

O/017/21

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003376139

BY MINI WORXX LIMITED

TO REGISTER THE FOLLOWING MARK:



IN CLASSES 12 AND 25

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 416377

BY BAYERISCHE MOTOREN WERKE AKTIENGESELLSCHAFT

BACKGROUND AND PLEADINGS

1. On 17 February 2019, Mini Worxx Limited (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the UK. The application was published for opposition purposes on 22 February 2019 and registration is sought for the goods set out in the Annex to this decision.

2. On 16 May 2019, Bayerische Motoren Werke Aktiengesellschaft (“the opponent”) opposed the application based upon sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”).

3. Under sections 5(2)(b) and 5(3) of the Act, the opponent relies upon the following trade marks:

MINI

UKTM no. 1506697

Filing date 11 July 1992; registration date 25 March 1994

Relying on all goods, namely:

Class 12 Motor land vehicles and parts and fittings therefor; all included in Class 12.

(“the First Earlier Mark”)

MINI

EUTM no. 143909

Filing date 1 April 1996; registration date 8 December 1999

Seniority dates claimed: 5 January 1971 and 11 July 1992

Relying on all goods, namely:

Class 12 Land vehicles and their engines; parts, components and accessories for all the aforesaid goods; shaped covers for steering wheels, for vehicle seats, and for land vehicles; shaped or fitted mats and floor coverings for motor land vehicles; pumps for inflating vehicle tyres; sun blinds; roof racks, luggage carriers and nets, cycle carriers, sail board carriers, ski carriers, and snow chains, all for land vehicles.

Class 28 Toys, games, and playthings; scale model vehicles and kits therefor; balloons; sporting articles.

Class 36 Financial, insurance, warranty, credit and leasing services; vehicle hire-purchase and financing services; banking and money-lending services.

Class 37 Repair, maintenance, reconditioning, remanufacturing and servicing, all relating to motor vehicles and parts and fittings therefor.

("the Second Earlier Mark")

4. The opposition based upon section 5(2)(b) is directed at the applicant's class 12 goods only. The opponent claims that there is a likelihood of confusion because the marks are similar and the goods are identical or similar.

5. The opposition based upon section 5(3) is directed at the application in its entirety. The opponent claims a reputation in relation to all goods for which the marks are registered. The opponent claims that use of the applicant's mark would, without due cause, take unfair advantage of, or be detrimental to, the distinctive character and/or reputation of the earlier marks.

6. The opposition based upon section 5(4)(a) is directed at the application in its entirety. The opponent relies upon the sign **MINI** which it claims to have used throughout the UK since 1969 in relation to "motor land vehicles, parts and fittings for vehicles".

7. The applicant filed a counterstatement denying the claims made and putting the opponent to proof of use of the earlier marks.

8. The opponent is represented by Palmer Biggs IP Solicitors and the applicant is unrepresented. Both parties filed evidence in chief. The opponent filed written submissions in reply. Neither party requested a hearing and only the opponent filed

written submissions in lieu. This decision is taken following a careful perusal of the papers.

EVIDENCE AND SUBMISSIONS

9. The opponent filed evidence in the form of the witness statements of Bettina May and Laura Morrish, both dated 6 November 2019. Ms May's statement was accompanied by 21 exhibits. Ms May is Legal Counsel Trademarks, Designs and Legal Issues Relating to Intellectual Property Law at the opponent, a role she has held since 2003. Ms Morrish's statement was accompanied by 1 exhibit. Ms Morrish is the Trade Mark Attorney acting on behalf of the opponent. The opponent's evidence was accompanied by written submissions dated 6 November 2019.

10. The applicant filed evidence in the form of the witness statement of Patrick van der Moyle dated 13 April 2020, which was accompanied by 13 exhibits. The applicant also filed evidence in the form of witness statements from Paul Herrett, Simon Dutton, William Rendell, Andrew Waterman, Don Keen, Ed Ruddick, Mark Gardiner, Peter Laver, Bruce Hodge, Jonathan Hale and Mark Francis. All of these are undated.

11. The opponent filed written submissions in reply dated 21 September 2020. The opponent also filed written submissions in lieu dated 3 November 2020.

12. Whilst I do not propose to summarise them here, I have taken all of the evidence and submissions into account in reaching my decision. I will refer to them below where necessary.

PRELIMINARY ISSUE

13. I note that in his evidence, Mr van der Moyle has referred to various other businesses which use the word "MINI" in their name or on their web pages and notes that they do not appear to have been subject to the same action by the opponent as the applicant.¹ Mr van der Moyle notes that it is common in the vehicle industry for

¹ Exhibits PVD1 to PVD12

third party independent businesses to specialise in the cars of a particular undertaking e.g. MINIs, BMWs, Mercedes etc. In its counterstatement, the applicant states that “[t]o avoid use of the word MINI would mean that the business would be unable to state what it actually does”. Mr van der Moyle is correct that not all use of a registered trade mark by third party dealers will be use that the opponent is able to prevent. However, a distinction needs to be drawn between trade mark use and descriptive use. This was described by Floyd LJ in the context of infringement in *BMW v Technosport London Limited and George Agyeton* [2017] EWCA Civ 779 as follows:

“18. I accept that one cannot start, in a case such as this, from the proposition that any use of the BMW Mark in the course of a business specialising in the repair of BMWs would be an infringement. Use of the mark is necessary and legitimate in order to explain to the public what the business in question actually does. Thus, by way of example, BMW rightly took no objection to the use by TLL of the slogan “The BMW specialists” on the fascia of their old premises, separated from the name identifying the business, namely Technosport. Equally, one cannot start from the proposition that the use of BMW in relation to a motor car repairing service can never be an infringement. The mark is, after all, registered for that very service. The distinction is between uses which convey the true message “my business provides a service which repairs BMWs and/or uses genuine BMW spare parts” and those which convey the false message “my repairing service is commercially connected with BMW”. Which of these messages is conveyed depends on a close consideration of the detail and context of the use.”

14. It is not, therefore, surprising that the opponent has not taken issue with some of the uses identified by the applicant in its evidence. Use of the mark MINI to indicate a service which specialises in repairing the opponent’s vehicles or the provision of parts which are compatible with the opponent’s vehicles is descriptive use. Further, we are not privy to the agreements that may be in place between such third parties and the opponent. In any event, I do not consider that the way in which third parties are using the opponent’s marks is relevant to my assessment for the purposes of the applicant’s application for a national trade mark.

DECISION

Section 5(2)(b)

15. Section 5(2)(b) of the Act 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.”

16. By virtue of their earlier filing dates, the trade marks upon which the opponent relies qualify as earlier trade marks pursuant to section 6 of the Act. As the earlier marks had both completed their registration process more than five years before the application date of the mark in issue, they are subject to proof of use pursuant to section 6A of the Act.

Proof of Use

17. I will begin by assessing whether there has been genuine use of the earlier marks. The relevant statutory provisions are as follows:

“Raising of relative grounds in opposition proceedings in case of non-use

6A(1) This section applies where

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a), (b) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the relevant period .

(1A) In this section “the relevant period” means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

(a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes -

(a) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5) In relation to a European Union trade mark or international trade mark (EC), any reference in subsection (3) or (4) to the United Kingdom shall be construed as a reference to the European Union.

(5A) [...]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.”

18. Section 100 of the Act is also relevant, which reads:

“100. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

19. Pursuant to section 6A of the Act, the relevant period for assessing whether there has been genuine use of the earlier marks is the five-year period ending with the date of the application in issue i.e. 18 February 2014 to 17 February 2019.

20. In *Walton International Ltd & Anor v Verweij Fashion BV* [2018] EWHC 1608 (Ch) Arnold J summarised the law relating to genuine use as follows:

“114.....The CJEU has considered what amounts to “genuine use” of a trade mark in a series of cases: Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, *La Mer* (cited above), Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bunderversammlung Kamaradschaft ‘Feldmarschall Radetsky’* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Marken BV v Hagelkruis Beheer BV* [EU:C:2012:816], [2013] ETMR 16, Case C-609/11 P *Centrotherm*

Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG [EU:C:2013:592], [2014] ETMR, Case C-141/13 P *Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089] and Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434], [2017] Bus LR 1795.

115. The principles established by these cases may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Leno* at [29]; *Centrotherm* at [71]; *Reber* at [29].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Leno* at [29]; *Centrotherm* at [71]. Accordingly, affixing of a trade mark on goods as a label of quality is not genuine use unless it guarantees, additionally and simultaneously, to consumers that those goods come from a single undertaking under the control of which the goods are manufactured and which is responsible for their quality: *Gözze* at [43]-[51].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14] and [22]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71]; *Reber* at [29].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Leno* at [29]-[30], [56]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72] and [76]-[77]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].”

21. As the Second Earlier Mark is an EUTM, the comments of the Court of Justice of the European Union (“CJEU”) in *Leno Merken BV v Hagelkruis Beheer BV*, Case C-149/11, are relevant. The court noted that:

“36. It should, however, be observed that [...] the territorial scope of the use is not a separate condition for genuine use but one of the factors determining genuine use, which must be included in the overall analysis and examined at the same time as other such factors. In that regard, the phrase ‘in the Community’ is intended to define the geographical market serving as the reference point for all consideration of whether a Community trade mark has been put to genuine use.”

And:

“50. Whilst there is admittedly some justification for thinking that a Community trade mark should – because it enjoys more extensive territorial protection than a national trade mark – be used in a larger area than the territory of a single Member State in order for the use to be regarded as ‘genuine use’, it cannot be ruled out that, in certain circumstances, the market for the goods or services for which a Community trade mark has been registered is in fact restricted to the territory of a single Member State. In such a case, use of the Community trade mark on that territory might satisfy the conditions both for genuine use of a Community trade mark and for genuine use of a national trade mark.”

And:

“55. Since the assessment of whether the use of the trade mark is genuine is carried out by reference to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark serves to create or maintain market shares for the goods or services for which it was registered, it is impossible to determine a priori, and in the abstract, what territorial scope should be chosen in order to determine whether the use of the mark is genuine or not. A *de minimis* rule, which would not allow the national court to appraise all the circumstances of the dispute before it, cannot therefore be laid down (see, by analogy, the order in *La Mer Technology*, paragraphs 25 and 27, and the judgment in *Sunrider v OHIM*, paragraphs 72 and 77)”.

At paragraphs 57 and 58, the court held that:

“Article 15(1) of Regulation No 207/2009 of 26 February 2009 on the Community trade mark must be interpreted as meaning that the territorial borders of the Member States should be disregarded in the assessment of whether a trade mark has been put to ‘genuine use in the Community’ within the meaning of that provision.

A Community trade mark is put to ‘genuine use’ within the meaning of Article 15(1) of Regulation No 207/2009 when it is used in accordance with its essential function and for the purpose of maintaining or creating market share within the European Community for the goods or services covered by it. It is for the referring court to assess whether the conditions are met in the main proceedings, taking account of all the relevant facts and circumstances, including the characteristics of the mark concerned, the nature of the goods or services protected by the trade mark and the territorial extent and the scale of the use as well as its frequency and regularity.”

22. In *The London Taxi Corporation Limited v Frazer-Nash Research Limited & Ecotive Limited*, [2016] EWHC 52, Arnold J. reviewed the case law since the *Leno* case and concluded as follows:

“228. Since the decision of the Court of Justice in *Leno* there have been a number of decisions of OHIM Boards of Appeal, the General Court and national courts with respect to the question of the geographical extent of the use required for genuine use in the Community. It does not seem to me that a clear picture has yet emerged as to how the broad principles laid down in *Leno* are to be applied. It is sufficient for present purposes to refer by way of illustration to two cases which I am aware have attracted comment.

229. In Case T-278/13 *Now Wireless Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs)* the General Court upheld at [47] the finding of the Board of Appeal that there had been genuine use of the contested mark in relation to the services in issue in London and the Thames

Valley. On that basis, the General Court dismissed the applicant's challenge to the Board of Appeal's conclusion that there had been genuine use of the mark in the Community. At first blush, this appears to be a decision to the effect that use in rather less than the whole of one Member State is sufficient to constitute genuine use in the Community. On closer examination, however, it appears that the applicant's argument was not that use within London and the Thames Valley was not sufficient to constitute genuine use in the Community, but rather that the Board of Appeal was wrong to find that the mark had been used in those areas, and that it should have found that the mark had only been used in parts of London: see [42] and [54]-[58]. This stance may have been due to the fact that the applicant was based in Guilford, and thus a finding which still left open the possibility of conversion of the community trade mark to a national trade mark may not have sufficed for its purposes.

230. In *The Sofa Workshop Ltd v Sofaworks Ltd* [2015] EWHC 1773 (IPEC), [2015] ETMR 37 at [25] His Honour Judge Hacon interpreted *Leno* as establishing that "genuine use in the Community will in general require use in more than one Member State" but "an exception to that general requirement arises where the market for the relevant goods or services is restricted to the territory of a single Member State." On this basis, he went on to hold at [33]-[40] that extensive use of the trade mark in the UK, and one sale in Denmark, was not sufficient to amount to genuine use in the Community. As I understand it, this decision is presently under appeal and it would therefore be inappropriate for me to comment on the merits of the decision. All I will say is that, while I find the thrust of Judge Hacon's analysis of *Leno* persuasive, I would not myself express the applicable principles in terms of a general rule and an exception to that general rule. Rather, I would prefer to say that the assessment is a multi-factorial one which includes the geographical extent of the use."

23. The General Court ("GC") restated its interpretation of *Leno Marken* in Case T-398/13, *TVR Automotive Ltd v OHIM* (see paragraph 57 of the judgment). This case concerned national (rather than local) use of what was then known as a Community trade mark (now a European Union trade mark).

24. Whether the use shown is sufficient for this purpose will depend on whether there has been real commercial exploitation of the EUTM, in the course of trade, sufficient to create or maintain a market for the goods/services at issue in the Union during the relevant 5 year period. In making the required assessment I am required to consider all relevant factors, including:

- a. The scale and frequency of the use shown;
- b. The nature of the use shown;
- c. The goods and services for which use has been shown;
- d. The nature of those goods/services and the market(s) for them; and
- e. The geographical extent of the use shown.

25. Proven use of a mark which fails to establish that “the commercial exploitation of the mark is real” because the use would not be “viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark” is, therefore, not genuine use.

Form of the marks

26. In *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12, which concerned the use of one mark with, or as part of, another mark, the CJEU found that:

“31. It is true that the ‘use’ through which a sign acquires a distinctive character under Article 7(3) of Regulation No 40/94 relates to the period before its registration as a trade mark, whereas ‘genuine use’, within the meaning of Article 15(1) of that regulation, relates to a five-year period following registration and, accordingly, ‘use’ within the meaning of Article 7(3) for the purpose of registration may not be relied on as such to establish ‘use’ within the meaning of Article 15(1) for the purpose of preserving the rights of the proprietor of the registered trade mark.

32. Nevertheless, as is apparent from paragraphs 27 to 30 of the judgment in *Nestle*, the 'use' of a mark, in its literal sense, generally encompasses both its independent use and its use as part of another mark taken as a whole or in conjunction with that other mark.

33. As the German and United Kingdom Governments pointed out at the hearing before the Court, the criterion of use, which continues to be fundamental, cannot be assessed in the light of different considerations according to whether the issue to be decided is whether use is capable of giving rise to rights relating to a mark or of ensuring that such rights are preserved. If it is possible to acquire trade mark protection for a sign through a specific use made of the sign, that same form of use must also be capable of ensuring that such protection is preserved.

34. Therefore, the requirements that apply to verification of the genuine use of a mark, within the meaning of Article 15(1) of Regulation No 40/94, are analogous to those concerning the acquisition of a sign of distinctive character through use for the purpose of its registration, within the meaning of Article 7(3) of the regulation.

35. Nevertheless, as pointed out by the German Government, the United Kingdom Government and the European Commission, a registered trade mark that is used only as part of a composite mark or in conjunction with another mark must continue to be perceived as indicative of the origin of the product at issue for that use to be covered by the term 'genuine use' within the meaning of Article 15(1)". (emphasis added)

27. There are examples of the earlier marks as registered throughout the evidence. Clearly, this will be use upon which the opponent can rely. There is also use in the following forms:



28. The earlier marks are both the word only MINI. The word MINI retains an independent distinctive role within the mark as used. Consequently, I consider this to be use of the earlier marks as registered in accordance with *Colloseum*.



29. The earlier marks are both the word only MINI. The word MINI retains an independent distinctive role within the mark as used. The words “Park Lane” and “London” will be seen as indicative of a particular geographical location and, consequently, will be attributed no trade mark significance. I consider this to be use of the earlier marks as registered in accordance with *Colloseum*.

Sufficient Use

30. An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each individual piece of evidence shows use by itself.²

31. Ms May gives evidence that cars have been sold under the earlier marks in the UK since 1959. Ms May provides the following figures for cars sold under the earlier marks in the UK between 2014 and 2019:³

Year	Numbers	Revenue
2014	53,030	£924.9million
2015	63,584	£1,102.2million

² *New Yorker SHK Jeans GmbH & Co KG v OHIM*, T-415/09

³ Witness statement of Ms May, para. 10

2016	68,984	£1,194.6million
2017	68,166	£1,181.4million
2018	67,021	£1,202.4million

32. I recognise, of course, that only a proportion of these figures for the years 2014 and 2019 will be within the relevant period. In support of these figures, Ms May has provided a sample of invoices dated between 31 May 2018 and 22 February 2019.⁴ I note that not all of these are within the relevant period. The invoices all display the earlier marks as registered in the product descriptions or on the invoice itself. The invoices relate to various cars, and also refer to parts and accessories such as “Mobility kit”, “Floor mats velour”, “Storage pack”, “AppleCarPlay preparation”, “Visual boost radio”, “Comfort pack”, “Navigation pack”, “Sport steering wheel”, “MINI Emergency Call” and “MINI TeleServices”. Of those dated within the relevant period, three invoices also make reference to “Shortfall insurance £20,001-£30,000 3 years” each for sums between of £250.00 and £400.00.

33. Ms May has provided the following figures for marketing expenditure in relation to vehicles and other associated goods in the UK under the earlier marks:

Year	Spend
2014	£26.5million
2015	£32.0million
2016	£35.0million
2017	£29.6million
2018	£26.2million

34. A samples of adverts have been provided, most of which are dated during the relevant period.⁵ These all display the earlier marks as registered.

35. The majority of the opponent’s evidence shows use in relation to cars and car parts. The second earlier mark covers a broader range of goods and services in

⁴ Exhibit BM3

⁵ Exhibit BM5

classes 28, 36 and 37. I have seen no evidence of use in relation to the opponent's class 28 goods. As noted above, the opponent has provided invoices, three of which show the sale of what appears to be an insurance policy. Each of these sales is for the sum of between £250 and £400. I recognise that this is only a sample of invoices. However, no total sales figures for these services have been provided by the opponent. In the absence of any further information, I do not consider that the opponent has shown genuine use for these services or any of its other class 36 services. Similarly, I have seen no evidence of use in relation to the opponent's class 37 services. I have been provided with no evidence of sales, no advertising expenditure or customer numbers.

36. Taking the evidence as a whole into account, I am satisfied that the opponent has demonstrated genuine use of the earlier marks in the UK in relation to cars and parts and accessories for cars. The case law above is clear that use of a mark in an area of the European Union constituting one member state may be sufficient to demonstrate genuine use in the European Union as a whole. I consider that to be the case here. I am satisfied that the opponent has demonstrated genuine use of the Second Earlier Mark in the EU during the relevant period for cars and parts and accessories for cars.

Fair Specification

37. I must now consider whether, or the extent to which, the evidence shows use of the earlier marks in relation to the goods and services relied upon. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10, Mr Geoffrey Hobbs Q.C. as the Appointed Person summed up the law as being:

“In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned.”

38. In *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch), Mr Justice Carr summed up the law relating to partial revocation as follows:

“iii) Where the trade mark proprietor has made genuine use of the mark in respect of some goods or services covered by the general wording of the specification, and not others, it is necessary for the court to arrive at a fair specification in the circumstance, which may require amendment; *Thomas Pink Ltd v Victoria’s Secret UK Ltd* [2014] EWHC 2631 (Ch) (“Thomas Pink”) at [52].

iv) In cases of partial revocation, pursuant to section 46(5) of the Trade Marks Act 1994, the question is how would the average consumer fairly describe the services in relation to which the trade mark has been used; *Thomas Pink* at [53].

v) It is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do. For example, in *Pan World Brands v Tripp Ltd* (Extreme Trade Mark) [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally; *Thomas Pink* at [53].

vi) A trade mark proprietor should not be allowed to monopolise the use of a trade mark in relation to a general category of goods or services simply because he has used it in relation to a few. Conversely, a proprietor cannot reasonably be expected to use a mark in relation to all possible variations of the particular goods or services covered by the registration. *Maier v Asos Plc* [2015] EWCA Civ 220 (“Asos”) at [56] and [60].

vii) In some cases, it may be possible to identify subcategories of goods or services within a general term which are capable of being viewed independently. In such cases, use in relation to only one subcategory will not constitute use in relation to all other subcategories. On the other hand, protection must not be cut down to those precise goods or services in relation to which the mark has been used. This would be to strip the proprietor of

protection for all goods or services which the average consumer would consider to belong to the same group or category as those for which the mark has been used and which are not in substance different from them; *Mundipharma AG v OHIM* (Case T-256/04) ECR II-449; EU:T:2007:46.”

39. The use shown in relation to both earlier marks relates to cars and parts and accessories for cars. I do not consider it appropriate to allow the opponent to rely upon the broader term of “motor land vehicles” or “land vehicles” as this could include a number of other vehicle types and I do not consider the opponent should be allowed to monopolise the use of a trade mark in relation to a such a general category of goods. I consider a fair specification for both earlier marks to be:

Class 12 Cars; parts and accessories for cars.

Section 5(2)(b) – case law

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

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

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

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

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

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

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

(g) a lesser degree of similarity between the goods or services may be offset by a 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 goods

41. In light of my findings above, the competing goods are as follows:

Opponent's goods	Applicant's goods
<p><u>Class 12</u> Cars; parts and accessories for cars.</p>	<p><u>Class 12</u> Aerodynamic attachments for vehicle bodies; Aerodynamic fairings for vehicles; Aero-dynamic fairings for vehicles; Aerofoils for land vehicles; Air deflectors for vehicles; Air flow spoilers; Air flow spoilers for vehicles; Alloy wheels for vehicles; Anti-theft devices for land vehicles; Anti-theft devices for motor cars; Antitheft devices for vehicles; Anti-theft devices for vehicles; Anti-theft locks for use on automobile steering wheels; Anti-theft, security and safety devices and equipment for vehicles; Anti-theft warning apparatus for motor cars; Arm rests for vehicles; Armrests for automobile seats; Automobile door handles; Automobile steering wheels; Automotive interior trim; Automotive vehicles; Bucket seats for automobiles; Bumpers for automobiles; Bumpers for vehicles; Caps for vehicle fuel tanks; Caps for wheel rims; Car body modification parts for sale in kit form; Car seat covers; Car seat covers [shaped or fitted]; Clips adapted for fastening automobile parts to automobile bodies; Covers (Shaped -) for motor cars;</p>

	<p>Covers (Shaped -) for pick-up trucks; Covers (Shaped -) for vehicles; Cup holders for use in automobiles [automobile accessories]; Cup holders for use in vehicles; Fender flares for land vehicles; Fenders for land vehicles; Fenders [land vehicle parts]; Fuel tanks for land vehicles; Gear shift covers; Gear shifts; Gear shifts for automobiles; Glass holders for automobiles; Glass holders for vehicles; Hoods for vehicle engines; Hub cap covers; Hub caps; Hub caps for wheels; Hub centre caps; Interior panels for vehicles; Interior trim for automobiles; Interior trim parts of automobiles; Parts and fittings for land vehicles; Parts and fittings for vehicles; Radiator grilles for vehicles; Radiator grills of metal for vehicles; Radiator grills of non-metallic materials for vehicles; Reservoirs (metal -) [parts of vehicles]; Reservoirs (non-metallic -) [parts of vehicles]; Reverse motion alarms for vehicles; Reverse warning transmitters for use on vehicles; Reversing alarm transmitters utilising ultrasonics for use on vehicles; Reversing alarms for vehicles; Reversing warning alarms for use on vehicles; Shift boots for motor vehicles; Shift levers for land vehicles; Speed change gears for land vehicles; Speed gear levers for land vehicles; Spoilers; Spoilers for automobiles; Spoilers for</p>
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	automotive vehicles; Spoilers for land vehicles.
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42. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the GC 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 für 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.”

43. In the *Treat* case, [1996] R.P.C. 281, Jacob J. (as he then was) identified the following factors for assessing similarity:

- (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.

44. In its counterstatement, the applicant states:

“[...] although both deal in class 12 goods and services they operate in completely different sectors of the market for class 12 goods, [...]”

45. I am required to carry out my assessment on the basis of the goods set out in the applicant’s specification and the goods for which I have found the opponent to have demonstrated genuine use. The way in which the applicant’s mark is actually used is not relevant to that assessment.

46. The applicant also states “[t]he goods and services will not be sold to the same customers for the same purpose, as those consumers who use independent vehicle specialists make a conscious decision to do so, rather than an authorised agent.” That submission relates to differences between the way in which the businesses operate rather than the goods covered by the parties’ respective specifications themselves. I must carry out an assessment based upon notional use of the marks across the full breadth of the parties’ specifications. I do not, therefore, consider that this line of argument assists the applicant.

47. The term “automotive vehicles” in the applicant’s specification is self-evidently identical to “cars” in the opponent’s specification.

48. The following goods in the applicant’s specification are identical on the principle outlined in *Meric* to “parts and accessories for cars” in the opponent’s specification:

Anti-theft devices for motor cars; Anti-theft locks for use on automobile steering wheels; Anti-theft warning apparatus for motor cars; Armrests for automobile seats; Automobile door handles; Automobile steering wheels; Automotive interior trim; Bucket seats for automobiles; Bumpers for automobiles; Car body modification parts for sale in kit form; Car seat covers; Car seat covers [shaped or fitted]; Clips adapted for fastening automobile parts to automobile bodies; Covers (Shaped -) for motor cars; Cup holders for use in automobiles [automobile accessories]; Gear shifts for automobiles; Glass holders for

automobiles; Interior trim for automobiles; Interior trim parts of automobiles; Spoilers for automobiles; Spoilers for automotive vehicles.

49. The following goods in the applicant's specification could relate to parts and accessories for vehicles other than just cars:

Aerodynamic attachments for vehicle bodies; Aerodynamic fairings for vehicles; Aero-dynamic fairings for vehicles; Aerofoils for land vehicles; Air deflectors for vehicles; Air flow spoilers; Air flow spoilers for vehicles; Alloy wheels for vehicles; Anti-theft devices for land vehicles; Antitheft devices for vehicles; Anti-theft devices for vehicles; Anti-theft, security and safety devices and equipment for vehicles; Arm rests for vehicles; Bumpers for vehicles; Caps for vehicle fuel tanks; Caps for wheel rims; Covers (Shaped -) for pick-up trucks; Covers (Shaped -) for vehicles; Cup holders for use in vehicles; Fender flares for land vehicles; Fenders for land vehicles; Fenders [land vehicle parts]; Fuel tanks for land vehicles; Gear shift covers; Gear shifts; Glass holders for vehicles; Hoods for vehicle engines; Hub cap covers; Hub caps; Hub caps for wheels; Hub centre caps; Interior panels for vehicles; Parts and fittings for land vehicles; Parts and fittings for vehicles; Radiator grilles for vehicles; Radiator grills of metal for vehicles; Radiator grills of non-metallic materials for vehicles; Reservoirs (metal -) [parts of vehicles]; Reservoirs (non-metallic -) [parts of vehicles]; Reverse motion alarms for vehicles; Reverse warning transmitters for use on vehicles; Reversing alarm transmitters utilising ultrasonics for use on vehicles; Reversing alarms for vehicles; Reversing warning alarms for use on vehicles; Shift boots for motor vehicles; Shift levers for land vehicles; Speed change gears for land vehicles; Speed gear levers for land vehicles; Spoilers; Spoilers for land vehicles.

However, even where they do not relate to cars, there is still likely to be overlap in terms of trade channels and nature with "parts and accessories for cars" in the opponent's specifications. There may be an overlap in terms of user and method of use. I consider these goods to be at least highly similar.

50. I also consider all of the goods in the applicant's specification to be complementary to the opponent's "cars".⁶ All of the applicant's goods could be used in relation to cars. They are important or indispensable to each other such that the average consumer would consider that they come from the same or economically linked undertakings. I consider these goods to be similar to at least a medium degree.

The average consumer and the nature of the purchasing act

51. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods. I must then determine the manner in which the goods 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."

52. The average consumer for the goods will be a member of the general public or a business user. The price of the goods are likely to vary from relatively inexpensive to expensive. However, even for those goods that are of relatively low cost, various factors will still be taken into consideration such as performance, aesthetic and safety. I consider that at least a medium degree of attention will be paid during the purchasing process. For those good that may have an impact upon the overall performance or reliability of the vehicle in which they are fitted, or those goods that are expensive and purchased infrequently (such as cars), a higher degree of attention will be paid.

⁶ *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06

53. The goods are likely to be purchased from specialist retail outlets or an online or catalogue equivalent. Visual considerations are, therefore, likely to dominate the selection process. However, I do not discount that there will also be an aural component to the purchase, as advice may be sought from a sales assistant or representative.


Comparison of trade marks

54. 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 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.”

55. 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.

56. The respective trade marks are shown below:

Opponent's trade marks	Applicant's trade mark
<p style="text-align: center;">MINI (the First and Second Earlier Marks)</p>	

57. The First and Second Earlier Mark both consist of the word MINI, presented in upper case. There are no other elements to contribute to the overall impression which lies in the word itself. The applicant's mark consists of the words "Mini Worxx" presented in a stylised black and red title case font, above the words "Independent Mini Specialist", which is presented in a red title case font. Above the words appears a black line in the shape of a car-outline. The eye is naturally drawn to the elements that can be read, with the words "Mini Worxx" playing the greater role due to their size. The car-outline also plays a role in the overall impression. The words "Independent Mini Specialist" are likely to be attributed little trade mark significance due to their descriptive/laudatory nature.

58. Visually, the marks coincide in the presence of the word MINI/Mini in all three marks. They differ in the addition of the word "Worxx" in the applicant's mark, as well as the car-outline, neither of which have a counterpart in the First and Second Earlier Marks. The words "Independent Mini Specialist" and use of colour in parts of the applicant's mark also represent a visual difference. Taking all of this into account, I consider the marks to be visually similar to a low degree.

59. Aurally, the First and Second Earlier Marks will be pronounced MIN-EEE. I consider that the words "Independent Mini Specialist" in the applicant's mark are unlikely to be pronounced due to their descriptive/laudatory nature. Consequently, I consider the applicant's mark is likely to be pronounced MIN-EEE-WER-KSS. I consider the marks to be aurally similar to a medium degree. However, if I am wrong in my finding that the words "Independent Mini Specialist" will not be pronounced, this

will be an additional point of aural difference and they will be similar to between a low and medium degree.

60. Conceptually, the word MINI will be attributed its ordinary dictionary meaning i.e. something that is very small. The word “Worxx” in the applicant’s mark is an invented word, but is likely to be seen as a deliberate misspelling of the ordinary dictionary word “Works”. I consider that this is the meaning that will be attributed to it. It, therefore, acts as a point of conceptual difference. The words “Independent Mini Specialist” will be seen as referring to a business that specialises in ‘Mini’ products and will be viewed as a descriptive/laudatory statement. Taking all of this into account, I consider there to be a medium degree of conceptual similarity between the marks.

Distinctive character of the earlier trade mark

61. 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).”

62. 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, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it.

63. I will begin by assessing the inherent distinctive character of the earlier marks. They both consist of the word MINI presented in upper case. This is an ordinary dictionary word, referring to something that is small or miniature.⁷ In the context of cars, this is likely to be seen as referring to a car that is particularly small or compact. I consider the earlier marks to be inherently distinctive to a low degree.

64. The relevant market for assessing enhanced distinctiveness is the UK market. Ms May gives evidence that cars have been sold under the earlier marks in the UK since 1959. Ms May has provided the following information regarding the number of vehicles sold under the marks in the UK and the revenue generated from those sales:

Year	Numbers	Revenue
2013	52,627	£867.2million
2014	53,030	£924.9million
2015	63,584	£1,102.2million
2016	68,984	£1,194.6million
2017	68,166	£1,181.4million
2018	67,021	£1,202.4million

These figures are supported by a number of invoices provided dated prior to the relevant date, which also include sales in relation to various car parts and accessories.⁸

⁷ <https://www.collinsdictionary.com/dictionary/english/mini>

⁸ Exhibit BM3

65. Ms May has provided information from the Society of Motor Manufacturers & Traders which, she states, is one of the largest UK automotive trade associations. This confirms that the opponent's "MINI" brand has a market share of 2.59%.⁹ Ms May notes that the largest market share is held by Ford which has a 10.10% market share and significantly more cars in its product range.

66. Ms May confirms that the following amounts have been spent on advertising in relation to vehicles and associated goods sold under the opponent's marks in the UK:

Year	Spend
2013	£20.4million
2014	£26.5million
2015	£32.0million
2016	£35.0million
2017	£29.6million
2018	£26.2million

67. A number of examples of press advertisements have been provided date between 2009 and 2019.¹⁰ However, it is not clear where these advertisements were published. Ms May has provided a printout from the website autoexpress.co.uk which covers TV advertisements run by the opponent in relation to the earlier marks. This lists advertisements from 2001, 2009, 2013 and 2014.¹¹

68. Ms May confirms that the opponent has also promoted its brand through various events. The opponent ran the MotorSport Vision's YoungDrive! Scheme (2014), The Mini Grand Tour (2016), Out of the Ordinary MINI Tour (2017) and Mini Tour across the UK (2018).¹² Some of these events visited locations across the UK such as London, Bristol, Belfast, Glasgow and Birmingham. The opponent's marks have also been promoted at the London Design Festival (2016 and 2017) and Goodwood

⁹ Exhibit BM4

¹⁰ Exhibit BM5

¹¹ Exhibit BM6

¹² Exhibit BM7

Festival of Speed (2016, 2017 and 2018).¹³ Ticket sales for the latter are capped at 150,000 per day.

69. In 2018, Ms May explains that the opponent designed a one-off MINI car to commemorate the Royal Wedding. Coverage of this reached 36.6million potential media contacts.¹⁴ Although we have no breakdown of how many of these contacts were based in the UK, the evidence does show that the topic was covered in national newspapers *The Daily Mail* and *The Sun*, so it is reasonable to infer that at least a proportion of these contacts were located in the UK.

70. At the date of Ms May's statement, there were over 150 MINI owner's clubs located around the UK (from Cardiff to Lincolnshire to Kent).¹⁵ Ms May states that the largest of these has around 4,000 members. Whilst I recognise that it is not clear when these were established (i.e. whether they were all established prior to the relevant date) given the number of clubs in operation by the date of Ms May's statement, it is reasonable to infer that at least a proportion of these would have been in operation prior to the relevant date.

71. A YouGov report, which Ms May states is from 2018, lists MINI as the fourth most popular car brand in the UK.¹⁶ Ms May also notes that the opponent's cars have appeared in various films such as *The Italian Job* (1969), *The Bourne Identity* (2002) and *Pixels* (2015). The opponent has also won various awards under the earlier marks such as Convertible of the Year 2016 (at Auto Express which is visited by 1.5million visitors per month), Top Ten Best Selling Cars of 2017 (at Carexpert.co.uk which is visited by 150,000 visitors per month) and Best Small Car 2018 (at What Car? Car of the Year which had over 50,000 visitors in 2018).

72. Taking all of the above evidence into account, I am satisfied that the distinctiveness of the earlier marks has been enhanced to between a medium and high degree through use in relation to cars and parts and accessories for cars.

¹³ Exhibits BM8 and BM9

¹⁴ Exhibit BM10

¹⁵ Exhibit BM12

¹⁶ Exhibit BM14

Likelihood of confusion

73. 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 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 goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier marks, the average consumer for the goods and 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.

74. I have found the earlier marks and the applicant's mark to be visually similar to a low degree, aurally similar to either between a low and medium degree or a medium degree (depending upon whether all of the words are articulated) and conceptually similar to a medium degree. I have found the average consumer to be a member of the general public or a business user, who will pay at least a medium degree of attention during the selection process. However, I recognise that for some of the goods the level of attention paid will be higher (where the goods are expensive, purchased infrequently or impact the safety of the user). I have found the purchasing process to be predominantly visual, although I do not discount an aural component. I have found the goods to vary from identical to similar to at least a medium degree. I have found the earlier marks to be inherently distinctive to a low degree, which has been enhanced through use to between a medium and high degree.

75. In his evidence, Mr van der Moyle refers to the fact that the opponent has not filed evidence of confusion. For the avoidance of doubt, it is not necessary for the opponent to file evidence of confusion in order for me to find that there is a likelihood of

confusion. In *Roger Maier and Another v ASOS*, [2015] EWCA Civ 220, Kitchen L.J. stated that:

“80.the likelihood of confusion must be assessed globally taking into account all relevant factors and having regard to the matters set out in *Specsavers* at paragraph [52] and repeated above. If the mark and the sign have both been used and there has been actual confusion between them, this may be powerful evidence that their similarity is such that there exists a likelihood of confusion. But conversely, the absence of actual confusion despite side by side use may be powerful evidence that they are not sufficiently similar to give rise to a likelihood of confusion. This may not always be so, however. The reason for the absence of confusion may be that the mark has only been used to a limited extent or in relation to only some of the goods or services for which it is registered, or in such a way that there has been no possibility of the one being taken for the other. So there may, in truth, have been limited opportunity for real confusion to occur.”

76. In *The European Limited v The Economist Newspaper Ltd* [1998] FSR 283 Millett L.J. stated that:

"Absence of evidence of actual confusion is rarely significant, especially in a trade mark case where it may be due to differences extraneous to the plaintiff's registered trade mark."

77. There may be any number of reasons why there have been no examples of confusion in practice. For example, the parties may be operating in different sectors or may be able to differentiate themselves through their marketing activities. Alternatively, customers who have been confused may never realise that they have been confused and, consequently, will not report it to the undertaking concerned. I do not, therefore, consider that this assists the applicant. I also note that the applicant has filed witness statements from various customers, all of whom make it clear that they are aware that the applicant is an independent MINI specialist and not associated with the opponent. I have taken this evidence into account. However, it seems to me that these customers may have been educated to that effect as a result of their use of

the applicant's goods/services. None of these witnesses express a view as to whether they would be confused based upon the marks in issue alone.

78. Taking all of the factors listed at paragraph 74 into account, particularly the visual differences between the marks and the predominantly visual purchasing process, I am satisfied that the marks are unlikely to be mistakenly recalled or misremembered as each other. I do not consider that the presence of the device and additional word "Worxx" in the applicant's mark will be overlooked by the average consumer. I do not consider there to be a likelihood of direct confusion.

79. In making my decision regarding indirect confusion, I am mindful that a finding of indirect confusion should not be made merely because two marks share a common element; it is not sufficient that a mark merely calls to mind another mark.¹⁷ That is of particular importance in a case such as this, in a field in which it is common for third parties to use marks descriptively to indicate the nature of their business. However, taking all of the above factors into account, I consider it likely that the common element "MINI" in both marks will lead the average consumer to conclude that the marks originate from the same or economically linked undertakings. I recognise that there may be some average consumers who will see the word MINI in the applicant's mark in its ordinary dictionary sense. However, given the enhanced distinctiveness of the earlier marks and the identity/similarity between the goods for which the marks are applied-for/registered, I consider that a significant proportion of average consumer will view the applicant's mark as indicating a sub-brand or alternative brand being used by the opponent. For example, it might be seen as indicating a sub-brand used to supply parts for or carry out additional works to its MINI cars. Consequently, I consider there to be a likelihood of indirect confusion. I consider that to be the case for all of the applicant's goods that I have found to be similar to at least a medium degree.

80. I note that Mr Hale gives evidence that the phrase "Independent Mini Specialist" will identify the applicant as being independent from the opponent. For the avoidance of doubt, in reaching my conclusion I have considered whether this will be sufficient to avoid average consumers concluding that the marks originate from the same or

¹⁷ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

economically linked undertakings. I do not think that it will. Firstly, given the size of this wording compared to the rest of the mark, I consider it likely that this will be overlooked by a significant proportion of average consumers. Secondly, the inclusion of this wording (which will be seen as a descriptive/laudatory slogan) does not, in my view, go far enough to counteract the effect of including the word MINI in the element of the mark which is likely to be seen as indicating origin. I do not, therefore, consider that this prevents there from being a likelihood of indirect confusion.

81. The opposition based upon section 5(2)(b) of the Act succeeds in its entirety.

Section 5(3)

82. Section 5(3) of the Act states:

“5(3) A trade mark which -

(a) is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark.”

83. As noted above, the marks relied upon all qualify as earlier marks pursuant to section 6 of the Act. I have found that the opponent has satisfied the proof of use requirements in relation to “cars; parts and accessories for cars”. Consequently, the earlier marks can be relied upon in relation to these goods for the purposes of the opponent’s opposition based upon section 5(3) of the Act.

84. I bear in mind the relevant case law set out in the following judgments of the CJEU: Case C-375/97, *General Motors*, Case 252/07, *Intel*, Case C-408/01, *Adidas-Salomon*, Case C-487/07, *L’Oreal v Bellure* and Case C-323/09, *Marks and Spencer v Interflora*. The conditions of section 5(3) are cumulative. Firstly, the opponent must

show that the earlier marks have achieved a level of knowledge/reputation amongst a significant part of the public. Secondly, it must be established that the level of reputation and the similarities between the marks will cause the public to make a link between them, in the sense of the earlier marks being brought to mind by the later mark. Thirdly, assuming the first and second conditions have been met, section 5(3) requires that one or more of the types of damage will occur. It is unnecessary for the purposes of section 5(3) that the goods and services be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

85. The relevant date for the assessment under section 5(3) is the date of the application i.e. 17 February 2019.

Reputation

86. In *General Motors*, Case C-375/97, the CJEU held that:

“25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.

26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation 'in the Member State'. In the absence of any definition of the Community provision in this respect, a trade mark cannot

be required to have a reputation 'throughout' the territory of the Member State. It is sufficient for it to exist in a substantial part of it."

87. In determining whether the opponent has demonstrated a reputation for the goods in issue, it is necessary for me to consider whether its marks will be known by a significant part of the public concerned with the goods. In reaching this decision, I must take all of the evidence into account including "the market share held by the trademark, the intensity, geographical extent and duration of use, and the size of the investment made by the undertakings in promoting it."

88. As noted above, Ms May's evidence indicates that the opponent's "MINI" brand has a market share of 2.59% in the UK, with the largest market share held by any individual undertaking being 10.10%.¹⁸ The opponent's evidence confirms that it has been selling cars in the UK under the earlier marks since 1959. The opponent has sold in excess of between 50,000 and 65,000 products each year between 2013 and 2018 under the earlier marks. This translates into a yearly revenue of over £800million to over £1,200million each year. Invoices have been provided to support these figures, which also include sales in relation to car parts and accessories.¹⁹ In excess of £20million has been spent each year on promoting the earlier marks in the UK. The opponent has engaged in TV advertising and has provided examples of these dated between 2001 and 2014.²⁰ The opponent has also promoted its marks through various events located across the UK, including the London Design Festival (2016 and 2017) and the Goodwood Festival of Speed (2016, 2017 and 2018).²¹ Ticket sales for the latter are capped at 150,000 per day. The opponent also designed a one-off MINI car to commemorate the Royal Wedding in 2018, coverage of which reached 36.6million potential media contacts.²² As noted above, although we have no evidence of how many of these contacts were based in the UK, coverage in national newspapers such as *The Daily Mail* and *The Sun* is likely to indicate that at least a proportion of these were from the UK. A YouGov report from 2018 lists the earlier marks as the fourth

¹⁸ Exhibit BM4

¹⁹ Exhibit BM3

²⁰ Exhibit BM6

²¹ Exhibits BM8 and BM9

²² Exhibit BM10

most popular car brand in the UK.²³ It has also featured in various films such as *The Italian Job* (1969), *The Bourne Identity* (2002) and *Pixels* (2015). The opponent has won various awards under the earlier marks such as Convertible of the Year 2016 (at Auto Express which is visited by 1.5million visitors per month), Top Ten Best Selling Cars of 2017 (at Carexpert.co.uk which is visited by 150,000 visitors per month) and Best Small Car 2018 (at What Car? Car of the Year which had over 50,000 visitors in 2018). Articles dated prior to the relevant date describe the opponent's brand as "quintessentially British", having a "reputation for style and excitement" and having a "gregarious, edgy character".²⁴

89. Taking all of the above evidence into account, I am satisfied that the opponent has a relatively strong reputation in relation to cars and parts and accessories for cars.

Link

90. As I noted above, my assessment of whether the public will make the required mental 'link' between the marks must take account of all relevant factors. The factors identified in *Intel* are:

The degree of similarity between the conflicting marks

For the reasons set out above, I consider the marks to be visually similar to a low degree, aurally similar to either a medium degree or between a low and medium degree (depending on which elements are articulated) and conceptually similar to a medium degree.

The nature of the goods or services for which the conflicting marks are registered, or proposed to be registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public

²³ Exhibit BM14

²⁴ Exhibits BM15 and BM16

The applied-for class 12 goods vary from being similar to a medium degree to identical to the goods for which the opponent has demonstrated a reputation.

The applied-for class 25 goods differ in nature, method of use and purpose to the goods for which the opponent has demonstrated a reputation. Ms Morrish gives evidence that it is common for car manufacturers in the UK to also offer branded merchandise including clothing, footwear and hats under their trade marks. In this regard, Ms Morrish has provided extracts from the websites of various car manufacturers which show use in relation to merchandise.²⁵ These extracts are all dated October 2019 (after the relevant date) and show 18 different car manufacturers which offer clothing and hats for sale under their marks. Whilst this evidence is dated after the relevant date, I consider it likely that this will be reflective of the position at the relevant date. Whilst I recognise that there may be some limited overlap in trade channels, I do not consider this sufficient to counteract the differing nature, method of use and purpose. I consider the goods to be dissimilar.

The strength of the earlier mark's reputation

The earlier marks have a relatively strong reputation in the UK.

The degree of the earlier mark's distinctive character, whether inherent or acquired through use

The earlier marks are inherently distinctive to a low degree and this has been enhanced to between a medium and high degree through use.

Whether there is a likelihood of confusion

I have found there to be a likelihood of indirect confusion. In relation to the applicant's class 12 goods. There can be no likelihood of confusion in relation to the applicant's class 25 goods because I have found them to be dissimilar.

²⁵ Exhibit LM1

91. In my view, taking into account the strength of the opponent's reputation and the common element (being the word "MINI") present in all three marks, I consider that a significant part of the relevant public will make a link between the marks in use in relation to the applicant's class 12 goods. Notwithstanding the differences between the opponent's goods and the applicant's class 25 goods, I consider that the strength of the opponent's reputation is such that a link would still be made.

Damage

92. I must now assess whether any of the three pleaded types of damage will arise.

93. In relation to unfair advantage, the opponent states:

"The use of the trade mark applied for will take unfair advantage of the reputation of the earlier mark because it will enable its owner to exploit the link referred to in Q3 above to free-ride on the reputation of the earlier mark, in order to benefit from its prestige.

The link will mean that the applicant will gain an unfair commercial advantage by being incorrectly associated with the opponent and misappropriating the attractive powers and advertising value of the earlier mark."

94. I bear in mind that unfair advantage has no effect on the consumers of the earlier marks' goods. Instead, the taking of unfair advantage of the distinctive character or reputation of an earlier mark means that consumers are more likely to buy the goods and services of the later mark than they would otherwise have been if they had not been reminded of the earlier mark.

95. In *Jack Wills Limited v House of Fraser (Stores) Limited* [2014] EWHC 110 (Ch) Arnold J. considered the earlier case law and concluded that:

"80. The arguments in the present case give rise to two questions with regard to taking unfair advantage. The first concerns the relevance of the defendant's

intention. It is clear both from the wording of Article 5(2) of the Directive and Article 9(1)(c) of the Regulation and from the case law of the Court of Justice interpreting these provisions that this aspect of the legislation is directed at a particular form of unfair competition. It is also clear from the case law both of the Court of Justice and of the Court of Appeal that the defendant's conduct is most likely to be regarded as unfair where he intends to benefit from the reputation and goodwill of the trade mark. In my judgment, however, there is nothing in the case law to preclude the court from concluding in an appropriate case that the use of a sign the objective effect of which is to enable the defendant to benefit from the reputation and goodwill of the trade mark amounts to unfair advantage even if it is not proved that the defendant subjectively intended to exploit that reputation and goodwill.”

96. As noted above, there is some evidence that car manufacturers have diversified into the sale of clothing. It is, therefore, logical to assume that there is some form of advantage to be gained from doing so. Taking into account the strength of the opponent's reputation, the common use of the word MINI in all of the marks and the similarity/identity of the goods, it is clear that there is potential for the applicant to gain an unfair advantage. The applicant would secure a commercial advantage, benefitting from the opponent's reputation without paying financial compensation and would, therefore, be likely to take unfair advantage of the earlier marks.

97. As damage is made out on the basis of unfair advantage, I do not consider it necessary to go on to consider the opponent's other heads of damage.

98. The opposition based upon section 5(3) succeeds in its entirety.

Section 5(4)(a)

99. Section 5(4)(a) of the Act states as follows:

“5(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented -

a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

aa)...

b) ...

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark”.

100. Subsection (4A) of section 5 of the Act states:

“(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application.”

101. In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

“55. The elements necessary to reach a finding of passing off are the ‘classical trinity’ of that tort as described by Lord Oliver in the *Jif Lemon* case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56. In relation to deception, the court must assess whether “a substantial number” of the Claimants' customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21).”

Relevant date

102. Whether there has been passing off must be judged at a particular point (or points) in time. In *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O-410-11, Mr Daniel Alexander QC, sitting as the Appointed Person, considered the relevant date for the purposes of s.5(4)(a) of the Act and stated as follows:

“43. In *SWORDERS TM* O-212-06 Mr Alan James acting for the Registrar well summarised the position in s.5(4)(a) proceedings as follows:

‘Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the applicant has used the mark before the date of the application it is necessary to consider what the position would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made.’”

103. The first relevant date for the purposes of the assessment under section 5(4)(a) is the date of the application i.e. 17 February 2019. However, in his evidence, Mr van der Moyle indicates that the applicant was incorporated in March 2018. It is not clear when the applicant started trading or when the mark in issue started to be used. However, as it represents the applicant’s best case, I will proceed on the basis that the opponent must be able to demonstrate goodwill at both 17 February 2019 and March 2018.

Goodwill

104. The House of Lords in *Inland Revenue Commissioners v Muller & Co’s Margarine Ltd* [1901] AC 217 (HOL) provided the following guidance regarding goodwill:

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in customers. It is the one thing which distinguishes an old-established business from a new business at its first start.”

105. In *South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)* [2002] RPC 19 (HC), Pumfrey J. stated:

“27. There is one major problem in assessing a passing off claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent's reputation extends to the goods comprised in the applicant's specification of goods. The requirements of the objection itself are considerably more stringent than the enquiry under s.11 of the 1938 Act (see *Smith Hayden & Co. Ltd's Application (OVAX)* (1946) 63 R.P.C. 97 as qualified by *BALI Trade Mark* [1969] R.P.C. 472). Thus the evidence will include evidence from the trade as to reputation; evidence as to the manner in which the goods are traded or the services supplied; and so on.

28. Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed to the relevant date. Once raised, the applicant must rebut the prima facie case. Obviously, he does not need to show that passing off will not occur, but he must produce sufficient cogent evidence to satisfy the hearing officer that it is not shown on the balance of probabilities that passing off will occur.”

106. However, in *Minimax GmbH & Co KG v Chubb Fire Limited* [2008] EWHC 1960 (Pat) Floyd J. (as he then was) stated that:

“[The above] observations are obviously intended as helpful guidelines as to the way in which a person relying on section 5(4)(a) can raise a case to be answered of passing off. I do not understand Pumfrey J to be laying down any absolute requirements as to the nature of evidence which needs to be filed in every case. The essential is that the evidence should show, at least prima facie, that the opponent’s reputation extends to the goods comprised in the application in the applicant’s specification of goods. It must also do so as of the relevant date, which is, at least in the first instance, the date of application.”

107. Goodwill arises as a result of trading activities. Clearly, the opponent had been trading prior to the relevant dates. This is clear from the revenue and sales figures provided by Ms May. By 2018, the earlier marks are described as being the fourth most popular car brand in the UK, supporting the fact that there must have been significant sales prior to that time.²⁶ I note that there are invoices dated prior to February 2019 which relate to car parts and accessories. However, these do not pre-date March 2018.²⁷ There is little evidence in relation to car parts and accessories prior to March 2018. Taking all of this into account, I am satisfied that by both relevant dates the opponent had a reasonably strong goodwill in relation to “cars”. There is also evidence to support a finding of goodwill in relation to “parts and accessories for cars” prior to February 2019 but not prior to March 2018. I will proceed on the basis of the opponent’s goodwill in relation to “cars” only as this represents the applicant’s best case.

Misrepresentation and damage

108. In *Neutrogena Corporation and Another v Golden Limited and Another* [1996] RPC 473, Morritt L.J. stated that:

“There is no dispute as to what the correct legal principle is. As stated by Lord Oliver of Aylmerton in *Reckitt & Colman Products Ltd. v. Borden Inc.* [1990] *R.P.C.* 341 at page 407 the question on the issue of deception or confusion is

²⁶ Exhibit BM14

²⁷ Exhibit BM3

“is it, on a balance of probabilities, likely that, if the appellants are not restrained as they have been, a substantial number of members of the public will be misled into purchasing the defendants' [product] in the belief that it is the respondents' [product]”

The same proposition is stated in Halsbury's Laws of England 4th Edition Vol.48 para 148. The necessity for a substantial number is brought out also in *Saville Perfumery Ltd. v. June Perfect Ltd.* (1941) 58 R.P.C. 147 at page 175; and *Re Smith Hayden's Application* (1945) 63 R.P.C. 97 at page 101.”

And later in the same judgment:

“... for my part, I think that references, in this context, to “more than *de minimis*” and “above a trivial level” are best avoided notwithstanding this court's reference to the former in *University of London v. American University of London* (unreported 12 November 1993). It seems to me that such expressions are open to misinterpretation for they do not necessarily connote the opposite of substantial and their use may be thought to reverse the proper emphasis and concentrate on the quantitative to the exclusion of the qualitative aspect of confusion.”

109. I recognise that the test for misrepresentation is different from that for likelihood of confusion in that it entails “deception of a substantial number of members of the public” rather than “confusion of the average consumer”. However, as recognised by Lewison L.J. in *Marks and Spencer PLC v Interflora*, [2012] EWCA (Civ) 1501, it is doubtful whether the difference between the legal tests will produce different outcomes. Certainly, I believe that to be the case here. I consider that a substantial number of members of the relevant public would be misled into purchasing the applicant's goods in the mistaken belief that they are the goods of the opponent. In *Harrods Limited V Harrodian School Limited* [1996] RPC 697, Millett L.J. described the requirements for damage in passing off cases like this:

“In the classic case of passing off, where the defendant represents his goods or business as the goods or business of the plaintiff, there is an obvious risk of damage to the plaintiff’s business by substitution. Customers and potential customers will be lost to the plaintiff if they transfer their custom to the defendant in the belief that they are dealing with the plaintiff. But this is not the only kind of damage which may be caused to the plaintiff’s goodwill by the deception of the public. Where the parties are not in competition with each other, the plaintiff’s reputation and goodwill may be damaged without any corresponding gain to the defendant. In the *Lego* case, for example, a customer who was dissatisfied with the defendant’s plastic irrigation equipment might be dissuaded from buying one of the plaintiff’s plastic toy construction kits for his children if he believed that it was made by the defendant. The danger in such a case is that the plaintiff loses control over his own reputation.

110. In this case, I consider that damage through diversion of sales is easily foreseeable in relation to the applicant’s class 12 goods. I do not consider the same to be true of the applicant’s class 25 goods. I recognise that it is not essential under the law of passing off for the parties to be engaged in the same fields of business activity (see *Harrods Limited v Harroddian School Limited* [1996] RPC 697 (CA)). However, the closeness of the parties’ respective fields is a factor which must be taken into account. To my mind, the distance between the applicant’s class 25 goods and the goods for which the opponent has demonstrated a reputation is sufficient to avoid misrepresentation occurring.

111. The opposition based upon section 5(4)(a) succeeds in relation to the applicant’s class 12 goods only.

CONCLUSION

112. The opposition is successful and the application is refused.

COSTS

113. The opponent 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 opponent the sum of **£1,950** as a contribution towards the costs of the proceedings. This sum is calculated as follows:

Filing a Notice of opposition and considering the applicant's counterstatement	£400
Filing evidence and considering the applicant's evidence	£1,000
Filing written submissions	£350
Official fee	£200
Total	£1,950

114. I therefore order Mini Worxx Limited to pay Bayerische Motoren Werke Aktiengesellschaft the sum of **£1,950**. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 11th day of January 2021

S WILSON

For the Registrar

ANNEX

Class 12

Aerodynamic attachments for vehicle bodies; Aerodynamic fairings for vehicles; Aerodynamic fairings for vehicles; Aerofoils for land vehicles; Air deflectors for vehicles; Air flow spoilers; Air flow spoilers for vehicles; Alloy wheels for vehicles; Anti-theft devices for land vehicles; Anti-theft devices for motor cars; Antitheft devices for vehicles; Anti-theft devices for vehicles; Anti-theft locks for use on automobile steering wheels; Anti-theft, security and safety devices and equipment for vehicles; Anti-theft warning apparatus for motor cars; Arm rests for vehicles; Armrests for automobile seats; Automobile door handles; Automobile steering wheels; Automotive interior trim; Automotive vehicles; Bucket seats for automobiles; Bumpers for automobiles; Bumpers for vehicles; Caps for vehicle fuel tanks; Caps for wheel rims; Car body modification parts for sale in kit form; Car seat covers; Car seat covers [shaped or fitted];Clips adapted for fastening automobile parts to automobile bodies; Covers (Shaped -) for motor cars; Covers (Shaped -) for pick-up trucks; Covers (Shaped -) for vehicles; Cup holders for use in automobiles [automobile accessories]; Cup holders for use in vehicles; Fender flares for land vehicles; Fenders for land vehicles; Fenders [land vehicle parts]; Fuel tanks for land vehicles; Gear shift covers; Gear shifts; Gear shifts for automobiles; Glass holders for automobiles; Glass holders for vehicles; Hoods for vehicle engines; Hub cap covers; Hub caps; Hub caps for wheels; Hub centre caps; Interior panels for vehicles; Interior trim for automobiles; Interior trim parts of automobiles; Parts and fittings for land vehicles; Parts and fittings for vehicles; Radiator grilles for vehicles; Radiator grills of metal for vehicles; Radiator grills of non-metallic materials for vehicles; Reservoirs (metal -) [parts of vehicles]; Reservoirs (non-metallic -) [parts of vehicles]; Reverse motion alarms for vehicles; Reverse warning transmitters for use on vehicles; Reversing alarm transmitters utilising ultrasonics for use on vehicles; Reversing alarms for vehicles; Reversing warning alarms for use on vehicles; Shift boots for motor vehicles; Shift levers for land vehicles; Speed change gears for land vehicles; Speed gear levers for land vehicles; Spoilers; Spoilers for automobiles; Spoilers for automotive vehicles; Spoilers for land vehicles.

Class 25

Beanie Hats; Bomber jackets; Caps; Caps being headwear; Clothing; Clothes; Coats; Hats; Hooded sweat shirts; Hooded sweatshirts; Hoodies; Jackets (Stuff -) [clothing]; Leisurewear; Neck scarves; Polo shirts; Printed t-shirts; Shirts; Short-sleeved T-shirts; Short-sleeved shirts; T-shirts; .