BL O-620-19

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 3316202
BY WHITCHESTER LTD TO REGISTER:

SPARKK

AS A TRADE MARK IN CLASS 9

AND

IN THE MATTER OF OPPOSITION THERETO UNDER NO. 414549
BY AMAZON TECHNOLOGIES, INC.

BACKGROUND & PLEADINGS

1. On 7 June 2018, Whitchester Ltd ("the applicant") applied to register **SPARKK** as a trade mark for a range of goods in class 9. The application was published for opposition purposes on 31 August 2018. The specification of the application was subsequently amended and now reads:

> Computer application software; Computer application software for mobile phones; Computer application software for mobile telephones; Computer software applications; Computer software applications, downloadable Mobile application software; Mobile apps; Mobile app's; Application development software; Application software for mobile devices; Application software for mobile phones; Application software for smart phones; Application software for social networking services via internet.

2. On 30 November 2018, the application was opposed in full by Amazon Technologies, Inc. ("the opponent"). The opposition is based upon section 5(2)(b) of the Trade Marks Act 1994 ("the Act"), in relation to which the opponent relies upon the goods in class 9 (shown in Annex A to this decision) in the following UK registrations:

> No. 3292244 for the trade mark **SPARK** which was applied for on 12 December 2014 and which was entered in the register on 1 June 2018;
>
> No. 3284592 for the trade mark **AMAZON SPARK** which was applied for on 23 January 2018 (claiming an international convention priority date of 27 July 2017 from a number of earlier filings in Trinidad & Tobago) and which was entered in the register on 8 June 2018.

3. The applicant filed a counterstatement in which the basis of the opposition is denied. The applicant makes a number of comments in its counterstatement which I will deal with at the appropriate points in my decision.

4. In these proceedings, the opponent is represented by Cooley (UK) LLP, the applicant represents itself. Although neither party filed evidence, the opponent filed written submissions during the evidence rounds. Neither party requested a hearing nor did they file written submissions in lieu of attendance.

DECISION

5. The opposition is based upon section 5(2)(b) of the Act which reads as follows:

> "5(2) A trade mark shall not be registered if because –
>
> (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,
>
> there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark."

6. An earlier trade mark is defined in section 6 of the Act, which states:

> "6. - (1) In this Act an "earlier trade mark" means –
>
> (a) a registered trade mark, international trade mark (UK), 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."

7. The trade marks relied upon by the opponent qualify as earlier trade marks under the above provisions. Given the interplay between the dates on which the opponent's

trade marks were entered in the register and the publication date of the application for registration, the earlier trade marks are not subject to the proof of use provisions.

Case law

8. The following principles are gleaned from the decisions of the courts of the European Union 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 the earlier mark to mind, is not sufficient;

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

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

The correct approach to the comparison of goods

9. In its counterstatement, the applicant describes its goods as “mobile application software” adding that “the intentions and specifically the limitations of use should be taken into account as per the goods covered in the application”. In relation to the opponent it states:

“2.2 Amazon Technologies, Inc. does not; as far as is available via the mobile application software providers have an ("App") called SPARK, rather its

> AMAZON SPARK platform is only accessible via its AMAZON App, not therefore downloadable as an App with the title AMAZON SPARK."

And:

> "3.2…" However, as there is no standalone App associated with the Opponent by way of the name SPARK or AMAZON SPARK that is available from the source which the SPARKK App will be available i.e. The mobile applications software providers…"

10. While perhaps understandable, as the opponent points out in its written submissions, the applicant's approach is misconceived. As the earlier trade marks upon which the opponent relies are not subject to the proof of use provisions, the opponent is, nonetheless, entitled to rely upon them in relation to all of the goods they have identified in class 9 without having to demonstrate that they have actually been used upon such goods.

My approach to the comparison

11. In its counterstatement, the applicant states:

> "3…there are obvious similarities between the application mark of SPARKK and the opponent's earlier marks of SPARK and AMAZON SPARK…"

12. That, I think, is a sensible concession and one with which I agree. Although the opponent's SPARK trade mark is visually, aurally and conceptually closer to the applicant's trade mark than its AMAZON SPARK trade mark, having compared the specifications being relied upon by the opponent and that of the application, I shall conduct the comparison on the basis of the opponent's AMAZON SPARK trade mark, returning to the opponent's SPARK trade mark later in this decision.

Comparison of goods

13. Broadly speaking, the applicant's amended specification in class 9 relates to application software, whereas the specification of the opponent's AMAZON SPARK trade mark contains, inter alia, the following "Computer software". In *Gérard Meric v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* case T-133/05, the General Court stated:

> "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 the trade mark application (Case T-388/00 Institut für Lernsysteme v OHIM – Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark (Case T-104/01 Oberhauser v OHIM – Petit Liberto (Fifties) [2002] ECR II-4359, paragraphs 32 and 33; Case T-110/01 Vedial v OHIM – France Distribution (HUBERT) [2002] ECR II-5275,paragraphs 43 and 44; and Case T- 10/03 Koubi v OHIM – Flabesa (CONFORFLEX) [2004] ECR II-719, paragraphs 41 and 42)."

14. As the term "computer software" in the opponent's specification would encompass all of the goods in the applicant's amended specification, they are to be regarded as identical on the inclusion principle mentioned in *Meric*.

The average consumer and the nature of the purchasing act

15. As the case law above indicates, it is necessary for me to determine who the average consumer is for the goods at issue. I must then determine the manner in which these goods are likely to be selected by the average consumer in the course of trade. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

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

16. In its written submissions, the opponent states:

> "30…The goods in question are directed at the public at large…"

17. If by the "public at large" the opponent is referring to members of the general public and business users, then I agree. While aural considerations may feature in the selection process (word of mouth recommendations and oral requests to sales assistants for example), in my experience, computer software is most often selected by visual means from bricks and mortar outlets or on-line. The cost and importance of computer software can, of course, vary considerably. Contrast, for example, the varying degrees of cost and attention likely to be paid to the selection of application software to control a manufacturing process and a rudimentary "App" for a mobile device which counts down to a particular event. I shall return to this point when I consider the likelihood of confusion.

Comparison of trade marks

18. 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 them, 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."

19. It would be wrong, therefore, artificially to dissect the trade marks, although it is necessary to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions they create. The trade marks to be compared are as follows:

Opponent's trade mark	**Applicant's trade mark**
AMAZON SPARK	SPARKK

20. The applicant's trade mark consists of the single word SPARKK presented in block capital letters. It is in that word the overall impression lies. Notwithstanding the presence of the additional letter "K" at the end of the word (which, in my view, may go unnoticed by the average consumer), I think it is highly likely that the average consumer will appreciate that it contains the well-known English language word SPARK.

21. The opponent's trade mark consists of two words also both presented in block capital letters; both words and their meanings will be well-known to the average consumer. Although the word AMAZON appears as the first component, I think that both words will make a roughly equal contribution to the overall impression the opponent's trade mark conveys. I will now assess the competing trade marks with those conclusions in mind.

The visual comparison

22. The opponent's trade mark consists of two words consisting of six and five letters respectively, whereas the applicant's trade mark consists of a single word consisting of six letters. The first five letters of the applicant's trade mark are identical to the five letters in the second word of the opponent's trade mark. Weighing the similarities and differences, in particular, the presence of the word AMAZON in the opponent's trade mark, results in what I regard as a medium degree of visual similarity between the competing trade marks.

The aural comparison

23. As the words in the opponent's trade mark will be well known to the average consumer, their pronunciation is predictable i.e. as the four syllable combination AM-A-ZON SPARK. Notwithstanding the presence in the applicant's trade mark of an additional letter "K" at the end of the word, the applicant's trade mark will, in my view, be pronounced in exactly the same way as the second word in the opponent's trade mark, resulting in a medium degree of aural similarity between the trade marks at issue.

The conceptual comparison

24. The meaning of both words in the opponent's trade marks will be well known to the average consumer. Notwithstanding the presence in the applicant's trade mark of an additional letter "K" at the end of the word, I think the average consumer is likely to accord the same conceptual meaning to the applicant's trade mark as it will to the second word in the opponent's trade mark, resulting in a medium degree of conceptual similarity overall.

Distinctive character of the earlier trade mark

25. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v*

OHIM (LITE) [2002] ETMR 91. In determining the distinctive character of a trade mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the trade mark to identify the goods for which it has been registered as coming from a particular undertaking and thus to distinguish those goods from those of other undertakings - *Windsurfing Chiemsee v Huber and Attenberger* Joined Cases C-108/97 and C-109/97 [1999] ETMR 585.

26. As the opponent has filed no evidence of any use it may have made of its earlier trade mark, I have only its inherent characteristics to consider. Although the words the subject of the opponent's trade mark will be well known to the average consumer, as far as I am aware, they are neither descriptive of nor non-distinctive for the goods upon which the opponent relies. As a consequence, it is, in my view, possessed of at least a medium degree of inherent distinctive character.

Likelihood of confusion

27. In determining whether there is a likelihood of confusion, 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 goods and vice versa. As I mentioned above, it is also necessary for me to keep in mind the distinctive character of the opponent's trade mark as the more distinctive it is, the greater the likelihood of confusion. I must also keep in mind the average consumer for the goods, the nature of the purchasing process and 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 he has retained in his mind.

28. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one trade mark for the other, while indirect confusion is where the average consumer realises the trade marks are not the same but puts the similarity that exists between the trade marks and goods down to the responsible undertakings being the same or related. Earlier in this decision I concluded that:

- I will conduct the comparison on the basis of the opponent's AMAZON SPARK trade mark;

- the competing goods are to be regarded as identical;

- the average consumer is a member of the general public or business user who, whilst not ignoring aural considerations, will select the goods at issue by predominantly visual means paying a varying degree of attention during that process;

- the competing trade marks are visually, aurally and conceptually similar to a medium degree;

- the opponent's AMAZON SPARK trade mark is possessed of at least a medium degree of inherent distinctive character.

29. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), Arnold J. considered the impact of the CJEU's judgment in *Bimbo,* Case C-591/12P, on the court's earlier judgment in *Medion v Thomson.* He stated:

> "18 The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.
>
> 19 The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole,

and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

20 The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).

21 The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors."

30. As the words AMAZON and SPARK do not create a unit, it follows that the word SPARK plays an independent distinctive role within the opponent's trade mark. When considered in relation to the goods being relied upon by the opponent, the word SPARK, like the opponent's trade mark as a whole, enjoys at least a medium degree of inherent distinctiveness. However, notwithstanding those findings, as the opponent's trade mark also includes the word AMAZON as its first component, the possibility that this component will be overlooked by the average consumer is remote as, in my view, is the likelihood of direct confusion. That leaves indirect confusion to be considered.

31. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained the difference in the following manner:

"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."

32. In reaching a conclusion, I begin by reminding myself that I have found that the word SPARK plays an independent distinctive role in the opponent's trade mark and that it enjoys at least a medium degree of inherent distinctiveness. In my view, an average consumer is likely to treat the opponent's trade mark as a house mark i.e. AMAZON and a sub-brand i.e. SPARK.

33. In those circumstances, even an average consumer paying a high degree of attention during the selection process (who notices that the applicant's trade mark contains an additional letter "K") is, in my view, likely to assume that it is, for example, a variation of the opponent's AMAZON SPARK trade mark in which the word SPARK functions as a sub-brand. That will result in a likelihood of indirect confusion and, as a consequence, the opposition succeeds.

Other considerations

34. In its counterstatement, the applicant stated:

> "4. There are many ("Apps") available from mobile application software providers associated with the word "SPARK"…".

35. The applicant then goes on to list a wide range of Apps which include this word, details of which are shown in Annex B to this decision. However, as the applicant has provided no evidence in support of this claim, it is not a factor that assists it in these proceedings.

The opponent's SPARK trade mark

36. Having reached the very clear conclusion that the opposition succeeds on the basis of the opponent's AMAZON SPARK trade mark, I see no need to also consider the position in relation to its SPARK trade mark, in relation to which in its submissions the opponent accepts the goods are only "closely similar" or "similar".

Overall conclusion

37. The opposition has succeeded and, subject to any successful appeal, the application will be refused.

Costs

38. As the opponent has been successful, it is entitled to a contribution towards its costs. Awards of costs in proceedings are governed by Annex A of Tribunal Practice Notice ("TPN") 2 of 2016. Applying the above guidance, I award costs to the opponent on the following basis:

Preparing the Notice of opposition and considering the counterstatement:	£200
Written submissions:	£300
Official fee:	£100
Total:	**£600**

39. I order Whitchester Ltd to pay to Amazon Technologies, Inc. the sum of **£600**. This sum is to be paid within twenty one days of the expiry of the appeal period or within twenty one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 15th day of October 2019

C J BOWEN
For the Registrar

Annex A

Goods relied upon by the opponent in class 9

No. 3292244 - SPARK

Electronic publications, including downloadable electronic publications in the nature of books, magazines and periodicals in the field of fiction and non-fiction and television entertainment; audio books in the field of fiction and non-fiction and television entertainment; cinematic and television programmes recorded on disc, tape and electronic form; apparatus for electronic distributing, electrical apparatus for use in television programme creation; portable electronic devices for receiving, transmitting and reading text, images and sound through wireless internet access; audio books; electronic books; downloadable MP3 files, MP3 recordings, MP4 files, MP4 recordings, digital audio files, digital multimedia files and podcasts featuring music and audio books; electronic publications featuring images, photographs, magazines, newspapers, periodicals, newsletters, and journals all relating to television entertainment; video cameras; DVD players; DVD recorders; remote controllers for DVD recorders and players; remote controllers for video disc recorders and players; remote controllers for recording devices; digital audio players; audio recorders; digital video players; portable apparatus for recording, transmission and reproduction of music; portable apparatus for recording, transmission and reproduction of video; other apparatus for recording, transmission and reproduction of video; monitors for television receiver; television receivers [TV sets] and television transmitters; remote controllers for television receiver [TV set]; television tuners; remote controllers for radio set; computer, electronic and video games equipment; electronic instructional and teaching apparatus and instruments; television and radio signal transmitters and receivers; game controllers; cinematographic machines and apparatus; set-top boxes; television receivers and transmitters; electronic controllers; electronic controllers to impart sensory feedback, namely, sounds and vibrations that are perceptible to the user; motion sensitive interactive video game remote control units; interactive video game remote control units; parental control software; headphones and earphones; remote controls for portable and handheld electronic devices and computers; downloadable audio works, visual works and audiovisual works featuring books, magazines, newspapers, periodicals, newsletters, guides, quizzes, tests, journals, manuals and television entertainment on a variety of topics; magnetic data carriers; telephones, videophones, cameras; radio receivers; radio transmitters; video cameras; computer hardware excluding microprocessors, central processing units, circuit boards and integrated circuits computer hardware for providing integrated telephone communication with computerized global information networks; parts and accessories for handheld and mobile digital electronic devices for the sending and receiving of telephone calls, faxes, electronic mail and other digital media and handheld digital electronic devices for recording, organising, transmitting, manipulating and reviewing text, data, audio, image and video files; parts and accessories for mobile telephones, smartphones and tablets in the nature of covers, cases, cases made of leather or imitations of leather, covers made of cloth or textile materials, headphones, stereo headphones, in-ear headphones, stereo speakers, audio speakers, audio speakers for home, headsets for wireless

communication apparatus; personal stereo speaker apparatus; microphones; apparatus for connecting and charging mobile digital electronic devices for the sending and receiving of telephone calls, faxes, electronic mail and other digital media and handheld digital electronic devices for recording, organising, transmitting, manipulating and reviewing text, data, audio, image and video files; user manuals in electronically readable, machine readable or computer readable form for use with, and sold as a unit with, all the aforementioned goods.

No. 3284592 – AMAZON SPARK

Computer software; voice and data transmitters and receivers; voice processing software; voice-activated software; communications software; computer hardware and software for processing, reproducing, synchronizing, recording, organizing, downloading, uploading, transmitting, streaming, receiving, playing and viewing television shows, films, text, images, digital media, multimedia, audio, video and data files; portable electronic devices for receiving, transmitting and reading text, images and sound through wireless internet access; audio books; electronic books; remote controllers; computer software, and peripherals for personalized, interactive television (TV) programming and for use in displaying and manipulating visual media, graphic images, text, photographs, illustrations, digital animation, video clips, film footage and audio data, and for social networking; remote controllers; joysticks; wireless controllers to remotely monitor and control the function and status of other electrical, electronic, and mechanical devices or systems; computer touchscreens; digital audio players; audio recorders; portable apparatus for recording, transmission and reproduction of music and video; electronic instructional and teaching apparatus and instruments; computer software for use in connection with the transmission of voice and data; computer software for formatting and converting content, text, visual works, audio works, audiovisual works, literary works, data, files, documents and electronic works into a format compatible with portable electronic devices and computers; computer software enabling content, text, visual works, audio works, audiovisual works, literary works, data, files, documents and electronic works to be downloaded to and accessed on a computer or other portable consumer electronic devices; downloadable software in the nature of a mobile application for computers or other portable consumer electronic device; computer software for transmitting, sharing, receiving, downloading, streaming, displaying and transferring content, text, visual works, audio works, audiovisual works, literary works, data, files, documents and electronic works via portable electronic devices and computers and global computer and communications networks; computer software for formatting and converting content, text, visual works, audio works, audiovisual works, literary works, data, files, documents and electronic works into a format compatible with portable electronic devices and computers; telephony management software, mobile telephone, smartphone and tablet software; telephone-based information retrieval software and hardware; software for the redirection of messages; computer application software for mobile phones, smart phones and tablet devices featuring mobile phone functionality; computer programs for accessing, browsing and searching online databases; computer hardware and software for providing integrated telephone communication with computerized global information networks; personal stereo speaker apparatus; microphones; electronic mail and messaging software; application service provider (ASP) featuring software for use in relation to visual images, namely, software for digital animation and special effects of images,

video games, and motion pictures, application service provider (ASP) featuring application programming interface (API) software including such software for the streaming, storage, and sharing of video games, content, data and information, providing non-downloadable software applications, providing temporary use of on-line non-downloadable cloud computing software for use in electronic storage of data, computer software development in the field of mobile applications, application service provider, namely, hosting, managing, developing, and maintaining applications, software, and web sites, in the fields of personal productivity, wireless communication, mobile, providing technical support services regarding the usage of communications equipment, production of video and computer game software, creating an on-line community for registered users to participate in discussions, to share content, photos, videos, text, data, images and other electronic works, and engage in social networking, provision of information, consultancy and advisory services relating to the aforesaid.

Annex B

“4.1 Apps available include, "spark, spark. ,spark nz, spark email app, spark camera, adobe spark post, adobe spark video, adobe spark page, devialet spark, spark energy, spark-shift calendar, its full of sparks, spark art!, rockland for spark, codespark academy, spark hire, spark profit, vr pro for spark, spark-your electric drive, pixmob spark, spark samar, uofl wellbeing spark, sparkchess pro, salestratus spark, spark systems, spark coach, story spark, sparknotes, spark-reaction time test, spark now, brain spark, spark-quick note, spark-sports team management, spark ev technology, harman spark, spark ai, spark slo, spark personal training, spark: the social news network, spark-secure social reminders, spark administratiekant ... , spark by skanska, spark by project epsilon, the spark, spark cases, spark orthodontics, spark mall, selfoops spark, spark core, spark ar viewer, idea spark, anthea spark, araloc spark, cph spark, avon spark, au spark, spark camera control, ea spark 2016, unipart spark, spark magazine, spark-idle evolution, spark firework videos, au spark go, fidget spinner-spark, spark fiction, spark social parking, spark dj for business, au spark pro, spark in, spark yoga, wolfpack spark, word spark, spark city, spark hr and payroll, spark installer, vutiliti spark, spark-le show mobile, smart spark, spark run,shogi spark!, spark solar app, aura spark, spark your idea, spark moment, spark vision, spark-see the world, spark 2017, sparkcapital, spark pro, pereko spark, bright spark uae, dual spark, spark golf, spark camp, imagus spark, spark generator, spark free, spark compass, spark app, inner spark, my spark, hello spark, sparkk tv, sparkk catalogues"