

O/540/19

TRADE MARKS ACT 1994

**IN THE MATTER OF REGISTRATION NO. UK00003187845
IN THE NAME OF CONSOLIDATED DEVELOPMENTS LIMITED
FOR THE FOLLOWING TRADE MARK:**

TIN PAN ALLEY

IN CLASSES 9, 15, 16, 35, 38, 41, 42 AND 43

AND

**AN APPLICATION FOR A DECLARATION OF INVALIDITY
UNDER NO. 501989 BY A.A. COOPER**

BACKGROUND AND PLEADINGS

1. Consolidated Developments Limited (“the proprietor”) applied for the trade mark shown on the cover page of this decision (“the Contested Mark”) on 27 September 2016. It was published for opposition purposes on 18 November 2016 and registered on 27 January 2017 for the goods and services listed in the Annex to this decision.

2. On 23 February 2018, Mr A. A. Cooper (“the applicant”) applied to have the Contested Mark declared invalid under section 47 of the Trade Marks Act 1994 (“the Act”). The application is based on sections 5(1) and 5(2)(a) of the Act. The invalidity is directed against the following goods and services in the proprietor’s specification only:

Class 9 Apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; compact discs; digital recording media; computer software; computer programs (downloadable software); computer programs (recorded); downloadable video recordings; downloadable movies; downloadable image files; music cassettes; musical recordings; downloadable digital music; juke boxes, musical; downloadable musical sound recordings; mp3 players; downloadable publications; amplifiers; sound amplifiers; musical instrument amplifiers; keyboard amplifiers; sound recording apparatus; film recording apparatus; sound and picture recording apparatus; digital music players; sound processors; signal processors; electric and electronic musical effects equipment; microphones; electronic sound pickups for guitars and basses; sound reproducing apparatus; loudspeakers; public address systems; podcasts; cases for MP3 players; CD cases; parts and fittings for the aforesaid goods.

Class 15 Musical instruments; tuning devices for musical instruments; plectrums; picks for stringed instruments; pegs for musical instruments; drums; drumsticks; drum machines; keyboard instruments [musical]; guitars; strings for musical instruments; music stands; music synthesizers; sound effects machines being musical instruments; bags specially

adapted for holding musical instruments; cases adapted for musical instruments; parts and fittings for the aforesaid goods.

Class 16 Stickers; music sheets; music books; printed music; music scores; sheet music; musical score books; magazines; printed periodicals in the field of music; leaflets; flyers; journals; newsletters; booklets; pamphlets; brochures; instructional and teaching materials; parts and fittings for the aforesaid goods.

Class 35 Business administration; providing consumer product information; providing a searchable online advertising guide featuring the goods and services of other on-line vendors on the internet; business information services provided on-line from a computer database or the internet; retail services in relation to downloadable video recordings, smart cards, downloadable image files, music cassettes, musical recordings, downloadable digital music, juke boxes, musical, downloadable musical sound recordings, mp3 players, downloadable publications, amplifiers, sound amplifiers, musical instrument amplifiers, keyboard amplifiers, sound recording apparatus, film recording apparatus, sound and picture recording apparatus, digital music players, sound processors, signal processors, electric and electronic musical effects equipment, microphones, electronic sound pickups for guitars and basses, sound reproducing apparatus, loudspeakers, public address systems, podcasts, mouse pads, display screens, machine readable information carriers, data storage media, cases adapted for computers, cases for photographic apparatus, cases for MP3 players, CD cases, musical instruments, printed matter, music sheets, music books, printed music, music scores, sheet music, musical score books, manuscript books, magazines, printed periodicals in the field of music, leaflets, flyers, journals, newsletters, booklets, pamphlets, brochures, instructional and teaching materials, clothing, advisory and consultancy services related to the foregoing.

3. The applicant relies on UK registration no. 2574641 for the trade mark **TIN PAN ALLEY**. The applicant's mark was filed on 9 March 2011 and registered on 12 August 2011. It stands registered for the following services:

Class 35 Providing advertising space on websites, for others.

4. The applicant claims that the Contested Mark is identical to his own mark and that the parties' respective goods and services are identical or similar.

5. The proprietor filed a counterstatement, denying the grounds of invalidity.

6. Both parties filed written submissions during the evidence rounds. Whilst I do not propose to summarise those here, I have read them all and I will refer to them below as appropriate. A hearing took place before me on 3 September 2019, by video conference. The applicant did not attend, and the proprietor was represented by Ms Denise McFarland of Counsel, instructed by Lee & Thompson LLP and Murgitroyd & Company.

DECISION

7. 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.”

8. The applicant’s mark had completed its registration procedure more than five years before the date on which the invalidation application was made. Consequently, the proof of use provisions apply. However, in its Counterstatement, the proprietor did not request that the applicant provide proof of use of its mark. In her Skeleton Argument, Ms McFarland did seek to reintroduce this issue. However, at the hearing she accepted that as it had not been pleaded, it was not an issue before me. Consequently, the applicant is entitled to rely upon all services for which his mark is registered.

9. Section 5(1) of the Act reads as follows:

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

10. Section 5(2)(a) of the Act reads as follows:

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

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

(b) [...]

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 mark, it qualifies as an earlier trade mark under section 6 of the Act.

Identity of the marks

13. It is a prerequisite of both section 5(1) and section 5(2)(a) of the Act that the trade marks are identical.

14. The proprietor admits that the marks are identical.

Comparison of goods and services

15. In its Notice of Invalidity, the applicant directed its invalidation action against specific goods and services in the proprietor's specification (as set out below). However, in its written submissions, it addressed the similarity between its own services and the proprietor's broader specification. The Registry wrote to the applicant on 22 August 2019 to note that the scope of the invalidation action would be limited to those goods and services specifically pleaded in the Notice of Invalidity. The applicant acknowledged and accepted this by email dated 30 August 2019.

16. The competing goods and services are, therefore, as follows:

Applicant's services	Proprietor's goods and services
<u>Class 35</u> Providing advertising space on websites, for others.	<u>Class 9</u> Apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; compact discs; digital recording media; computer software; computer programs (downloadable software); computer programs (recorded); downloadable video recordings; downloadable movies; downloadable image files; music cassettes; musical recordings; downloadable digital music; juke boxes, musical; downloadable musical sound recordings; mp3 players; downloadable publications; amplifiers; sound amplifiers; musical instrument amplifiers; keyboard amplifiers; sound recording apparatus; film recording apparatus; sound and picture recording apparatus; digital music players; sound processors;

signal processors; electric and electronic musical effects equipment; microphones; electronic sound pickups for guitars and basses; sound reproducing apparatus; loudspeakers; public address systems; podcasts; cases for MP3 players; CD cases; parts and fittings for the aforesaid goods.

Class 15

Musical instruments; tuning devices for musical instruments; plectrums; picks for stringed instruments; pegs for musical instruments; drums; drumsticks; drum machines; keyboard instruments [musical]; guitars; strings for musical instruments; music stands; music synthesizers; sound effects machines being musical instruments; bags specially adapted for holding musical instruments; cases adapted for musical instruments; parts and fittings for the aforesaid goods.

Class 16

Stickers; music sheets; music books; printed music; music scores; sheet music; musical score books; magazines; printed periodicals in the field of music; leaflets; flyers; journals; newsletters; booklets; pamphlets; brochures; instructional and teaching materials; parts and fittings for the aforesaid goods.

Class 35

Business administration; providing consumer product information; providing a searchable online advertising guide featuring the goods and services of other on-line vendors on the internet; business information services provided on-line from a computer database or the internet; retail services in relation to downloadable video recordings, smart cards, downloadable image files, music cassettes, musical recordings, downloadable digital music, juke boxes, musical, downloadable musical sound recordings, mp3 players, downloadable publications, amplifiers, sound amplifiers, musical instrument amplifiers, keyboard amplifiers, sound recording apparatus, film recording apparatus, sound and picture recording apparatus, digital music players, sound processors, signal processors, electric and electronic musical effects equipment, microphones, electronic sound pickups for guitars and basses, sound reproducing apparatus, loudspeakers, public address systems, podcasts, mouse pads, display screens, machine readable information carriers, data storage media, cases adapted for computers, cases for photographic apparatus, cases for MP3 players, CD

	<p>cases, musical instruments, printed matter, music sheets, music books, printed music, music scores, sheet music, musical score books, manuscript books, magazines, printed periodicals in the field of music, leaflets, flyers, journals, newsletters, booklets, pamphlets, brochures, instructional and teaching materials, clothing, advisory and consultancy services related to the foregoing.</p>
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Classes 9, 15 and 16

17. In its written submissions, the applicant states:

“23. The Earlier Registration covers services intended for allowing third parties to place any goods or services they wish on a collective website in order to advertise for retail. These services are therefore complementary to any of the goods advertised on that space [...]”

18. To adopt this approach would be to provide the applicant’s mark with much broader protection than it is entitled. The fact that advertising services may be used in relation to any number of secondary goods is not sufficient for a finding of complementarity between those goods and services. I can see no overlap in trade channels, use, method of use or nature. I consider the goods and services to be dissimilar.

Class 35

19. At the hearing, Ms McFarland equated the term “Providing a searchable online advertising guide featuring the goods and services of other on-line vendors on the internet” in the proprietor’s specification with internet search engines such as Google or Bing which enable the consumer to enter a search term which will bring up multiple results from the websites of multiple businesses. Ms McFarland identified that such

search engines display results of businesses that have had no contact with the search engine provided; there is no contractual relationship between them. The search engine has simply searched multiple platforms and identified various results. Ms McFarland contrasted this with the provision of advertising space on a website, which involves a direct contractual relationship between the advertising provider and the party seeking to place an advert.

20. Whilst search engines provide results from a variety of websites which have had no contractual relationship with the search engine provider, they also provide paid for advertising. In any event, to my mind, a search engine such as Bing or Google would not be considered an online advertising guide. Rather, this term is more likely to cover websites which enable individuals or businesses to post adverts relating to a specific sector which can then be searched by the end consumer. For example, the FreeAds. In his written submissions, the applicant states that such services all allow for third party goods and services to be promoted via a dedicated platform or area. I agree. There is overlap in trade channels, use, users and method of use with “Providing advertising space on websites, for others” in the applicant’s specification. I consider these services to be highly similar.

21. With regard to “business administration” in the proprietor’s specification, the applicant states that this is a service used to improve the performance of a business in the market place. The applicant argues that this is, therefore, similar or complementary to its own services. However, in my view, this is too tenuous a link. The proprietor’s services are entirely different in their specific purpose to the applicant’s services. Whilst they may overlap in user, in that both services may be used by businesses, they will differ in trade channels, nature and method of use. They are neither complementary nor competitive. I consider the services to be dissimilar.

22. “Providing consumer product information” in the proprietor’s specification is a service likely to be provided to businesses by specialist service providers. In the absence of any evidence to the contrary, I do not consider there to be any overlap in trade channels, method of use, nature or purpose with the applicant’s services. They are neither competitive nor complementary. I consider the services to be dissimilar.

23. “Business information services provided on-line from a computer database or the internet” in the proprietor’s specification is likely to take the form of a business directory service. In the absence of any evidence to the contrary, I do not consider there to be any overlap in trade channels, method of use, nature or purpose with the applicant’s services. They are neither competitive nor complementary. I consider the services to be dissimilar.

24. That leaves only the retail services in the proprietor’s specification. In respect of these services, the applicant states:

“17. The remaining retail services are similar to the *providing advertising space on websites, for others*. Consumers now expect online retailers to not only provide products directly from the website in question, but to provide a marketplace for third parties to advertise and promote their own goods and services alongside. These are in competition to the retail services directly, and even complementary if the model adopted specialises in an online marketplace featuring new and second-hand goods located in one convenient website [...]”

25. Again, in my view, this approach would give the applicant’s mark broader protection than it is entitled. In the absence of any evidence to support this submission, I do not consider that the applicant’s specification would cover an online marketplace. I do not, therefore, see any overlap in trade channels, purpose, method of use or nature. I do not consider the services to be competitive or complementary. I consider the services to be dissimilar.

26. For the application under section 5(1) of the Act to succeed, the parties’ respective goods and services must be identical. For the reasons set out above, I do not consider any of the goods and services to be identical. Consequently, the application for invalidity based upon section 5(1) of the Act must fail.

27. For there to be a likelihood of confusion under section 5(2)(a) of the Act, there must be some degree of similarity between the parties’ respective goods and

services¹. The application for invalidity under section 5(2)(a) of the Act must, therefore, fail in respect of all goods and services with the exception of “Providing a searchable online advertising guide featuring the goods and services of other on-line vendors on the internet” in the proprietor’s specification.

The average consumer and the nature of the purchasing act

28. 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 the 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.”

29. The average consumer for the services will be either a member of the general public or a business user. Purchases of the services are likely to vary in frequency and cost. For example, an individual posting an advert on a local website may pay only a small amount, whereas a business securing a deal for regular advertising on a popular, high traffic web platform may pay significantly more. Nonetheless, a number of factors will be taken into account such as relevance to the user’s specific needs, ease of use, presentation style of search results and target audience. I consider that the average consumer will pay at least a medium degree of attention during the purchasing process for the services.

¹ *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

30. The services are likely to be purchased from online websites. The average consumer will come into contact with the mark on the website itself or in advertisements for the services (such as flyers, posters or online adverts). Visual considerations are likely to dominate the selection process. 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 purchase of the services.

Distinctive character of the earlier trade mark

31. 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 promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

32. Registered trade marks possess varying degrees 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.

33. The applicant has filed no evidence to demonstrate that the distinctiveness of its mark has been enhanced through use. I have, therefore, only the inherent position to consider. I have no substantive submissions on the inherent distinctiveness of the earlier mark. I have been referred, throughout these proceedings to the appeal judgment of the Honorable Mr Justice Henry Carr dated 6 July 2018² which related to the earlier revocation action brought by the proprietor in these proceedings against the applicant's mark. In that judgment, it is noted:

“7. [...] Denmark Street has for many years been colloquially referred to as *“Tin Pan Alley”*. This nickname is derived from an area around New York's West 28th Street, also known as Tin Pan Alley. Many famous artists have recorded music in Denmark Street and a blue plaque was installed by the British Plaque Association in 2014, stating that *“This street was Tin Pan Alley 1911-1992 Home of the British Publishers and Songwriters”*.

34. Whilst this may mean that the mark has a lower degree of inherent distinctiveness in relation to music-related goods and services, this meaning has no relevance to advertising services (which are the services in issue in these proceedings). Consequently, I consider the earlier mark to have a medium degree of inherent distinctive character.

Likelihood of confusion

35. 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

² [2018] EWHC 1727 (Ch)

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 marks, the average consumer for 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.

36. I have found the marks to be identical. I have found the earlier mark to have 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 primarily by visual means, although I do not discount an aural component. I have concluded that at least a medium degree of attention will be paid during the purchasing process. I have found the parties' services to be highly similar (except where I have found them to be dissimilar as set out above).

37. Bearing in mind that the marks are identical, and the earlier mark has a medium degree of inherent distinctive character, I consider that there is a likelihood of direct confusion in respect of those services that I have found to be similar to the applicant's services.

Final Remarks

38. I note that in her Skeleton Argument, Ms McFarland made reference to the possibility of any conflict between the goods and services being overcome by modification to the proprietor's specification to include wording such as "save insofar as the provision of advertising space on websites for others". Although in her Skeleton Argument, this suggestion was made in reference to particular services, at the hearing Ms McFarland extended this as a formal offer in relation to any point of similarity that might be identified.

39. This offer was put forward very late in the day. Although referenced in Ms McFarland's Skeleton Argument, it was not put forward in its broader terms until the

hearing and, as the applicant was not represented at the hearing, there was no opportunity for him to comment upon the offer put forward.

40. In any event, I do not consider that this offer will be of assistance in this case. The point of similarity that I have identified is such that, in my view, the proprietor's services could not exist without "the provision of advertising space on websites for others". If a business offering a searchable online advertising guide did not also offer advertising space on their website for others, then there would be no adverts to search. These services are so intertwined that it is not possible to properly limit them in such a way. My finding that there is a likelihood of confusion cannot, therefore, be circumvented by such a limitation to the proprietor's specification.

CONCLUSION

41. The application for invalidity has succeeded in relation to "Providing a searchable online advertising guide featuring the goods and services of other on-line vendors on the internet" in the proprietor's specification. Under section 47(6) of the Act, the registration is deemed never to have been made in respect of these services.

42. The application for invalidity has failed in relation to the remaining goods and services in the proprietor's specification, for which the Contested Mark will remain registered.

COSTS

43. The proprietor has enjoyed the greater degree of success 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 proprietor the sum of **£950** as a contribution towards the costs of proceedings. There had been some confusion as to the matters in issue in this case with the result that the hearing was brief. I have, therefore, reduced the amount awarded in respect of the hearing to reflect this. The sum is calculated as follows:

Preparing a statement and considering	£200
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the applicant's statement

Preparing written submissions £300

Preparing for and attendance at hearing £450

Total £950

44. I therefore order Mr A. A. Cooper to pay Consolidated Developments Limited the sum of £950. 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 this 12th day of September 2019

S WILSON

For the Registrar

ANNEX

The proprietor's mark stands registered for the following goods and services:

Class 9

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; digital recording media; mechanisms for coin-operated apparatus; cash registers; calculating machines; data processing equipment; computers; computer software; computer programs (downloadable software); computer programs (recorded); computer memory devices; computer software (recorded); computer game software; downloadable video recordings; downloadable movies; smart cards; downloadable image files; music cassettes; musical recordings; downloadable digital music; juke boxes, musical; downloadable musical sound recordings; mp3 players; downloadable publications; amplifiers; sound amplifiers; musical instrument amplifiers; keyboard amplifiers; sound recording apparatus; film recording apparatus; sound and picture recording apparatus; digital music players; sound processors; signal processors; electric and electronic musical effects equipment; microphones; electronic sound pickups for guitars and basses; sound reproducing apparatus; loudspeakers; public address systems; podcasts; mouse pads; display screens; machine readable information carriers; data storage media; cases adapted for computers; cases for photographic apparatus; cases for MP3 players; CD cases; DVD cases; mobile telephone cases; parts and fittings for the aforesaid goods.

Class 15

Musical instruments; tuning devices for musical instruments; plectrums; picks for stringed instruments; pegs for musical instruments; drums; drumsticks; drum machines; keyboard instruments [musical]; guitars; strings for musical instruments; music stands; music synthesizers; sound effects machines being musical instruments; bags specially adapted for holding musical instruments; cases adapted for musical instruments; parts and fittings for the aforesaid goods.

Class 16

Paper; cardboard; blank note cards; bond paper; cardboard boxes; scrapbooks; note pads; desk pads; bookmarks; calendars; address books; daily planners; stickers; posters; trading cards; postcards; beer mats; coasters of cardboard; printed matter; music sheets; music books; writing paper; printed music; music scores; sheet music; musical score books; manuscript books; magazines; printed periodicals in the field of music; leaflets; flyers; journals; newsletters; booklets; pamphlets; brochures; photographs; stationery; adhesives for stationery or household purposes; paint brushes; stationery; pens; pencils; drawing rulers; pencil sharpeners; bookends; book covers; book holders; paperweights; instructional and teaching materials; packaging materials; gift packaging; bubble packs for packaging; parts and fittings for the aforesaid goods.

Class 35

Advertising; business management; business administration; office functions; advertising, marketing and promotional services; provision of advertising space; rental of advertising time on communication media; preparation and realization of media and advertising plans and concepts; advertising via electronic media and specifically the internet; production of television and radio advertisements; provision of business information; rental of billboards; electronic billboard advertising; leasing of advertising billboards; production of advertising matter; rental of advertising space; rental of advertising time on communication media; dissemination of advertising and promotional materials; providing consumer product information; providing a searchable online advertising guide featuring the goods and services of other on-line vendors on the internet; computerized database management; business information services provided on-line from a computer database or the internet; retail services in relation to hand tools and implements (hand-operated), 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, digital recording media, mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment, computers, computer software, computer programs (downloadable software), computer programs (recorded), computer memory devices, computer software (recorded), computer game software, downloadable video

recordings, downloadable movies, smart cards, downloadable image files, music cassettes, musical recordings, downloadable digital music, juke boxes, musical, downloadable musical sound recordings, mp3 players, downloadable publications, amplifiers, sound amplifiers, musical instrument amplifiers, keyboard amplifiers, sound recording apparatus, film recording apparatus, sound and picture recording apparatus, digital music players, sound processors, signal processors, electric and electronic musical effects equipment, microphones, electronic sound pickups for guitars and basses, sound reproducing apparatus, loudspeakers, public address systems, podcasts, mouse pads, display screens, machine readable information carriers, data storage media, cases adapted for computers, cases for photographic apparatus, cases for MP3 players, CD cases, DVD cases, mobile telephone cases, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, fireworks, precious metals and their alloys, jewellery, precious stones, horological and chronometric instruments, musical instruments, paper, cardboard, blank note cards, bond paper, cardboard boxes, scrapbooks, note pads, desk pads, bookmarks, calendars, address books, daily planners, stickers, posters, trading cards, postcards, beer mats, coasters of cardboard, printed matter, music sheets, music books, writing paper, printed music, music scores, sheet music, musical score books, manuscript books, magazines, printed periodicals in the field of music, leaflets, flyers, journals, newsletters, booklets, pamphlets, brochures, photographs, stationery, adhesives for stationery or household purposes, paint brushes, stationery, pens, pencils, drawing rulers, pencil sharpeners, bookends, book covers, book holders, paperweights, instructional and teaching materials, packaging materials, gift packaging, bubble packs for packaging, leather and imitations of leather, animal skins, hides, trunks and travelling bags, umbrellas and parasols, walking sticks, whips, harness and saddlery, furniture, mirrors, picture frames, unworked or semi-worked bone, horn, ivory, whalebone or mother-of-pearl, shells, meerschaum, yellow amber, household or kitchen utensils and containers, combs and sponges, brushes (except paintbrushes), brush-making materials, articles for cleaning purposes, steelwool, unworked or semi-worked glass (except glass used in building), glassware, porcelain and earthenware, ropes and string, nets, tents, awnings and tarpaulins, sails, sacks, padding and stuffing materials (except of paper, cardboard, rubber or plastics), raw fibrous textile materials, textiles and substitutes for textiles, bed covers, table covers, clothing, footwear, headgear, games and playthings, gymnastic and sporting

articles, decorations for Christmas trees, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages, alcoholic beverages (except beers), tobacco, smokers' articles, matches; information, advisory and consultancy services related to the foregoing.

Class 38

Telecommunications services; on-line communication services; audio broadcasting; video broadcasting; radio broadcasting; internet broadcasting services; wireless broadcasting; webcasting services; live transmissions accessible via home pages on the internet [webcam]; satellite broadcasting services relating to entertainment; delivery of digital music by telecommunications; transmission of short messages [SMS], images, speech, sound, music and text communications between mobile telecommunications devices; internet access services; providing computer access to communication networks; electronic mail services; message sending; electronic bulletin board services; providing multiple-user access to a global computer information network; rental of access time to global computer networks; transmission of messages over electronic media; data streaming; streaming audio and video material on the internet; transmission of data, audio, video and multimedia files, including downloadable files and files streamed over a global computer network; information, advisory and consultancy services related to the foregoing.

Class 41

Entertainment services; organisation of competitions; arranging of contests; production of shows; video production; audio production; music production; music library services; music publishing services; recording studios; film studios; museum services; providing digital music [not downloadable] from the internet; presentation of live performances; provision of sports facilities; live music services; live music performances; live music shows; live entertainment; theatrical performances; provision of facilities for live band performances; provision of live entertainment; provision of live music; provision of live musical performances; provision of live shows; recreational facilities; providing sports facilities; provision of entertainment facilities; film rental; rental of grandstands; nightclub services; video and audio rental services; rental of audio-visual apparatus; health and fitness club services; publication services;

electronic publications (not downloadable); publishing; education services; cultural activities; cultural services; art gallery services; provision of entertainment via podcast; radio entertainment; radio production services; conducting guided tours; information, advisory and consultancy services related to the foregoing.

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; architectural services; architectural consultancy; authenticating works of art; conversion of data or documents from physical to electronic media; creating and maintaining web sites for others; electronic data storage; hosting computer sites [web sites]; land surveying; quality control; software as a service [SaaS]; urban planning; web site design consultancy; information, advisory and consultancy services related to the foregoing.

Class 43

Services for providing food and drink; temporary accommodation; bar services; food and drink catering; café services; restaurants; self service restaurants; snack-bars; provision of food and drink; bistro services; café services; cafeteria services; canteen services; catering services; night club services [provision of food]; club services for the provision of food and drink; cocktail lounge services; restaurant services; self-service restaurant services; public house services; provision of conference, exhibition and meeting facilities; providing banquet and social function facilities for special occasions; accommodation bureau services; hotels; tourist hostels; providing travel lodging information services and travel lodging booking agency services for travellers; information, advisory and consultancy services relating to the foregoing.