association not indirect confusion. In my view, the differences in the marks do not lend themselves to a natural brand extension or sub-brand, nor are the different elements indicative of a logical re-branding. I find this to be the case particularly due to the importance of the addition of ‘LINES’ in the applicant’s mark as this results in the applicant’s mark having a different conceptual meaning than that of the opponent’s marks. For example, the difference

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<sup>4</sup> *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

between the marks is not simply the addition of a non-distinctive word to 'LIFE' that will be seen as an obvious sub-brand but that the addition of 'LINES', in actual fact, creates a completely different word, with its own meaning. I see no obvious reason why average consumers would assume an economic connection between the parties on the basis of two marks with distinct meanings. Consequently, I do not consider there to be a likelihood of indirect confusion between the opponent's mark and application, even on goods that are identical.

## **CONCLUSION**

67. The opposition fails in its entirety and the application can proceed to registration.

## **COSTS**

68. As the applicant has been successful, it is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 2/2016. In the circumstances, I award the applicant the sum of **£500** as a contribution towards its costs. The sum is calculated as follows:

Preparing a counter statement and considering the opponent's statement:	£200
Filing written submissions:	£300
<b>Total</b>	<b>£500</b>

69. I therefore order Medion AG to pay Miles-Bramwell Executive Services Limited the sum of £500. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

**Dated this 27th day of May 2021**

**A COOPER**  
**For the Registrar**

## **ANNEX 1**

### Class 9

Electrical and electronic measuring and calculating apparatus, appliances, equipment and instruments; electrical and electronic weighing apparatus, appliances, equipment and instruments; electrical and electronic scales; electrical and electronic calculators, pedometers, diaries and planners; electrical and electronic measuring, weighing and calculating devices, appliances, instruments, apparatus and systems, all for use in slimming, weight control, weight management, diet, dieting, foods, beverages, nutrition and exercise; electrical and electronic apparatus, appliances, equipment and instruments for monitoring physical activity; electrical and electronic apparatus, appliances, equipment and instruments for food and beverage analysis; computer software; downloadable software; electronic publications; downloadable electronic publications; compact discs, DVDs and other digital recording media; prerecorded compact discs, DVDs and other recording media; data processing equipment; computers; computer hardware; computer firmware; computer peripheral devices; electrical, electronic and computer measuring, monitoring and calculating devices for use in relation to slimming, weight control, weight management, diet, dieting, exercise, health, fitness, recreation, lifestyle, eating habits, foods, beverages, nutrition and well being; downloadable publications; weighing apparatus; prerecorded digital recording media; weighing scales, weighing balances, weighing platforms, all for weighing the human body; electrical and computer apparatus and devices, namely, digital weighing scales, digital balances, digital platforms for use in relation to slimming, weight control, weight management, diet, dieting, foods, beverages, nutrition exercise, health, fitness, recreation, lifestyle, eating habits and well-being; computer software for controlling weighing apparatus, appliances, instruments and devices, for use in database management in the fields of slimming, weight control, weight management, diet, dieting, exercise, health, fitness, recreation, lifestyle, eating habits, foods, nutrition and well-being; computer programs for use in data management in the fields of slimming, weight control, weight management, diet, dieting, exercise, health, fitness, foods, beverages, nutrition, recreation, lifestyle, eating habits and well being; downloadable computer software and computer programs for controlling weighing apparatus, appliances, instruments and devices, for use in data management in the fields of slimming, weight control, weight management, diet, dieting, foods, nutrition, exercise,

health, fitness, recreation, lifestyle, eating habits and well-being; software and programs for managing, assisting, monitoring and weighing, in particular for weight loss, diet, dieting, exercise, health, fitness, nutrition and well-being of humans; calculators; information technology and audio visual equipment; data processing equipment and accessories; measuring, detecting and monitoring apparatus and instruments.

### Class 35

The bringing together, for the benefit of others, of a variety of goods relating to or for use in the fields of slimming, weight control, weight management, diet, dieting, exercise, health, fitness, recreation, lifestyle, eating habits, foods, beverages, nutrition and well being enabling customers to conveniently view and purchase those goods and services from an internet website, on intranet website, or any other computer network, from a virtual retail or wholesale store or outlet, a retail or wholesale store or outlet, through a television shopping channel, by mail order, by means of telecommunications, said goods comprising electrical and electronic measuring and calculating apparatus, appliances, equipment and instruments, electrical and electronic weighing apparatus, appliances, equipment and instruments, electrical and electronic scales, electrical and electronic calculators, pedometers, diaries and planners, electrical and electronic measuring, weighing and calculating devices, appliances, instruments, apparatus and systems, electrical and electronic apparatus, appliances, equipment and instruments for monitoring physical activity, computer software, downloadable software, electronic publications, downloadable electronic publications, compact discs, DVDs and other digital recording media, prerecorded compact discs, DVDs and other recording media, data processing equipment, computers, computer hardware, computer firmware, computer peripheral devices, weighing scales, weighing balances, weighing platforms, all for weighing the human body, digital weighing scales, digital balances, digital platforms, computer software for controlling weighing apparatus, appliances, instruments and devices, for use in database management, computer programs for controlling weighing apparatus, appliances, instruments and devices for use in data management, downloadable computer software and computer programs for controlling weighing apparatus, appliances, instruments and devices for use in data management, software and programs for managing, assisting, monitoring and weighing, information technology

and audio visual equipment, data processing equipment and accessories, measuring, detecting and monitoring apparatus and instruments, printed matter, publications, photographs, stationery, books, booklets, directories, recipes, pamphlets, diaries, charts, greetings cards, magazines, periodical publications, instructional and teaching materials, posters, plans, pads, postcards, catalogues, newsletters, printed forms, flyers, printed publications, handbooks, manuals, advertisement boards, cards, calendars, notebooks, calculating tables, writing materials, writing instruments, signs, cookbooks, clothing, footwear and headwear, exercise apparatus, equipment and devices, fitness apparatus, equipment and devices, exercise bicycles, body training and toning equipment, apparatus and devices, computer controlled exercisers, fitness apparatus and equipment, gymnastic and sporting articles, apparatus, appliances, equipment and instruments for monitoring physical activity, pharmaceuticals, dietary supplements, nutraceuticals, supplements, dietary supplements, vitamins, minerals, dietetic food and substances, food and food products, snack foods, prepared and packaged meals and food, agricultural, horticultural and forestry products, fresh fruits, vegetables, nuts, herbs, seeds, grains, salad vegetables, fungi and legumes, garden salads, unprocessed fruits, vegetables, nuts, herbs, seeds, grains, salad vegetables, fungi and legumes, raw fruits, vegetables, nuts, herbs, seeds, grains, salad vegetables, fungi and legumes, seeds, 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 beer), preparations for making alcoholic beverages; the bringing together, for the benefit of others, of a variety of services relating to slimming, weight control, weight management, diet, dieting, food, nutrition, exercise, health, fitness, recreation, lifestyle, eating habits and well-being, said services comprising education services, training services, arranging and conducting education seminars, lectures, symposia, colloquiums, conferences and workshops, coaching services, online education services, provision of online training services, online education services, arranging of lectures, seminars, symposia and workshops, health club services, fitness club services, health and fitness services, exercise services, information services and counselling services relating to exercise(fitness), education services and education advice relating to physical fitness, exercise, instruction services relating to fitness and exercise, fitness and exercise training services, provision of exercise and fitness classes, publishing services in relation to electronic publications, publishing services in relation to downloadable

publications, publishing services relating to electronic magazines, journals, books and other written materials, information services and counselling services relating to fitness, recreation, information services in the fields of fitness, exercise and recreation, online information services and counselling services relating to fitness, exercise and recreation, web based information services and counselling services relating to fitness, exercise and recreation, educational services namely provision of correspondence courses, publishing services in relation to texts, publishing services in relation to books, information and counselling services, online information and counselling services, beauty care services, slimming salon services, slimming treatment services, weight control evaluation, weight control treatment, weight management evaluation, weight management treatment, weight management services, supervision services in the field of weight management, providing weight loss programme services, providing weight management programme services, providing nutritional information about food and drink for weight loss, weight control and weight management purposes and health care services, enabling customers to conveniently view and purchase those services from an internet website, an intranet website, or any other computer network, from an online retail store or outlet, from an online wholesale store or outlet, a retail store or outlet, a wholesale store or outlet, through a television shopping channel, by mail order, or by means of telecommunications.

## **ANNEX 2**

### *The opponent's first mark*

#### Class 9

Music software; Musical sound recordings; Musical video recordings; Downloadable digital music; Downloadable video recordings featuring music; Data recorded electronically; Downloadable electronic books exclusively referring to music and computer or technical devices used to consume digital music, comics, phantasy, science fiction, books for children, cookbook, crime novels, thriller, advisers, travel guides, novels, non-fiction books, schoolbooks, specialised books; Downloadable ring tones for mobile phones; Recorded content; Information technology and audio-visual, multimedia and photographic devices; Navigation, guidance, tracking, targeting and map making devices; Information technology and audiovisual equipment; Access control devices; Alarms and warning equipment.

#### Class 35

Computerised file management; On-line advertising on a computer network; Rental of advertising time on communication media; Publication of publicity texts; Rental of advertising space; Dissemination of advertising matter; Retailing in relation to electric household utensils; Retailing in relation to electronic household utensils; Retail services in relation to computer software; Retail services in relation to mobile phones; Retail services in relation to smartphones; Retail services in relation to smartwatches; Retail services in relation to downloadable music files; Retail services in relation to downloadable electronic publications; Retail services in relation to wearable computers; Retail services in relation to printed matter; Retail services in relation to navigation devices; Retail services in relation to audio-visual equipment.

### *The opponent's second mark*

#### Class 9

Magnetic encoders; magnetic data carriers; optical data media; data-processing apparatus; optical character readers; writing and/or reading implements (data processing); magnetic data carriers; mouse (data processing equipment); optical data

carriers; disc exchangers (for computers); scanners [data processing equipment]; memories for data processing installations, processors (central processing units); compact discs (read-only memory); compact discs (audio-video); computers; recorded computer programs; computer software [recorded]; games programs for computers; computer operating programs (recorded); computer peripheral devices; computer programs (downloadable); computer keyboards; printers for use with computers; wrist rests for use with computers; interfaces [for computers]; laptops (computers); floppy disc drives; monitors for computers; monitors (computer hardware), navigation apparatus (computer programs) for vehicles (onboard computers); notebooks (computers); computer peripheral devices; computer programs; computer software (recorded); computer game programs; keyboards for computers; make-up removing appliances, electric; grids for electric accumulators, chargers for electric accumulators, plates for electric accumulators, electric accumulators; alarm bells, electric; connection boxes (electricity), display apparatus (electric); electronic display panels; batteries, electric; flat irons, electric; theft prevention installations, electric; electric wires; electrodynamic apparatus for the remote control of railway points; electric cables; electric capacitors; electromagnetic coils; electronic publications [downloadable]; electronic pens [visual display units]; discharge tubes, electric, other than for lighting; anti-interference devices (electricity); batteries, electric, for vehicles; electrodynamic signal remote control apparatus; photocopiers (photographic, electrostatic, thermic); inductance coils (electricity); electric devices for attracting and killing insects; wire connectors (electricity); door bells (electric); chargers for electric batteries; hair-curlers, electrically heated; welding apparatus, electric; soldering irons, electric; solenoid valves (electromagnetic switches); measuring devices, electric; electrically heated hair curlers; locks (electric); transmitters of electronic signals; electronic security tags for goods; socks, electrically heated; electronic pens (visual display units); buzzers electric; electronic pocket translators; electronic organisers; electric door bells; door openers, electric; door closers, electric; monitoring apparatus, electric; compact discs (audio-video); receivers (audio and video); tone arms for record players; head cleaning tapes [recording]; tone arms for record players; sound recording apparatus; tape-recorders; sound locating instruments; sound carriers; sound transmitting apparatus; sound amplifiers; sound-reproducing apparatus; amusement apparatus adapted for use with television receivers; temperature indicators; video telephones; loudspeaker boxes; letter scales; compact disc players;

television apparatus; telephone apparatus; motion picture cameras; film cutting apparatus; radiotelephony sets; signalling bells; altimeters; cassette players; compasses; headphones; laser pointers (luminous pointers); microphones; mobile telephones; modems; navigational instruments; lenses (optics); mouse pads (mouse mats); plotters; projection apparatus; projection screens; slide projectors, radios; smartcards (cards with integrated circuits); video games adapted for use with television receivers only; walkie talkies; video cameras; video recorders; safety helmets for sports; none of the aforesaid goods being or featuring educational and/or entertainment content intended for general circulation; the aforementioned goods exclusive of board game programs for computers, computer board games and video board games for use with television receivers only, electronic board games, video board games for a connection to a television, board games software, cards/discs/tapes/wires/circuits for bearing or bearing board games and/or games software and/or arcade board games, board gaming machines including slot machines.