

O/444/21

TRADE MARKS ACT 1994

TRADE MARK REGISTRATION 1521191

IN THE NAME OF CHRISTOPHER KINGSLEY

AND

TRADE MARK REGISTRATION 3242869

**IN THE NAME OF CHRISTOPHER KINGSLEY
AND JASON KINGSLEY**

AND

APPLICATIONS 503081 – 503083 BY REBELLION DEFENCE LIMITED

TO INVALIDATE AND REVOKE TRADE MARK 1521191 FOR NON-USE

AND

INVALIDATE REGISTRATION 3242869

Background and pleadings

1. Christopher Kingsley is the registered proprietor of trade mark 1521191, which is shown below.



2. The application to register the trade mark was filed on 10th December 1992 and the mark was registered on 3rd June 1994 in relation to:

Computers; electronic and electric apparatus, all for the input, output and processing of data; gaming, entertainment and amusement machines and apparatus; video game apparatus, computer games, electronic game apparatus, all adapted for use with television receivers and video apparatus; coin and counter-freed game and pinball machines; electronic table game apparatus with electro-optical screens; magnetic tapes, discs, magnetic discs, optical discs, silicone chips, microchips, electronic circuits and cassettes, all encoded with programs for games and all for use with the aforesaid games apparatus; sound and video records, sound and video recording and reproduction apparatus; computer software; computer programs; computer firmware; program memory cartridges for electronic amusement apparatus; parts and fittings for all the aforesaid goods; all included in Class 9.

Games, toys and playthings; electronic games; electronic amusement apparatus incorporating computer apparatus; non-coin and counter-freed games and pinball machines; parts and fittings for all the aforesaid goods; all included in Class 28.¹

3. Christopher Kingsley and Jason Kingsley (“the proprietors”) are the registered proprietors of trade mark registration 3242869, which consists of a series of two marks, **REBELLION** and **Rebellion**.

¹ The mark remains registered for these goods. On 14th October 2020, the proprietor applied by letter to partially surrender the trade mark for about half the descriptions of goods in classes 9 and 28. However, according to the Trade Mark Rules 2008, an application to surrender a trade mark must be filed on form TM23. Despite this being pointed out to the proprietor, no such form was filed. Therefore, the mark remains registered for all the goods shown in paragraph 2.

4. The application to register the Rebellion marks was filed on 11th July 2017 and the marks were registered on 20th October 2017. The registrations cover a very wide range of goods/services in twelve classes, 9, 16, 18, 21, 24, 25, 28, 35, 38, 41, 42 and 45. In most of these classes the list of goods/services incorporates the class heading. As with trade mark 1521191, the registration in class 9 covers 'computer software' at large.

5. On 26th March 2020, Rebellion Defence Limited ("the applicant") applied under section 47(1) of the Trade Marks Act 1994 ("the Act") to invalidate the marks registered under 1521191 & 3242869 on the grounds that they were registered in bad faith, contrary to s.3(6) of the Act. The pleaded case is that:

- (i) The proprietors themselves have not used the marks since they were registered;
- (ii) Whilst it is acknowledged that the proprietors are directors of Rebellion Developments Limited ("RDL"), it is not admitted that this company uses the trade marks with the consent of the proprietors;
- (iii) In any event, RDL is a video games company and the only apparent business it has is in relation to a small subset of the goods/services for which the marks are registered, namely video games, board games, comics, books, TV and film;
- (iv) These facts show that there was no intention at the time the applications were filed for the trade marks to be used in relation to a large majority of goods/services for which they were registered;
- (v) According to the case law, an application is filed in bad faith if there is objective, relevant and consistent indicia tending to show that, when the application for a trade mark was filed, the trade mark applicant had the intention either of undermining, in a manner inconsistent with honest practices, the interests of third parties, or of obtaining, without even targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark.
- (vi) The registration of the marks in relation to 'computer software' in particular was, and is, unjustified and contrary to the public interest

because it confers a monopoly of immense breath which cannot be justified by any legitimate commercial interests of the proprietors.

6. The applicant also applied under ss.46(1)(a) and (b) of the Act to revoke trade mark 1521191 for non-use. The applicant claims that the trade mark has not been put to genuine use since it was registered and the registration of the mark should therefore be revoked in its entirety with effect from 4th June 1999. Alternatively, the applicant claims that the mark was not put to genuine use in the periods 26th March 2000 – 25th March 2005, 26th March 2005 – 25th March 2010 or 26th March 2010 – 25th March 2015. The applicant therefore seeks revocation to take effect from (the earliest of) 26th March 2005, 26th March 2010 or 26th March 2015.

7. The proprietors filed counterstatements denying the grounds for invalidation and revocation. I note the following:

- (i) It is claimed that trade mark 1521191 has been used extensively by the proprietor, or with his consent, in the United Kingdom, since 1992;
- (ii) It is denied that trade marks registered under 3242869 cover an excessively broad range of goods/services;
- (iii) It is claimed that the trade marks are used by the proprietors, or with their consent, or that there is an intention to do so;
- (iv) It is accepted that the proprietors are directors of RDL;
- (v) It is claimed that the website of RDL shows use of the marks in relation to many goods/services additional to the ones identified in the applications;
- (vi) It is claimed that at the time the applications were filed it was acceptable practice at the UKIPO and EUIPO to register trade marks in relation to 'computer software' at large;
- (vii) The proprietors dispute that the applicant has explained how the registration of the marks dishonestly undermines the interests of third parties or obtained a right for purposes other than those falling within the functions of the trade marks.

8. Both sides seek an award of costs.

9. The invalidation and revocation proceedings are consolidated.

Representation

10. The applicant is represented by Taylor Wessing LLP. The proprietors are represented by Brand Protect. Neither party requested an oral hearing. I have, however, had the benefit of evidence and written submissions from both sides.

The evidence

11. The proprietors' evidence consists of a witness statement (with 19 exhibits) by Christopher Kingsley. Mr Kingsley is a director of RDL, Rebellion Interactive Ltd and other (unspecified) companies in the Rebellion group. The purpose of his evidence appears to be to provide background on the activities of the Rebellion group and show use of the contested trade marks in relation to goods in classes 9 and 28, particularly software and games.

12. The applicant's evidence consists of a witness statement (with 5 exhibits) by Mark Owen of Taylor Wessing LLP. Mr Owen's statement was filed in response to Mr Kingsley's evidence. It is mostly a forensic critique of that evidence. It also includes some exhibits casting doubt on whether the contested trade marks were actually used in relation to goods the proprietors rely on as having been marketed with their/RDL's consent.

13. I have taken account of all the evidence and submissions filed.

Application to revoke trade mark 1521191 for non-use

14. It is convenient to start by examining the application to revoke trade mark 1521191 for non-use. The relevant parts of s.46 of the Act are shown below.

"46. - (1) The registration of a trade mark may be revoked on any of the following grounds-

(a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use;

(b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;

(c)

(d)

(2) For the purpose of subsection (1) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as is referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made:

Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made.

(4) -

(5) Where grounds for revocation exist in respect of only some of the goods or services for which the trade mark is registered, revocation shall relate to those goods or services only.

(6) Where the registration of a trade mark is revoked to any extent, the rights of the proprietor shall be deemed to have ceased to that extent as from-

(a) the date of the application for revocation, or

(b) if the registrar or court is satisfied that the grounds for revocation existing at an earlier date, that date.”

15. In essence, the applicant claims that the trade mark has not been put to genuine use between the date of registration on 3rd June 1994 and 25th March 2015.

However, the proviso to s.46(3) of the Act effectively extends the inquiry to cover the period up to the date of the application of the application for revocation on 26th March 2020 (“the relevant periods”).

16. The proprietors contend that the applicant has admitted there has been genuine use of trade mark 1521191 by RDL in relation to video games, board games, comics, books, TV, and film. Therefore, the proprietors contend that the only issue that has to be determined so far as these goods are concerned, is whether RDL uses the mark with the proprietors’ consent. The applicant denies making any such admission.

17. The relevant parts of the applicant’s pleading is shown below:

*“If, which is not admitted, any presumption or assertion is made that RDL is using the Mark with the licence or consent of the Registrants, it is to be noted from its website at www.rebellion.com that RDL is a video game company. It develops and distributes video games, such as *Zombie Army*, *Evil Genius* and *Sniper Elite*. It appears also to make and sell board games with similar names. Finally, it appears RDL has a business in comics, books, TV and films. There is nothing on its website to suggest it makes or sells any other goods or provides any other services, whether under the name *Rebellion* or otherwise.”*

“The absence of any apparent actual use of the Mark by the Registrants indicates that they had no intention at the time the application for the Registration was filed to themselves use the Mark on all types of the Registrants’ Goods and Services. Even if such use is claimed by RDL, there has been only a very narrow apparent actual use of the Mark by RDL, namely in relation to video games, board games, comics, books, TV and film. That again shows there was no intention at the time the application for the Registration was filed for there to be authorised or licensed use the Mark on the large majority of the Registrants’ Goods and Services.”

18. In my view, these statements do not amount to an admission that RDL, or the proprietors, used the contested marks in relation to *video games, board games, comics, books, TV, and film* in the UK during the relevant periods. Therefore, I reject the proprietors’ submission that the only issue that has to be determined so far as

these goods are concerned, is whether RDL uses the mark with the proprietors' consent.

19. Section 100 of the Act states:

“If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

The evidential burden is therefore on the proprietor of trade mark 1521191 to show what use was made of the mark during the relevant periods.

20. 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 Trade Marks 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.

21. In *Walton International Ltd & Anor v Verweij Fashion BV*,² Arnold J. (as he then was) summarised the law relating to genuine use as follows:

“114.....The CJEU has considered what amounts to “genuine use” of a trade mark in a series of cases: Case C-40/01 Ansul BV v Ajax Brandbeveiliging BV [2003] ECR I-2439, La Mer (cited above), Case C-416/04 P Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs) [2006] ECR I-4237, Case C-442/07 Verein Radetsky-Order v Bunderversammlung Kamaradschaft ‘Feldmarschall Radetsky’ [2008] ECR I-9223, Case C-495/07 Silberquelle GmbH v Maselli-Strickmode GmbH [2009] ECR I-2759, Case C-149/11 Leno Merken BV v Hagelkruis Beheer BV [EU:C:2012:816], [2013] ETMR 16, Case C-609/11 P Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG [EU:C:2013:592], [2014] ETMR, Case C-141/13 P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

² [2018] EWHC 1608 (Ch)

[EU:C:2014:2089] and Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434], [2017] Bus LR 1795.

115. *The principles established by these cases may be summarised as follows:*

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: Ansul at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: Ansul at [36]; Sunrider at [70]; Verein at [13]; Leno at [29]; Centrotherm at [71]; Reber at [29].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: Ansul at [36]; Sunrider at [70]; Verein at [13]; Silberquelle at [17]; Leno at [29]; Centrotherm at [71]. Accordingly, affixing of a trade mark on goods as a label of quality is not genuine use unless it guarantees, additionally and simultaneously, to consumers that those goods come from a single undertaking under the control of which the goods are manufactured and which is responsible for their quality: Gözze at [43]-[51].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: Ansul at [37]. Internal use by the proprietor does not suffice: Ansul at [37]; Verein at [14] and [22]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: Silberquelle at [20]-[21]. But use by a non-profit making association can constitute genuine use: Verein at [16]-[23].

(5) *The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial raison d'être of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: Ansul at [37]-[38]; Verein at [14]; Silberquelle at [18]; Centrotherm at [71]; Reber at [29].*

(6) *All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: Ansul at [38] and [39]; La Mer at [22]-[23]; Sunrider at [70]-[71], [76]; Leno at [29]-[30], [56]; Centrotherm at [72]-[76]; Reber at [29], [32]-[34].*

(7) *Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no de minimis rule: Ansul at [39]; La Mer at [21], [24] and [25]; Sunrider at [72] and [76]-[77]; Leno at [55].*

(8) *It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: Reber at [32].”*

22. Mr Kingsley's evidence is that trade marks 1521191 and 3242869 are:

"...used by many companies in the Rebellion group of companies with my consent and, in the case of UKTM UK0003242869, that of my brother Jason and I, for a variety of goods. Some of the goods and services for which the EUTM (sic) is registered are licensed to third parties on a commercial basis. In all cases, where the mark is licensed to third parties, we insist that the mark is used in a way that accords with our branding and we ensure that the use is in accordance with provisions laid down by myself, or my staff."

23. The background to Rebellion is described as follows:

"42. Rebellion was founded in Oxford by my brother Jason and myself in 1992 whilst we were both at university in the city. The business and the REBELLION brand took off when we were commissioned by Atari US to write two pieces of software for their Atari Jaguar system. The software "Checkered Flag" and "Alien vs Predator" were both released in 1994. Alien vs Predator received critical acclaim when it was released to the public, with critics praising its atmosphere, graphics and single-player campaign. It received multiple awards and was referred by various publications as one of the best games for the Jaguar. The software was also a commercial success, selling over 85,000 copies, becoming one of the best-selling games for the Atari in July 1995."

"44. In 2000 we were able to purchase from Fleetway magazines the "2000 AD" series of magazines and its associated intellectual property. Amongst the fictional characters purchased at that time was JUDGE DREDD, ROGUE TROOPER and STRONTIUM DOG. As I have already mentioned in this statement, all those fictional characters have featured in books, magazines, films and video games. The first video game released after the purchase by Rebellion of the 2000 AD titles was software entitled Judge Dredd: Dredd Vs. Death. Rebellion was commissioned by a publisher called Sierra Games to develop this game. Throughout the first 15 years of the 21st century, Rebellion continued to grow through acquisition of other software developers and by being commissioned to write software for many companies. Today,

Rebellion employs over 400 people, mainly in software development, in five separate locations around the United Kingdom (Oxford, Didcot, Liverpool, Warwick and Wakefield).....

45. In 2015, software entitled Sniper Elite was sold to more than 15 million licensees around the world. Since then, many more licensed copies of the software have been sold.

46. In August 2016, Rebellion acquired the post-1970 “IPC Youth” and Fleetway comics libraries from Time Warner. We print some of those titles these under the Treasury of British Comics imprint, including Roy of the Rovers, Wildcat and One-Eyed Jack. We will be creating software aimed at being entertaining and educational from some of this recently acquired intellectual property.”

24. The proprietors’ evidence of use of the contested marks in relation to goods in classes 9 and 28 together with my findings of fact are shown in the table below.

Proprietor’s evidence	My findings
Class 9	
<p><i>Video games console controllers</i></p> <p>Claim: Many video games users adapt their console controllers for Sony games consoles so as to incorporate iconography from the proprietors’ games software. On 20th February 2020 someone [unidentified] used Rebellion’s Twitter account to retweet a picture of such an adapted console controller bearing iconography from ‘Zombie Army 4’. The console was pictured against a background on which trade mark 1521191 appeared above the (much larger) word ‘ZOMBIE’. The re-Tweet constituted RDL’s consent to the game user’s use of the REBELLION logo in relation to console controllers.</p>	<p>The re-Tweeted picture shown at exhibit 1 does not show any use of the 1521191 trade mark <u>in relation to console controllers</u>. This is because the re-Tweet does not show use of the REBELLION logo “..to create or preserve an outlet for [console controllers] that bear the mark.” In any event, the re-tweet of the picture of the adapted console controller from the proprietor’s Twitter account by an unidentified person does not constitute use of the trade mark with the proprietor’s consent.</p>

Video games

Claim: Games software for Sony PlayStation is provided on pre-recorded discs, which are marketed in folders. *“If those games originate from RDL,”* Rebellion in logo form (as registered) is printed on the front and back of the folder. Exhibit 2 shows video games that were offered for sale between 26 March 2015 and 25 March 2020 and *“various on-line shops in the United Kingdom and elsewhere selling these goods.”*

Claim: Page 1 of exhibit 2 consists of pictures downloaded from the proprietors’ website in June 2020 showing video games that Mr Kingsley says were available in the UK between 26 March 2015 and 25 March 2020.

Pages 2 – 5 of exhibit 2 show a video game called Arca’s Path for sale in June 2020 on the websites oculus.com and store.steampowered.com. Mr Kingsley says these show that (i) the game was released in December 2018, (ii) Rebellion was identified as the publisher, and (iii) the software was available to download in the UK since 2018.

Claim: Pages 6 – 13 of exhibit 2 show that games software called Sniper Elite VR was published by Rebellion and available in the UK since June 2019.

I note Mr Kingsley’s narrative evidence. Exhibit 2 consists of 48 pages. Mr Kingsley does not identify which pages show the folders he refers to.

None of the games shown on page 1 of exhibit 2 show use of the contested marks.

The extracts from these websites show that Arca’s Path was released in December 2018. I note that (i) both websites have prices in pounds sterling, indicating that the pages were aimed at UK consumers (in June 2020), (ii) ‘Rebellion’ was recorded as the publisher of the game, and (iii) the Rebellion logo (trade mark 1521191) is shown on the cover of the game shown on the website at store.steampowered.com, but not on the game shown on the website oculus.com.

Pages 6 – 13 of exhibit 2 show that (i) Sniper Elite 4 and Sniper Elite V2 Remastered were available for sale on the website store.steampowered.com in June 2020,

Pages 14 and 15 of exhibit 2 show the video game Strange Brigade was available for sale throughout the UK from the website playstation.com from 28/08/18, and that it was shown as published by Rebellion. Page 16 of Figure 2 shows that Strange Brigade was also available for sale and download in the Microsoft store in the United Kingdom.

Claim: Page 17 of Figure 2 shows a game called 'Zombie Army 4 Dead War' was made available for pre-order on the website www.epicgames.com from 4 February 2020.

priced in pounds sterling, and were recorded as having been released on 14/02/17 (page 8) and 13/05/19 (page11), respectively, (ii) an article from 'Game Central' dated June 2019 was shown on the website metro.co.uk in June 2020 covering a game called Sniper Elite VR (page 6), (iii) 'Rebellion' was identified as responsible for the games (pages 6, 11 and 12), and (iv) the Rebellion logo is shown on the cover of the games on pages 8 and 11.

Pages 14/15 of exhibit 2 show that the Strange Brigade game was available for sale on the English language GB section of the Playstation.com website in June 2020 for £39.99, and that the game was recorded as having been released by RDL in August 2018. Page 16 shows that the game was also available on the GB section of the Microsoft store website in June 2020. None of the pictures of the game show any use of the contested marks on the games or their folders/covers.

The extract from the epicgames.com website shows that (i) Zombie Army 4 Dead War was available to pre-order in February 2020, (ii) the advert included the Rebellion logo, and (iii) the advert was on the English-US (not GB) section of the website.

Claim: Pages 18 – 19 of exhibit 2 show that (i) a game called ‘Battle Zone’ was for sale and for delivery on compact discs (DVDs and CDs) from the website amazon.co.uk, (ii) the software was released on 13 October 2016 and, (iii) the REBELLION logo was clearly shown on the front of the CD case *“as it is with every game sold.”*

Claim: That pages 20 - 48 of exhibit 2 show further use of Rebellion in relation to games software.

Claim: Exhibit 3 “shows royalty statements from Microsoft, Sony Europe, Sony America and Sony Japan. The statements show sales of *“our”* software by those companies, in 2015, 2016, 2017, 2018, 2019.” Pages 1 - 9 of these statements are claimed to show sales of between 1324 and 13602 units of software per annum in the years 2015 - 2019.

Claim: Exhibit 4 shows sales of our software on the website “steampowered.com”. Our software can be downloaded from this website, and is in fact downloaded to the United Kingdom and nearly every country around the world.

These pages were also downloaded on 20th June 2020. They show what Mr Kingsley says they show. I note that the game in question was priced at £14.95, confirming that it was aimed at UK consumers.

These pages show advertisements for games software on websites aimed at Germany, France, the Netherlands, Italy and Poland. They are irrelevant to the proprietor’s claim to have used the contested marks in the UK in relation to video games.

The statements are so heavily redacted that it is impossible to identify any sales of software in many of them, let alone sales to the UK. Pages 10 – 22 of the exhibit are specifically addressed to other territories, such as USA, Canada and Japan. Some of the statements are addressed to RDL or simply ‘Rebellion’, others are addressed to Rebellion Interactive Ltd.

The documents making up exhibit 4 are addressed to Rebellion Interactive Ltd. They show annual sales of hundreds of thousands of units of games software, including games in the Sniper Elite series, during 2014 -2019. They do not show that any software was

Claim: Mr Kingsley says that the proprietors produce millions of computer games software products and have done throughout the relevant period. He provides (as exhibit 16) an example of a software licence, which he says are provided with the games intended to be installed on computers.

Claim: Exhibit 17 is an article written about Rebellion in the magazine 'PC Gamer' which Mr Kingsley says has a circulation of 22,000 per month. According to Mr Kingsley *"The article shows some photographs of the inside of our large software studio in Oxford where we design and develop our software. The article describes the process of developing and customising our games software, especially the games Sniper Elite and Battlezone. The article was published on 22 January 2017 and accessed on 4 May 2020."*

downloaded by UK users of the website.

None of the games Mr Kingsley identifies show any use of the contested marks. The software licence is between the user and Rebellion Interactive Limited. 'Rebellion' is used in the licence to identify that company as the owner of the IP rights in the product, including the copyright. This does not show use of the contested marks for the purpose of creating or maintaining a market for goods bearing those marks.

The article in 'PC Gamer' appeared on the website pcgamesn.com. It appears to be addressed to a multi-national audience, including the USA. It includes the following:

"You'll be familiar with Rebellion, the UK-based developer behind Sniper Elite, NeverDead and a couple of the Aliens Vs. Predator games. If you know your way around a comic book store, you might also know the same company owns 2000AD, the publisher behind Judge Dredd and Rogue Trooper."

The word Rebellion is used in this article to refer to a company (it is not clear exactly which one) that owns 2000AD, which publishes various computer games under

Claim: Exhibit 18 consists of the published accounts of RDL for the year ending 30th June 2018. They show that the company's turnover was £24.8m in 2018 and £40.1m the previous year. Most of this was generated through publishing computer games.

Claim: In 2017, Rebellion was nominated for a BAFTA award for the game SNIPER ELITE 4.

Recruitment software

Claim: In 2006, Rebellion was commissioned by Rival Technologies LLC, to write a piece of software for the US military. The software was called "Prism Guard Shield" and was aimed at increasing recruitment and retention into the US voluntary forces. The entity that purchased the software was the US military. Although the software is aimed at users situated in the USA, the software is available for download and is playable by anyone in the world. Exhibit 6 is a webpage showing that the 2006 version of the game was available for download in 2011, that the developer of the software is Rebellion, and that the game was still being used in 2017.

Educational software

Claim: A company called Gazoob Ltd marketed educational software authored by RDL before Gazoob Ltd went into liquidation in 2018. Exhibit 5 includes a screenshot of

other names. There is no use of the contested marks as trade marks for computer games.

The accounts confirm that RDL publishes video games. They do not show any use of the contested trade marks.

This is confirmed by the contents of exhibit 19. Rebellion is used by the organisers to identify the company responsible for developing the game.

This evidence does not show that the software, which appears to be a game, was marketed under the contested marks. Rebellion (the company) was merely credited as the creator of the software on the webpage shown on page 1 of exhibit 6, dated 2006. The webpages in exhibit 6 come from the websites combatsim.com, itstillworks.com and softexe.net. There is nothing to indicate that these sites were aimed at (or visited by) UK users.

Exhibit 5 shows 'Letterland stories' apps for sale on amazon. They appear to be stories for children sold as apps. Neither the

such educational software on sale on amazon.co.uk on 22nd October 2020. The same exhibit includes a copy of a slide from a presentation made to the board of Gazoob Ltd, of which Mr Kingsley was a member.

Software for downloading books

Claim: Rebellion has produced software that allows its books to be read on various computer apparatus. The software or “app” is still available for download on the Apple iTunes website. Shown at pages 1-3 of exhibit 7 is a screen shot showing the software available for download on the Apple iTunes store, in 2020. The software was published by Rebellion Publishing Limited, which Mr Kingsley says is “*one of the Rebellion group of companies.*” The software is free to download but the user of the software can choose to read otherwise unavailable content by paying a subscription for the content that is to be paid for. The software available for download is shown on Page 4 of exhibit 7, that being a magazine featuring “Judge Dredd”.

CDs with recorded music

Claim: Mr Kingsley says that “*a CD featuring some of the music in the film Judge Dredd was offered for sale.*” Exhibit 8 consists of extracts from the French, German and Italian websites of Amazon showing music from the film DREDD for sale in CD and MP3 formats.

Computer firmware; program memory cartridges for electronic amusement apparatus

Claim: Mr Kingsley claims that computer software is sold on firmware and memory cartridges used for the “Megadrive”. He says

screenshot nor the slide show any use of the contested marks.

Pages 1 -3 of exhibit 7 show that a magazine entitled ‘2000AD featuring Judge Dredd’ was available for download from the Apple Store at apple.com on 30/06/20. The seller was shown as Rebellion Publishing Limited. The game bore a copyright date of 2012. Mr Kingsley does not expressly claim, and there is nothing to show, that any of these publications were downloaded by UK users, or that there were any subscriptions for the magazine from UK users, during the relevant periods.

No claim is made to have used the contested marks in relation to recorded CDs/MP3s in the UK during the relevant periods, and none is shown.

The video game shown in exhibit 9 makes no reference to the contested marks. It is shown as marketed by an entity called

that page 1 of exhibit 9 is a printout of firmware and memory cartridges branded “JUDGE DREDD” for sale on the retailer Amazon(amazon.co.uk) on 30 June 2020 for £53.73. Although this is after the end of the relevant periods, he says that to his knowledge *“this computer apparatus and firmware was offered for sale throughout the relevant period.”*

Computer software

Claim: Mr Kingsley says that *“in 2019 we were asked to provide software to Google (the internet search engine).”* Exhibit 10 is a purchase order from Google to Rebellion. According to Mr Kingsley, such software is exported from the EU to the USA. Google Stadia, the relevant software platform, was launched for users in Europe on 19 November 2019.

Claim: Mr Kingsley says that the proprietors produce millions of computer games software products and have done throughout the relevant period. He provides (as exhibit 16) an example of a software licence, which he says are provided with the games intended to be installed on computers.

‘Acclaim’. There is no reference whatsoever to Rebellion or the contested marks.

The purchase order at exhibit 10 is addressed to Rebellion Interactive Limited. It is dated 13th February 2020 and is for various versions of Rebellion Interactive software delivered (or to be delivered) to Goggle in the USA between December 2019 and 27th February 2020. There is no evidence that the contested marks were “affixed” to the software, or its packaging, in the UK prior to the goods being exported to the USA (per s.46(2) of the Act).

None of the games Mr Kingsley identifies include any use of the contested marks. The software licence is between the user and Rebellion Interactive Limited. ‘Rebellion’ is used in the licence to identify that company as the owner of the IP rights in the product, including the copyright. This does not show use of the contested marks for the purpose of creating

<p>Claim: Exhibit 17 is an article written about Rebellion in the magazine 'PC Gamer' which Mr Kingsley says has a circulation of 22,000 per month. According to Mr Kingsley <i>"The article shows some photographs of the inside of our large software studio in Oxford where we design and develop our software. The article describes the process of developing and customising our games software, especially the games Sniper Elite and Battlezone. The article was published on 22 January 2017 and accessed on 4 May 2020."</i></p>	<p>or maintaining a market for goods bearing those marks.</p> <p>The article in 'PC Gamer' appeared on the website pcgamesn.com. It appears to be addressed to a multi-national audience, including the USA. It includes the following:</p> <p><i>"You'll be familiar with Rebellion, the UK-based developer behind Sniper Elite, NeverDead and a couple of the Aliens Vs. Predator games. If you know your way around a comic book store, you might also know the same company owns 2000AD, the publisher behind Judge Dredd and Rogue Trooper."</i></p> <p>The word Rebellion is used in this article to refer to a company (it is not clear exactly which one) that owns 2000AD, which publishes various computer games under other names. There is no use of the contested marks as trade marks for computer games.</p>
<p>Class 28</p>	
<p><i>Games</i></p> <p>Claim: Mr Kingsley says that <i>"Games, toys and playthings are an important part of Rebellion's offerings. These games, toys and playthings help to reinforce the individual brands such as STRONTIUM DOG, ROGUE TROOPER, JUDGE DREDD. The Strontium Dog game was released on 18 March 2019 and was licensed by Rebellion. The REBELLION logo can be seen in the left hand top corner. When the website</i></p>	<p>The Rebellion logo is visible on the Strontium Dog game shown in exhibit 11 on the website 2000ad.com as at June 2020. This evidence does not show that games sold in the relevant periods bore the contested marks, or that any were sold in the UK. The review of the Strontium Dog game on rpg.net at page 2 of exhibit 11</p>

2000ad.com was accessed on 11 June 2020, this game had been “sold out”.

Claim: Further examples of games sold by Rebellion are given at exhibit 12. These show the games being sold on various shops in the United Kingdom and elsewhere.

Toys and playthings

Claim: Mr Kingsley says that exhibit 13 shows examples of jigsaw puzzles sold in UK and elsewhere throughout the relevant period, and that these puzzles were marked with the Rebellion brand.

records the publisher of the game as Warlord Games, not Rebellion.

Page 5 of exhibit 12 shows a game called ‘Judge Dredd Starter Pack’ for sale on the website 2000ad.com for £50. The Rebellion logo is shown on the game and on the webpage. The webpage says that the game was released in November 2019, but the webpage in evidence appears to have been downloaded in June 2020. It bears a copyright claim of 2020, indicating that at least some of the content (including, potentially, the picture of the particular game shown on the page) was created sometime during that year.

There are further examples in exhibit 12 of similar games for sale in Germany and the USA in June and November 2020.

None of the evidence in exhibit 12 shows use of the contested marks during the relevant periods in the UK in relation to games.

Exhibit 13 shows three jigsaw puzzles for sale on the website amazon.co.uk in June 2020, each of which bears the Rebellion logo mark (amongst others). The goods are priced in pounds sterling. Exhibit 13 itself does not show use of the contested marks in the UK during the relevant periods.

Figurines & board games

Claim: Exhibit 14 shows an example of the figurines the proprietors have always sold. Mr Kingsley says that this example was released on 28th March 2018.

Claim: The proprietors allow toys and figurines to be made and sold to third parties by our licensees. One of those licensees is the toy company “Three A Trading Company Ltd” of Hong Kong, China. Exhibit 15 shows the royalty returns relating to licensing agreements for figurines and games between Rebellion and Three A, Mezco Toys LLC and Bloomsbury Publishing plc.

Exhibit 14 does not show any use of the contested marks in relation to figurines. The website shown in exhibit 14 makes no reference to the marks.

The royalty returns and examples of sales of figurines by Three A Trading Company and Mezco Toys LLC do not show any use of the contested marks by the proprietors or with their consent. The royalty returns are addressed to RDL and show use of its company name. They do not show use of the contested marks for the purpose of distinguishing the source of the figurines so as to create a market for such goods in the UK (or anywhere else).

The royalty return from Bloomsbury Publishing plc is addressed to Rebellion Publishing Limited. It shows UK sales of around 1400 board games entitled ‘Judge Dredd, Helter Skelter.’ A picture of the game at page 15 of exhibit 15 from the website Travellingman.com shows no use of the contested marks. A second royalty return from Bloomsbury Publishing relates to UK sales of around 80 board games in 2019 entitled ‘Judge Dredd, The Cursed Earth’. A picture of the game downloaded from the website goblin gaming.co.uk shows the game, which does not bear the contested marks either. The

	<p>Rebellion logo mark <u>is</u> included on the webpage beneath the picture of the board game, which was on sale for £19.99. However, although the game appears to have been on sale in the UK in 2019, the webpage on which the mark appears seems to have been downloaded sometime in 2020. Consequently, the use of the Rebellion logo mark on the website of goblinaming.co.uk in 2020 does not necessarily show use of the contested marks in relation to board games <u>during the relevant periods.</u></p>
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25. Mr Owen’s evidence on behalf of the applicant is that “*Rebellion has published a number of print titles under the imprints 'Solaris' and 'Abaddon Books'. Under the 'Solaris' imprint, these titles include; 'These Lifeless Things', 'Grave Secrets' and 'Black Sun'. Under the 'Abaddon' imprint, these titles include; 'Spec Ops Z' and 'Liquid Crystal Nightingale'.*”

26. Mr Owen attaches extracts from amazon.co.uk showing these books being offered for sale.³ He points out that the copyright claim in Black Sun states that Solaris is an imprint of Rebellion Publishing Limited, and that the copyright claim in ‘Spec Ops Z’ states that ABADDON BOOKS is a trade mark owned by Rebellion Intellectual Property Limited. He points out that this is use of company names to identify the owners of IP rights, not use of the contested marks as trade marks for the publications.

Assessment

27. The proprietors’ evidence of use of the 1521191 mark is deficient in the following respects:

³ See exhibits MO-1 to MO-4 to Mr Owen’s statement

- (i) It relies on limited examples of use of the contested marks on websites after the end of the relevant period to support Mr Kingsley's assertions that such use occurred throughout the period 2015 – 2020;
- (ii) It includes numerous examples of use of the contested marks outside the UK, which are irrelevant to the revocation proceedings, and Mr Kingsley is often vague about whether his claims to have used the marks relate specifically to the relevant UK market;
- (iii) Where use is shown on websites apparently directed at other territories, or the target audience for the website is unclear, there is insufficient evidence to conclude that those websites were, at least in part, targeted at UK consumers, per *Warner Music UK Ltd v TuneIn Inc.*;⁴
- (iv) Some of the examples put forward to illustrate use of the contested marks manifestly do no such thing;
- (v) The only evidence put forward about the extent of the use of the contested marks is in relation to video games and board games;
- (vi) The use of the contested marks in relation to video games appears to reflect international unit sales, not UK unit sales;
- (vii) The use of the contested marks in the UK in relation to board games is trivial in extent, and it is not clear whether the contested marks were used in relation to such goods during the relevant periods;
- (viii) Mr Kingsley is not specific as to which of the companies in the Rebellion group use the contested marks with his consent and/or that of his brother.

28. In *Awareness Limited v Plymouth City Council*,⁵ Mr Daniel Alexander Q.C. as the Appointed Person stated that:

⁴ [2019] EWHC 2923 (Ch)

⁵ Case BL O/236/13

“22. The burden lies on the registered proprietor to prove use..... However, it is not strictly necessary to exhibit any particular kind of documentation, but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public.”

29. For present purposes I accept that use of Rebellion as a word mark would count as use of the Rebellion logo registered under 1521191 under s.46(2) of the Act. This is because the distinctive character of the 1521191 mark depends on the word Rebellion rather than stylisation of the letters.

30. I also accept that the mark (or an acceptable variation) does not have to be applied to the goods or their packaging in order to constitute genuine use.⁶ It is sufficient if a link is established between a company or trade name and the goods marketed by that party. However, where the use of a company name or trade name is limited to identifying a company or designating a business which is being carried on, such use cannot be considered as being ‘in relation to goods or services’.⁷

31. I am prepared to infer that any use shown of the contested mark by companies in the Rebellion group was with the consent of the proprietor. This is because (i) it is not necessary for a formal licence to exist in order for use of a trade mark to be with the consent of the proprietor, and (ii) I accept Mr Kingsley’s evidence that the 1521191 mark was used by companies in the Rebellion group with his consent.

⁶ See *Aegon UK Property Fund Limited v The Light Aparthotel LLP*, BL O/472/11, at paragraphs 17 and 18

⁷ *Céline SARL v. Céline SA*, CJEU, Case C-17/06

32. In order to evaluate the use shown of trade mark 1521191 it is necessary to consider the proprietors' evidence of use as a whole. It is not, therefore, fatal to the proprietors' case that no single exhibit shows use of the 1521191 mark in the UK during the relevant periods in relation to the goods at issue. However, even considering the evidence as a whole, I find that the only goods for which genuine use of the contested mark has even *arguably* been shown is video games in class 9. I reject the proprietors' claims to have used the mark in relation to other goods in classes 9 and 28. This is because the evidence does not show use of the mark in relation to these goods or, where such use is shown, that it was in, or directed at, the UK market or, where use of the mark in the UK in relation to relevant goods is shown, that it occurred during the relevant periods, or was on a scale "*warranted in the economic sector concerned to maintain or create a share in the market for the goods.. in question.*"

33. I acknowledge that even the evidence of use of the 1521191 mark in relation to video games is far from complete, e.g. there are no UK sales figures. However, the evidence relating to the games Arca's Path, Sniper Elite and Dead War 'Battle Zone' is (just) sufficient for me to accept Mr Kingsley's evidence that the Rebellion logo was used on the covers/folders of (at least) these games. The market for video games is an international one. It is therefore likely that the same marks will be used for video games sold in the UK, USA, and EU markets. Although the extent of sales of such goods under the contested mark in the UK market is not specified in the evidence, it is clear from the evidence that (i) the proprietors are based in the UK, and (ii) have a significant presence in the international market for video games. It is therefore likely that UK sales of Arca's Path, Sniper Elite and Dead War 'Battle Zone' games bearing the Rebellion logo following the release of these games in 2017 – 2019 would have been more than trivial and constituted "*real commercial exploitation of the mark.*"

34. Consequently, I find that the proprietors have shown genuine use of the 1521191 mark in relation to video games. In *Property Renaissance Ltd (t/a Titanic Spa) v*

Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors,⁸ Mr Justice Carr summed up the law relating to partial revocation as follows:

“iii) Where the trade mark proprietor has made genuine use of the mark in respect of some goods or services covered by the general wording of the specification, and not others, it is necessary for the court to arrive at a fair specification in the circumstance, which may require amendment; Thomas Pink Ltd v Victoria's Secret UK Ltd [2014] EWHC 2631 (Ch) ("Thomas Pink") at [52].

iv) In cases of partial revocation, pursuant to section 46(5) of the Trade Marks Act 1994, the question is how would the average consumer fairly describe the services in relation to which the trade mark has been used; Thomas Pink at [53].

v) It is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do. For example, in Pan World Brands v Tripp Ltd (Extreme Trade Mark) [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally; Thomas Pink at [53].

vi) A trade mark proprietor should not be allowed to monopolise the use of a trade mark in relation to a general category of goods or services simply because he has used it in relation to a few. Conversely, a proprietor cannot reasonably be expected to use a mark in relation to all possible variations of the particular goods or services covered by the registration. Maier v Asos Plc [2015] EWCA Civ 220 ("Asos") at [56] and [60].

vii) In some cases, it may be possible to identify subcategories of goods or services within a general term which are capable of being viewed independently. In such cases, use in relation to only one subcategory will not constitute use in relation to all other subcategories. On the other hand, protection must not be cut down to those precise goods or services in relation

⁸ [2016] EWHC 3103 (Ch)

to which the mark has been used. This would be to strip the proprietor of protection for all goods or services which the average consumer would consider to belong to the same group or category as those for which the mark has been used and which are not in substance different from them; Mundipharma AG v OHIM (Case T-256/04) ECR II-449; EU:T:2007:46.”

35. Adopting this approach, I find that an average consumer would regard *computer games* and *computer games software* as a fair description of, and specification for, the goods in relation to which trade mark 1521191 was put to genuine use in the UK during the relevant periods.

36. The registration of the trade mark will be revoked in relation to the other goods for which it is registered with effect from 26th March 2005.

Registration of the Rebellion trade marks covered by 3242869 in bad faith

37. Section 47 of the Act states:

“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).”

Section 3(6) of the Act states:

“(6) A trade mark shall not be registered if or to the extent that the application is made in bad faith.”

38. The parties agree that the correctness of the law as applied by the High Court in *Sky v Skykick*⁹ could have an important bearing on the outcome of this ground.¹⁰

39. During the course of drafting this decision I became aware that the Court of Appeal was hearing an appeal against the judgment of Arnold J. in *Skykick*. I therefore advised the parties that I was minded to issue a provisional decision. This

⁹ [2020] EWHC, 990 (Ch)

¹⁰ Although the proprietors argue that this case be distinguished from *Skykick* on the facts

would leave open the possibility for further submissions and revision of my provisional decision on the bad faith grounds following receipt of the judgment of the Court of Appeal. Such a course would avoid the possibility of an appeal tribunal having to decide an appeal against this decision without the benefit of the first instance decision having taken into account the judgment of the Court of Appeal in *Skykick*. The parties responded agreeing that a final decision should not be made until after the Court of Appeal had given judgment in *Skykick*. Neither party expressed a preference for or against a provisional decision being made in the meantime. I will therefore proceed as I originally planned and give a provisional decision on the bad faith grounds based on the case law as it currently stands.

Bad faith: the case law

40. The relevant case-law concerning trade mark applications made in bad faith can be found in the following cases: *Chocoladefabriken Lindt & Sprüngli*, CJEU, Case C-529/07, *Malaysia Dairy Industries*, CJEU, Case C-320/12, *Sky v Skykick*, CJEU, Case C-371/18, *Hotel Cipriani SRL and others v Cipriani (Grosvenor Street) Limited and others*, [2009] RPC 9 (approved by the Court of Appeal in England and Wales: [2010] RPC 16), *Copernicus-Trademarks v EUIPO*, General Court of the EU, Case T-82/14, *Alexander Trade Mark, The Appointed Person*, BL O/036/18, *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited* [2012] EWHC 1929 (Ch) and *Sky v Skykick* [2020] EWHC, 990 (Ch).

41. The law appears to be as follows:

- (a) While in everyday language the concept of 'bad faith' involves a dishonest state of mind or intention, the concept of bad faith in trade mark law must be understood in the context of trade: *Skykick* CJEU.
- (b) The applicant for a trade mark is not required to know precisely, on the date on which his or her application for registration of a mark is filed, the use he or she will make of the mark applied for and he or she has a period of 5 years for beginning actual use consistent with the essential function of that trade mark; *Skykick* CJEU.
- (c) Bad faith cannot, therefore, be presumed on the basis of the mere finding that, at the time of filing his or her application, the applicant had no economic

activity corresponding to the goods and services referred to in that application: *Skykick CJEU*.

- (d) However, where the trade mark application is filed without an intention to use it in relation to the specified goods and services, and there is no rationale for the application under trade mark law, it may constitute bad faith. Such bad faith may be established where there are objective, relevant and consistent indications showing that the applicant had the intention either of undermining, in a manner inconsistent with honest practices, the interests of third parties, or of obtaining, without even targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark: *Skykick CJEU*.
- (e) This may be the case where the exclusive right was sought as part of a strategy of using widely cast trade mark registrations as legal weapons for use against others in infringement or opposition proceedings and/or for the purposes of blocking trade mark applications by third parties: *Skykick EWHC* and *Copernicus-Trademarks v EUIPO*.
- (f) A trade mark may be applied for in good faith in relation to some of the goods/services covered by the application, and in bad faith as regards others: *Skykick CJEU*.
- (g) This may be the case where the applicant has included a specific term in the specification, such as 'computer games', with no intention of using the mark in relation to any such goods, simply to obstruct third parties from using or registering the same or similar marks. It may also be the case where the applicant has included a broad term, such as 'computer software', with the intention of using the mark in relation to a particular sub-category of such goods/services, but no intention of using the mark in relation to all the other (sometimes very different) sub-categories of goods/services covered by the broad term, with the objective of obstructing third parties from using or registering the mark in relation to such goods/services: *Skykick EWHC*.
- (h) In deciding whether there was a rationale for registering the trade mark in relation to any particular term, it is necessary to bear in mind that trade mark proprietors have a legitimate interest in seeking protection in respect of goods or services in relation to which they may wish to use the trade mark in future (even if were no plans to use the mark in relation to the goods/services at

issue at the time of filing the application): *Skykick* EWHC. It is therefore relevant to consider whether the goods/services in the contested application are related to those for which the mark has been used, or for which the applicant had plans to use the mark.

42. A statement on the application form that the mark is in use, or there is a *bona fide* intention to use it may, if untrue, provide evidence supporting a bad faith case, but is not sufficient by itself to justify the refusal or cancellation of the registration: *Skykick* CJEU.

43. An allegation of bad faith is a serious allegation which must be distinctly proved, but in deciding whether it has been proved, the usual civil evidence standard applies (i.e. balance of probability). This means that it is not enough to establish facts which are as consistent with good faith as bad faith: *Red Bull*.

44. The matter must be judged at the relevant date, which is the date of the application for registration: *Lindt*.

Assessment

45. The applicant's main contentions appear to be that the application to register the trade marks covered by 3242869 was filed (i) without an intention to use the marks in relation to the majority of the goods/services covered by the application, and (ii) for the purpose of obtaining, without even targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark.

46. The first part of the applicant's case is based on:

(i) The sheer number and diversity of the goods/services covered by the registered specification of goods/services, which it says are more than any one undertaking would trade in;

(ii) The breadth of the terms 'computer software', 'computer software development services' and 'computer services', which the applicant claims are so broad in scope that no one trader would offer all the goods/services falling within these broad terms;

(iii) The absence of evidence of use of the marks by the proprietors themselves and the specific nature and scope of RDL's business, which has no apparent connection with many of the descriptions of goods/services covered by the application, e.g. *covers for horse saddles*;

(iv) The passage of time since trade marks 1521191 and 3242869 were registered and the lack of any change in RDL's business into one trading in a diverse range of goods/services;

(v) The proprietors' ineffective attempt on 14th October 2020 to partially surrender the 1521191 trade mark for about half the descriptions of goods in which it is registered in classes 9 and 28, which the applicant says confirms that both the contested marks were registered for descriptions of goods/services that went well beyond the proprietors real commercial interests.

47. In my view, no inferences can or should be drawn from the proprietors' ineffective attempt to partially surrender trade mark 1521191 after these proceedings were started. This is because it says nothing about the proprietors' intentions at the relevant date in 2017 (or in 1992 when 1521191 was registered).

48. Further, nothing can be drawn from the mere fact that the proprietors do not use the trade marks themselves, but instead consent to the use of the marks by companies in which they have a commercial interest.

49. On the other hand, I accept the applicant's submission that it is difficult to imagine any business that would use a trade mark to indicate to consumers that it is responsible for the quality of goods/services as diverse as *life-saving and teaching apparatus* in class 9, *painting sets for artists* in class 16, *collars, leashes and clothing for animals* in class 18, *appliances for removing make-up* in class 21, *textiles and substitutes for textiles* in class 24, *fancy dress costumes* in class 25, *gymnastic and sporting articles* in class 28, *human resources consultancy* in class 35, *broadcast of television programs* in class 38, *arranging of conventions for business purposes* in class 41, *website design services* in class 42 and *online social networking services, namely, facilitating social introductions or interactions among individuals* in class 45.

50. In extreme cases, the sheer breadth of the goods/services covered by a trade mark application may be sufficient, by itself, to call into question whether the applicant was using, or had an intention (whether fixed, conditional or otherwise) to use the trade mark in accordance with its essential function in relation to all the goods/services covered by the application. In this case the doubts created by the breadth of the specification is reinforced by the evidence about the rather specific nature and scope of the proprietors' business conducted through the Rebellion group of companies.

51. The case law indicates that the fact that the applicant applied to register the trade marks in respect of a wide range of goods or services is not sufficient to demonstrate bad faith if the applicant had a reasonable commercial rationale for seeking such protection. The proprietors claim they have shown that there was a commercial logic in registering the contested marks for the registered specification. They claim that the marks are used in relation to a wide range of goods/services. However, as my analysis of that evidence for the purposes of the revocation action shows, the proprietors' business is really not much broader than that described by the applicant, i.e. *video games, board games, comics, books, TV, and film*. However, I accept that, even though they have not shown use of the contested marks in relation to such goods, there is evidence that the proprietors' economic activities also include:

- (i) Children's stories in the form of downloadable apps;
- (ii) Downloadable software for reading online books and publications;
- (iii) CDs bearing recorded music;
- (iv) Firmware and other digital media bearing games and films;
- (v) Toys, puzzles, and figurines.

52. The above facts are sufficient for me to reach a *prima facie* finding that when the application to register trade marks covered by 3242869 was filed there was no use, and no intention to use, the trade marks in relation to all, or even the majority, of the descriptions of goods/services specified in the application.

53. In related EUIPO proceedings, the applicant illustrated its claim that REBELLION was unreasonably registered for goods which appear to have nothing to do with the business connected to the proprietors by pointing to the registration of the trade mark in class 18 for *covers for horse saddles*. The proprietors' representative draws my attention to their response, which was to provide evidence to the EUIPO that the proprietors operate a YouTube channel featuring knights on horseback. This combined with the proprietors' "*widespread licensing business interests*" were said to justify the registration of the EUTM in relation to *covers for horse saddles*. There is no evidence about a YouTube channel before me. In any event, it is not obvious why a YouTube channel featuring knights on horseback is relevant. There is no evidence that the proprietors "*widespread licensing business interests*" go much beyond computer games software, games, figurines, comics, and books. The fact that the proprietors have had to resort to such farfetched arguments to justify the registration of the marks for *covers for horse saddles* merely emphasises that the registered specification goes well beyond the realistic and plausible scope of the only business claimed to be a user of the contested mark.

54. The first part of the applicant's case also includes an objection to the width of some of the individual descriptions covered by the registration; namely, *computer software*, *computer software development services* and *computer services*. According to the applicant, *computer software* covers any software program that can be operated on any device, whether as part of a plane, a laptop, a games console, a payment terminal, a firewall, an air conditioning system, a social media platform, a database, or a phone. For this reason, the applicant says it describes so many different software products that someone applying to register a trade mark for such a description of goods runs a high risk that their application will be judged to have been filed in bad faith. In support of this submission the applicant points to:

- (i) The decision of Laddie J. in *Mercury Communications Ltd v Mercury Interactive (UK) Ltd*¹¹ in which the judge said that the description *computer software* would normally be "*too broad*";

¹¹ [1995] FSR 850

(ii) The first judgment of Arnold J. (as he then was) in *SkyKick EWHC*¹² in which he said that “*registration of a trade mark for 'computer software' is unjustified and contrary to the public interest because it confers on the proprietor a monopoly of immense breadth which cannot be justified by any legitimate commercial interest of the proprietor*”;

(iii) The Opinion of Advocate General Tanchev in *Skykick CJEU*, in which he opined that registration of marks for the term *computer software* was “*..unjustified and contrary to the public interest*” because it confers “*a monopoly of immense breadth*”.

55. The proprietors respond that:

(i) The term *computer software* covers only software for use in computers, not other devices, and is therefore narrower than *software* as such;

(ii) Despite the judgment of the CJEU in the *IP Translator* case,¹³ the practice of the UKIPO and EUIPO at the relevant date was (and remains) to permit the registration of trade marks for *computer software*;

(iii) The CJEU in *Skykick* did not adopt the part of the Opinion of Advocate General Tanchev which specifically addressed the acceptability or otherwise of the term *computer software*;

(iv) The second judgment of Arnold LJ in *SkyKick EWHC*¹⁴ can be distinguished from the present case on its facts;

(v) They do use the contested marks in relation to goods falling within the description *computer software*.

56. I do not accept that *computer software* is limited to software for computers as such. The term is wide enough to cover software which runs on computer processors incorporated into any device. Whether or not that is right, I agree with the applicant that *computer software* is a description of considerable breadth.

¹² [2018] EWHC 155 (Ch)

¹³ Case C-307/10 *Chartered Institute of Patent Attorneys v Registrar of Trade Marks*

¹⁴ [2020] EWHC, 990 (Ch)

57. The question that arose in *IP Translator* was about the degree of precision and clarity required for terms used in trade mark specifications. That is a different issue to whether broad terms have been registered in bad faith. In my view, the meaning of *computer software* is clear and precise. There should be no difficulty in working out what is and is not covered by 'computer software'. The meaning of that term just happens to cover a very wide range of goods with many different purposes. Therefore, nothing relevant can be taken from the fact that neither the UKIPO nor the EUIPO classify *computer software* as a term that is too general to satisfy the requirements for clarity and precision set out in *IP Translator*.

58. On the other hand, the mere fact that the UKIPO does not routinely object to the registration of marks for *computer software* does not mean that the registration of a trade mark for such goods is immune to claims that the mark was registered in bad faith. Such claims must be determined on the facts of the individual case, including (i) evidence as to the nature and scope of the applicant's actual, planned and possible business intentions at the date of the application, and (ii) whether it has been shown that the applicant registered the mark for *computer software* in order to acquire an exclusive right for purposes other than those falling within the functions of a trade mark.

59. I accept that the CJEU did not adopt or endorse the Opinion of Advocate General Tanchev insofar as it specifically addressed the acceptability or otherwise of the term *computer software*. This is particularly significant because this part of the Advocate General's Opinion was addressed, or at least mainly addressed, to the possible application of a ground for refusal or invalidity of marks in Article 3(1)(f) of Directive 104/89, which excludes marks that are contrary to public policy, rather than marks registered in bad faith.

60. I accept that the facts in *SkyKick* were different from the facts in the present case. However, I do not accept that the fact that Sky is primarily a telecoms company, whereas the proprietors' main business is computer games software, means that the registration of the contested trade mark in relation to *computer software* (at large) is immune from the bad faith attack.

61. It is, of course, relevant that the contested mark is used, with the proprietors' consent, in relation to at least one sub-category of *computer software*. However, I

am satisfied that, at the relevant date, the proprietors had no intention of using the mark in relation to the vast majority of the goods covered by the term *computer software*. On the evidence, their commercial interest was limited to *computer games software, interactive software for entertainment and educational purposes, downloadable software for reading and entertainment and software for electronic publications*.

62. I should emphasise that none of the above findings are sufficient, by themselves, to justify a finding that the application to register trade mark 3242869 was filed in bad faith. This is because the teaching from the case law cited above is that:

- (i) Bad faith cannot be presumed on the basis of the mere finding that, at the time of filing his or her application, the applicant had no economic activity corresponding to the goods and services referred to in that application;
- (ii) The applicant for a trade mark is not required to know precisely, on the date on which his or her application for registration of a mark is filed, the use he or she will make of the mark applied for and he or she has a period of 5 years for beginning actual use consistent with the essential function of that trade mark.

63. I would add to the second point that the mere fact that the proprietor has not put its mark to use in relation to some or all of the goods/services covered by the registration within 5 years does not necessarily mean that the application was filed in bad faith. The applicant may still not know precisely which goods/services he or she will use the mark for in future (assuming it is not revoked for non-use in the meantime). Mere indecision/inaction cannot be equated with bad faith. Further, although it is relevant as evidence of possible bad faith, the mere fact that the application contained a partially untrue statement that the applicants were using, or had an intention to use, the trade marks in relation to the goods/services in the application is not decisive of the proprietors' bad faith.

64. This brings me to the second part of the applicant's case, which appears to be that the applicant had the intention either of undermining, in a manner inconsistent with honest practices, the interests of third parties, or of obtaining, without even targeting a specific third party, an exclusive right for purposes other than those falling

within the functions of a trade mark. This is an appropriate point to remind myself that according to *Alexander Trade Mark* it is necessary to determine:

- (a) What, in concrete terms, was the objective that the proprietors have been accused of pursuing?
- (b) Was that an objective for the purposes of which the contested application could not be properly filed? and
- (c) Was it established that the contested application was filed in pursuit of that objective?

65. In answering these questions I must bear in mind that the proprietors' intention (i.e. their "objective") is a subjective factor which must be determined objectively by the competent authority. An overall assessment is required, which must take account of all the factual circumstances relevant to the particular case: *Lindt*. It is necessary to take into account any evidence as to the applicant's state of knowledge at the relevant date: *Red Bull*. Evidence about subsequent events may also be relevant if it casts light backwards on the motives of the trade mark applicant at the relevant date: *Hotel Cipriani*.

What, in concrete terms, was the objective that the proprietors have been accused of pursuing

66. The proprietors submit that the applicant has made no allegation, or provided any proof, that they filed the application with the dishonest intention of undermining the interests of third parties. Consequently, the proprietors submit that the bad faith claim must be rejected.

67. Dealing first with the scope of the applicant's case, I note that the pleaded case emphasised overly wide specification/lack of intention to use points. However, as the proprietors recognised in their counterstatement, and again in paragraph 34 of the proprietor's written submissions in lieu of a hearing, paragraph 8 of the applicant's statement of case referred specifically to the judgment of the CJEU in *Skykick*. This is where the CJEU stated that bad faith may be found where the application was filed with the intention of undermining the interests of third parties or obtaining an exclusive right for purposes other than protecting the functions of the trade mark.

68. The proprietors' counterstatement included a complaint that the applicant had not explained how the 3242869 registration was intended to undermine the interests of third parties etc. The applicant responded to this in its written submissions dated 8th January 2021 when it stated that "*The Registrants filed their Registrations to use them as a legal weapon against third parties, rather than to protect their rights, and with an intention to undermine the interests of third parties contrary to accepted principles of ethical behaviour or honest commercial and business practices.*" The applicant was allowed to file evidence in reply to the applicant's submissions of 8th January 2021, but chose not to do so. In my view, the applicant's allegation was tolerably clear from its statement of case. The allegation was re-stated in terms in the applicant's follow-up submissions. The proprietors had the opportunity of meeting the allegation with evidence. There is no unfairness. I therefore reject the submission that the applicant has not even claimed that the proprietors filed trade mark application 3242869 with the intention of undermining the interests of third parties.

Was it established that the contested application was filed in pursuit of that objective?

69. I accept that the applicant has not provided direct evidence of the proprietors' intentions at the relevant date. This is hardly surprising because only the proprietors can give direct evidence about their intentions at that time, and they have not done so. Instead, Mr Kingsley's evidence focuses on the use made of the mark and the commercial activities of companies in the Rebellion group. On any view of the evidence, this is far narrower in scope than the registered specification. Therefore, I must determine the proprietors' intentions objectively based on all the evidence before me.

70. The proprietors' representative draws my attention to the judgment of Mr Iain Purvis Q.C., sitting as a deputy judge of the High Court in *Swatch A.G. v Apple Inc.*¹⁵ The bad faith claim in that case was based on an allegation that the applicant had no intention to use the trade mark and registered the mark to take unfair advantage of a phrase used in the past by the opponent. The judge said that:

"46 It would be perfectly reasonable and consistent with the evidence to

¹⁵ [2021] EWHC 719, at paragraph 46

suppose that Swatch had not, at the date of the Applications, given much thought to exactly what they would do with these marks.”

The judge went on to reject the bad faith case, pointing out that the CJEU had stated in *SkyKick* that an applicant is not required to know at the date of the application for registration precisely the use he or she would make of the mark applied for. There was no issue in the *Swatch* case about the width of the specification. The opponent had not pleaded any kind of ‘blocking’ allegation.

71. In my view, the issues in the *Swatch* case are not comparable with the issues in this case. The judgment in *Swatch* case simply applies the CJEU’s ruling in *SkyKick*, i.e. that it is not enough to show that the applicant had not decided what use to make of the mark at the date of the application for registration.

72. Turning back to the issues in this case, I find it informative to compare the very broad specification of registration 3242869, and the diverse nature of the goods/services included in it, to the specific nature and scope of the proprietors’ business conducted through the Rebellion group of companies. The difference between the two is so wide that I find it implausible that the specification was framed as widely as it was simply to allow for ‘growing room’ in the proprietors’ Rebellion businesses.

73. The proprietors refuse to acknowledge the large gap between the registered specification and the nature and scope of the Rebellion businesses they rely upon as the authorised users of the mark. Consequently, they offer no explanation for the mismatch described above. In the absence of any alternative explanation from the proprietors, I find that the most likely purpose of the very broad specification for registration 3242869 is that it was intended to provide a wide buffer between any actual business intended to be conducted under the trade marks and the boundary of the exclusive rights sought through registration.

74. I acknowledge that the evidence in this case is different to that before the High Court in *Skykick*. In particular, there seems to have been evidence in that case of an abusive filing strategy which had resulted in 100s of oppositions and threats of infringement, many against operators who did not appear to be in competition with Sky in any way. There is no corresponding evidence in this case. Nevertheless,

businesses do not apply to register trade marks for goods/services that are far removed from those they appear to intend to trade in (and pay associated additional class fees for registration) for nothing. The most likely explanation for the specification far exceeding the scope of the business conducted, or plausibly intended, under the marks is that the proprietors sought a legal weapon that could be used to deter third parties from using Rebellion as a trade mark, even in relation to distant goods/services, such as *covers for horse saddles*.

Was that an objective for the purposes of which the contested application could not be properly filed?

75. As already noted, filing an application with the objective of obtaining, even without targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark, may constitute bad faith. In my view, the objective behind application 3242869 was inconsistent with honest commercial practices. On this basis I find that the application to register the marks covered by application 3242869 was filed in bad faith to the extent that it sought an exclusive right to the Rebellion marks that went far beyond the proprietors' current, or plausible future use, of the marks.

Procedure for determining a specification that leaves only the goods/services for which the marks covered by 3242869 were not registered in bad faith

76. Having decided that application 3242869 was filed partly in bad faith, it is necessary to determine how much of the application was filed in good faith. I earlier found that the 1521191 mark had been used in relation to *computer games* and *computer games software*. I also found that the distinctive element of the 1521191 mark was the word Rebellion, which makes up the series of marks registered under 3242869. It follows that the bad faith finding cannot apply to these goods.

77. Having regard to the evidence about the proprietors' economic activity and the need to allow for reasonable expansion of the proprietors' use of its Rebellion marks in the future, I consider that the bad faith claim will also fail insofar as the marks are registered for *interactive software for entertainment and educational purposes*, *downloadable software for reading and entertainment* and *software for electronic publications*.

78. In addition, the applicant has accepted that RDL economic activities extend to *board games, comics, books, TV, and film*. Having regard to the possibility that the proprietors' intention at the relevant date may reasonably have included future use of the Rebellion marks in relation to goods/services for which it is economically active, I do not consider that the bad faith allegation can be maintained in relation to goods/services falling within the above descriptions.

79. The same applies to *children's stories in the form of downloadable apps, downloadable software for reading online books and publications, CDs and other digital media bearing recorded music, firmware and other digital media bearing games and films* in class 9 and *toys, puzzles, and figurines* in class 28.

Registration of trade mark 1521191 in bad faith

80. I can deal with this briefly. I do not consider it likely that Mr Christopher Kingsley, the sole proprietor of trade mark 1521191, intended to use the Rebellion logo mark any more widely than the Rebellion trade marks covered by the later application 3242869. This means that there are some goods in the specification of 1521191, such as *pinball machines* in class 9, for which I doubt there was ever an intention to use the mark. There are others, specifically *computer software*, which are wide enough to cover multiple software products which were never intended to be marketed under the mark. However, as noted above, the width of the specification and/or of any individual terms within it, is not sufficient, without more, to justify a finding of bad faith. In contrast to the specification of 3242869, I do not consider that the specification of 1521191 in classes 9 and 28 is so much broader in scope compared to the business described in Mr Kingsley's evidence, that an inference can properly be drawn that he intended to use the width of the specification as a legal weapon for use against third parties, contrary to honest commercial practices, or to obtain an exclusive right for purposes other than those falling within the functions of a trade mark. In my view, insofar as it sheds light on the proprietor's intentions in 1992, the evidence around the filing of application 1521191 is at least as consistent with good faith as it is bad faith. The bad faith ground for invalidity will therefore fail in relation to trade mark 1521191.

Next steps

81. The parties are allowed one month from the date of the judgment of the Court of Appeal in *Sky v SkyKick* to make written submissions on the impact of that judgment, if any, on my provisional decision that application 3242869 was registered partly in bad faith, and application 1151191 was not.

82. By the same date, the parties are invited to make written submissions as to an appropriate retained specification for trade mark 3242869 in the event that my provisional decision becomes my final one.

Status of this decision

83. This is a final decision on application 503083 to revoke trade mark 1151191 for non-use. The period for appeal against this decision will run from the date shown below.

84. This is a provisional decision on applications 503081/82 to invalidate the trade marks covered by registrations 1151191 and 3242869 on the grounds that the marks were registered in bad faith. The date for appeal against these decisions will run from the date of my final decision, which will also deal with the costs for all the consolidated proceedings.

Dated 15th June 2021

**Allan James
For the Registrar**

Annex A

Class 9

Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking [supervision], life-saving and teaching apparatus and instruments; Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; Apparatus for recording, transmission or reproduction of sound or images; Magnetic data carriers, recording discs; Compact discs, DVDs and other digital recording media; Mechanisms for coin-operated apparatus; Cash registers, calculating machines, data processing equipment, computers; Computer software; Fire-extinguishing apparatus; adaptive software; application software; application software for social networking services via internet; assistive software; bioinformatics software; BIOS software; cinematographic films; communication software; downloadable online community software; compact discs; compiler software; computer application software; computer databases; computer discs; computer firmware; computer games software; computer games; computer games used in business; computer games used for business purposes; computer gaming software; computer graphics software; computer operating software; computer programs; computer software applications; computer software packages; computer software; computer telephony software; credit screening software; data communications software; data compression software; data processing software; database management software; database software; decoder software; digital versatile discs; downloadable computer software applications; downloadable computer software; downloadable electronic publications; downloadable games software; downloadable movies; downloadable publications; downloadable software; downloadable video recordings; DVD discs; editing software; education software; electronic publications; encoded discs; facial analysis software; facial recognition software; firmware; games software; hard discs; image recognition software; industrial software; interface software; internet messaging software; localisation software; maintenance software; manufacturing software; media software; mobile apps; mobile software; motion pictures; multimedia software; pre-recorded compact discs; pre-recorded digital versatile discs featuring games; pre-recorded digital versatile discs featuring films; pre-recorded digital versatile discs featuring music; pre-recorded digital versatile discs featuring videos; pre-recorded discs; pre-recorded software; privacy software; process controlling software; security software; sensory software; sensory software; software drivers; software; speech analytics software; telecommunications software; training software; utility software; video compact discs; video films; video game discs; virtual reality game software; virtual reality software; visualisation software; VPN [virtual private network] operating software; WAN [wide area network] operating software; workflow software; parts, accessories or fittings for the aforesaid.

Class 16

Paper and cardboard; Printed matter; Bookbinding material; Photographs; Stationery; Adhesives for stationery or household purposes; Artists' materials; Paintbrushes; Typewriters and office requisites [except furniture]; Instructional and teaching material [except apparatus]; Plastic materials for packaging; Printers' type; Printing blocks; advertising pamphlets; advertising posters; advertising publications;

books; brochures; cards; comic books; comic magazines; comics; guide books; magazines; manuals; pamphlets; periodical magazines; periodical publications; periodicals; photographs; posters; printed matter; printed periodicals; printed publications; stationery; stickers; strategy guide books for card games; strategy guide books for computer games; trading cards; books for children; colouring books; sticker books; stickers; writing materials; pens; pencils; crayons; painting sets for artists; writing paper; greetings cards; parts, accessories or fittings for the aforesaid.

Class 18

Leather and imitations of leather; animal skins and hides; luggage and carrying bags; umbrellas and parasols; walking sticks; whips, harness and saddlery; collars, leashes and clothing for animals. Airline travel bags; all-purpose carrying bags; all-purpose leather straps; all-purpose sports bags; articles of luggage being bags; attaché cases; bags and holdalls for sports clothing; bags for sports; bags for sports clothing; barrel bags; beach bags; beach umbrellas; blinkers for horses; business card cases; business card cases in the nature of wallets; business cases; cosmetic cases sold empty; covers for horse saddles; credit card cases [wallets]; daypacks; dog collars and leads; flexible bags for garments; garment bags for travel; golf umbrellas; gym bags; handbags; haversacks; hiking bags; horse rugs; jewelry bags of textile material [empty]; key cases; kit bags; leather bags and wallets; leather wallets; luggage; luggage tags; overnight bags; overnight suitcases; saddlery; school book bags; school backpacks; shopping bags; small backpacks; sports packs; suitcases; toilet bags; tool bags; travel baggage; umbrellas.

Class 21

Household or kitchen utensils and containers; combs and sponges; brushes, except paintbrushes; brush-making materials; articles for cleaning purposes; unworked or semi-worked glass, except building glass; glassware, porcelain and earthenware. All-purpose portable household containers; appliances for removing make-up, electric; appliances for removing make-up, non-electric; applicator sticks for applying make-up; bakeware; beer glasses; beer mugs; bottles; bowls [basins]; boxes for dispensing paper towels; boxes of glass; brushes; brushes for household purposes; busts of crystal, china, ceramic, terra cotta, earthenware, glass or porcelain; busts of porcelain, ceramic, earthenware or glass; ceramic bowls; ceramic busts; ceramic figurines; ceramic mugs; ceramic ornaments; ceramic plates [tableware]; ceramic sculptures; ceramics for household purposes; ceramic statues; ceramic vases; ceramic vessels; china busts; china figurines; china mugs; china ornaments; china statues; coasters, not of paper or textile; cocktail shakers; coffee cups; coffee mugs; coffee travel mugs; combs; corkscrews, electric and non-electric; crystal busts; crystal figurines; crystal [glassware]; crystal ornaments; crystal statues; decorative glass, not for building; disposable table plates; drinking cups; drinking bottles for sports; drinking cups, not of precious metal; drinking cups of precious metal; drinking flasks; drinking glasses; drinking vessels; dusters; earthenware; egg cups; fiberglass figurines; figures of porcelain, ceramic, earthenware or glass; flower pots; grills [cooking utensils]; household or kitchen utensils and containers; insulated containers for food or beverages, for household purposes; insulated mugs; insulating flasks; ironing board covers, shaped; ironing boards; money boxes of metal; mugs; nail brushes; plastic bowls; plastic cups; plastic household storage containers for cereals; plastic jars for household purposes; plastic plates; plastic water bottles, empty; polishing cloths; porcelain busts; porcelain mugs; porcelain ornaments; porcelain

statues; porcelain ware; portable cool boxes, non-electric; pots; pottery; salad bowls; salt cellars; saucers; soap containers; soup bowls; souvenir plates; sponge cloths for cleaning; storage jars; tablemats of leather; tablemats, not of paper or textile; table plates; tankards; tea caddies; teacups; teapots; travel mugs; trays for domestic purposes, of metal; utensils for household purposes; water bottles; works of art of porcelain, ceramic, earthenware or glass; sponge bags.

Class 24

Textiles and substitutes for textiles; household linen; curtains of textile or plastic. Adhesive labels of textile; bags specifically adapted for sleeping bags; banners of textile; banners of textile or plastic; bath linen; bathroom towels of textile; bed blankets; bed coverings; bed linen; bed quilts; bed throws; blankets for household pets; children's bed sheets; children's towels; cloths for removing make-up; coasters of textile; continental quilts; cotton fabrics; covers for cushions; curtain fabrics; curtains; drapes; duvet covers; eiderdown covers; fabrics for textile use; face towels of textile; flags of textile or plastic; glass cloths [towels]; golf towels; hand towels of cotton; hand towels of textile; household linen; household textiles; knitted fabric; labels of textile; picnic blankets; pillowcases; printed fabrics; printed textile labels; sheets [textile]; shower curtains; sleeping bags; tablecloths of textile; table linen of textile; textile material; towels of cotton; towels of textile; travel throws.

Class 25

Clothing; footwear; headgear; hooded sweatshirts; shirts; sweatshirts; t-shirts; vests; fancy dress costumes; costumes; underwear; socks; parts, accessories or fittings for the aforesaid.

Class 28

Games and playthings; Gymnastic and sporting articles; Decorations for Christmas trees; board games; card games; collectable toy figures; dolls; dice games; electronic games; figurines; games; model toys; models for use with role playing games; scale model figures; scale model vehicles; toy action figurines; toy figures; toy figurines; toy models; toys, games, playthings or novelties; toys; parts, accessories or fittings for the aforesaid; playing cards.

Class 35

Advertising; business management; business administration; office functions; business analysis services; business networking services; business research services; business statistical studies; human resources consultancy; human resources management; marketing consultancy; marketing information; marketing services; online advertising on computer networks; publicity services; recruitment services; sales promotion services; providing marketing consulting in the field of social media; providing business information in the field of social media; advertising or marketing services provided by means of social media; mail order retail services, wholesale, retail or Internet retail services connected with Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking [supervision], life-saving and teaching apparatus and instruments, Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; mail order retail services, wholesale, retail or Internet retail services connected with Apparatus for recording, transmission or

reproduction of sound or images, Magnetic data carriers, recording discs, Compact discs, DVDs and other digital recording media, Mechanisms for coin-operated apparatus, Cash registers, calculating machines, data processing equipment, computers, Computer software, Fire-extinguishing apparatus, adaptive software; mail order retail services, wholesale, retail or Internet retail services connected with application software, application software for social networking services via internet, assistive software, bioinformatics software, BIOS software, cinematographic films, communication software, online community software, compact discs, compiler software, computer application software, computer databases, computer discs; mail order retail services, wholesale, retail or Internet retail services connected with computer firmware, computer games software, computer games, computer games used in business, computer games used for business purposes, computer gaming software, computer graphics software, computer operating software, computer programs, computer software applications, computer software packages; mail order retail services, wholesale, retail or Internet retail services connected with computer software, computer telephony software, credit screening software, data communications software, data compression software, data processing software, database management software, database software, decoder software, digital versatile discs, downloadable computer software applications, downloadable computer software, downloadable electronic publications; mail order retail services, wholesale, retail or Internet retail services connected with downloadable games software, downloadable movies, downloadable publications, downloadable software, downloadable video recordings, DVD discs, editing software, education software, electronic publications, encoded discs, facial analysis software; mail order retail services, wholesale, retail or Internet retail services connected with facial recognition software, firmware, games software, hard discs, image recognition software, industrial software, interface software, internet messaging software, localisation software, maintenance software, manufacturing software, media software, mobile apps, mobile software, motion pictures, multimedia software; mail order retail services, wholesale, retail or Internet retail services connected with pre-recorded compact discs, pre-recorded digital versatile discs featuring games, pre-recorded digital versatile discs featuring films, pre-recorded digital versatile discs featuring music, pre-recorded digital versatile discs featuring videos, pre-recorded discs, pre-recorded software, privacy software, process controlling software, security software, sensory software, sensory software, software drivers, software; mail order retail services, wholesale, retail or Internet retail services connected with speech analytics software, telecommunications software, training software, utility software, video compact discs, video films, video game discs, virtual reality game software, virtual reality software, visualisation software, VPN [virtual private network] operating software, WAN [wide area network] operating software, workflow software; mail order retail services, wholesale, retail or Internet retail services connected with Paper and cardboard, Printed matter, Bookbinding material, Photographs, Stationery, Adhesives for stationery or household purposes, Artists' materials, Paintbrushes, Typewriters and office requisites [except furniture], Instructional and teaching material [except apparatus], Plastic materials for packaging, Printers' type, Printing blocks; mail order retail services, wholesale, retail or Internet retail services connected with advertising pamphlets, advertising posters, advertising publications, books, brochures, cards, comic books, comic magazines, comics, guide books, magazines, manuals, pamphlets, periodical magazines, periodical publications, periodicals; mail order retail services, wholesale, retail or Internet retail services

connected with photographs, playing cards, posters, printed matter, printed periodicals, printed publications, stationery, stickers, strategy guide books for card games, strategy guide books for computer games, trading cards, books for children, colouring books, sticker books, stickers; mail order retail services, wholesale, retail or Internet retail services connected with writing materials, pens, pencils, crayons, paints, writing paper, greetings cards, Clothing, footwear, headgear, hooded sweatshirts, shirts, sweatshirts, t-shirts, vests, fancy dress costumes, costumes, underwear, socks, Games and playthings, Gymnastic and sporting articles, board games, card games, collectable toy figures; mail order retail services, wholesale, retail or Internet retail services connected with dolls, dice games, electronic games, figurines, games, model toys, models for use with role playing games, scale model figures, scale model vehicles, toy action figurines, toy figures, toy figurines, toy models, toys, games, playthings or novelties, toys, parts, accessories or fittings for the aforesaid; information, consultancy or advisory services relating to the aforesaid.

Class 38

Telecommunications; access to content, websites or portals; advisory services relating to telecommunications; arranging access to a computer database; arranging access to databases on the internet; arranging access to a computer server for the purpose of providing games; audio broadcasting; audio communications services; audio teleconferencing; broadcast of radio programmes; broadcast of television programmes; broadcasting or transmission of television programs; broadcasting of motion picture films via the internet; broadcasting of programmes by television; broadcasting of programmes via the internet; broadcasting of radio or television programmes; broadcasting services; chat room services for social networking; chat room services; chat rooms for social networking; communication between computers; communication by computer terminals; communication by computer; communication by electronic computer terminals; communication by electronic mail systems; communication by electronic means; communication by mobile telephone; communication by online blogs; communication by telephone; communication services; communications by fibre optic networks; communications consultancy; communications services; computer transmission services; data broadcasting services; data streaming; data transmission; digital transmission services; electronic communication services; forums for social networking; leasing access time to a computer database; leasing access time to web sites; message sending services; on-line communication services; podcasting; providing access to an internet discussion website; providing instant messaging services; providing internet access; providing internet chat rooms; providing on-line chat rooms for social networking; telecommunication access services; telecommunication network services; telecommunication of information; telecommunication services; telecommunications consultancy services; television broadcasting services; transfer of data by telecommunications; transmission of news; Transmission of videos, movies, pictures, images, text, photos, games, user-generated content, audio content, or information via the Internet; video communication services; providing access to an online portal for consumers to access enhancements within games; information, consultancy or advisory services relating to the aforesaid.

Class 41

Education; Providing of training; Entertainment; Sporting and cultural activities; arrangement of conventions for educational purposes; arrangement of conventions

for recreational purposes; arranging of competitions via the internet; arranging of conventions for business purposes; arranging of conventions for cultural purposes; arranging of conventions for entertainment purposes; arranging of conventions for trade purposes; arranging, organising or conducting of conventions, conferences, symposiums, seminars, lectures, events, socials or parties; book publishing; computer game entertainment services; conducting of competitions on the internet; electronic publishing; entertainment services; entertainment; exhibition, distribution or production of films or software; game services; gaming services; interactive entertainment; magazine publishing; motion picture production; multimedia entertainment software publishing services; organisation of competitions or awards; organisation of competitions; organisation of conferences, exhibitions or competitions; organisation of entertainment competitions; organisation of recreational competitions; organising competitions; photography; provision of on-line computer games; publishing of printed matter; publishing services; software publishing services; providing information, news, commentary, education, tutorials or advice to users of a social networking platform in the field of games or gaming activities; providing virtual environments in which users can interact through social games for entertainment, leisure or recreational purposes; providing an online portal for consumers to share information relating to video games, computer games, console games or online games; providing online games, online gaming, online video games, online computer games or online console games provided by social networking services, in particular, social networking via the Internet or mobile communication devices; providing an online portal for consumers to play online computer games or electronic games or access or share enhancements within games; information, consultancy or advisory services relating to the aforesaid.

Class 42

Scientific and technological services and research and design relating thereto; Industrial analysis and research services; Design and development of computer hardware and software; computer analysis; computer services; design of board-games; design of computer game software; design of console game software; design of games; design of mobile game software; design of software; design of virtual reality software; development of computer game software; development of virtual reality software; graphic design services; maintenance of software; research in the field of social media; Software as a service [SaaS]; software authoring; software consulting services; software creation; software customisation services; software design; software development services; software development; software engineering; software research; updating of software; website design services; website hosting; website maintenance software; providing an online portal for consumers to share information relating to software; providing online gaming applications provided by social networking services, in particular, social networking via the Internet or mobile communication devices; hosting an online portal for consumers to access enhancements within games; information, consultancy or advisory services relating to the aforesaid.

Class 45

Computer licensing; computer software licensing; copyright licensing; film, television or video licensing; internet-based social networking services; licensing industrial property rights; licensing of computer games; licensing of computer software; licensing of databases; licensing of intellectual property; licensing of printed matter;

licensing of trade marks; licensing services; online social networking services accessible by means of downloadable mobile applications; online social networking services, namely, facilitating social introductions or interactions among individuals; online social networking services; provision of a social networking website; providing online social networking services; social networking services in the fields of entertainment, gaming or application development; software licensing; information, consultancy or advisory services relating to the aforesaid.