

O-000-22

TRADE MARKS ACT 1994
IN THE MATTER OF
TRADE MARK APPLICATION NO 3634082
BY ELT SONGS LTD
TO REGISTER



(SERIES OF SIX)

AS A TRADE MARK
IN CLASSES 9, 16, 24, 25, 38 & 41
AND OPPOSITION THERETO (UNDER NO. 427380)
BY
GROUPE CANAL+

Background & pleadings

1. ELT Songs Ltd (“the applicant”) applied to register the trade marks set out on the title page of this decision on 28 April 2021. The application was examined and published in the Trade Marks Journal on 9 July 2021 in classes 9, 16, 24, 25, 38 and 41 although this opposition concerns only classes 9, 38 and 41. During the course of these proceedings the applicant sought to restrict its class 9, 38 and 41 specifications by means of a form TM21B dated 7 October 2021. The specifications as they currently stand are set out in Annex 1 of this decision.

2. Groupe Canal+ (“the opponent”) opposed the application for some goods and services in classes 9, 38 and 41 on 8 October 2021 under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) on the basis of some goods and services in its UK trade mark no. 909781791. Details of the earlier registration are set out below and the goods and services on which it relies are set out in Annex 2 of this decision.



3. When the UK left the EU, under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right holders with an existing EUTM. As a result, the opponent’s earlier mark was automatically converted into comparable UK trade mark. Comparable UK marks are now recorded on the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and the original filing dates remain the same. The opponent’s trade mark has a filing date that is earlier than the filing date of the application and, therefore, it is an earlier mark, in accordance with section 6 of the Act. As the registration procedure was completed more than 5 years prior to the filing date of the contested application, it is subject to the proof of use conditions, as per section 6A of the Act. The opponent made a statement of use in respect of all goods and services in classes 9, 38 and 41 on which it relies.

4. The applicant filed a counterstatement in which it denied the ground of opposition and put the opponent to proof of use of its earlier registration.

5. During these proceedings the applicant has been represented by The IP Asset Partnership Limited whilst the opponent has been represented by D Young & Co LLP. Only the opponent filed evidence and both parties filed written submissions in lieu of a hearing.

6. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in

accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon in these proceedings are derived from an EU Directive. That is why this decision continues to refer to EU trade mark law.

7. I make this decision following a consideration of all the material before me.


Relevant period


8. My first task is to establish whether, or to what extent, the opponent has shown genuine use of the earlier mark within the ‘relevant period’. The relevant period is defined as being a period of five years ending with the filing date of the contested application. In this case the relevant period is 29 April 2016 to 28 April 2021. As the earlier mark is a comparable mark, use in the EU will apply up to 31 December 2020.


Opponent’s evidence


9. The opponent supplied two witness statements. The first witness statement is in the name of Clément Hellich Praquin, Corporate General Counsel for the opponent. Mr Praquin appends 20 exhibits. The second witness statement is filed in the name of Emma Broxholme who states she is a translator and has translated all relevant documents from French to English in the exhibits supplied by the opponent.


10. Pertinent points to note from Mr Praquin’s witness statement are that the earlier



mark  was first used from May 2011 and that the mark is used as the name of a pay per view television channel specialising in the documentary genre and has an associated website and social media channels as well as related merchandise such

as book and DVD tie-ins.  is one of a number of pay per view channels available from the opponent’s “stable” of channel offerings in the EU.

11. Two turnover figures are given for revenue generated by  namely €170.5m in 2018 and €171m in 2019¹. No other turnover figures are provided. Mr Praquin offers two examples of invoices dated 2015 from third parties² detailing promotional

material and services relating to one of the programmes made by  and a contract between the opponent as Planete+ and a production company dated August 2015 for a 5-episode series³ as evidence of the opponent’s commercial use in the marketplace.

12. The mark  is used on the opponent’s website and advertising materials for its channel offerings⁴. There are a number of website screenshots from www.planetepius.com and www.planetepius.pl dated between March 2016 and June

2017 taken from the WaybackMachine internet archive which show  and the words PLANETE+ as well as other variations such as  which appears to be used on the Polish website.⁵

¹ Exhibit CHP12

² Exhibit CHP14

³ Exhibit CHP14

⁴ Exhibit CHP7

⁵ Exhibit CHP2

13. The earlier mark appeared on special advertising material to celebrate 30 years of broadcasting⁶. This material is undated by year but I take to mean the anniversary occurred in 2018 as Mr Praquin states that the channel began broadcasting in 1988 under the opponent's predecessor in title. In addition the current channel has its own social media following on Facebook and Twitter⁷. The mark also appears on the packaging for DVD covers.⁸

14. Mr Praquin states that the earlier mark has been used in collaboration with third parties for tie in projects to two of its documentaries namely "Tanks, dans L'enfer des combats" ⁹ ("Tanks, in the hell of combat", hereafter "Tanks") and "Lune, La Face cachée de la Terre"¹⁰ ("Moon, The far side of the Earth", hereafter "Moon"). In terms of Tanks, the evidence shows a screenshot from www.worldoftanks.eu which is dated November 2017 and shows a competition to win a year's subscription to the opponent's channel package including the Planete+ channel.

15. In terms of the Moon collaborations, the evidence shows screenshots from the Editions de la Martiniere and FNAC websites for a March 2015 book release titled "Lune, La Face cachée de la Terre", said to be an accompaniment to the documentary series. There is also a screenshot from the www.planeteplus.com website advertising a video presentation launched in 2015 of the collaboration between the opponent and La Cite Des Sciences et de L'industrie for the Moon documentary. Although both tie-ins were launched in 2015, Mr Praquin states they continued during the relevant period.

16. That concludes my summary of the evidence.

Proof of use provisions

17. The relevant statutory provisions for proof of use are as follows:

"(1) This section applies where

- (a) an application for registration of a trade mark has been published,
- (b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and
- (c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section "the relevant period" means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

- (a) within the relevant period the earlier trade mark has 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, or
- (b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes -

- (a) 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

⁶ Exhibit CHP8

⁷ Exhibit CHP11

⁸ Exhibit CHP5

⁹ Exhibit CHP16

¹⁰ Exhibits CHP17-20

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

(b) 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.

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.”

As the earlier mark is a comparable mark, paragraph 7 of Part 1, Schedule 2A of the Act is also relevant. It reads:

“7.— (1) Section 6A applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the relevant period referred to in section 6A(3)(a) (the "five-year period") has expired before IP completion day—

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A(3) and (4) to the United Kingdom include the European Union.

(3) Where [IP completion day] falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day —

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM ; and

(b) the references in section 6A to the United Kingdom include the European Union”.

19. Section 100 of the Act states that:

“100. 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.”

20. In *Walton International Ltd & Anor v Verweij Fashion BV* [2018] EWHC 1608 (Ch) 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 Bundersvereinigung 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 Marken 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)* [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].”

Sufficiency of use

21. The evidence demonstrates that the opponent's earlier mark  has been used as the name of TV channel within the opponent's stable of subscription channel offerings during the relevant period and has also been used to designate the origin of TV and other broadcast media programmes solely and in collaboration with other partners. Taken in conjunction with its social media offerings, audience share numbers and the two years of turnover provided, I find the opponent has demonstrated sufficient use of its earlier mark in the EU during the relevant period.

Framing a fair specification

22. The next stage is to decide whether the opponent's use entitles it to rely on all of the goods and services for which it is registered. In framing a fair specification, I rely on guidance given in the following judgements. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*¹¹, Mr Geoffrey Hobbs K.C. (formerly Q.C.) sitting as the Appointed Person summed up the law as being:

"In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned."

23. In *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors*¹², Mr Justice Carr summed up the law relating to partial revocation as follows (at [47]):

"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

¹¹ BL O/345/10

¹² [2016] EWHC 3103 (Ch)

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 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."

24. In *Merck KGaA v Merck Sharp & Dohme Corp & Ors*¹³, a case which concerned pharmaceutical substances and preparations, Kitchen LJ held that it was well established that (1) a category of goods/services may contain numerous subcategories capable of being viewed independently and, (2) the purpose and intended use of a pharmaceutical product are of particular importance in identifying the subcategory to which it belongs.

25. The evidence demonstrates that the opponent has used its mark across a number of goods and services relating largely to broadcasting in various media and production of audio-visual programmes. I find that a fair specification which reflects use made of the mark demonstrated by the evidence provided is as follows:

Class 9: Video films, digital video discs (DVDs), video discs, video tapes; Electronic television programme guide

Class 38: Communications by television, by telephones or video phones, Broadcasting (television -); television broadcasting; Broadcasting of programmes by satellite, by cable, by computer network (in particular via the Internet); Broadcasting of audio, audiovisual, cinematographic or multimedia programmes, text and/or still or moving images and/or sound, whether musical or not; Communications (transmission) on open (Internet) or closed (intranet) global computer networks; Online downloading of films and other audio and audiovisual programmes; Transmission of programmes and selection of television channels; Consultancy in the field of video programme broadcasting; Sending and receiving video images via the Internet using a computer or mobile telephone; transmission of information via the Internet, an extranet and an intranet; Providing access to Internet websites containing audiovisual works of all kinds.

Class 41: television entertainment on media of all kinds, namely television, computer, personal stereo, personal video player, personal assistant, mobile phone, computer networks, the Internet; Production of shows, films and television films, of television broadcasts, of documentaries, of debates, of video recordings and sound recordings; Production of shows, films, audiovisual, and multimedia programs; Editing and publication of text (except publicity texts), sound and video media, multimedia (interactive discs, compact discs, storage discs).

Section 5(2)(b)

26. Section 5(2)(b) of the Act is as follows:

¹³ [2017] EWCA Civ 1834 (Court of Appeal)

“5(2) A trade mark shall not be registered if because-
(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

Section 5A

27. Section 5A of the Act is as follows:

“5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

28. The following principles are gleaned from the judgments of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V*, Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C3/03, *Medion AG v Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L.Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

The principles:

- (a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) The matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- (c) The average consumer normally perceives the mark as a whole and does not proceed to analyse its various details;
- (d) The visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) Nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;

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

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

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

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

Comparison of the goods and services

29. In the judgment of the Court of Justice of the European Union (“CJEU”) in Canon¹⁴, the court stated at paragraph 23 of its judgment that:

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

30. The relevant factors identified by Jacob J. (as he then was) in the Treat case¹⁵, for assessing similarity were:

(a) The respective uses of the respective goods or services;

(b) The respective users of the respective goods or services;

(c) The physical nature of the goods or acts of service;

(d) The respective trade channels through which the goods or services reach the market;

(e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

¹⁴ Case C-39/97

¹⁵ [1996] R.P.C. 281

30. I also find that the following case law is useful in these proceedings where in *Gérard Meric v Office for Harmonisation in the Internal Market (“OHIM”)*¹⁶, the General Court (“GC”) stated that:

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

31. The goods and services to be compared are,

Opponent’s goods & services demonstrated in use	Applicants goods & services
Class 9: Video films, digital video discs (DVDs), video discs, video tapes; Electronic television programme guide	Class 9: Mobile phone cases; Laptop cases; Tablet computer cases; Educational mobile applications; Educational tablet applications; Mobile phone covers; Mobile telephone covers; Educational computer applications; Cases for mobile phones; Education software; Educational software; Downloadable educational media; Children's educational software; Educational computer software; CDs; DVDs; all aforementioned services limited to the field of education and training for the purpose of teaching children to learn languages, mathematics, science, economics, mental health and well-being, environmental care and health, technology, engineering, and social responsibility.
Class 38: Communications by television, by telephones or video phones, Broadcasting (television -); television broadcasting; Broadcasting of programmes by satellite, by cable, by computer network (in particular via the Internet) ; Broadcasting of audio, audiovisual, cinematographic or multimedia programmes, text and/or still or moving images and/or sound, whether musical or not,	Class 38: Broadcasting; Music broadcasting; Video broadcasting; Television broadcasting; Subscription television broadcasting; Internet broadcasting services; Broadcasting of programmes via the internet; Audio, video and multimedia broadcasting via the Internet and other communications networks; all aforementioned services limited to the field of education and training for the purpose of teaching

¹⁶ Case T- 133/05

<p>Communications (transmission) on open (Internet) or closed (intranet) global computer networks; Online downloading of films and other audio and audiovisual programmes; Transmission of programmes and selection of television channels; Consultancy in the field of video programme broadcasting; Sending and receiving video images via the Internet using a computer or mobile telephone; transmission of information via the Internet, an extranet and an intranet; Providing access to Internet websites containing audiovisual works of all kinds.</p>	<p>children to learn languages, mathematics, science, economics, mental health and well-being, environmental care and health, technology, engineering, and social responsibility.</p>
<p>Class 41: Television entertainment on media of all kinds, namely television, computer, personal stereo, personal video player, personal assistant, mobile phone, computer networks, the Internet; Production of shows, films and television films, of television broadcasts, of documentaries, of debates, of video recordings and sound recordings; Production of shows, films, audiovisual, and multimedia programs; Editing and publication of text (except publicity texts), sound and video media, multimedia (interactive discs, compact discs, storage discs).</p>	<p>Class 41: Education; Singing education; Education services; Educational services; Primary education services; Musical education services; Pre-school education; Online education services; Second language educational services; Foreign language education services; English language education services; Educational and teaching services; Language teaching; Language courses; Language teaching services; Teaching of languages; Services for teaching languages; Teaching of foreign languages; Education services relating to languages; Educational services for the teaching of languages; Education services for imparting language teaching methods; Educational services relating to the teaching of foreign languages; Publishing of educational material; Leasing of educational material; Development of educational materials; Publication of educational materials; Dissemination of educational material; Publication of educational teaching materials; Education; Educational instruction; Singing education; Education services; Educational services; Lingual education; Musical education services; Technological education services; Education and training; Online education services; Developing</p>

	<p>educational manuals; Providing of education; Education and instruction; Pre-school education; Second language educational services; DVD and CD-ROM film production; Video and DVD film production; Instruction via broadcasting; Preparation of entertainment programmes for broadcasting; Tutoring; all aforementioned services limited to the field of education and training for the purpose of teaching children to learn languages, mathematics, science, economics, mental health and well-being, environmental care and health, technology, engineering, and social responsibility.</p>
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32. Before proceeding with the comparison and for the sake of clarity, I note that the applicant's limitation in class 9 mentions "all aforementioned services". I take this to be an error on the part of the applicant as class 9 is a goods class so I have taken the limitation to mean "all aforementioned goods".

33. For the purpose of a comparison, it is appropriate to group related goods together, where they are sufficiently comparable to do so¹⁷.

Class 9

34. I find that the opponent's goods Video films, digital video discs (DVDs), video discs, video tapes are not limited by subject matter and therefore are broad enough to cover the applicant's goods, namely CDs; DVDs; all aforementioned services limited to the field of education and training for the purpose of teaching children to learn languages, mathematics, science, economics, mental health and well-being, environmental care and health, technology, engineering, and social responsibility to be considered identical under the Meric principle.

35. In terms of the applicant's goods namely Educational mobile applications; Educational tablet applications; Educational computer applications; Education software; Educational software; Downloadable educational media; Children's educational software; Educational computer software; all aforementioned services limited to the field of education and training for the purpose of teaching children to learn languages, mathematics, science, economics, mental health and well-being, environmental care and health, technology, engineering, and social responsibility, I find there to be a low degree of similarity with the opponent's Video films, digital video discs (DVDs), video discs, video tapes as while the nature of the goods is different, the purpose is similar and there may be a crossover of user. There is also a degree of competition if a consumer can choose a DVD in place of a software program to learn a language for example.

¹⁷ *Separode Trade Mark* decision, BL O-399-10 (AP)

36. With regard to the applicant's remaining goods namely Mobile phone cases; Laptop cases; Tablet computer cases; Mobile phone covers; Mobile telephone covers; Cases for mobile phones, I find these good to be dissimilar to the opponent's goods as they do not share the same nature, purpose or users. Neither are they complementary or in competition with the opponent's goods.

Class 38

37. I find the opponent's services, namely Communications by television, by telephones or video phones, Broadcasting (television -); television broadcasting; Broadcasting of programmes by satellite, by cable, by computer network (in particular via the Internet) ; Broadcasting of audio, audiovisual, cinematographic or multimedia programmes, text and/or still or moving images and/or sound, whether musical or not; Transmission of programmes and selection of television channels; transmission of information via the Internet, an extranet and an intranet; Providing access to Internet websites containing audiovisual works of all kinds to be identical to the applicant's class 38 services. This is either because there are literally identical terms in the respective specifications, such as Broadcasting or because the terms are so broad so they are considered identical under the Meric principle.

Class 41

38. I find the opponent's services namely television entertainment on media of all kinds, namely television, computer, personal stereo, personal video player, personal assistant, mobile phone, computer networks, the Internet; Production of shows, films and television films, of television broadcasts, of documentaries, of debates, of video recordings and sound recordings; Production of shows, films, audiovisual, and multimedia programs; Editing and publication of text (except publicity texts), sound and video media, multimedia (interactive discs, compact discs, storage discs) to be identical under the Meric principle to the applicant's services DVD and CD-ROM film production; Video and DVD film production; Instruction via broadcasting; Preparation of entertainment programmes for broadcasting; all aforementioned services limited to the field of education and training for the purpose of teaching children to learn languages, mathematics, science, economics, mental health and well-being, environmental care and health, technology, engineering, and social responsibility.

39. With regard to the applicant's remaining goods namely Education; Singing education; Education services; Educational services; Primary education services; Musical education services; Pre-school education; Online education services; Second language educational services; Foreign language education services; English language education services; Educational and teaching services; Language teaching; Language courses; Language teaching services; Teaching of languages; Services for teaching languages; Teaching of foreign languages; Education services relating to languages; Educational services for the teaching of languages; Education services for imparting language teaching methods; Educational services relating to the teaching of foreign languages; Leasing of educational material; Development of educational materials; Dissemination of educational material; Education; Educational instruction; Singing education; Education services; Educational services; Lingual education; Musical education services; Technological education services; Education and training; Online education services; Developing educational manuals; Providing of education; Education and instruction; Pre-school education; Second language

educational services; Publishing of educational material; Publication of educational materials; Publication of educational teaching materials; Tutoring; all aforementioned services limited to the field of education and training for the purpose of teaching children to learn languages, mathematics, science, economics, mental health and well-being, environmental care and health, technology, engineering, and social responsibility whilst the opponent's services could feasibly incorporate some element of education I find these services to be dissimilar to the opponent's class 41 services. Whilst there may be an element of education within the opponent's services, I find that their nature or purpose is not that of teaching or educational services but is of entertainment. Therefore there is little crossover of users and although there may be some small degree of complementarity between using a TV broadcast in an education service, it is not sufficient for a finding of similarity.

40. Where I have found those goods and services which are dissimilar, the opposition cannot succeed. In *eSure Insurance v Direct Line Insurance*¹⁸ Lady Justice Arden stated that:

"49..... I do not find any threshold condition in the jurisprudence of the Court of Justice cited to us. Moreover I consider that no useful purpose is served by holding that there is some minimum threshold level of similarity that has to be shown. If there is no similarity at all, there is no likelihood of confusion to be considered. If there is some similarity, then the likelihood of confusion has to be considered but it is unnecessary to interpose a need to find a minimum level of similarity.

Average Consumer

41. I next consider who the average consumer is for the contested goods and how they are purchased. It is settled case law that the average consumer is deemed to be reasonably well informed and reasonably observant and circumspect¹⁹. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question²⁰.

42. The average consumer for the contested goods and services are likely to comprise the general public, as well as education and broadcasting professionals. In terms of the goods, the mark will be seen by consumers on TV or online equivalent or on packaging of the goods in a relevant retail environment. The services are likely to be selected from printed material or equivalent online resource. There is a considerable price range within the contested goods and services from a relatively inexpensive DVD to a more expensive production for TV broadcast. When making a selection, the average consumer will consider factors such as price, content and suitability for viewing. The selection of the goods and services may not be a frequent purchase. Overall both goods and services will be purchased primarily visually. However I do not discount the opportunity for word-of-mouth recommendations, for example. Taking all the above into account, I find the average consumer, both general public and professionals, would apply at least a medium degree of attention.

¹⁸ [2008] ETMR 77 CA

¹⁹ *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch)

²⁰ *Lloyd Schuhfabrik Meyer, Case C-342/97*.



Mark comparisons

43. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in *Bimbo SA v OHIM*²¹, that:

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

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

45. The respective trade marks to be compared are:

Opponent's earlier mark	Applicant's mark
	

46. The opponent's mark is a composite arrangement comprising a word and figurative element. The figurative element is a red sphere across the middle of which is a black rectangle. Contained within the black rectangle is the word and mathematical symbol **PLANETE +**, rendered in white lettering in a regular font. The red sphere device makes a contribution to the overall impression of the mark but it is subordinate to the **PLANETE +** element.

²¹ Case C-591/12P

47. The applicant's mark is also a composite arrangement comprising words and figurative elements. The application is for a series of six marks, the differences between them being the colours they are depicted in, namely marks 1-5 are in pastel shades and mark 6 is in black and white. The mark consists of the word PLANET sitting on an outline of the word POP, with the letter O of POP being a figurative element of a planet with rings. In my view the dominant and distinctive element of the mark is the word PLANET as it is the most obviously readable element, as the word POP may not be as readily seen by some consumers. The word POP including its figurative planet and rings element does make a contribution to the overall impression but it plays a subordinate role to PLANET.

48. In a visual comparison, the respective marks contain the letters P-L-A-N-E-T as a point of similarity. There are significant points of difference as the opponent's mark has an additional letter E, a plus sign and device of a sphere and the applicant's mark has the additional word POP and a figurative planet device. Taking all this into account, I find there is a low degree of visual similarity.

49. Turning now to the aural comparison, I find that the opponent's mark is likely to be pronounced as PLAN-ETT PLUS as the word "plus" is commonly verbalised in place of the mathematical symbol. Although the earlier mark contains an additional letter E, I do not think it would make a difference to the pronunciation. The applicant's mark will likely be pronounced as PLAN-ETT POP where the POP element is seen or as simply as PLAN-ETT where it is not. In the former scenario I find the respective marks to be aurally similar to a medium degree and in the latter scenario to a high degree.

50. Finally in a conceptual comparison, it is possible that some consumers may regard the verbal element of opponent's mark as an invented word due to its spelling but in my view a significant proportion will see the opponent's mark and bring to mind the word "planet" and its usual concept, as well as a mathematical plus sign. When a plus sign follows a word, it can perform a role of enhancing the preceding word giving it a sense of something additional. The red sphere may be seen as a planet but more likely simply as a geometric shape. The applicant's dominant and distinctive element PLANET will also bring to mind the concept of a planet, this being reinforced by the figurative element. The other word element, namely the word POP, has a descriptive meaning in relation to musical goods and services and will likely bring that concept to mind but has no descriptive meaning in relation to other goods and services. The whole mark in totality would likely be regarded as meaning a planet connected in some way to pop music or to the word pop. Overall I find the marks to be conceptually similar to a medium degree.

Distinctive character of the earlier mark

51. The degree of distinctiveness of the earlier mark must be assessed. This is because the more distinctive the earlier mark, based either on inherent qualities or because of use made, the greater the likelihood of confusion. In *Lloyd Schuhfabrik Meyer*²² the CJEU stated that:

"22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to

²² *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97

distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

52. Registered trade marks possess varying degrees of inherent distinctive character starting from the very low, because they are suggestive of, or allude to, a characteristic of the goods or services, scaling up to those with high inherent distinctive character, such as invented words.

53. The earlier mark is a composite of verbal and figurative elements. The red sphere device, nor the word and symbol PLANETE + describe the goods or services for which the mark is registered. I find there to be a medium level of inherent distinctiveness

54. As evidence of use has been provided by the opponent, I must consider whether use made of the earlier mark has enhanced its distinctiveness. I remind myself of the *Windsurfing Chiemsee* factors set out above as to what I should consider.

55. As I set out in paragraph 21 above, the evidence demonstrated that there has been use of the earlier mark in the EU during the relevant period, however the market for enhanced distinctiveness I must look to is the UK. It is clear from the evidence that the broadcast language for the TV channel is largely French, although there was evidence of a Polish language version of the channel and associated website. The channel is said to be available in a number of French speaking countries. The audience share figures are for France. No customer base is given for the UK. Taking this into account I do not find that the earlier mark’s distinctive character has been enhanced though use in the UK.

Likelihood of confusion

56. In assessing the likelihood of confusion, I must adopt the global approach advocated by case law and take into account the fact that marks are rarely recalled perfectly, the consumer relying instead on the imperfect picture of them that they have kept in mind.²³ I must also keep in mind the average consumer for the goods, the nature of the purchasing process and have regard to the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa.

57. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related.

²³ *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* paragraph 27

58. In *L.A. Sugar Limited*,²⁴ Mr Iain Purvis K.C. (formerly Q.C.), sitting as the Appointed Person, explained that:

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

59. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors*²⁵, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Arnold LJ agreed, pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

60. It is not sufficient that a mark merely calls to mind another mark: *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17. This is mere association not indirect confusion.

61. In *Kurt Geiger v A-List Corporate Limited*,²⁶ Mr Iain Purvis K.C. (formerly Q.C.), again sitting as the Appointed Person pointed out that the level of ‘distinctive character’ is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar. He said:

“38. The Hearing Officer cited *Sabel v Puma* at paragraph 50 of her decision for the proposition that ‘the more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion’. This is indeed what was said in *Sabel*. However, it is a far from complete statement which can lead to error if applied simplistically.

39. It is always important to bear in mind what it is about the earlier mark which gives it distinctive character. In particular, if distinctiveness is provided by an aspect of the mark which has no counterpart in the mark alleged to be confusingly similar, then the distinctiveness will not increase the likelihood of confusion at all. If anything it will reduce it.”

62. In other words, simply considering the level of distinctive character possessed by the earlier mark is not enough. It is important to ask ‘in what does the distinctive character of the earlier mark lie?’ Only after that has been done can a proper assessment of the likelihood of confusion be carried out.

63. So far in this decision I have found that, Some goods and services were identical, others similar to a low degree and the remainder were dissimilar

²⁴ *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10

²⁵[2021] EWCA Civ 1207

²⁶ BL O-075-13

The average consumer will pay at least a medium level of attention during the primarily visual purchasing process

There is a low degree of visual similarity between the respective marks

There is a medium degree of aural similarity if the POP word element of the applicant's mark is verbalised and a high degree of similarity if it is not

There is a medium degree of conceptual similarity

The earlier mark is inherently distinctive to a medium degree

64. Based on the marks, goods and services before me and taking into account the assessments set out above, I find the PLANETE/PLANET element of the respective marks is the most pertinent factor to consider as per Kurt Geiger. As set out above a consumer rarely has the chance to make direct comparisons between marks but instead relies on an imperfect recollection. The PLANETE/PLANET factor will have an impact on consumers but given the other word and figurative differences between the marks and the consequent visual, aural and conceptual considerations, I do not find that consumers will directly confuse the two marks, i.e. mistake one mark for another.

65. As I do not find direct confusion, I will go on to assess the likelihood of indirect confusion. I remind myself of the guidance given in L.A. Sugar that indirect confusion requires a consumer to undertake a thought process whereby they acknowledge the differences between the marks yet attribute the common element to the same or an economically connected undertaking, taking the later mark to be a possible brand extension or sub brand of the earlier mark. In this case the marks share the letters PLANET which has the same conceptual hook in both cases but the respective marks have different devices and have different second follow on elements, namely the + sign and the word POP. However when taken as wholes those second follow on elements can be seen as connecting back to the word PLANET which precedes them. It's my view that consumers may assume that the application is a brand extension or sub-brand of the earlier mark, i.e. it is another offering from the PLANETE undertaking. As such I find there is a likelihood of indirect confusion.

Conclusion

66. The opposition has been partially successful. Subject to any appeal against this decision, the application will be refused for class 38 and for the following goods and services in classes 9 and 41:

Class 9: Educational mobile applications; Educational tablet applications; Educational computer applications; Education software; Educational software; Downloadable educational media; Children's educational software; Educational computer software; CDs; DVDs; all aforementioned services limited to the field of education and training for the purpose of teaching children to learn languages, mathematics, science, economics, mental health and well-being, environmental care and health, technology, engineering, and social responsibility

Class 41: DVD and CD-ROM film production; Video and DVD film production; Instruction via broadcasting; Preparation of entertainment programmes for broadcasting; all aforementioned services limited to the field of education and training for the purpose of teaching children to learn languages, mathematics, science, economics, mental health and well-being, environmental care and health, technology, engineering, and social responsibility.

67. The application can proceed to registration for the following goods and services in 9 and 41 and for the remaining classes namely 16, 24, and 25 which did not form any part of these proceedings.

Class 9: Mobile phone cases; Laptop cases; Tablet computer cases; Mobile phone covers; Mobile telephone covers; Cases for mobile phones

Class 41: Education; Singing education; Education services; Educational services; Primary education services; Musical education services; Pre-school education; Online education services; Second language educational services; Foreign language education services; English language education services; Educational and teaching services; Language teaching; Language courses; Language teaching services; Teaching of languages; Services for teaching languages; Teaching of foreign languages; Education services relating to languages; Educational services for the teaching of languages; Education services for imparting language teaching methods; Educational services relating to the teaching of foreign languages; Leasing of educational material; Development of educational materials; Dissemination of educational material; Education; Educational instruction; Singing education; Education services; Educational services; Lingual education; Musical education services; Technological education services; Education and training; Online education services; Developing educational manuals; Providing of education; Education and instruction; Pre-school education; Second language educational services; Publishing of educational material; Publication of educational materials; Publication of educational teaching materials; Tutoring; all aforementioned services limited to the field of education and training for the purpose of teaching children to learn languages, mathematics, science, economics, mental health and well-being, environmental care and health, technology, engineering, and social responsibility

Costs

68. The opponent has been partially successful, so it is entitled to a contribution towards the costs incurred in these proceedings. Awards of costs are governed by Annex A of Tribunal Practice Notice (TPN) 2/2016. Bearing in mind the guidance given in TPN 2/2016 but factoring in the partial nature of its success, I award costs as follows:

£100	Official fee for Notice of Opposition
£300	Preparation of statement & consideration of counterstatement
£500	Preparation of evidence
£300	Preparation of written submissions
£1200	Total

69. I order ELT Songs Ltd to pay Groupe Canal+. the sum of £1200. This sum is to be paid within 21 days of the expiry of the appeal period or within 21 days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this xx day of November 2022

June Ralph
For the Registrar
The Comptroller-General

Annex 1 – Applicants goods and services

Class 9: Mobile phone cases; Laptop cases; Tablet computer cases; Educational mobile applications; Educational tablet applications; Mobile phone covers; Mobile telephone covers; Educational computer applications; Cases for mobile phones; Education software; Educational software; Downloadable educational media; Children's educational software; Educational computer software; CDs; DVDs; all aforementioned services limited to the field of education and training for the purpose of teaching children to learn languages, mathematics, science, economics, mental health and well-being, environmental care and health, technology, engineering, and social responsibility.

Class 38: Broadcasting; Music broadcasting; Video broadcasting; Television broadcasting; Subscription television broadcasting; Internet broadcasting services; Broadcasting of programmes via the internet; Audio, video and multimedia broadcasting via the Internet and other communications networks; all aforementioned services limited to the field of education and training for the purpose of teaching children to learn languages, mathematics, science, economics, mental health and well-being, environmental care and health, technology, engineering, and social responsibility.

Class 41: Education; Singing education; Education services; Educational services; Primary education services; Musical education services; Pre-school education; Online education services; Second language educational services; Foreign language education services; English language education services; Educational and teaching services; Language teaching; Language courses; Language teaching services; Teaching of languages; Services for teaching languages; Teaching of foreign languages; Education services relating to languages; Educational services for the teaching of languages; Education services for imparting language teaching methods; Educational services relating to the teaching of foreign languages; Publishing of educational material; Leasing of educational material; Development of educational materials; Publication of educational materials; Dissemination of educational material; Publication of educational teaching materials; Education; Educational instruction; Singing education; Education services; Educational services; Lingual education; Musical education services; Technological education services; Education and training; Online education services; Developing educational manuals; Providing of education; Education and instruction; Pre-school education; Second language educational services; DVD and CD-ROM film production; Video and DVD film production; Instruction via broadcasting; Preparation of entertainment programmes for broadcasting; Tutoring; all aforementioned services limited to the field of education and training for the purpose of teaching children to learn languages, mathematics, science, economics, mental health and well-being, environmental care and health, technology, engineering, and social responsibility.

Annex 2 – Opponent’s goods and services relied on

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

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

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

Class 41: Providing of training; Providing of training; Entertainment; Radio and television entertainment on media of all kinds, namely television, computer, personal stereo, personal video player, personal assistant, mobile phone, computer networks, the Internet; Leisure services; Sporting and cultural activities; Animal training; Production of shows, films and television films, of television broadcasts, of documentaries, of debates, of video recordings and sound recordings; Rental of video recordings, films, sound recordings, video tapes; Motion picture rental; Rental of movie projectors; Audiovisual apparatus and instruments of all kinds, radios and televisions, audio and video apparatus, cameras, personal stereos, personal video players; Theater decorations; Production of shows, films, audiovisual, radio and multimedia programs; Movie studios; Arranging competitions, shows, lotteries and games relating to education or entertainment; Production of audiovisual, radio and multimedia programs, text and/or still or moving images, and/or sound, whether musical or not, and/or ring tones, whether or not for interactive purposes; Arranging exhibitions, conferences, seminars for cultural or educational purposes; Booking of seats for shows; News reporter services; Photography, namely photographic services, photographic reporting; Videotaping; Consultancy relating to the production of video programs; Game services provided online from a computer network, gaming; Casino facilities; Editing and publication of text (except publicity texts), sound and video media, multimedia (interactive discs, compact discs, storage discs); Electronic online publication of periodicals and books; Publication and lending of

books and texts (except publicity texts); Providing movie theatre facilities; Micro publishing.