

O/133/19

TRADE MARKS ACT 1994

IN THE MATTER OF REGISTRATION NO. UK00003236165

IN THE NAME OF HILIFE MUSIC LIMITED

FOR THE FOLLOWING TRADE MARK:

HILIFE MUSIC

IN CLASSES 35 AND 41

AND

AN APPLICATION FOR A DECLARATION OF INVALIDITY

UNDER NO. 502009 BY HILIFE MUSIC ENTERTAINMENT LIMITED

BACKGROUND AND PLEADINGS

1. Hilife Music Limited (“the proprietor”) applied for the trade mark shown on the cover page of this decision (“the Contested Mark”) on 8 June 2017. It was registered on 29 September 2017 for the following services:

Class 35 Publicity; advertisement and sales promotion; advertisement mediation; business management, also for the benefit of commercial broadcasting companies; distribution of advertising and promotional material, among which samples; provision of advertisement space in different kinds of media such as television, radio, papers, periodicals, magazines and electronic media; marketing, market research and analysis; managing databases; organization of shows and exhibitions for commercial and publicity purposes; all aforementioned services also provided via a global computer network; retail services in relation to downloadable music files; promotion of music concerts; business management of musicians; promoting the music of others by means of providing online portfolios via a website.

Class 41 Education, training and entertainment services; music production; music production services; production of sound and music recordings; production of music shows; production of sound and musical recordings; preparation of radio and television programmes; consultancy on film and music production; production of musical works in a recording studio; music publishing and music recording services; publication of music; music recording studio services; sporting and cultural activities; production of films and live entertainment features; production of cinematographic films and TV shows; production of animated motion pictures and television features.

2. On 8 March 2018, Hilife Music Entertainment Limited (“the applicant”) applied to have the Contested Mark declared invalid under s.47 of the Trade Marks Act 1994 (“the Act”). The application is based on section 5(2)(b) of the Act. The invalidity is directed against all services in the Contested Mark’s specifications.

3. The applicant relies on the trade marks shown below and upon all of the goods and services for which the marks are registered (see the Annex below):

HILIFE

("the First Earlier Mark")

EU trade mark no. 16238958

Filing date 10 January 2017; registration date 25 May 2018

Classes 14, 16, 18, 25, 35 and 41



HILIFE MUSIC

("the Second Earlier Mark")

EU trade mark no. 16238966

Filing date 10 January 2017; registration date 3 July 2017

Classes 9, 14, 16, 18, 25, 35 and 41

Colours claimed/indication: Black; Grey; White.

4. The applicant claims that the Contested Mark is similar to its own marks and is registered for identical or similar goods and services and there is a likelihood of confusion.

5. The proprietor filed a counterstatement in which it denies the grounds of invalidity.

6. The applicant is represented by Trademark Eagle Limited and the proprietor is represented by Trade Mark Wizards Limited. Only the applicant filed written submissions, which were dated 8 October 2018. No hearing was requested and neither party filed written submission in lieu. This decision is taken following a careful perusal of the papers.

PRELIMINARY ISSUE

7. In its written submissions, the applicant has made reference to a company name dispute between the parties. The applicant also referred, in its written submissions, to a “Companies House decision”, which it states was attached at Annex 1. However, no annex was attached. On 4 February 2019, the Tribunal wrote to the applicant and invited it to file a copy of the document it described as “Annex 1” within 14 days if it still wished to rely on it. No response was received from the applicant. In any event, the present issue concerns the similarity of the marks as registered and their respective goods and services. The outcome of any company name dispute is not relevant to the decision I must make.

DECISION

8. Section 5 of the Act has application in invalidation proceedings because of the provisions set out in section 47. The relevant legislation is set out below:

“47. –[...]”

(2) The registration of a trade mark may be declared invalid on the ground-

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

(b) ...

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

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

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

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

(c) the use conditions are met.”

9. Given the date of registration of the applicant’s marks and the date of this application, proof of use does not apply as the marks completed their registration procedure less than five years before the date on which the invalidation application was made.

10. The invalidation is based on section 5(2)(b) of the Act, which reads as follows:

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

(a) [...]

(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.”

11. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

“6(1) In this Act an “earlier trade mark” means –

(a) a registered trade mark, international trade mark (UK) or Community trade mark or international trade mark (EC) which has a date of

application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks.

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b) subject to its being so registered.”

12. Given the filing date for the applicant’s trade marks, they qualify as earlier trade marks under section 6 of the Act.

Section 5(2)(b) – case law

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

The principles:

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

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

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

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

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

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

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

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

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

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

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

Comparison of trade marks

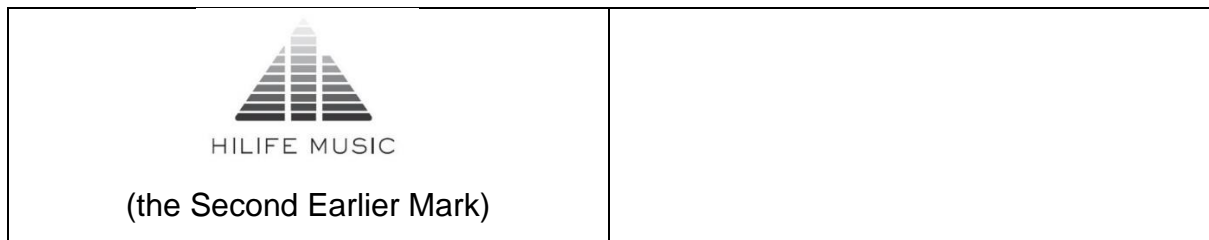
14. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union (“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.”

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

16. The respective trade marks are shown below:

| Applicant's marks | Contested Mark |
|------------------------------------|-----------------------|
| HILIFE (the First Earlier Mark) | HILIFE MUSIC |



17. I have no submissions from the proprietor on the similarity of the marks, other than its denial of the grounds of invalidity. In its Application for Invalidation, the applicant states:

“8. The Registered Mark is phonetically and visually similar to the Invalidity Applicant’s Trade Marks as it includes the word elements of the Invalidity Applicant’s mark, these are the words HILIFE MUSIC. The additional stylization and device elements of the Invalidity Applicant’s Trade Marks are not sufficient to detract from the overall similarities between the marks. On a visual assessment, the words HILIFE MUSIC are more distinctive and therefore dominant element of the Invalidity Applicant’s Mark, which are identical to the Registered word mark HILIFE MUSIC. Applying the principles of *Sabel v Puma*, the Registration is similar to the Invalidity Applicant’s Trade Marks. The net effect is that HILIFE MUSIC would be seen as the word mark version of the Invalidity Applicant’s Trade Mark.

10. The Registered mark is also similar to the Invalidity Applicant’s word mark HILIFE this is because the Registered mark incorporates the Invalidity Applicant’s earlier work mark HILIFE for identical and similar services.”

18. The applicant also makes reference to various user names on social media platforms and its domain name which incorporate the words HILIFE. However, the dispute in issue is between the marks as registered and the existence/ownership of domain names and social media user names is irrelevant to the decision I must make.

Overall Impression

The Contested Mark

19. The Contested Mark consists of the made-up word HILIFE and the word MUSIC. The word MUSIC is descriptive of some of the services for which the Contested Mark is registered, although not all. The made-up word HILIFE plays a greater role in the overall impression, with the word MUSIC playing a lesser role.

The First Earlier Mark

20. The First Earlier Mark consists of the made-up word HILIFE. There are no other elements to contribute to the overall impression, which lies in the word itself.

The Second Earlier Mark

21. The Second Earlier Mark consists of the made-up word HILIFE and the word MUSIC, with a triangular device above it. The wording is smaller than the device element, although the eye is naturally drawn to the elements in the mark that can be read. As above, the word MUSIC is descriptive for some of the goods and services for which the mark is registered. The overall impression lies in the combination of these elements with the word HILIFE and the triangular device playing a greater role, and the word MUSIC playing a lesser role.

Visual Comparison

The Contested Mark and the First Earlier Mark

22. Visually, the Contested Mark and the First Earlier Mark share the common made-up word HILIFE. The difference lies in the addition of the word MUSIC in the Contested Mark. As noted above, the word MUSIC is descriptive of some of the services for which the Contested Mark is registered. Overall, I consider there to be at least a medium degree of visual similarity between the marks.

The Contested Mark and the Second Earlier Mark

23. Visually, the Contested Mark and the Second Earlier Mark share the common made-up word HILIFE and the ordinary dictionary word MUSIC. The wording in the Second Earlier Mark is presented in a standard font which would be covered by fair and notional use of the Contested Mark. The difference lies in the addition of the triangular device in the Second Earlier Mark, which has no counterpart in the Contested Mark. Overall, I consider there to be at least a medium degree of visual similarity between the marks.

Aural Comparison

The Contested Mark and the First Earlier Mark

24. Aurally, the made-up word HILIFE will be pronounced identically in both marks. That is, in the same way as the ordinary English words HIGH and LIFE. The difference lies in the addition of the word MUSIC in the Contested mark. Overall, I consider there to be at least a medium degree of aural similarity.

The Contested Mark and the Second Earlier Mark

25. Aurally, the made-up word HILIFE will be pronounced identically in both marks (HIGH-LIFE), as will the ordinary English word MUSIC. As these are the only elements in the Contested Mark and the only elements of the Second Earlier Mark that will be pronounced, I consider the marks to be aurally identical.

Conceptual Comparison

The Contested Mark and the First Earlier Mark

26. Conceptually, the made-up word HILIFE is likely to convey the meaning that would be attributed to the use of the ordinary dictionary words HIGH and LIFE. The consumer may consider this to be a reference to the phrase “living the high life”. In any event, the meaning conveyed by this word will be identical for both marks. The point of

conceptual difference is the addition of the word MUSIC in the Contested Mark. This will be given its ordinary dictionary meaning and the use of the word MUSIC is more likely to be seen as a reference to the goods and services offered under the mark. There is no obvious meaning to the combination of the words as a whole. Overall, I consider the marks to be conceptually similar to at least a medium degree.

The Contested Mark and the Second Earlier Mark

27. The same conceptual meaning as described above will be conveyed by the made-up word HILIFE. Similarly, the word MUSIC will convey its ordinary dictionary meaning. These elements will be conceptually identical for both marks. I do not consider that the triangular device in the Second Earlier Mark has any conceptual meaning which is capable of immediate grasp. I consider the marks to be conceptually highly similar.

Comparison of services

28. As the First Earlier Mark shares the lesser degree of similarity with the Contested Mark I will focus my assessment on those marks as, if there is a likelihood of confusion in respect of the First Earlier Mark it follows that there must also be a likelihood of confusion in respect of the Second Earlier Mark. I consider that the highest degree of similarity with the proprietor’s services lies in the class 35 and class 41 services for which the First Earlier Mark is registered. In its Application for Invalidity, it is these services that the applicant states share the greatest degree of similarity. I have, therefore, only reproduced those services below:

| First Earlier Mark Services | Proprietor’s services |
|---|---|
| <p><u>Class 35</u> Advertising; business management; business administration; office functions; management services to musicians and recording artists; management and promotion of performing artists; public relations and publicity services; marketing services; promotional services; preparation, publication and distribution of promotional material; production of promotional</p> | <p><u>Class 35</u> Publicity; advertisement and sales promotion; advertisement mediation; business management, also for the benefit of commercial broadcasting companies; distribution of advertising and promotional material, among which samples; provision of advertisement space in different kinds of media such as television, radio, papers, periodicals, magazines and electronic media;</p> |

| | |
|---|---|
| <p>audio and video recordings; production of video recordings for advertising, marketing and publicity purposes; organisation, arrangement and conducting of conferences, conventions, seminars, events and exhibitions for commercial or advertising purposes; advertising via the Internet; provision of advertising space; provision of space on web sites for advertising goods and services; operation and supervision of membership schemes; organisation, operation and supervision of loyalty and incentive schemes; data processing; retail services and online retail services connected with the sale of soaps, detergents, perfumery, essential oils, cosmetics, hair lotions, dentifrices, toiletries, fragrances, toilet waters, cologne; retail services and online retail services connected with the sale of body sprays, personal deodorants, talcum powder, shower and bath preparations, shower gel, bubble bath, bath oils, bath salts, hair care products and preparations, shampoos, hair conditioners, hair colorants, hair styling products, body care products and preparations, skin care products and preparations, oils, creams, lotions, gels and powders for the skin, moisturisers, skin toners, facial scrubs and washes; retail services and online retail services connected with the sale of after shave lotion, shaving soaps, shaving foams, shaving gels, make-up, aromatherapy products, massage preparations, candles, badges, signs, plaques, ornaments, figurines, works of art, money boxes, key chains, penknives, apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs, compact discs, DVDs and other digital recording media, parts and fittings for all the aforesaid goods; retail services and online retail</p> | <p>marketing, market research and analysis; managing databases; organization of shows and exhibitions for commercial and publicity purposes; all aforementioned services also provided via a global computer network; retail services in relation to downloadable music files; promotion of music concerts; business management of musicians; promoting the music of others by means of providing online portfolios via a website.</p> <p><u>Class 41</u> Education, training and entertainment services; music production; music production services; production of sound and music recordings; production of music shows; production of sound and musical recordings; preparation of radio and television programmes; consultancy on film and music production; production of musical works in a recording studio; music publishing and music recording services; publication of music; music recording studio services; sporting and cultural activities; production of films and live entertainment features; production of cinematographic films and TV shows; production of animated motion pictures and television features.</p> |
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services connected with the sale of CD ROMs, digital video discs, audio tapes and cassettes, video tapes and cassettes, records, photographic transparencies and photographic and cinematographic films prepared for exhibition purposes, pre-recorded sound storage media, image storage media and data storage media, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of audio recordings, video recordings, audio-visual recordings featuring music and musical-based entertainment, musical sound recordings, musical video recordings, motion picture films, animated cartoons, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of downloadable and streamable audio and video recordings, downloadable and streamable sound recordings and audio-visual recordings featuring music and musical-based entertainment, downloadable and streamable music and music video recordings, downloadable music files, downloadable and streamable digital music provided from the internet or from a computer database, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of digital music downloadable provided from MP3 internet web sites, downloadable and streamable MP3 files, ring tones, graphics, games, images and video images, screen savers, computer software and programs, downloadable computer software, computer application software, computer games programs, computer application software for mobile communication devices, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of downloadable electronic publications,

downloadable and streamable podcasts in the field of music, electronic storage media, memory cards, eye glasses, spectacles and sunglasses, cases, chains, straps, cords and frames for eye glasses, spectacles and sunglasses, cameras, holograms, computer mouse mats and pads, telecommunications apparatus, mobile phones, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of parts and accessories for mobile phones and personal electronic devices, mobile phone accessory charms, covers and cases for mobile phones and personal electronic devices, holders adapted for mobile phones, straps for mobile phones, covers and cases specially adapted for PDAs, MP3 players, laptops and gaming devices, headphones, earphones, magnetic or encoded cards, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of payment cards, telephone cards, magnets, jewellery, costume jewellery, precious stones, horological and chronometric instruments, clocks and watches, watch straps, key rings, trinkets and fobs, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of bracelets, rings, ear rings, necklaces, pendants, jewellery charms, ornamental pins, lapel pins, cufflinks, tie pins and tie clips, badges of precious metals, jewellery cases, coins, medals and medallions, musical instruments, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of certificates, menus, stationery, writing paper, writing pads, drawing pads, notelets, note pads, note books, cards, postcards, greeting cards, envelopes, labels, trading cards, collectors' cards, parts and fittings for all the aforesaid goods; retail

services and online retail services connected with the sale of stickers, transfers, decalcomanias, stencils, tickets, gift vouchers, diaries, address books, appointment books, albums, photograph albums, scrap books, folders, wall charts, maps, personal organisers, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of calendars, paper and cardboard boxes, tablecloths and napkins, place mats and coasters, paper towels, gift bags and bags for packaging, carrier bags, wrapping paper, gift tags, flags and banners, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of calendars bookmarks, pens, pencils, pencil sharpeners, erasers, rulers, paint brushes, signs and advertisement boards, paper and cardboard, prints and pictures, graphic prints, representations and reproductions, wall art, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of money clips, trunks and travelling bags, umbrellas, parasols and walking sticks, luggage, cases, garment bags for travel, brief cases, bags, rucksacks, backpacks, holdalls, purses, wallets, card holders, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of credit card cases and holders, ID card holders, key cases, collars, covers, leads and leashes for animals, picture frames, photograph frames, household or kitchen utensils and containers, combs, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of brushes, glassware, porcelain, pottery and earthenware, drinking vessels, cups, mugs, bottle openers, corkscrews, flasks,

bed and table covers, textile piece goods, textiles for making articles of clothing, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of household textile articles, towels, clothing, footwear, headgear, articles of outer clothing, t-shirts, shirts, sweatshirts, tank tops, sweaters, cardigans, hooded pullovers, jerseys, sweatpants, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of track suits, shorts, trousers, pants, jeans, blouses, skirts, dresses, vests, ties, waistcoats, suits, jackets, coats, overcoats, rainwear, sleepwear, underwear, swimwear, socks, hosiery, scarves, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of gloves, shoes, boots, sandals, flip-flops, slippers, hats, caps, sun visors, headbands, wristbands, belts, badges and patches of textile materials, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of belt clasps, brooches, buckles, hat ornaments, hair ornaments, shoe ornaments, lanyards for wear, games and playthings, toys, gymnastic and sporting articles, whistles, playing cards, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of confetti, balloons, party novelties, dolls, action figure toys, food products, confectionery, snack foods, drinks, matches and lighters; parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of printed matter, photographs, stationery, printed publications, printed publicity and promotional material, books, magazines, periodical publications, newsletters, brochures, manuals, letterheads, posters, leaflets, forms,

programmes, printed music, music scores, music books, instruction guides, music in sheet form, comic books, catalogues, parts and fittings for all the aforesaid goods; information, advisory and consultancy services in relation to all the aforesaid services; promotion of entertainment and events; entertainment promotion services; none of the aforementioned services in relation to articles for smokers and (cannabis) cafes.

Class 41

Entertainment; cultural activities; musical entertainment; music performance services; provision of live music; musical concert services; organisation and production of entertainment and events; organisation, production and presentation of shows, staged events, concerts, live performances, musical performances, theatrical performances, dancing displays, audience participation events and talent shows; organisation of parties and social events; music festival services; entertainment services provided at nightclubs and discotheques; entertainment and education services provided via the Internet and other computer and communications networks; entertainment services provided from a web site featuring music, musical performances, musical videos, photographs, games and other multimedia materials; providing on-line electronic publications (not downloadable); providing on-line music and video recordings (not downloadable); providing digital music from the internet and other computer and communications networks; provision of digital music (not downloadable) from MP3 web sites; information services relating to music; booking and ticketing services for entertainment and cultural events; reservation services for concert

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|---|--|
| and entertainment event tickets; ticket information services for concerts and entertainment events; DJ services; fan club services; arranging, organising and conducting of games, contests and competitions; publishing services; music publishing services; sound recording and video entertainment services; television and radio entertainment services; provision of music studios; provision of recording studio services and facilities; audio and video recording services; music recording services; music production services; film and video production, publication and distribution; production, presentation and distribution of audio and video recordings; information, advisory and consultancy services relating to all of the aforesaid; except services with respect to (cannabis) cafes. | |
|---|--|

29. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the CJEU in *Canon*, Case C-39/97, the court stated at paragraph 23 of its judgment that:

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

30. Guidance on this issue has also come from Jacob J. (as he then was) in 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.

31. 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 for 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.”

32. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), 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.”

33. In *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another*, [2000] F.S.R. 267 (HC), Neuberger J. (as then was) stated that:

“I should add that I see no reason to give the word “cosmetics” and “toilet preparations”... anything other than their natural meaning, subject, of course, to the normal and necessary principle that the words must be construed by reference to their context.”

34. In *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. (as the then was) stated that:

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

35. 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 the responsibility for those goods lies with the same undertaking.”

36. In *Sanco SA v OHIM*, Case T-249/11, the GC indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in

circumstances where the nature and purpose of the respective goods and services are very different, i.e. *chicken* against *transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted, as the Appointed Person, in *Sandra Amelia Mary Elliot v LRC Holdings Limited* BL-0-255-13:

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense – but it does not follow that wine and glassware are similar goods for trade mark purposes.”

Whilst on the other hand:

“... it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.”

Class 35

37. “Business management” in the First Earlier Mark’s specification and “business management, also for the benefit of commercial broadcasting companies” in the proprietor’s specification are self-evidently identical.

38. “Publicity” in the proprietor’s specification falls within the broader category of “public relations and publicity services” in the First Earlier Mark’s specification. “Advertising” in the First Earlier Mark’s specification falls within the broader category of “advertisement and sales promotion” in the proprietor’s specification. “Advertisement mediation”, “distribution of advertising and promotional material, among which samples” and “provision of advertisement space in different kinds of media such as television, radio, papers, periodicals, magazines and electronic media” in the proprietor’s specification falls within the broader category of “advertising” in the First Earlier Mark’s specification. “Marketing services” in the First Earlier Mark’s specification falls within the broader category of “marketing, market research and analysis” in the proprietor’s specification. “Promotion of music concerts” and

“promoting the music of others by means of providing online portfolios via a website” in the proprietor’s specification falls within the broader category of “promotional services” in the First Earlier Mark’s specification. “Business management of musicians” in the proprietor’s specification falls within the broader category of “business management” in the First Earlier Mark’s specification. “Retail services in relation to downloadable music files” in the proprietor’s specification falls within the broader category of “retail services and online retail services connected with the sale of downloadable and streamable audio and video recordings” in the First Earlier Mark’s specification. “Organization of shows and exhibitions for commercial and publicity purposes” in the proprietor’s specification falls within the broader category of “organisation, arrangement and conducting of conferences, conventions, seminars, events and exhibitions for commercial or advertising purposes” in the First Earlier Mark’s specification. These services can, therefore, be considered identical on the principle outlined in *Meric*.

39. “Data processing” in the First Earlier Mark’s specification will fall within “managing databases” in the proprietor’s specification. These services can, therefore, be considered identical on the principle outlined in *Meric*. If I am wrong in this finding then they will overlap in users, uses and method of use and will be available through the same trade channels. The services will, therefore, be highly similar.

40. That leaves “all aforementioned services also provided via a global computer network” in the proprietor’s specification. As I have found all of the preceding services to be either identical or highly similar to the First Earlier Mark’s specification, it follows that services provided in this manner will also be identical or highly similar.

Class 41

41. “Music production services” appears in the First Earlier Mark’s specification and the proprietor’s specification. These services are identical. “Music production” in the proprietor’s specification is self-evidently identical to “music production services” in the First Earlier Mark’s specification.

42. “Entertainment and education services provided via the Internet and other computer and communications networks” in the First Earlier Mark’s specification falls within the broader category of “education, training and entertainment services” in the proprietor’s specification. “Production of music shows” in the proprietor’s specification falls within the broader category of “organisation, production and presentation of shows...” in the First Earlier Mark’s specification. “Preparation of radio and television programmes” in the proprietor’s specification falls within the broader category of “television and radio entertainment services” in the First Earlier Mark’s specification. “Production of sound and music recordings”, “production of sound and musical recordings” and “production of musical works in a recording studio” in the proprietor’s specification fall within the broader category of “music production services” in the First Earlier Mark’s specification. “Music recording services” in the First Earlier Mark’s specification falls within the broader category of “music publishing and music recording services” in the proprietor’s specification. “Music recording studio services” in the proprietor’s specification falls within the broader category of “provision of recording studio services and facilities” in the First Earlier Mark’s specification. “Cultural activities” and “arranging, organising and conducting of games, contests and competitions” in the First Earlier Mark’s specification falls within the broader category of “sporting and cultural activities” in the proprietor’s specification. “Production of films and live entertainment features”, “production of cinematographic films and TV shows” and “production of animated motion pictures and television features” in the proprietor’s specification all fall within the broader category of “film and video production, publication and distribution” in the First Earlier Mark’s specification. These services can, therefore, be considered identical on the principle outlined in *Meric*.

43. As noted above “music production” and “film and video production, publication and distribution” appear in the First Earlier Mark’s specification. The First Earlier Mark’s specification also includes “advisory and consultancy services relating to all of the aforesaid”. This is self-evidently identical to “consultancy on film and music production” in the proprietor’s specification.

44. “Music production services” in the First Earlier Mark’s specification will be part of the “publication of music” in the proprietor’s specification. They will commonly be provided by the same undertakings and will have the same use end users. They will

be available through the same trade channels. One is indispensable to the other and they will, therefore, have a complementary relationship. I consider these services to be highly similar.

The average consumer and the nature of the purchasing act

45. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' services. I must then determine the manner in which these services are likely to be selected by the average consumer. 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”.

46. I have no submissions from either party on the average consumer or the purchasing process for the services in issue. The services vary from those likely to be used by the general public, such as entertainment services, to those likely to be used by businesses, such as business management services. The average consumer will therefore be either a business user or a member of the general public. The cost and frequency of the purchases are likely to vary, depending on the exact services being purchased. Overall, the level of attention paid by the average consumer will be at least average.

47. The services are likely to be purchased from specialist retail outlets or their online equivalent. The purchasing process is likely to be dominated by visual considerations, as the average consumer is likely to select the services following inspection of the premises' frontage on the high street, on websites and in advertisements (such as

flyers, posters or online adverts). However, given that word-of-mouth recommendations may also play a part, I do not discount that there will be an aural component to the selection of the services.

Distinctive character of the earlier mark

48. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-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 promotion of 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. Registered trade marks possess varying degree of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

50. As the applicant has not filed any evidence to show that its mark has enhanced its distinctiveness through use, I have only the inherent position to consider. Neither the proprietor nor the applicant have made any submissions about the distinctiveness of the earlier mark.

51. I must make an assessment of the inherent distinctiveness of the earlier mark as a whole. The word HILIFE is a made-up word, although it is likely to be broken down into two ordinary dictionary words HIGH and LIFE. The made-up word HILIFE is neither descriptive nor allusive of the goods and services for which the First Earlier Mark is registered. I consider the First Earlier Mark to have at least a medium degree of inherent distinctive character.

Likelihood of confusion

52. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the applicant's trade mark, the average consumer of the services and the nature of the purchasing process. In doing so, I must be alive to the fact 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 that he has retained in his mind.

53. I have found the First Earlier Mark and the Contested Mark to be visually, aurally and conceptually similar to at least a medium degree. I have found the earlier mark to have at least a medium degree of inherent distinctive character. I have identified the average consumer to be a member of the general public or a business user who will

select the services by primarily visual means (although I do not discount an aural component). I have concluded that the degree of attention paid during the purchasing process will be at least average. I have found the parties' services to be either identical or highly similar.

54. Whilst keeping in mind the conceptual, visual and aural similarity of the marks I do not consider that the consumer will fail to recognise the presence of the word MUSIC in the Contested Mark and the absence of that word from the First Earlier Mark. I am satisfied that the consumer will not simply mistake one mark for another, particularly as at least an average degree of attention will be paid during the purchasing process. In my view, there is no likelihood of direct confusion.

55. It now falls to me to consider the likelihood of indirect confusion. Indirect confusion was described in the following terms 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:

“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. Bearing in mind my conclusions summarised in paragraph 53 above, I consider that the presence of the word HILIFE in both marks will create an expectation on the part of the average consumer that the services originate from the same or economically linked undertakings. The addition of the word MUSIC in the Contested

Mark will be seen as an extension of that brand. There is, therefore, a likelihood of indirect confusion.

57. As the Second Earlier Mark shares a greater degree of similarity with the Contested Mark, and as the services I have found to be identical with or highly similar to the Contested Mark's services also appear in the specification of the Second Earlier Mark, it follows that there will also be a likelihood of confusion in respect of that mark. In my view, the Second Earlier Mark and the Contested Mark will be seen as alternative configurations of the same mark used by the same or economically linked undertakings.

CONCLUSION

58. The application for invalidation succeeds in its entirety and the registration is hereby declared invalid in respect of all services for which it is registered. Under section 47(6) of the Act, the registration is deemed never to have been made.

COSTS

59. The applicant has been successful and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 2/2016. In the circumstances, I award the applicant the sum of £700 as a contribution towards the costs of proceedings. The sum is calculated as follows:

| | |
|--|-------------|
| Preparing a statement and considering the proprietor's statement | £200 |
| Official fee | £200 |
| Preparing written submissions during the evidence rounds | £300 |
| Total | £700 |

60. I therefore order Hilife Music Limited to pay Hilife Music Entertainment Limited the sum of £700. This sum should be paid within 14 days of the expiry of the appeal period or, if there is an appeal, within 14 days of the conclusion of the appeal proceedings.

Dated 11 March 2019

S WILSON

For the Registrar

ANNEX

HILIFE (EUTM no. 16238958)

- Class 14 Jewellery, costume jewellery, precious stones; horological and chronometric instruments, clocks and watches; watch straps; key rings, trinkets and fobs; bracelets; rings; ear rings; necklaces; pendants; jewellery charms; ornamental pins; lapel pins; cufflinks; tie pins and tie clips; badges of precious metals; jewellery cases; coins; medals and medallions; parts and fittings for all of the aforesaid goods.
- Class 16 Printed matter; photographs; stationery; printed publications; printed publicity and promotional material; books; magazines; periodical publications; newsletters; brochures; manuals; letterheads; posters; leaflets; forms; programmes; printed music; music scores; music books; instruction guides; music in sheet form; comic books; catalogues; certificates; menus; stationery; writing paper; writing pads; drawing pads; notelets; note pads; note books; cards; postcards; greeting cards; envelopes; labels; trading cards; collectors' cards; stickers; transfers; decalcomanias; stencils; tickets; gift vouchers; diaries; address books; appointment books; albums; photograph albums; scrap books; folders; wall charts; maps; personal organisers; calendars; paper and cardboard boxes; paper tablecloths and napkins; paper and cardboard place mats and coasters; paper towels; gift bags and bags for packaging; carrier bags; wrapping paper; gift tags; paper flags and banners; bookmarks; pens; pencils; pencil sharpeners; erasers; rulers; paint brushes; signs and advertisement boards; paper and cardboard; prints and pictures; graphic prints, representations and reproductions; wall art; money clips; none of the aforementioned goods in relation to articles for smokers and (cannabis) cafes.
- Class 18 Trunks and travelling bags; umbrellas, parasols and walking sticks; luggage; cases; garment bags for travel; brief cases; bags; rucksacks; backpacks; holdalls; purses; wallets; card holders; credit card cases and

holders; ID card holders; key cases; collars, covers, leads and leashes for animals; parts and fittings for all the aforesaid goods; none of the aforementioned goods in relation to articles for smokers and (cannabis) cafes.

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

Class 35 Advertising; business management; business administration; office functions; management services to musicians and recording artists; management and promotion of performing artists; public relations and publicity services; marketing services; promotional services; preparation, publication and distribution of promotional material; production of promotional audio and video recordings; production of video recordings for advertising, marketing and publicity purposes; organisation, arrangement and conducting of conferences, conventions, seminars, events and exhibitions for commercial or advertising purposes; advertising via the Internet; provision of advertising space; provision of space on web sites for advertising goods and services; operation and supervision of membership schemes; organisation, operation and supervision of loyalty and incentive schemes; data processing; retail services and online retail services connected with the sale of soaps, detergents, perfumery, essential oils, cosmetics, hair lotions, dentifrices, toiletries, fragrances, toilet waters, cologne; retail services and online retail services connected with the sale of body sprays, personal deodorants, talcum powder, shower and bath preparations, shower gel, bubble bath, bath oils, bath salts, hair care products and preparations, shampoos, hair conditioners, hair colorants,

hair styling products, body care products and preparations, skin care products and preparations, oils, creams, lotions, gels and powders for the skin, moisturisers, skin toners, facial scrubs and washes; retail services and online retail services connected with the sale of after shave lotion, shaving soaps, shaving foams, shaving gels, make-up, aromatherapy products, massage preparations, candles, badges, signs, plaques, ornaments, figurines, works of art, money boxes, key chains, penknives, apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs, compact discs, DVDs and other digital recording media, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of CD ROMs, digital video discs, audio tapes and cassettes, video tapes and cassettes, records, photographic transparencies and photographic and cinematographic films prepared for exhibition purposes, pre-recorded sound storage media, image storage media and data storage media, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of audio recordings, video recordings, audio-visual recordings featuring music and musical-based entertainment, musical sound recordings, musical video recordings, motion picture films, animated cartoons, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of downloadable and streamable audio and video recordings, downloadable and streamable sound recordings and audio-visual recordings featuring music and musical-based entertainment, downloadable and streamable music and music video recordings, downloadable music files, downloadable and streamable digital music provided from the internet or from a computer database, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of digital music downloadable provided from MP3 internet web sites, downloadable and streamable MP3 files, ring tones, graphics, games, images and video images, screen savers, computer software and programs, downloadable computer software, computer application software, computer games programs, computer application software for mobile communication

devices, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of downloadable electronic publications, downloadable and streamable podcasts in the field of music, electronic storage media, memory cards, eye glasses, spectacles and sunglasses, cases, chains, straps, cords and frames for eye glasses, spectacles and sunglasses, cameras, holograms, computer mouse mats and pads, telecommunications apparatus, mobile phones, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of parts and accessories for mobile phones and personal electronic devices, mobile phone accessory charms, covers and cases for mobile phones and personal electronic devices, holders adapted for mobile phones, straps for mobile phones, covers and cases specially adapted for PDAs, MP3 players, laptops and gaming devices, headphones, earphones, magnetic or encoded cards, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of payment cards, telephone cards, magnets, jewellery, costume jewellery, precious stones, horological and chronometric instruments, clocks and watches, watch straps, key rings, trinkets and fobs, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of bracelets, rings, ear rings, necklaces, pendants, jewellery charms, ornamental pins, lapel pins, cufflinks, tie pins and tie clips, badges of precious metals, jewellery cases, coins, medals and medallions, musical instruments, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of certificates, menus, stationery, writing paper, writing pads, drawing pads, notelets, note pads, note books, cards, postcards, greeting cards, envelopes, labels, trading cards, collectors' cards, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of stickers, transfers, decalcomanias, stencils, tickets, gift vouchers, diaries, address books, appointment books, albums, photograph albums, scrap books, folders, wall charts, maps, personal organisers, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of calendars, paper and

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

retail services connected with the sale of belt clasps, brooches, buckles, hat ornaments, hair ornaments, shoe ornaments, lanyards for wear, games and playthings, toys, gymnastic and sporting articles, whistles, playing cards, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of confetti, balloons, party novelties, dolls, action figure toys, food products, confectionery, snack foods, drinks, matches and lighters; parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of printed matter, photographs, stationery, printed publications, printed publicity and promotional material, books, magazines, periodical publications, newsletters, brochures, manuals, letterheads, posters, leaflets, forms, programmes, printed music, music scores, music books, instruction guides, music in sheet form, comic books, catalogues, parts and fittings for all the aforesaid goods; information, advisory and consultancy services in relation to all the aforesaid services; promotion of entertainment and events; entertainment promotion services; none of the aforementioned services in relation to articles for smokers and (cannabis) cafes.

Class 41 Entertainment; cultural activities; musical entertainment; music performance services; provision of live music; musical concert services; organisation and production of entertainment and events; organisation, production and presentation of shows, staged events, concerts, live performances, musical performances, theatrical performances, dancing displays, audience participation events and talent shows; organisation of parties and social events; music festival services; entertainment services provided at nightclubs and discotheques; entertainment and education services provided via the Internet and other computer and communications networks; entertainment services provided from a web site featuring music, musical performances, musical videos, photographs, games and other multimedia materials; providing on-line electronic publications (not downloadable); providing on-line music and video recordings (not downloadable); providing digital music from the internet and other computer and communications networks; provision of

digital music (not downloadable) from MP3 web sites; information services relating to music; booking and ticketing services for entertainment and cultural events; reservation services for concert and entertainment event tickets; ticket information services for concerts and entertainment events; DJ services; fan club services; arranging, organising and conducting of games, contests and competitions; publishing services; music publishing services; sound recording and video entertainment services; television and radio entertainment services; provision of music studios; provision of recording studio services and facilities; audio and video recording services; music recording services; music production services; film and video production, publication and distribution; production, presentation and distribution of audio and video recordings; information, advisory and consultancy services relating to all of the aforesaid; except services with respect to (cannabis) cafes.



HILIFE MUSIC (EUTM no. 16238966)

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

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

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

Class 16 Printed matter; photographs; stationery; printed publications; printed publicity and promotional material; books; magazines; periodical publications; newsletters; brochures; manuals; letterheads; posters; leaflets; forms; programmes; printed music; music scores; music books; instruction guides; music in sheet form; comic books; catalogues; certificates; menus; stationery; writing paper; writing pads; drawing pads; notelets; note pads; note books; cards; postcards; greeting cards;

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

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

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

Class 35 Advertising; business management; business administration; office functions; management services to musicians and recording artists; management and promotion of performing artists; public relations and publicity services; marketing services; promotional services; preparation, publication and distribution of promotional material;

production of promotional audio and video recordings; production of video recordings for advertising, marketing and publicity purposes; organisation, arrangement and conducting of conferences, conventions, seminars, events and exhibitions for commercial or advertising purposes; advertising via the Internet; provision of advertising space; provision of space on web sites for advertising goods and services; operation and supervision of membership schemes; organisation, operation and supervision of loyalty and incentive schemes; data processing; retail services and online retail services connected with the sale of soaps, detergents, perfumery, essential oils, cosmetics, hair lotions, dentifrices, toiletries, fragrances, toilet waters, cologne; retail services and online retail services connected with the sale of body sprays, personal deodorants, talcum powder, shower and bath preparations, shower gel, bubble bath, bath oils, bath salts, hair care products and preparations, shampoos, hair conditioners, hair colorants, hair styling products, body care products and preparations, skin care products and preparations, oils, creams, lotions, gels and powders for the skin, moisturisers, skin toners, facial scrubs and washes; retail services and online retail services connected with the sale of after shave lotion, shaving soaps, shaving foams, shaving gels, make-up, aromatherapy products, massage preparations, candles, badges, signs, plaques, ornaments, figurines, works of art, money boxes, key chains, penknives, apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs, compact discs, DVDs and other digital recording media, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of CD ROMs, digital video discs, audio tapes and cassettes, video tapes and cassettes, records, photographic transparencies and photographic and cinematographic films prepared for exhibition purposes, pre-recorded sound storage media, image storage media and data storage media, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of audio recordings, video recordings, audio-visual recordings featuring music and musical-based entertainment, musical sound recordings, musical

video recordings, motion picture films, animated cartoons, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of downloadable and streamable audio and video recordings, downloadable and streamable sound recordings and audio-visual recordings featuring music and musical-based entertainment, downloadable and streamable music and music video recordings, downloadable music files, downloadable and streamable digital music provided from the internet or from a computer database, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of digital music downloadable provided from MP3 internet web sites, downloadable and streamable MP3 files, ring tones, graphics, games, images and video images, screen savers, computer software and programs, downloadable computer software, computer application software, computer games programs, computer application software for mobile communication devices, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of downloadable electronic publications, downloadable and streamable podcasts in the field of music, electronic storage media, memory cards, eye glasses, spectacles and sunglasses, cases, chains, straps, cords and frames for eye glasses, spectacles and sunglasses, cameras, holograms, computer mouse mats and pads, telecommunications apparatus, mobile phones, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of parts and accessories for mobile phones and personal electronic devices, mobile phone accessory charms, covers and cases for mobile phones and personal electronic devices, holders adapted for mobile phones, straps for mobile phones, covers and cases specially adapted for PDAs, MP3 players, laptops and gaming devices, headphones, earphones, magnetic or encoded cards, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of payment cards, telephone cards, magnets, jewellery, costume jewellery, precious stones, horological and chronometric instruments, clocks and watches, watch straps, key rings, trinkets and fobs, parts and fittings for all the aforesaid

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

services and online retail services connected with the sale of credit card cases and holders, ID card holders, key cases, collars, covers, leads and leashes for animals, picture frames, photograph frames, household or kitchen utensils and containers, combs, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of brushes, glassware, porcelain, pottery and earthenware, drinking vessels, cups, mugs, bottle openers, corkscrews, flasks, bed and table covers, textile piece goods, textiles for making articles of clothing, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of household textile articles, towels, clothing, footwear, headgear, articles of outer clothing, t-shirts, shirts, sweatshirts, tank tops, sweaters, cardigans, hooded pullovers, jerseys, sweatpants, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of track suits, shorts, trousers, pants, jeans, blouses, skirts, dresses, vests, ties, waistcoats, suits, jackets, coats, overcoats, rainwear, sleepwear, underwear, swimwear, socks, hosiery, scarves, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of gloves, shoes, boots, sandals, flip-flops, slippers, hats, caps, sun visors, headbands, wristbands, belts, badges and patches of textile materials, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of belt clasps, brooches, buckles, hat ornaments, hair ornaments, shoe ornaments, lanyards for wear, games and playthings, toys, gymnastic and sporting articles, whistles, playing cards, parts and fittings for all the aforesaid goods; retail services and online retail services connected with the sale of confetti, balloons, party novelties, dolls, action figure toys, food products, confectionery, snack foods, drinks, matches and lighters; parts and fittings for all the aforesaid goods; information, advisory and consultancy services in relation to all of the aforesaid; promotion of entertainment and events; entertainment promotion services; none of the aforementioned services in relation to articles for smokers and (cannabis) cafes.

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