

**O-0543-23**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF**

**TRADE MARK REGISTRATION NOS. 3234373 & 3234384**

**IN THE NAME OF AIRTASKER PTY LTD**

**FOR THE TRADE MARKS**

**AIRTASKER**

**AND**



**AND THE APPLICATION FOR INVALIDATION THEREOF**

**UNDER NOS. 504110 & 504111**

**BY**

**AIRBNB, INC**

## Background and pleadings

1. Airtasker Pty Ltd (“Airtasker”) is the registered proprietor of the following UK trade marks in classes 9, 35 and 42. The goods and services are set out in Annex 1 of this decision.

UK TM No. 3234373 (“the ‘373 mark”)

**AIRTASKER**

UK TM No. 3234384 (“the ‘384 mark”)



Filing date: 31 May 2017

Registration date: 18 August 2017

2. Airbnb, Inc (“Airbnb”) seeks invalidation of Airtasker’s registered marks under section 47(2)(a) of the Trade Marks Act 1994 (“the Act”). The grounds are based on sections 5(2)(b), 5(3) and 5(4)(a) of the Act and are directed all goods and services in the contested registrations. For sections 5(2)(b) and 5(3) Airbnb relies on its UK trade marks set out below. The goods and services relied on are set out in Annex 2 of this decision.

UK TM No. 801182496 (“the ‘496 mark”)

**AIRBNB**

Classes 9 & 42

Filing date: 8 April 2013

Registration date: 23 September 2014

UK TM No. 911933611 (“the ‘611 mark”)

## **AIRBNB**

Classes 9, 35, 36, 37, 39, 41, 42, 43, 44, 45

Filing date: 26 June 2013

Registration date: 6 February 2014

UK TM No. 909376468 (“the ‘468 mark”)

## **AIRBNB**

Classes 35, 36, 38, 39, 41, 42, 43, 45

Filing date: 15 September 2010

Registration date: 1 March 2011

3. Under section 5(4)(a), Airbnb claims use of the sign **AIRBNB** since 2009 throughout the UK for goods and services set out at Annex 3 of this decision.
4. Airtasker filed counterstatements in which it denied all grounds of the invalidation and put Airbnb to proof of use for its claims.
5. Airbnb’s trade marks each have a registration date that is earlier than the filing date of the invalidation application and the trade marks under attack and, therefore, they are earlier marks, in accordance with Section 6 of the Act. As the registration procedure for UK TM No.909376468 was completed more than 5 years prior to the filing date of the contested registrations, it is subject to proof of use conditions, as per section 6A of the Act. The opponent made a statement of use in respect of all the goods and services it relies on.
6. The proceedings were consolidated on 8 December 2021.
7. Both sides are represented in these proceedings. Airtasker is represented by Sipara Limited and Airbnb by D Young & Co LLP.

8. Both sides filed evidence. A hearing was requested and was held before me on 17 January 2023. Airtasker was represented by Henry Edwards of Counsel, appointed by Sipara and Airbnb was represented by Jamie Muir Wood of Counsel, appointed by D Young. Both sides filed skeleton arguments in advance of the hearing.

9. I make this decision based on a reading of all the material before me and the submissions presented at the hearing

### **Preliminary issues**

10. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon in these proceedings are derived from an EU Directive. That is why this decision continues to refer to EU trade mark law.

### **Decision**

11. The relevant section of the Act is set out below

“47. (1) [...]

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

(a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or

(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.

(2ZA) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 5(6).

(2A) The registration of a trade mark may not be declared invalid on the ground that there is an earlier trade mark unless –

(a) the registration procedure for the earlier trade mark was completed within the period of five years ending with the date of the application for the declaration,

(b) the registration procedure for the earlier trade mark was not completed before that date, or

(c) the use conditions are met.

(2B) The use conditions are met if –

(a) the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with their consent in relation to the goods or services for which it is registered-

(i) within the period of 5 years ending with the date of application for the declaration, and

(ii) within the period of 5 years ending with the date of filing of the application for registration of the later trade mark or (where applicable) the date of the priority claimed in respect of that application where, at that date, the five year period within which the earlier trade mark should have been put to genuine use as provided in section 46(1)(a) has expired, or

(b) it has not been so used, but there are proper reasons for non-use.

(2C) For these purposes –

(a) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the

form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(2D)-(2DA) [Repealed]

(2E) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.

(2F) Subsection (2A) does not apply where the earlier trade mark is a trade mark within section 6(1)(c)

(2G) An application for a declaration of invalidity on the basis of an earlier trade mark must be refused if it would have been refused, for any of the reasons set out in subsection (2H), had the application for the declaration been made on the date of filing of the application for registration of the later trade mark or (where applicable) the date of the priority claimed in respect of that application.

(2H) The reasons referred to in subsection (2G) are-

(a) that on the date in question the earlier trade mark was liable to be declared invalid by virtue of section 3(1)(b), (c) or (d), (and had not yet acquired a distinctive character as mentioned in the words after paragraph (d) in section 3(1));

(b) that the application for a declaration of invalidity is based on section 5(2) and the earlier trade mark had not yet become sufficiently distinctive to support a finding of likelihood of confusion within the meaning of section 5(2);

(c) that the application for a declaration of invalidity is based on section 5(3)(a) and the earlier trade mark had not yet acquired a reputation within the meaning of section 5(3).

(3) [...]

(4) [...]

(5) Where the grounds of invalidity exist 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.

(5A) An application for a declaration of invalidity may be filed on the basis of one or more earlier trade marks or other earlier rights provided they all belong to the same proprietor.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made: Provided that this shall not affect transactions past and closed.”

12. As the earlier marks are comparable marks, paragraph 9 of part 1, Schedule 2A of the Act is relevant. It reads:

“9.— (1) Section 47 applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the period of five years referred to in sections 47(2A)(a) and 47(2B) (the "five-year period") has expired before IP completion day —

(a) the references in section 47(2B) and (2E) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 47 to the United Kingdom include the European Union.

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

(a) the references in section 47(2B) and (2E) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 47 to the United Kingdom include the European Union”.

## **Evidence**

13. My first task is to establish whether, or to what extent, Airbnb has shown genuine use of the earlier UK mark within the ‘relevant period’. The relevant period is defined as being a period of five years ending with the filing date of the contested application. In this case the relevant period under section 47(2B)(b) relating to the ‘468 mark is 1 June 2012 to 31 May 2017 and the relevant period under section 47(2B)(a) is 3 September 2016 to 2 September 2021.

## **Airbnb’s evidence in chief**

14. Airbnb filed a first witness statement and 36 exhibits in the name of Meredith Pavia, its Lead Counsel for Trademark and Brand Protection. Ms Pavia states that AIRBNB was first used in the UK and worldwide since March 2009 as a way of allowing people to monetise their homes by renting them out. Ms Pavia describes AIRBNB as<sup>1</sup>,

“The Airbnb platform allows users to search for, list and/or book rental properties, and read property reviews and user feedback in relation to a variety of accommodation, ranging from an apartment for a night, a castle for a week, or a villa for a month. By providing a direct connection between individuals in the real-world and unique accommodations and experiences, it is a link to adventure, opportunity, and global citizenship. And with world class customer service and an ever-growing community of users, Airbnb is a popular way for people to monetize their extra space and to showcase it to an audience of millions.”

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<sup>1</sup> Paragraph 7



15. Ms Pavia also describes Airbnb's business model as<sup>2</sup>

"The Applicant does not own the real estate listings nor does it host the tours or events advertised and sold via the Airbnb platform. Instead, the Applicant acts as a platform and receives commission for each booking made by consumers. The Applicant therefore offers electronic payment services by processing the payment for each booking on the Airbnb platform. Once a guest has booked a stay, an experience, or an adventure, the Applicant processes the payment by collecting the payment from each guest. An invoice will be issued to the guest, charging a commission for the booking made.

16. Ms Pavia gives the following information on relation to the gross booking value (GBV):<sup>3</sup>

"We experienced rapid growth since our founding through 2019. In 2019, we generated GBV of \$38.0 billion, representing growth of 29% from \$29.4 billion in 2018, and revenue of \$4.8 billion, representing growth of 32% from \$3.7 billion in 2018. During the year ended December 31, 2020, our business was materially impacted by the COVID-19 pandemic, with GBV of \$23.9 billion, down 37% year over year, and revenue of \$3.4 billion, down 30% year over year.

GBV represents the dollar value of bookings on our platform in a period and is inclusive of host earnings, service fees, cleaning fees, and taxes, net of cancellations and alterations that occurred during that period."

17. Sales and marketing related expenditure is given by Ms Pavia as:

2018: \$1,101,327

2019: \$1,621,519

2020: \$1,175,325

18. I do not intend to summarise all of the exhibits here, but I find the following exhibits to be pertinent.

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<sup>2</sup> Paragraph 24

<sup>3</sup> Exhibit MP21

19. Exhibit MP1 comprises a selection of Wayback Machine internet archive (hereafter “Wayback”) pages from Airbnb’s website dated 30 August 2012, 8 November 2013 and 16 April 2017 and screenshots of online articles from TechCrunch dated 27 May 2015, Skift News dated 11 July 2016 and lovebelfast.co.uk dated September 2017. Each of these extracts mentions the mark AIRBNB and charts the growth of the company and its commercial reach in the UK and globally. Airbnb’s website screenshot from 2012 states that Airbnb accommodations had grown by 748% in the UK since its setup in 2008. The Skift News article says that company was valued at \$30bn in 2016. The lovebelfast article states that between July 2016 to July 2017, Airbnb had 168k accommodation listings in the UK and had contributed £3.4bn to the UK’s economy.

20. Exhibit MP2 comprises a press release dated 2018 outlining the expansion of the Airbnb’s “experiences” packages and Wayback screenshots dated 9 December 2016 and 29 October 2019 advertising “Airbnb experiences” and “Airbnb adventures” such as skate boarding, wine tasting, surfing and wild camping among other activities.

21. Exhibit MP3 comprises an article from Wired.co.uk dated 8 December 2019 and two Wayback screenshots dated 24 June and 2019 and 11 February 2021 from Airbnb’s website illustrating the “Airbnb Luxe” collection of luxury properties highlighting destinations in the UK and Europe as well as advertising add on features such as airport pickups and personal chefs.

22. Exhibit MP 4 comprises screenshots from ShortTermRentalz.com dated 13 December 2018 titled “Airbnb acquires Luckey Homes to signal potential entry into property management”. The articles mention that Luckey Homes are a company providing property maintenance services in France. There is also a Wayback screenshot dated 9 August 2019 from luckey.com which outlines the property maintenance services they provide under the trading name “Luckey by Airbnb”. There is a customer review dated 3 months previously which mentions the London office. There is an additional Wayback screenshot from luckey.com dated 8 August 2020 announcing the launch of the “Airbnb management services” in London.

23. Exhibit MP5 comprises an article from EuroWeeklyNews.com dated 11 December 2020 stating that the value of Airbnb was \$100bn following its launch on the US stock market on 10 December 2020.

24. Exhibit MP6 is an article from Forbes magazine dated 10 December 2013 regarding the growth of the gig economy and online marketplaces. In particular the article focuses on Airbnb and estimates its revenue in 2012 at \$150m. In addition the exhibit also contains tips and hints from various Airbnb service providers including Airtasker.

25. Exhibit MP7 contains Wayback screenshots dated 9 February 2014 from Airtasker.com outlining its services, an article from theguardian.com dated 10 March 2018 examining Airtasker's service provision, reviews of the Airtasker app from the Apple store dated between 2018-2020 and an Airtasker blog dated 23 August 2018 about preparing to receive an Airbnb guest. Also contained are an extract from Australian Trustpilot reviews dated between 2016-2017 in which the reviewers compare the Airtasker business model to the Airbnb business model.

26. Exhibit MP8 is a selection of Wayback screenshots from Airbnb.co.uk dated between 1 June 2012 and 1 September 2015 offering accommodation booking services. In a Wayback screenshot dated 1 December 2016 the page is headed "Welcome to the world of trips. Homes, Experiences and places – all in one app". In a Wayback screenshot dated 14 July 2019, the page is headed "book unique places to stay and things to do". There are additional Wayback screenshots dated between 14 May 2020 and 1 March 2021 regarding having a host led enhanced cleaning regime in place due to the Covid 19 pandemic.

27. Exhibit MP9 comprises Wayback screenshots dated 31 December 2016 and 13 June 2018 indicating the Airbnb app being available to download from the Apple and Google platforms.

28. Exhibits MP11-14 contains Wayback screenshot information for hosts and guests including the Help Centre dated between 2017-2018, Superhost program details from 2015-2021 as well as liability insurance for stays and experiences and the company refund policy dated December 2019.

29. Exhibit MP22 shows use of AIRBNB in various third-party media articles on both accommodation services and experiences dated between 2012 and 2021.

30. Exhibit MP23 comprises a selection of publicity campaign materials used by Airbnb between 2014-2018 in the UK and other EU countries.

31. Exhibits MP24-28 comprises information on Airbnb's online presence and social media followings between 2014 -2021.

### **Airtasker's evidence in reply**

32. Airtasker filed two witness statements. The first in the name of Robert Furneaux of Sipara, Airtasker's legal representative. Mr Furneaux appends four exhibits. The second witness statement was filed in the name of Timothy Fung, the co-founder and CEO of Airtasker Ltd. Mr Fung appends one exhibit which was granted confidentiality by means of an order dated 2 October 2022

33. Taking Mr Furneaux's evidence first. It comprises four exhibits.

- copy of an undated investment document used by Airtasker,
- dictionary references, all accessed on 5 October 2020, from Oxford Learners Dictionary, Lexico, Cambridge Dictionary, Collins Dictionary, Dictionary.com and Vocabulary.com. Each reference indicated that 'tasker' is not a known word.
- data regarding a number of AIR-formative brands which existed at or around 2017
- screenshots dated 2 November 2012 from thenextweb.com and undated from breezybnb.com regarding the presence of Airbnb in Australia.

34. Turning to Mr Fung's evidence, he states that the mark AIRTASKER was first used in Australia in 2012 and in the UK in 2018 and describes Airtasker as:

“an online services marketplace which connects people who have jobs to be done (Customers), with service providers who are willing to do those jobs to earn money (Taskers). We operate under the name Airtasker, and have done so since the Company was started in Australia in 2012.”

35. Airtasker's turnover in the UK is stated to be

2018: £39,607

2019: £172,266

2020: £89,750

2021; £111,100

And the UK marketing spend for July 2021 to June 2022 is stated to be £2.6m

36. Airtasker is stated to be available as an app for Android and Apple phone users and advertises its platform via its website, social media channels and via mainstream media advertising such as TV, radio, advertisements on vehicles, posters and billboards. The most recent advertising campaign was run in 2022 and targeted London by means of regional TV, radio and advertisements on the London Underground network.

### **Airbnb's evidence in reply**

36. Airbnb filed a second witness statement in the name of Meredith Pavia and a further 11 exhibits which I consider to be mainly rebuttal evidence in reply to Airtasker's evidence. The most pertinent points from Ms Pavia's second witness statement are set out below.

37. Firstly, Ms Pavia provides information on Airbnb's accommodation booking services in Australia since launching there in 2010 and the website process for Australian guests to book accommodation in the UK and Europe.

38. Secondly, Ms Pavia provides dictionary references<sup>4</sup>, accessed on 18 October 2022, from Collins Dictionary and Merriam-Webster Dictionary both of which reference a definition for the word "Tasker". There are also two screenshot references dated 13 July 2017 and 13 October 2022 from Thefreedictionary.com which contains grammar rules for adding the suffix 'er' to a noun to indicate "a person or thing that performs an action".

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<sup>4</sup> Exhibit MP41

39. Thirdly Ms Pavia provides evidence of the AIRBNB mark in connection with other goods and services<sup>5</sup>. In particular she lists:

- a. Photography, including photographing properties for use on the Airbnb platform and photographing people and scenery;
- b. Interior design, woodwork, painting and creative activities, including an online workshop run by a Host in the US which was marketed to consumers outside of the US, including consumers in the UK;
- c. Food and drink, and linked to this, cooking and chefs;
- d. Entertainment events, including within various Airbnb Experiences;
- e. Translation and choice of language on the Airbnb platform, as well as language lessons;
- f. Computer, IT, engineering and data science assistance and information;
- g. Dog walking;
- h. Cleaning, including house cleaning, laundry, washing and excerpts from the Airbnb cleaning handbook; and
- i. Online research”

40. Finally Ms Pavia provides evidence of Airtasker referencing Airbnb on 24 September 2018 in an article for the Brighton Argus, when Airtasker launched its app in the city<sup>6</sup> as an example of “riding on the coat tails” of Airbnb. In addition Ms Pavia includes a number of Trustpilot reviews of Airtasker dating from 2016 and 2017<sup>7</sup> where the reviewer makes a comparison to Airbnb within the review.

### **Proof of use provisions**

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

“(1) This section applies where

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<sup>5</sup> Exhibit MP45

<sup>6</sup> Exhibit MP46

<sup>7</sup> Exhibit MP47

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

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

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

(3) The use conditions are met if –

- (a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or
- (b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes -

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

(5)-(5A) [Repealed]

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

42. Section 100 of the Act states that:

“100. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show 9. In *Walton International Ltd & Anor v Verweij Fashion BV* [2018] EWHC 1608 (Ch) Arnold J (as he then was) summarised the law relating to genuine use as follows:

“114.....The CJEU has considered what amounts to “genuine use” of a trade mark in a series of cases: Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, *La Mer* (cited above), Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bunderversammlung Kameradschaft ‘Feldmarschall Radetsky’* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Marken BV v Hagelkruis Beheer BV* [EU:C:2012:816], [2013] ETMR 16, Case C-609/11 P *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], [2014] ETMR, Case C-141/13 P *Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089] and Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434], [2017] Bus LR 1795.

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



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

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

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

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

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to

create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71]; *Reber* at [29].

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

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

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

**Sufficiency of Use and fair specification**

43. In its skeleton argument at annex 1 and subsequently reiterated in its oral submissions at the hearing, Airbnb presented a subset of its goods and services in relation to its earlier marks which it believed represented the high point of its considerable use and reputation in these proceedings. The subset of goods of services is set out below:

The '496 mark	The '611 mark	The '468 mark
<p>9: <u>computer application software</u>; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to solicit each other to perform <u>a wide range of personal and customized services</u>, housekeeping, cooking and related services, personalized travel, itinerary and private tour and activity services; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software to facilitate the sale of goods and services by others via a computer network and to</p>	<p>9: <u>computer software</u></p>	<p>35: providing information, namely, compilations, rankings, ratings, reviews, referrals and recommendations relating to business organizations, service providers, and other resources using a global computer network; computer services, namely, providing on-line computer databases and on-line searchable databases featuring consumer information on a wide variety of topics of general interest to the consuming public</p>

<p>provide evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods and services, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith ; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to list and rent temporary lodging, access information, listings and announcements about housing, apartments, condominiums, townhouses, real estate, commercial real estate and rental and leasing advertisements for the foregoing.</p>		
<p>42: computer services, namely, remote management of electronic messaging systems for</p>	<p>35: providing a web site featuring the ratings, reviews and recommendations for</p>	<p>36: providing purchase protection services in the field of online trading of goods and services by</p>

<p>others providing temporary use of web based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list and rent temporary lodging, access information, listings and announcements about housing, apartments, condominiums, townhouses, real estate, commercial real estate and rental and leasing advertisements for the foregoing; software as a service(SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to solicit each other to perform <u>a wide range of personal and customized services</u>, housekeeping, cooking and related services, personalized travel, itinerary and private tour</p>	<p>commercial purposes posted by users</p>	<p>others via a global computer network</p>
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<p>and activity services; providing temporary use of a web-based software application for providing a two-way system for users of an online marketplace to evaluate and provide feedback regarding parties they have interacted with via the online marketplace; software as a service (SAAS) services featuring messaging that allows users of mobile phones, portable media players, handheld computers and related mobile devices to communicate with each other</p>		
	<p>43: online journals, namely, blogs and video logs in the fields of lodging and dining around the world; providing information in the fields of lodging and dining; social and collaborative lodging and dining</p>	<p>43: providing temporary lodging information via the Internet; providing travel information over global computer networks, namely, providing search services for lodging; arranging temporary housing accommodations; providing online reservation services for</p>

		temporary lodging; travel agency services, namely, making reservations and bookings for lodging; providing temporary lodging information via the Internet; providing travel information over global computer networks, namely, providing search services for lodging
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44. I have reviewed the evidence provided and have considered this subset of goods and services in relation to it. On the whole I agree that the subset of goods and services reflects the evidence save for two areas of concern which are underlined in the table above and which I deal with in detail in the following paragraphs.

45. Firstly, I find that Airbnb has not shown use of “*computer application software*” or “*computer software*” at large. This criticism was also raised by Airtasker in its skeleton argument<sup>8</sup>. The use shown on these class 9 goods within the evidence could, in my view, be fairly characterised as “*computer application software and computer software all relating to listing and renting temporary lodging, accessing information, listings and announcements about housing, apartments, condominiums, townhouses and real estate, photography of properties, housekeeping, cooking and related services, personalized travel, itinerary and private tour and activity services.*”

46. Secondly, I find the term “*a wide range of personal and customized services*” in classes 9 and 42 to be imprecise in relation to the evidence. Airbnb has demonstrated use for software and software as a service for arranging the following

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<sup>8</sup> Paragraph 28

namely “*photography of properties, housekeeping, cooking and related services, personalized travel, itinerary and private tour and activity services*”.

47. The revised subset of goods and services for which I find Airbnb has shown use is set out below:

<b>The ‘496 mark</b>	<b>The ‘611 mark</b>	<b>The ‘468 mark</b>
<p><i>9: computer application software all relating to listing and renting temporary lodging, accessing information, listings and announcements about housing, apartments, condominiums, townhouses and real estate, photography of properties, housekeeping, cooking and related services, personalized travel, itinerary and private tour and activity services; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to solicit each other to perform photography of properties, housekeeping, cooking and related</i></p>	<p><i>9: computer software all relating to listing and renting temporary lodging, accessing information, listings and announcements about housing, apartments, condominiums, townhouses and real estate, photography of properties, housekeeping, cooking and related services, personalized travel, itinerary and private tour and activity services.</i></p>	<p><i>35: providing information, namely, compilations, rankings, ratings, reviews, referrals and recommendations relating to business organizations, service providers, and other resources using a global computer network; computer services, namely, providing on-line computer databases and on-line searchable databases featuring consumer information on a wide variety of topics of general interest to the consuming public</i></p>



<p><i>services, personalized travel, itinerary and private tour and activity services; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software to facilitate the sale of goods and services by others via a computer network and to provide evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods and services, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith ; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to list and rent temporary lodging, access information, listings and</i></p>		
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<p><i>announcements about housing, apartments, condominiums, townhouses, real estate, commercial real estate and rental and leasing advertisements for the foregoing.</i></p>		
<p><i>42: computer services, namely, remote management of electronic messaging systems for others providing temporary use of web based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list and rent temporary lodging, access information, listings and announcements about housing, apartments, condominiums, townhouses, real estate, commercial real estate and rental and leasing advertisements for the foregoing; software as a service(SAAS) services</i></p>	<p><i>35: providing a web site featuring the ratings, reviews and recommendations for commercial purposes posted by users</i></p>	<p><i>36: providing purchase protection services in the field of online trading of goods and services by others via a global computer network</i></p>

<p><i>featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to solicit each other to perform photography of properties, housekeeping, cooking and related services, personalized travel, itinerary and private tour and activity services; providing temporary use of a web-based software application for providing a two-way system for users of an online marketplace to evaluate and provide feedback regarding parties they have interacted with via the online marketplace; software as a service (SAAS) services featuring messaging that allows users of mobile phones, portable media players, handheld computers and related mobile devices to communicate with each other</i></p>		
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	<p><i>43: online journals, namely, blogs and video logs in the fields of lodging and dining around the world; providing information in the fields of lodging and dining; social and collaborative lodging and dining</i></p>	<p><i>43: providing temporary lodging information via the Internet; providing travel information over global computer networks, namely, providing search services for lodging; arranging temporary housing accommodations; providing online reservation services for temporary lodging; travel agency services, namely, making reservations and bookings for lodging; providing temporary lodging information via the Internet; providing travel information over global computer networks, namely, providing search services for lodging</i></p>

## **Section 5(2)(b)**

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

“5(2) A trade mark shall not be registered if because-

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

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

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

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

### *The principles*

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

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely

upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

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

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

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

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

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

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

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

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

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

## Comparison of the goods and services

51. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*<sup>9</sup>, the court stated at paragraph 23 of its judgment that:

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

52. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case<sup>10</sup>, for assessing similarity were:

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

53. I also find that the following case law is useful in these proceedings where in *Gérard Meric v Office for Harmonisation in the Internal Market (“OHIM”)*<sup>11</sup>, the General Court (“GC”) stated that:

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<sup>9</sup> Case C-39/97

<sup>10</sup> [1996] R.P.C. 281

<sup>11</sup> Case T- 133/05

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

54. The goods and services to be compared are set out previously in paragraph 47 for Airbnb and in Annex 1 of this decision for Airtasker.

#### Class 9

55. I find that the Airtasker’s terms *Computer software; Application software; software for use in sending and viewing electronic messages, data and images* are sufficiently broad to cover Airbnb’s software terms in class 9 namely *computer software and computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to solicit each other to perform housekeeping, cooking and related services, personalized travel, itinerary and private tour and activity services; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software to facilitate the sale of goods and services by others via a computer network and to provide evaluative feedback and ratings of sellers’ goods and services, the value and prices of sellers’ goods and services, buyers’ and sellers’ performance, delivery, and overall trading experience in connection therewith; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to list and rent temporary lodging, access information, listings and announcements about housing, apartments, condominiums, townhouses, real estate, commercial real estate and rental and leasing advertisements for the foregoing* and are therefore identical on the Meric principle.

56. I find Airtasker’s terms *computer e-commerce software to allow users to conduct electronic business transactions in online marketplaces via a global computer network; software for use in viewing and posting classified advertising* as being similar to a medium degree to Airbnb’s terms *computer software and computer application software for mobile phones, portable media players, handheld computers*



*and related mobile devices, namely, software that allows users to solicit each other to perform photography of properties, housekeeping, cooking and related services, personalized travel, itinerary and private tour and activity services; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software to facilitate the sale of goods and services by others via a computer network and to provide evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods and services, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to list and rent temporary lodging, access information, listings and announcements about housing, apartments, condominiums, townhouses, real estate, commercial real estate and rental and leasing advertisements for the foregoing.* Both sets of terms incorporate software for the purpose of business exchanges between buyers and sellers of goods and services. Airtasker's terms are not limited to specific business transactions or to specific types of classified advertisements so could therefore include photography, housekeeping, cookery, accommodation or travel arrangements. Therefore, I find the nature and purpose to be similar and there will likely be a crossover of users.

57. This leaves Airtasker's terms *telecommunications apparatus* and *encoded loyalty cards; encoded gift cards*. In relation to the term *telecommunications apparatus*, I would ordinarily consider this term to cover physical goods in relation to telecommunications such as hardware, transceivers, masts, routers and handsets for example. I do not find any similarity with Airbnb's goods and services for *telecommunications apparatus*. With regard to *encoded loyalty cards; encoded gift cards*, I consider these to be physical cards which can be pre-loaded with monetary credit or reward for the purposes of spending. I do not find any similarity for these goods and Airbnb's goods and services.

### Class 35

58. I find Airtasker's terms *Advertising; sales promotion (for others); promoting the goods and services of others; Compilation and provision of online directories; Intermediary business services relating to the commercialisation of goods; Providing*

*business information via a web site; providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods and services, buyers' and sellers' performance, delivery, and overall trading experience in connection thereto; providing a searchable online advertising guide featuring the goods and services of online vendors; price comparison services; Provision of an on-line marketplace for buyers and sellers of goods and services; classified advertising services; online classified advertisements posted by users provided via a website; on-line trading services to facilitate the sale of goods and services by others via a computer network* to be similar to a medium degree to Airbnb's services namely *providing information, namely, compilations, rankings, ratings, reviews, referrals and recommendations relating to business organizations, service providers, and other resources using a global computer network*. Both sets of terms provide a platform for providing information on goods and services provided by third parties including the functionality for feedback and recommendations which I see as a form of advertising and promotional service. Therefore, the nature and purpose are similar and there will be a likely crossover of users. There is also likely to be an element of competition between the services.

59. In relation to Airtasker's terms namely *on-line auction services; on-line trading services in which seller posts products to be auctioned and bidding is done via the Internet; labour exchange services; recruitment services; job listings, resume postings, and other job information via the Internet; loyalty, incentive, discount and bonus program services; administration of loyalty programs involving discounts or incentives; organisation and administration of bonus, loyalty and reward programs involving financial benefits, savings, incentives, gifts, gift vouchers and gift schemes*, I do not find these services to be similar to Airbnb's services. They are different in nature and purpose. There is no apparent overlap of user. Neither are the services complementary or in competition with each other

## Class 42

60. I find Airtasker' terms namely *Software as a service (SaaS); Provision of online non-downloadable software (application service provider); application service provider services; providing temporary use of online non-downloadable software for use in sending and viewing electronic messages, data and images; providing temporary use of online non-downloadable computer e-commerce software to allow users to conduct electronic business transactions in online marketplaces via a global computer network; Hosting computer sites (web sites) to be sufficiently broad and therefore identical on the Meric principle to Airbnb's services being computer services, namely, remote management of electronic messaging systems for others providing temporary use of web based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list and rent temporary lodging, access information, listings and announcements about housing, apartments, condominiums, townhouses, real estate, commercial real estate and rental and leasing advertisements for the foregoing; software as a service(SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to solicit each other to perform photography of properties, housekeeping, cooking and related services, personalized travel, itinerary and private tour and activity services; providing temporary use of a web-based software application for providing a two-way system for users of an online marketplace to evaluate and provide feedback regarding parties they have interacted with via the online marketplace; software as a service (SAAS) services featuring messaging that allows users of mobile phones, portable media players, handheld computers and related mobile devices to communicate with each other*

61. With regard to Airtasker's remaining terms namely *online computer services, namely non-downloadable software for uploading, managing and searching resumes, social profiles, job qualifications and personnel records; Design of computer databases; Design of information systems; Industrial analysis; Providing information, including online, about industrial analysis and research services; Information technology (IT) services (computer hardware, software and peripherals design and technical consultancy); Providing information, including online, about scientific and technological services and research and design relating thereto;*

*Computer software design* I do not find these services to be similar to Airbnb's services. They are different in nature and purpose. There is no apparent overlap of user. Neither are the services complementary or in competition with each other

### **Average Consumer**

62. I next consider who the average consumer is for the contested goods and services and how they are purchased. It is settled case law that the average consumer is deemed to be reasonably well informed and reasonably observant and circumspect<sup>12</sup>. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question<sup>13</sup>.

63. The average consumers for the contested goods and services are the general public and businesses. I find the purchasing process will be primarily visual as consumers are likely to browse websites or use mobile phone apps but I do not discount an aural aspect through word-of-mouth recommendations. An average consumer would be paying a medium level of attention as they will be using the goods and services essentially as a platform to search for vendors and service providers, to make bookings, to conduct transactions and to provide feedback. The commission element of transactions will also attract a medium level of attention.

### **Comparison of the marks**

64. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in *Bimbo SA v OHIM*<sup>14</sup>, 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

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<sup>12</sup> *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)


<sup>13</sup> *Lloyd Schuhfabrik Meyer*, Case C-342/97.

<sup>14</sup> Case C-591/12P

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.”

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

66. The respective trade marks to be compared are:

Airbnb’s registrations	Airtasker’s registrations
<p><b>AIRBNB</b></p>	<p><u>The ‘373 mark</u></p> <p><b>AIRTASKER</b></p> <p><u>The ‘384 mark</u></p> 

67. Airbnb’s registrations all consist of the same single word namely **AIRBNB** with no other aspect to them. The overall impression is derived solely from this word.

68. Airtasker’s ‘373 mark consists of the single word **AIRTASKER** with no other aspect to it and as such the overall impression is derived solely from this word.

69. Airtasker’s ‘384 mark is a composite arrangement of the word **Airtasker** in lower case with a single wing device protruding from the left of the initial letter A. The mark is depicted in blue. Although the device is the first element the eye sees from left to right, the word element is dominant in the overall impression of this mark.

### **Visual similarity**

70. In a visual comparison, the word elements of the respective marks all share the letters A-I-R as their first three letters. In its skeleton argument<sup>15</sup> Airbnb submits that consumers' attention tends more to the beginnings of words than the ends and that submission is reflected in settled case-law<sup>16</sup>. As a point of difference Airbnb has three additional letters, namely B-N-B, to end its marks whilst Airtasker has six additional letters, namely T-A-S-K-E-R, making it about a third longer. Neither ending has any counterpart in the other side's marks, nor has Airtasker's wing device any counterpart in Airbnb's marks. Given that Airtasker's marks could be used in any font or colour, I do not consider that the differences in upper/lower case, use of colour and differing fonts to be of much significance. Taking all factors into account, I find there is a low degree of visual similarity between the respective marks.

### **Aural similarity**

71. Clearly the device element will play no part in an aural comparison. So taking the word elements, I find there will be an identical pronunciation of the shared element A-I-R followed by two different end sounds. The two syllable TASK-ER on the one hand and the three syllable BEE-UN-BEE on the other. Overall, I find there is a low degree of aural similarity between the respective marks.

### **Conceptual similarity**

72. Whilst the respective word marks are invented and have no meaning when seen as wholes, the shared first three letters, namely A-I-R, may bring to mind the concept of "air", for some consumers. If this recognition of the word "air" does convey any message about the AIR element then in my view it will be same for each of the respective marks. The B-N-B part of Airbnb's mark may be seen by some consumers as meaning "bed and breakfast" as the letter "N" is often used in place of an ampersand or the word "and" itself. The wing device element of Airtasker's '384 mark may bring to mind some concept regarding wings or flight whereas the TASKER part of the mark may be seen by some consumers as having something to do with a task. Other consumers may simply see an invented word they do not

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<sup>15</sup> Paragraph 52

<sup>16</sup> *El Corte Inglés, SA v OHIM*, Case T-39/10

recognise. Overall though and even taking the above factors in account, I find the whole marks to be conceptually neutral.

### **Distinctiveness of the earlier marks**

73. The degree of distinctiveness of the earlier marks must be assessed. This is because the more distinctive an earlier mark, based either on inherent qualities or because of use made, the greater the likelihood of confusion. In *Lloyd Schuhfabrik Meyer*<sup>17</sup> 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).”

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

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<sup>17</sup> *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97

75. I begin by considering the inherent position. Although there are three earlier rights, they are all for the same mark, namely AIRBNB, which I consider to be an invented mark and therefore inherently highly distinctive.

76. As evidence has been provided, I must consider whether use made of AIRBNB has enhanced its distinctiveness. The relevant market I must consider is the UK. I remind myself of the *Windsurfing Chiemsee* factors set out above as to what I should consider.

77. As I set out previously, the evidence demonstrated that there has been use of the mark in the UK since 2009, high turnover, considerable advertising expenditure, significant market share and a geographically wide customer base in the UK. Taking this into account I find that the earlier marks' distinctive character has been enhanced through use to a very high degree.

### **Likelihood of confusion**

78. In assessing the likelihood of confusion, I must adopt the global approach advocated by case law and take into account the fact that marks are rarely recalled perfectly, the consumer relying instead on the imperfect picture of them that they have kept in mind.<sup>18</sup> I must also keep in mind the average consumer for the goods, the nature of the purchasing process and have regard to the interdependency principle, i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa.

79. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. In *L.A. Sugar Limited*<sup>19</sup>, Mr Iain Purvis Q.C. (as he then was), sitting as the Appointed Person, explained that:

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<sup>18</sup> *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* paragraph 27

<sup>19</sup> *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10



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

80. However it is also settled case law that it is not sufficient to find a likelihood of confusion if a mark merely calls to mind another mark<sup>20</sup>. This is considered mere association, not indirect confusion.

81. So far in this decision I have found that,

- There is identity between some of the goods and services, a medium degree of similarity between others and dissimilarity for the remainder.
- The average consumers are the general public and businesses paying a medium degree of attention in a predominantly visual purchasing process
- There is a low degree of visual and aural similarity between the respective marks
- There is conceptual neutrality
- The earlier marks are distinctive to a very high degree

82. In its skeleton argument<sup>21</sup> Airbnb submits that it does not contend that the respective marks will be directly confused on the basis that “the signs are sufficiently

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<sup>20</sup> *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

<sup>21</sup> Paragraphs 59 & 60

different that those differences will go unnoticed”. I agree with Airbnb’s submission on that point and do not find that there is a likelihood of direction confusion.

83. However Airbnb does contend that there is a likelihood of indirect confusion. I remind myself of the guidance given in *L.A. Sugar* that indirect confusion requires a consumer to undertake a thought process whereby they acknowledge the differences between the marks yet attribute the common element to the same or an economically connected undertaking, taking the later mark to be a possible brand extension or sub brand of the earlier mark.

84. For Airbnb’s part, it contends that AIR has an independent distinctive character and:

“not only does the element ‘AIR’ have independent distinctive character, in light of the meaning of ‘TASKER’ that independent distinctive character is dominant and will be the focus of the attention of the average consumer. The average consumer, faced with the Trade Marks, will assume they are a sub-brand or new line of services under the ‘AIR’ brand, owned by Airbnb. In the circumstances, confusion will occur. For example, Airbnb has more recently launched ‘AIRCOVER’ as an insurance sub-brand: consumers will see that and the Trade Marks as obvious brand extensions/sub-brands of the Earlier Mark.”

85. I do not agree that AIR does have an independently distinctive character. The respective marks are presented visually as wholes with no breaks, spaces or hyphens. I accept that some consumers may recognize the word “air” as the first three letters. However that, in my view, does not amount to considering AIR as an independently distinctive element. In my view most consumers will regard the respective marks as whole invented words.

86. I note Airbnb’s point about its recently launched “AIRCOVER” brand. However the evidence presented indicated that when Airbnb had acquired or developed additional brands during the relevant period, these appeared to be using AIRBNB in

full, e.g. AIRBNB LUXE and LUCKEY BY AIRBNB. There was no evidence to indicate that Airbnb have other “air-” formative marks.

87. In relation to the specific point about the meaning of TASKER, I note from Airtasker’s evidence that there were no definitions of “tasker” in leading UK dictionaries. However, there is a discrepancy as Airtasker exhibited an entry from Collins Dictionary showing no definition of “tasker” but definitions of “task” as a countable noun and a verb. Whereas Airbnb furnished a definition from Collins showing “tasker” as a derived form in British English of “task” as a noun. I conclude from this evidence that it is possible to form “tasker” from “task” as set out in one dictionary but that does not appear to be common usage given it is not recorded in other UK dictionaries. Even if I were to take the view that the word “tasker” can be said to be someone performing a task, it is combined with the word “air” which makes the whole meaningless.

88. For its part Airtasker submits that

“The term ‘-TASKER’ is not a purely descriptive addition but it would strike the average consumer as an unfamiliar and strange word with its own distinctive significance. This is not therefore the sort of brand extension envisaged by Mr. Purvis QC at 17(b) and (c) of LA Sugar.”

89. I agree with Airtasker on this point and find that there is no likelihood of indirect confusion.

90. Having failed to find a likelihood of confusion under section 5(2). I will go on to consider the other grounds.

### Section 5(3)

91. Airbnb opposes the contested trade marks under Section 5(3) of the Act. This is on the basis of its earlier marks for which it claims have a reputation. In particular, Airbnb argues that Airtasker will benefit from Airbnb's investment in advertising, leading to advantage. Further that Airtasker will ride on its coat tails and will benefit from the power of attraction, reputation and positive image of the earlier marks. Airbnb also claims that the later use will be out of its control and that any potentially poor-quality goods or services from Airtasker will cause detriment to its valuable reputation and business. In addition, Airbnb claims that use of the later mark will over time dilute the distinctive character and reputation of its marks.

92. Section 5(3) of the Act states:

“5(3) A trade mark which –

(a) is identical with or similar to an earlier trade mark, [...] shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark.”

93. Section 5(3A) of the Act states:

“Subsection (3) applies irrespective of whether the goods and services for which the trade mark is to be registered are identical with, similar to or not similar to those for which the earlier trade mark is protected.”

94. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, Case C-252/07, *Intel*, Case C-408/01, *Adidas-Salomon*, Case C-487/07, *L'Oreal v Bellure* and Case C-323/09, *Marks and Spencer v Interflora* and Case C-383/12P, *Environmental Manufacturing LLP v OHIM*. The law appears to be as follows:

(a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Saloman*, paragraph 29 and *Intel*, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel*, paragraph 42.

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel*, paragraph 68; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel*, paragraph 79.

(f) the more immediately and strongly the earlier mark is brought to mind by the later mark, the greater the likelihood that use of the latter will take unfair advantage of, or will be detrimental to, the distinctive character or the repute of the earlier mark; *L'Oreal v Bellure NV*, paragraph 44.

(g) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel*, paragraphs 76 and 77 and *Environmental Manufacturing*, paragraph 34.

(h) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel*, paragraph 74.

(i) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such

a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV*, paragraph 40. The stronger the reputation of the earlier mark, the easier it will be to prove that detriment has been caused to it; *L'Oreal v Bellure NV*, paragraph 44.

(j) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

95. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that its mark is similar to the applicant's mark. Secondly, that the earlier mark has achieved a level of knowledge/reputation amongst a significant part of the public. Thirdly, it must be established that the level of reputation and the similarities between the marks will cause the public to make a link between them, in the sense of the earlier mark being brought to mind by the later mark. Fourthly, assuming that the first three conditions have been met, section 5(3) requires that one or more of the three types of damage claimed will occur. It is unnecessary for the purposes of section 5(3) that the goods be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

## **Reputation**

96. As outlined above, for an opposition under section 5(3) to get off the ground it is first necessary for the opponent to show that it has the necessary reputation. I must be satisfied that the earlier marks are known by a significant part of the relevant public, in this case consumers of goods and services in the tourism and temporary accommodation lettings sectors.

97. In taking into account the factors set out above and weighing in Airbnb's evidence as examined earlier in this decision, I find that, at the material date of 31 May 2017, use of its earlier trade marks has established a qualifying reputation for those goods and services set out at paragraph 47.

## **Link**

97. Having found that Airbnb has established the necessary reputation, I will go on to make the assessment of whether the public will make the required mental 'link' between the marks, taking account of all relevant factors. The factors identified in *Intel* (underlined below) are:

### The degree of similarity between the conflicting marks

98. For the reasons given previously I find there is a low degree of visual and aural similarity but a conceptual neutrality.

### The nature of the goods or services for which the conflicting marks are registered, or proposed to be registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public

99. The contested goods and services will be purchased by the general public paying a medium degree of attention, for the reasons given at paragraphs 62-63. I have found that some goods and services are identical or similar to a medium degree, but I also found goods and services which I considered dissimilar.

### The strength of the earlier mark's reputation

100. The earlier marks have, through evidence, established a very strong reputation in relation to the goods and services listed at paragraph 47.

The degree of the earlier marks' distinctive character, whether inherent or acquired through use

101. For the reasons previously given, the earlier marks are inherently distinctive to a high degree. Given the use which has been made of the earlier marks, I found that the distinctiveness has been enhanced to a very high degree.

Whether there is a likelihood of confusion

102. I did not find a likelihood of either direct or indirect confusion due to the differences in the respective marks.

103. In Airbnb's second witness statement<sup>22</sup>, Meredith Pavia highlights Exhibits MP46 and 47 in particular to establish its claim that Airtasker are "attempting to ride on the coat tails, not only of AIRBNB but also other successful businesses, rather than attempting to develop its own brand".

104. Turning to Exhibit MP46 first, which is an article dated 24 September 2018 from the Brighton Argus newspaper. Although this article is dated after the material date, I think it is helpful in casting light backwards on the position at the relevant date<sup>23</sup>. In the article, the managing director of Airtasker UK, Mr Lucas London, is interviewed about the launch of the Airtasker app in Brighton as its second geographical area of activity after being launched previously in London. In particular the article says

"Airtasker decided to launch in Brighton after seeing the success of businesses such as Deliveroo, Uber and Airbnb in the city. Mr London said "Airbnb seems to have more reviews in Brighton than in Manchester which made us feel the community is incredibly active and involved. London has been a real success and we identify Brighton as a great market to launch in given it is progressive and has a very capable demographic".

105. In considering Exhibit MP46, I conclude from the article that Airtasker has studied the business models of Airbnb, Deliveroo and Uber, which are essentially online platforms for connecting vendors to purchasers and made a decision that residents of Brighton support and use these kinds of businesses. There is no IP in a

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<sup>22</sup> Paragraphs 19-21

<sup>23</sup> *Hotel Cipriani SRL and others v Cipriani (Grosvenor Street) Limited and others*, [2009] RPC 9 (approved by the Court of Appeal in England and Wales: [2010] RPC 16).



business idea per se. Moreover, I do not feel this amounts to Airtasker not developing their own brand or riding on the coat tails of others, simply that they are launching their brand in an area already known to be significant users of similar online network based businesses.

106. Exhibit MP47 comprises a selection of product reviews taken from Trustpilot.com and productreview.com.au. The reviews are dated from 2016 and 2017. The reviews relate to the Airtasker app and are written by both those who have used it to post tasks that need undertaking and from those who have undertaken tasks. I note that many of the reviewers mention Airbnb in their comments about Airtasker. In particular there were two comments saying that Airtasker was “the Airbnb of house work” and “the Airbnb of small jobs”. In other reviews, the posters were comparing the Airtasker platform to the Airbnb platform in terms of ease of contact, rates of commission and refunds processing. As in the previous paragraph I find this to be a comparison between the similarity of the business models of the respective parties rather than making a link between the brands. I do not find the respective marks to be sufficiently similar to create a link and whilst the marks share a common element AIR, this is not sufficient to create a transfer of image. As the link will not be made then the section 5(3) grounds falls at this hurdle.

#### **Section 5(4)(a)**

107. Airbnb oppose the contested marks under Section 5(4)(a) of the Act. This is on the basis of its alleged earlier rights in the sign AIRBNB since 2009 for the goods and services set out in Annex 3. It claims to have acquired goodwill under this sign. Use of AIRTASKER in the course of trade would therefore be a misrepresentation to the public and result in damage to the aforementioned goodwill.

108. Section 5(4)(a) states:

“(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,

(aa) [...]

(b) [...]

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

Subsection (4A) of Section 5 states:

“(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.”

109. The relevant parts of section 47 state:

“47. (1) [...]

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

(a) [...]

(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.

[...]

(5) Where the grounds of invalidity exist 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.

(5A) An application for a declaration of invalidity may be filed on the basis of one or more earlier trade marks or other earlier rights provided they all belong to the same proprietor.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made: Provided that this shall not affect transactions past and closed.”

110. The three elements which the opponent must show are therefore goodwill; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation.<sup>24</sup>

### **Relevant date**

111. In terms of the relevant date for assessment of this ground, in *Advanced Perimeter Systems Limited v Multisys Computers Limited*,<sup>25</sup> Mr Daniel Alexander QC, sitting as the Appointed Person, quoted with approval the summary made by Mr Allan James, acting for the Registrar, in *SWORDERS Trade Mark*:<sup>26</sup>

‘Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the applicant has used the mark before the date of the application it is necessary to consider what the position would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made.’”

112. Therefore the relevant date in this case is the filing date for the AIRTASKER marks namely 31 May 2017.

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<sup>24</sup> *Discount Outlet v Feel Good UK* [2017] EWHC 1400 (IPEC), Her Honour Judge Melissa Clarke, sitting as a deputy judge of the High Court.

<sup>25</sup> BL O-410-11

<sup>26</sup> BL O-212-06

## Goodwill

113. The first hurdle for Airbnb is to show that it had the requisite goodwill at the relevant date. and that the sign relied upon, AIRBNB, is associated with, or distinctive of, that business.

114. The concept of goodwill was considered by the House of Lords in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217:

“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.”

115. Given my previous analysis of Airbnb’s evidence at paragraph 47, I find that it has established sufficient goodwill for these goods and services at the relevant date.

## Misrepresentation

116. Having cleared the first hurdle of goodwill I now go on to consider the second hurdle of misrepresentation. 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.”

And later in the same judgment:

“.... for my part, I think that references, in this context, to “more than *de minimis*” and “above a trivial level” are best avoided notwithstanding this court's reference to the former in *University of London v. American University of London* (unreported 12 November 1993) . It seems to me that such expressions are open to misinterpretation for they do not necessarily connote the opposite of substantial and their use may be thought to reverse the proper emphasis and concentrate on the quantitative to the exclusion of the qualitative aspect of confusion.”

117. On the subject of how many of the relevant public must be deceived or confused for the opponent to be successful in a claim under this ground, I bear in mind the decision in *Lumos Skincare Limited v Sweet Squared Limited and others* [2013] EWCA Civ 590, where Lord Justice Lloyd commented on the paragraph above as follows:

“64. One point which emerges clearly from what was said in that case, both by Jacob J and by the Court of Appeal, is that the “substantial number” of people who have been or would be misled by the Defendant's use of the mark, if the Claimant is to succeed, is not to be assessed in absolute numbers, nor is it applied to the public in general. It is a substantial number of the Claimant's actual or potential customers. If those customers, actual or potential, are small in number, because of the nature or extent of the Claimant's business, then the substantial number will also be proportionately small.”

118. Accordingly, once it has been established that the party relying on the existence of an earlier right under section 5(4)(a) had sufficient goodwill at the relevant date to find a passing-off claim, the likelihood that only a relatively small number of persons would be likely to be deceived does not mean that the case must fail. There will be a misrepresentation if a substantial number of customers, or potential customers, of the claimant's actual business would be likely to be deceived.

119. I have found that Airbnb has established goodwill in the sign AIRBNB. The contested mark is AIRTASKER which I have found to be visually and aurally similar to a low degree but conceptually neutral.

120. I recognise that the test for misrepresentation is different to that for likelihood of confusion, namely, that misrepresentation requires “a substantial number of members of the public are deceived” rather than whether the “average consumers are confused”. However, as recognised by Lewison L.J. in *Marks and Spencer PLC v Interflora*<sup>27</sup>, it is doubtful whether the difference between the legal tests will produce different outcomes. In my view, this is the case here. I do not find that the relevant public faced with the contested marks will believe that there is a connection between Airtasker and Airbnb, the differences between the marks are too significant and there is not a logical progression from one to the other to give rise to misrepresentation. As such the invalidation based on section 5(4)(a) fails.

### **Conclusion**

121. The invalidation has failed and the contested marks will remain registered. At the hearing, Airtasker offered a fall back specification. However as I have found in its favour, I do not consider this issue.

### **Costs**

122. Airtasker has been successful in these proceedings. As such it is entitled to a contribution towards the costs incurred. Awards of costs for proceedings commenced before 1 February 2023 are governed by Annex A of Tribunal Practice Notice (TPN) 2/2016. Bearing in mind the guidance given in TPN 2/2016, I award costs as follows:

£500 Considering Notices of Opposition & preparing counterstatements

£1000 Considering other side’s evidence & preparing own evidence

£1000 Preparing for & attending hearing

**£2500 Total**

123. I order Airbnb, Inc to pay Airtasker Pty Ltd the sum of £2500. 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.

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<sup>27</sup> [2012] EWCA (Civ) 1501

**Dated this 12<sup>th</sup> day of June 2023**

**June Ralph**

**For the Registrar**

**The Comptroller-General**

## **Annex 1**

Airtasker's goods and services for its trade mark registration nos. 3234373 and 3234384:

*Class 9: Computer software; Application software; Telecommunications apparatus; computer e-commerce software to allow users to conduct electronic business transactions in online marketplaces via a global computer network; software for use in viewing and posting classified advertising; software for use in sending and viewing electronic messages, data and images; encoded loyalty cards; encoded gift cards.*

*Class 35: Advertising; sales promotion (for others); promoting the goods and services of others; Compilation and provision of online directories; Intermediary business services relating to the commercialisation of goods; Providing business information via a web site; Provision of an on-line marketplace for buyers and sellers of goods and services; classified advertising services; online classified advertisements posted by users provided via a website; price comparison services; on-line auction services; on-line trading services in which seller posts products to be auctioned and bidding is done via the Internet; labour exchange services; recruitment services; job listings, resume postings, and other job information via the Internet; on-line trading services to facilitate the sale of goods and services by others via a computer network and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods and services, buyers' and sellers' performance, delivery, and overall trading experience in connection thereto; providing a searchable online advertising guide featuring the goods and services of online vendors; loyalty, incentive, discount and bonus program services; administration of loyalty programs involving discounts or incentives; organisation and administration of bonus, loyalty and reward programs involving financial benefits, savings, incentives, gifts, gift vouchers and gift schemes.*

*Class 42: Software as a service (SaaS); Provision of online non-downloadable software (application service provider); application service provider services; providing temporary use of online non-downloadable software for use in sending and viewing electronic messages, data and images; providing temporary use of online non-downloadable computer e-commerce software to allow users to conduct electronic business transactions in online marketplaces via a global computer*



*network; online computer services, namely non-downloadable software for uploading, managing and searching resumes, social profiles, job qualifications and personnel records; Design of computer databases; Design of information systems; Hosting computer sites (web sites); Industrial analysis; Providing information, including online, about industrial analysis and research services; Information technology (IT) services (computer hardware, software and peripherals design and technical consultancy); Providing information, including online, about scientific and technological services and research and design relating thereto; Computer software design.*

## **Annex 2**

Airbnb's goods and services relied on for section 5(2)(b) and 5(3) for its trade mark registration no. 801182496

*Class 9: Computer application messaging software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to communicate with each other; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows messaging among guests of lodging accommodations owned and hosted by others and among the hosts who list lodging accommodations for rent and sale; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to plan, announce, invite others to attend and evaluate real world meetings and events; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to solicit each other to perform a wide range of personal and customized services, housekeeping, cooking and related services, personalized travel, itinerary and private tour and activity services; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to arrange for the remote exchange of keys to lodgings, homes and vehicles and for locking and unlocking lodgings homes and vehicles; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software management tools to permit users to manage, organize, calendar and share with others travel bookings, activity dates, photographs, opinions and preferences; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software management tools to permit users to arrange for temporary lodging check-in help; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that permits listers of goods, real property and services for rent or sale to receive suggested improvements to their listing advertisements; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that permits listers of goods, real property and services for rent or sale to arrange for*

*professional photographs of the listed goods, property and services; computer application software; computer application software for mobile phones, portable media players, handheld computers and related mobile devices; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software to facilitate the sale of goods and services by others via a computer network and to provide evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods and services, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to list and rent temporary lodging, access information, listings and announcements about housing, apartments, condominiums, townhouses, real estate, commercial real estate and rental and leasing advertisements for the foregoing; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to provide reviews and feedback about listers and renters of real estate, temporary lodging, transportation, sharing of vehicles and rides and temporary parking; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to make and receive payments for the rental, purchase and sale of goods and services; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to search for travel, transportation, temporary accommodation, vehicle and ride sharing and temporary vehicle parking listings, travel information and related topics and for making reservations and bookings for transportation, temporary accommodations, vehicle and ride sharing and temporary parking; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to provide travel reviews and recommendations for local attractions; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows vehicle owners and users to list, arrange and reserve shared vehicles and rides; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to list, arrange and reserve temporary parking of vehicles at*

*residences and businesses; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to list and book car sharing, ride sharing and temporary parking; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to access information and listing of peer-to-peer transportation; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to engage in social networking featuring travel, transportation, temporary lodging, shared vehicles and rides, temporary parking and the rental and listing of real estate.*

*Class 42: Computer services, namely, remote management of electronic messaging systems for others; computer services, namely, remote management of electronic messaging systems for others that allows users of mobile phones, portable media players, handheld computers and related mobile devices to communicate with each other; providing temporary use of web-based messaging software applications that allows users of mobile phones, portable media players, handheld computers and related mobile devices to communicate with each other; providing temporary use of web-based messaging software applications that allows users of mobile phones, portable media players, handheld computers and related mobile devices to send and receive messages among guests of lodging accommodations owned and hosted by others and among the hosts who list lodging accommodations for rent and sale; providing temporary use of a web-based software application for identifying and defining the scope and components of projects; providing temporary use of a web-based software application for providing an online marketplace for buyers and sellers of goods and/or services on a global computer network; providing temporary use of a web-based software application for providing a two-way system for users of an online marketplace to evaluate and provide feedback regarding parties they have interacted with via the online marketplace; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to plan, announce, invite others to attend and evaluate real world meetings and events; providing temporary use of web-based software application that allows users of mobile phones, portable media*

*players, handheld computers and related mobile devices to solicit each other to perform a wide range of personal and customized services, housekeeping, cooking and related services, personalized travel, itinerary and private tour and activity services; providing temporary use of web based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to arrange for the remote exchange of keys to lodgings, homes and vehicles and for locking and unlocking lodgings homes and vehicles; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to manage, organize, calendar and share with others travel bookings, activity dates, photographs, opinions and preferences; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to arrange for temporary lodging check-in help; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list goods, real property and services for rent or sale and receive suggested improvements to their listing advertisements; providing temporary use of web-based computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to list of goods, real property and services for rent or sale and arrange for professional photographs of the listed goods, property and services; providing temporary use of web-based software application that facilitates use of the internet by users of mobile phones, portable media players, handheld computers and related mobile devices; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to facilitate the sale of goods and services via computer network and to provide evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods and services, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list and rent temporary lodging, access information, listings and announcements about housing, apartments, condominiums, townhouses, real*

*estate, commercial real estate and rental and leasing advertisements for the foregoing; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to provide reviews and feedback about listers and renters of real estate, temporary lodging, transportation, sharing of vehicles and rides and temporary parking; providing temporary use of webbased software application that allows users of mobile phones, portable media player's, handheld computers and related mobile devices to make payments for the purchases of goods and services; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to search for travel, transportation, temporary accommodation, vehicle and ride sharing and temporary vehicle parking listings, travel information and related topics and for making reservations and bookings for transportation, temporary accommodations, vehicle and ride sharing and temporary parking; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to provide travel reviews and recommendations for local attractions; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list, arrange and reserve shared vehicles and rides; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list, arrange and reserve temporary parking of vehicles at residences and businesses; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list and book car sharing, ride sharing and temporary parking; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to access information and listings of peer-to-peer transportation; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to engage in social networking featuring travel, transportation, temporary lodging, shared vehicles and rides, temporary parking and the rental and listing of real estate; software as a service (SAAS) services featuring messaging software that allows users of mobile phones, portable*

*media players, handheld computers and related mobile devices to communicate with each other; software as a service (SAAS) services featuring messaging software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to send and receive messages among guests of lodging accommodations owned and hosted by others and among the hosts who list lodging accommodations for rent and sale; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to plan, announce, invite others to attend and evaluate real world meetings and events; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to solicit each other to perform a wide range of personal and customized services, housekeeping, cooking and related services, personalized travel, itinerary and private tour and activity services; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to arrange for the remote exchange of keys to lodgings, homes and vehicles and for locking and unlocking lodgings homes and vehicles; software as a service (SAAS) services featuring software management tools that allows users of mobile phones, portable media players, handheld computers and related mobile devices to manage, organize, calendar and share with others travel bookings, activity dates, photographs, opinions and preferences; software as a service (SAAS) services featuring software management tools that allows users of mobile phones, portable media players, handheld computers and related mobile devices to arrange for temporary lodging check-in help; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list goods, real property and services for rent or sale and receive suggested improvements to their listing advertisements; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list goods, real property and services for rent or sale and arrange for professional photographs of the listed goods, property and services; software as a service (SAAS) services featuring software that facilitates use of the internet by users of mobile phones, portable media players, handheld computers and related mobile devices; software as a service (SAAS) services featuring software that allows users*

*of mobile phones, portable media players, handheld computers and related mobile devices to facilitate the sale of goods and services via computer network and to provide evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods and services, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list and rent temporary lodging, access information, listings and announcements about housing, apartments, condominiums, townhouses, real estate, commercial real estate and rental and leasing advertisements for the foregoing; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to provide reviews and feedback about listers and renters of real estate, temporary lodging, transportation, sharing of vehicles and rides and temporary parking; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to make payments for the purchases of goods and services; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to search for travel, transportation, temporary accommodation, vehicle and ride sharing and temporary vehicle parking listings, travel information and related topics and for making reservations and bookings for transportation, temporary accommodations, vehicle and ride sharing and temporary parking; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to provide travel reviews and recommendations for local attractions; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list, arrange and reserve shared vehicles and rides; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list, arrange and reserve temporary parking of vehicles at residences and businesses; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list and book car sharing, ride sharing and temporary parking; software as a service (SAAS) services*



*featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to access information and listings of peer-to-peer transportation; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to engage in social networking featuring travel, transportation, temporary lodging, shared vehicles and rides, temporary parking and the rental and listing of real estate.*

## **Annex 2 continued**

Airbnb's goods and services relied on for section 5(2)(b) for its trade mark registration no. 911933611.

*Class 9: computer software; computer software for mobile devices; downloadable connected software platform; software platform that facilitates the provision of information, peer-to-peer interaction and transactions, and the booking of temporary accommodations in the fields of travel, lodging, dining, and entertainment; application programming interface (API) software.*

*Class 35: business consulting and management services; business consulting and management services in the nature of arranging, organizing, advising about and providing various services, including photography services and cleaning services; advertising; business management; business administration; office functions; providing a web site featuring the ratings, reviews and recommendations for commercial purposes posted by users; providing a web site featuring the ratings, reviews and recommendations of lodging, accommodations, travel, dining, and entertainment-related establishments for commercial purposes posted by users; providing online business directories; providing online business directories featuring temporary accommodations; consulting services for owners of rental properties, namely assisting property owners to better advertise their property over the internet and to create their rental listings in order to maximize interest.*

*Class 36: Consulting services, namely, rental property consulting services.*

*Class 37: Providing, organizing and arranging cleaning services; consulting services for owners of rental properties, namely cleaning services.*

*Class 39: Online journals, namely, blogs and video logs in the fields of travel around the world; providing information in the fields of travel; social and collaborative travel.*

*Class 41: online journals, namely blogs and video logs featuring multimedia content; online journals, namely, blogs and video logs in the fields of entertainment around the world.*

*Class 42: Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer software; providing temporary use of non-downloadable, web-based, and cloud-based software; providing an online non-downloadable, web-based, and cloud-based connected software platform that facilitates the provision of information, peer-to-peer interaction and transactions, and bookings in the fields of travel, lodging, dining, and entertainment; application service provider featuring application programming interface (API) software.*

*Class 43: Online journals, namely, blogs and video logs in the fields of lodging and dining around the world; providing information in the fields of lodging and dining; social and collaborative lodging and dining.*

*Class 45: providing online and offline social networking and introduction services; providing a social networking website.*

## **Annex 2 continued**

Airbnb's services relied on for its trade mark registration no. 909376468

*Class 35: Providing online business directories featuring temporary lodging; providing an online interactive website obtaining users comments concerning business organizations, service providers, and other resources; providing information, namely, compilations, rankings, ratings, reviews, referrals and recommendations relating to business organizations, service providers, and other resources using a global computer network; advertising and promotion services and related consulting; preparation of custom or non-custom advertising for businesses for dissemination via the web; dissemination of advertising for others via a global communications network; online advertising services for others, namely, providing advertising space on internet web sites; providing a searchable online advertising guide featuring the goods and services of online vendors; providing a searchable online evaluation database for buyers and sellers; advertising and advertisement services; customer loyalty services and customer club services for commercial, promotional and advertising purposes; promoting the goods and services of others; on-line trading services to facilitate the sale of goods and services by others via a computer network and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods and services, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith; advertising and advertisement services; on-line trading services in which seller posts items to be auctioned and bidding is done electronically, and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith; advertising and information distribution services, namely, providing classified advertising space via the global computer network; providing consumer product and service information via the Internet; providing an online business information directory on the Internet; computerized database management; providing on-line computer databases and on-line searchable databases featuring classified listings and want ads; computer services, namely, providing on-line computer databases and on-line searchable databases featuring consumer*

*information on a wide variety of topics of general interest to the consuming public; business management; business administration; office functions; providing online computer database and online searchable databases featuring rental and leasing advertisements for housing, apartments, condominiums, townhouses, real estate and commercial real estate.*

*Class 36: Providing an online interactive website featuring the listing and rental of temporary lodging; providing online computer database and online searchable databases featuring information, listings and announcements about housing, apartments, condominiums, townhouses, real estate, commercial real estate; real estate listing, rental and leasing services for residential housing, apartments, rooms in homes, sublets, vacation homes, cabins and villas and office space in commercial properties on a global computer network; providing reviews and feedback about listers and renters of real estate, from virtual communities and from social networking sites; electronic commerce payment services, namely, processing payments for the purchase of services via an electronic communications network; providing purchase protection services in the field of online trading of goods and services by others via a global computer network; Insurance; financial affairs; monetary affairs; real estate affairs.*

### **Annex 3**

Goods and services relied on by Airbnb in relation to section 5(4)(a)

*Computer software; downloadable connected software platform; Application software; computer application software; non-downloadable software; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to list and rent temporary lodging, access information, listings and announcements about housing, apartments, condominiums, townhouses, real estate, commercial real estate and rental and leasing advertisements for the foregoing; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to search for travel, transportation, temporary accommodation, vehicle and ride sharing and temporary vehicle parking listings, travel information and related topics and for making reservations and bookings for transportation, temporary accommodations, vehicle and ride sharing and temporary parking. Software platform that facilitates the provision of information, peer-to-peer interaction and transactions, and the booking of temporary accommodations; Software platform that facilitates the provision of information, peer-to-peer interaction and transactions, and the booking of temporary accommodations in the fields of travel, lodging, dining, and entertainment.*

*Computer application messaging software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to communicate with each other; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows messaging among guests of lodging accommodations owned and hosted by others and among the hosts who list lodging accommodations for rent and sale; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to plan, announce, invite others to attend and evaluate real world meetings and events; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to solicit each other to perform a wide range of personal*

*and customized services, housekeeping, cooking and related services, personalized travel, itinerary and private tour and activity services; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to arrange for the remote exchange of keys to lodgings, homes and vehicles and for locking and unlocking lodgings homes and vehicles; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software management tools to permit users to manage, organize, calendar and share with others travel bookings, activity dates, photographs, opinions and preferences; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software management tools to permit users to arrange for temporary lodging check-in help; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that permits listers of goods, real property and services for rent or sale to receive suggested improvements to their listing advertisements; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that permits listers of goods, real property and services for rent or sale to arrange for professional photographs of the listed goods, property and services; computer application software; computer application software for mobile phones, portable media players, handheld computers and related mobile devices; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software to facilitate the sale of goods and services by others via a computer network and to provide evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods and services, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to provide reviews and feedback about listers and renters of real estate, temporary lodging, transportation, sharing of vehicles and rides and temporary parking; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to make and receive payments for the rental, purchase and sale of goods and services; computer application software for mobile phones, portable*

*media players, handheld computers and related mobile devices, namely, software that allows users to provide travel reviews and recommendations for local attractions; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows vehicle owners and users to list, arrange and reserve shared vehicles and rides; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to list, arrange and reserve temporary parking of vehicles at residences and businesses; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to list and book car sharing, ride sharing and temporary parking; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to access information and listing of peer-to-peer transportation; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to engage in social networking featuring travel, transportation, temporary lodging, shared vehicles and rides, temporary parking and the rental and listing of real estate.*

*Advertising; providing a web site featuring the ratings, reviews and recommendations for commercial purposes posted by users; Providing an online interactive website obtaining users comments concerning business organizations, service providers, and other resources; providing information, namely, compilations, rankings, ratings, reviews, referrals and recommendations relating to business organizations, service providers, and other resources using a global computer network; advertising and promotion services and related consulting; dissemination of advertising for others via a global communications network; online advertising services for others, namely, providing advertising space on internet web sites; providing a searchable online advertising guide featuring the services of online vendors; providing a searchable online evaluation database for buyers and sellers; advertising and advertisement services; promoting the services of others; on-line trading services to facilitate the sale of services by others via a computer network and providing evaluative feedback and ratings of sellers' services, the value and prices of sellers' goods and services,*



*buyers' and sellers' performance, delivery, and overall trading experience in connection therewith; advertising and advertisement services; advertising and information distribution services, namely, providing classified advertising space via the global computer network; providing consumer product and service information via the Internet; providing an online business information directory on the Internet; providing on-line computer databases and on-line searchable databases featuring classified listings and want ads; providing online computer database and online searchable databases featuring rental and leasing advertisements for housing, apartments, condominiums, townhouses, real estate and commercial real estate*

*Online journals, namely, biogs and video logs in the fields of travel around the world; providing information in the fields of travel.*

*Providing an online interactive website featuring the listing and rental of temporary lodging; providing online computer database and online searchable databases featuring information, listings and announcements about housing, apartments, condominiums, townhouses, real estate, commercial real estate; real estate listing, rental and leasing services for residential housing, apartments, rooms in homes, sublets, vacation homes, cabins and villas and office space in commercial properties on a global computer network; providing reviews and feedback about listers and renters of real estate, from virtual communities and from social networking sites; electronic commerce payment services, namely, processing payments for the purchase of services via an electronic communications network.*

*Providing online interactive bulletin board for transmission of messages among computer users concerning listing, rental and leasing of real estate; electronic mail service; providing online electronic bulletin boards for transmission of messages among computer users concerning rankings, ratings, reviews, referrals, and recommendations relating to business organizations and service providers; providing an online, interactive bulletin board for the transmission of messages among computer users concerning the sale of services via a global communications network; providing online forums and discussion groups for transmission of messages among computer users; electronic mail subscription services.*

*Online journals, namely biogs and video logs featuring multimedia content; photography services; providing information in the fields of entertainment; providing,*

*organizing and arranging photography; consulting services for owners of rental properties, namely facilitation of photography services.*

*Online trip and travel recommendations and reservation services; providing travel information over global computer networks, namely, providing search services for travel listings, travel information and related travel topics and for making reservations and bookings for transportation; providing travel information via a global computer, namely, providing reviews and recommendations of local attractions (sightseeing services).*

*Providing online newsletters featuring lodging and travel information and reviews of lodging and travel providers. Providing a web site featuring the ratings, reviews and recommendations of lodging, accommodations, travel, dining, and entertainment-related establishments; Providing a web site featuring the ratings, reviews and recommendations of lodging, accommodations, travel, dining, and entertainment-related establishments for commercial purposes posted by users; providing online business directories; providing online business directories featuring temporary accommodations;*

*Providing online business directories featuring temporary lodging. providing temporary use of non-downloadable, web-based, and cloud-based software;*

*Providing online non-downloadable, web-based, cloud-based and mobile-based software platforms; Providing an online non-downloadable, web-based, and cloud-based connected software platform that facilitates the provision of information, peer-to-peer interaction and transactions, and bookings in the fields of travel, lodging, dining, and entertainment.*

*Providing temporary use of online non-downloadable, web-based, cloud-based and mobile-based software applications; messaging software services; Providing temporary use of web-based messaging software applications that allows users of mobile phones, portable media players, handheld computers and related mobile devices to send and receive messages among guests of lodging accommodations owned and hosted by others and among the hosts who list lodging accommodations for rent and sale; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to search for travel, transportation, temporary*

*accommodation, vehicle and ride sharing and temporary vehicle parking listings, travel information and related topics and for making reservations and bookings for transportation, temporary accommodations, vehicle and ride sharing and temporary parking. Providing temporary use of web-based messaging software applications that allows users of mobile phones, portable media players, handheld computers and related mobile devices to offer and arrange cleaning services, key drop off services, check-in services and parking; Providing temporary use of web-based messaging software applications that allows users of mobile phones, portable media players, handheld computers and related mobile devices to provide advice in relation to the fields of travel, transport, lodging, dining and entertainment.*

*Computer services, namely, remote management of electronic messaging systems for others; computer services, namely, remote management of electronic messaging systems for others that allows users of mobile phones, portable media players, handheld computers and related mobile devices to communicate with each other; providing temporary use of web-based messaging software applications that allows users of mobile phones, portable media players, handheld computers and related mobile devices to communicate with each other; providing temporary use of a web-based software application for identifying and defining the scope and components of projects; providing temporary use of a web-based software application for providing an online marketplace for buyers and sellers of goods and/or services on a global computer network; providing temporary use of a web-based software application for providing a two-way system for users of an online marketplace to evaluate and provide feedback regarding parties they have interacted with via the online marketplace; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to plan, announce, invite others to attend and evaluate real world meetings and events; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to solicit each other to perform a wide range of personal and customized services, housekeeping, cooking and related services, personalized travel, itinerary and private tour and activity services; providing temporary use of webbased software application that allows users of mobile phones, portable media*

*players, handheld computers and related mobile devices to arrange for the remote exchange of keys to lodgings, homes and vehicles and for locking and unlocking lodgings homes and vehicles; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to manage, organize, calendar and share with others travel bookings, activity dates, photographs, opinions and preferences; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to arrange for temporary lodging check-in help; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list goods, real property and services for rent or sale and receive suggested improvements to their listing advertisements; providing temporary use of web-based computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to list of goods, real property and services for rent or sale and arrange for professional photographs of the listed goods, property and services; providing temporary use of web-based software application that facilitates use of the internet by users of mobile phones, portable media players, handheld computers and related mobile devices; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to facilitate the sale of goods and services via computer network and to provide evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods and services, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list and rent temporary lodging, access information, listings and announcements about housing, apartments, condominiums, townhouses, real estate, commercial real estate and rental and leasing advertisements for the foregoing; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to provide reviews and feedback about listers and renters of real*

*estate, temporary lodging, transportation, sharing of vehicles and rides and temporary parking;*

*providing temporary use of webbased software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to make payments for the purchases of goods and services; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to provide travel reviews and recommendations for local attractions; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list, arrange and reserve shared vehicles and rides; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list, arrange and reserve temporary parking of vehicles at residences and businesses; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list and book car sharing, ride sharing and temporary parking; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to access information and listings of peer-to-peer transportation; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to engage in social networking featuring travel, transportation, temporary lodging, shared vehicles and rides, temporary parking and the rental and listing of real estate; software as a service (SAAS) services featuring messaging software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to communicate with each other; software as a service (SAAS) services featuring messaging software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to send and receive messages among guests of lodging accommodations owned and hosted by others and among the hosts who list lodging accommodations for rent and sale; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to plan, announce, invite others to attend and*

*evaluate real world meetings and events; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to*

*solicit each other to perform a wide range of personal and customized services, housekeeping, cooking and related services, personalized travel, itinerary and private tour and activity services; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, hand held computers and related mobile devices to arrange for the remote exchange of keys to lodgings, homes and vehicles and for locking and unlocking lodgings homes and vehicles; software as a service (SAAS) services featuring software management tools that allows users of mobile phones, portable media players, handheld computers and related mobile devices to manage, organize, calendar and share with others travel bookings, activity dates, photographs, opinions and preferences; software as a service (SAAS) services featuring software management tools that allows users of mobile phones, portable media players, handheld computers and related mobile devices to arrange for temporary lodging check- in help; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list goods, real property and services for rent or sale and receive suggested improvements to their listing advertisements; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list goods, real property and services for rent or sale and arrange for professional photographs of the listed goods, property and services; software as a service (SAAS) services featuring software that facilitates use of the internet by users of mobile phones, portable media players, handheld computers and related mobile devices; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to facilitate the sale of goods and services via computer network and to provide evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods and services, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and*

*related mobile devices to list and rent temporary lodging, access information, listings and announcements about housing, apartments, condominiums, townhouses, real estate, commercial real estate and rental and leasing advertisements for the foregoing; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to provide reviews and feedback about listers and renters of real estate, temporary lodging, transportation, sharing of vehicles and rides and temporary parking; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, hand held computers and related mobile devices to make payments for the purchases of goods and services; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to search for travel, transportation, temporary accommodation, vehicle and ride sharing and temporary vehicle parking listings, travel information and related topics and for making reservations and bookings for transportation, temporary accommodations, vehicle and ride sharing and temporary parking; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to provide travel reviews and recommendations for local attractions; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list, arrange and reserve shared vehicles and rides; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list, arrange and reserve temporary parking of vehicles at residences and businesses; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list and book car sharing, ride sharing and temporary parking; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to access information and listings of peer-to-peer transportation; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to engage in social networking featuring travel, transportation,*

*temporary lodging, shared vehicles and rides, temporary parking and the rental and listing of real estate.*

*Travel reservation services; arranging temporary housing accommodations; providing online reservation services for temporary lodging; travel agency services; travel agency services, namely, making reservations and bookings for lodging; providing temporary lodging information via the Internet; services for providing food and drink; temporary accommodation; providing travel information over global computer networks, namely, providing search services for lodging. Online journals, namely, biogs and video logs in the fields of lodging and dining around the world; providing information in the fields of lodging and dining; social and collaborative lodging and dining.*

*Provision of host management tools; provision of an online marketplace which allows users to view and book accommodation.*