

**BL O/0210/23**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. UK00003691021  
BY SHENZHEN SHANGSI YIMAO TECHNOLOGY CO., LTD  
TO REGISTER THE TRADE MARK:**

**fikfok**

**IN CLASS 20**

**AND**

**IN THE MATTER OF OPPOSITION THERETO  
UNDER NO. 431016  
BY TIKTOK INFORMATION TECHNOLOGIES UK LIMITED**

## BACKGROUND AND PLEADINGS

1. On 7 September 2021, Shenzhen Shangsi Yimao Technology Co., Ltd. (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the UK. The application was published for opposition purposes on the 12 November 2021. The applicant seeks registration for the following goods:

Class 20 Luggage racks being furniture; magazine racks; mattresses; office furniture; sofas; tables; wardrobes; shelving; shelves for storage; inflatable furniture.

2. The application was opposed by TikTok Information Technologies UK Limited on 14 February 2022. The opposition is based upon sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”).

3. Under section 5(2)(b), the opponent relies upon the following trade marks:

# TikTok

UK registration no. UK00918184341

Filing date 21 January 2019; registration date 13 February 2020.

**(“the First Earlier Mark”)**

# TikTok

# Tik Tok

**(Series of 2)**

UK registration no. UK00003469520

Filing date 24 February 2020; registration date 9 August 2020.

**(“the Second Earlier Mark”)**

4. Under section 5(3), the opponent relies upon the following trade mark:

**TikTok**

**Tik Tok**

**(Series of 2)**

UK registration no. UK00003469550

Filing date 24 February 2020; registration date 9 August 2020.

**(“the Third Earlier Mark”)**

5. On 1 January 2021, the UK left the EU. Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right holders with an existing EUTM. As a result, the opponent’s First Earlier Mark was automatically converted into a comparable UK trade mark. Comparable UK marks are now recorded on the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and the original filing dates remain the same.

6. Under section 5(2)(b), the opponent only relies upon its class 20 goods for which its First and Second Earlier Marks are registered, as underlined in the Annex to this decision. The opponent claims that there is a likelihood of confusion because of the identity/similarity of the goods, and the high degree of visual and aural similarity between the marks.

7. Under section 5(3), the opponent claims to have acquired a “substantial reputation” for some of its goods and services for which the Third Earlier Mark is registered, as underlined in the Annex to this decision. The opponent claims that use of the applicant’s mark would, without due cause, take unfair advantage of the Third Earlier Mark, by free riding on its distinctiveness (which has been enhanced) and reputation. The opponent also claims that use of the applicant’s mark will cause detriment to the reputation of the Third Earlier Mark if the goods are of inferior quality, which is likely to have a negative impact on the image, prestige and huge reputation of the Third Earlier

Mark and its power of attraction will therefore be reduced. Lastly, the use of the applicant's mark will cause detriment to the reputation of the Third Earlier Mark because it will dilute the distinctiveness.

8. The applicant filed a counterstatement denying that the opposed marks are visually, aurally and conceptually similar, that the relevant public of the goods is a consumer with an average degree of attention, and that there exists a likelihood of confusion. However, the applicant does not contest that the relevant goods are identical or similar, and that the earlier marks have acquired a reputation among minors (under 18) in classes 9 and 45.

9. The applicant therefore requested proof from the opponent of an acquired reputation amongst adults in classes 9 and 45, and that the applicant would take unfair advantage by free riding on the opponent's alleged reputation and its distinctiveness.

10. The opponent is represented by Taylor Wessing LLP and the applicant is represented by Akos Suele, LL.M. A hearing was neither requested nor considered necessary, however, the opponent filed submissions and evidence in chief as well as submissions in lieu. I make this decision having taken full account of all the papers, referring to them as necessary.

11. Although the UK has left the EU, section 6(3)(a) of the European Union (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 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**

12. The opponent's evidence consists of the witness statement of Maya Muchemwa dated 12 July 2022. Ms Muchemwa is a Trade Mark Attorney at Taylor Wessing LLP, who are the opponent's representatives. Ms Muchemwa's statement was accompanied by 16 exhibits (Exhibit A-Exhibit P).

13. Whilst I do not propose to summarise it here, I have taken all of the evidence and the parties' submissions into consideration in reaching my decision and will refer to it where necessary below.

## **DECISION**

### **Section 5(2)(b)**

14. Section 5(2)(b) reads as follows:

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

(a)...

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

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

15. The earlier marks had not completed their registration process more than five years before the relevant date (the filing date of the mark in issue). Accordingly, the use provisions at s.6A of the Act do not apply. The opponent may rely on all of the goods it has identified without demonstrating that it has used the marks.

### **Section 5(2)(b) case law**

16. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia*

*Sales Germany & Austria GmbH, Case C-120/04, Shaker di L. Laudato & C. Sas v OHIM, Case C-334/05P and Bimbo SA v OHIM, Case C-591/12P:*

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

17. The competing goods are as follows:

Opponent's goods	Applicant's goods
<p><b>First Earlier Mark</b></p> <p><u>Class 20</u></p> <p>Furniture; mirrors; picture frames; bedding (except linen); cushions; bolsters; bins of wood or plastic; magazine racks; beds; bunk beds; wardrobes; desks; chests of drawers; pillows; chairs; chest for toys; coat hangers; figurines and statuettes of wood, wax, plaster or plastic; Nameplates, not of metal; statues of wood, wax, plaster or plastic; parts and fittings for all the aforesaid goods.</p>	<p><u>Class 20</u></p> <p>Luggage racks being furniture; magazine racks; mattresses; office furniture; sofas; tables; wardrobes; shelving; shelves for storage; inflatable furniture.</p>

**Second Earlier Mark**

Class 20

Air mattresses; baby changing mats; bamboo curtains; bedding; boxes of wood or plastic; camping mattresses; clips of plastic for sealing bags; decorations of plastic for foodstuffs; furniture; furniture fittings, not of metal; hand-held flagpoles, not of metal; identification bracelets, not of metal; keyboards for hanging keys; letter boxes, not of metal or masonry.

18. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union (“CJEU”) in Canon, Case C-39/97, the court stated at paragraph 23 that:

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

19. Guidance on this issue has come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;



- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and, in particular, whether they are or are likely to be found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance, whether market research companies, who of course act for industry, put the goods or services in the same or different sectors

20. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court (“GC”) stated that:

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

21. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that:

“... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of ‘dessert sauce’ did not include jam, or because the ordinary and natural description of jam was not ‘a dessert sauce’. Each involved a straining of the relevant language, which is incorrect. Where words

or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question.”

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

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

23. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the GC stated that “complementary” means:

“... there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think the responsibility for those goods lies with the same undertaking.”

24. In *Sanco SA v OHIM*, Case T-249/11, the GC indicated that goods may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods are very different, i.e. chicken against transport services for chickens. The purpose of examining whether there is a complementary relationship between goods is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. (as he then was) noted, as the Appointed Person, in *Sandra Amalia Mary Elliot v LRC Holdings Limited*, BL-0-255-13:

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense – but it does not follow that wine and glassware are similar goods for trade mark purposes.” Whilst on the other hand: “... it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.”

Whilst on the other hand:

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

25. As highlighted above, in its counterstatement, the applicant accepts that the relevant goods are identical or similar. However, the applicant hasn’t specified which goods they consider are identical, and which goods they consider are similar, and what degree of similarity those goods share. Therefore, I shall carry out a full comparison of the specifications.

26. “Wardrobes” and “magazine racks” appear identically in the First Earlier Mark’s specification and the applicant’s specification.

27. The applicant’s “luggage racks being furniture”, “office furniture”, “sofas”, “tables” and “inflatable furniture” fall within the broader category of “furniture” in the First and Second Earlier Marks’ specifications. They are identical on the principle outlined in *Meric*.

28. I consider that “shelving” and “shelves for storage” in the applicant’s specification overlap with “furniture” in the First and Second Earlier Marks’ specifications. I consider that the term furniture includes an array of goods, including bookcases and wardrobes. Therefore, I consider that to some extent the goods will overlap in purpose and method of use as they can all be used to store/shelve items. I also consider that there would be an overlap in nature as they can be made from the same materials, such as wood. There would be an overlap in user and distribution channels as the same DIY and home retail outlets would sell all of these goods. The goods are not complementary;

however, they may be in competition as a user may, for example, choose to store their books on a shelf or in a bookcase. Consequently, I consider that the goods are similar to between a medium and high degree.

29. I consider that “beds” in the First Earlier Mark’s specification is similar to the applicant’s “mattresses”. I note that beds are a piece of furniture which are designed to hold a mattress which allows the user to sleep. Therefore, the end purpose of both goods overlaps. I also consider that, as they are used together, the average consumer would assume that they come from the same undertaking, and that they are important and indispensable to one another. Therefore, they are complementary. The goods also overlap in distribution channels and users. Consequently, the goods are similar to a medium degree.

### **The average consumer and the nature of the purchasing act**

30. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties’ goods. I must then determine the manner in which the goods are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J (as he then was) 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 word “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

31. The average consumer for the goods will be members of the general public. The cost of purchase, and the frequency of purchase, is likely to vary, with, for example, shelving, inflatable furniture and magazine racks being low cost goods which would

be purchased more frequently, and beds, mattresses and tables being a more expensive, and a less-frequent purchase. Regardless, various factors are still likely to be taken into consideration during the purchasing process, such as the cost, materials, aesthetic and durability of the goods. Taking the above into account, I consider that a medium degree of attention will be paid during the purchasing process.

32. The majority of the goods are likely to be obtained by self-selection from a DIY and home retail outlet, or its online equivalent. However, I note that beds and mattresses can also be purchased from a bed retailer or manufacturer, or its online equivalent. Alternatively, all of the goods may be purchased following perusal of advertisements or inspection of a catalogue. Visual considerations are, therefore, likely to dominate the selection process. However, I do not discount that there may also be an aural component to the purchase through advice sought from a sales assistant or word-of-mouth recommendations.

### **Comparison of the trade marks**

33. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU stated, at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

“... it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

34. 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.

35. The respective trade marks are shown below:

Opponent's trade marks	Applicant's trade mark
<p data-bbox="336 607 651 689"><b>TikTok</b></p> <p data-bbox="308 741 679 779">("the First Earlier Mark")</p> <p data-bbox="336 882 651 965"><b>TikTok</b></p> <p data-bbox="323 1019 663 1102"><b>Tik Tok</b></p> <p data-bbox="276 1153 711 1191">("the Second Earlier Marks")</p>	<p data-bbox="962 790 1235 873"><b>fikfok</b></p>

Overall Impression

36. The First Earlier Mark consists of the word TikTok. There are no other elements to contribute to the overall impression which lies in the word itself.

37. The Second Earlier Marks consists of the words Tik Tok, in different cases, and with and without spacing between the two words. For the mark TikTok, there are no other elements to contribute to the overall impression which lies in the word itself. For the mark Tik Tok, the overall impression lies in the combination of these words.

38. The applicant's trade mark consists of the word fikfok. There are no other elements to contribute to the overall impression which lies in the word itself.

## Visual Comparison

### *The First Earlier Mark and the applicant's mark*

39. Visually, the marks coincide in their second, third, fifth and sixth letters; I, K, O and K. This acts as a point of visual similarity.

40. The applicant states that the opponent's mark has its first and third letter's in upper case which "evidently stands out". However, as highlighted by the opponent, normal and fair use of word marks mean that they may be used in any standard typeface, as well as in upper and lower-case lettering. The letters T and F in capital letters are visually similar, both sharing a vertical line with a horizontal line at the top of the letters. Albeit the letter F has the addition of the horizontal straight line in the middle of the vertical line, and the letter T having the overextended horizontal line at the top of the letter. I also consider that the letters t and f in lower-case are visually similar, with both letters sharing a vertical line with a curve either at the bottom of the letter "t" or a curve at the top of the letter "f". Both letters also share the horizontal line in the middle of the vertical line. Therefore, taking the above into account, I consider that the marks are visually similar to a high degree.

### *The Second Earlier Marks and the applicant's mark*

41. I note that the only difference in one of the Second Earlier Marks is a space in between the words Tik and Tok. I consider that this is such a minimal difference that the same comparison applies above in paragraphs 39 and 40. The marks are visually similar to a high degree.

## Aural Comparison

### *The First Earlier Mark and the applicant's mark*

42. The First Earlier Mark will be pronounced as it is presented; TIK-TOK. The applicant submits that their mark can be pronounced in several ways, including; FI-KFOK, F-IKFOK, FIK-FOK and FIFK-OF. However, by breaking it down into syllables,

I consider that the average consumer is most likely to pronounce the applicant's mark as FIK-FOK. Therefore as the marks overlap in the "IK" and "OK" of the first and second syllables, I consider that the marks are aurally similar to between a medium and high degree.

*The Second Earlier Marks and the applicant's mark*

43. The same comparison applies above in paragraph 42. The marks are aurally similar to between a medium and high degree.

Conceptual Comparison

*The First Earlier Mark and the applicant's mark*

44. The applicant submits that "neither of the marks have a meaning". I agree that the applicant's mark will be recognised as an invented word with no meaning. However, I consider that the average consumer, will recognise the First Earlier Mark, TikTok, and assign it the conceptual meaning of the noise that a clock makes. I note that this is normally spelt as "ticktock"<sup>1</sup>, however, I consider that phonetically "ticktock" is also pronounced as TIK-TOK, hence a parallel between the two would be drawn. Therefore, the First Earlier Mark and applicant's mark are conceptually dissimilar.

*The Second Earlier Marks and the applicant's mark*

45. The same comparison applies above in paragraph 44. The marks are conceptually dissimilar.

**Distinctive character of the earlier trade marks**

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

---

<sup>1</sup> <https://www.collinsdictionary.com/dictionary/english/ticktock> accessed 3 February 2023



“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 C108/97 and C-109/97 Windsurfing Chiemsee v Huber and Attenberger [1999] ECR I-2779, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promotion of the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see Windsurfing Chiemsee, paragraph 51).”

47. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

48. I will begin by assessing the inherent distinctive character of the opponent’s marks. The opponent argues that its marks are inherently distinctive to a high degree. Albeit the First and Second Earlier Marks are not allusive nor descriptive of the opponent’s goods, as highlighted above, the marks have a recognisable dictionary concept; the noise that a clock makes. However, I note that it is presented in an unusual spelling (without the letter c’s). Therefore, I consider that the First and Second Earlier Marks are inherently distinctive to between a medium and high degree.

49. I note that the opponent has not pleaded that its First and Second Earlier Marks have acquired enhanced distinctiveness. In instances where the opponent has filed evidence, it will normally be assessed to see if it can be used to demonstrate enhanced distinctive character. However, I note that this evidence is only in relation to its class 9 goods and class 42 services. This evidence, therefore, cannot be used to establish enhanced distinctiveness in relation to its class 20 goods.

### **Likelihood of confusion**

50. 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. It is necessary for me to keep in mind the distinctive character of the earlier marks, the average consumer for the goods 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.

51. The following factors must be considered to determine if a likelihood of confusion can be established:

- I have found all of the marks to be visually similar to a high degree.
- I have found all of the marks to be aurally similar to between a medium and high degree.
- I have found all of the marks to be conceptually dissimilar.
- I have found the opponent's marks to be inherently distinctive to between a medium and high degree.

- I have identified the average consumer to be members of the general public who will select the goods primarily by visual means, although I do not discount an aural component.
- I have concluded that a medium degree of attention will be paid during the purchasing process for the goods.
- The parties' goods are identical or similar to between a medium and high degree, or a medium degree.

52. The conceptual dissimilarity between the marks could point in favour of the applicant. In *Picasso Estate v OHIM*, Case C-361/04 P, the CJEU found that:

“20. By stating in paragraph 56 of the judgment under appeal that, where the meaning of at least one of the two signs at issue is clear and specific so that it can be grasped immediately by the relevant public, the conceptual differences observed between those signs may counteract the visual and phonetic similarities between them, and by subsequently holding that that applies in the present case, the Court of First Instance did not in any way err in law.”

53. However, I recognise that conceptual differences do not always overcome visual and/or aural similarities.<sup>2</sup> For example, in *Diramode S.A. v Richard Turnham and Linda Turnham* (BL O/566/19), Mr Geoffrey Hobbs QC, sitting as the Appointed Person, overturned a decision that the conceptual differences between PIMKIE and PINKIE were sufficient to outweigh the visual and aural similarities between them. Mr Geoffrey Hobbs QC found that:

‘Even though one of the marks in issue refers to a clear and immediately apparent concept and the other does not have a clear meaning which can be immediately perceived by the relevant public, the degree of visual and aural similarity between them may still be sufficient to give rise to the existence of a likelihood of confusion’.

---

<sup>2</sup> *Nokia Oyj v OHIM*, Case T-460/07

54. Whether or not the conceptual differences are sufficient to outweigh the visual and aural similarities must be decided on the facts of each particular case. However, in this case, I consider it unlikely that the conceptual differences between the marks will offset the visual similarities, particularly in what I have found to be a predominantly visual purchasing process. This is particularly the case bearing in mind the higher level of distinctiveness of the opponent's First and Second Earlier Marks (between a medium and high degree of inherent distinctness) and the principle of imperfect recollection. Even where aural considerations play a greater role, the relatively high aural similarity between the marks (between a medium and high degree) will have the same result. Therefore, I consider that because the marks share the second, third, fifth and sixth letters (I, K, O and K), with the differences being the first and third letters, these will be easily overlooked by the average consumer. The visual similarities between the first and third letters (T and F / t and f) furthermore highlights that they would be easily mistakenly recalled or misremembered as each other. In my view, this results in a likelihood of direct confusion, even where there is a medium degree of similarity between the goods, due to the effect of the interdependency principle.

55. The opposition based upon section 5(2)(b) succeeds.

### **Section 5(3)**

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

“5(3) A trade mark which –

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

57. As noted above, the Third Earlier Mark relied upon qualifies as an earlier mark pursuant to section 6 of the Act. I note that the opponent only relies on the following goods and services under its Third Earlier Mark for the opposition under section 5(3):

Class 9      Application software; application software for smartphones.

Class 45      Online social networking services.

58. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, Case 252/07, *Intel*, Case C-408/01, *Adidas-Salomon*, Case C-487/07, *L'Oreal v Bellure* and Case C-323/09, *Marks and Spencer v Interflora* and Case C383/12P, *Environmental Manufacturing LLP v OHIM*. The law appears to be as follows.

a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Saloman*, paragraph 29 and *Intel*, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel*, paragraph 42.

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel*, paragraph

68; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel, paragraph 79*.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel, paragraphs 76 and 77* and *Environmental Manufacturing, paragraph 34*.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel, paragraph 74*.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV, paragraph 40*.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora, paragraph 74* and the court's answer to question 1 in *L'Oreal v Bellure*).

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

60. The relevant date for the assessment under section 5(3) is the date of application i.e. 7 September 2021.

## **Reputation**

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

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

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

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

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation 'in the Member State'. In the absence

of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation 'throughout' the territory of the Member State. It is sufficient for it to exist in a substantial part of it."

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

63. As the Third Earlier Mark is a UKTM, it must have a reputation amongst a significant part of the UK public.

64. Ms Muchemwa states that TikTok, the app, was launched in China in September 2016, and released globally in 2017 on iOS and Android devices. I note that this statement is supported by **exhibit A**, which is a series of print outs from Wikipedia captured on 10 August 2021. I note that this platform allows entries to be updated by the public and, therefore, I consider that the information from Wikipedia should be approached with a certain degree of caution.

65. **Exhibit B** is an article from [www.businessofapps.com](http://www.businessofapps.com) dated 6 July 2021. I note that this highlights that TikTok was the most downloaded app globally in 2020, with 850 million global downloads. 22 million of those downloaded were from the UK.

66. **Exhibit C** is an article from [www.reuters.com](http://www.reuters.com) dated 29 July 2020, which values the app at \$50 billion, which is "50 times its projected 2020 revenue of about \$1 billion". The article also states that "TikTok is growing rapidly as it takes in more cash from advertising, and its management team expects to achieve \$6 billion in revenue in 2021".

67. **Exhibit D** is an article from [www.businessofapps.com](http://www.businessofapps.com) dated 4 August 2021. The article explains that TikTok is an app which "allows users to create 15 second videos, soundtracked by music clips" and is largely used to "create, share, and video content



based around lip syncing, dancing, comedy skits and other physical activities. Clearly, this is something that appeals to young people (and quite a few older ones) around the world, with the app snowballing in popularity over 2018 and 2019". The article also includes the following statistics:

- There are 100 million TikTok users in Europe, with 17 million monthly users in the UK over the age of 18.
- The proportion of UK TikTok users aged under 18 is only 18%.
- The TikTok user growth over 2020 in the UK was 75.2%.
- The daily usage in the UK is 60 minutes, with 13 app opens per day.
- The daily TikTok usage in children aged 4-14 in the UK in May 2019 was 35 minutes and in February 2020 69 minutes, which is an increase of 97%.
- Four in ten adult European TikTok users are aged 18 to 24.
- Average daily time on TikTok is estimated at 45 minutes.

68. The following charts are also included within the article:

**Predicted UK TikTok users and penetration (internet users)**

Year	Users, millions	Penetration
2019	4.9	12.4%
2020	8.5	21.1%
2021	10.9	26.4%
2022	11.7	27.8%
2023	12.1	28.3%
2024	12.5	28.5%

Source: [eMarketer](#)

**Key TikTok Revenue Statistics**

**TikTok revenue by month\***

Month	TikTok revenue, USD millions
Apr-19	7.8
May-19	9.0
Jun-19	10.9
Jul-19	11.9
Aug-19	14.0

Sep-19	16.5
Oct-19	18.5
Nov-19	33.2
Dec-19	43.0
Apr-20**	75
May-20	95.7
Jun-20	90.7
Jul-20	102.5
Aug-20	88.1
Sep-20	130.5
Oct-20	115
Nov-20	123
Dec-20	142

\*\*IOS and Google Play revenue only, excludes Chinese third-party revenue

69. **Exhibit E** firstly contains a screenshot dated 9 August 2021 of a blog from [www.appannie.com](http://www.appannie.com). It lists TikTok as the seventh most downloaded app in the world between 2010 and 2019. It also contains a screenshot from [www.socialfilms.co.uk](http://www.socialfilms.co.uk) dated “11/07/2022”. Under the heading, “how many downloads does TikTok have in the UK?” it states that “in total, App Store and Google Play customers around the world downloaded TikTok almost 115 million times in March 2020- the most the app has ever achieved to date in one month. Over 745,000 of these March 2020 downloads were from the UK. The number of UK TikTok users is expected to reach 10 million by 2021”.

70. **Exhibit F** contains a screenshot from [statista.com](http://statista.com) which shows a graph of “smartphone users on TikTok in the United Kingdom (UK) in December 2019, by age group and gender”. This is dated 21 April 2022 and shows the following figures:

Age range	% breakdown
18-24	26%
25-34	9.3%
35-44	8%

45-54	4.7%
55+	2.5%

71. **Exhibit F** also contains the following description; “in December 2019, over a quarter of UK smartphone users aged between 18 and 24 were using TikTok”.

72. **Exhibit G** contains an article about a survey where TikTok has become the second most popular media platform of choice for influencer marketing, dated 20 April 2021. This highlights that 68% of brand marketers indicated they were planning on using the app to market their products.

73. **Exhibit H** contains a case study published on the opponent’s website in relation to the opponent’s Balenciaga advertising campaign which was shown “over the Christmas period using the high-engaging TopView format in the UK and France. In fact, the resulting numbers impressed the fashion brand so much, that it then went on to launch two Brand Takeovers as well- one for the UK market, to solidify its message, and the other to extend reach across Italy”. The result of the campaign was that it “drove 23M+ impressions across the UK, France and Italy”. The print out of this case study is dated 10 August 2021.

74. **Exhibits I to L** contains screenshots of the opponent’s social media pages. I note the following:

- As of 9 August 2021, its Facebook page had 32.1 million likes, and 24.9 million people follow this page.
- A screenshot dated 11 August 2021 shows its Instagram page had 27.2 million followers.
- A screenshot dated 11 August 2021 shows its Twitter page had 1.7 million followers. I also note that the opponent has a UK TikTok Twitter page, which has 122.8K followers, however, this screenshot is dated 12 July 2022.
- A screenshot dated 11 August 2021 shows its YouTube page had 219,000 subscribers.

75. **Exhibit N** contains a screenshot of a YouTube video dated 12 July 2021. It shows an interview with Harry Kane after the loss to Italy in the Euro 2022 final, with the backdrop showing an array of sponsors, including TikTok. It also contains an article called “TikTok inks deal to sponsor Euro 2020” from [www.campaignlive.co.uk](http://www.campaignlive.co.uk) dated 11 February 2021. I note the following from the article:

- This is the “first time a digital entertainment platform has sponsored a major football tournament and is a marketing first for TikTok, which has aggressively expanded in Europe since launching a continental hub in London in 2018. It had only launched its first TV ad in the UK last year”.
- “The deal value was not disclosed but it is thought to be worth tens of millions of pounds”.
- “Uefa Euro 2020 will also launch an official TikTok account prior to the tournament. TikTok will also benefit from brand exposure when football matches from the tournament are broadcast across European TV channels, ITV and BBC share the tournament’s TV rights in the UK”.
- “The short-form video platform now boasts one of the most downloaded apps in the world. Its UK user base is set to grow to reach the tens of millions this year”.

76. **Exhibit O** contains an article from The Guardian and Variety, both dated 12 July 2021. They highlight that the Euro 2020 final attracted a UK audience of over 30 million. The England vs Denmark game also drew 27.6 million views at its peak, making it the most watched soccer match ever shown on one network in the UK.

77. The evidence provided by the opponent is not without its limitations. For instance, there is no evidence regarding the opponent’s advertising expenditure in promoting TikTok. The opponent has provided revenue figures above, but this is not broken down by territory and therefore I am unable to determine the revenue figures which only pertain to the UK. However, taking the evidence as a whole into account, in particular

a) the very substantial userbase in the UK prior to the relevant date, b) the high ranking of downloads of the app on both iOS and Android within the UK and c) the scale of coverage of TikTok in the UK media alone for the 2020 Euro final, that this alongside the opponent's wider evidence such as its revenue statistics, its value of \$50 billion, its high social media following and its coverage using the Balenciaga advertising campaign in the UK, means that I am satisfied that the opponent has demonstrated a strong reputation in relation to its Third Earlier Mark for its application software and application software for smartphones in class 9 and online social networking services in class 45.

## **Link**

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

### The degree of similarity between the conflicting marks

The Third Earlier Mark is visually identical to the Second Earlier Mark. Therefore, for the reasons as set out above, I consider the Third Earlier Mark and the applicant's mark to be visually similar to high degree and aurally similar to between a medium and high degree and conceptually dissimilar.

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

The goods and services upon which the opponent has shown a reputation are for its application software and application software for smartphones in class 9, and its online social networking services in class 45. These were not relied upon for the section 5(2)(b) claim.

I consider that these goods and services are dissimilar to all of the applicant's class 20 furniture goods. The applicant's goods would be sold in furniture stores, DIY stores and home retail outlets. The opponent's goods would be sold by application software specialists, and the opponent's services would be sold by online social networking undertakings. The goods and services also do not overlap in nature, method of use or purpose. They are neither in competition nor complementary. Consequently, they are dissimilar. Having said that, the parties' goods and services are all those that will be selected by the same section of the relevant public, being members of the general public at large.

#### The strength of the earlier mark's reputation

The opponent enjoys a strong reputation in respect of its Third Earlier Mark, in the UK, for its application software and application software for smartphones in class 9, and its online social networking services in class 45.

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

The opponent's First and Second Earlier Marks are all inherently distinctive to between a medium and high degree.

While I have not assessed its Third Earlier mark, I consider that the same will apply on the basis that the Third Earlier Mark is identical to the Second Earlier Mark.

In terms of enhanced distinctiveness, I consider that based on the evidence above, and for the same reasons as set out in paragraph 77, I do not hesitate to conclude that the distinctiveness of the Third Earlier Mark has been enhanced, through use, in relation to application software and application software for smartphones in class 9, and its online social networking services in class 45, to a high degree.

### Whether there is a likelihood of confusion

As there is no similarity of the goods and services, there can be no likelihood of confusion.

79. I am now required to determine whether, in this particular case, the relevant public would bring the opponent's marks to mind when confronted with the applicants mark. That is, to make a link between them. I did find there to be a likelihood of confusion between the applicant's mark and the opponent's First and Second Earlier Marks which are registered for identical/similar class 20 goods. However, for its 5(3) claim, the opponent is relying upon its Third Earlier Mark. The reputation of the opponent's Third Earlier Mark is strong for its application software and application software for smartphones in class 9, and its online social networking services in class 45, and while the inherent distinctiveness of the mark is between a medium and high degree, I accept that the mark has been enhanced through use.

80. However, I do not consider that the above evidence is strong, nor specific enough, to establish that a link could be made between the applicant's furniture goods, which is entirely different in nature to the opponent's class 9 application software goods and class 45 online social networking services. The applicant's goods and the opponent's goods and services are completely removed from one another and therefore the opponent's reputation is not strong enough to bridge the gap between them. I consider that the distance between the goods and services is sufficient to offset the similarity of the marks and, therefore, I do not consider that the requisite link will be made in respect of the goods and services.

81. As I have found there to be no link, the opposition based upon section 5(3) is dismissed.

### **CONCLUSION**

82. The opposition is fully successful under section 5(2)(b) and the application is refused.

## **COSTS**

83. The opponent has been successful and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 2/2016. In the circumstances, I award the opponent the sum of **£1,250** as a contribution towards the costs of the proceedings. The sum is calculated as follows:

Filing a Notice of opposition and considering the applicant's counterstatement	£200
Preparing and filing evidence	£500
Preparing and filing written submissions and submissions lieu of a hearing	£350
Official Fee	£200
<b>Total</b>	<b>£1,250</b>

84. I therefore order Shenzhen Shangsi Yimao Technology Co., Ltd. to pay TikTok Information Technologies UK Limited the sum of £1,250. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

**Dated this 28<sup>th</sup> day of February 2023**

**L FAYTER**

**For the Registrar**



## ANNEX

### **The First Earlier Mark**

#### Class 6

Badges of metal for vehicles; Buckles of common metal (hardware); Metal identification bracelets; Chains of metal; chain links; keys; key rings, metal; key chains; hooks; Pins (hardware); spurs; plaques; Nameplates of metal.

#### Class 9

Glasses; spectacle glasses; sunglasses; protective glasses and cases therefor; parts and fittings for all the aforesaid goods.

#### Class 14

Jewellery; imitation jewellery and precious stones; precious metals; badges; cufflinks; Figurines (statuettes) of precious metal; Buckles for watchstraps; key rings; pins and table cutlery made from precious metals; pendants; finger rings; necklaces; bracelets; chains made from precious metals; clocks; watches and horological instruments; Clasps for jewellery; parts and fittings for all the aforesaid goods.

#### Class 16

Printed matter; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); printers' type; printing blocks; printed publications; periodical publications; books, brochures; newspapers; magazines; journals; comics, stationery; labels; stickers; decalcomanias; posters; ring binders; calendars; address books; diaries; annuals; notebooks; autograph albums; photo albums; cards; greeting cards; catalogues; programmes; writing paper; folders; envelopes; pads; notepads; stamps and stamp pads; writing implements; letter paper; drawing materials; napkins of paper; rubber erasers; pens; pencils; erasers; rulers; pencil sharpeners; staplers; paper hole punches; highlighter pens; felt-tip pens; glue sticks for stationery purposes; mats [coasters] of card; tablecloths of paper; wrapping paper; napkins; bags of paper or plastic material; Pins (stationery); Plastic bags for general use; parts and fittings for all the aforesaid goods.

### Class 18

Trunks and travelling bags; articles of luggage being bags; bags; baggage; travel baggage; travel bags; weekend bags; work bags; toiletry cases sold empty; tool bags [empty]; sports bags; shopping bags; bags for clothes; bags made of leather; bags made of imitation leather; Travel bags made of plastic materials; money bags; school bags; shoe bags; suitcases; rucksacks; back packs; purses; wallets; cosmetic cases; make up bags; cosmetic bags; handbags; school satchels.

### Class 20

Furniture; mirrors; picture frames; bedding (except linen); cushions; bolsters; bins of wood or plastic; magazine racks; beds; bunk beds; wardrobes; desks; chests of drawers; pillows; chairs; chest for toys; coat hangers; figurines and statuettes of wood, wax, plaster or plastic; Nameplates, not of metal; statues of wood, wax, plaster or plastic; parts and fittings for all the aforesaid goods.

### Class 21

Household or kitchen utensils and containers; combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steelwool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes; hair brushes; drinking glasses; mugs; drinking cups; brushes; egg cups; food trays; coasters (tableware); drink coasters [other than of paper or table linen]; plastic coasters; dishes; bowls; plates; drinking vessels; lunch boxes; soap dispensers; coasters; toothbrushes; water bottles; plastic water bottles; tableware; moneyboxes; Vacuum flasks; bottle openers; horse brushes; paper drinking cups and plates; drinking straws; parts and fittings for all the aforesaid goods.

### Class 24

Textiles; textile articles; textile piece goods, bed and table covers; bath linen; linen; cloth; bed linen; household linen; table linen; table cloths; pillow cases; sheets; eiderdowns; duvets; covers for eiderdowns and duvets; napery, napkins; serviettes; towels, face towels, flannels; traced cloth for embroidery, tapestry (wall hangings) of textile, curtains of textile or plastic; sleeping bags.

### Class 26

Armband for holding sleeves.

## **The Second Earlier Mark**

### Class 6

Baskets of metal; bells for animals; split rings of common metal for keys; boxes of common metal; clothes hooks of metal; door bells of metal, non-electric; keys of metal.

### Class 11

Coffee machines; coffee percolators; cooking apparatus and installations; electric fans for personal use; hot water bottles; luminous house numbers; electric lamps; light bulbs; nail lamps; refrigerating apparatus and machines; water heaters; wine cellars, electric; USB-powered cup heaters; USB-powered hand warmers; safety lamps; hair driers; sanitary apparatus and installations; disinfectant apparatus; radiators; lighters.

### Class 14

Alarm clocks; badges of precious metal; boxes of precious metal; bracelets; earrings; jewellery; ornamental pins; shoe jewellery; tie clips; necklaces; watches; split rings of precious metal for keys; key rings; key chains.

### Class 16

Bookmarks; printed matter; composing frames; drawing materials; desk mats; document holders; marking pens; school supplies; stationery; writing paper; table napkins of paper; paper; pencils; pictures; stands for pens and pencils; ink; teaching materials.

### Class 18

Bags; bags for sports; boxes of leather or leatherboard; card cases; chain mesh purses; clothing for pets; handbags; net bags for shopping; suitcases; umbrellas; walking sticks; leather goods unworked or semi-worked namely, leather purses, leather cloths, leather bags, leather wallets, leather coin purses and leather briefcases.

### Class 20

Air mattresses; baby changing mats; bamboo curtains; bedding; boxes of wood or plastic; camping mattresses; clips of plastic for sealing bags; decorations of plastic for foodstuffs; furniture; furniture fittings, not of metal; hand-held flagpoles, not of metal; identification bracelets, not of metal; keyboards for hanging keys; letter boxes, not of metal or masonry.

#### Class 21

Kitchen utensils; glass ware; cooking utensils; ceramics for household purposes; combs; mugs; tea sets; toilet utensils; toothbrushes; cosmetic utensils; cages for household pets; brushes; works of art, of porcelain, terracotta or glass.

#### Class 24

Textiles; bed clothes; wall hangings of textile; loose covers for furniture; curtains of textile or plastic; banners; non-woven textile fabrics; felts.

#### Class 25

Clothing, namely, shirts, t-shirts, jackets, sweaters, sweatshirts, vests, shorts, pants, bodysuits, cloth bibs, jerseys, pullovers, socks; headgear, namely, hats, caps, beanies, visors; beach shoes; belts; caps being headwear; bandanas [neckerchiefs]; gloves.

#### Class 26

Edgings for clothing; fastenings for clothing; false hair; artificial flowers; heat adhesive patches for repairing textile articles; numerals or letters for marking linen; shoulder pads for clothing; needles.

#### Class 28

Games; toys; board games; balls for games; body-building apparatus; archery implements; physical exercise machines; whistles; inflatable swimming pools; plastic racetracks; ice skates; Christmas tree ornaments, except illumination articles and confectionery; fishing tackle; twirling batons; camouflage screens [sports articles]; scratch cards for playing lottery games.

### **The Third Earlier Mark**

### Class 9

Software; application software; application software for smartphones; downloadable computer software applications; downloadable smart phone applications; covers for smartphones and mobile phones; cases for smartphones and mobile phones; protective cases for smartphones; selfie sticks used as smartphone accessories; holders adapted for smartphones; mobile phones; straps for smartphones; batteries; battery chargers; USB chargers (battery chargers); USB cables; earphones; headphones; headsets; protective films adapted for smartphones and mobile phones; other accessories designed for smartphones or mobile phones; fridge magnets; blank digital or analogue recording and storage media; decorative magnets; alarms; sunglasses; optical apparatus and instruments; video screens.

### Class 35

Advertising and advertisement services; advertising agency services; on-line advertising on computer networks; pay per click advertising; preparing advertisements for others; dissemination of advertising matter; advertising through all public communication means; sales promotion for others; advice in the field of business management and marketing; presentation of goods on communication media, for retail purposes; search engine optimization services; provision and rental of advertising space on the internet; business advice and information services; assistance in management of business activities; commercial information agency services; providing business information via a website; personnel management consultancy services; updating and maintenance of data in computer databases.

### Class 36

Insurance; financial affairs; monetary affairs; real estate affairs; clearing and reconciling financial transactions via a global computer network; online banking services; financial services; credit card services, processing and transmission of bills and payments thereof, and providing insurance for financial transactions; funds transfer services; transmission of funds by electronic means for others; transfer of payments for others via the internet; financial services in the nature of billing and payment processing services; arrangement and management of leases and tenancy; renting and leasing of real estate; real estate appraisal; real estate valuation; real estate financing; real estate investment; real estate brokerage services; housing

agency services; actuarial services; real estate management and consultancy services; rent collection; rental of offices; capital investment services; financial evaluation services; financial and asset management services; insurance and financial services; financial services provided by telecommunication means; financial consultancy and advisory services; online banking; information services relating to finance and insurance, provided online from a computer database or the internet; antique appraisal; art appraisal; jewelry appraisal; used car appraisal; tax information supply services; charitable fund raising; organizing of charitable collections; charitable collection services; online payment services; safe deposit services; arranging of finance for construction projects.

### Class 38

Providing internet application services for communications; SMS message sending services; application message sending services; transmission of application information via internet; search services for smartphone applications; communication via virtual private networks [vpn]; electronic delivery of images and photographs via a global computer network; data transmission and telecommunication services; telecommunications services for providing access to data, sound or images; transmission of text, photos or video via a smartphone application; transmission of information via applications for smartphones; transmission, broadcasting and reception of audio, video, still and moving images, text and data; transfer of data via on-line services; peer-to-peer (p2p) sharing services; providing access to a video sharing portal; live video streaming services.

### Class 41

Educational services; training services; presentation of music videos via mobile device online; provision of online electronic publications (not downloadable), via mobile devices; multimedia publishing of printed matter, books, magazines, journals, newspapers, newsletters, tutorials, maps, graphics, photographs, videos, music and electronic publications; electronic publication of information on-line; entertainment and amusement information via the internet; entertainment services; organization and presentation of shows, competitions, games, concerts and entertainment events; arranging, organizing, conducting, and hosting social entertainment events;

conducting educational conferences; user generated content and online advertising strategy services.

#### Class 42

Provision of software applications through a website; hosting on-line web facilities for others for sharing on-line content; hosting platforms on the internet; computer programming; computer software design; electronic data storage; software as a service (saas) services; cloud computing; hosting a website for the electronic storage of digital photographs and videos; hosting digital content on the internet; hosting multimedia entertainment content; hosting of multimedia and interactive applications; web site hosting services; business card design.

#### Class 45

Online social networking services; licensing of computer software; legal services; licensing of intellectual property.