

O-259-15

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION 2606505
BY RM PLC
TO REGISTER THE FOLLOWING TRADE MARK IN CLASSES 9 & 28:**

Easi-Listener

AND

**AN OPPOSITION THERETO (NO. 103674) BY
EASYGROUP IP LICENSING LIMITED**

Background and pleadings

1. This dispute concerns an opposition to the following trade mark being registered:

Trade mark: **Easi-Listener**

Filing date: 9 January 2012

Publication date: 11 May 2012

Goods: Class 9: Apparatus for reproducing sound and speech files and libraries from CDs or MP3 files downloaded from the Internet and web sites; parts and fittings for the aforesaid goods; headphones (multiple) connected to the apparatus; software for use of said music and speech libraries in relation to education; music playback devices namely CD players.

Class 28: Toys, games and playthings in the field of education.

Applicant: RM plc¹ (“the applicant”)

2. EasyGroup IP Licensing Limited (“the opponent”) oppose the registration under section 5(2)(b)² of the Trade Marks Act 1994 (“the Act”). The opponent relies on the following earlier trade marks:

i) Community trade mark (“CTM”) 5140157 for the mark **easyVan** covering goods and services in classes 12, 36 & 39.

ii) CTM 5112115 for the mark **easyTaxi** covering goods and services in classes 12, 39 & 43.

iii) CTM 8680125 for the mark **EASYFOOTBALL** covering goods and services in classes 9, 28, 38 & 41.

iv) CTM 4300901 for the mark **easyMobile** covering goods and services in classes 9, 38 & 42.

v) UK registration 2265184 for the series of marks: **easyMoney easyMoney** which cover goods and services in classes 9, 16, 35, 36, 38, 39, 41 & 42.

¹ The application was originally filed by TTS Group Limited, but it assigned the mark to RM plc on 5 April 2012.

² There were other grounds (section 5(3)) and other earlier marks relied upon, however, as the opponent filed no evidence these were struck out because of the requirement (which was thus not met) to adduce evidence to establish a reputation and/or genuine use.

vi) CTM 9802646 for the mark **EASYGYM** covering goods and services in classes 3, 5, 28, 35, 41 & 44.



vii) UK registration 2325850 for the series of marks covering goods and services in classes 3, 6, 9, 12, 14, 16, 18, 28, 29, 30, 31, 32, 33, 35, 36, 38, 39, 41, 42, 43 & 45.

viii) CTM 3088366 for the mark  covering goods and services in classes 9, 40, 41 & 42.

3. Full details of the earlier marks are set out in the Annex to this decision. The opponent claims that all of the goods and services covered by all of its earlier marks are identical or similar to the goods of the applicant's mark.

4. The applicant filed a counterstatement. It denies that there is a likelihood of confusion. It makes a number of points focused upon the overall similarity of the marks at issue and its claim that the word EASY is inherently descriptive/non-distinctive.

5. Both sides are professionally represented. The opponent is represented by Clarke Willmott LLP, the applicant by Pennington Manches LLP. Neither side filed evidence, although the applicant filed written submissions. Neither side requested a hearing or filed written submissions in lieu.

6. As can be seen above, the opponent relies on a number of marks which cover various goods and services. The marks all include the word easy, most of them then being followed by a non-distinctive word. In one mark the word easy is part of what will be seen as a domain name "easy.com" (stylised). I will, in the first instance, consider the opposition on the basis of CTM 3088366 and UK registration 2325850, which consist of the following marks:



I will return to the other marks, to the extent necessary, if it becomes relevant to do so.

Section 5(2)(b)

7. Section 5(2)(b) of the Act states that:

"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.”

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

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

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

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

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

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

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

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

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

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

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

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

Comparison of goods

9. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account. In *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* the CJEU stated at paragraph 23 of its judgment:

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

10. Guidance on this issue has also come from Jacob J In *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281 where the following factors were highlighted as being relevant when making the comparison:

“(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.”

11. In terms of being complementary (one of the factors referred to in *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer*), this relates to close connections or relationships that are important or indispensable for the use of the other. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T- 325/06 it was stated:

“It is true that goods are complementary if there is a close connection between them, in the *sense that one is indispensable or important for the use of the other in such a way that* customers may think that the responsibility for those goods lies with the same undertaking (see, to that effect, Case T-169/03 *Sergio Rossi v OHIM – Sissi Rossi (SISSI ROSSI)* [2005]

ECR II-685, paragraph 60, upheld on appeal in Case C-214/05 P *Rossi v OHIM* [2006] ECR I-7057; Case T-364/05 *Saint-Gobain Pam v OHIM – Propamsa (PAM PLUVIAL)* [2007] ECR II-757, paragraph 94; and Case T-443/05 *El Corte Inglés v OHIM – Bolaños Sabri (PiraÑAM diseño original Juan Bolaños)* [2007] ECR I-0000, paragraph 48).”

12. In relation to complementarity, I also bear in mind the guidance given by Mr Daniel Alexander QC, sitting as the Appointed Person, in case B/L O/255/13 *LOVE* where he warned against applying too rigid a test:

“20. In my judgment, the reference to “legal definition” suggests almost that the guidance in *Boston* is providing an alternative quasi-statutory approach to evaluating similarity, which I do not consider to be warranted. It is undoubtedly right to stress the importance of the fact that customers may think that responsibility for the goods lies with the same undertaking. However, it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together. I therefore think that in this respect, the Hearing Officer was taking too rigid an approach to *Boston*.”

13. In relation to understanding what terms used in specifications mean/cover, the case-law informs me that “in construing a word used in a trade mark specification, one is concerned with how the product is, as a practical matter, regarded for the purposes of the trade”³ and that I must also bear in mind that words should be given their natural meaning within the context in which they are used; they cannot be given an unnaturally narrow meaning⁴. I also note the judgment of Mr Justice Floyd in *YouView TV Limited v Total Limited* where he stated:

“..... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IPTRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. *Treat* was decided the way it was because the ordinary and natural, or core, meaning of “dessert sauce” did not include jam, or because the ordinary and natural description of jam was not “a dessert sauce”. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question.”

14. Even if goods are not worded identically, they can still be considered identical if one term falls within the ambit of another (or vice versa), as per the judgment in *Gérard Meric v OHIM*, Case T-133/05.

³ See *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281

⁴ See *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another* [2000] FSR 267

15. I will make the comparison with reference to the applied for goods.

Apparatus for reproducing sound and speech files and libraries from CDs or MP3 files downloaded from the Internet and web sites

16. Both of the opponent's registrations cover:

“Apparatus, instruments and media for recording, reproducing, carrying, storing, processing, manipulating, transmitting, broadcasting and retrievingsounds”

17. I consider the respective goods to be identical as both cover, essentially, apparatus for reproducing sound.

Parts and fittings for the aforesaid goods

18. Both of the opponent's registrations also cover parts and fitting of the goods so they are, consequently, also identical.

Headphones (multiple) connected to the apparatus

19. I consider headphones to fall within the ambit of the term set out in paragraph 16. In any event, headphones are also specifically referred to in the specifications of the earlier marks. Identical goods are in play.

Software for use of said music and speech libraries in relation to education

20. Both earlier marks cover computer software at large. The goods must be considered identical.

Music playback devices namely CD players

21. I consider CD players to fall within the ambit of the term set out in paragraph 16. In any event, compact disc players are also specifically referred to in the specifications of the earlier marks. Identical goods are in play.

Toys, games and playthings in the field of education.

22. Neither of the earlier marks cover goods in class 28. However, they do cover teaching apparatus and instruments which serve the same purpose as toys, games and playthings in the field of education, could be sold through the same trade channels to the same users. There could also be a degree of competition (one may choose between a standard form of teaching tool or a more play orientated version) and there could also be some complementary as one may supplement the other in the educational field. I consider there to be a reasonable degree of similarity. There would also be similarity on the basis that computer software (including computer game software), despite being inherently different in nature, could be used for educational purposes also. There is a reasonable degree of similarity here.

Average consumer and the purchasing act

23. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. 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: *Lloyd Schuhfabrik Meyer*, Case C-342/97. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

24. The goods in class 9 will be purchased by members of the public or, possibly, by businesses, depending on their exact purpose. Either way, they do not strike me as particularly frequent purchases. The cost may not be particularly high, but neither would these be classed as low cost items. I consider it likely that an average level of care and consideration will be deployed, not materially higher or lower than the norm. The same applies to the goods in class 28, the average consumer could be educational establishments or parents buying the goods for their children. I consider an average level of care and attention to be applicable.

25. The goods will be encountered through a variety of medium such as websites, brochures, advertising matter. They may be selected from a shelf in a retail environment (or the online equivalent). This suggests that visual considerations are more important. However, the goods could be discussed with salespeople, so I do not ignore the aural significance of the marks.

Comparison of marks

26. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a 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 marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

27. 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.

28. The marks to be compared are:

Easi-Listener

v



29. Easi-Listener will be perceived as a complete phrase, neither word in the mark being particularly distinctive per se. Neither word dominates or has greater relative weight than the other. The distinctiveness lies in its totality. The same applies to easyMusic. It will be seen as a complete phrase with neither word dominating the other. Although the concept is slightly opaque, it creates a combination in which neither word stands as an independent element of the mark. The orange background has less relative weight in the overall impression than the word combination. The easy.com mark(s) will be perceived as a domain name, although, the word easy has greater relative weight on account of the manner of presentation. The oval and colour has less relative weight.

30. Visually, all the marks begin with the first three letters EAS-. Furthermore, the first element of the word combination in each of the marks is of four letters. The remainder of the marks differ significantly. I consider there to be a moderate level of visual similarity. Aurally, the first part of each of the marks will be articulated in the same way – EASI – but the rest of the marks differ LIST-EN-ER/MEW-SIC/DOT-COM. I consider there to be a moderate level of aural similarity. Conceptually, all of the marks evoke images of easiness or ease of use, even if the exact nature of that easiness is not clear. In the opponent's statement of case it submits that the applicant's mark is conceptually identical to its easyMusic mark. However, the focus of all the respective marks is on different things, or non specific things, i.e. some form of listening device (that is easy to use), some form of music (that is easy to use or easy to listen to) or just easy in general. The marks are not conceptually identical. I consider there to be a medium but not high level of conceptual similarity.

Distinctiveness character of the earlier marks

31. The degree of distinctiveness of the earlier marks must be assessed. This is because the more distinctive the earlier marks, based either on inherent qualities or because of use made, the greater the likelihood of confusion (see *Sabel BV v. Puma AG*, paragraph 24). In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

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

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

32. No evidence of use has been filed so I have only the inherent qualities of the earlier marks to consider. The applicant states that the word EASY lacks inherent distinctiveness. I have already observed that the earlier marks’ distinctiveness lies in their totalities not in the word EASY per se, which I consider to have little or no distinctiveness. The marks as a whole may be averagely distinctive, but it is the distinctiveness of the point of similarity that matters most⁵.

Likelihood of confusion

33. The factors assessed so far have a degree of interdependency (*Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, paragraph 17), a global assessment of them must be made when determining whether there exists a likelihood of confusion (*Sabel BV v. Puma AG*, paragraph 22). However, there is no scientific formula to apply. It is a matter of considering the relevant factors from the viewpoint of the average consumer and determining whether they are likely to be confused.

34. Even though some of the goods are identical (and the rest of the goods reasonably similar), and even though there is some similarity between the marks (as assessed earlier), I come to the view that there is no likelihood of confusion. The differences between the marks means that they will not be mistaken for one another; I consider the differences I have identified to be quite acute and not likely to be lost through imperfect recollection. In relation to indirect confusion, which relates to the an assumption on the part of the average consumer that the respective goods come from the same or an economically linked undertaking, the sharing of an element such as the word easi/easy will be put down to a simple co-incidental use of a word which is either lacking or has very little distinctiveness. The sharing of this word will not be put down to the goods coming from the same stable. There is no likelihood of confusion. This applies to both earlier marks.

⁵ See the decision of Mr Purvis in *Gurwitch Products LLC v Firm of ABX* BL O/229/13

Other earlier marks

35. The other earlier marks have the same basic structure as the easyMusic mark. I can see no better prospect for success in relation to the other earlier marks so I do not consider it necessary to discuss those marks further. **There is no likelihood of confusion with any of them.**

Costs

36. The applicant has succeeded and is entitled to a contribution towards its costs. The amount awarded below for considering the notice of opposition and the filing of a counterstatement is at the higher end of the scale as I consider the opponent to have over-pleaded its case; it filed multiple earlier marks when less would have done, and, despite giving an example of where the competing goods were similar, it nevertheless claimed (goods) similarity across the board. My assessment is as follows:

Preparing a statement and considering the other side's statement - £600

Written submissions (filed at the evidence stage) - £500

37. I therefore order EasyGroup IP Licensing Limited to pay RM plc the sum of £1100. This should be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 4th day of June 2015

**Oliver Morris
For the Registrar,
The Comptroller-General**

Annex – full details of earlier marks

i) Community trade mark 5140157 for the mark  which was filed on 15 June 2006 and registered on 31 May 2007 in respect of:

Class 12: Vehicles; apparatus for locomotion by land, air or water.

Class 36: Insurance including vehicle insurance; financial affairs; monetary affairs; real estate affairs.

Class 39: Transport; packaging and storage of goods; travel arrangement; vehicle rental and leasing

ii) CTM 5112115 for the mark  which was registered on 1 June 2006 and registered on 31 May 2007 in respect of:

Class 12: Vehicles; apparatus for locomotion by land, air or water.

Class 39: Transport including air travel, vehicle rental, driving and chauffeur services; packaging and storage of goods; travel arrangement.

Class 43: Services for providing food and drink; temporary accommodation

iii) CTM 8680125 for the mark **EASYFOOTBALL** which was filed on 26 October 2009 and registered on 31 May 2010 in respect of:

Class 9: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, supervision, life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin operated apparatus; cash registers; calculating machines, data processing equipment and computers; recorded media, computer hardware and firmware; computer software; software downloadable from the Internet; downloadable electronic publications; compact discs; digital music; telecommunications apparatus; computer games equipment adapted for use with an external display screen or monitor; mouse mats; mobile phone accessories; contact lenses, spectacles and sunglasses; computer software and hardware including that relating to betting, gaming, gambling, lotteries, quizzes, competitions, amusements, gaming machines, odds for betting; electronic publications; electronic number generators; electronic number terminals; calculators; cards bearing magnetic data.

Class 28: Scratch cards; game cards.

Class 38: Providing access to multiple user network systems allowing access to gaming, competition and betting information and services over the Internet and other global networks.

Class 41: Education; providing of training; entertainment; sporting and cultural activities; betting, gaming and gambling services; offering and compiling odds for betting; conducting lotteries; organising and conducting competitions, amusements, games, quizzes; all of the aforesaid services provided by means including on-line from a computer network, via mobile phones and other electronic and telecommunications means; information and advisory services relating to the aforesaid services.

The logo for 'easyMobile' features the word 'easy' in white lowercase letters and 'Mobile' in white uppercase letters, both set against a solid orange rectangular background.

iv) CTM 4300901 for the mark  which was filed on 21 March 2005 and registered on 15 April 2008

Class 9: Electric and electronic apparatus and instruments; telecommunications apparatus and instruments; telephones and mobile telephones and accessories including handsets, battery chargers, stands, hands-free devices, cases adapted for storing mobile telephones; computer hardware and software; optical, measuring, signalling, controlling or teaching apparatus and instruments; apparatus for recording, transmission, processing and reproduction of sound, images or data; machine run data carriers; automatic vending machines and mechanisms for coin operated apparatus; data processing equipment; parts and fittings for all of the aforesaid.

Class 38: Communication, telecommunication, broadcasting and message transmission services; mobile and fixed line telecommunication services; telephone connection services; provision of conference calling facilities; satellite communication services; transmission and reception of data and information; provision of access to the Internet; Internet services, namely, providing user access to the Internet (service providers), providing telecommunications connections to the Internet or databases, telecommunication of information (including web pages), computer programmes and other data; operation of search engines; email services; advisory and arrangement services relating to all the aforesaid; operation, rental and leasing of apparatus, instruments, equipment and components for all of the aforesaid; including, but not limited to, all the aforesaid services provided via telecommunications networks, by online delivery and by way of the Internet and the world wide web.

Class 42: Rental of access to computers

v) UK registration 2265184 for the marks:  which were filed on 22 March 2001 and registered on 22 February 2008 in respect of:

Class 9: Computer software; computer hardware; pre-recorded CD Roms and other disk carriers; sunglasses; but not including electronic games and amusement apparatus.

Class 16: Printed matter and publications; books, manuals, pamphlets, newsletters, brochures, albums, newspapers, magazines and periodicals; tickets, vouchers, coupons and travel documents; documents, tickets and publications, all relating to travel arranged by means of the world-wide web; travel documents folders; travel guide books; travellers cheques; playing cards; identity cards; labels and tags; posters, postcards, stationery, writing instruments, wrapping materials, calendars, diaries, photographs, gift cards and greetings cards; badges; teaching and instructional materials; promotional and advertising materials; signs of paper or cardboard.

Class 35: Advertising; business management; business administration; office functions; publicity, promotional services, import-export agency services, business information services, organising exhibitions for commercial or advertising purposes; auctioneering services; on-line processing of mail orders; advice and consultancy relating to the aforesaid services.

Class 36: Unsecured and secured personal loans, car financing, mortgages, ISA's and other investment funds, deposit accounts and credit card services; insurance services; monetary affairs, banking, banking services, real estate affairs; advice and consultancy relating to the aforesaid services.

Class 38: Communication services; providing access to information on line from a computer database or provided with facilities from the Internet; provision of access to the Internet (service providers); operating of search engines; providing access to the Internet or portal services.

Class 39: Transportation of goods, passengers and travellers by air; airport check-in services; arranging of transportation of goods, passengers and travellers by land; bus transport services, car transport services, coach services; airline services; baggage handling services; cargo handling and freight services; operating and providing facilities for tours; cruises, excursions and vacations; chartering of aircraft; rental and hire of vehicles, boats and aircraft; aircraft fuelling services, aircraft parking services; ambulance services; travel agency and tourist office services; advisory and information services relating to the aforesaid services; information services relating to transportation services, including information services provided on-line from a computer database or the Internet; travel reservation and travel booking services provided by means of the world-wide web.

Class 41: Information relating to entertainment and education, provided on-line from a computer database or the Internet; entertainment services

provided on-line from a computer database or the Internet; educational information provided on-line from a computer database or the Internet.

Class 42: Temporary accommodation; catering, hotel, restaurant, café and bar services; reservation services for hotel accommodation; provision of exhibition facilities; meteorological information services; hairdressing, grooming and beauty salon services; security services; airport security services; airline passenger security screening services; design of computer software; design, drawing and commissioned writing, all for the compilation of web pages on the Internet; posting, creating and maintaining websites for others; leasing access time to a computer database; hosting the web sites of others; compilation, creation and maintenance of a register of domain names.

vi) CTM 9802646 for the mark **EASYGYM** which was filed on 11 March 2011 and registered on 22 August 2011 in respect of:

Class 3: Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions, dentifrices; aftershave lotions; toiletries; antiperspirants; beauty masks; astringents for cosmetic purposes; breath freshening sprays; cosmetics; cosmetic kits; depilatories; hair lotions; hair spray; shampoos; shaving preparations; soap; nail varnish; varnish removing preparations.

Class 5: Pharmaceutical and veterinary preparations; sanitary preparations for medical purposes; dietetic substances adapted for medical use; food for babies; plasters; materials for dressings, materials for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides; herbicides; dietetic beverages adapted for medical purposes; dietetic foods adapted for medical purposes; medical preparations for slimming purposes; vitamin preparations; vitamins; vitamin drinks; preparations for weight control; health food supplements; dietary supplements.

Class 28: Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees; toys; bar-bells; body building apparatus; body training apparatus; fitness apparatus; appliances for gymnastics; physical exercise machines; body rehabilitation apparatus; indoor football tables; table tennis tables.

Class 35: Advertising; business management; business administration; office functions; the bringing together for the benefit of others of cosmetics, cosmetic kits, toiletries, perfumes, hair lotions, dentifrices, aftershave lotions, antiperspirants, beauty masks, hair spray, shampoos, shaving preparations, soap, nail varnish, tanning lotions, pharmaceutical preparations, baby food, plasters, vitamin preparations, vitamins, vitamin drinks, preparations for weight control, health food, health supplements, dietary supplements, toys, games, playthings, sporting articles, bar-bells, body-building apparatus, body training apparatus, fitness apparatus, fitness equipment, sports clothing,

leotards, sports shorts, sports T-shirts, polo shirts, baseball caps, sports shoes, training shoes, swimming costumes, swimming goggles, nose clips for use in swimming, ear plugs for use in swimming, tennis racquets, squash racquets, tennis balls, squash balls, towels, robes, enabling customers to conveniently view and purchase those goods; advice relating to the business management of health clubs; advice relating to the business operation of health clubs.

Class 41: Education; providing of training; sporting and cultural activities; fitness instruction and tuition; group fitness and exercise classes; personal training services; provision of gymnasium facilities; gymnasium services relating to body building; gymnasium services relating to weight training; life coaching services; education relating to nutrition; provision of educational information relating to fitness, exercise, diet, health and nutrition; entertainment services; entertainment information services; health club services; gymnasium services; gymnasium club services; nutrition coaching; weight management coaching; organisation of sports competitions; physical education services; providing sports facilities; provision of recreation facilities; rental of sports equipment; rental of tennis courts; arranging and conducting workshops; advisory, consultancy and information services relating to all the aforesaid services.

Class 44: Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services; hairdressing salons; aromatherapy services; health care; health spa services; physical therapy; physiotherapy; sauna services; solarium services; health assessment and health risk assessment services; provision of medical referral services; fitness testing services; counselling services relating to health, fitness, diet and nutrition; provision of weight control and weight reduction programmes.



vii) UK registration 2325850 for the marks   which were filed on 6 March 2003 and registered on 28 September 2007 in respect of:

Class 3: Preparations and substances for use in the care and appearance of the hair, scalp, lips, face, skin, teeth, nails and eyes; cosmetics; non-medicated toilet preparations; perfumes, fragrances, colognes and scents; soaps and cleaning preparations; shampoos, conditioners, moisturisers and rinses; tooth cleaning preparations; depilatory preparations; sun-screening and tanning preparations; polishing preparations, dentifrices, bleaching preparations, hair lotions, anti-perspirants, deodorisers and deodorants, cotton wool; essential oils; preparations and substances for use in massage and aromatherapy, scouring and abrasive preparations.

Class 6: Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal

hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores.

Class 9: Communications, photographic, measuring, signalling, checking, scientific, optical, nautical, life-saving and surveying apparatus and instruments; consumer domestic electrical and electronic apparatus and instruments, namely, battery chargers, camcorders, cameras, cassette players, compact disc players, compact discs, computers, computer printers, disk drives for computers, floppy discs, headphones, loud speakers, modems, computer monitors, computer mouse, personal stereos, pocket calculators, mobile phones, radios, record players, scanners, stereos, tape recorders, televisions, video players, video cassettes, VDUs, DVDs, DVD players and CD Roms; computer software, hardware and firmware; computer games software; apparatus, instruments and media for recording, reproducing, carrying, storing, processing, manipulating, transmitting, broadcasting and retrieving publications, text, signals, software, information, data, code, sounds and images; audio and video recordings; audio recordings, video recordings, music, sounds, images, text, publications, signals, software, information, data and code provided via telecommunications networks, by online delivery and by way of the Internet and the world wide web; sound and video recordings; sound and video recording and playback machines; coin freed apparatus; arcade games; televisions and television games apparatus and instruments; photographic and cinematographic films prepared for exhibition; photographic transparencies, non-printed publications; educational and teaching apparatus and instruments; electronic, magnetic and optical identity and membership cards; sunglasses and sunvisors; mouse mats; protective clothing and headgear; parts and fittings for all the aforesaid goods.

Class 12: Scooters, bicycles, vehicles, apparatus for locomotion by land, air or water.

Class 14: Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewellery, precious stones; horological and chronometric instruments.

Class 16: Printed matter and publications; paper; adhesives for stationery or household purposes, office requisites, wrapping and packaging material; books, manuals, pamphlets, newsletters, albums, newspapers, magazines and periodicals; tickets, vouchers, coupons and travel documents; identity cards; labels and tags; posters, postcards, calendars, diaries, photographs, gift cards and greeting cards; teaching and instructional materials; stationery, artists' materials, writing instruments, brochures, travel document folders, guide books, travellers cheques, badges, promotional and advertising material, signs of paper or cardboard.

Class 18: Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.

Class 28: Games and playthings; toys; gymnastic and sporting articles; decorations for Christmas trees, model aeroplanes, scooters, teddy bears, balls, golf balls, playing cards.

Class 29: Prepared meals; snacks and snack foods, meat, fish, poultry, edible oils and fats, eggs, milk and milk products, jellies, jams, compotes, fruit sauces; preserved, dried and cooked fruits and vegetables; game, meat extract, compotes.

Class 30: Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread and pastry; honey, treacle; yeast, baking powder; salt, mustard; vinegar, sauces; condiments; spices; prepared foods and meals; snacks and snack foods; confectionery; ices; chocolate.

Class 31: Agricultural, horticultural and forestry products and grains; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals, malt.

Class 32: Mineral and aerated waters; beers; non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.

Class 33: Alcoholic drinks (except beer); wines, spirits, liqueurs and cocktails.

Class 35: Advertising, marketing and publicity services; dissemination of advertising, marketing and publicity materials; business organisation, business administration and business management services, business information services, auctioneering services, office functions, promotional services; import-export agency services, business and management consultancy, assistance and advice; purchasing and demonstration of goods for others; hotel management services; the bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods in a general merchandising outlet, general merchandise kiosk, general merchandise shop onboard aircraft, or from a general merchandise catalogue, by mail order, or by means of telecommunications; advisory and arrangement services relating to all the aforesaid; including, but not limited to, all the aforesaid services provided via telecommunications networks, by online delivery and by way of the Internet and the world wide web.

Class 36: Financial and insurance services; monetary affairs, banking, banking services, real estate affairs; rental of offices, leasing of office space, letting of office space; advice and consultancy relating to the aforesaid services.

Class 38: Communication, telecommunication, broadcasting and message transmission services; provision of access to the Internet; Internet services, namely, providing user access to the Internet (service providers), providing telecommunications connections to the Internet or databases, telecommunication of information (including web pages), computer programmes and other data; email services; advisory and arrangement

services relating to all the aforesaid; including, but not limited to, all the aforesaid services provided via telecommunications networks, by online delivery and by way of the Internet and the world wide web.

Class 39: Transportation of goods, passengers and travellers by air; airline and shipping services; airport check-in services; arranging of transportation of goods, passengers and travellers by land and sea; airline services; bus transport services, car transport services, coach services, baggage handling services; cargo handling and freight services; arranging, operating and providing facilities for cruises, tours, excursions and vacations; chartering of aircraft; rental and hire of aircraft, vehicles and boats; storage services, packaging services; rental of storage containers; aircraft parking services; aircraft fuelling services, travel reservation and travel booking services provided by means of the world wide web, information services concerning travel, including information services enabling customers to compare prices of different companies; travel agency and tourist office services; advisory and information services relating to the aforesaid services; information services relating to transportation services, including information services provided on-line from a computer database or the Internet.

Class 41: Information relating to entertainment and education, provided on-line from a computer database or the Internet; entertainment services provided on-line from a computer database or the Internet; educational information provided on-line from a computer database or the Internet; entertainment services, education services, publishing services, production, editing and rental of sound and video recordings and films, organising games and competitions, instructional services, rental of consumer domestic electric and electronic goods, namely, rental of amusement machines, audio and visual apparatus and equipment, camcorders, compact disc players and compact discs, fruit machines, cassette players, cassette recorders, cassette tapes, audio tapes, video cameras, video cassettes, video discs, video tapes, CD-Roms, radio sets, television sets and computer monitors, rental of toys, games and playthings; providing training; sporting and cultural activities, gymnasium services, audio recording services, distribution and hire of sound and/or video recording apparatus, provision of recording studio facilities, recording of music; production of optical discs, masters and record masters; kindergarten services.

Class 42: Meteorological information services; consultancy, development, advice, assistance, analysis, design, evaluation and programming services relating to computer software, firmware, hardware and information technology; provision of access to computers, namely, computer rental and leasing access time to a computer database (other than by Internet services providers); rental of consumer domestic electric and electronic goods, namely, rental of computers, computer hardware, computer software, computer apparatus and equipment; design, drawing and commissioned writing, all for the compilation of web pages on the Internet; posting, creating and maintaining websites for others; Internet café services, namely, renting computers and leasing access time to computers; consultancy and advice relating to the evaluation, choosing and implementation of computer software,

firmware, hardware, information technology and of data-processing systems; duplication of computer software. recovery of computer data; rental and licensing of computer software, firmware and hardware; provision of information relating to technical matters, legal matters, information technology, and intellectual property; scientific and technological services and research and design relating thereto, industrial analysis and research services, legal services; including but not limited to, all the aforesaid services provided via telecommunications networks, by online delivery and by way of the Internet and the world wide web.

Class 43: Temporary accommodation; provision of food and drink; catering; hotel, restaurant, café and bar services; hotel reservation services; nursery and creche services; hotel services for the provision of facilities for exhibitions; providing facilities for exhibitions and conferences.

Class 45: Security services for the protection of property and individuals; namely, concierge services for others comprising making requested personal arrangements and providing customer specific information to meet the needs of individuals, consultancy services relating to personal appearance, personal introduction agency services, consultancy services relating to social planning; counselling; investigation services, escort services; funeral services.

The logo for 'easyMusic' is displayed in white text on a red rectangular background.

viii) CTM 3088366 for the mark  which was filed on 4 March 2003 and registered on 27 June 2008

Class 9: Communications, photographic, measuring, signalling, checking, scientific, optical, nautical, life-saving and surveying apparatus and instruments; consumer domestic electrical and electronic apparatus and instruments, namely, battery chargers, camcorders, cameras, cassette players, compact disc players, compact discs, computers, computer printers, disk drives for computers, floppy discs, headphones, loud speakers, modems, computer monitors, computer mouse, personal stereos, pocket calculators, mobile phones, radios, record players, scanners, stereos, tape recorders, televisions, video players, video cassettes, VDUs, DVDs, DVD players and CD Roms; computer software, hardware and firmware; computer games software; apparatus, instruments and media for recording, reproducing, carrying, storing, processing, manipulating, transmitting, broadcasting and retrieving publications, text, signals, software, information, data, code, sounds and images; audio and video recordings; audio recordings, video recordings, music, sounds, images, text, publications, signals, software, information, data and code provided via telecommunications networks, by online delivery and by way of the Internet and the world wide web; sound and video recordings; sound and video recording and playback machines; coin freed apparatus; arcade games; televisions and television games apparatus and instruments; photographic and cinematographic films prepared for exhibition; photographic transparencies, non-printed publications; educational and teaching apparatus and instruments; electronic, magnetic and optical identity and membership

cards; sunglasses and sunvisors; mouse mats; protective clothing and headgear; parts and fittings for all the aforesaid goods.

Class 40: Treatment of materials, duplicating of tape recordings, material treatment of recording media, electronic recording of sounds and/or images, duplicating of video recordings, recording services.

Class 41: Information relating to entertainment and education, provided on-line from a computer database or the Internet; entertainment services provided on-line from a computer database or the Internet; educational information provided on-line from a computer database or the Internet; entertainment services, education services, publishing services, production, editing and rental of sound and video recordings and films, organising games and competitions, instructional services, rental of consumer domestic electric and electronic goods, namely, rental of amusement machines, audio and visual apparatus and equipment, camcorders, compact disc players and compact discs, fruit machines, cassette players, cassette recorders, cassette tapes, audio tapes, video cameras, video cassettes, video discs, video tapes, CD-Roms, radio sets, television sets and computer monitors, rental of toys, games and playthings; providing training; sporting and cultural activities, gymnasium services, audio recording services, distribution and hire of sound and/or video recording apparatus, provision of recording studio facilities, recording of music; pressing and production of optical discs, masters and record masters.

Class 42: Non-business professional consultancy; meteorological information services; consultancy, development, advice, assistance, analysis, design, evaluation and programming services relating to computer software, firmware, hardware and information technology; provision of access to computers, namely, computer rental and leasing access time to a computer database (other than by Internet services providers); rental of consumer domestic electric and electronic goods, namely, rental of computers, computer hardware, computer software, computer apparatus and equipment; design, drawing and commissioned writing, all for the compilation of web pages on the Internet; posting, creating and maintaining websites for others; leasing access time to a computer database, Internet café services, namely, renting computers and leasing access time to computers; consultancy and advice relating to the evaluation, choosing and implementation of computer software, firmware, hardware, information technology and of data-processing systems; duplication of computer software, recovery of computer data; rental and licensing of computer software, firmware and hardware; provision of information relating to technical matters, legal matters, information technology, and intellectual property; scientific and technological services and research and design relating thereto, industrial analysis and research services, legal services; including but not limited to, all the aforesaid services provided via telecommunications networks, by online delivery and by way of the Internet and the world wide web.