

O/088/21

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003409134

BY QIANXUN SPATIAL INTELLIGENCE INC

TO REGISTER:

Magic Cube

MAGIC CUBE

(SERIES OF 2)

AS TRADE MARKS IN CLASSES 9, 35, 36, 38, 39 AND 42

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 418601 BY

GROUPE CANAL+ SA

BACKGROUND AND PLEADINGS

1. On 24 June 2019, Qianxun Spatial Intelligence Inc (“the applicant”) applied to register the series of trade marks shown on the cover of this decision in the UK (“the application”). The application was published for opposition purposes on 30 August 2019 and registration is sought for the goods and services shown in the **Annex 1** of this decision.
2. On 29 November 2019, the application was partially opposed by Groupe Canal+ SA (“the opponent”). The opposition is based on section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and is aimed at only those goods and services shown in **Annex 2** of this decision. The opponent relies on the following European Union trade mark (“EUTM”)¹:



EUTM registration no. 8699291

Filing date 19 November 2009; registration date 27 May 2010

Relying on all goods and services namely:

Class 9: Decoders; Remote controls; antennas satellite dishes.

Class 35: Retailing and wholesaling of set-top boxes; Retail sale of aerials; Arranging subscriptions to audiovisual programmes; Arranging subscriptions to a television channel.

Class 38: Television communication; Transmission of images and videos; Television broadcasting; Broadcasting of programmes via satellite, via cable, via computer networks (in particular via the internet), and via radio waves; Audiovisual and cinematographic

¹Although the UK has left the EU and the transition period has now expired, EUTMs, and International Marks which have designated the EU for protection, are still relevant in these proceedings given the impact of the transitional provisions of The Trade Marks (Amendment etc.) (EU Exit) Regulations 2019 – please see Tribunal Practice Notice 2/2020 for further information.

broadcasting, whether or not for interactive purposes; Rental of aerials and satellite dishes; Transmission of programmes and selection of television channels.

Class 41: Rental of decoders.

Class 42: Online downloading of films and other audiovisual programmes.

3. In its notice of opposition, the opponent submits that given the similarities between the marks and the identity/similarity of the goods and services offered by both marks, there exists a likelihood of confusion (including a likelihood of association) on the part of the public.
4. The applicant filed a counterstatement denying the claims made and put the opponent to proof of use of its mark. The relevant period in respect of the opponent's requirement to show proof of use is 25 June 2014 to 24 June 2019.
5. The applicant is represented by Mathys & Squire LLP and the opponent is represented by D Young & Co LLP. Only the opponent has filed evidence. No hearing was requested and only the opponent filed written submissions in lieu. This decision is taking following a careful perusal of the papers.
6. Although the UK has left the EU, section 6(3)(a) of the European (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Trade Marks Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

EVIDENCE

Preliminary Issues

7. The opponent has filed evidence in the form of the witness statement of Mr Clément Hellich Praquin dated 17 July 2020. Accompanying this statement, the opponent

made an application for confidentiality in relation to some of the contents of its exhibits on the basis that they contained commercially sensitive information. Whilst reference was made to other exhibits, the opponent confirmed by way of letter dated 10 August 2020 that its application for confidentiality was related to the contents of exhibit CHP23 only. No objection having been raised by the applicant, a Confidentiality Order was made on 8 September 2020 with the effect that the figures and information contained within exhibit CHP23 would not be disclosed to the public at large.

8. Mr Praquin is the Corporate General Counsel of the opponent and has held this position since 2016. Mr Praquin states that the opponent is the EU leader in the provision of premium content and themed networks, including television stations and film and television services. The opponent's mark was launched in November 2008. Mr Praquin states that it "permits consumers of film and television stations to access such services via a set-top box, which works as a decoder alongside a remote control and satellite dish". Mr Praquin states that the opponent's mark has been used continuously in the EU since 2008.
9. I note that throughout Mr Praquin's statement and the evidence exhibited thereto, the terms set-top box and decoder are used to refer to the same product, being a device that is used to receive broadcast channels that the consumer can watch on their television. Throughout this evidence summary, I have used the term 'decoder' for consistency.
10. A previous decision of the EUIPO involving the opponent is enclosed.² That decision shows that the opponent was successful in proving use for all of its goods and services between 2010 and 2015. While I note the content of that decision, the relevant period for that decision is different to the relevant period in these proceedings and I have not been privy to the contents of the evidence filed in the EUIPO proceedings. While I accept that there is a slight overlap in the relevant period, proof of use is an evidential exercise requiring me to only consider the evidence filed in these proceedings.

² Exhibit CHP2

11. A number of website printouts are included within the evidence that are taken from the online archive facility known as 'The Wayback Machine'.³ I note that the printouts are dated at various points between 14 December 2013 and 6 December 2016. I note that the two earliest printouts fall outside the relevant period so these have been discounted. The printouts are all in French and appear to show a decoder that is referred to as '+ LE CUBE'. I note that the photographs of the decoder show the word 'CANAL+' engraved into them. Some translations have been provided that refer to 'LE CUBE' as a 'HD Wifi Decoder with External Disk'. I also note that the service packages offered for the television channels included with 'LE CUBE' are 'LES CHAINES CANAL+', 'CANALSAT PANORAMA', 'TNT+', 'CANALSAT ACCESS' and 'CANALSAT LIBREMENT'. Further, there appears to be an "app" for accessing the packages on different devices called 'MyCANAL'.
12. Independent web traffic statistics of the website 'www.pluslecube.fr' from 2015 and 2018 are provided.⁴ I note that these statistics are provided by 'www.urlmetrics.co' in French, however, only a partial translation is provided. I note that, as per the report dated 17 April 2015, the 'pluslecube' website attracted 4,169 views per month. Further, the second report appears to be dated 21 April 2018 and shows the same amount of views per month, being 4,169. Mr Praquin states that the website subject to these reports features the opponent's mark prominently on the home page.
13. Mr Praquin also explains that on the decoder packaging, the opponent's mark is clearly seen. To support this, packaging designs are enclosed together with some photographs of the box that the decoder is shipped in.⁵ I note that the packaging is in French and no translation is provided as to the wording on the box but I do note that all the examples provided include the opponent's mark. In addition, I note that the examples shown also include other marks such as 'CANAL+', 'CANAL SAT', 'myCANAL', 'TNT' and 'CANAL PLAY'. While this evidence is undated, I consider it likely to be reflective of the packaging in which the opponent's goods are shipped.

³ Exhibit CHP3

⁴ Exhibit CHP4

⁵ Exhibit CHP5

14. Evidence of purchase orders for the production of installation manuals are attached together with copies of the manuals themselves, which I note were distributed between 2014 and 2018.⁶ These invoices are in French but it appears that they were for the order of 60,000 copies of the manuals. While the manuals show the opponent's mark, I note that the invoices do not, and only contain the opponent's name and '01 CANAL PLUS'. Mr Praquin states that the manuals show a close link between the decoder, the remote control and antenna satellite dishes. While the manual is in French, I am of the view that it is clear that it relates to the decoder and a remote control. I note that the manual does contain an image of a satellite dish, but it does not appear that this is one of the products that is actually covered by the manual, but instead indicates that the decoder can be connected to a satellite.
15. There is also evidence enclosed that shows various customers asking questions on a website between 2012 and 2018.⁷ This is all shown in French. I note that a partial translation is provided that shows the headings of these pages in English. Mr Praquin states that this evidence further demonstrates the close link between the decoder, accessories and related services offered under the opponent's mark. These pages appear to be troubleshooting questions on an online forum and while I note the translation of the headings, I am unable to determine the content of this evidence as a whole. I also note that a significant number of these print outs are dated before the relevant period.
16. Mr Praquin sets out that CANAL+ had a turnover of 533 million euros as at 31 December 2014. This is evidenced in a 2015 brochure about the CANAL+ GROUP.⁸ While there is a reference to a range of services within this brochure, there is no mention of the opponent's mark. Additional copies of brochures are also included that show the opponent's mark on decoders.⁹ These brochures appear to show a variety of channels that are available under the CANAL+/CANALSAT range. However, there is only an occasional reference to the opponent's mark. I also note that the evidence shows that these channels are also available on

⁶ Exhibit CHP6

⁷ Exhibit CHP7

⁸ Exhibit CHP8

⁹ Exhibit CHP9

'MyCANAL' and 'CANAL PLAY'. I also note a reference that the '+ LE CUBE' decoder has a hard drive with the ability to record films/show and also to access on demand programming.

17. Further website printouts from within the relevant period are provided that show the opponent's mark alongside a decoder and a satellite.¹⁰ I note that the translation sets out that the satellite option is one of 4 reception modes for the opponent's services. Further, the translation states that the decoder comes with a satellite dish and installation free of charge. In addition to the above, there is an online article from 2018 regarding a design award obtained by a third party in designing the 'LE CUBE' decoder.¹¹

18. Mr Praquin has provided a number of articles from third party websites.¹² I note that these include a Norwegian website and a '.com' website that discuss new third party software being used by the '+ LE CUBE' decoder. I also note that these articles also refer to a complete range of 'CANAL+/CANALSAT channels via the internet and also refer to the 'MyCanal' portal for accessing content. I do not consider that these articles will assist the opponent as they appear to focus on the third party software as opposed to demonstrating any use of the opponent's mark. Other articles provided discuss the availability of the 2014 FIFA World Cup on CANAL+ services. I note that Mr Praquin's explanation sets out that as some of these articles are in English, they were directed at consumers in the UK. While the article is in English, I have no further evidence to suggest that it was aimed at the UK market and I also note that it does not include the opponent's mark. There are also French websites regarding the provision of HD channels and 'Deezer' on CANAL+/CANALSAT services. I note from the partial translation provided that:

- a. An update of the Android app for 'myCANAL' will be compatible with the opponent's '+ LE CUBE' decoder;
- b. That CANAL+/CANALSAT's on-demand service will be available on a 'new decoder', being the '+LE CUBE HD/WIFI' decoder; and

¹⁰ Exhibit CHP10

¹¹ Exhibit CHP15

¹² Exhibit CHP17

c. One article is titled 'Benefit from CANAL packages with "+ LE CUBE".

19. In his statement, Mr Praquin states that the articles take into account the opponent's pay-TV operations in Africa, Poland and Vietnam have a total subscriber base of 14.7 million. While I note this comment, there is no reference to Africa, Poland or Vietnam which has been produced in English within the evidence. I do, however, note that the brochure referred to at paragraph 16 refers to these countries. This will not assist the opponent because (1) some of these countries are outside the EU and (2) aside from a mention in the brochure, no further evidence of any use in EU countries is provided.

20. I also note that Mr Praquin states that the opponent's mark has been used in connection with large scale services related to television and audio-visual broadcasting. In support of this, a copy of a presentation guide showing the functionality of the '+ LE CUBE' decoder.¹³ However, I note that this evidence is dated 28 October 2011 and falls outside of the relevant period. It will, therefore, not assist the opponent

21. Further evidence in the form of printouts from the opponent's website are included that show the '+ LE CUBE' decoder.¹⁴ These printouts are dated within the relevant period and are in French. The partial translation shows that the television services provided are from the 'CANAL+' or 'CANALSAT' packages. It also states that the 'myCANAL' app provides the subscribers with the ability to watch live TV, download content or access on demand content on their mobile devices. There are also additional brochures/catalogues provided¹⁵ that show the range of 'CANAL+/CANALSAT' packages available via the '+ LE CUBE' decoder. Mr Praquin explains that these campaigns offered one year free rental of the '+ LE CUBE' decoder. However, I note that this evidence is prior to the relevant period and will, therefore not assist the opponent.

¹³ Exhibit CHP18

¹⁴ Exhibit CHP19

¹⁵ Exhibits CHP20 and 21

22. Mr Praquin has also included an example of a subscription agreement between the opponent and consumers that was used between 2014 and 2018.¹⁶ The opponent's mark is not present on these agreements and Mr Praquin confirms that these agreements are for the rental of '+ LE CUBE' decoders plus subscriptions to various television channels. I note that the agreement is in French and no translation is provided. I also note that CANAL+ and CANALSAT is referred to throughout these agreements.

23. In 2015, the opponent had 11.2 million individual subscribers which increased to a total of 20.3 million by 2020. Mr Praquin states that, on average, 4.8 million subscribers were equipped with Canal+ and that at least 2.5 million LE CUBE decoders were distributed to these households. I note the confidentiality order made by the Tribunal in relation to Exhibit CHP23 which prohibited the disclosure of the actual figures contained within that exhibit and therefore will merely note that the contents of this exhibit relate to the subscribers of the decoders bearing the opponent's mark between 2014 and 2020. In any event, not discounting that the numbers provided are significant, there is no explanation as to what information is included within the columns of the spreadsheet as the column headers are in French and no translation is provided.

24. There is additional evidence provided that I do not consider will assist the opponent because it is either undated, dated outside the relevant date or refers to other branding. For completeness, I note that this evidence shows:

- a. undated advertising/marketing campaigns;¹⁷
- b. stills from YouTube adverts that are either from before the relevant date or 'parody adverts' uploaded by third parties;¹⁸
- c. a price list of subscription tariffs from 2016 that shows a range of services under the 'CANAL' and 'CANAL PLAY' banners¹⁹. Within this evidence there is one reference to a 'LE CUBE' product in that it is one of the options provided to customers when subscribing to the opponent's services;

¹⁶ Exhibit CHP22

¹⁷ Exhibit CHP11

¹⁸ Exhibit CHP12

¹⁹ Exhibit CHP13

- d. a competition from before the relevant date organised by CANAL+/CANALSAT;²⁰ and
- e. promotions in conjunction with music streaming service 'Deezer' that is available to select as a channel via the opponent's services.²¹

25. Finally, some purchase orders are produced regarding the manufacture of the decoders. I note that these do not bear the opponent's mark, however, the invoices refer to products described as 'DECODEUR G5' and 'DECODUER G6'. I note that Mr Praquin has provided an explanation and supporting evidence that these products are from the '+LE CUBE' range.²² I note that between 18 August 2014 and 21 September 2016, the opponent ordered the production of 13,000 units of '+LE CUBE' decoders.

DECISION

Proof of use

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

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

(a) a registered trade mark, international trade mark (UK) or Community trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,

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

²⁰ Exhibit CHP14

²¹ Exhibit CHP16

²² Exhibit CHP24

27. Given its filing date, the opponent's mark qualifies as an earlier trade mark under the above provisions. As set out above, the applicant put the opponent to proof of use of its mark because its mark completed its registration process more than 5 years before the date of the application in issue. Therefore, it is subject to proof of use pursuant to section 6A of the Act.

28. 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 period of five years ending with the date of publication.

(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 mark unless the use conditions are met.

(3) The use conditions are met if –

(a) within the period of five years ending with the date of publication of the application 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 Community.

(5A) In relation to an international trade mark (EC) the reference in subsection (1)(c) to the completion of the registration procedure is to be construed as a reference to the publication by the European Union Intellectual Property Office of the matters referred to in Article 190(2) of the European Union Trade Mark Regulation.

(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.”

29. 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.”

30. In *Walton International Ltd & Anor v Verweij Fashion BV* [2018] EWHC 1608 (Ch) Arnold J (as he then was) 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 Bunderversvereinigung 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 Merken 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].”

31. As the opponent’s 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)”.

32. Pursuant to Section 6A of the Act, the relevant period for assessing whether there has been genuine use of the opponent’s mark is the 5-year period ending with the date of the application in issue i.e. 25 June 2014 to 24 June 2019.

33. As the earlier mark is an EUTM, the opponent must show use in the EU. In *Leno Merken BV v Hagelkruis Beheer BV*, Case C-149/11, the CJEU noted that:

“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.”²³

34. Whether the use shown is sufficient for this purpose will depend on whether there has been real commercial exploitation of the EUTMs, 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.

Form of the Mark

35. The opponent’s mark as registered is used throughout the evidence. Clearly, this is use upon which the opponent can rely. The opponent has also used the mark as a word only mark, being ‘+ LE CUBE’. The word only variant of the opponent’s mark is used in promotional texts and websites. While the opponent’s mark has additional presentational elements, I am of the view that its use as a word only mark will retain the mark’s independent distinctive role within the mark as used. Therefore, in accordance with the case of *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12, I consider this use to be use of the opponent’s mark as registered. While I note that the mark is also displayed as ‘LE CUBE’, I do not consider it necessary to assess this form of the mark. This is because the evidence showing use of ‘LE CUBE’ also shows use of the mark as registered and/or the mark presented as ‘+ LE CUBE’ or is evidence that does not assist the opponent.

²³ Paragraph 36.

36. I also note that the opponent has used 'pluslecube' within its evidence. However, as it is used as a domain name, I do not consider this a variant use and, therefore, do not consider it necessary to assess this.

Sufficient Use

37. 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.²⁴

38. I have set out above that some of the evidence does not assist the opponent for various reasons. However, of the evidence I note that:

- a. at least 2.5 million '+ LE CUBE' decoders were distributed to households between 2014 and 2020. The evidence suggests that these were not sold to consumers but, instead, rented. While some of this evidence will fall outside the relevant period. I am content to conclude that even if reduced accordingly, these figures would still be significant;
- b. while the information provided in Confidential Exhibit CHP23 of Mr Praquin's witness statement is in French, I am satisfied that it is self-evident that the figures provided demonstrate a significant number of customers who have rented the '+ LE CUBE' decoder;
- c. that between 18 August 2014 and 21 September 2016, a total of 13,000 '+LE CUBE' decoders were ordered by the opponent. While there is no evidence to demonstrate that these units were eventually rented to the consumer, it is reasonable to conclude that coupled with the evidence referred to at a. and b. above, I am satisfied that they were; and
- d. that the opponent ordered a total of 60,000 manuals for its decoder. While there is no evidence to demonstrate the distribution of these manuals, it is reasonable to conclude that they were eventually shipped to consumers, for the same reason set out in c. above.

²⁴ New York SHK Jeans GmbH & Co KG v OHIM, T-415/09

39. While I have no evidence from either party as to the size of the market for the opponent's goods in the EU, I would expect it to be a significant market amounting to hundreds of millions, if not billions, of euros per annum. The figures provided are low in respect of the size of the relevant market. However, I note that the case law cited above states that use of the mark need not always be quantitatively significant for it to be deemed genuine. Taking the evidence as a whole into account, I am satisfied that the opponent has demonstrated genuine use of the opponent's mark in France.

40. 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 use of its mark in the EU during the relevant period.

Fair Specification

41. 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.”

42. 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.”

43. While the opponent's evidence uses the terms 'set-top box' and 'decoder', they are clearly a reference to the same good. I am of the view that the opponent has demonstrated use for 'decoders'. Further, given the fact that the evidence also shows that (1) the decoders were advertised together with remote controls and (2) user manuals were produced in significant numbers that show the consumer how to use the remotes, I am satisfied that the opponent has also shown genuine use of 'remote controls'.

44. The evidence provided does not refer to sales figures of the '+ LE CUBE' decoder. The evidence does, however, refer to the rental of the decoders. This is in the form of an explanation by Mr Praquin that the subscription agreements provided with his statement²⁵ relate to 12 or 24 month subscriptions that include the rental of a decoder.²⁶ Mr Praquin goes on to state that at least 2.5 million 'LE CUBE' decoders were distributed during the relevant period.²⁷ If a consumer was to rent a decoder, I am of the view that they would consider that the retail of that decoder was provided under the '+ LE CUBE' branding. While I note the prominence of the 'CANAL+' and 'CANALSAT' marks throughout the evidence, I am of the view that these marks relate to the transmission/broadcast services (which I will address further below) and not the actual rental of the goods. I am satisfied that the opponent has demonstrated that it has put its mark to genuine use in relation to "rental of decoders".

45. I do not consider that the opponent has demonstrated genuine use of the remaining goods and services in the opponent's specification. I will address these in turn below.

46. Firstly, I will deal with those goods and services relating to satellites. While the opponent's evidence contains some reference to satellites, I note that this is as one of four different methods by which to access the television services. Further, the evidence is not sufficient to show that the satellites fall within the '+ LE CUBE' range of goods. I am of the view that the opponent has not produced sufficient

²⁵ Exhibit CHP22

²⁶ Paragraph 31 of the witness statement of Mr Clément Hellich Praquin dated 17 July 2020

²⁷ Paragraph 21 of the witness statement of Mr Clément Hellich Praquin dated 17 July 2020

evidence in respect of goods and services relating to satellites and/or antennas. Therefore, the opponent has failed to demonstrate genuine use in relation to “antennas satellite dishes”, “retail sale of aerials”, “rental of aerials and satellite dishes”.

47. The opponent’s class 35 services are “retailing and wholesaling of set-top boxes”, “arranging subscriptions to audiovisual programmes” and “arranging subscriptions to a television channel”. I am of the view that the evidence does not show any retail or wholesale in relation to decoders. I have set out above that the evidence shows the opponent has rented the decoders, not sold them. Therefore, the opponent has not provided any evidence in relation to this service.

48. Before moving on to consider the opponent’s remaining class 35 services and all of its 38 services, it is important to note that the case law above states that when assessing proof of use, it is necessary to determine the characteristics of the market concerned. The market concerned is at-home satellite or cable television services. While it is common for service providers in this market to provide both the decoder and the other services associated with it, it is also common for service providers to provide their services via other third party decoders. For example, the services of one television broadcaster can be watched via a decoder provided by a separate broadcaster or a third-party. It is, therefore, likely that the average consumer will be aware that the undertaking that provides the television service is not necessarily the same as the undertaking that provides the decoder, through which the service is received. Further, in accordance with the case of *Thomas Pink* (cited above), I must consider how the average consumer would fairly describe the goods/services in relation to which the opponent’s mark has been used. Based on the evidence, I am of the view that the average consumer would consider that the transmission/broadcast services were provided by an undertaking known as ‘CANAL+’. The average consumer would then consider that the broadcast/transmission services would be provided by several other sub-brands of ‘CANAL+’.

49. Considering the opponent’s remaining class 35 services, I am of the view that the average consumer, when subscribing to the television services, will consider the

undertaking arranging for the subscription to be either 'CANAL+' or 'CANALSAT' but not '+ LE CUBE'. This is because the subscription services relate to the provision of the broadcast/transmission services and, as I have stated above, it is clear from the evidence that these are provided under a separate branding, not under the opponent's mark. Therefore, I find that the opponent has failed to show that these services are provided under the opponent's mark.

50. As for the opponent's class 38 services, these are a range of transmissions or broadcast services. For the reasons set out in paragraph 48 above, I am of the view that these services would be seen as being provided under a separate trade mark. Therefore, I am of the view that the opponent has failed to provide sufficient evidence that the services of "television communication", "transmission of images and videos", "television broadcasting", "broadcasting of programmes via satellite, via cable, via computer networks (in particular via the internet), and via radio waves", "audiovisual and cinematographic broadcasting, whether or not for interactive purposes" and "transmission of programmes and selection of television channels" are provided under the opponent's mark.

51. Further, the evidence shows that the opponent's service of "online downloading of films and other audiovisual programmes" would be accessed via an application known as 'myCANAL'. While this application may be accessed from the decoder itself, it will be viewed as a different service and is clearly advertised as such in the opponent's evidence. There is also reference to an additional service under the branding 'CANAL PLAY' which can be used to access content. I am of the view that this service will, therefore, be perceived as being provided under a separate trade mark.

52. In summary, I am of the view that the opponent's goods and services are likely to be provided together and that the average consumer will likely consider them to be provided by the same undertaking. However, it is clear from the evidence that the opponent's mark covers the decoder and remote control only and that the other goods and services are provided under separate marks. I am of the view that the average consumer will only consider that the decoder, the remote control and the rental of the decoder to fall under the opponent's mark and will be aware that the

associated goods and services are all provided under separate marks, all of which fall within the 'CANAL+' umbrella.

53. As a result of my findings above, genuine use has only been proven in respect of decoders, remote controls and rental of decoders. It is, therefore, necessary to limit the scope of the opponent's opposition. For the purpose of fair specification, I limit the opponent's specification to "decoders" and "remote controls" in its class 9 goods and "rental of decoders" in its class 41 services.

Section 5(2)(b): legislation and case law

54. Section 5(2)(b) of the Act reads as follows:

"(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 or association with the earlier trade mark."

55. Section 5A of the Act states as follows:

"Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only."

56. 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 Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM), Case C-3/03, Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH, Case C-120/04, Shaker di L. Laudato & C. Sas v OHIM, Case C-334/05P and Bimbo SA v OHIM, Case C-591/12P.

- (a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

- (g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

57. In light of my finding above, those goods and services upon which the Opponent may rely are limited to “decoders”, “remote controls” and “rental of decoders”. The applicant’s goods and services against which the opposition is aimed are set out in the **Annex 2** to this decision.

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

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

60. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

- (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.

61. The General Court confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, that, even if goods or services are not worded identically, they can still be considered identical if one term falls within the scope of another or (vice versa):

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 Institut fur Lernsysteme v OHIM- Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

Class 9 goods

62. “Remote control apparatus” in the applicant’s specification falls within the category of “remote controls” in the opponent’s specification. These goods will, therefore, be identical under the principle outline in *Meric*.

63. A decoding apparatus is an electronic device that receives a coded signal (via a transmission and then converts it and outputs it as an open, decoded signal). “Decoders” in the opponent’s specification describe the same good and will, therefore, fall within the category of “encoding and decoding apparatus” in the applicant’s specification. In so far as the applicant’s term covers decoding apparatus, these goods will be identical under the principle outlined in *Meric*. However, where the applicant’s term covers encoding apparatus, these goods will not be identical. An encoder is the electronic device that codes the signal and then transmits it. These goods will overlap in user in that the user of a decoder may also require encoding apparatus on the other end of the transmission to supply the signal. The core purpose of these goods will also overlap as they are both used for the transmission of signals. They will both be electronic devices and will, therefore, overlap in nature. They will overlap in trade channels as an undertaking providing encoding apparatus will also likely provide decoding apparatuses. Further, I consider them to have a complementary relationship in that they are indispensable or important to each other and the average consumer will believe that the undertaking responsible for a decoder, will also be responsible for the apparatus that is encoding the signal on the other end of the transmission.²⁸ Overall, I find that these goods are similar to a high degree.

64. While a decoder will be pre-installed with software to enable it to function, the mere fact that a certain type of software or operating system may be used in the functionality of a product is not sufficient for a finding of similarity.²⁹ Therefore, I do not consider there to be any level of similarity between “decoders” and “computer software, recorded” and “computer software applications, downloadable” in the

²⁸ *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06

²⁹ *Commercy AG v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-316/07

applicant's specification. While there will be an overlap in user in that the user of a decoder will also likely use different computer programmes, any overlap will be very limited given the wide nature of the applicant's goods. Further, while there may be complementarity between the goods, this will be limited as the consumer is unlikely to view the decoder and the software contained within it as separate goods. Given the limited nature of any overlap, I do not consider there to be any similarity between these goods. However, if I am wrong in this finding, any similarity will be very low at best.

65. "Network communication devices" in the applicant's specification describes a wide range of goods that are used to communicate via 'Bluetooth', wireless or wired internet, infrared, radio signals or satellite signals. It is becoming increasingly common for any electronic device to have the ability to communicate with a network under the heading of the Internet of Things. While "decoders" in the opponent's specification will involve some sort of network communication (either satellite or WiFi), I do not consider it appropriate to give the applicant's term such a broad meaning to give rise to a finding of similarity between these goods. I am of the view that it would be wrong to apply such a broad definition to network communication devices. Instead, I am of the view that it should be interpreted as covering goods clearly covered by the literal meaning of the term.³⁰ Therefore, I find that network communication devices only covers those goods that are used specifically for network communication purposes, such as modems, routers, transponders and hubs. As I have set out above, a decoder will rely on some form of network communication but is not specifically used for network communication purposes in the same way a modem or router would be. These goods will not overlap in purpose, nature, method of use or trade channels. Neither do I consider them to be complimentary of each other. However, while there will be a limited overlap in user due to the wide range of goods included in the opponent's specification, I do not consider this enough to warrant a finding of similarity. Therefore, these goods are dissimilar.

66. I do not consider that the remaining goods in class 9 of the applicant's specification, being "integrated circuit cards [smart cards]", "theft prevention installations,

³⁰ *Sky v Skykick* [2020] EWHC 990 (Ch)

electric”, “computers”, “computer game programs”, “smartwatches (data processing)”, “encoded magnetic cards”, “navigational instruments”, “virtual reality headsets”, “computer peripheral devices”, “sound locating instruments”, “satellite navigational apparatus”, “Global Positioning System [GPS] apparatus”, “GPS navigation apparatus”, “electronic navigation and location apparatus and instruments”, “electronic locating apparatus for lost property through Global Positioning System (GPS) and cellular communication networks”, “Global Positioning System Receivers”, “data processing apparatus”, “couplers [data processing equipment]”, “central processing unit for processing information, data, sound and image”, “Memory expansion module”, “light-emitting electronic pointers” and “vehicle navigation devices” have any counterpart with the goods in the opponent’s specification. I do not consider these goods to be similar to any degree with any of the goods and/or services in the opponent’s specification.

Class 35 services

67. I do not consider that the services in class 35 of the applicant’s specification, being “presentation of goods on communication media, for retail purposes”, “advertising”, “providing business information via a web site”, “organization of trade fairs for commercial or advertising purposes”, “commercial information and advice for consumers [consumer advice shop]”, “price comparison services”, “sales promotion for others”, “provision of an on-line marketplace for buyers and sellers of goods and services”, “web site traffic optimization”, “systemization of information into computer databases”, “commercial intermediation services”, “auctioneering”, “search engine optimization for sales promotion”, “business data analysis” and “business management assistance” have any counterpart with the goods in the opponent’s specification. I do not consider these goods to be similar to any degree with any of the goods and/or services in the opponent’s specification.

Class 38 services

68. “Decoders” will commonly (although not always) rely on the satellite transmission of sound and images. As a result, I have considered whether these goods will be similar to “satellite transmission of sounds, images, signals and database” and “satellite transmission services” in the applicant’s specification. There will be no

overlap in user in that the user of a decoder will be someone wishing to watch television whereas the user of a service for satellite and radio transmissions will be someone engaging in the broadcast of sounds, images, signals and databases. There will also be no overlap in nature or method of use. The transmission of a signal is to send it, whereas the purpose of the opponent's goods will be to receive that signal and decode it, meaning that the purpose will not overlap. However, there may be an overlap in trade channels in that an undertaking transmitting satellite images and sounds may also provide decoders. Further, there may be a complementary relationship between them as the transmission of sound and images will be important to the opponent's goods which means the user may consider the responsibility of one lies with another. Overall, the limited overlap in trade channels and the fact that they may share a complementary relationship means that I find these goods and services to be similar to a very low degree.

69. Further to paragraph 68 above, the same reasoning can be applied to the comparison of "radio transmission and reception" in the applicant's specification and "decoders" in the opponent's specification. This is because a decoder may also have the ability to receive radio channels. For the same reasons that I have found at paragraph 68 above, I find these goods and services to be similar to a very low degree.

70. "Electronic information transmission", "transmission of information through optical fiber communication networks" and "transmission of information through electronic communication networks" in the applicant's specification may also describe the transmission of television signals via various methods. For this reason and for the same reasons set out in paragraph 68 above, I also find this service to be similar to a very low degree with "decoders" in the opponent's specification in that they will overlap in trade channels and share a complementary relationship.

71. "Providing access to telecommunications networks" in the applicant's specification may overlap with "decoders, in that a decoder will be used to access telecommunications networks such as television and radio channels and the internet. For this reason, there will be an overlap in purpose. There will be limited overlap in trade channels as a provider of a decoder may also provide the services

of the telecommunications networks that the user wishes to access. There may also be a complementary relationship in that access to a telecommunications network will be important for a decoder and I am of the view that a consumer may consider the undertaking responsible for one to be responsible for the other. There will be no overlap in user, nature or method of use. Overall, I find that these goods and services to be similar to a low degree.

72. I do not consider that the remaining services in class 38 of the applicant's specification, being "message sending", "providing internet chatrooms", "communications by cellular phones", "news agency services", "transmission of digital files", "providing access to databases", "communications by computer terminals", "computer aided transmission of messages and images", "electronic bulletin board services [telecommunications services]", "videoconferencing services", "data transfer through telecommunications" and "provision of electronic communication connections" have any counterpart with the goods in the opponent's specification. I do not consider there to be any obvious similarity between these services and "decoders" or "remote controls" in the opponent's specification. These goods and services belong in different markets and could not compete with one another. There is no complementarity between them where one could be used or was indispensable to the other so that consumers would think that the same or linked undertakings would be responsible. Overall, I consider these services to be similar to the opponent's goods to a low degree with any of the goods and/or services in the opponent's specification.

Class 39 services

73. "Rental of Global Positioning System [GPS] apparatus for navigation" in the applicant's specification will overlap in nature and method of use with "rental of decoders" in the opponent's specification as they are both rental services. However, given the wide ranging nature of rental services, I am of the view that any overlap will be limited. Further, while the core purpose will overlap because they are both for the purpose of renting something, they will differ in that the item being rented will be different. There will also be an overlap in user as someone looking to rent either object may be a member of the general public. However, this

overlap will be very limited due to the wide user base of both services. These services will not overlap in trade channels as an undertaking is unlikely to offer both and they are unlikely to have a competitive relationship as a consumer will not choose one service over the other. Overall, while there is a limited overlap in nature and method of use and a very limited overlap in user between these services, I do not consider this to be enough to find any level of similarity between these services. However, if I am wrong, any similarity will be very low at best.

74. I do not consider that the remaining services in class 39 of the applicant's specification, being "physical storage of electronically-stored data or documents", "navigating", "launching of satellites for others" and "GPS navigation service" have any counterpart with the goods in the opponent's specification. I do not consider these goods to be similar to any degree with any of the goods and/or services in the opponent's specification.

Class 42 services

75. I do not consider that the services in class 42 of the applicant's specification, being "research and development of new products for others", "quality assessment", "computer software design", "computer system analysis", "installation of computer software", "data conversion of computer programs and data [not physical conversion]", "quality control", "maintenance of computer software", "conversion of data or documents from physical to electronic media", "monitoring of computer systems by remote access", "electronic data storage", "cloud computing", "quality system certification", "consultancy in the design and development of computer hardware", "computer programming", "design and development of wireless computer network", "technological research", "software as a service [SaaS]", "vehicle roadworthiness testing" and "machine function tests" have any counterpart with the goods in the opponent's specification. I do not consider these goods to be similar to any degree with any of the goods and/or services in the opponent's specification.

76. As some degree of similarity between goods and services is necessary to engage the test for likelihood of confusion, my findings above mean that the opposition

aimed against those goods and services I have found to be dissimilar will fail.³¹ For ease of reference, the opposition may proceed against the following goods and services in the applicant's specification:

Class 9: Computer software, recorded; Computer software applications, downloadable; Remote control apparatus; Encoding and decoding apparatus.

Class 38: Satellite transmission services; Satellite transmission of sounds, images, signals and database. Radio transmission and reception; Electronic information transmission; Transmission of information through electronic communication networks; Transmission of information through optical fiber communication networks; Providing access to telecommunications networks.

Class 39: Rental of Global Positioning System [GPS] apparatus for navigation.

The average consumer and the nature of the purchasing act

77. The case law, as set out earlier, requires that I determine who the average consumer is for the respective parties' goods. I must then decide the manner in which these goods are likely to be selected by the average consumer in the course of trade. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words

³¹ *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

“average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

78. The opponent submits that “[t]he relevant consumer in this case is the general public at large and the average consumer within the United Kingdom.” While I agree that this is the case for the class 9 goods at issue and those class 39/41 services that I have found to be similar, I am of the view that the user of the class 38 services is likely to be a business user. This is because the services covered by the class 38 services at issue are for the transmission of signals via various methods of telecommunications and this is a service that is likely to be sought by a professional undertaking who is looking to transmit signals and communications such as a television/radio network.

79. When selected by a member of the general public, the goods are likely to be sold through either retail shops such as electronic stores and their online equivalents or via the manufacturer directly via online websites or telephone sales. In stores, the goods will be displayed on shelves and self-selected by the consumer. However, while the services will not be displayed on shelves, they will likely be advertised in stores on sales boards and placards. As for the selection process on websites, the consumer will select the goods or services having viewed an image displayed on a webpage. The selection of the goods or services by members of the general public will be primarily visual, however, I do not discount aural considerations in the form of word of mouth recommendations and advice sought from shop assistants.

80. As for business users, the services are likely to be available for selection through the manufacturer directly via its online website, catalogues or telephone sales. Therefore, I am of the view that the selection process will be both visual and aural depending on the method of sale used, be it online or through telephone sales.

81. When choosing the goods or services, members of the general public is likely to bear in mind several factors such as functionality, reliability and ease of use. As for the services selected by the business user, various factors will be taken into account such as reliability, the range of channels available, functionality, any

particular areas of expertise and availability of access. I find that the general public would pay a medium degree of attention in selection the goods whereas the business user would pay a higher than medium degree of attention in the selection of the services but not considerably so.

Distinctive character of the opponent's mark

82. 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-0000, 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).”

83. Registered trade marks possess various degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The

distinctiveness of a mark can be enhanced by virtue of the use made of it. In this case, the opponent has submitted:

“[B]y virtue of the use that has been made of the Opponent’s trade marks in the European Union (as shown in the Witness Statement of Clement Hellich Praquin), the Opponent’s trade marks enjoy an enhanced level of distinctive character and the Opponent respectfully requests that the Office takes account of this.”

84. For the purposes of assessing enhanced distinctiveness, the opponent is required to show that it has obtained a level of enhanced distinctiveness in the United Kingdom. As above, I have found that the use shown is in relation to use in France and, consequently, the EU. No evidence in respect of the use of the opponent’s mark in the UK, let alone evidence of an enhanced distinctive character, has been provided. Consequently, I have only the inherent position to consider.

85. The opponent’s mark is made up of a device and word element. The device element sits at the beginning of the mark and is a white plus sign in a black square. While a ‘plus’ may generally be considered as signifying something that is ‘upgraded’ or ‘advanced’, I do not consider that to be the case here. This is particularly due to its placement at the beginning of the mark. To the right of the device sits the words ‘LE CUBE’ in a standard grey typeface. ‘LE’ is the French language word for ‘THE’ and, while a significant proportion of average consumers will understand this, a smaller proportion may not. If recognised as ‘THE’, little trade mark significance will be attributed to it. If not, it will be seen as either a made up or foreign language word or an acronym/two letter combination with no obvious meaning.

86. While ‘CUBE’ will not be seen as allusive or descriptive of the goods for which the opponent has proven use, it is still an ordinary dictionary word and from a trade mark perspective, unremarkable. I consider that ‘CUBE’ has no more than a medium degree of distinctive character.

87. In combination, I consider that the dominant and distinctive element of the mark lies in the word 'CUBE', regardless of how the average consumer views 'LE'. However, given the contrast in colour between the light grey wording, I am of the view that the device element will stand out and will, therefore, contribute to the distinctive character of the mark, albeit slightly. Overall, regardless of whether or not 'LE' is recognised as the word 'THE' in French, I am of the view that, taking account of all the elements in combination, the mark enjoys a medium degree of distinctive character, dominated by the word 'CUBE'.

Comparison of marks


88. It is clear from *Sabel 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.

89. 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.”

90. 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.

91. The respective trade marks are shown below:

The opponent's mark	The applicant's mark
	Magic Cube MAGIC CUBE (Series of 2)

92. The opponent has submitted that:

“When considering the overall impression of the trade marks it is clear that the contested MAGIC CUBE trade mark is closely similar visually, aurally and conceptually to the earlier mark.

- The application contains the identical word CUBE, which is considered to be the most distinctive element of the mark given that the word MAGIC lacks distinctive character or contains a low distinctive character at best.
- The element LE (meaning THE in French) in the earlier mark is non-distinctive.
- The “+” device element in the earlier mark has some distinctive character; however, it will not be articulated aurally and given the lack of any device element in the contested MAGIC CUBE mark, consumer attention would be drawn to the verbal elements.
- The colours in the Opponent's earlier mark are irrelevant since the mark applied for is a plain text mark and the colours of the earlier mark do not serve to differentiate the marks at all.
- Conceptually the element CUBE is apparent in both marks and they are therefore similar at least.

Overall the comparison of the trade marks shows there is a high degree of similarity between the trade marks on a visual, aural and conceptual basis.”

Overall Impression

The application

93. The application consists of a series of two marks that are word only marks. The marks are the same words presented differently. The first mark in the series is presented as ‘Magic Cube’ and the second is presented as ‘MAGIC CUBE’. I note the opponent’s submissions that the word ‘MAGIC’ lacks distinctive character or that it is low, at best. I disagree with these submissions. ‘MAGIC’ has no allusive or distinctive qualities and the opponent has not provided any reasons as to why it considers MAGIC to have no (or at best a low) level of distinctive character. The overall impression of the application lies in the combination of the words ‘Magic Cube’/‘MAGIC CUBE’. There are no other elements that contribute to the application’s overall impression.

The opponent’s mark

94. The impact of ‘LE’ will depend on whether or not it is recognised as ‘THE’ in the French language. However, regardless of how it is perceived, I am of the view that it will play a lesser role in the overall impression of the mark. This is because the average consumer who recognises it as ‘THE’ will attribute it little significance and the average consumer who does not, will focus on the word that they do understand, being ‘CUBE’. Further, I am of the view that the eye will naturally be drawn to the element of a mark that can be read. This means that, while it will be noticed, the device element will play a lesser role in the overall impression of the opponent’s mark. Taking all of this into account, I find that ‘CUBE’ will play a greater role in the overall impression of the opponent’s mark with the word ‘LE’ and the device element playing a lesser role.

Visual Comparison

95. Visually, the marks share the word 'CUBE' that will sit at the end of each mark. The marks will differ in that the application contains the word 'Magic'/'MAGIC', which is absent in the opponent's mark. Further, the device element and the word 'LE' are present in the opponent's mark but absent in the application. Depending on whether the average consumer recognised 'LE' as 'THE' in French or not, it will play a different role in the overall impression of the mark. Regardless of whether it plays a lesser role or not, it will still constitute a visual difference. This also applies to the device element of the opponent's mark. Further, I note that the differences between the marks sit at the beginning of the marks, which is where the average consumer tends to focus.³² Taking all of this into account, I am of the view that marks are visually similar to between a low and medium degree.

Aural Comparison

96. While the device element in the opponent's mark is capable of being articulated as the word 'PLUS', I do not consider that, when encountering the mark, the average consumer will pronounce it. Therefore, the opponent's mark will consist of two syllables that will be pronounced 'LE-KYOOB'. The application will consist of three syllables that will be pronounced 'MADGE-IK-KYOOB'. The last syllable of each mark will be pronounced identically. However, the differences fall at the beginning of the marks where, as above, the average consumer will tend to focus. Overall, I found that the marks are aurally similar to between a low and medium degree. However, in the event that I am wrong, and the average consumer does pronounce 'PLUS' in the opponent's mark, then the marks will be aurally similar to a low degree.

Conceptual Comparison

97. I do not consider that the device element in the opponent's mark will have any conceptual impact for the reasons outlined previously. Therefore, I find that the

³² *El Corte Inglés, SA v OHIM* Cases T-183/02 and T-184/02

conceptual message of the opponent's marks lies in 'LE CUBE' only. For those consumers who see 'LE' as 'THE' in French, I do not consider 'LE' will have any conceptual impact. If 'LE' is seen as either a made up or foreign language word or as an acronym/two letter combination with no obvious meaning, it will also have no conceptual impact as the consumer will not know what it means. Either way, CUBE will be seen as the only element of the opponent's mark that carries any conceptual meaning to the average consumer, which will be seen as meaning a three-dimensional shape. While the concept of a cube will carry over to the application, the addition of the word 'MAGIC' will mean that the concept conveyed by the application as a whole is one of a magical cube. This could either be a cube with magical abilities or one with magical contents. As a result, while both marks refer to a cube, there is a significant difference between them with the addition of 'MAGIC'. As a result, I find that the marks are conceptually similar to a low degree.

Likelihood of confusion

98. 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 vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the services and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

99. I have found the goods and services at issue to range from identical to similar to a very low degree. I have found that the average consumer will either be a member

of the general public or a business user. For the member of the general public, I consider that the goods will be purchased by primarily visual means, although I do not discount an aural component. For the business user, I have found that the selection process of the services will be either visual or aural depending on the method of selection used. I have concluded that the member of the general public will pay a medium degree of attention whereas the business user will pay a higher than medium degree of attention but not considerably so. I have found the opponent's mark to have a medium degree of inherent distinctive character. I have found the marks to be visually similar to between a low and medium degree, aurally similar to between or low and medium degree (or low if the 'plus' element is pronounced) and conceptually similar to a low degree.

100. Notwithstanding the principle of imperfect recollection and taking all of the above factors into account, I consider that the visual, aural and conceptual differences between the marks will be sufficient to enable the consumer to differentiate between the marks. This is particularly the case given that the average consumer will be paying at least a medium degree of attention during the purchase/selection process. Consequently, I do not consider there to be a likelihood of direct confusion between the marks, even on goods that I have found to be identical. I consider this finding to apply regardless of whether the opponent's mark has a medium or higher than medium degree of inherent distinctiveness.

101. It now falls to me to consider whether there is a likelihood of indirect confusion. Indirect confusion was described in the following terms by Iain Purvis Q.C., sitting as the Appointed Person in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10.

"16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later

mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (“26 RED TESCO” would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as “LITE”, “EXPRESS”, “WORLDWIDE”, “MINI”, etc.). BL O/375/10 Page 15 of 16

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (“FAT FACE” to “BRAT FACE” for example).”

102. The marks share the common element of ‘CUBE’, which I have found to be the dominant and distinctive element of the opponent’s mark. However, I do not find this to be the case with the applicant’s mark, which I consider to be dominated by the combination of its two words, being ‘MAGIC CUBE’. While the marks share a common element, I do not consider that the differences between the marks would fall within one of the categories set out by Mr Purvis QC in the case of *L.A Sugar* (cited above). This is because the common element is not so strikingly distinctive where the average consumer would consider that only the opponent would use it. Further, the differences in the marks do not lend themselves to a natural brand

extension or sub-brand, nor are the different elements indicative of a logical re-branding. While I note that these categories are not exhaustive and are instead intended to be illustrative of the general approach,³³ I can see no additional reasons as to why the average consumer would be indirectly confused by the marks. I find this to be the case particularly due to the importance of the distinctive word 'MAGIC' in the applicant's mark as this creates a significant point of conceptual difference. I am of the view that the conceptual differences between the marks, as wholes, will not be overlooked and will, instead, serve to further distance the marks. This, together with the visual and aural differences is, in my view, sufficient to enable average consumers to differentiate between the marks, especially on goods and services that are selected whilst paying at least a medium degree of attention, regardless of whether they are selected visually or aurally. Consequently, I do not consider there to be a likelihood of indirect confusion between the opponent's mark and application, even on goods that are identical. As with direct confusion above, I consider this finding to apply even though the opponent's mark has a medium degree of distinctive character.

FINAL REMARKS

103. I note that in respect of the proof of use, I only found that the opponent had proven genuine use in relation to "decoders" and "remote controls" in class 9 and "rental of decoders" in class 41. Even if I had found that (1) the opponent was successful in proving all of its goods and services were put to genuine use during the relevant period and (2) all those goods and services were identical to the goods and services in the applicant's specification, I would have found no likelihood of confusion between the marks. This is because I have already found no likelihood of confusion between the marks on goods that are identical. It, therefore, follows that the same outcome would have been reached even in respect of all of the opponent's goods and services.

³³ *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10

CONCLUSION

104. The opposition fails in its entirety and the application can proceed to registration.

COSTS

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

Preparing a counter statement and considering the opponent's statement:	£200
Considering evidence:	£500
Total	£700

106. I therefore order Groupe Canal+ SA to pay Qianxun Spatial Intelligence Inc the sum of £700. This sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 5th day of February 2021

A COOPER

For the Registrar

ANNEX 1

Class 9: Network communication devices; Integrated circuit cards [smart cards]; Theft prevention installations, electric; Computer software, recorded; Computers; Computer game programs; Smartwatches (data processing); Computer software applications, downloadable; Encoded magnetic cards; Navigational instruments; Remote control apparatus; Virtual reality headsets; Computer peripheral devices; Encoding and decoding apparatus; Sound locating instruments; Satellite navigational apparatus; Global Positioning System [GPS] apparatus; GPS navigation apparatus; Electronic navigation and location apparatus and instruments; Electronic locating apparatus for lost property through Global Positioning System (GPS) and cellular communication networks; Global Positioning System Receivers; Data processing apparatus; Couplers [data processing equipment]; Central processing unit for processing information, data, sound and image; Memory expansion module; Vehicle breakdown warning triangles; Light-emitting electronic pointers; Vehicle breakdown warning lights; Vehicle navigation devices.

Class 35: Presentation of goods on communication media, for retail purposes; Advertising; Providing business information via a web site; Organization of trade fairs for commercial or advertising purposes; Commercial information and advice for consumers [consumer advice shop]; Price comparison services; Sales promotion for others; Provision of an on-line marketplace for buyers and sellers of goods and services; Web site traffic optimization; Systemization of information into computer databases; Commercial intermediation services; Auctioneering; Search engine optimization for sales promotion; Business data analysis; Business management assistance.

Class 36: Non-stop electronic toll service; Automobile lease financing; Financial services relating to motor vehicles; Repair costs evaluation [Financial appraisal] Provision of billing services through a website.

Class 38: Message sending; Providing internet chatrooms; Communications by cellular phones; news agency services; Transmission of digital files; Providing access to databases; Satellite transmission services; Communications by computer terminals; Computer aided transmission of messages and images; Electronic bulletin board services [telecommunications services]; Videoconferencing services; Radio transmission and reception; Transmission of information through optical fiber communication networks; Transmission of information through electronic communication networks; Data transfer through telecommunications; Provision of electronic communication connections; Providing access to telecommunications networks; Electronic information transmission; Satellite transmission of sounds, images, signals and database.

Class 39: Physical Storage of electronically-stored data or documents; Navigating; Launching of satellites for others; GPS navigation service; Providing road and traffic information; Traffic flow Management through Advanced Communication Networks and Technologies; Transportation information; Transport brokerage; Rental of Global Positioning System [GPS] apparatus for navigation; Provision of customized route guidelines; Provision of parking facilities; Vehicle driving service; car sharing services; Rental car reservation.

Class 42: Research and development of new products for others; Quality assessment; Computer software design; Computer system analysis; Installation of computer software; Data conversion of computer programs and data [not physical conversion]; Quality

control; Maintenance of computer software; Conversion of data or documents from physical to electronic media; Monitoring of computer systems by remote access; Electronic data storage; Cloud computing; Quality system certification; Consultancy in the design and development of computer hardware; Computer programming; Design and Development of Wireless computer Network; technological research; Software as a service [SaaS]; Vehicle roadworthiness testing; Machine function tests.

ANNEX 2

- Class 9: Network communication devices; Integrated circuit cards [smart cards]; Theft prevention installations, electric; Computer software, recorded; Computers; Computer game programs; Smartwatches (data processing); Computer software applications, downloadable; Encoded magnetic cards; Navigational instruments; Remote control apparatus; Virtual reality headsets; Computer peripheral devices; Encoding and decoding apparatus; Sound locating instruments; Satellite navigational apparatus; Global Positioning System [GPS] apparatus; GPS navigation apparatus; Electronic navigation and location apparatus and instruments; Electronic locating apparatus for lost property through Global Positioning System (GPS) and cellular communication networks; Global Positioning System Receivers; Data processing apparatus; Couplers [data processing equipment]; Central processing unit for processing information, data, sound and image; Memory expansion module; Light-emitting electronic pointers; Vehicle navigation devices.
- Class 35: Presentation of goods on communication media, for retail purposes; Advertising; Providing business information via a web site; Organization of trade fairs for commercial or advertising purposes; Commercial information and advice for consumers [consumer advice shop]; Price comparison services; Sales promotion for others; Provision of an on-line marketplace for buyers and sellers of goods and services; Web site traffic optimization; Systemization of information into computer databases; Commercial intermediation services; Auctioneering; Search engine optimization for sales promotion; Business data analysis; Business management assistance.
- Class 38: Message sending; Providing internet chatrooms; Communications by cellular phones; news agency services;

Transmission of digital files; Providing access to databases; Satellite transmission services; Communications by computer terminals; Computer aided transmission of messages and images; Electronic bulletin board services [telecommunications services]; Videoconferencing services; Radio transmission and reception; Transmission of information through optical fiber communication networks; Transmission of information through electronic communication networks; Data transfer through telecommunications; Provision of electronic communication connections; Providing access to telecommunications networks; Electronic information transmission; Satellite transmission of sounds, images, signals and database.

Class 39: Physical Storage of electronically-stored data or documents; Navigating; Launching of satellites for others; GPS navigation service; Rental of Global Positioning System [GPS] apparatus for navigation.

Class 42: Research and development of new products for others; Quality assessment; Computer software design; Computer system analysis; Installation of computer software; Data conversion of computer programs and data [not physical conversion]; Quality control; Maintenance of computer software; Conversion of data or documents from physical to electronic media; Monitoring of computer systems by remote access; Electronic data storage; Cloud computing; Quality system certification; Consultancy in the design and development of computer hardware; Computer programming; Design and Development of Wireless computer Network; technological research; Software as a service [SaaS]; Vehicle roadworthiness testing; Machine function tests.