

0/052/19

TRADE MARKS ACT 1994

IN THE MATTER OF INTERNATIONAL REGISTRATION NO.

1363697

FOR THE TRADE MARK:

**BLUTV**

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 411295

## **Background and pleadings**

1. International registration number 1363697 **BLUTV**, in the name of BluTV İletişim ve Dijital Yayın Hizmetleri Anonim Şirketi (“the holder”) was registered on 2 February 2017, with the UK designated on the same date.<sup>1</sup> It was published on 6 October 2017 in respect of the following goods and services:

Class 9: Measurement apparatus, equipment and indicators including those for scientific and laboratory use, laboratory equipment and apparatus, apparatus for recording, transmission or reproduction of sound or images, data processing apparatus, telecommunication apparatus, sound or image reproducing apparatus, computer peripheral devices, magnetic and optic data carriers and computer software and programmes recorded thereto, downloadable electronic publications, electronic publications recorded on computer media, encoded magnetic and optic cards, antennas, satellite antennas, amplifiers for antennas, parts of the aforementioned goods, ticket dispensers, automatic teller machines (ATM), electronic components used in the electronic parts of machines and apparatus, counters and quantity indicators for measuring the quantity of consumption, automatic time switches, clothing for protection against accidents, irradiation and fire, safety vests and life-saving apparatus and equipment, eyeglasses, sunglasses, optical lenses and cases, containers for contact lenses, parts and components thereof, apparatus and instruments for conducting, transforming, accumulating or controlling electricity, electric cables and electrical power supplies, batteries, electric accumulators, alarms and anti-theft alarms, other than for vehicles, electric bells, signalling apparatus and instruments, luminous or mechanical signs for traffic use, fire extinguishing apparatus, fire engines, fire hose and fire hose nozzles, radar apparatus, sonars, night vision apparatus and instruments, decorative magnets, metronomes.

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<sup>1</sup> Originally in the name of Mozak İletişim Hizmetleri Anonim Şirketi, the transfer of ownership was notified to the tribunal on 27 September 2018. It was confirmed at the hearing that the current holder adopts the pleadings and accepts liability for costs.

Class 38: Radio and television broadcasting services, telecommunication services, providing access to internet, news agencies.

2. A notice of opposition was filed by O2 Worldwide Limited (“the opponent”). The opposition is based upon s. 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and is directed against all of the goods and services in the application.

3. The opponent relies upon the following trade marks, the relevant specifications of which can be found in full in the appendix to this decision:

(i) European Union trade mark (“EUTM”) number 16057002 **BLUE**

Filing date: 19 November 2016; date of entry in register: 22 November 2017

Registered in classes 9, 35, 38 and 42. All of the goods and services for which the mark is registered are relied upon;

(ii) UK trade mark number 2647617 **BLUE DOOR**

Filing date: 3 January 2013; date of entry in register: 14 June 2013

Registered in classes 9, 35, 36, 38, 41, 42 and 45. The opponent relies upon all of the goods and services in classes 9, 35, 38, 41 and 42;

(iii) UK trade mark number 3197455 **BLUEROOM / BLUE ROOM** (series of two)

Filing date: 18 November 2016; date of entry in register 10 February 2017

Registered in classes 9, 35, 36, 38, 41, and 42. All of the goods and services in classes 9, 35, 38, 41 and 42 are relied upon;

(iv) UK trade mark number 3003477 **THE BLUE**

Filing date: 24 April 2013; date of entry in register: 13 December 2013

Registered in classes 9, 16, 35, 36, 38, 41, 42 and 45. All goods and services in classes 9, 35, 38, 41 and 42 are relied upon.

4. The opponent claims that the marks are highly similar and that the goods and services are identical, which will result in a likelihood of confusion, including the likelihood of association.

5. The holder filed a counterstatement in which it denies the basis of the opposition. It claims that there are noticeable visual, aural and conceptual differences between the marks at issue. It claims that “BLUE” is both extremely common in trade marks and that it has a low level of inherent distinctive character. As a consequence, it claims that even minor differences will be sufficient to avoid confusion between the trade marks concerned.

6. Given their dates of filing, all of the opponent’s marks are earlier trade marks in accordance with s. 6 of the Act. None of the marks had been registered for five years or more at the date on which the opposed applications were published. They are not, therefore, subject to the proof of use provisions contained in s. 6A of the Act and the opponent may rely upon all of the goods and services it has identified without showing that it has used its marks.

7. Neither party filed evidence, although the holder did file written submissions during the evidence rounds, which I will take into account. A hearing took place before me on 19 December 2018, by videoconference, at which the opponent was represented by Claire Breheny of Stobbs IP and the holder by Graeme Murray of WP Thompson.

### **My approach**

8. Ms Breheny indicated both in her skeleton argument and at the hearing that the opponent’s best case was in respect of its BLUE and THE BLUE trade marks, on which she focused her submissions. As the other marks are clearly less similar to the applied-for mark and unlikely to succeed where the BLUE and THE BLUE marks fail, this is a sensible approach and one I will follow.

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

9. The opposition is based upon s. 5(2)(b) of the Act, which reads 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”.

10. 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:

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

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

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

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

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

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

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

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

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

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

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

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

## **Comparison of goods and services**

11. Mr Murray accepted at the hearing that the contested goods and services are either identical or highly similar to those of the earlier marks. However, whilst keeping that concession in mind, I must determine which goods and services are identical, and which only similar. When making the comparison, all relevant factors relating to the goods and services in the specification should be taken into account. In *Canon*, the Court of Justice of the European Union (“CJEU”) stated at paragraph 23 of its judgment:

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

12. Guidance on this issue has also come from Jacob J. (as he then was) *British Sugar Plc v James Robertson & Sons Ltd* (the *Treat* case), [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;

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

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

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

13. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court stated that:

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 Institut fur 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”.

14. It is permissible to group terms together in making the comparison, if the considerations are similar: *Separode Trade Mark* BL O/399/10.

15. In approaching the question of similarity between the goods and services, I bear in mind the following guidance from *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), where Floyd J. (as he then was) stated that:

“[...] 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) (IP TRANSLATOR)* [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”.

16. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the General Court (“GC”) stated that “complementary” means:

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

## Class 9

*Data processing apparatus, computer peripheral devices, magnetic data carriers and computer software and programmes recorded thereto, downloadable electronic publications, clothing for protection against accidents, irradiation and fire, life-saving apparatus and equipment*

17. All of these goods are identical to goods covered by the earlier specifications, either because the identical terms are contained in the specifications or, where the wording is

not identical, because they are different ways of describing the identical goods. In respect of UK 3003477, there is one exception, namely “computer peripheral devices”, which is covered instead under *Meric* by “computer hardware”.

*Measurement apparatus, equipment and indicators including those for scientific and laboratory use, laboratory equipment and apparatus, counters and quantity indicators for measuring the quantity of consumption, eyeglasses, sunglasses, optical lenses and cases, containers for contact lenses, alarms and anti-theft alarms, other than for vehicles, electric bells, signalling apparatus and instruments, luminous or mechanical signs for traffic use, radar apparatus, sonars, night vision apparatus and instruments, metronomes*

18. These terms have identical counterparts in the earlier specifications and/or are identical under *Meric*, being included within the earlier “scientific, nautical, photographic, optical, surveying, weighing, measuring, signalling, checking (supervision), apparatus and instruments”.

*Apparatus for recording, transmission or reproduction of sound or images, telecommunication apparatus, sound or image reproducing apparatus, antennas, satellite antennas, amplifiers for antennas*

19. These goods are identical, or are identical on the principle in *Meric*, to “telecommunications apparatus” in the earlier specifications.

*Optic data carriers and programmes recorded thereto, encoded magnetic and optic cards*

20. The earlier specifications include “magnetic cards; encoded cards”. The earlier specifications also include “computer hardware” and “computer software”, which encompass all of the above, and which are, therefore, identical on the basis outlined in *Meric*.

*Ticket dispensers; automatic teller machines (ATM)*

21. “Ticket dispensers” include machines such as car parking ticket dispensers, which record information such as time and date, as well as vehicle registration, before calculating the period for which the ticket is valid or how much money is due. ATMs enable a consumer to view the money in their account, transfer money and make withdrawals, which are recorded against their account. Accordingly, I consider that these goods are types of data processing equipment/apparatus in the broadest sense and are identical under *Meric* to these terms in the earlier specifications.

*Apparatus and instruments for conducting, transforming, accumulating or controlling electricity, electric cables and electrical power supplies, batteries, electric accumulators, electronic components used in the electronic parts of machines and apparatus, automatic time switches*

22. These goods have identical counterparts in the earlier specifications or, when that is not the case, are identical under *Meric* to the earlier marks’ “apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; parts and fittings for all the aforesaid goods”.

*Safety vests*

23. I see no reason, in the absence of evidence on the point, why a “safety vest” would be restricted to, for example, a high visibility vest and would not cover protective vests more widely. On that basis, these goods are included within “protective clothing” in the earlier specifications and are identical based on the principle in *Meric*. If that is not right, they are highly similar, both being intended for protection but differing slightly in their specific purpose and nature while sharing users, method of use, channels of trade and being in competition.

*Fire extinguishing apparatus, fire engines, fire hose and fire hose nozzles*

24. These goods are identical to “fire-extinguishing apparatus; parts and fittings for all the aforesaid goods”, both literally and on the basis outlined in *Meric*.

*Decorative magnets*

25. These are contained within the broader “magnets”. The goods are identical.

*Electronic publications recorded on computer media*

26. These goods are highly similar to “downloadable electronic publications”/“electronic publications (downloadable)”. Whilst there is some difference in nature and, potentially, method of use, one being recorded and the other downloadable, aside from the method of obtaining the publication there is overlap in both of these aspects of the goods. They are identical in purpose and users, are likely to share channels of trade and are in competition, though they are unlikely to be complementary, as defined in the case law.

*Parts and components*

27. The contested specification includes parts and components of a range of the goods in the specification. The earlier specifications include “parts and fittings” for all of the goods covered. These terms are similar to the extent identified above for the goods themselves.

28. I have not overlooked the limitation to the specification of EUTM 16057002, namely “none of the aforesaid goods being microphones or microphone cables”. Whilst some of the contested terms are, in theory, broader than the earlier specification and may include goods which are excluded from the earlier specification (for example, “apparatus for recording sound” includes microphones), the goods are still highly similar, coinciding

in purpose, users and being in competition and/or complementary, even if they are not identical in nature and method of use.

### Class 38

29. The contested specification is “radio and television broadcasting services, telecommunication services, providing access to internet, news agencies”. In class 38, news agency services are a type of telecommunication service, concerned with the transmission of information rather than, for example, publishing or reporting services. As a consequence, the contested specification in class 38 is encompassed by the earlier marks’ “telecommunications services” and the services are identical on the principle outlined in *Meric*.

### **The average consumer and the nature of the purchasing act**

30. It is necessary for me to determine both who the average consumer is for the respective parties’ goods and services and the manner in which these goods and services are likely to be selected by the average consumer in the course of trade. 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”.

31. Ms Breheny argued that the average consumer of the goods and services at issue will be either a member of the general public or a specialist consumer. The opponent submits that a reasonable level of attention will be paid to the purchase, even in the case of specialist laboratory equipment, since those terms also cover goods such as beakers and pipettes. Ms Breheny also stressed the role of telephone selling in the purchasing process.

32. Mr Murray submitted that the services in class 38 will be purchased with a high level of attention. The goods in class 9 would, in the main, be purchased with a lower level of attention than the services.

33. At this point of the decision, I would normally identify the average consumer of the products, their traits and the nature of the purchasing act. However, the goods in class 9 cover a wide range of different products, which will vary in terms of both the average consumer and the level of attention which will be paid to the purchase. I do not, therefore, propose to comment in detail on the average consumer here; rather, I will return to the average consumer when I consider the likelihood of confusion.

### **Comparison of trade marks**

34. 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.

35. 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”.

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

37. The trade marks to be compared are as follows:

<b>Earlier trade marks</b>	<b>Contested trade mark</b>
BLUE  THE BLUE	BLUTV

38. Ms Breheny submitted that the average consumer will separate the contested trade mark into the two elements “BLU” and “TV”, and that “TV” is weakly distinctive or descriptive of many of the goods and services at issue. She submitted that the consumer is well used to seeing common misspellings and would recognise the colour blue within the contested mark. In respect of the THE BLUE mark, Ms Breheny submits that “THE” may be disregarded but will in any event be given little weight, and draws my attention to a previous decision of this tribunal which found the mark to be dominated by the word “BLUE”.<sup>2</sup>

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<sup>2</sup> BL O/506/17.

39. Mr Murray submitted that the omission of the letter “E” from the word “BLUE” and the inclusion of the letters “TV” increase the dissimilarity between the marks. In contrast with the opponent’s position, Mr Murray argued that the consumer will not dissect out the “TV” element of the contested mark, which will be perceived as a neologism with no conceptual meaning.

40. The overall impression of the BLUE mark is contained within the single word that is the entirety of the mark.

41. I do not consider that, in THE BLUE, the word “THE” will be altogether disregarded. However, whilst the mark will be read as a phrase, “THE” is clearly lower in distinctiveness than the word “BLUE”, which plays a greater role in the overall impression.

42. As for the contested BLUTV, the overall impression will be of the string “BLUTV”. However, the consumer is likely to recognise the very common abbreviation “TV” within the mark.

(i) BLUE v BLUTV

43. From a visual perspective, the earlier mark is four letters long, compared with the contested mark’s five letters. Both marks share the same initial letters “BLU” but there is a difference at the end of the marks, due to the differing letters “E” and “TV”. Overall, there is a medium degree of visual similarity.

44. The earlier mark will be articulated entirely predictably as the well-known word “blue”. The later mark, if it is articulated, is most likely to be verbalised as “BLOO-TEE-VEE”. There is, therefore, a medium degree of aural similarity.

45. The earlier mark clearly conveys the concept of the colour blue. As regards BLUTV, it is likely that the consumer will recognise the two elements “BLU” and “TV” within the



mark. The consumer is likely to view “BLU” as a misspelling of the colour “BLUE”, which concept it will convey and which is shared with the earlier mark. “TV” is likely to be read as the very common abbreviation of television. However, for some of the contested goods and services, “TV” is highly suggestive or non-distinctive. Therefore, for some goods and services, the only conceptual difference will be a non-distinctive difference arising from “TV”; for some goods, however, “TV” will convey a concept which is distinctive and therefore there is a greater degree of conceptual difference.

(ii) THE BLUE v BLUTV

46. There is less visual and aural similarity between these marks than those discussed above, due to the additional word “THE” in the earlier mark, which will be both noticed in the visual comparison and articulated as part of the mark. Overall, and whilst keeping in mind my assessment of the overall impression, there is a fairly low degree of visual and aural similarity.

47. Conceptually, the introduction of the word “THE” in the earlier mark changes the quality of the concept of “BLUE” a little but the colour is still evoked. The mark BLUTV will be perceived in the same way as described above and there will, therefore, be some conceptual similarity but a greater degree of distinctive conceptual difference where “TV” is not meaningful in respect of the goods at issue.

**Distinctive character of the earlier trade mark**

48. The distinctive character of the earlier marks must be assessed, as the more distinctive the earlier marks, either inherently or through use, the greater the likelihood of confusion (*Sabel* at [24]). In *Lloyd Schuhfabrik*, the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify

the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, 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)".

49. There is no claim that the earlier marks enjoy an enhanced distinctive character. Ms Breheny submits that the earlier marks are very distinctive. The holder maintains that "BLUE" has a low level of inherent distinctiveness, as it is simply the name of a colour. In that regard, with its counterstatement the holder filed the result of a search of trade marks, in which over 1,000 marks containing or similar to "blue" were returned. Mr Murray asks that I take this into account.

50. It is now well established that "state of the register" evidence is of little or no assistance in showing that a word's distinctiveness should be considered weakened. In *Zero Industry Srl v OHIM*, Case T-400/06, the General Court stated that:

"73. As regards the results of the research submitted by the applicant, according to which 93 Community trade marks are made up of or include the word 'zero', it should be pointed out that the Opposition Division found, in that

regard, that ‘... there are no indications as to how many of such trade marks are effectively used in the market’. The applicant did not dispute that finding before the Board of Appeal but none the less reverted to the issue of that evidence in its application lodged at the Court. It must be found that the mere fact that a number of trade marks relating to the goods at issue contain the word ‘zero’ is not enough to establish that the distinctive character of that element has been weakened because of its frequent use in the field concerned (see, by analogy, Case T-135/04 GfK v OHIM – BUS(Online Bus) [2005] ECR II-4865, paragraph 68, and Case T-29/04 Castellblanch v OHIM – Champagne Roederer (CRISTAL CASTELLBLANCH) [2005] ECR II-5309, paragraph 71”).

51. In the instant case, the document provided by the holder (which is not in proper evidential format in any event) only shows that many marks registered in classes 9 and 38 include “blue” or a word similar to “blue”. It does not show the marks themselves, nor how they are used in the market. Thus, even if the search results are taken into account, they can have no effect.

52. Colours are, however, not inherently very distinctive, particularly for goods, given their propensity to describe the colour of products. Nevertheless, the earlier marks are registered marks and I must accord them a minimum degree of distinctive character.<sup>3</sup> For the goods at issue, the BLUE mark is inherently distinctive only to a low degree. For the services, it is a stronger mark and distinctive to a medium degree.

53. I am not persuaded that the position regarding THE BLUE is different from that elaborated above. THE BLUE is liable to suggest a characteristic of goods and is inherently distinctive to a low degree. For services, where it is not allusive of a characteristic, it has a medium degree of inherent distinctive character.

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<sup>3</sup> See *Formula One Licensing BV v OHIM*, Case C-196/11P, at [41]-[44].

## Likelihood of confusion

54. There is no simple formula for determining whether there is a likelihood of confusion. The factors considered above have a degree of interdependency (*Canon* at [17]). I must make a global assessment of the competing factors (*Sabel* at [22]), considering the various factors from the perspective of the average consumer and deciding whether the average consumer is likely to be confused. In making my assessment, I must keep in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he has retained in his mind (*Lloyd Schuhfabrik* at [26]).

55. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other. The concept of indirect confusion was explained by Iain Purvis Q.C., sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10 as follows:

“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”.

56. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, James Mellor Q.C., sitting as the Appointed Person, stressed that a finding of indirect confusion should not

be made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark. This is mere association not indirect confusion.

57. For all of the goods and services at issue, the purchase is likely to be dominated by visual considerations, resulting from viewing the goods and services in retail premises, on websites or in catalogues, or from having inspected marketing material in print and online. I have considered Ms Breheny's submission regarding the role of telephone marketing. However, whilst I accept that there may be an aural component to the purchase, I do not consider that it is more important than the visual aspect. I will consider first the goods at issue in class 9, grouping them as I deem appropriate.

*Apparatus for recording, transmission or reproduction of sound or images, telecommunication apparatus, sound or image reproducing apparatus, computer peripheral devices, magnetic and optic data carriers and computer software and programmes recorded thereto, encoded magnetic and optic cards, antennas, satellite antennas, amplifiers for antennas, parts of the aforementioned goods, parts and components thereof, apparatus and instruments for conducting, transforming, accumulating or controlling electricity, electric cables and electrical power supplies.*

58. The average consumer of these goods will be either a member of the public or a professional or specialist. Although the level of attention will vary across the category, these goods will, in my view, be purchased with a medium to reasonably high level of attention, as a result of the consumer wishing to ensure, for example, compatibility with existing systems, image/sound quality or fitness for purpose. They are all goods which are closely related to or may obviously be adapted for use with televisions and for which the "TV" element in the later mark is likely to be given little or no trade mark significance. Even bearing in mind the weak distinctiveness of the earlier marks and in circumstances where a reasonably high level of attention is paid to the purchase, the conceptual similarities, not countered by a distinctive difference in the contested mark, are liable to cause the consumer to misremember the marks and be directly confused,

in respect of both of the earlier marks. I have not overlooked the fact that the later mark contains “BLU” not “BLUE”, or that one of the earlier marks contains “THE” but these differences are insufficient to mitigate against the effects of imperfect recollection. Even if the differences are recalled, where the consumer is aware that the marks are not the same, given that “TV” is non-distinctive for the above goods, the consumer is likely to believe that the contested mark is a variant mark or a sub-brand of the earlier mark and that the respective undertakings are economically connected. There is a likelihood of indirect confusion.

*Measurement apparatus, equipment and indicators including those for scientific and laboratory use, laboratory equipment and apparatus, data processing apparatus, downloadable electronic publications, electronic publications recorded on computer media, parts of the aforementioned goods, ticket dispensers, automatic teller machines (ATM), electronic components used in the electronic parts of machines and apparatus, counters and quantity indicators for measuring the quantity of consumption, automatic time switches, clothing for protection against accidents, irradiation and fire, safety vests and life-saving apparatus and equipment, eyeglasses, sunglasses, optical lenses and cases, containers for contact lenses, parts and components thereof, batteries, electric accumulators, alarms and anti-theft alarms, other than for vehicles, electric bells, signalling apparatus and instruments, luminous or mechanical signs for traffic use, fire extinguishing apparatus, fire engines, fire hose and fire hose nozzles, radar apparatus, sonars, night vision apparatus and instruments, decorative magnets, metronomes.*

59. The above goods will be purchased by both members of the public and by professionals or specialists. Again, the level of attention will vary but they will, in my view, be purchased with at least a medium level of attention; some, such as fire engines, will require greater outlay and technical capability and will be purchased with a high level of attention. Importantly, however, for these goods “TV” is distinctive. Bearing in mind the low level of distinctiveness of the earlier marks, coupled with the level of attention, I do not consider that there is a likelihood of confusion, whether direct or indirect. The consumer may not be able to recall with precision what the respective

marks are but I consider that the differences, including the distinctive conceptual difference introduced by “TV”, are sufficient to avoid confusion, if not mere association. There is no likelihood of confusion, whether direct or indirect, for these goods.

60. Turning then to class 38, all of the contested services may be purchased by the general public or by professionals. They are likely to be subject to a reasonably high level of attention in the purchasing process, given that, for example, substantial outlay or contracts may be involved. They are also services in relation to which “TV” has little or no distinctiveness. My comments at paragraph 58 regarding the lack of distinctiveness of the element “TV” and the inability of the consumer to distinguish, once the effects of imperfect recollection are borne in mind and notwithstanding the higher than average level of attention, are equally applicable here. In relation to the services at issue, however, the opponent is in an even stronger position, due to the medium level of distinctiveness of its earlier marks. There is a likelihood of confusion in respect of all of the services in class 38.

61. I have proceeded on the basis of the best case identified by the opponent and on which I was addressed. I indicated, above, that the remaining earlier marks are less similar to the contested mark; I do not see that the opponent’s position would be improved were its other marks to be considered. The irresistible inference from the way in which the opponent’s case was put before me is that the opponent could not itself identify a stronger case based upon its other earlier marks. In those circumstances, I do not intend to consider the position further.

## **Conclusion**

62. The application will be refused for goods and services set out below; it will proceed to registration for the remainder:

Class 9        Apparatus for recording, transmission or reproduction of sound or images, telecommunication apparatus, sound or image reproducing apparatus,

computer peripheral devices, magnetic and optic data carriers and computer software and programmes recorded thereto, encoded magnetic and optic cards, antennas, satellite antennas, amplifiers for antennas, parts of the aforementioned goods, parts and components thereof, apparatus and instruments for conducting, transforming, accumulating or controlling electricity, electric cables and electrical power supplies

Class 38 Radio and television broadcasting services, telecommunication services, providing access to internet, news agencies.

### **Costs**

62. Both parties have had a roughly equal measure of success; the applicant has retained more goods in class 9 but the opposition has succeeded in class 38. I direct that they bear their own costs.

**Dated this 25<sup>th</sup> day of January 2019**

**Heather Harrison  
For the Registrar**



## APPENDIX

### Opponent's trade marks (as relied upon)

#### **EUTM 16057002**

Class 9: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; magnetic data carriers, recording discs; compact discs, DVDs and other digital recording media; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment, computers; computer software; fire-extinguishing apparatus; telecommunications apparatus; mobile telecommunication apparatus; mobile telecommunications handsets; digital telecommunication apparatus and instruments; digital tablets; computer hardware; computer application software; computer software downloadable from the Internet; recorded computer software; software applications; mobile software applications, downloadable applications for multimedia devices; computer games; computer game software; computer games programs; PDAs (Personal Digital Assistants); pocket PCs; mobile telephones; laptop computers; telecommunications network apparatus; drivers software for telecommunications networks and for telecommunications apparatus; protective clothing; protective helmets; televisions; headphones; global positioning system [GPS] apparatus; satellite navigation devices; computer software recorded onto CD Rom; SD-Cards (secure digital cards); glasses; spectacle glasses; sunglasses; protective glasses and cases therefor; contact lenses; cameras; camera lenses; MP3 players; audio tapes, audio cassettes; audio discs; audio-video tapes; audio-video cassettes; audio-video discs; video tapes; video cassettes; video discs; CDs, DVDs; downloadable electronic publications; downloadable image files; downloadable music files; mouse mats; magnets; mobile telephone covers; mobile telephone cases; hands free kits for phones; magnetic cards; encoded cards; mobile phone application software; software for telecommunication; software for the processing of financial transactions; electronic notice boards; electric batteries; battery chargers; security alarms; security cameras; security warning apparatus; security control apparatus; security surveillance apparatus; computer software for security purposes; computer software for insurance purposes; SIM cards; aerials; alarms; electric cables; chemistry apparatus and instruments; recorded computer operating programs; computer peripheral devices; data processing apparatus; diagnostic apparatus, not for medical purposes; distance measuring apparatus; distance recording apparatus; downloadable ring tones for mobile phones; electronic tags for goods; eyepieces; goggles for sports; magnetic identity cards; intercommunication apparatus; loudspeakers; magnetic data media; mathematical instruments; modems; electric monitoring apparatus; television apparatus; testing apparatus not for medical purposes;

telecommunication transmitters; parts and fittings for all the aforesaid goods; none of the aforesaid goods being microphones or microphone cables.

Class 35: Advertising; business management; business administration; office functions; organisation, operation and supervision of loyalty and incentive schemes; retail services and online retail services connected with the sale of scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus for recording, transmission or reproduction of sound or images; retail services and online retail services connected with the sale of magnetic data carriers, recording discs, compact discs, DVDs and other digital recording media, mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment, computers, computer software, fire-extinguishing apparatus, apparatus for the transmission of sound and image, telecommunications apparatus, mobile telecommunication apparatus, mobile telecommunications handsets; retail services and online retail services connected with the sale of digital telecommunication apparatus and instruments, digital tablets, computer hardware, computer application software, computer software downloadable from the Internet, recorded computer software, software applications, mobile software applications, downloadable applications for multimedia devices, computer games, computer game software, computer games programs, PDAs (Personal Digital Assistants); retail services and online retail services connected with the sale of pocket PCs, mobile telephones, laptop computers, telecommunications network apparatus, drivers software for telecommunications networks and for telecommunications apparatus, protective clothing, protective helmets, televisions, headphones, global positioning system [GPS] apparatus, satellite navigation devices, computer software recorded onto CD Rom, SD-Cards (secure digital cards), glasses, spectacle glasses, sunglasses; retail services and online retail services connected with the sale of protective glasses and cases therefor, contact lenses, cameras, camera lenses, MP3 players, audio tapes, audio cassettes, audio discs, audio-video tapes, audio-video cassettes, audio-video discs, video tapes, video cassettes, video discs, CDs, DVDs, downloadable electronic publications, downloadable image files, downloadable music files, mouse mats, magnets, mobile telephone covers, mobile telephone cases; retail services and online retail services connected with the sale of hands free kits for phones, magnetic cards, encoded cards, mobile phone application software, software for telecommunication, software for the processing of financial transactions, electronic notice boards, electric batteries, battery chargers, security alarms, security cameras, security warning apparatus, security control apparatus, security surveillance apparatus, computer software for security purposes; retail services and online retail services connected with the sale of computer software for insurance purposes, SIM cards, aerials, alarms, electric cables, chemistry apparatus and instruments, recorded computer operating programs, computer peripheral devices, data processing apparatus, diagnostic apparatus, not for medical purposes, distance measuring apparatus, distance recording apparatus, downloadable ring tones for mobile phones, electronic tags for goods; retail services and online retail services connected with the sale of electronic tags for goods, eyepieces, goggles for

sports, magnetic identity cards, intercommunication apparatus, loudspeakers, magnetic data media, mathematical instruments, modems, electric monitoring apparatus, television apparatus, testing apparatus not for medical purposes, telecommunication transmitters, paper, cardboard, printed matter, photographs, stationery; retail services and online retail services connected with the sale of office requisites, instructional and teaching material, packaging material, educational equipment, writing implements, writing instruments, writing materials, books, catalogues, cards, instruction manuals, magazines, mail order catalogues, newspapers, pamphlets, periodical publications, calendars, diaries, labels, maps, printed publications, postcards, posters, printed tariffs, printed forms; retail services and online retail services connected with the sale of gift boxes, gift bags, clothing, footwear, headgear, household or kitchen utensils and containers, jewellery, precious stones, horological and chronometric instruments, musical instruments, apparatus for lighting, textiles, household textile articles, leather and imitations of leather, handbags, rucksacks, purses, bags and sports bags, travel bags, backpacks, duffel bags; retail services and online retail services connected with the sale of boot bags, holdalls, wallets, purses, credit card holders, games and playthings, gymnastic and sporting articles, meat, fish, poultry, game, coffee, tea, cocoa, sugar, rice, beers, mineral waters, aerated waters and other non-alcoholic drinks, alcoholic beverages, matches; retail services and online retail services relating to white goods; arranging subscriptions to telecommunications for others; compilation and systemisation of information into computer databases; compilation of statistics; cost price analysis; arranging of competitions for advertising purposes; recruitment services; employment recruitment; employment consultancy; employment agencies; providing employment information; commercial administration of the licensing of the goods and services of others; commercial information and advice for consumers [consumer advice shop]; opinion polling; personnel recruitment; price comparison services; procurement services for others [purchasing goods and services for other businesses]; rental of advertising space; rental of advertising time on communication media; sales promotion for others; sponsorship search; information and advisory services relating to the aforesaid services; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

Class 38: Telecommunications; cable television broadcasting; cellular telephone communication; communications by computer terminals; communications by fiber [fibre] optic networks; communications by telephone; computer aided transmission of messages and images; electronic bulletin board services [telecommunications services]; electronic mail; facsimile transmission; information about telecommunication; message sending; paging services [radio, telephone or other means of electronic communication]; providing access to databases; providing internet chatrooms; providing telecommunication channels for teleshopping services; providing telecommunications connections to a global computer network; providing user access to global computer networks; radio broadcasting; rental of access time to global computer networks; rental of message sending apparatus; rental of modems; rental of telecommunication equipment; rental of telephones; satellite transmission; telecommunications routing and junction services; teleconferencing services; telegraph services; telephone services;

television broadcasting; telex services; transmission of digital files; transmission of greeting cards online; transmission of telegrams; voice mail services; wire service; wireless broadcasting; telecommunications services; mobile telecommunications services; telecommunications portal services; Internet portal services; mobile telecommunications network services; fixed line telecommunication services; provision of broadband telecommunications access; broadband services; wireless communication services; digital communication services; broadcasting services; television broadcasting services; broadcasting services relating to Internet protocol TV; provision of access to Internet protocol TV; Internet access services; email and text messaging services; telecommunications information provided via telecommunication networks; services of a network provider, namely rental and handling of access time to data networks and databases, in particular the Internet; communications services for accessing a database; leasing of access time to a computer database; providing access to computer databases; rental of access time to a computer database; operation of a network, being telecommunication services; providing electronic bulletin board services; providing access to weblogs; providing access to podcasts; chatroom services for social networking; providing online forums; forums for social networking; providing electronic telecommunication connections; routing and connecting services for telecommunications; rental of telecommunications equipment; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

Class 42: Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; calibration [measuring]; cloud seeding; computer programming; computer rental; computer software consultancy; computer software design; updating of computer software; computer system analysis; computer system design; construction drafting; consultancy in the design and development of computer hardware; consultancy in the field of energy-saving; conversion of data or documents from physical to electronic media; creating and maintaining web sites for others; data conversion of computer programs and data [not physical conversion]; digitization of documents [scanning]; duplication of computer programs; engineering; hosting computer sites [web sites]; industrial design; installation of computer software; scientific laboratory services; land surveying; maintenance of computer software; material testing; mechanical research; monitoring of computer systems by remote access; packaging design; technical project studies; providing search engines for the internet; provision of scientific information, advice and consultancy in relation to carbon offsetting; quality control; recovery of computer data; rental of computer software; rental of web servers; research and development for others; surveying; technical research; it services; computer programming services; programming of data processing equipment; recovery of computer data; consultancy in the field of computer hardware; rental of computer hardware; application service provider (ASP); consultancy in the field of computer software; creating and maintaining blogs for others; expert advice and expert opinion relating to technology; rental of data processing apparatus and computers; technical

services relating to projection and planning of equipment for telecommunications; product research services; weather forecasting; research in the field of telecommunication technology; monitoring of network systems in the field of telecommunications; technical support services relating to telecommunications and apparatus; data security services; data security services [firewalls]; research relating to security; computer security system monitoring services; maintenance of computer software relating to computer security and prevention of computer risks; updating of computer software relating to computer security and prevention of computer risks; computer virus protection services; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

### **UK trade mark number 2647617**

Class 9: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; compact discs, DVDs and other digital recording media; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment, computers; computer software; fire-extinguishing apparatus; apparatus for the transmission of sound and image; telecommunications apparatus; mobile telecommunication apparatus; mobile telecommunications handsets; computer hardware; computer application software; computer software; computer software downloadable from the Internet; PDAs (Personal Digital Assistants), pocket PCs, mobile telephones, laptop computers; telecommunications network apparatus; drivers software for telecommunications networks and for telecommunications apparatus; protective clothing; protective helmets; televisions; headphones; satellite navigation devices; computer software recorded onto CD Rom; SD-Cards (secure digital cards); glasses, spectacle glasses, sunglasses, protective glasses and cases therefor; contact lenses; cameras; camera lenses; MP3 players; audio tapes, audio cassettes, audio discs; audio-video tapes, audio-video cassettes, audio-video discs; video tapes, video cassettes, video discs; CDs, DVDs; electronic publications (downloadable); mouse mats; magnets; mobile telephone covers, mobile telephone cases; magnetic cards; encoded cards; parts and fittings for all the aforesaid goods.

Class 35: Advertising; business management; business administration; office functions; organisation, operation and supervision of loyalty and incentive schemes; retail services and electronic shopping retail services connected with the sale of scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs, automatic vending machines and

mechanisms for coin operated apparatus, cash registers, calculating machines, data processing equipment and computers, fire-extinguishing apparatus, apparatus for the transmission of sound and image, telecommunications apparatus, mobile telecommunication apparatus, mobile telecommunications handsets, computer hardware, computer application software, computer software, computer software downloadable from the Internet, PDAs (Personal Digital Assistants), pocket PCs, mobile telephones, laptop computers, telecommunications network apparatus, drivers software for telecommunications networks and for telecommunications apparatus, protective clothing, protective helmets, televisions; computer software recorded onto CD Rom, SD-Cards (secure digital cards), glasses, spectacle glasses, sunglasses, protective glasses and cases therefor, contact lenses, cameras, camera lenses, MP3 players, audio tapes, audio cassettes, audio discs, audio-video tapes, audio-video cassettes, audio-video discs, video tapes, video cassettes, video discs, CDs, DVDs, electronic publications (downloadable), mouse mats, magnets, mobile telephone covers, mobile telephone cases, magnetic cards, encoded cards, printed matter, books, magazines, paper, stationery, clothing, footwear, headgear, household or kitchen utensils and containers, jewellery, precious stones, horological and chronometric instruments, musical instruments, apparatus for lighting, textiles, handbags, rucksacks, purses, bags and sports bags, travel bags, backpacks, duffel bags, boot bags, holdalls, wallets, purses, credit card holders, games and playthings, gymnastic and sporting articles, meat, fish, poultry, game, coffee, tea, cocoa, sugar, rice, beers, mineral waters, aerated waters and other non-alcoholic drinks, alcoholic beverages, matches; business networking services; business information services; services to assist in establishing a network of business contacts; providing business information; providing information about commercial business and commercial information via the global computer network; providing an online searchable database featuring employment and career opportunities and business, employment and professional queries and answers; online business and professional networking services; information and advisory services relating to the aforesaid services; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

Class 38: Telecommunications; telecommunications services; mobile telecommunications services; telecommunications portal services; Internet portal services; mobile telecommunications network services; fixed line telecommunication services; provision of broadband telecommunications access; broadband services; broadcasting services; television broadcasting services; broadcasting services relating to internet protocol TV; provision of access to Internet protocol TV; Internet access services; email and text messaging services; information services provided by means of telecommunication networks relating to telecommunications; services of a network provider, namely rental and handling of access time to data networks and databases, in particular the Internet; provision of access time for data networks and data banks, in particular the Internet; communications services for accessing a database, leasing of access time to a computer database; providing access to computer databases; rental of access time to a computer database; operation of a network, being telecommunication services; expert advice and opinion relating to telecommunications; planning relating to

telecommunications equipment; chat room services for social networking; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

Class 41: Education; providing of training; entertainment; sporting and cultural activities; interactive entertainment services; electronic games services provided by means of any communications network; entertainment and information services provided by means of telecommunication networks; provision of news information; television services; internet protocol television services; provision of entertainment by means of television and Internet protocol television; provision of musical events; entertainment club services; discotheque services; presentation of live performances; night clubs; rental of music venues and stadiums; casino services; ticket reservations for entertainment, sporting and cultural events; ticket information services for entertainment, sporting and cultural events; ticket agency services; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

Class 42: Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; information and consultancy services relating to information technology; consultancy services relating to information technology; engineering services relating to information technology; information services relating to information technology; technical consultancy services relating to information technology; computer programming services; programming of data processing apparatus and equipment; recovery of computer data; consultancy in the field of computer hardware; computer programming; duplication of computer programs; computer rental; computer software design; installation of computer software; maintenance of computer software; repair of computer software; updating of computer software; rental of computer software; rental of computer hardware; computer system design; computer systems analysis; consultancy in the field of computer software; conversion of data or documents from physical to electronic media; creating and maintaining websites for others; data conversion of computer programs and data (not physical conversion); hosting computer sites (web sites) of others; engineering services relating to telecommunications; technical consulting; rental of computers; monitoring of telecommunications network systems; services of information brokers and providers, namely product research for others; weather forecasting; research relating to telecommunications; research of field telecommunication technology; technical support services relating to telecommunications and apparatus; expert advice and opinion relating to technology; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

## **UK trade mark number 3197455**

Class 9: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; compact discs, DVDs and other digital recording media; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment, computers; computer software; fire-extinguishing apparatus; apparatus for the transmission of sound and image; telecommunications apparatus; mobile telecommunication apparatus; mobile telecommunications handsets; digital telecommunication apparatus and instruments; digital tablets; computer hardware; computer application software; computer software downloadable from the Internet; recorded computer software; software applications; mobile software applications, downloadable applications for multimedia devices; computer games; computer game software; computer games programs; PDAs (Personal Digital Assistants); pocket PCs; mobile telephones; laptop computers; telecommunications network apparatus; drivers software for telecommunications networks and for telecommunications apparatus; protective clothing; protective helmets; televisions; headphones; global positioning system [GPS] apparatus; satellite navigation devices; computer software recorded onto CD Rom; SD-Cards (secure digital cards); glasses; spectacle glasses; sunglasses; protective glasses and cases therefor; contact lenses; cameras; camera lenses; MP3 players; audio tapes, audio cassettes; audio discs; audio-video tapes; audio-video cassettes; audio-video discs; video tapes; video cassettes; video discs; CDs, DVDs; downloadable electronic publications; downloadable image files; downloadable music files; mouse mats; magnets; mobile telephone covers; mobile telephone cases; hands free kits for phones; magnetic cards; encoded cards; mobile phone application software; software for telecommunication; software for the processing of financial transactions; electronic notice boards; electric batteries; battery chargers; security alarms; security cameras; security warning apparatus; security control apparatus; security surveillance apparatus; computer software for security purposes; computer software for insurance purposes; SIM cards; aerials; alarms; electric cables; chemistry apparatus and instruments; recorded computer operating programs; computer peripheral devices; data processing apparatus; diagnostic apparatus, not for medical purposes; distance measuring apparatus; distance recording apparatus; downloadable ring tones for mobile phones; electronic tags for goods; eyepieces; goggles for sports; magnetic identity cards; intercommunication apparatus; loudspeakers; magnetic data media; mathematical instruments; modems; electric monitoring apparatus; television apparatus; testing apparatus not for medical purposes; telecommunication transmitters; parts and fittings for all the aforesaid goods.

Class 35: Advertising; business management; business administration; office functions; organisation, operation and supervision of loyalty and incentive schemes; retail services and online retail services connected with the sale of scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking



(supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus for recording, transmission or reproduction of sound or images; retail services and online retail services connected with the sale of magnetic data carriers, recording discs, compact discs, DVDs and other digital recording media, mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment, computers, computer software, fire-extinguishing apparatus, apparatus for the transmission of sound and image, telecommunications apparatus, mobile telecommunication apparatus, mobile telecommunications handsets; retail services and online retail services connected with the sale of digital telecommunication apparatus and instruments, digital tablets, computer hardware, computer application software, computer software downloadable from the Internet, recorded computer software, software applications, mobile software applications, downloadable applications for multimedia devices, computer games, computer game software, computer games programs, PDAs (Personal Digital Assistants); retail services and online retail services connected with the sale of pocket PCs, mobile telephones, laptop computers, telecommunications network apparatus, drivers software for telecommunications networks and for telecommunications apparatus, protective clothing, protective helmets, televisions, headphones, global positioning system [GPS] apparatus, satellite navigation devices, computer software recorded onto CD Rom, SD-Cards (secure digital cards), glasses, spectacle glasses, sunglasses; retail services and online retail services connected with the sale of protective glasses and cases therefor, contact lenses, cameras, camera lenses, MP3 players, audio tapes, audio cassettes, audio discs, audio-video tapes, audio-video cassettes, audio-video discs, video tapes, video cassettes, video discs, CDs, DVDs, downloadable electronic publications, downloadable image files, downloadable music files, mouse mats, magnets, mobile telephone covers, mobile telephone cases; retail services and online retail services connected with the sale of hands free kits for phones, magnetic cards, encoded cards, mobile phone application software, software for telecommunication, software for the processing of financial transactions, electronic notice boards, electric batteries, battery chargers, security alarms, security cameras, security warning apparatus, security control apparatus, security surveillance apparatus, computer software for security purposes; retail services and online retail services connected with the sale of computer software for insurance purposes, SIM cards, aerials, alarms, electric cables, chemistry apparatus and instruments, recorded computer operating programs, computer peripheral devices, data processing apparatus, diagnostic apparatus, not for medical purposes, distance measuring apparatus, distance recording apparatus, downloadable ring tones for mobile phones, electronic tags for goods; retail services and online retail services connected with the sale of electronic tags for goods, eyepieces, goggles for sports, magnetic identity cards, intercommunication apparatus, loudspeakers, magnetic data media, mathematical instruments, modems, electric monitoring apparatus, television apparatus, testing apparatus not for medical purposes, telecommunication transmitters, paper, cardboard, printed matter, photographs, stationery; retail services and online retail services connected with the sale of office requisites, instructional and teaching material, packaging material, educational equipment, writing implements, writing instruments, writing materials, books, catalogues, cards, instruction manuals,

magazines, mail order catalogues, newspapers, pamphlets, periodical publications, calendars, diaries, labels, maps, printed publications, postcards, posters, printed tariffs, printed forms; retail services and online retail services connected with the sale of gift boxes, gift bags, clothing, footwear, headgear, household or kitchen utensils and containers, jewellery, precious stones, horological and chronometric instruments, musical instruments, apparatus for lighting, textiles, household textile articles, leather and imitations of leather, handbags, rucksacks, purses, bags and sports bags, travel bags, backpacks, duffel bags; retail services and online retail services connected with the sale of boot bags, holdalls, wallets, purses, credit card holders, games and playthings, gymnastic and sporting articles, meat, fish, poultry, game, coffee, tea, cocoa, sugar, rice, beers, mineral waters, aerated waters and other non-alcoholic drinks, alcoholic beverages, matches; retail services and online retail services relating to white goods; arranging subscriptions to telecommunications for others; compilation and systemisation of information into computer databases; compilation of statistics; cost price analysis; arranging of competitions for advertising purposes; recruitment services; employment recruitment; employment consultancy; employment agencies; providing employment information; commercial administration of the licensing of the goods and services of others; commercial information and advice for consumers [consumer advice shop]; opinion polling; personnel recruitment; price comparison services; procurement services for others [purchasing goods and services for other businesses]; rental of advertising space; rental of advertising time on communication media; sales promotion for others; sponsorship search; information and advisory services relating to the aforesaid services; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

Class 38: Telecommunications; cable television broadcasting; cellular telephone communication; communications by computer terminals; communications by fiber [fibre] optic networks; communications by telephone; computer aided transmission of messages and images; electronic bulletin board services [telecommunications services]; electronic mail; facsimile transmission; information about telecommunication; message sending; paging services [radio, telephone or other means of electronic communication]; providing access to databases; providing internet chatrooms; providing telecommunication channels for teleshopping services; providing telecommunications connections to a global computer network; providing user access to global computer networks; radio broadcasting; rental of access time to global computer networks; rental of message sending apparatus; rental of modems; rental of telecommunication equipment; rental of telephones; satellite transmission; telecommunications routing and junction services; teleconferencing services; telegraph services; telephone services; television broadcasting; telex services; transmission of digital files; transmission of greeting cards online; transmission of telegrams; voice mail services; wire service; wireless broadcasting; telecommunications services; mobile telecommunications services; telecommunications portal services; Internet portal services; mobile telecommunications network services; fixed line telecommunication services; provision of broadband telecommunications access; broadband services; wireless communication services; digital communication services; broadcasting services; television broadcasting

services; broadcasting services relating to Internet protocol TV; provision of access to Internet protocol TV; Internet access services; email and text messaging services; telecommunications information provided via telecommunication networks; services of a network provider, namely rental and handling of access time to data networks and databases, in particular the Internet; communications services for accessing a database; leasing of access time to a computer database; providing access to computer databases; rental of access time to a computer database; operation of a network, being telecommunication services; providing electronic bulletin board services; providing access to weblogs; providing access to podcasts; chatroom services for social networking; providing online forums; forums for social networking; providing electronic telecommunication connections; routing and connecting services for telecommunications; rental of telecommunications equipment; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

Class 41: Education; providing of training; entertainment; sporting and cultural activities; academies [education]; amusement parks; amusements; arranging and conducting of colloquiums; arranging and conducting of concerts; arranging and conducting of conferences; arranging and conducting of congresses; arranging and conducting of seminars; arranging and conducting of symposiums; arranging and conducting of workshops [training]; arranging of beauty contests; booking of seats for shows; cinema presentations; club services [entertainment or education]; coaching [training]; discotheque services; education information; educational examination; electronic desktop publishing; entertainer services; entertainment information; organisation of fashion shows for entertainment purposes; film production, other than advertising films; gambling; game services provided on-line from a computer network; games equipment rental; health club services [health and fitness training]; holiday camp services [entertainment]; music-halls; news reporters services; organization of shows [impresario services]; organization of sports competitions; party planning [entertainment]; personal trainer services [fitness training]; physical education; practical training [demonstration]; production of music; production of radio and television programmes; production of shows; providing amusement arcade services; providing karaoke services; providing on-line electronic publications, not downloadable; providing sports facilities; publication of books; publication of electronic books and journals on-line; publication of texts, other than publicity texts; radio entertainment; recording studio services; providing recreation facilities; sport camp services; subtitling; television entertainment; theatre productions; ticket agency services [entertainment]; timing of sports events; tuition; interactive entertainment services; electronic games services provided by means of any communications network; entertainment services provided by means of telecommunication networks; education, training, entertainment, sporting and cultural activities information provided by means of telecommunication networks; provision of news information; television production services; television programming services; television production and television programming services provided by means of Internet protocol technology; provision of musical events; entertainment club services;

discotheque services; presentation of live performances; night clubs; rental of music venues and stadiums; casino services; ticket reservations for entertainment, sporting and cultural events; ticket information services for entertainment, sporting and cultural events; ticket agency services for entertainment, sporting and cultural events; provision of on-line computer games; rental of computer games programs; computer amusement services; provision of information, news and commentary in the field of computer games; arranging, organising and conducting computer game competitions; publishing services; providing on-line electronic publications, not downloadable; publication of books; publication of electronic books and journals on-line; publication of texts, other than publicity texts; arranging, organising and conducting of competitions, games and quizzes; arranging, organising and conducting of competitions, games and quizzes for entertainment, recreational, cultural and educational purposes; organisation of awards; conducting of phone-in competitions; booking agency services connected with the issuing of tickets for entertainment events; employment training; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

Class 42: Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; calibration [measuring]; cloud seeding; computer programming; computer rental; computer software consultancy; computer software design; updating of computer software; computer system analysis; computer system design; construction drafting; consultancy in the design and development of computer hardware; consultancy in the field of energy-saving; conversion of data or documents from physical to electronic media; creating and maintaining web sites for others; data conversion of computer programs and data [not physical conversion]; digitization of documents [scanning]; duplication of computer programs; engineering; hosting computer sites [web sites]; industrial design; installation of computer software; scientific laboratory services; land surveying; maintenance of computer software; material testing; mechanical research; monitoring of computer systems by remote access; packaging design; technical project studies; providing search engines for the internet; provision of scientific information, advice and consultancy in relation to carbon offsetting; quality control; recovery of computer data; rental of computer software; rental of web servers; research and development for others; surveying; technical research; it services; computer programming services; programming of data processing equipment; recovery of computer data; consultancy in the field of computer hardware; rental of computer hardware; application service provider (ASP); consultancy in the field of computer software; creating and maintaining blogs for others; expert advice and expert opinion relating to technology; rental of data processing apparatus and computers; technical services relating to projection and planning of equipment for telecommunications; product research services; weather forecasting; research in the field of telecommunication technology; monitoring of network systems in the field of telecommunications; technical support services relating to telecommunications and apparatus; data security services; data security services [firewalls]; research relating to

security; computer security system monitoring services; maintenance of computer software relating to computer security and prevention of computer risks; updating of computer software relating to computer security and prevention of computer risks; computer virus protection services; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

### **UK trade mark number 3003477**

Class 9: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; compact discs, DVDs and other digital recording media; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment, computers; computer software; fire-extinguishing apparatus; apparatus for the transmission of sound and image; telecommunications apparatus; mobile telecommunication apparatus; mobile telecommunications handsets; computer hardware; computer application software; computer software; computer software downloadable from the Internet; PDAs (Personal Digital Assistants), pocket PCs, mobile telephones, laptop computers; telecommunications network apparatus; drivers software for telecommunications networks and for telecommunications apparatus; protective clothing; protective helmets; televisions; headphones; satellite navigation devices; computer software recorded onto CD Rom; SD-Cards (secure digital cards); glasses, spectacle glasses, sunglasses, protective glasses and cases therefor; contact lenses; cameras; camera lenses; MP3 players; audio tapes, audio cassettes, audio discs; audio-video tapes, audio-video cassettes, audio-video discs; video tapes, video cassettes, video discs; CDs, DVDs; electronic publications (downloadable); mouse mats; magnets; mobile telephone covers, mobile telephone cases; magnetic cards; encoded cards; parts and fittings for all the aforesaid goods.

Class 35: Advertising; business management; business administration; office functions; organisation, operation and supervision of loyalty and incentive schemes; retail services and online retail services connected with the sale of scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs, automatic vending machines and mechanisms for coin operated apparatus, cash registers, calculating machines, data processing equipment and computers, fire-extinguishing apparatus, apparatus for the transmission of sound and image, telecommunications apparatus, mobile telecommunication apparatus, mobile telecommunications handsets, computer hardware, computer application software, computer software, computer software

downloadable from the Internet, PDAs (Personal Digital Assistants), pocket PCs, mobile telephones, laptop computers, telecommunications network apparatus, drivers software for telecommunications networks and for telecommunications apparatus, protective clothing, protective helmets, televisions, computer software recorded onto CD Rom, SD-Cards (secure digital cards), glasses, spectacle glasses, sunglasses, protective glasses and cases therefor, contact lenses, cameras, camera lenses, MP3 players, audio tapes, audio cassettes, audio discs, audio-video tapes, audio-video cassettes, audio-video discs, video tapes, video cassettes, video discs, CDs, DVDs, electronic publications (downloadable), mouse mats, magnets, mobile telephone covers, mobile telephone cases, magnetic cards, encoded cards, paper, cardboard, printed matter, book binding material, photographs, stationery, adhesives for stationery or household purposes, artists' materials, paint brushes, typewriters and office requisites, instructional and teaching material, plastic materials for packaging, printers' type, printing blocks, books, calendars, cards, catalogues, programmes, writing paper, envelopes, pads, notebooks, diaries, greeting cards, magazines, pamphlets, pens, pencils, postcards, posters, decalcomanias, stickers, tickets, beer mats, coasters of paper and cardboard, napkins of paper, tissues and towels of paper, bags of paper and/or plastic material, clothing, footwear, headgear, household or kitchen utensils and containers, jewellery, precious stones, horological and chronometric instruments, musical instruments, apparatus for lighting, textiles and textile piece goods, leather and imitations of leather, handbags, rucksacks, purses, bags and sports bags, travel bags, backpacks, duffel bags, boot bags, holdalls, wallets, purses, credit card holders, games and playthings, gymnastic and sporting articles, meat, fish, poultry, game, coffee, tea, cocoa, sugar, rice, beers, mineral waters, aerated waters and other non-alcoholic drinks, alcoholic beverages, matches; information and advisory services relating to the aforesaid services; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

Class 38: Telecommunications; telecommunications services; mobile telecommunications services; telecommunications portal services; Internet portal services; mobile telecommunications network services; fixed line telecommunication services; provision of broadband telecommunications access; broadband services; broadcasting services; television broadcasting services; broadcasting services relating to internet protocol TV; provision of access to Internet protocol TV; Internet access services; email and text messaging services; information services provided by means of telecommunication networks relating to telecommunications; services of a network provider, namely rental and handling of access time to data networks and databases, in particular the Internet; provision of access time for data networks and data banks, in particular the Internet; communications services for accessing a database, leasing of access time to a computer database; providing access to computer databases; rental of access time to a computer database; operation of a network, being telecommunication services; expert advice and opinion relating to telecommunications; planning relating to telecommunications equipment; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided

on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

Class 41: Education; providing of training; entertainment; sporting and cultural activities; interactive entertainment services; electronic games services provided by means of any communications network; entertainment and information services provided by means of telecommunication networks; provision of news information; television production services; television entertainment services; internet protocol television services; provision of entertainment by means of television and Internet protocol television; provision of musical events; entertainment club services; discotheque services; presentation of live performances; night clubs; rental of music venues and stadiums; casino services; ticket reservations for entertainment, sporting and cultural events; ticket information services for entertainment, sporting and cultural events; ticket agency services; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

Class 42: Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; information and consultancy services relating to information technology; consultancy services relating to information technology; engineering services relating to information technology; information services relating to information technology; technical consultancy services relating to information technology; computer programming services; programming of data processing apparatus and equipment; recovery of computer data; consultancy in the field of computer hardware; computer programming; duplication of computer programs; computer rental; computer software design; installation of computer software; maintenance of computer software; repair of computer software; updating of computer software; rental of computer software; rental of computer hardware; computer system design; computer systems analysis; consultancy in the field of computer software; conversion of data or documents from physical to electronic media; creating and maintaining websites for others; data conversion of computer programs and data (not physical conversion); hosting computer sites (web sites) of others; engineering services relating to telecommunications; technical consulting; rental of computers; monitoring of telecommunications network systems; services of information brokers and providers, namely product research for others; weather forecasting; research relating to telecommunications; research of field telecommunication technology; technical support services relating to telecommunications and apparatus; expert advice and opinion relating to technology; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.