

O/1066/22

TRADE MARKS ACT 1994

IN THE MATTER OF

TRADE MARK REGISTRATION NOS 3383039, 3412728 & 3383112

IN THE NAME OF HILIFE MUSIC LIMITED

AND

APPLICATIONS FOR DECLARATIONS OF INVALIDITY

BY HILIFE MUSIC ENTERTAINMENT LIMITED

AND

TRADE MARK REGISTRATION NOS 916238958 & 916238966

IN THE NAME OF HILIFE MUSIC ENTERTAINMENT LIMITED

AND

APPLICATIONS FOR DECLARATIONS OF INVALIDITY

BY HILIFE MUSIC LIMITED

Background and pleadings

1. Hilife Music Limited (“Peterborough”) is the registered proprietor of the three trade marks shown below:

(i) UK3383039 “HILIFE” (“UK309”)

Filed 13 March 2019; registered 7 June 2019

Registered for services in classes 35 and 41.

(ii) UK3412728 (“UK728”)



Filed 9 July 2019; registered 29 November 2019

Registered for services in classes 35 and 41.

(iii) UK3383112 (series of 2) (“UK112”)



Filed 13 March 2019; registered 16 August 2019.

Registered for services in classes 35 and 41.

2. The specifications for the above marks are shown in full at annex 1.

3. On 3 September 2020, Hilife Music Entertainment Limited (“London”) filed applications to invalidate each of the above trade marks. Each of the applications is directed against the full list of services in the trade marks’ specifications.

4. All of the applications for invalidation are based on the following two European Union (“EU”) trade marks owned by London:

(i) EU16238958 “HILIFE” (“EU958”)

Filed 10 January 2017; registered 25 May 2018

Registered for goods and services in classes 14, 16, 18, 25, 35 and 41.

(ii) EU 16238966 (“EU966”)



Filed 10 January 2017; registered 3 July 2017

Registered for goods and services in classes 9, 14, 16, 18, 25, 35, 41.

5. The applications are based upon s. 5(2)(b) and s. 47(2)(a), save in respect of UK039 where ss. 5(1) and 5(2)(a), rather than s. 5(2)(b), are asserted to the extent that the invalidity is based upon EU958. The TM26(l) application forms and their statement of grounds are not entirely consistent in respect of the goods and services relied upon. I will return to this. The full specifications for London’s trade marks are contained in annex 2 to this decision. Given their filing dates, neither of London’s trade marks is subject to the use provisions at s. 6A of the Act and they can be relied upon in their entirety without any need to show use.

6. In its counterstatements, Peterborough accepted that UK039 is identical to EU958 and similar to EU966. It denied the invalidations in all other respects but now accepts both that some of the services are identical or similar and that if London's trade marks are valid the applications must succeed for some the services.

7. There are two additional invalidities in this consolidated group of proceedings. They are in the name of Peterborough against trade marks owned by London and are based upon s. 5(4)(a) and s. 47(2)(b) of the Act. The trade marks at issue are comparable marks (EU) ("comparable marks") which were created from EU958 and EU966 when the Brexit transition period ended on 31 December 2020. The trade marks are:

(i) UK916238958 "HILIFE" ("UK958")

Filed 10 January 2017; registered 25 May 2018

Registered for goods and services in classes 14, 16, 18, 25, 35 and 41 (see annex 2)

Invalidation is sought for all of the services for which the mark is registered in classes 16, 25, 35 and 41.

(ii) UK916238966 ("UK966")



Filed 10 January 2017; registered 3 July 2017

Registered for goods and services in classes 9, 14, 16, 18, 25, 35 and 41 (see annex 2)

The invalidation is directed against all of the goods and services for which the mark is registered in classes 9, 16, 25, 35 and 41.

8. The basis of the claims against both of London's trade marks is the same. Peterborough says that it has used three signs, namely "HILIFE", "HILIFE MUSIC" and "HILIFE MUSIC GROUP" in the UK since 2007. All three signs are said to have been used in relation to the following goods and services:

Class 9: Downloadable and streamable audio and video recordings; downloadable and streamable sound recordings and audio-visual recordings featuring music and musical-based entertainment; downloadable music files; downloadable and streamable digital music provided from the internet or from a computer database; digital music downloadable provided from MP3 internet web sites; downloadable and streamable MP3 files.

Class 25: Clothing; t-shirts; hooded sweatshirts; sweatshirts; hats.

Class 35: Management services for musicians and recording artists; management and promotion of performing artists; public relations and publicity services; promotional services; preparation, publications and distribution of promotional material; production of promotional audio and video recordings; provision of space on web sites for advertising goods and services; retail services and online retail services connected with the sale of audio recordings, audio-visual recordings featuring music and musical-based entertainment, musical sound recordings, musical video recordings, downloadable and streamable audio and video recordings, downloadable and streamable sound recordings and audio-visual recordings featuring music and musical-based entertainment, downloadable music files, downloadable and streamable MP3 files, clothing.

Class 41: Education and training services relating to music; entertainment; musical entertainment; music performance services; provision of live music; organisation and production of entertainment and events; organisation, production and presentation of concerts, live performances, and musical performances; organisation of parties and social events.

9. Peterborough says that it has generated a substantial goodwill of which each of the signs is distinctive and that use of London's trade marks would give rise to misrepresentation and damage. Peterborough therefore claims that the registration of London's trade marks was contrary to s. 5(4)(a) of the Act.

10. London filed counterstatements defending both of its trade marks. It puts Peterborough to proof of goodwill and denies that there will be either misrepresentation or damage.

11. Both parties filed evidence. Both also filed written submissions during the evidence rounds, which I will take into account.

12. A hearing was requested and held before me, by videoconference, on 14 September 2022. London was represented at the hearing by Edward Boateng-Addo of Counsel, instructed by Hansonwoods Solicitors. Peterborough was represented by Jamie Muir Wood of Counsel, instructed by Trade Mark Wizards Limited.

Preliminary issue

13. On 9 December 2021, Peterborough wrote to the tribunal indicating that it was unable to file invalidation actions against the EUTMs relied upon by London because the EUIPO had adopted a practice which from 1 January 2021 refused to recognise earlier UK rights as bases of claims against EUTMs. Peterborough therefore requested that the tribunal assess the validity of the comparable marks owned by London and only enforce the EUTMs to the extent that the comparable marks survived the invalidations filed against them, pursuant to The Trade Marks and International Trade Marks (Amendment) (EU Exit) Regulations 2021 and the practice outlined in Tribunal Practice Notice ("TPN") 1/2021. On 19 January 2022 the tribunal issued a preliminary view that it was appropriate to tie the enforcement of the EUTMs to the fate of the comparable marks. Neither party objected to that preliminary view, which was automatically confirmed. I will, therefore, begin by considering the invalidity applications against the comparable marks. If the comparable marks survive to any extent, I will then turn to London's applications for

invalidity but I will treat the EUTMs as if they were registered only for the specification for which the comparable marks remain registered.

Evidence

14. Peterborough's evidence is provided by Adrian Fife. Mr Fife is the sole director, sole shareholder and person with overall control of Peterborough. Mr Fife produced two witness statements for these proceedings, each accompanied by one exhibit. I will refer to these witness statements as "Fife 1" and "Fife 2". In addition, there is a witness statement filed as an exhibit to Fife 1. That witness statement was filed in previous Company Names Tribunal proceedings and is dated 30 May 2019. I will refer to it as "Fife 3". Mr Fife's evidence is principally about the use Peterborough has made of the signs relied upon.

15. London's evidence consists of two witness statements by Augustina Atiemo, with exhibits AA01 to AA05 and AA/05 to AA/12. Ms Atiemo is the CEO of London and gives evidence about the creation of the company and its subsequent activities.

16. London also relies upon a witness statement by Harry Koranteng, who is an accountant instructed by Ms Atiemo in 2016 to carry out searches on the Companies House register to ascertain whether there were other companies with names similar to London's. His evidence is very brief and is that the searches showed a number of companies with "HILIFE" or "HI-LIFE" in their name; there are no further details and no exhibits. Mr Koranteng confirms that Peterborough's details were returned but that it showed as having been dormant since 2014.

17. None of the witnesses was cross-examined. I have read all of the evidence. I will return to it to the extent I consider necessary.

Peterborough's application to invalidate UK958 and UK966 under s. 5(4)(a)

18. The relevant parts of s. 5(4) read:

“5. (4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented-

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met, [...].

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

(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application.”

19. S. 5(4)(a) has application in invalidity proceedings because of the provisions at s. 47(2)(b):

“47. - (2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground- [...]

(b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied, unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.”

20. S. 47(5) is also relevant:

“5) Where the grounds of invalidity exists in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.”

21. In *Reckitt & Colman Products Limited v Borden Inc. & Ors* [1990] RPC 341 HL, Lord Oliver of Aylmerton described at [406] the ‘classical trinity’ that must be proved in order to reach a finding of passing off:

“First, he must establish a goodwill or reputation attached to the goods or services which he supplies in the mind of the purchasing public by association with the identifying ‘get-up’ (whether it consists simply of a brand name or a trade description, or the individual features of labelling or packaging) under which his particular goods or services are offered to the public, such that the get-up is recognised by the public as distinctive specifically of the plaintiff’s goods or services. Secondly, he must demonstrate a misrepresentation by the defendant to the public (whether or not intentional) leading or likely to lead the public to believe that the goods or services offered by him are the goods or services of the plaintiff. Thirdly, he must demonstrate that he suffers or, in a quia timet action, that he is likely to suffer damage by reason of the erroneous belief engendered by the defendant’s misrepresentation that the source of the defendant’s goods or services is the same as the source of those offered by the plaintiff”.

22. The prima facie relevant date is the filing date, i.e. 10 January 2017. However, use before the filing date is relevant because under the law of passing off the relevant date for determining whether the claimant had established the necessary goodwill is the date of commencement of the conduct complained of. It is therefore necessary to assess the position at the date on which the objectionable use began and then to consider whether the position is any different at the filing date.¹ In this case, although there is no claim in London’s counterstatements to use before the filing date, Ms Atiemo’s evidence refers to use of “HILIFE” and “HILIFE MUSIC” in December 2016.² London was incorporated on 5 December 2016.³ Mr Muir Wood’s submissions were made on the basis that the relevant date is December 2016; I did not detect any dispute about this from Mr Boateng-Addo. I will bear both dates in mind.

¹ *Maier & Anor v Asos & Anor* [2015] EWCA Civ 220 at [165]. See also *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O/410/11.

² Atiemo 1, §5.

³ AF1, p. 270.

Goodwill

23. In *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 (HOL), goodwill was described as follows:

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start”.

Peterborough's evidence of goodwill

24. Mr Fife's evidence is that the business was first run by him in his personal capacity before goodwill was transferred to Peterborough, which was incorporated in 2014.⁴ It appears that Peterborough also owns the goodwill generated by other companies in the group.⁵ Mr Boateng-Addo confirmed that there is no challenge to the chain of title, nor did I detect any dispute about goodwill accruing to Peterborough, so I need not say any more about this.

25. The use of “HILIFE MUSIC” began in 2007 in connection with a recording studio, which, it is said, later developed into a record company.⁶ Mr Fife says that from 2007 “HILIFE MUSIC GROUP” provided music and audio services including music and audio production, mixing, mastering, remixing, audio design and sound effects for TV, radio and games.⁷ Two games are said to have won awards. The evidence shows Mr Fife's involvement with the first during 2006; the second game was released in 2007.⁸ There is no mention of “HILIFE” in respect of the games. From 2007, it is said that Peterborough also recorded “creative works to provide the sale of pre-recorded music, in digital and

⁴ Fife 1, §§7-9; AF1, pp. 123-129.

⁵ Fife 3, §20.

⁶ Fife 1, §7

⁷ Fife 1, §10.

⁸ AF1, p. 2.

vinyl formats”.⁹ It is also said that Peterborough has worked with certain radio stations but there are no details.¹⁰

26. Non-trading “departments” and companies were created for marketing and promoting the HILIFE MUSIC GROUP core brand, including HILIFE Marketing and Promotions, Muzik-I-Management and FM Entertainment Group.¹¹ Muzik-I-Management and FM Entertainment Group were set up “to manage the artist and for artist shows events and promotion”. HILIFE MUSIC PRODUCTIONS and HI5FIVE manage artist music production. There are other brands, such as Jorvinci and HMG DESIGNER BRANDS; the latter was established to sell artist merchandise. It is said that all of these “departments” produce products and services in their own right.¹² Mr Fife also says that the services included artist management, client events, artist shows and the promotion of artists/clients (shows, events and releases) which were, from 2008, “promoted through HILIFE online outlets digitally as well as physical flyer and banner promotion”.¹³

27. Although purchased earlier, the website at the domain hilifemusicgroup.com was not operational until 2015 but it is said to have been active almost continuously ever since.¹⁴ It is said that the goods and services relied upon were promoted through the site. The only evidence showing the website itself is an undated print which describes the company as a record, music production and publishing company.¹⁵ It appears that there were 2,200 visitors to the site between 1 October 2016 and 1 October 2017.¹⁶ Peterborough owns other domain registrations, including hilifemusicgroup.co.uk, purchased in 2013.¹⁷

28. Mr Fife gives a breakdown of the numerous social media sites using “hilife” on Facebook, Instagram, Soundcloud and Twitter.¹⁸ Many include “HILIFE” but not all: other examples are @agrademusic and @Muzik_I_. In relation to the Twitter accounts,

⁹ Fife 1, §12.

¹⁰ Fife 3, §9. There is one radio station customer shown on an invoice. It paid £300 for a jingle.

¹¹ Fife 1, §13.

¹² Fife 1, §22.

¹³ Fife 1, §13.

¹⁴ Fife 1, §28, AF1, pp. 130-131

¹⁵ AF1, p. 258.

¹⁶ AF1, p. 131.

¹⁷ Fife 1, §29; AF1, pp. 132-137; Fife 3, §21. See also AF1, pp. 257, 258, not dated.

¹⁸ Fife 1, §30.

although they have different handles, a number of them (@HMG_PROMOTIONS, @HMG_MKT, @AntonCEO, @PromoTransfmed, @HMG_PRs, @mkt_promo) appear alongside the full name “HILIFE MUSIC GROUP”.¹⁹ Where the tweets are from these accounts, I refer to them as “HILIFE MUSIC GROUP” accounts. Follower numbers are given for HILIFE MUSIC GROUP and other accounts but are from after the relevant date.²⁰

29. Turnover figures for goods and services sold under the signs relied upon are provided as follows:²¹

Year	Sum	Year	Sum
2007	£107,000	2013	£200,000
2008	£130,000	2014	£210,000
2009	£143,000	2015	£211,000
2010	£157,000	2016	£233,000
2011	£177,000	2017	£256,000
2012	£184,000	2018	£273,000

30. Financial statements for the year ending 30 September 2016 are in evidence.²² There is only a balance sheet which records fixed assets worth £1,353, current assets of £1, amounts falling due to creditors of £1,387 and net current liabilities of £1,386. There is no profit and loss account or income statement.

¹⁹ See, for example, AF1, pp. 27, 33.

²⁰ Fife 1, §§23, 30.

²¹ Fife 1, §34.

²² AF1, pp. 148-149.

31. Advertising spend has risen each year from 2007 except 2015.²³ In 2007, £50,000 was spent; by 2016, it was £123,000.

32. There are twelve handwritten invoices dated between 2007 and 8 December 2016 relating to various music services, such as original instrumentals and compositions, production work (including mix and mastering and an album), personalised tracks and remixes, and audio editing.²⁴ In total, they disclose sales worth £20,350 and range between £200 (2016) and £5,000 (2008). “Hilife Music”/“Hilife Music Group” does not appear on the two 2007 invoices (totalling £3,500); it is visible on the remainder, sometimes accompanied by Mr Fife’s name. Not all of the invoices indicate the location of clients. Of those that do, six are in Peterborough, two are in Leicester, one is in Nottingham and one is in Luton.

33. There are in evidence seven contracts between Hilife Music Group and individual artists. They are dated between 13 February 2013 and 7 July 2015 and are of one or two years’ duration.²⁵ The terms material to this decision are identical. Hilife Music Group undertakes to produce master recordings consisting of songs. The contracts mention that “production, promotion, manufacturing and all other bona fide expenses relating to Artist are recoupable from gross income”. The company is also responsible for attempting to secure distribution of the recordings through distribution companies such as record companies or film companies. The contracts are all governed by UK law.

34. Mr Fife also says that Peterborough has “worked with” a number of other artists.²⁶ However, there is little or no detail about the nature of the relationship with many of them, specifically the goods/services provided by Peterborough under the name HILIFE, and/or the dates or duration of any working relationship. Two artists/groups, Xclusive and Anton, released a single each in 2007 and 2008 respectively, on 12” vinyl. Undated images of

²³ Fife 1, §35.

²⁴ Af1, pp. 150-156.

²⁵ AF1, pp. 200-227.

²⁶ Fife 1, §§14, 18; AF1, pp. 28-30.

the single covers are in evidence.²⁷ I note that one of the recording contracts gives the performer's stage name as "Anton".

35. There is evidence that Peterborough released tracks by the following artists:

- Mark Morrison (2013-2014: "N.A.N.G.2.0"; a remix; "2MORROW")
- Starkey Banton (2013: "Want my Woman")
- Shanice Ashley (2013: "SummerTime_Remix"; "Used2LuvMe")
- Chauncey Black (2014: "Headboard Knockin")

36. There are undated prints from soundcloud.com/hilifemusicgroup showing some of the above tracks.²⁸ The information records the tracks as being uploaded between 5 and 8 years earlier; a track by Mr Morrison is marked "private". Tweets from HILIFE MUSIC GROUP accounts between 2013 and 2015 refer to these artists and/or their music.²⁹ The tweet about "Used2LuvMe" specifies that it is an "@HILifeMuscGroup" (the Twitter account in question) production. There is also a retweet about "Used2LuvMe" in August 2014 which is from a HILIFE MUSIC GROUP account.³⁰ The highest number of "likes" for a post is 122 and the most retweets is 61.

37. In addition, there is a tweet from a HILIFE MUSIC GROUP account concerning the first thousand downloads of "@_markmorrison #BDAY Refix" which are available free from that evening (4 June 2015).³¹ However, this tweet is a reply to @Muzik_I_ and the tweet itself directs users to @Muzik_I_ for information.

38. Mr Banton's single was released by Peterborough on streaming and download platforms such as Apple Music and Spotify, as well as other digital outlets.³² A 2013

²⁷ AF1, pp. 6-7.

²⁸ Fife 1, §§17, 19 and AF1, pp. 13 (duplicated at p. 27), 31-36, 143, 258.

²⁹ AF1, pp. 13, 14, 25, 32-35, 197-199 (the last also appears truncated at pp. 25 and 26).

³⁰ AF1, p. 15

³¹ AF1, p. 198.

³² Fife 1, §16: AF1, pp. 18-24. See also Fife 3, §12.

copyright date acknowledging “HiLife Music Group” is visible on some of the prints, while a print from Napster identifies HiLife Music Group as the label. There is a Wikipedia page about Mr Banton but there is no mention of Peterborough or the success of the record.

39. A print of the front page of Peterborough’s Soundcloud account shows the words “HILIFE MUSIC GROUP” in word and slightly stylised form.³³ It is not dated. It describes Peterborough as a “Record Company, Award Winning Music Production and Entertainment Group”. This corresponds to Twitter evidence which describes the company in the same terms and also as offering, variously, publishing, public relations and promotions, music/event promotion and marketing.³⁴ Some of the tweets show dates between November 2014 and November 2015. However, it is not clear whether the sidebar details/descriptions of the company represent the details visible at the time of the tweets or at a later date: the pages are not obviously archive prints.

40. Mr Fife also says that from 2007 Peterborough “worked with” an artist called Bizzy/Bizzi Dixon.³⁵ A letter dated 9 January 2015 to “HILIFE MUSIC GROUP” refers to the appointment of Bizzi Dixon as an ambassador for the Cambridgeshire & Peterborough YMCA.³⁶ There are a number of tweets relating to Mr Dixon from 2014 to 2015 and he is mentioned in a poster.³⁷ The poster is not dated and does not show “HILIFE” anywhere. The tweets originate from Muzik-I Management rather than a HILIFE MUSIC GROUP account: Peterborough has retweeted or replied to them. The reader is directed to @Muzik_I_ or other unrelated parties for further details.

41. Tweets concerning other artists, including Maxi Priest, Zahra Palmer and The Pharcyde, are also originally from non-HILIFE accounts.³⁸ The poster for a Pharcyde event is among the evidence. It does not show “HILIFE”.³⁹ I do note that there are tweets from HILIFE MUSIC GROUP accounts promoting songs/appearances by “zahraxfactor and Elson Barbosa/Tempa T, dance groups and a VIP-CODE event which appears to be

³³ AF1, p. 258.

³⁴ AF1, pp. 32-36.

³⁵ Fife 1, §14.

³⁶ AF1, p. 5.

³⁷ AF1, pp. 11-12, 193-199.

³⁸ AF1, pp. 11, 14-16, 193-199.

³⁹ AF1, p. 10.

music-related (it mentions hip-hop, funk and soul).⁴⁰ There is little or no detail about Peterborough's involvement and, in particular, whether the retweets are part of a service contract in relation to the "HILIFE" brand. The latter two event tweets include posters, in which "HILIFE" is not visible.

42. A letter is included dated June 2019 from someone known as Monsta Boy.⁴¹ It is addressed "to whom it may concern" and is therefore hearsay. The writer says that he has had a working relationship with "HILIFE MUSIC" since 2010. Despite references to "various projects", the nature of the relationship is not explained; Mr Fife refers to a previous UK hit record but Peterborough's role in that, if any, is not explained.⁴²

43. There are four posters/flyers in evidence.⁴³ Only one, a poster for the "Julian Marley Official Reggae After Party", shows the words "HILIFE MUSIC GROUP", which appear at the bottom of the page along with the venue details (a café in Leicester) and "2FUNKYarts" and "RADIO FUNKY". "Muzik-I Management" is present at the top of the page. It is dated August 2016. The other posters bear the words "FM Entertainment Group Ltd presents"/ "FM Entertainment presents".

44. There are provided around eighty examples of submissions to info@hilifemusicgroup.com from prospective artists, their representatives or others in the field (e.g. producers) in the period May 2015-September 2016.⁴⁴ Most of the approaches are not clearly identifiable as being from people in the UK; the majority are neutral (.com email addresses, no telephone details). Some, however, are clearly people based overseas.⁴⁵ There are submissions from seven groups/individuals who state they are in the UK or appear to be, based on their email addresses, telephone numbers or time

⁴⁰ AF1, pp. 16, 195-196.

⁴¹ AF1, p. 17.

⁴² Fife 1, §15.

⁴³ AF1, pp. 8-10, 12.

⁴⁴ AF1, pp. 37-120; Fife 1, §24.

⁴⁵ For example, pp. 37-40, 42, 52, 62, 66, 69, 71, 72, 74, 78, 82, 89, 102, 109 refer to bases overseas or have telephone numbers which are not UK numbers.

zone.⁴⁶ Some of the submissions mention that their email is a response to a message from Peterborough.⁴⁷

45. Prints from Twitter show a number of artists, whom Mr Fife describes as “well-known”, who follow the HILIFE accounts.⁴⁸ Only eight appear to be UK-based, whether full- or part-time.⁴⁹ None includes any mention of “HILIFE” or Peterborough. None of the prints is obviously dated prior to the relevant date and there is no indication of when the following began.

46. There is an email dated May 2019 from Mr Dixon, who is described as the founder of the Leicester Music & Entertainment Awards.⁵⁰ It is hearsay evidence and relates to events after the relevant date.

47. A licence agreement is said to relate to Peterborough having “leased various musical compositions for third party use using a bespoke licensing agreement”.⁵¹ It relates to instrumental music which may be delivered by digital download of MP3 files or other digital and physical means. Although “HI5FIVE MUSIC” is the licensor, “HILIFE MUSIC GROUP” and a figurative sign using those words, similar to UK112 but in greyscale, are visible on the first two pages. The agreement includes copyright dates of both 2013 and 2016. Although the agreement details the terms of the licence (e.g. prices, from £9.95 to £7,995.95), there is no information about how many licences, if any, have been sold. I note that there is an undated print from hilifemusicgroup.co.uk/instrumentals relating to a track available for purchase.⁵² It appears to be three seconds long and has been played 665,207 times.

48. “Download data” is provided for the period June 2013 to June 2018.⁵³ It is said to relate to Peterborough’s music. The data is for “HILife Music Group” and concerns sales

⁴⁶ AF1, p. 46, 50, 53, 60, 70, 81, 90-91, 93

⁴⁷ See, for example, pp. 48, 58.

⁴⁸ Fife 1, §38. AF1, pp. 178-192.

⁴⁹ AF1, pp. 178, 180, 183, 184, 188, 188, 189, 192.

⁵⁰ AF1, p. 121.

⁵¹ Fife, §43; AF1, pp. 22-256

⁵² AF1, p. 144.

⁵³ AF1, pp. 145-147; Fife 1, §33.

across a number of platforms, such as Amazon and iTunes. The artist mentioned is Starkey Banton and there are two track references. The UK accounted for 42.31% of downloads over the period and the same percentage is shown for the UK under “Top 8 Accounting downloads June 2013”. The UK accounted for 54.98% of the “Top 8 Accounting Streamings June 2013”. The absolute number of downloads is not provided. Under “Shop”, the “Top 8 Accounting Downloads June 2013”, there is the following information: “iTunesGB 1.94 EUR (17.49%)”. For the “Top 10 Accounting Streamings June 2013” it says, “iTunesGB 2.63 EUR (30.16%)”.

49. Peterborough is said to have worked with Cambridgeshire and Peterborough YMCA Trinity Group from 2015.⁵⁴ It is said that throughout 2016, Peterborough delivered music industry courses “in all aspects of music education and tuition via HILIFE MUSIC, as well as providing sport-based activities for deprived youths via HILIFE SPORT”. There is hearsay evidence in the form of a letter dated May 2019 from the Health & Well Being Manager at the organisation attesting to the involvement with YMCA Trinity Group during 2015/2016 and at the time of the letter but there is no evidence about the activities themselves.⁵⁵

50. It is said that in 2014 a non-trading department was created, called HILIFE SPORTS.⁵⁶ There followed a HILIFE Football Academy. The only supporting evidence is undated images of football shirts bearing a badge which includes the words “HILIFE FOOTBALL ACADEMY”.⁵⁷

51. Sales of clothing (“including” t-shirts, hooded tops and hats) were 570 units in 2007 and from 1,000 to 2,000 units each year between 2008 and 2016.⁵⁸ In total, just over 15,000 units were sold between 2007 and 2016. The sales of apparel are said to have been “to promote the applicant”.

⁵⁴ Fife 1, §11.

⁵⁵ AF1, pl. 3.

⁵⁶ Fife 1, §46.

⁵⁷ AF1, pp. 261-268.

⁵⁸ Fife 1, §36.

52. There are images of sweatshirts, t-shirts, hoodies and a jacket said to have been sold under the signs.⁵⁹ The images are not dated. The word HILIFE is not present in most of the images: the majority of the goods bear the word “Jorvinci”; one item has “A Grade Music”. Some items do bear a figurative sign which includes the words “HILIFE MUSIC GROUP” and is similar to UK112 but in different colourways. It is not possible to tell what the garments are (for example whether they are hoodies or t-shirts). There is no accompanying information in the exhibit at all.

53. There is an image from hilifedesignerbrands.com, which includes the words “HILIFE FASHION” and a figurative mark showing the words “HILIFE MUSIC GROUP”.⁶⁰ It is not dated. The garment shown bears the name “JORVINCI”. “HILIFE PRODUCTS” is a category. Undated prints from Instagram (hilife_fashion) show a fleece, sweatshirts/hoodies a jacket and a t-shirt, also bearing the word “JORVINCI”.⁶¹

54. A tweet dated 11 May 2016 from HILIFE DESIGNER BRANDS announces the Jorvinci clothing range has arrived and there is a link to “our online store”.⁶² There is also a retweeted post from HILIFE MUSIC GROUP dated 29 February 2016 promoting the new JORVINCI range which is due in March 2016.⁶³

Conclusions on Peterborough’s goodwill

55. Goodwill which is protectable under the law of passing off must be more than trivial. In *Hart v Relentless Records* [2002] EWHC 1984 (Ch), Jacob J. (as he then was) concluded at [62] that references in earlier cases to a “significant reputation” meant that “one is looking for more than a minimal reputation”.

56. More recently, In *Smart Planet Technologies, Inc. v Rajinda Sharma* (BL O/304/20), Mr Thomas Mitcheson QC, as the Appointed Person, reviewed the authorities about the establishment of goodwill for the purposes of passing-off, namely *Starbucks (HK) Ltd v*

⁵⁹ Fife 1, §37; AF1, pp. 157-177.

⁶⁰ AF1, p. 138. See also p. 259.

⁶¹ AF1, p. 141.

⁶² AF1, p. 142.

⁶³ AF1, p. 141.

British Sky Broadcasting Group Plc [2015] UKSC 31, paragraph 52, *Reckitt & Colman Product v Borden* [1990] RPC 341, HL and *Erven Warnink B.V. v. J. Townend & Sons (Hull) Ltd* [1980] R.P.C. 31. After reviewing these authorities Mr Mitcheson concluded that:

“[...] a successful claimant in a passing off claim needs to demonstrate more than nominal goodwill. It needs to demonstrate significant or substantial goodwill and at the very least sufficient goodwill to be able to conclude that there would be substantial damage on the basis of the misrepresentation relied upon.”

57. In *Smart Planet Technologies*, Mr Mitcheson decided that ten invoices showing sales to two customers, totalling €3,230 for around 40,000 paper cups, did not show the required significant or substantial reputation. He found support for his conclusion in the fact that the sign at issue was, at best, weakly distinctive.

58. However, the case law also shows that a small business which has more than a trivial goodwill can protect signs which are distinctive of that business under the law of passing off even though its goodwill and reputation may be small. In *Lumos Skincare Limited v Sweet Squared Limited and others* [2013] EWCA Civ 590, the Court of Appeal in England and Wales held that the defendant had passed off its LUMOS nail care products as the claimant's goods. The claimant had been selling “LUMOS” anti-ageing products since 2007. The goods retailed at prices between £40 and £100 per bottle. The Claimant's sales were small, of the order of £2,000 per quarter from early 2008 to September 2009, rising to £10,000 per quarter by September 2010. The vast majority of these sales were to the trade, including salons, clinics and a market. There was evidence of repeat purchases. Although the number of customers was small, or, as the judge at first instance put it, “very limited”, the claimant's goodwill was found to be sufficient to entitle it to restrain the defendant's trade under “LUMOS”. In *Stannard v Reay* [1967] F.S.R. 140, a mobile fish and chip van had been trading for three weeks, generating around £130 per week, which was held to be sufficient for an interlocutory injunction to prevent the defendants using the same sign (“MR CHIPPY”). The facts were unusual because of the very localised nature of the case.

59. In *South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)* [2002] RPC 19 (HC), Pumfrey J. stated:

“27. There is one major problem in assessing a passing of claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent's reputation extends to the goods comprised in the applicant's specification of goods. The requirements of the objection itself are considerably more stringent than the enquiry under s.11 of the 1938 Act (see *Smith Hayden & Co. Ltd's Application (OVAX)* (1946) 63 R.P.C. 97 as qualified by *BALI Trade Mark [1969] R.P.C. 472*). Thus the evidence will include evidence from the trade as to reputation; evidence as to the manner in which the goods are traded or the services supplied; and so on.

28. Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed to the relevant date. Once raised, the applicant must rebut the prima facie case. Obviously, he does not need to show that passing off will not occur, but he must produce sufficient cogent evidence to satisfy the hearing officer that it is not shown on the balance of probabilities that passing off will occur.”

60. However, in *Minimax GmbH & Co KG v Chubb Fire Limited* [2008] EWHC 1960 (Pat) Floyd J. (as he then was) stated that:

“[The above] observations are obviously intended as helpful guidelines as to the way in which a person relying on section 5(4)(a) can raise a case to be answered of passing off. I do not understand Pumfrey J to be laying down any absolute requirements as to the nature of evidence which needs to be filed in every case. The essential is that the evidence should show, at least prima facie, that the opponent's reputation extends to the goods comprised in the application in the

applicant's specification of goods. It must also do so as of the relevant date, which is, at least in the first instance, the date of application.”

61. In my view, evidence tendered to establish use of an unregistered trade mark sufficient to create an earlier right to the mark in the UK should be subject to the same level of critical scrutiny as evidence filed to counter a claim for the revocation of a trade mark on the grounds of non-use. In *Awareness Limited v Plymouth City Council*, BL O/236/13, Daniel Alexander Q.C., sitting as the Appointed Person, stated that:

“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.”

62. In *Robot Energy Limited v Monster Energy Company*, BL O308/20, Emma Himsworth QC, as the Appointed Person, reviewed the case-law covering the weight to be attached to a witness's evidence in the absence of cross examination, as set out in *Pan World Brands v. Tripp (EXTREME)* [2008] RPC 2, *Williams and Williams v. Canaries Seaschool SLU (CLUB SAIL)* [2010] RPC 32 and *Advanced Perimeter Systems Ltd v. Keycorp Ltd (Multisys Trade Mark)* [2012] RPC 14. Having done so, she summarised the position as follows:

““73. As was made clear in the decision in CLUB SAIL grounds of opposition cannot be rejected automatically on the basis that the witness who sought to refute

them was not cross-examined. It is necessary to form a view as a matter of judgment whether the evidence is sufficient to establish the relevant fact which requires, as the Hearing Officer correctly said, the decision taker to consider the evidence as a whole. That the Hearing Officer took this view is entirely consistent with the guidance set out in *CLUB SAIL* (and *EXTREME* and *MULTISYS*). This includes weighing up in particular (1) the power of one side to produce the evidence and the other to contradict it; and (2) the plausibility of the positions that have been adopted in the context of the evidence as a whole which entails where the parties have elected to proceed without cross-examination accepting that the evidence of one witness might be found to have been disproved or displaced by the evidence of another.”

63. Therefore, the absence of cross-examination does not mean that I must accept Mr Fife’s evidence at face value.

64. As the case law above indicates, in order to be protectable, goodwill must be “substantial”: mere use is not enough. The stated annual turnover is between £100,000 and £233,000 each year from 2007 to 2016, totalling over £1.7 million. That level of turnover is not so small that it is insufficient, in principle, to support the claim to goodwill. However, the rest of the evidence should be sufficient to substantiate the figures. In this case, the remainder of the evidence is such that it causes me to doubt the stated turnover figures. In particular, the invoices which show use of “HILIFE” in any form amount to only £16,850 spread over eight years. In his statement, Mr Fife does not say that the invoices are examples but says that they and the accounts show “the income I have generated through the brand, along with that generated by the Applicant”.⁶⁴ The accounts show no income at all and very limited assets. Even if the invoices are only samples from a wider range, they amount to a tiny fraction of the total turnover claimed. There are additional difficulties with the stated turnover figures. The first is that they are not broken down as between the various goods and services relied upon, or indeed the three signs. It is impossible for me to know exactly how much of the claimed turnover is in relation to the

⁶⁴ Fife 1, §34.

differing goods and services. The second is that Peterborough does not specify that the turnover figures are in relation to goods/services offered to customers in the UK. That is of particular concern when other parts of the evidence relate to customers or potential customers who are obviously not in the UK. I consider it appropriate to approach the bare turnover figures with caution and to attach more weight to the documentary evidence of trade. I have similar concerns about the advertising figures, which are supported by next to no evidence which shows how the sums were spent.

65. Peterborough's evidence shows that between 2013 and 2015 it entered into seven contracts with artists for the production of music, specifically songs. It appears that at least one of those contracts, with Shanice Ashley, resulted in the release of two songs in 2013/2014. There is also evidence that Peterborough released songs for three other artists during 2013-2014. All of these either show "HILIFE MUSIC GROUP" as the copyright owner or are made available on the "HILIFE MUSIC GROUP" Soundcloud page, with some associated tweets from HILIFE MUSIC GROUP Twitter accounts. Mr Fife also says that two singles were released in 2007/2008, for Xclusive and Anton. The only documentary evidence relating to these singles is not dated and does not show "HILIFE". The invoices show "Hilife Music"/"Hilife Music Group" but only from 2008 onwards and the evidence relating to the video games either does not show "HILIFE" or credits Mr Fife personally. In these circumstances, I am not prepared to conclude that the services in relation to the 2007 single for Xclusive were provided under the name "HILIFE" or a variation thereof. Apart from the Xclusive single, all of the above production contracts and songs appear to have been entered into or released under the "HILIFE" or "HILIFE MUSIC GROUP" brand.

66. Only a small number of the music submissions to info@hilifemusicgroup.com clearly relate to parties in the UK. However, the invoices are mainly to UK addresses. Given the handwritten nature of the invoices and that they are for relatively small sums, it seems likely that even where the address is not included, they too are for customers in the UK. The services are various types of music production services, from composition to editing and, in one case, production of an album, to different customers. Overall, it is sufficiently clear from the evidence that the word "HILIFE" or, more commonly, "HILIFE MUSIC

GROUP” had been used in the UK to distinguish music production services offered by Peterborough by late 2016. As to whether the evidence establishes that the goodwill is significant enough to be protectable for music production, there is clearly a very significant difference between the turnover claimed and the actual sales shown. It is not possible to determine the exact amount which has been generated by music production services. However, it is apparent that Peterborough had offered music production services over a number of years prior to 2016. Although the number of clients is very limited, it includes artists in addition to those in the production contracts and invoices. There had also been some online presence in the form of Twitter accounts. I consider that, on balance, there was a protectable but small goodwill in music production by December 2016/January 2017.

67. In terms of the distinctiveness of the word “HILIFE”, London has filed some evidence that “HILIFE” is a genre of music in Ghana.⁶⁵ However, the evidence is lacking detail on how the word “HILIFE” has been used in the UK. In my view, it does not establish that the relevant UK public would perceive the word as descriptive. I accept that there may be some consumers, most likely those with a personal connection to Ghana or those with a private or professional interest in world music, who have heard of the genre but that will not be the case for a substantial part of the relevant public. “HILIFE” may be perceived in various ways, as a variant spelling and juxtaposing of the words “high life” or potentially “hi life”, or as a word which has no concrete meaning but which is made up of at least one recognisable English word. I think it most likely that no precise meaning will be attributed to the term but in any of these scenarios it strikes me as inherently distinctive to at least a medium degree. There is no dispute that “HILIFE” is by far the most distinctive part of the composite word signs relied upon. “MUSIC” and “MUSIC GROUP” describe the services or the entity. That being the case, I see no reason why the use of “HILIFE MUSIC GROUP” would not also constitute use of “HILIFE” solus (in relation to which there is also independent use) or of “HILIFE MUSIC”. I find that there was a small but protectable

⁶⁵ Atiemo 1, §3. See also Atiemo 2 and AA/05-AA/12.

goodwill for music production services by December 2016 (which had not dissipated by January 2017) of which all three signs were distinctive.

68. I do not think that goodwill has been established for entertainment services more widely. There is very little evidence that Peterborough has had any role in organising music events. Whilst the contracts refer to performances, there is very limited evidence to suggest that Peterborough may have played any role in the organisation of events and none at all which discloses the value of any services provided.

69. As regards educational services, the evidence is merely assertion. The evidence regarding both the YMCA and the football academy is too vague to be of material assistance and there is nothing else of any substance to establish goodwill in these services.

70. Peterborough's case is that the contracts include promotional and distribution services. The extent of the specified involvement in distribution services is that Peterborough will attempt to secure a distributor for the music. This indicates that Peterborough's role is the procurement of distribution. There is no evidence that it has itself provided distribution services. Even if the service provided were part of "distribution services" construed widely, I do not consider that the evidence establishes a protectable goodwill for these services. There is no other evidence regarding distribution services, such as contacts with distributors or how many songs were distributed to which outlets. One of Mr Banton's songs being placed on Spotify and Apple Music etc. is not sufficient. Nor is the placing of songs on Peterborough's own Soundcloud page. There is no indication at all of turnover in relation to these services; the evidence does not get close to suggesting that distribution services are a significant part of the turnover. I do not consider that goodwill has been established for distribution services.

71. Turning to the promotional, public relations and advertising services, I accept that the contracts provide for the deduction of promotional expenses from gross income, which suggests that some kind of promotion is expected. The contracts do not specify any promotional services which will be undertaken by Peterborough or how much will be spent on promotion. I recognise that securing a distribution contract will require promotion of

some description to bring the artists/their music to the attention of distributors. However, the evidence of promotional activities is underwhelming. There is nothing at all to show any promotional activities designed to secure distribution, let alone that distribution contracts were secured for any artist.

72. More generally, there are some tweets from HILIFE MUSIC GROUP accounts which promote a handful of artists and their music, as well as songs/appearances by artists and groups who are not mentioned in Mr Fife's narrative evidence. They are not many in number, nor is there any indication that the tweets were the result of a contract for promotional services. I accept that there is evidence of some songs, which were produced by Peterborough, being placed on platforms where they can be listened to but this is not enough to establish the provision of promotional services to third parties. There is virtually no evidence of any other kind of promotional activity carried out under the "HILIFE" brand. As far as I can tell, only one poster in the entirety of the evidence includes "HILIFE MUSIC GROUP" at all. That poster also includes the "Muzik-I Management" brand at the top of the page. The inclusion of another brand on a poster does not mean that "HILIFE" cannot be distinctive of Peterborough's goodwill but in this case there are a number of different brands/companies operating under the control of HILIFE MUSIC GROUP. Whilst the goodwill from those brands may accrue to Peterborough, their activities are irrelevant unless "HILIFE" is used to distinguish their services. Mr Fife's evidence is that both Muzik-I-Management and FM Entertainment Group were set up "to manage the artist and for artist shows events and promotion". That is consistent with the limited evidence that there is of posters, where those two brands are used (and HILIFE is absent in all but one). Many of the tweets in evidence are by Muzik-I Management and do not assist in showing that "HILIFE" is distinctive of the services provided because it is not visible. Absent any specific sales figures at all, I am not satisfied that Peterborough's promotional activities amounted to a protectable goodwill for any of the promotional, public relations or advertising services relied upon.

73. In respect of management services, the evidence that such services were provided under a "HILIFE" brand is little more than bare assertion. There are no invoices or contracts specifically relating to management services. Mr Muir Wood relied at the

hearing on the invoices in evidence as showing the provision of services relevant to class 35. I disagree. On my reading, those invoices are for technical production services, not management (or, for that matter, promotion). The production contracts do provide for some personal appearances by the artists but this is in the context of appearances to “promote the distribution of the recording”. This is not analogous to artist management services which would reasonably include managing the day-to-day affairs of the artist and advice about their future career, giving counsel about decisions and arranging or advising about performances, interviews and appearances at events. I am doubtful that artist management services were provided under the HILIFE sign at all, given Mr Fife’s evidence that I-Muzik and FM Entertainment were the artist management brands, but in any event the evidence is too thin to substantiate the claim to goodwill in these services.

74. Regarding downloadable or “streamable” recordings, there is no evidence whatsoever of any video recordings having been produced. There is some evidence that instrumental recordings were available to purchase for use under licence. However, there is no evidence at all of any revenue generated by such recordings or licence agreements. One track has been played over 600,000 times but the evidence is undated and there is no way to judge whether any or all of these were before the relevant date, or whether the ‘plays’ were by users in the UK. The download data for “HILife Music Group” does show the UK as the largest audience but this appears to relate to downloads from platforms such as Amazon and iTunes rather than the “HILIFE” instrumentals site. The only absolute figure in the download data is of iTunesGB downloads which amount to less than €5. I accept that some tracks have been made available on both Soundcloud and via other platforms. I also accept that a production contract would generally result in the production of a recording and that the invoices also suggest that recordings of some description were produced. What is not clear is that all of these recordings were downloadable or streamable. There is no evidence to show that master recordings would usually be in that format; on the contrary, it seems to me very likely that they would be in hard copy to prevent unauthorised copying. The single by Anton was on 12” vinyl. Seven tracks are actually shown in the evidence as available online. Absent any details of revenue/downloads, the evidence is not sufficient to establish a protectable goodwill.

75. For similar reasons, the claim to goodwill in a range of retail services connected to recordings fails. The evidence does not show that Peterborough offered any retail services to third parties, whilst the evidence of sales of its own goods is too thin to establish goodwill in retail services connected with the sale of recordings.

76. The remaining claim is to goodwill for “clothing; t-shirts; hooded sweatshirts; sweatshirts; hats” and for connected retail services. There is almost no documentary evidence dated before the relevant date, which means that Peterborough’s case rests heavily on Mr Fife’s narrative evidence. The comments of the Appointed Person in *Robot Energy Limited* are also relevant here. Figures are provided for sales of garments, though they are not broken down between the different types of clothing. Mr Fife says that sales were under the signs. However, the only documentary evidence dated before the relevant date are two tweets from 2016. Both mention the new JORVINCI range, which arrived in May 2016; potential customers are referred to jorvinci.com, which was registered in May 2016.⁶⁶ There is no evidence at all of any clothing being offered on a “HILIFE” website or being branded “HILIFE” before the relevant date. Whilst there is a print from hilifedesignerbrands.com, it is undated. Further, despite there being evidence of the registration of several other domain names, such evidence for hilifedesignerbrands.com is conspicuous by its absence. This information would certainly have been available to Peterborough. Evidence of the goods being available for sale on the hilifemusicgroup.com website, said by Mr Fife to have been the vehicle for promotion of the goods and services since 2013, would also have been available to Peterborough. One would also expect Peterborough to have access to evidence demonstrating sales of clothing and hats. Yet there is not a single documented example of an actual sale (e.g. an invoice or sale receipt), whether in the relevant period or not. Crucially, there is also no explanation for the lack of such material. I see much force in Pumfrey J.’s suggestion that evidence of goodwill should include “evidence as to the manner in which the goods are traded or the services supplied.” The absence of supporting documents/information of the kind described above indicates to me that the bare sales figures should be treated with caution. My view is that the claim of sales of more than 15,000 garments over nine years is called

⁶⁶ AF1, p. 139.

into question by the total absence of any supporting material other than two tweets in the last ten months before the relevant date, both of which refer to the launch of a clothing line which eventually took place in May of 2016. I do not think that the evidence provided in support of the claimed level of sales is sufficiently solid to support a finding of goodwill in either clothing and hats or retail of clothing.

77. My overall finding regarding Peterborough's goodwill is therefore that at the relevant date there was a small but not trivial goodwill in relation to music production services only. The signs "HILIFE", "HILIFE MUSIC" and "HILIFE MUSIC GROUP" were distinctive of that goodwill.

Misrepresentation

78. In *Neutrogena Corporation and Another v Golden Limited and Another* [1996] RPC 473, Morritt L.J. stated that:

"There is no dispute as to what the correct legal principle is. As stated by *Lord Oliver of Aylmerton in Reckitt & Colman Products Ltd. v. Borden Inc.* [1990] R.P.C. 341 at page 407 the question on the issue of deception or confusion is

"is it, on a balance of probabilities, likely that, if the appellants are not restrained as they have been, a substantial number of members of the public will be misled into purchasing the defendants' [product] in the belief that it is the respondents' [product]"

The same proposition is stated in Halsbury's Laws of England 4th Edition Vol.48 para 148. The necessity for a substantial number is brought out also in *Saville Perfumery Ltd. v. June Perfect Ltd.* (1941) 58 R.P.C. 147 at page 175; and *Re Smith Hayden's Application* (1945) 63 R.P.C. 97 at page 101."

79. In *Harrods Limited v Harrodian School Limited* [1996] RPC 697 (CA), Millet LJ noted that there is no requirement in passing-off law for the defendant to be carrying on a business which competes with that of the plaintiff or which would compete with any natural extension of the plaintiff's business. However, he continued:

“The absence of a common field of activity, therefore, is not fatal; but it is not irrelevant either. In deciding whether there is a likelihood of confusion, it is an important and highly relevant consideration

‘...whether there is any kind of association, or could be in the minds of the public any kind of association, between the field of activities of the plaintiff and the field of activities of the defendant’:

Annabel's (Berkeley Square) Ltd. v. G. Schock (trading as Annabel's Escort Agency) [1972] R.P.C. 838 at page 844 per Russell L.J.

In the *Lego* case Falconer J. likewise held that the proximity of the defendant's field of activity to that of the plaintiff was a factor to be taken into account when deciding whether the defendant's conduct would cause the necessary confusion.

Where the plaintiff's business name is a household name the degree of overlap between the fields of activity of the parties' respective businesses may often be a less important consideration in assessing whether there is likely to be confusion, but in my opinion it is always a relevant factor to be taken into account.

Where there is no or only a tenuous degree of overlap between the parties' respective fields of activity the burden of proving the likelihood of confusion and resulting damage is a heavy one. In *Stringfellow v. McCain Foods (G.B.) Ltd.* [1984] R.P.C. 501 Slade L.J. said (at page 535) that the further removed from one another the respective fields of activities, the less likely was it that any member of the public could reasonably be confused into thinking that the one business was connected with the other; and he added (at page 545) that

‘even if it considers that there is a limited risk of confusion of this nature, the court should not, in my opinion, readily infer the likelihood of resulting damage to the plaintiffs as against an innocent defendant in a completely different line of business. In such a case the onus falling on plaintiffs to show


that damage to their business reputation is in truth likely to ensue and to cause them more than minimal loss is in my opinion a heavy one.'

In the same case Stephenson L.J. said at page 547:

'...in a case such as the present the burden of satisfying Lord Diplock's requirements in the *Advocaat* case, in particular the fourth and fifth requirements, is a heavy burden; how heavy I am not sure the judge fully appreciated. If he had, he might not have granted the respondents relief. When the alleged "passer off" seeks and gets no benefit from using another trader's name and trades in a field far removed from competing with him, there must, in my judgment, be clear and cogent proof of actual or possible confusion or connection, and of actual damage or real likelihood of damage to the respondents' property in their goodwill, which must, as Lord Fraser said in the *Advocaat* case, be substantial.'"

80. UK958 ("HILIFE") is clearly identical to the sign "HILIFE". That sign represents Peterborough's best case in respect of UK958. I will therefore consider this sign first.



81. UK966 () includes both the words "HILIFE MUSIC" and a triangular device. The device is placed above the words and is quite large relative to them. It is divided into three columns, each of which consists of multiple bars, and is evocative of volume bars. Although the device occupies more space, consumers' tendency to latch on to words rather than devices means that the impact of the device and the words "HILIFE MUSIC" is roughly equal. When compared with the sign "HILIFE MUSIC", there is medium degree of visual similarity and both aural and conceptual identity. There is a lesser degree of visual similarity with the other signs. In terms of the "HILIFE" sign, the visual similarity is below average, bearing in mind the additional elements in the contested mark against "HILIFE" alone. There is a medium degree of aural similarity because "HILIFE" is shared whilst "MUSIC" is not. I have already said that it is unlikely that "HILIFE" will be ascribed a meaning. This results in a conceptual difference but it is a non-distinctive difference. In

a scenario where HILIFE is given a meaning, there would be some conceptual similarity between the mark and the sign but some difference, since there is an element in the contested mark which is not present in the sign.

82. As for the similarity of the “HILIFE MUSIC GROUP” sign to UK966, the differences and similarities will result overall in a lower than average degree of visual and aural similarity. Conceptually, any meaning for “HILIFE MUSIC” is the same in both marks but there is a distinction because “GROUP” suggests a group of companies. It is a difference of limited distinctiveness.

83. The most likely public for Peterborough’s music production services are people already in the music profession or aspiring musicians, DJs, etc. This is a characteristic shared by many of the goods and services in the contested specifications; some services, such as advertising, are likely to be bought by professionals and businesses rather than the general public. However, many of the goods and services in the contested specifications will share the same professional customers whilst also being goods and services used by the general public. Some of the contested goods, such as clothing and retail of mobile phones, are more general consumer goods and services, though of course I accept that music professionals will also purchase such goods and services in their capacity as members of the public. The level of attention paid is likely to be average or reasonably high: the general public will for the most part pay less attention than the professional purchaser. I bear in mind, however, that there are some instances where the purchase is less frequent or more technical and the general public’s attention will be equally elevated (e.g. cameras).

84. Peterborough’s goodwill is in music production services but it is small. However, given the level of similarity between the marks and the earlier signs, in particular the identity of the only or most distinctive element “HILIFE”, there will be a misrepresentation where the goods and services are in the same field or where the fields are sufficiently connected that the goods/services represent a plausible expansion of the services of a music production company. I do not think, however, that the goodwill is sufficient to sustain an objection to goods and services which are normally traded in a discrete commercial sector

and/or would not typically be provided by the same entity alongside music production services. I consider that misrepresentation will occur for the following goods and services in UK958 (classes 9, 35, 41) and UK966 (classes 35 and 41):

Class 9: Magnetic data carriers, recording discs; compact discs, DVDs and other digital recording media; CD ROMs; digital video discs; audio tapes and cassettes; video tapes and cassettes; records; pre-recorded sound storage media, image storage media and data storage media; audio recordings; video recordings; audio-visual recordings featuring music and musical-based entertainment; musical sound recordings; musical video recordings; motion picture films; downloadable and streamable audio and video recordings; downloadable and streamable sound recordings and audio-visual recordings featuring music and musical-based entertainment; downloadable and streamable music and music video recordings; downloadable music files; downloadable and streamable digital music provided from the internet or from a computer database; digital music downloadable provided from MP3 internet web sites; downloadable and streamable MP3 files, images and video images; downloadable electronic publications; downloadable and streamable podcasts in the field of music; electronic storage media.

Class 35: Advertising; business management; business administration; management services to musicians and recording artists; management and promotion of performing artists; public relations and publicity services; marketing services; promotional services; preparation, publication and distribution of promotional material; production of promotional audio and video recordings; production of video recordings for advertising, marketing and publicity purposes; advertising via the Internet; information, advisory and consultancy services in relation to all of the aforesaid; promotion of entertainment and events; entertainment promotion services; none of the aforementioned services in relation to articles for smokers and (cannabis) cafes.

Class 41: Entertainment; cultural activities; musical entertainment; music performance services; provision of live music; musical concert services;

organisation and production of entertainment and events; organisation, production and presentation of shows, staged events, concerts, live performances, musical performances; music festival services; entertainment services provided via the Internet and other computer and communications networks; entertainment services provided from a web site featuring music, musical performances, musical videos and other multimedia materials; providing on-line electronic publications (not downloadable); providing on-line music and video recordings (not downloadable); providing digital music from the internet and other computer and communications networks; provision of digital music (not downloadable) from MP3 web sites; information services relating to music; publishing services; music publishing services; sound recording and video entertainment services; television and radio entertainment services; provision of music studios; provision of recording studio services and facilities; audio and video recording services; music recording services; music production services; film and video production, publication and distribution; production, presentation and distribution of audio and video recordings; information, advisory and consultancy services relating to all of the aforesaid; except services with respect to (cannabis) cafes.

85. In particular, as regards the goods in class 9, the various types of media storage devices are (or may be) the physical manifestations of music recordings: none of the above is limited to blank media storage goods. Whilst “memory cards” are also not so limited, I am not aware that it is customary for recorded media to be sold on memory cards. The market for such goods appears to be related uniquely to blank memory cards and it is separate from the market in recorded music. In terms of motion picture films, these could include music videos which are produced as part of record deals. Apparatus is, in my view, a distinct field from production services. Whilst music producers will no doubt use such apparatus, there is nothing to suggest that the relevant public would consider a music producer to be the trade source of the goods. The remaining goods in class 9 are too distant from the music production services of Peterborough’s goodwill to result in misrepresentation.

86. As regards the goods in class 16, whilst it is true that some of the terms are or include music books and scores, my view is that such services are too far removed from music production services to give rise to a misrepresentation. The services of a music producer create and refine the audio recording and may include some composition. However, this requires skills and equipment distinct from the publication of printed matter, even if that printed matter includes, for example, musical scores. Even if the composition is written down as sheet music, the value is in the service rather than the making available of printed musical scores for purchase and there is no evidence that the latter is an activity routinely undertaken by music producers.

87. I do not consider that Peterborough's goodwill would give rise to a misrepresentation for clothing. The goods are usually traded in distinct sectors: music production and clothing manufacture are very different areas of activity. I recognise that there is some evidence that Peterborough has offered clothing for sale but its evidence is equivocal as to the brand used for clothing. I also acknowledge that record labels may have a hand in the production of merchandise, including clothing, for their artists. However, it is not clearly the case that a record label would, in the ordinary course of events, sell clothing under its own brand. It seems even less likely that a music production company would do so. There is no evidence to show that the position is normally otherwise.

88. The above services in class 35 represent or include services which would typically be offered through the same channels as music production services, most obviously through record labels which will be responsible for public relations and promotion of their artists and their music, as well as for the production of the music. Business management services may appear far removed from music production but they will include business management for artists (i.e. the specific artist management terms in the specification) and it is likely that such services would also be provided with music production as part of a record deal. Some of the terms are so wide they cover services which may be in entirely separate fields from the services of a record label. However, no fall-back specification has been provided by London and there is no indication that London's services would be anything other than those of a record label. I do not consider that the other services in class 35, including retail services related to music products, are sufficiently close to

Peterborough's goodwill to give rise to a misrepresentation. I recognise that there is a market for artist merchandise but I am not prepared to find absent evidence either that merchandise is a matter of course for all artists (Peterborough's evidence does not show any) or that record companies, still less music production companies, routinely provide retail services for such merchandise. There is limited overlap between the relevant public for music production and retail services and there is no evidence that music production and retail services are closely linked. The nature and object of the services is too distinct for me to draw that conclusion without evidence.

89. In terms of class 41, music production services are a category within entertainment services at large. Peterborough's activities appear to have been restricted to studio production but it seems to me that music production may also be a necessary ingredient in the production of performances by artists, for example in the composition and mixing of backing tracks. Whilst Peterborough's activities to date appear limited to audio production, video recording includes music videos and the relevant public is also likely to be misled as to the origin of these services. Film production will also cover the production of music videos. Whilst the focus of music production services is different from that of a television or radio entertainment company, television and radio entertainment services is a very wide term, covering production and post-production of television and radio programmes. Such programmes will often have a musical score or sound effects, which will usually require some degree of music production. The creation of the score may be done in-house or contracted out to a specialist music production company. The relevant public may coincide: a broadcaster may commission a project with a radio/television production company or use the services of a music production company when producing its own shows. Although these services are not in the same field, they are close enough for there to be a misrepresentation.

90. For the remaining services, it is not immediately apparent to me that music production plays a real role in the provision of the service or that the providers of the respective services would ordinarily be considered the same or connected. For example, providers of DJ services may use music producers to create their tracks but the user of the DJ service would be a different class of consumer and there is no evidence that music

production and DJ services are offered by the same companies. Similarly, booking services are a distinct field of business, even though they may relate to musical performances. There is no deception in respect of these services.

Damage

91. In *Harrods Limited V Harrodian School Limited* [1996] RPC 697, Millett L.J. described the requirements for damage in passing off cases like this:

“In the classic case of passing off, where the defendant represents his goods or business as the goods or business of the plaintiff, there is an obvious risk of damage to the plaintiff’s business by substitution. Customers and potential customers will be lost to the plaintiff if they transfer their custom to the defendant in the belief that they are dealing with the plaintiff. But this is not the only kind of damage which may be caused to the plaintiff’s goodwill by the deception of the public. Where the parties are not in competition with each other, the plaintiff’s reputation and goodwill may be damaged without any corresponding gain to the defendant. In the *Lego* case, for example, a customer who was dissatisfied with the defendant’s plastic irrigation equipment might be dissuaded from buying one of the plaintiff’s plastic toy construction kits for his children if he believed that it was made by the defendant. The danger in such a case is that the plaintiff loses control over his own reputation.

92. For those services which are the same as Peterborough’s, a loss of sales is likely to occur as a result of the misrepresentation. For all of the goods and services for which there is a misrepresentation, there is a non-hypothetical risk of damage in the form of loss of control of Peterborough’s reputation and diminution of the attractive force of the signs. Damage is made out for the goods at paragraph 84 above, but not otherwise.

93. I indicated above that no fall-back specification was provided by London and that it does not appear to be concerned with services other than those provided as a record label. In the circumstances, it is not appropriate to invite London again to provide an acceptable limitation of its specifications.

London's applications to invalidate Peterborough's registrations

94. Section 5 of the Act reads as follows:

“5. - (1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected.

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

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

(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.”

95. The following principles, of relevance to the s. 5(2)(a) and (b) grounds, are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, EU:C:1997:528, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, EU:C:1998:442, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, EU:C:1999:323, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, EU:C:2000:339, *Matratzen Concord GmbH v OHIM*, Case C-3/03, EU:C:2004:233, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, EU:C:2005:594, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P, EU:C:2007:333, and *Bimbo SA v OHIM*, Case C-591/12P, EU:C:2016:591.⁶⁷

⁶⁷ Although the UK has left the EU, s. 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. This is why this decision continues to refer to EU trade mark law.

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

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

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

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

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

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

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

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

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

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

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

Comparison of goods and services

96. For the reasons given above, the specifications used for the comparison will be those of the comparable marks which have survived Peterborough's invalidation. For convenience, I will refer to the EU trade marks as if it were those marks which had been subject to the invalidations.

97. There is a slight inconsistency in the applications for invalidity completed by London. The forms themselves indicate that all of the goods and services for which its marks are registered are relied upon. However, in the statements of grounds, London says that the applications are based upon the goods and services in classes 9, 16, 35 and 41, and it has undertaken a comparison based on its specifications in classes 9, 35 and 41. Mr Muir Wood's skeleton argument indicated that London's invalidities are based on classes 9, 35 and 41 only. However, reliance on class 16 has never been formally dropped and, although the table in the statement of grounds made no reference to class 16, that was in the context of an application made before a corresponding attack on the earlier marks. I will proceed on the basis that classes 9, 16, 35 and 41 are relied upon.

98. The goods and services to be compared are:

London's goods and services	Peterborough's services
Class 9 (UK966 only): Apparatus for recording, transmission or reproduction of sound or images; photographic transparencies and photographic and cinematographic films prepared for exhibition purposes; animated cartoons; downloadable and	<u>UK039, UK827 and UK112</u> Class 35: Publicity; advertisement and sales promotion; advertisement mediation; business management; business services in the fields of music, entertainment and media; business

<p>streamable, ring tones, graphics, games; screen savers; computer software and programs; downloadable computer software; computer application software; computer games programs; computer application software for mobile communication devices; memory cards; eye glasses, spectacles and sunglasses and cases, chains, straps, cords and frames therefor; cameras; holograms; computer mouse mats and pads; telecommunications apparatus; mobile phones; parts and accessories for mobile phones and personal electronic devices; covers and cases for mobile phones and personal electronic devices; holders adapted for mobile phones; straps for mobile phones; covers and cases specially adapted for PDAs, MP3 players, laptops and gaming devices; headphones; earphones; magnetic or encoded cards; payment cards; telephone cards; magnets; parts and fittings for all of the aforesaid goods.</p>	<p>management on behalf of commercial broadcasting companies; retail services connected with the sale of music instruments and records; distribution of advertising and promotional material; distribution of samples; providing advertising space for television, radio, papers, periodicals, magazines and electronic media; marketing, market research and analysis; database management; organization of shows and exhibitions for commercial and publicity purposes; all aforementioned services also provided via a global computer network; retail services in relation to downloadable music files; promotion services in relation to music concerts; business management of musicians; promoting the music of others by means of online portfolios.</p>
<p>Class 16: Printed matter; photographs; stationery; printed publications; printed publicity and promotional material; books; magazines; periodical publications; newsletters; brochures; manuals; letterheads; posters; leaflets; forms; programmes; printed music; music scores; music books; instruction guides; music in sheet form; comic books; catalogues; certificates; menus; stationery; writing paper; writing pads; drawing pads; notelets; note pads; note books; cards; postcards; greeting cards; envelopes; labels; trading cards; collectors' cards; stickers; transfers; decalcomanias; stencils; tickets; gift vouchers; diaries; address books; appointment books; albums; photograph albums; scrap books; folders; wall charts; maps; personal organisers; calendars; paper and cardboard boxes;</p>	<p><u>UK039 & UK827</u></p> <p>Class 41: Education, training and entertainment services; <u>provision of online entertainment through sound and audio-visual recordings relating to music and musical entertainment</u>;* production of music; concerts; production of sound and music recordings; sound recordings (UK039 only); production of music shows; distribution of digital programs, namely, online radio and television programs; production of sound and musical recordings; preparation of radio and television programmes; consultancy on film and music production; provision of studio for audio and visual recordings; entertainment services rendered by musical artists; music publishing and music recording services; publication of music; sporting and cultural activities; production of films and live entertainment features; production of</p>

<p>paper tablecloths and napkins; paper and cardboard place mats and coasters; paper towels; gift bags and bags for packaging; carrier bags; wrapping paper; gift tags; paper flags and banners; bookmarks; pens; pencils; pencil sharpeners; erasers; rulers; paint brushes; signs and advertisement boards; paper and cardboard; prints and pictures; graphic prints, representations and reproductions; wall art; money clips; none of the aforementioned goods in relation to articles for smokers and (cannabis) cafes.</p>	<p>cinematographic films and TV shows; production of animated motion pictures and television features.</p>
<p>Class 35: Office functions; organisation, arrangement and conducting of conferences, conventions, seminars, events and exhibitions for commercial or advertising purposes; provision of advertising space; provision of space on web sites for advertising goods and services; operation and supervision of membership schemes; organisation, operation and supervision of loyalty and incentive schemes; data processing; retail services and online retail services connected with the sale of soaps, detergents, perfumery, essential oils, cosmetics, hair lotions, dentifrices, toiletries, fragrances, toilet waters, cologne; retail services and online retail services connected with the sale of body sprays, personal deodorants, talcum powder, shower and bath preparations, shower gel, bubble bath, bath oils, bath salts, hair care products and preparations, shampoos, hair conditioners, hair colorants, hair styling products, body care products and preparations, skin care products and preparations, oils, creams, lotions, gels and powders for the skin, moisturisers, skin toners, facial scrubs and washes; retail services and online retail services connected with the sale of after shave lotion, shaving soaps, shaving</p>	<p>*UK827 reads, “providing online entertainment, namely, online entertainment provided through sound and audio-visual recordings relating to music and musical entertainment”.</p>
	<p><u>UK112</u></p>
	<p>Class 41: Education, training and entertainment services; providing online entertainment, namely, providing sound and audio-visual recording relating to music and musical entertainment; production of music; production of sound and music recordings; production of music shows; distribution of digital programs, namely, online radio and television programs; production of sound and musical recordings; preparation of radio and television programmes; consultancy on film and music production; provision of studio for audio and visual recordings; entertainment services rendered by musical artists; music publishing and music recording services; publication of music; sporting and cultural activities; production of films and live entertainment features; production of cinematographic films and TV shows; production of animated motion pictures and television features.</p>

foams, shaving gels, make-up, aromatherapy products, massage preparations, candles, badges, signs, plaques, ornaments, figurines, works of art, money boxes, key chains, penknives, apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs, compact discs, DVDs and other digital recording media, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of CD ROMs, digital video discs, audio tapes and cassettes, video tapes and cassettes, records, photographic transparencies and photographic and cinematographic films prepared for exhibition purposes, pre-recorded sound storage media, image storage media and data storage media, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of audio recordings, video recordings, audio-visual recordings featuring music and musical-based entertainment, musical sound recordings, musical video recordings, motion picture films, animated cartoons, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of downloadable and streamable audio and video recordings, downloadable and streamable sound recordings and audio-visual recordings featuring music and musical-based entertainment, downloadable and streamable music and music video recordings, downloadable music files, downloadable and streamable digital music provided from the internet or from a computer database, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of digital music downloadable provided from MP3 internet web

sites, downloadable and streamable MP3 files, ring tones, graphics, games, images and video images, screen savers, computer software and programs, downloadable computer software, computer application software, computer games programs, computer application software for mobile communication devices, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of downloadable electronic publications, downloadable and streamable podcasts in the field of music, electronic storage media, memory cards, eye glasses, spectacles and sunglasses, cases, chains, straps, cords and frames for eye glasses, spectacles and sunglasses, cameras, holograms, computer mouse mats and pads, telecommunications apparatus, mobile phones, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of parts and accessories for mobile phones and personal electronic devices, mobile phone accessory charms, covers and cases for mobile phones and personal electronic devices, holders adapted for mobile phones, straps for mobile phones, covers and cases specially adapted for PDAs, MP3 players, laptops and gaming devices, headphones, earphones, magnetic or encoded cards, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of payment cards, telephone cards, magnets, jewellery, costume jewellery, precious stones, horological and chronometric instruments, clocks and watches, watch straps, key rings, trinkets and fobs, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of bracelets, rings, ear rings, necklaces, pendants, jewellery

charms, ornamental pins, lapel pins, cufflinks, tie pins and tie clips, badges of precious metals, jewellery cases, coins, medals and medallions, musical instruments, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of printed matter, photographs, stationery, printed publications, printed publicity and promotional material, books, magazines, periodical publications, newsletters, brochures, manuals, letterheads, posters, leaflets, forms, programmes, printed music, music scores, music books, instruction guides, music in sheet form, comic books, catalogues, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of certificates, menus, stationery, writing paper, writing pads, drawing pads, notelets, note pads, note books, cards, postcards, greeting cards, envelopes, labels, trading cards, collectors' cards, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of stickers, transfers, decalcomanias, stencils, tickets, gift vouchers, diaries, address books, appointment books, albums, photograph albums, scrap books, folders, wall charts, maps, personal organisers, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of calendars, paper and cardboard boxes, tablecloths and napkins, place mats and coasters, paper towels, gift bags and bags for packaging, carrier bags, wrapping paper, gift tags, flags and banners, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of calendars bookmarks, pens, pencils, pencil sharpeners, erasers, rulers, paint brushes, signs and advertisement boards, paper and

cardboard, prints and pictures, graphic prints, representations and reproductions, wall art, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of money clips, trunks and travelling bags, umbrellas, parasols and walking sticks, luggage, cases, garment bags for travel, brief cases, bags, rucksacks, backpacks, holdalls, purses, wallets, card holders, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of credit card cases and holders, ID card holders, key cases, collars, covers, leads and leashes for animals, picture frames, photograph frames, household or kitchen utensils and containers, combs, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of brushes, glassware, porcelain, pottery and earthenware, drinking vessels, cups, mugs, bottle openers, corkscrews, flasks, bed and table covers, textile piece goods, textiles for making articles of clothing, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of household textile articles, towels, clothing, footwear, headgear, articles of outer clothing, t-shirts, shirts, sweatshirts, tank tops, sweaters, cardigans, hooded pullovers, jerseys, sweatpants, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of track suits, shorts, trousers, pants, jeans, blouses, skirts, dresses, vests, ties, waistcoats, suits, jackets, coats, overcoats, rainwear, sleepwear, underwear, swimwear, socks, hosiery, scarves, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of gloves, shoes, boots,

sandals, flip-flops, slippers, hats, caps, sun visors, headbands, wristbands, belts, badges and patches of textile materials, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of belt clasps, brooches, buckles, hat ornaments, hair ornaments, shoe ornaments, lanyards for wear, games and playthings, toys, gymnastic and sporting articles, whistles, playing cards, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of confetti, balloons, party novelties, dolls, action figure toys, food products, confectionery, snack foods, drinks, matches and lighters; parts and fittings for all the aforesaid goods; information, advisory and consultancy services in relation to all of the aforesaid; none of the aforementioned services in relation to articles for smokers and (cannabis) cafes.

Class 41: Organisation, production and presentation of theatrical performances, dancing displays, audience participation events and talent shows; organisation of parties and social events; entertainment services provided at nightclubs and discotheques; education services provided via the Internet and other computer and communications networks; entertainment services provided from a web site featuring photographs, games; booking and ticketing services for entertainment and cultural events; reservation services for concert and entertainment event tickets; ticket information services for concerts and entertainment events; DJ services; fan club services; arranging, organising and conducting of games, contests and competitions; information, advisory and

consultancy services relating to all of the aforesaid; except services with respect to (cannabis) cafes.	
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99. In *Canon*, the Court of Justice of the European Union (“CJEU”) stated at paragraph 23 of its judgment:

“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”.

100. Guidance on this issue has also come from Jacob J. (as he then was) *British Sugar Plc v James Robertson & Sons Ltd*, where he identified the factors for assessing similarity as:

- (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.

101. Regarding the interpretation of terms in specifications, in *Avnet Incorporated v Isoact Limited* [1998] F.S.R. 16, Jacob J. (as he then was) warned against construing specifications for services too widely, stating that:

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase”.

102. It is also necessary to consider whether there is a complementary relationship between the respective goods and services.⁶⁸ In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, T-325/06, EU:T:2009:428, the General Court (“GC”) stated that “complementary” means:

“[...] there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking”.

103. In *Gérard Meric v Office for Harmonisation in the Internal Market*, T- 133/05, EU:T:2006:247, the GC held that, where goods or services in the specification of the contested mark are included within a more general category designated by the goods/services of the earlier mark, or vice versa, such goods and services can be considered identical.

Class 35

Retail services connected with the sale of music instruments and records; retail services in relation to downloadable music files

104. The same terms are contained in the earlier specifications. These services are identical.

⁶⁸ Complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods: *Kurt Hesse v OHIM*, C-50/15 P, EU:C:2016:34.

Publicity; advertisement and sales promotion; marketing; organization of shows and exhibitions for commercial and publicity purposes; providing advertising space for television, radio, papers, periodicals, magazines and electronic media; database management

105. These services are identical on the basis outlined in *Meric* to terms in the earlier specifications, namely “organisation, arrangement and conducting of conferences, conventions, seminars, events and exhibitions for commercial or advertising purposes”, “provision of advertising space” and “office functions”.

Business services in the fields of music, entertainment and media

106. This is a very wide term which appears to include all kinds of business services offered to businesses in these fields. In my view, it would include “office functions” provided to the same businesses. If that is not right, there is an overlap in purpose, nature, users and channels of trade, along with the potential for complementarity because the services may be used together and provided by the same undertaking resulting in a high degree of similarity.

Advertisement mediation

107. This appears to be a service which includes, among other things, enabling businesses to find space for their advertisements on websites. The purpose is not the same as “provision of advertising space” but both enable businesses to place advertisements. They may be in competition and users of the services will be the same. They are similar to a fairly low degree.

Business management; business management on behalf of commercial broadcasting companies; business management of musicians

108. These services share some similarity of purpose with office functions, as both are intended to take on aspects of the running of a business, though management includes advice and strategy whereas office functions are typically administrative or support

services. In my view, “office functions” includes services such as secretarial services and diary management, both of which may be used by musicians as well as other businesspeople or companies. There is no reason to believe that business management of a musician’s business affairs is substantially different from other business management services. Users are identical and channels of trade may be shared. They are similar to a low degree.

Distribution of advertising and promotional material; distribution of samples

109. The earlier specifications contain “organisation, arrangement and conducting of conferences, conventions, seminars, events and exhibitions for commercial or advertising purposes”. There is a difference in purpose because the earlier services are concerned with running the conferences etc. However, both sets of services are also concerned with facilitating the promotion of others’ goods and/or services. The users of the services will intersect. Distribution of advertising material is likely to be an important part of the organisation of advertising events and users are likely to think that the services are offered by the same undertakings. Samples are likely to be offered during such events and there is potential for complementarity. They are similar to a medium degree.

Market research and analysis

110. The purpose of these services is to investigate and assess market conditions so that product viability can be ascertained and advertising campaigns tailored to maximise sales. It is not the same purpose as the organisation of conferences etc. but both are concerned with promotion of others’ goods and services. The nature of the services is not the same. Users will be the same and the services are likely to reach the market through the same channels, including the same providers. The services have a low degree of similarity.

Promotion services in relation to music concerts

111. These services have a different specific purpose from the earlier organisation of conference and events services because they are related specifically to music concerts:

the purpose of a music concert is not primarily advertising, unlike the events covered by the earlier term. However, both of the services are connected with promotion and the organisation of an event for advertising purposes and would typically include promotion of the event itself, meaning there will be some overlap in nature. The users of both will be professionals, though it is unlikely that those using promotional services in respect of music concerts would routinely require conferences and exhibitions. Given the different specific purpose, the services are unlikely to be in competition and they are not complementary. However, they may reach the market through the same channels. These services are similar to a low degree.

Promoting the music of others by means of online portfolios

112. These services are again advertising services and share that overall purpose with the organisation and conduct of exhibitions for advertising purposes. Whilst one service is online, the other is not. Both services may entail the curation of information about the companies/individuals being promoted, though there is plainly more to the organisation of conferences and exhibits than this alone. There may be an overlap in users, though it is unlikely to be pronounced at a lower level. The services may be offered by the same undertakings but they are not complementary. They are similar to a low degree.

Class 41

Education, training and entertainment services; sporting and cultural activities

113. The above services are identical to “education services provided via the Internet and other computer and communications networks”, “organisation, production and presentation of theatrical performances, dancing displays, audience participation events and talent shows” and/or “arranging, organising and conducting of games, contests and competitions” on the basis identified in *Meric*.

Production of live entertainment features

114. This term appears to include “production of audience participation events” in the earlier specification and is also identical under *Meric*.

Concerts (UK039& UK287); production of music shows

115. These services coincide in purpose with “organisation, production and presentation of theatrical performances” in that both arrange cultural events designed for entertainment. The precise nature of the cultural event differs and there may be some difference in the skills required but both involve putting on a show, finding a venue and arranging tickets for audiences. The users will be the same and the services will reach the market through the same channels. They are similar to a fairly high degree.

Provision of online entertainment through sound and audio-visual recordings relating to music and musical entertainment (UK039); providing online entertainment, namely, online entertainment provided through sound and audio-visual recordings relating to music and musical entertainment. (UK827); providing online entertainment, namely, providing sound and audio-visual recording relating to music and musical entertainment (UK112)

116. The closest term in the earlier specifications appears to be “entertainment services provided from a web site featuring photographs, games”, as both parties’ marks are online entertainment services and share that broad purpose. They are differences in both their purpose and nature because one is concerned with photographs and games, whilst the other is provided through sound and audio-visual recordings and is about music. Users of these services will be the same. The services are likely to be made available through the same sites by the same undertakings. They are similar to a medium degree.

Preparation of television programmes; consultancy on film production; production of films; production of cinematographic films and TV shows; production of animated motion pictures and television features

117. The television and films prepared or produced as part of the above services include both live-action and animated programmes. UK966 includes, in class 9, “animated cartoons”. Whilst the goods and services differ in nature and purpose, they share both users and channels of trade. There is also a reasonable level of complementarity. They are similar to a medium degree. I cannot see any meaningful similarity between these terms and those in the surviving specification of EU958.

Distribution of digital programs, namely online television programmes

118. The above includes the distribution of animated cartoons; EU966’s specification includes animated cartoons. The nature and purpose differ but users intersect. I have no evidence on the point but the goods are important for the services and it seems to me that the relevant public is likely to believe that the cartoons are both produced and distributed by the same entity. They are similar to a medium degree. There are no obviously similar services in the specification of EU958.

Entertainment services rendered by musical artists

119. The earlier marks’ “organisation of parties and social events” will include the provision of musical entertainment, like bands. Although one service is concerned with organisation overall and the other simply the performance, those using party organisers will hold the organiser responsible for any musical entertainment booked through the organiser. There is likely to be a complementary relationship and the average consumer is the same. There may be a degree of competition, as users may choose to engage an artist directly without using an organiser to source the entertainment. There is a fairly low degree of similarity.

Music publishing services; publication of music

120. These services are similar to the earlier “printed matter” because both will or may result in the publication of music, though one is concerned with publication itself, the other with the physical product of the service. They have a strong complementary relationship and will be used by the same average consumer. They are similar to a medium degree.

Production of music; production of sound and music recordings; sound recordings (UK039); production of sound and musical recordings; preparation of radio programmes; consultancy on music production; provision of studio for audio and visual recordings; music recording services

121. It is not obvious to me why any of the above are similar to the goods or services in the earlier specifications. There does not appear to be any overlap in nature or purpose, except at a very high level, nor is it apparent to me that there would be shared channels of trade, competition or complementarity. The closest services are probably entertainment at discotheques and nightclubs/DJ services. However, these involve the playing of music, rather than its production. DJs and club owners may use music production services but the average consumer for DJ and nightclub services is the public at large. These services are not similar.

Distribution of digital programs, namely, online radio programs

122. Although I found animated cartoons to be similar to distribution of television programmes, the position is different for the distribution of radio programmes. By their nature, cartoons are a visual product. They may have an audio aspect but they do not, to my knowledge, readily or commonly translate to a purely audio medium like radio and their market sectors are likely to be distinct. These goods and services are not similar. I cannot see any obvious similarity with the other goods and services in the earlier specifications.

The average consumer and the nature of the purchasing act

123. The average consumer is a legal construct deemed to be reasonably well informed and reasonably circumspect: *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) at [60]. For the purposes 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 and services in question: *Lloyd Schuhfabrik*.

124. Mr Muir Wood submitted that the average consumer is a professional or musician likely to be paying a high degree of attention. Mr Boateng-Addo did not make any specific submissions on this point, although he appeared to rely upon average consumers familiar with Ghanaian music as recognising the genre of music.

125. For the reasons given above, I do not consider that the relevant UK consumer would understand “HILIFE” as a genre of music. I agree with Mr Muir Wood that the overlapping average consumer of many of the identical or similar goods and services will be a business user or professional musician, though I note that the end users for animated cartoons and some of the services will also include the general public.

126. I agree that there will be at least a fairly high level of attention paid by business consumers or professional musicians using the goods and services, because they are likely to be commissioned at significant expense and/or be very important to an artist's career or the reputation of a company. The general public's level of attention is likely to be medium, as the goods and services are for entertainment alone, though attention will be paid to, for example, the particular programme or event. The purchasing process will have a significant visual element, as the trade marks will be seen on websites and in promotional material, both in print and online. I do not rule out an aural element to the purchase of any of the goods or services, for example because of oral recommendations.

Distinctive character of the earlier trade mark

127. In *Lloyd Schuhfabrik*, the CJEU stated that:

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

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

128. I have already indicated that I consider the word “HILIFE”, and therefore EU958, to be inherently distinctive to a medium degree. EU966 contains other elements but neither of these is so distinctive that the overall distinctiveness of the mark is increased beyond medium. There is no documentary evidence of use dated before the relevant dates (13 March 2019 and 9 July 2019), only Ms Atiemo’s assertion as to use and the investment which has been made in the company.⁶⁹ There is no enhanced distinctive character.

Comparison of trade marks




129. The average consumer normally perceives a mark as a whole and does not proceed to analyse its various details: *Sabel* (particularly paragraph 23). *Sabel* also explains that

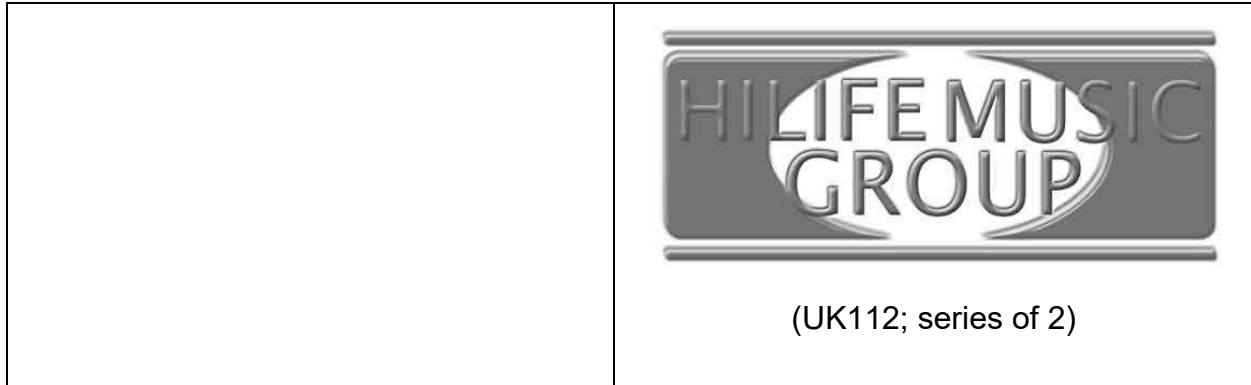
⁶⁹ Atiemo 1, §4-5.

the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in *Bimbo*, 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”.

130. It would be wrong, therefore, artificially to dissect the marks, although it is necessary to take into account the distinctive and dominant components of the marks. Due weight must be given to any other features which are not negligible and therefore contribute to the overall impressions created by the marks. The trade marks to be compared are:

London's trade marks	Peterborough's trade marks
<p data-bbox="378 1192 607 1226">HILIFE (EU958)</p>  <p data-bbox="311 1520 657 1554">HILIFE MUSIC</p> <p data-bbox="433 1635 552 1669">(EU966)</p>	<p data-bbox="998 1102 1227 1136">HILIFE (UK039)</p>  <p data-bbox="1052 1423 1170 1457">(UK728)</p> 



131. Peterborough accepts that UK039 is identical to EU958. It also accepts that there is a moderate degree of visual similarity and a higher degree of aural similarity between its own marks and those of London. In the absence of any submissions from London to explain why there would be a higher degree of similarity, I will proceed on the basis that there is a medium degree of visual similarity and an above average degree of aural similarity between all of the marks, except for UK039 and EU958 which are identical. It was not expressly conceded so I find that UK728 and EU966 are also aurally identical because neither device will be verbalised.

132. Peterborough argues that there is a conceptual difference between UK728 and UK112 on the one hand and both earlier marks on the other.

133. I agree that the word “MUSIC” in UK728 adds a concept that is not present in the EU958. UK728 is identical in concept to EU966.

134. I also agree that the words “HILIFE MUSIC GROUP” in UK112 suggest a group of companies involved in the music business. This is a concept not present in EU958. Regarding the conceptual similarity between UK112 and EU966, EU966 does indicate that the area of interest is music. There is therefore some similarity and some difference. However, the differences and similarities which arise from “MUSIC GROUP” and “MUSIC” are, in the context of music-related services, descriptive and/or non-distinctive.

Likelihood of confusion

135. In determining whether there is a likelihood of confusion, all of the above factors need to be borne in mind. They must be considered globally (*Sabel*), from the perspective

of the average consumer. In making my assessment, I must keep in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he has retained in his mind (*Lloyd Schuhfabrik*). The factors considered above have a degree of interdependency (*Canon*): for example, a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa.

136. Confusion can be direct or indirect. The difference between these two types of confusion was explained in *LA Sugar Limited v Back Beat Inc.*, BL O/375/10, where Iain Purvis 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”.

137. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, 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.

Conclusions on UK039

138. UK039 is identical to EU958. The services shown below in the specification for UK039 are identical to services contained in EU958. The invalidation therefore succeeds under s. 5(1) in respect of the following:

Class 35: Publicity; advertisement and sales promotion; business services in the fields of music, entertainment and media; marketing; organization of shows and exhibitions for commercial and publicity purposes; retail services connected with the sale of music instruments and records; retail services in relation to downloadable music files; providing advertising space for television, radio, papers, periodicals, magazines and electronic media; database management.

Class 41: Education, training and entertainment services; sporting and cultural activities; production of live entertainment features.

139. Turning to the invalidity based upon s. 5(2)(a) and (b), I find that there is a likelihood of confusion for all of the goods and services which I have found to be similar, in respect of both earlier marks. In the case of EU958, in view of the identity of the trade marks, there is no way to distinguish the provider of the goods and services based on the marks alone. Even when considered with a fairly high degree of attention and bearing in mind the low degree of similarity between some of the services, the differences between the goods and services are not sufficient for the average consumer to conclude that their commercial origin is different. There is a likelihood of direct confusion.

140. In respect of EU966, there is a lesser degree of similarity between the trade marks. However, the elements which are different are of limited or no distinctive character. The common element is also the most inherently distinctive element of the earlier mark. Weighing all of the competing factors, I conclude that, even though the average consumer is likely to notice that there are differences between the marks, such as the device, they will conclude that the marks are variants used by the same or economically connected undertakings and that there will be a likelihood of indirect confusion.

141. Where there is no similarity between the goods and services, there can be no confusion and the invalidity against the dissimilar services is dismissed accordingly.⁷⁰

Conclusions on UK728

142. My view is that there is a likelihood of confusion in respect of both earlier marks where I have found similarity or identity between the goods and services. In light of the average degree of distinctive character of the earlier marks, the level of similarity between the goods and services and the fact that any conceptual differences are of little or no distinctiveness, the differences between the marks themselves are not sufficient to preclude the average consumer from believing that the goods and services are offered by the same or connected undertakings. There is a likelihood of indirect confusion. I should add that I have considered whether there is a likelihood of direct confusion, given that the word elements in UK728 and EU966 are identical, and that the difference between EU958 and UK728 is only the non-distinctive or descriptive word “MUSIC”. However, the peculiar presentation of UK729 with dark writing on a dark background, only legible with difficulty, is likely to make a particular impact on the consumer. In the circumstances, I consider it more likely that the average consumer will perceive the differences but conclude that there has been an update to the branding.

Conclusions on UK112

143. For reasons similar to those already expressed, I also consider that there is a likelihood of confusion in respect of UK112 (both marks in the series) based on both earlier marks where there is similarity or identity between the goods and services. The differences between the trade marks, and between the goods and services, are not sufficient to displace the assumption caused by the distinctive element “HILIFE” that the same or related undertakings are using the respective trade marks. The conceptual differences, such as they are, do not amount to a clear indication that the commercial

⁷⁰ *Waterford Wedgwood plc v OHIM*, C-398/07 P.

origin is different. The different presentation of the marks will be noticed but there is a likelihood of indirect confusion.

Overall result

144. UK trade mark registration 916238966 will be deemed never to have been made for the goods and services in classes 9, 35 and 41 shown at paragraph 84, above.

145. UK trade mark registration 916238958 will be deemed never to have been made for the services in classes 35 and 41 shown at paragraph 84, above.

146. UK trade mark registration numbers 3383039, 3412728 and 3383112 will be deemed never to have been made for all of the services in class 35 and some services in class 41 of their specifications. They will remain registered for the following services only:

Class 41: Production of music; production of sound and music recordings; sound recordings (UK3383039 only); distribution of digital programs, namely, online radio programs; production of sound and musical recordings; preparation of radio programmes; consultancy on music production; provision of studio for audio and visual recordings; music recording services.

Costs

147. Awards of costs are governed by TPN 2/2016. Neither party seeks costs off the published scale but Peterborough asks for its costs in respect of the joint hearing held on 15 June 2021.⁷¹

148. Overall, London has had more success in both retaining its own trade marks and invalidating those of Peterborough. I will award costs to London but I will reduce the award to take into account its partial success. The hearing in relation to which Peterborough seeks its costs concerned forms TM8 filed late by London, in which London successfully argued for the admission of the forms TM8. It is not clear to me why Peterborough should

⁷¹ BL O/498/21 refers.

be awarded costs for a hearing at which it lost the point and I decline its request. I award costs to London as follows:

Contribution towards official fees x 3:	£450
Preparing the applications; considering London's applications and filing defences:	£500
Filing evidence and considering the other party's evidence:	£500
Preparing for and attending a hearing:	£550
Total:	£2,000

149. I order Hilife Music Limited to pay Hilife Music Entertainment Limited the sum of £2,000. 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 5th day of December 2022

Heather Harrison

For the Registrar

The Comptroller-General

ANNEX 1

UK 3383039 & 3412827

Class 35: Publicity; advertisement and sales promotion; advertisement mediation; business management; business services in the fields of music, entertainment and media; business management on behalf of commercial broadcasting companies; retail services connected with the sale of music instruments and records; distribution of advertising and promotional material; distribution of samples; providing advertising space for television, radio, papers, periodicals, magazines and electronic media; marketing, market research and analysis; database management; organization of shows and exhibitions for commercial and publicity purposes; all aforementioned services also provided via a global computer network; retail services in relation to downloadable music files; promotion services in relation to music concerts; business management of musicians; promoting the music of others by means of online portfolios.

Class 41: Education, training and entertainment services; provision of online entertainment through sound and audio-visual recordings relating to music and musical entertainment;* production of music; concerts; production of sound and music recordings; sound recordings (UK039 only); production of music shows; distribution of digital programs, namely, online radio and television programs; production of sound and musical recordings; preparation of radio and television programmes; consultancy on film and music production; provision of studio for audio and visual recordings; entertainment services rendered by musical artists; music publishing and music recording services; publication of music; sporting and cultural activities; production of films and live entertainment features; production of cinematographic films and TV shows; production of animated motion pictures and television features.

* For the underlined services, UK3412827 reads instead “providing online entertainment, namely, online entertainment provided through sound and audio-visual recordings relating to music and musical entertainment”.

UK 3383112

Class 35: Publicity; advertisement and sales promotion; advertisement mediation; business management; business services in the fields of music, entertainment and media; business management on behalf of commercial broadcasting companies; retail services connected with the sale of music instrument and record; distribution of advertising and promotional material; distribution of samples; providing advertising space for television, radio, papers, periodicals, magazines and electronic media; marketing, market research and analysis; database management; organization of shows and exhibitions for commercial and publicity purposes; all aforementioned services also provided via a global computer network; retail services in relation to downloadable music files; promotion services in relation to music concerts; business management of musicians; promoting the music of others by means of online portfolios.

Class 41; Education, training and entertainment services; providing online entertainment, namely, providing sound and audio-visual recording relating to music and musical entertainment; production of music; production of sound and music recordings; production of music shows; distribution of digital programs, namely, online radio and television programs; production of sound and musical recordings; preparation of radio and television programmes; consultancy on film and music production; provision of studio for audio and visual recordings; entertainment services rendered by musical artists; music publishing and music recording services; publication of music; sporting and cultural activities; production of films and live entertainment features; production of cinematographic films and TV shows; production of animated motion pictures and television features.

ANNEX 2

EU16238958 & UK916238958

Class 14: Jewellery, costume jewellery, precious stones; horological and chronometric instruments, clocks and watches; watch straps; key rings, trinkets and fobs; bracelets; rings; ear rings; necklaces; pendants; jewellery charms; ornamental pins; lapel pins; cufflinks; tie pins and tie clips; badges of precious metals; jewellery cases; coins; medals and medallions; parts and fittings for all of the aforesaid goods.

Class 16: Printed matter; photographs; stationery; printed publications; printed publicity and promotional material; books; magazines; periodical publications; newsletters; brochures; manuals; letterheads; posters; leaflets; forms; programmes; printed music; music scores; music books; instruction guides; music in sheet form; comic books; catalogues; certificates; menus; stationery; writing paper; writing pads; drawing pads; notelets; note pads; note books; cards; postcards; greeting cards; envelopes; labels; trading cards; collectors' cards; stickers; transfers; decalcomanias; stencils; tickets; gift vouchers; diaries; address books; appointment books; albums; photograph albums; scrap books; folders; wall charts; maps; personal organisers; calendars; paper and cardboard boxes; paper tablecloths and napkins; paper and cardboard place mats and coasters; paper towels; gift bags and bags for packaging; carrier bags; wrapping paper; gift tags; paper flags and banners; bookmarks; pens; pencils; pencil sharpeners; erasers; rulers; paint brushes; signs and advertisement boards; paper and cardboard; prints and pictures; graphic prints, representations and reproductions; wall art; money clips; none of the aforementioned goods in relation to articles for smokers and (cannabis) cafes.

Class 18: Trunks and travelling bags; umbrellas, parasols and walking sticks; luggage; cases; garment bags for travel; brief cases; bags; rucksacks; backpacks; holdalls; purses; wallets; card holders; credit card cases and holders; ID card holders; key cases; collars, covers, leads and leashes for animals; parts and fittings for all the aforesaid goods; none of the aforementioned goods in relation to articles for smokers and (cannabis) cafes.

Class 25: Clothing, footwear, headgear; articles of outer clothing; t-shirts; shirts; sweatshirts; tank tops; sweaters; cardigans; hooded pullovers; jerseys; sweatpants; track suits; shorts; trousers; pants; jeans; blouses; skirts; dresses; vests; ties; waistcoats; suits; jackets; coats; overcoats; rainwear; sleepwear; underwear; swimwear; socks; hosiery; scarves; gloves; shoes; boots; sandals; flip-flops; slippers; hats; caps; sun visors; headbands; wristbands; belts; none of the aforementioned goods in relation to articles for smokers and (cannabis) cafes.

Class 35: Advertising; business management; business administration; office functions; management services to musicians and recording artists; management and promotion of performing artists; public relations and publicity services; marketing services; promotional services; preparation, publication and distribution of promotional material; production of promotional audio and video recordings; production of video recordings for advertising, marketing and publicity purposes; organisation, arrangement and conducting of conferences, conventions, seminars, events and exhibitions for commercial or advertising purposes; advertising via the Internet; provision of advertising space; provision of space on web sites for advertising goods and services; operation and supervision of membership schemes; organisation, operation and supervision of loyalty and incentive schemes; data processing; retail services and online retail services connected with the sale of soaps, detergents, perfumery, essential oils, cosmetics, hair lotions, dentifrices, toiletries, fragrances, toilet waters, cologne; retail services and online retail services connected with the sale of body sprays, personal deodorants, talcum powder, shower and bath preparations, shower gel, bubble bath, bath oils, bath salts, hair care products and preparations, shampoos, hair conditioners, hair colorants, hair styling products, body care products and preparations, skin care products and preparations, oils, creams, lotions, gels and powders for the skin, moisturisers, skin toners, facial scrubs and washes; retail services and online retail services connected with the sale of after shave lotion, shaving soaps, shaving foams, shaving gels, make-up, aromatherapy products, massage preparations, candles, badges, signs, plaques, ornaments, figurines, works of art, money boxes, key chains, penknives, apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs, compact discs, DVDs and other

digital recording media, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of CD ROMs, digital video discs, audio tapes and cassettes, video tapes and cassettes, records, photographic transparencies and photographic and cinematographic films prepared for exhibition purposes, pre-recorded sound storage media, image storage media and data storage media, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of audio recordings, video recordings, audio-visual recordings featuring music and musical-based entertainment, musical sound recordings, musical video recordings, motion picture films, animated cartoons, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of downloadable and streamable audio and video recordings, downloadable and streamable sound recordings and audio-visual recordings featuring music and musical-based entertainment, downloadable and streamable music and music video recordings, downloadable music files, downloadable and streamable digital music provided from the internet or from a computer database, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of digital music downloadable provided from MP3 internet web sites, downloadable and streamable MP3 files, ring tones, graphics, games, images and video images, screen savers, computer software and programs, downloadable computer software, computer application software, computer games programs, computer application software for mobile communication devices, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of downloadable electronic publications, downloadable and streamable podcasts in the field of music, electronic storage media, memory cards, eye glasses, spectacles and sunglasses, cases, chains, straps, cords and frames for eye glasses, spectacles and sunglasses, cameras, holograms, computer mouse mats and pads, telecommunications apparatus, mobile phones, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of parts and accessories for mobile phones and personal electronic devices, mobile phone accessory charms, covers and cases for mobile phones and personal electronic devices, holders adapted for mobile phones, straps for mobile phones, covers and cases specially adapted for PDAs, MP3 players, laptops and gaming devices, headphones, earphones, magnetic or encoded

cards, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of payment cards, telephone cards, magnets, jewellery, costume jewellery, precious stones, horological and chronometric instruments, clocks and watches, watch straps, key rings, trinkets and fobs, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of bracelets, rings, ear rings, necklaces, pendants, jewellery charms, ornamental pins, lapel pins, cufflinks, tie pins and tie clips, badges of precious metals, jewellery cases, coins, medals and medallions, musical instruments, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of certificates, menus, stationery, writing paper, writing pads, drawing pads, notelets, note pads, note books, cards, postcards, greeting cards, envelopes, labels, trading cards, collectors' cards, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of stickers, transfers, decalcomanias, stencils, tickets, gift vouchers, diaries, address books, appointment books, albums, photograph albums, scrap books, folders, wall charts, maps, personal organisers, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of calendars, paper and cardboard boxes, tablecloths and napkins, place mats and coasters, paper towels, gift bags and bags for packaging, carrier bags, wrapping paper, gift tags, flags and banners, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of calendars bookmarks, pens, pencils, pencil sharpeners, erasers, rulers, paint brushes, signs and advertisement boards, paper and cardboard, prints and pictures, graphic prints, representations and reproductions, wall art, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of money clips, trunks and travelling bags, umbrellas, parasols and walking sticks, luggage, cases, garment bags for travel, brief cases, bags, rucksacks, backpacks, holdalls, purses, wallets, card holders, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of credit card cases and holders, ID card holders, key cases, collars, covers, leads and leashes for animals, picture frames, photograph frames, household or kitchen utensils and containers, combs, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of brushes, glassware, porcelain, pottery and earthenware,

drinking vessels, cups, mugs, bottle openers, corkscrews, flasks, bed and table covers, textile piece goods, textiles for making articles of clothing, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of household textile articles, towels, clothing, footwear, headgear, articles of outer clothing, t-shirts, shirts, sweatshirts, tank tops, sweaters, cardigans, hooded pullovers, jerseys, sweatpants, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of track suits, shorts, trousers, pants, jeans, blouses, skirts, dresses, vests, ties, waistcoats, suits, jackets, coats, overcoats, rainwear, sleepwear, underwear, swimwear, socks, hosiery, scarves, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of gloves, shoes, boots, sandals, flip-flops, slippers, hats, caps, sun visors, headbands, wristbands, belts, badges and patches of textile materials, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of belt clasps, brooches, buckles, hat ornaments, hair ornaments, shoe ornaments, lanyards for wear, games and playthings, toys, gymnastic and sporting articles, whistles, playing cards, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of confetti, balloons, party novelties, dolls, action figure toys, food products, confectionery, snack foods, drinks, matches and lighters; parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of printed matter, photographs, stationery, printed publications, printed publicity and promotional material, books, magazines, periodical publications, newsletters, brochures, manuals, letterheads, posters, leaflets, forms, programmes, printed music, music scores, music books, instruction guides, music in sheet form, comic books, catalogues, parts and fittings for all the aforesaid goods; information, advisory and consultancy services in relation to all the aforesaid services; promotion of entertainment and events; entertainment promotion services; none of the aforementioned services in relation to articles for smokers and (cannabis) cafes.

Class 41: Entertainment; cultural activities; musical entertainment; music performance services; provision of live music; musical concert services; organisation and production of entertainment and events; organisation, production and presentation of shows, staged

events, concerts, live performances, musical performances, theatrical performances, dancing displays, audience participation events and talent shows; organisation of parties and social events; music festival services; entertainment services provided at nightclubs and discotheques; entertainment and education services provided via the Internet and other computer and communications networks; entertainment services provided from a web site featuring music, musical performances, musical videos, photographs, games and other multimedia materials; providing on-line electronic publications (not downloadable); providing on-line music and video recordings (not downloadable); providing digital music from the internet and other computer and communications networks; provision of digital music (not downloadable) from MP3 web sites; information services relating to music; booking and ticketing services for entertainment and cultural events; reservation services for concert and entertainment event tickets; ticket information services for concerts and entertainment events; DJ services; fan club services; arranging, organising and conducting of games, contests and competitions; publishing services; music publishing services; sound recording and video entertainment services; television and radio entertainment services; provision of music studios; provision of recording studio services and facilities; audio and video recording services; music recording services; music production services; film and video production, publication and distribution; production, presentation and distribution of audio and video recordings; information, advisory and consultancy services relating to all of the aforesaid; except services with respect to (cannabis) cafes.

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Class 9: Apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; compact discs, DVDs and other digital recording media; CD ROMs; digital video discs; audio tapes and cassettes; video tapes and cassettes; records; photographic transparencies and photographic and cinematographic films prepared for exhibition purposes; pre-recorded sound storage media, image storage media and data storage media; audio recordings; video recordings; audio-visual recordings featuring music and musical-based entertainment; musical sound recordings; musical video recordings; motion picture films; animated cartoons; downloadable and

streamable audio and video recordings; downloadable and streamable sound recordings and audio-visual recordings featuring music and musical-based entertainment; downloadable and streamable music and music video recordings; downloadable music files; downloadable and streamable digital music provided from the internet or from a computer database; digital music downloadable provided from MP3 internet web sites; downloadable and streamable MP3 files, ring tones, graphics, games, images and video images; screen savers; computer software and programs; downloadable computer software; computer application software; computer games programs; computer application software for mobile communication devices; downloadable electronic publications; downloadable and streamable podcasts in the field of music; electronic storage media; memory cards; eye glasses, spectacles and sunglasses and cases, chains, straps, cords and frames therefor; cameras; holograms; computer mouse mats and pads; telecommunications apparatus; mobile phones; parts and accessories for mobile phones and personal electronic devices; covers and cases for mobile phones and personal electronic devices; holders adapted for mobile phones; straps for mobile phones; covers and cases specially adapted for PDAs, MP3 players, laptops and gaming devices; headphones; earphones; magnetic or encoded cards; payment cards; telephone cards; magnets; parts and fittings for all of the aforesaid goods.

Class 14: Jewellery, costume jewellery, precious stones; horological and chronometric instruments, clocks and watches; watch straps; key rings, trinkets and fobs; bracelets; rings; ear rings; necklaces; pendants; jewellery charms; ornamental pins; lapel pins; cufflinks; tie pins and tie clips; badges of precious metals; jewellery cases; coins; medals and medallions; parts and fittings for all of the aforesaid goods.

Class 16: Printed matter; photographs; stationery; printed publications; printed publicity and promotional material; books; magazines; periodical publications; newsletters; brochures; manuals; letterheads; posters; leaflets; forms; programmes; printed music; music scores; music books; instruction guides; music in sheet form; comic books; catalogues; certificates; menus; stationery; writing paper; writing pads; drawing pads; notelets; note pads; note books; cards; postcards; greeting cards; envelopes; labels; trading cards; collectors' cards; stickers; transfers; decalcomanias; stencils; tickets; gift

vouchers; diaries; address books; appointment books; albums; photograph albums; scrap books; folders; wall charts; maps; personal organisers; calendars; paper and cardboard boxes; paper tablecloths and napkins; paper and cardboard place mats and coasters; paper towels; gift bags and bags for packaging; carrier bags; wrapping paper; gift tags; paper flags and banners; bookmarks; pens; pencils; pencil sharpeners; erasers; rulers; paint brushes; signs and advertisement boards; paper and cardboard; prints and pictures; graphic prints, representations and reproductions; wall art; money clips; none of the aforementioned goods in relation to articles for smokers and (cannabis) cafes.

Class 18: Trunks and travelling bags; umbrellas, parasols and walking sticks; luggage; cases; garment bags for travel; brief cases; bags; rucksacks; backpacks; holdalls; purses; wallets; card holders; credit card cases and holders; ID card holders; key cases; collars, covers, leads and leashes for animals; none of the aforementioned goods in relation to articles for smokers and (cannabis) cafes.

Class 25: Clothing, footwear, headgear; articles of outer clothing; t-shirts; shirts; sweatshirts; tank tops; sweaters; cardigans; hooded pullovers; jerseys; sweatpants; track suits; shorts; trousers; pants; jeans; blouses; skirts; dresses; vests; ties; waistcoats; suits; jackets; coats; overcoats; rainwear; sleepwear; underwear; swimwear; socks; hosiery; scarves; gloves; shoes; boots; sandals; flip-flops; slippers; hats; caps; sun visors; headbands; wristbands; belts; none of the aforementioned goods in relation to articles for smokers and (cannabis) cafes.

Class 35: Advertising; business management; business administration; office functions; management services to musicians and recording artists; management and promotion of performing artists; public relations and publicity services; marketing services; promotional services; preparation, publication and distribution of promotional material; production of promotional audio and video recordings; production of video recordings for advertising, marketing and publicity purposes; organisation, arrangement and conducting of conferences, conventions, seminars, events and exhibitions for commercial or advertising purposes; advertising via the Internet; provision of advertising space; provision of space on web sites for advertising goods and services; operation and supervision of

membership schemes; organisation, operation and supervision of loyalty and incentive schemes; data processing; retail services and online retail services connected with the sale of soaps, detergents, perfumery, essential oils, cosmetics, hair lotions, dentifrices, toiletries, fragrances, toilet waters, cologne; retail services and online retail services connected with the sale of body sprays, personal deodorants, talcum powder, shower and bath preparations, shower gel, bubble bath, bath oils, bath salts, hair care products and preparations, shampoos, hair conditioners, hair colorants, hair styling products, body care products and preparations, skin care products and preparations, oils, creams, lotions, gels and powders for the skin, moisturisers, skin toners, facial scrubs and washes; retail services and online retail services connected with the sale of after shave lotion, shaving soaps, shaving foams, shaving gels, make-up, aromatherapy products, massage preparations, candles, badges, signs, plaques, ornaments, figurines, works of art, money boxes, key chains, penknives, apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs, compact discs, DVDs and other digital recording media, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of CD ROMs, digital video discs, audio tapes and cassettes, video tapes and cassettes, records, photographic transparencies and photographic and cinematographic films prepared for exhibition purposes, pre-recorded sound storage media, image storage media and data storage media, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of audio recordings, video recordings, audio-visual recordings featuring music and musical-based entertainment, musical sound recordings, musical video recordings, motion picture films, animated cartoons, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of downloadable and streamable audio and video recordings, downloadable and streamable sound recordings and audio-visual recordings featuring music and musical-based entertainment, downloadable and streamable music and music video recordings, downloadable music files, downloadable and streamable digital music provided from the internet or from a computer database, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of digital music downloadable provided from MP3 internet web sites, downloadable and streamable MP3 files, ring tones, graphics, games,

images and video images, screen savers, computer software and programs, downloadable computer software, computer application software, computer games programs, computer application software for mobile communication devices, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of downloadable electronic publications, downloadable and streamable podcasts in the field of music, electronic storage media, memory cards, eye glasses, spectacles and sunglasses, cases, chains, straps, cords and frames for eye glasses, spectacles and sunglasses, cameras, holograms, computer mouse mats and pads, telecommunications apparatus, mobile phones, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of parts and accessories for mobile phones and personal electronic devices, mobile phone accessory charms, covers and cases for mobile phones and personal electronic devices, holders adapted for mobile phones, straps for mobile phones, covers and cases specially adapted for PDAs, MP3 players, laptops and gaming devices, headphones, earphones, magnetic or encoded cards, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of payment cards, telephone cards, magnets, jewellery, costume jewellery, precious stones, horological and chronometric instruments, clocks and watches, watch straps, key rings, trinkets and fobs, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of bracelets, rings, ear rings, necklaces, pendants, jewellery charms, ornamental pins, lapel pins, cufflinks, tie pins and tie clips, badges of precious metals, jewellery cases, coins, medals and medallions, musical instruments, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of printed matter, photographs, stationery, printed publications, printed publicity and promotional material, books, magazines, periodical publications, newsletters, brochures, manuals, letterheads, posters, leaflets, forms, programmes, printed music, music scores, music books, instruction guides, music in sheet form, comic books, catalogues, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of certificates, menus, stationery, writing paper, writing pads, drawing pads, notelets, note pads, note books, cards, postcards, greeting cards, envelopes, labels, trading cards, collectors' cards, parts and fittings for all the aforesaid goods; retail services and online

retail services connected with the sale of stickers, transfers, decalcomanias, stencils, tickets, gift vouchers, diaries, address books, appointment books, albums, photograph albums, scrap books, folders, wall charts, maps, personal organisers, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of calendars, paper and cardboard boxes, tablecloths and napkins, place mats and coasters, paper towels, gift bags and bags for packaging, carrier bags, wrapping paper, gift tags, flags and banners, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of calendars bookmarks, pens, pencils, pencil sharpeners, erasers, rulers, paint brushes, signs and advertisement boards, paper and cardboard, prints and pictures, graphic prints, representations and reproductions, wall art, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of money clips, trunks and travelling bags, umbrellas, parasols and walking sticks, luggage, cases, garment bags for travel, brief cases, bags, rucksacks, backpacks, holdalls, purses, wallets, card holders, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of credit card cases and holders, ID card holders, key cases, collars, covers, leads and leashes for animals, picture frames, photograph frames, household or kitchen utensils and containers, combs, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of brushes, glassware, porcelain, pottery and earthenware, drinking vessels, cups, mugs, bottle openers, corkscrews, flasks, bed and table covers, textile piece goods, textiles for making articles of clothing, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of household textile articles, towels, clothing, footwear, headgear, articles of outer clothing, t-shirts, shirts, sweatshirts, tank tops, sweaters, cardigans, hooded pullovers, jerseys, sweatpants, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of track suits, shorts, trousers, pants, jeans, blouses, skirts, dresses, vests, ties, waistcoats, suits, jackets, coats, overcoats, rainwear, sleepwear, underwear, swimwear, socks, hosiery, scarves, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of gloves, shoes, boots, sandals, flip-flops, slippers, hats, caps, sun visors, headbands, wristbands, belts, badges and patches of textile materials, parts and fittings for all the

aforesaid goods; retail services and online retail services connected with the sale of belt clasps, brooches, buckles, hat ornaments, hair ornaments, shoe ornaments, lanyards for wear, games and playthings, toys, gymnastic and sporting articles, whistles, playing cards, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of confetti, balloons, party novelties, dolls, action figure toys, food products, confectionery, snack foods, drinks, matches and lighters; parts and fittings for all the aforesaid goods; information, advisory and consultancy services in relation to all of the aforesaid; promotion of entertainment and events; entertainment promotion services; none of the aforementioned services in relation to articles for smokers and (cannabis) cafes.

Class 41: Entertainment; cultural activities; musical entertainment; music performance services; provision of live music; musical concert services; organisation and production of entertainment and events; organisation, production and presentation of shows, staged events, concerts, live performances, musical performances, theatrical performances, dancing displays, audience participation events and talent shows; organisation of parties and social events; music festival services; entertainment services provided at nightclubs and discotheques; entertainment and education services provided via the Internet and other computer and communications networks; entertainment services provided from a web site featuring music, musical performances, musical videos, photographs, games and other multimedia materials; providing on-line electronic publications (not downloadable); providing on-line music and video recordings (not downloadable); providing digital music from the internet and other computer and communications networks; provision of digital music (not downloadable) from MP3 web sites; information services relating to music; booking and ticketing services for entertainment and cultural events; reservation services for concert and entertainment event tickets; ticket information services for concerts and entertainment events; DJ services; fan club services; arranging, organising and conducting of games, contests and competitions; publishing services; music publishing services; sound recording and video entertainment services; television and radio entertainment services; provision of music studios; provision of recording studio services and facilities; audio and video recording services; music

recording services; music production services; film and video production, publication and distribution; production, presentation and distribution of audio and video recordings; information, advisory and consultancy services relating to all of the aforesaid; except services with respect to (cannabis) cafes.