

O/0501/23

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF APPLICATION NUMBERS 3595072 AND 3602837

IN THE NAME OF ANDREW RATCLIFFE

FOR THE TRADE MARKS

miminutes

IN CLASS 09

AND

miminutes

IN CLASS 42

AND

THE OPPOSITIONS THERETO UNDER NUMBERS 425433 AND 425661

BY XIAOMI INC.

Background and pleadings

1. On 12 February 2021 and 1 March 2021, Andrew Ratcliffe filed two applications, both for the trade mark *miminutes*. The first application (3595072) is in Class 9 for *Software; Software applications; Computer software; Workflow software; Industrial software; Dashboard software; Communication software; Collaborative software; Mobile software; Business software; Conference software; Email software; Embedded software; Reporting software; Project management software; Internet messaging software; Computer application software; Integrated software packages; Data management software*. The second application (3602837) is in class 42 for *Software as a service [Saas]*.

2. Following publication, the two applications were opposed by Xiaomi Inc. (“the opponent”) under sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). The opponent relies upon the following earlier trade mark registrations for its section 5(2)(b) and 5(3) grounds, as follows:

(i) International Registration (“IR”) 1462437

M i

Mark description in the International register: “The trade mark is composed of two letters “M” and “I”.”

Registration date: 20 August 2018; priority date (China): 1 March 2018; date of protection in the UK: 20 September 2019.

Relying on all the protected class 9 goods for the section 5(2)(b) ground. Relying on all the protected goods and services in classes 9, 11 and 35 for the section 5(3) ground.

(ii) 917601667



Filing date: 15 December 2017; registration date: 22 October 2019.

Relying on all the registered goods and services in classes 9 and 42 for the section 5(2)(b) ground. Relying on all the registered goods and services in classes 9, 35 and 42 for the section 5(3) ground.

(iii) 909822751

MI

Filing date: 4 May 2011; registration date: 28 September 2011.

Relying on all the registered class 9 goods for the section 5(2)(b) ground against the first application, and the registered goods and services in classes 9 and 42 against the second application. Relying on all the registered goods and services in classes 9, 16, 35, 41, 42 and 43 for the section 5(3) ground.

3. Under section 5(2)(b) of the Act, the opponent claims that the parties' goods and services are identical and similar and that the marks are visually, aurally and conceptually similar, sharing the same dominant and distinctive component, MI. It claims that these factors lead to a likelihood of confusion.

4. Under section 5(3) of the Act, the opponent claims a reputation in its marks for the registered goods and services relied upon such that the relevant public will believe that Mr Ratcliffe's goods and services come from the opponent or an undertaking linked to the opponent, leading to unfair advantage. Further, the opponent claims that the contested applications will 'ride on the coat tails' of the earlier marks, unfairly benefitting from their repute. The opponent also claims that use of the contested

applications will erode the distinctiveness of the earlier marks and damage their reputations if used in relation to goods and services of poor quality.

5. Under section 5(4)(a) of the Act, the opponent claims that it has used the following signs in the UK since 2011:

MI



6. The opponent claims that the signs have been used for the following goods:

Computer hardware; computer peripheral equipment; computer software; data processing equipment; portable computers; tablet computers; computer memory devices; pedometers; apparatus for recording, transmission or reproduction of sound or images; measuring apparatus and instruments; telephones; mobile telephones; smartphones; mobile phone accessories; global positioning system apparatus; loud speakers; apparatus for sound transmission; sound recording devices; headphones; earphones; video telephones; dictating machines; cameras; portable media players; electronic pocket translators; video recording apparatus; video cameras; remote control apparatus; electric wires; battery chargers; scales; smart watches; electronic sensors; security cameras; retail services.

7. The opponent claims that its goodwill in the business of these goods, distinguished by its signs, entitles it to prevent the use of the applications under the law of passing off.

8. Mr Ratcliffe filed defences and counterstatements, denying the grounds of opposition. He put the opponent to proof that it has used its marks. At this point, the two sets of proceedings were consolidated. I will refer to the contents of the counterstatements during the course of this decision, where appropriate.

9. The opponent is professionally represented by Lane IP. Mr Ratcliffe represents himself. Both parties filed evidence. The matter was heard on 28 March 2023 by video conference. Mr Phillip Harris represented the opponent. Mr Ratcliffe did not attend and did not file written submissions in lieu of attendance. I make this decision after a careful consideration of all the papers and submissions.

Preliminary points

10. The opponent submits that Mr Ratcliffe has made certain concessions:

- a. that the opponent uses the “Mi” “naming convention”;
- b. that “Mi” is synonymous with “hardware products”;
- c. that “Mi” is used by the opponent at least in relation to mobile devices/hardware, albeit with XIAOMI (which does not make a difference to the use of MI as an independent and distinctive element).

11. The opponent submits that, as a result of the above concessions, Mr Ratcliffe has acknowledged that MI has, for hardware and mobile devices at least, the requisite goodwill and reputation for all purposes.

12. Mr Ratcliffe is not professionally represented. Although at one point in the counterstatements he says that “Xiaomi’s “Mi” is synonymous with hardware products such as mobile phones, this comes after a statement that the ““Mi” trademark is reliant upon the Xiaomi brand name in order to be identifiable”. I consider that the context in which Mr Ratcliffe refers to the naming convention in the counterstatements means that he has not made an admission as to use, reputation and goodwill of the earlier marks (my underlining):

“Xiaomi have adopted a product naming convention using “Mi” for some devices, eg. Mi 11, or Redmi Buds 3 Pro. These products are reliant upon the Xiaomi brand name in order to be identifiable by consumers.

...

Opponent to clarify exactly which products/goods synonymous [sic] with the Opponent's trademarks.

The Opponents [sic] Marks are only synonymous when preceded with the brand name "Xiaomi" – in isolation the trade mark "Mi" is not synonymous with goods or services.

The "Mi" trade mark does not have a reputation because it is not a brand name that is used in isolation.

...

"Mi" is not a brand recognisable in the UK, it is a naming convention used by the "Xiaomi" brand to name their mobile phone hardware products. The trademark "Mi" is always preceded by the brand name "Xiaomi". The "Xiaomi" brand is known and recognisable in the UK. "Mi" in isolation is not."

Evidence

13. The opponent has filed evidence from Mr Shen Chong, who is the opponent's IP Director, Legal Department.¹ His evidence is aimed at proving that the earlier marks and signs have been used. Mr Ratcliffe has filed evidence about the opponent's current use of its marks.² The opponent filed evidence in reply to Mr Ratcliffe's evidence from Matthew McAleer, a partner at Lane IP.³

14. Although Mr Ratcliffe requests the opponent to prove use of its three earlier marks, as far as the requirement to prove that there has been genuine use of the earlier marks is concerned, this only applies to earlier mark (iii). This is because, under section 6A of the Act, an opponent may rely on any or all of the goods and services for which its marks are registered if they had been registered for less than five years on the date on which an opposed application was filed. Marks (i) and (ii) had been registered for

¹ Witness statement dated 6 May 2022 and exhibits.

² Witness statement dated 29 September 2022 and exhibits.

³ Witness statement dated 7 December 2022.

less than five years on 12 February 2021 and 1 March 2021. The opponent may rely upon all the goods and services identified in its pleadings in respect of marks (i) and (ii) without having to prove it has made genuine use of them. Of course, to sustain its ground under section 5(3), it is required to prove it has a reputation in these marks (as with mark (iii)).

15. As the contested marks are the same, I will refer to them in the singular from now on. Looking at the three earlier marks, mark (iii) is registered in word-only form and is therefore the closest of the three earlier mark in terms of the contested mark. It also has the widest specification coverage compared to the contested applications, depending on whether and how far it survives the genuine use assessment. I will begin with mark (iii) because that is the high point of the opponent's case, returning to marks (i) and (ii), as necessary.

16. The first task is to assess whether, and to what extent, the evidence supports the opponent's statement that it has made genuine use of mark (iii) in relation to the goods and services for which it is registered and upon which it relies in its pleadings. The relevant period for this purpose is the five years ending on the filing dates of the contested applications. These are 13 February 2016 to 12 February 2021 for the first contested application and 2 March 2016 to 1 March 2021 for the second contested application.

17. Section 6A of the Act states:

“(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), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and
- (c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

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

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

(3) The use conditions are met if –

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

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

(4) For these purposes –

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

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

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the

purposes of this section as if it were registered only in respect of those goods or services.”

18. The earlier mark is a ‘comparable mark’. This means that it is a UK registered mark, derived from an EU trade mark (“EUTM”). The EUTM became a UK registered ‘comparable’ trade mark at 11pm on 31 December 2020.⁴ For the part of the five year period up until then, the opponent is entitled to rely upon use in the EU (which included the UK before that date). For the short part of the relevant period of use after that date, the opponent may only rely upon use in the UK because the UK was no longer part of the EU. This is provided for in paragraph 7 of Part 1, Schedule 2A of the Act:

“7.— (1) Section 6A applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the relevant period referred to in section 6A(3)(a) (the "five-year period") has expired before IP completion day—

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A(3) and (4) to the United Kingdom include the European Union.

(3) Where [IP completion day] falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day —

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM ; and

(b) the references in section 6A to the United Kingdom include the European Union.”

⁴ The Trade Marks (Amendment etc.) (EU Exit) Regulations 2019; also see Tribunal Practice Notice 2/2020.

19. However, the evidence the opponent has provided about its global use (outside of the UK and the EU) is not relevant to the question of genuine use, reputation or goodwill, unless its significance to the UK/EU has been explained. For example, the opponent's social media figures are global.

20. The onus is on the opponent, as the proprietor of the earlier mark, to show genuine use because Section 100 of the Act states:

“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.”

21. 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:⁵

“114.....The CJEU has considered what amounts to “genuine use” of a trade mark in a series of cases: Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, *La Mer* (cited above), Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bunderversammlung Kameradschaft ‘Feldmarschall Radetsky’* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Marken BV v Hagelkruis Beheer BV* [EU:C:2012:816], [2013] ETMR 16, Case C-609/11 P *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], [2014] ETMR, Case C-141/13 P *Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089] and Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434], [2017] Bus LR 1795.

⁵ “EWHC” means the High Court of England and Wales. “CJEU” is the abbreviation for the Court of Justice of the European Union. 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 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 caselaw of EU courts.

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].”

22. The goods and services relied upon for the purposes of section 5(2)(b) are:

Class 9: Teaching apparatus and instruments; computer programs and computer software; electronic publications provided on-line from a computer database or from a global computer network; audio and video recordings; magnetic data media; optical data media; tapes, discs and laser discs, CDs, CD ROMs, DVDs, audio cassettes; apparatus for recording, transmitting and/or reproducing sound and/or video images; electronic diaries; personal organisers; parts and fittings for all the aforesaid goods.

Class 42: Rental of computers, computer systems and networks, equipment for the display of computer data, all for use in exhibitions and training, teaching and tuition; graphic and design services for exhibitions and training, teaching and tuition; drafting and planning services.

23. Mr Chong states that the opponent opened its first physical MI store in the UK on 18 November 2018 (this was at a west London shopping centre). As far as I can tell from the evidence, this was the only shop opened, at least in the relevant period. The heavily stylised version of the mark, registered in the form of earlier mark (ii), is shown on the shop signage. “Mi” is shown on shelf signage in relation to smartwatches, a wireless mouse, power banks and mobile phones (the latter “Mi 8 Pro”).⁶

24. Exhibit SC10 comprises prints from the opponent’s UK website (mi.com/uk) from the Wayback Machine, the internet archive. The majority of these are dated in 2018 and 2019. I note that the first page of the exhibit has the following tabs at the top of the screen: Mi Phones, Redmi Phones, POCOPHONE F1, Audio, Smart Devices and Accessories. Images of various phones follow, such as Mi Mix 2S, Mi 8, Mi A2, Mi A2 Lite, and others prefixed with Redmi and POCOPHONE. Included in the exhibit are thumb size images of eight different Mi pre-fixed mobile phones; Mi Headphones Comfort, Mi Sports Bluetooth Earphones, Mi In-ear Headphones Pro 2 and Mi power banks (all as at 22 May 2019). The pages say “Follow MI We want to hear from you!” next to the logos for Facebook, Instagram and Twitter. Full size pages give details of the Mi power bank (April 2019) and the headphones (December 2018).

⁶ Exhibit SC7.

25. Exhibit SC9 comprises a print from the opponent's website mi.com/uk/service/wheretobuy, dated 21 March 2019, which shows that the opponent's goods were available from major UK retailers, such as amazon.co.uk, John Lewis, Carphone Warehouse, Argos and Currys PC World. Exhibit SC11 comprises prints from some of these retailers, although many are not dated. However, for example, a screenshot of a page of customer reviews on amazon.co.uk about the Mi A2 mobile phone shows reviews dated late in 2018. Another is about the Xiaomi Mi Smart Band 4 Fitness Armband, with reviews dated mid-2019. A further page of reviews is about a different mobile phone, the Xiaomi Mi 8 Lite, with reviews dated 2019 and early 2020.

26. Mr Chong states that, as of February 2021, the opponent had a mobile phone market share in the UK of 1.68% and an average market share of 1.34% for January-September 2020. This made the opponent the 7th most popular mobile phone seller in the UK at this time. Although this market share may at first sight seem small, the UK market is largely dominated by Apple and Samsung, according to Exhibit SC12. That said, I note from the opponent's website and third-party retailer evidence, detailed above, that not all of the opponent's mobile phones are pre-fixed with Mi/MI: some are prefixed with Redmi and POCOPHONE. The figures do not say what proportion of the opponent's market share was down to sales of Mi/MI-branded mobile phones, although I can see that the opponent's website refers to Mi-branded phones as its flagship products.

27. Mr Chong states that the opponent has released a number of MI-branded software apps to UK consumers, as shown in the table below, which has been comprised from data provided by an independent app analytics company called App Annie:⁷

⁷ Exhibit SC14.

App Name	Release Date	Best Performance in UK Download Charts
Mi Wi-Fi	24 April 2014	353 rd (Productivity) on 24 February 2015
Mi Fit	5 December 2014	7 th (Health & Fitness) on 27 December 2020
Mi Home	27 January 2015	7 th (Lifestyle) on 25 December 2020
Mi Store	15 July 2015	69 th (Shopping) on 28 November 2019
Mi Community – Xiaomi Forum	20 August 2016	76 th (Social) on 13 October 2018
Mi Calculator	31 August 2017	180 th (Tools) on 4 September 2017
File Manager: free and easily	19 September 2017	45 th (Tools) on 27 February 2018
Mi Browser Pro	26 February 2020	7 th (Tools) on 22 May 2020

28. To put these figures into context, Mr Chong exhibits an extract from the independent market insights company, Sensor Tower.⁸ This shows that 7.6 billion app ‘installs’ were made in Europe from the Google Play Store and 6.5 billion from the iOS Apple Store in 2019. Another table gives the visits made to the opponent’s website between September 2020 and February 2021. Although these are global figures, Mr Chong states that during this time, the UK accounted for 1.41% of traffic to the opponent’s website, equating to approximately 2.98 million visits. During this period, mi.com was ranked as the 2,738th most popular website in the UK.⁹

29. Mr Chong states that the opponent’s financial report for 2019 shows that revenue for that year stood at RMB 205 billion, but these figures (and those for the preceding four years and for 2020) are global and unparticularised.¹⁰ The additional figures given for sales outside of China are for Western Europe, India and Indonesia, which is a vast area. The statement is that they are the opponent’s sales, not specifically sales of goods bearing the earlier mark. I note, however, that Exhibit SC30, which is an extract from the 2019 financial report, says that the opponent was the second largest

⁸ Exhibit SC15.

⁹ Exhibit SC6.

¹⁰ About £20 billion at the current exchange rate.

smartphone maker in Spain by shipments, with a 22.8% market share; and the fourth in France and Italy. I bear in mind, in considering these figures, that I have already noted that not all of the opponent's mobile phones are branded with Mi/MI (some are Redmi, for instance).

30. Mr Chong states that the opponent has received a number of international accolades and design awards. The opponent submits that awards given overseas nevertheless have resonance in the UK. This is fact-dependent. For instance, the 2017 Red Star Awards held in China had 'nearly' 800 attendees. There is no information as to the level of UK awareness of the event. Many of the design awards detailed in Exhibit SC20 were for goods targeted at regions which did not include Europe or the UK (for goods largely falling in class 11). However, I note that the website techadvisor.com picked its ten best new technological products in 2017. From the dating format, this appears to be a UK website. The reviews are based on new products shown at the international CES 2017 exhibition, which is said to be the main such exhibition in the world with 3,900 exhibitors and 170,000 visitors.¹¹ The review put the Xiaomi Mi Mix mobile phone in the top ten. Other UK-specific press reports which are about goods in relation to which the earlier mark is used, as opposed to reports about the opponent, include:¹²

- An article in *The Sun* about the Mi Mix 3 mobile phone, dated 27 January 2019;
- Two reviews about the Xiaomi Mi Notebook Air and the Xiaomi Mi Band tracker, published in 2016 and 2015, respectively, in *The Daily Star*.

31. Mr Ratcliffe points out in his counterstatement that the opponent only uses MI with XIAOMI. The evidence shows that this is not so, and that Mi/MI is often used without XIAOMI. However, even if it were the case that the earlier mark was always preceded by XIAOMI, there could still be genuine use of the mark in the form in which it is registered. This is because the CJEU has stated that the "use' of a mark, in its literal sense, generally encompasses both its independent use and its use as part of another mark taken as a whole or in conjunction with that other mark" as long as the mark is

¹¹ Exhibits SC16 and SC17.

¹² Exhibit SC23.

perceived as indicative of the trade origin of the goods or service.¹³ In my view, the opponent's use of Mi/MI falls into this category, and so is use of the mark in the form in which it is registered. Although the use is more often "Mi" rather than MI, use as Mi qualifies as use in the form in which the mark was registered because registration in block capitals covers the use of capital and lower case letters:¹⁴

"16. A word trade mark registration protects the word itself (here BENTLEY) written in any normal font and irrespective of capitalisation and, or highlighting in bold (see e.g. Case T-66/11, *Present-Service Ullrich GmbH & Co. KG v. OHIM*, EU:T:2013:48, para. 57 and the cases referred to therein, BL O/281/14,)."

32. Despite the shortcomings in the evidence in terms of particularised turnover, I find that there is sufficient evidence that the opponent made genuine use of mark (iii) in the relevant period. There is sufficient evidence of the mark in relation to goods in stores and the availability of the goods online, both via the opponent and via major third-party UK retailers. MI mobile phones were ranked seventh in UK mobile phone sales at the end of the relevant period and these were the opponent's flagship phones. Additionally, it is a reasonable inference, given the flagship status of MI phones, that they accounted for a significant number of the large volume of sales in Spain, France and Italy, which are relevant to genuine use for the reasons given earlier in this decision.

33. I am required to determine in relation to which goods and services the mark has been used and, if that use is not on everything within the registered specifications, or a reasonable range of goods and services within the terms in the specifications, to decide upon a reduced, fair specification represented by the use. In so doing, I am guided by *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors*, in which Mr Justice Carr summed up the law relating to partial revocation as follows:¹⁵

¹³ *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12, paragraphs 31 to 35.

¹⁴ Professor Ruth Annand, sitting as the Appointed Person, in *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17.

¹⁵ [2016] EWHC 3103 (Ch).

“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.”

34. The evidence does not support a finding of genuine use across all the goods and services relied upon. It will be clear from my comments above that there has been genuine use in relation to mobile phones (a sub-category of the registered *apparatus for recording, transmitting and/or reproducing sound and/or video images*). The evidence also shows use in relation to apps for mobile phones and fitness bands. The evidence is too thin, unparticularised or non-existent for the other goods and services relied upon. Although there is some evidence of use in relation to fitness bands, I am unconvinced that the class 9 specification covers such goods. In any event, these goods are not as similar to the contested goods and services as mobile phones and mobile application software, so it is unnecessary to make a formal finding about fitness bands.

35. Apps (or applications) are a type of computer software, which I consider to be a sub-category of software. Bearing in mind the court’s guidance at point (vii) of *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool)*, set out above, I find that a fair specification for the purposes of these proceedings is:

Class 9: mobile telephones; mobile application software.

36. The opponent may rely upon these goods for its section 5(2)(b) ground and for the section 5(3) ground, dependent upon the existence of a qualifying reputation in the case of the latter ground.

Section 5(2)(b) of the Act

37. Section 5(2)(b) states:

“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.”

38. Section 5A states:

“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.”¹⁶

39. The following principles for determining whether there is a likelihood of confusion under section 5(2)(b) of the Act are taken from the decisions of the CJEU in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

The principles

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

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to

¹⁶ This section also applies to the grounds raised under sections 5(3) and 5(4)(a) of the Act.

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.

Distinctive character of earlier mark (iii)

40. The assessment as to whether there is a likelihood of confusion includes considering whether the distinctive character of the earlier mark has been enhanced (i.e. more distinctiveness has been acquired) through the use made of it. If a mark has an inherently high, or an enhanced, level of distinctiveness, the likelihood of confusion is increased.¹⁷ I will begin by considering the inherent distinctive character of earlier mark (iii) before reminding myself of the use that the opponent has made of its mark.

41. The earlier mark consists entirely of the letters MI. These do not appear to be descriptive or allusive of the goods; other than Mr Ratcliffe's submission that they sound like the word 'My', there are no submissions or evidence to show any meaning. Contrary to Mr Ratcliffe's statement in his evidence, two letter marks are not necessarily non-distinctive. More fundamentally, however, earlier mark (iii) is registered and therefore must be taken to have at least some distinctive character because section 72 of the Act states:

"In all legal proceedings relating to a registered trade mark (including proceedings for rectification of the register) the registration of a person as proprietor of a trade mark shall be prima facie evidence of the validity of the original registration and of any subsequent assignment or other transmission of it."¹⁸

42. That does not mean that the mark has a high level of inherent distinctive character. In *Kunze Folien GmbH v Kartell UK Limited*, BL O/084/14, Mr Iain Purvis QC, sitting as the Appointed Person, referred with approval to a decision of the Fourth Board of

¹⁷ *Sabel BV v Puma AG*, Case C-251/95.

¹⁸ See also *Formula One Licensing BV v OHIM*, Case C-196/11 P, CJEU.

Appeal of OHIM (now the EUIPO), *Alfa-Beta Vissilopoulos AE v Agro de Bazan*, Case R 82/2011-4.¹⁹ The Board of Appeal considered the letters AB in a stylised form against AB in a different stylised form, saying at paragraph 16:

“As to the distinctive character of the letter combination ‘AB’ in the earlier marks and of the contested mark, either perceived as the letter ‘B’ or as a possible letter combination such as ‘PB’ or ‘AB’, it should be noted that letters or letter combinations of two or three letters are inherently weak, given the limited number of letters in the alphabet, the great number of meanings that acronyms and abbreviations may have and the fact that consumers frequently encounter abbreviations and letter combinations of all kinds in everyday life and business as generic abbreviations but not as marks. In view of this, the graphical design in which the letter combinations appear strongly influences the consumer’s perception. The distinctive character of the conflicting marks to a large extent rests in their specific graphic elements.”

43. Letters must be assessed for distinctive character in relation to the goods or services in question, as with other types of marks.²⁰ I find that, *prima facie*, the inherent distinctive character of MI, for the goods upon which the opponent may rely, is low, for the reasons given in the above caselaw extract.

44. Distinctive character is a measure of how strongly the earlier mark identifies the goods or services for which it is registered, determined, according to *Lloyd Schuhfabrik Meyer & Co.*, partly by assessing the proportion of the relevant public which, because of the mark, identify the goods or services as originating from a particular undertaking. At paragraph 23, of its judgment, the CJEU stated:

“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

¹⁹ European Intellectual Property Office

²⁰ *OHIM v. Borco-Marken-Import Matthiesen GmbH & Co. KG*, Case C-265/ 09 P

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).

45. It is only use in the UK which is relevant to whether distinctive character increases a likelihood of confusion, because the assessment is made from the perspective of the UK average consumer. This means that the ranking of the opponent's mobile phone sales in Spain, France and Italy is not a factor for these purposes. That said, the opponent's mobile phones achieved a ranking of seventh in the UK in 2019, and a significant market share in the context of the dominance of Apple and Samsung. MI phones were in the top ten of techadvisor.com's best new technological products in 2017 and one of the MI phones was reviewed in *The Sun* in 2019. The opponent's MI apps achieved high rankings in terms of performance in the UK download charts, considering the huge number of apps and mobile phone users in the UK. Contrary to Mr Ratcliffe's submissions, the use is frequently without XIAOMI in close proximity to the mark. Furthermore, as already set out, use of a sub-brand or co-brand can be genuine use; it can also have its own distinctive character, aside from a primary, or 'house mark'. In *Société des Produits Nestlé SA v Mars UK Ltd*, Case C-353/03, the CJEU held that a mark may acquire a distinctive character as a result of it being used as part of, or in conjunction with, another mark. This is provided "the relevant class of persons actually perceive the product or service at issue as originating from a given undertaking".²¹ In this case, I find that the way in which MI, or Mi, has been used would indicate the goods to have originated from a single undertaking. I find that the distinctive character of MI had been enhanced to a medium degree at the dates on which the contested applications were filed (12 February 2021 and 1 March 2021) in relation to mobile telephones; mobile application software.

²¹ *Specsavers v Asda*, Case C-252/12, CJEU.

Comparison of marks

46. The marks to be compared are:

Earlier mark (iii)	The applicant's mark
MI	miminutes

47. *Sabel BV v. Puma AG* explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the 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.”

48. 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.

49. Both parties' marks consist of a single element, in which the overall impression of the marks resides.

50. The two letters of which the earlier mark is comprised form the first two letters of the contested mark and also the third and fourth letters. Balancing that with the remaining five letters in the contested mark which are not shared by the earlier mark, there is a medium degree of visual similarity between the marks.

51. The earlier mark could be pronounced as two separate letters, or as 'MY', or as 'MEE', although this seems the most unlikely of the three. The common word 'minutes' is likely to be perceived in the later mark. The whole of the mark could be pronounced as 'my minutes' or 'mee minutes' or mi minutes with a short initial 'i' sound. The level of similarity between the marks will accordingly vary depending on pronunciation, from a medium degree of similarity to little similarity.

52. The earlier mark does not have any concept, unless it is only heard aurally and the pronunciation heard is MY, in which case it will mean possession by the first person singular. The contested mark contains the word minutes which is likely to be noticed, notwithstanding the letters mi which precede minutes. The concept of minutes could either be a unit of time or as a form of notes taken at a meeting, which I will come back to later in this decision. Taking all of this into account, even if the contested mark is perceived as 'my minutes', there is no conceptual similarity between the parties' marks.

Comparison of goods and services

53. In comparing the respective specifications, all relevant factors should be considered, as per *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.* where the CJEU stated at paragraph 23 of its judgment:

“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.”

54. Additionally, the criteria identified in *British Sugar Plc v James Robertson & Sons Limited* (“*Treat*”) [1996] R.P.C. 281 for assessing similarity between goods and services also include an assessment of the channels of trade of the respective goods or services.

55. In *Avnet Incorporated v Isoact Limited* [1998] F.S.R. 16, Jacob J. (as he then was) stated:

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.”

56. Mr Ratcliffe states in his counterstatements:

“MiMinutes” is an online platform to record minutes of meetings.”

57. The comparison of goods and services under section 5(2)(b) of the Act is not confined to Mr Ratcliffe’s current mode of business and/or his business plans. This is because a trade mark application (and registration) is a claim to a piece of legal property. The level of protection provided is normally based on a notional assessment of the likelihood of confusion between the earlier trade mark and the later mark. The opponent’s earlier mark is entitled to protection against a likelihood of confusion with the contested mark based on the ‘notional’ use of the earlier mark for the goods in relation to which I have found genuine use. Mr Ratcliffe’s specifications are not restricted to an online platform to record minutes of meetings. The comparison is to be made on the basis of notional use of the terms in both parties’ specifications.

58. Marks are protected against the use of the same or similar marks in relation to goods or services which are the same or similar, if there is a likelihood of confusion. Goods and services can be similar, even if in different classes, as provided for in section 60A of the Act:

“60A Similarity of goods and services

- (1) For the purpose of this Act goods and services-
- (2)

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

(3) In subsection (1), the "Nice Classification" means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1975."

59. The parties' respective goods and services to be compared in accordance with the above caselaw are:

Earlier mark (iii)	Applications
Class 9: mobile telephones; mobile application software.	Class 9: Software; Software applications; Computer software; Workflow software; Industrial software; Dashboard software; Communication software; Collaborative software; Mobile software; Business software; Conference software; Email software; Embedded software; Reporting software; Project management software; Internet messaging software; Computer application software; Integrated software packages; Data management software. Class 42: Software as a service [Saas].

60. The opponent has cover for mobile application software. Application software has a wide variety of different uses and purposes. The law requires that goods/services be considered identical where one party's description of its goods/services encompasses the specific goods/services covered by the other party's description (and vice versa).²² On this basis, the following terms in the first application are identical to the opponent's goods as they could all be mobile application software:

Software; Software applications; Computer software; Workflow software; Dashboard software; Communication software; Collaborative software; Mobile software; Business software; Conference software; Email software; Reporting software; Project management software; Internet messaging software.

61. Industrial software; Conference software and Data management software do not strike me as being the sort of software which would be found in mobile application form. That said, they are similar to a low to medium degree to mobile application software. Although the purposes might be different, they are of the same nature (software) and may be offered through shared trade channels.

62. Embedded software; Computer application software; Integrated software packages do not seem to be the same as mobile software applications, hence I have not found them to be identical. However, they are still software and they are likely to share users and trade channels. There could be functional similarity, and they could be used for the same purpose. There could also be an element of competition between the use of mobile application software and computer application software, in particular, such as a desktop version of an app. I find they are similar to a medium to high degree to mobile application software.

63. Software as a service [SaaS] is highly similar to mobile application software because it entails subscription-based access to software, including mobile application software. The nature may differ, but there will be the same trade channels, users and access to the service will be via an app, making them complementary in the sense

²² *Gérard Meric v OHIM*, Case T-33/05, General Court of the European Union.

described in *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*:²³

“82 ... there is a close connection between [the goods], in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking...”.²⁴

64. I will also make a finding about the similarity between the opponent’s mobile telephones and the contested goods because I also found an enhanced degree of distinctiveness for the opponent’s mobile phones. The degree of similarity is also relevant to the considerations under section 5(3) of the Act, which I will address later in this decision. For those goods which I found to be identical, for computer application software and for software as a service [Saas], there is a medium degree of similarity because mobile phone manufacturers frequently are responsible for mobile phone software applications. There is a medium degree of similarity in relation to embedded software because this may be complementary to mobile phones which contain embedded operating system software. There is a low degree of similarity in relation to integrated software packages.

The average consumer and the purchasing process

65. As the caselaw cited above in paragraph 39 indicates, it is necessary to decide who the average consumer is for the parties’ goods and services and how they purchase them. “Average consumer” in the context of trade mark law means the “typical consumer.”²⁵ The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer’s level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*.

²³ Case T-325/06, the General Court of the European Union.

²⁴ In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is capable of being the sole basis for the existence of similarity between goods and services.

²⁵ *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).

66. Software is used by the general public but also for example by businesses, governments, the military, aerospace and research establishments. The level of attention during purchase will vary depending on what the software is for. At the lowest level of attention, for mobile phone applications, the level of attention is medium. For software as a service, embedded software and integrated software packages, it will be higher. Mobile phones are ubiquitous and are often the subject of upgrades every few years (or more frequently) by their users. They can be relatively expensive items and will entail a reasonable amount of attention during purchase to ensure they have sufficient speed, data storage capacity, a good camera and other functionality. The purchasing process for all of the goods and services will be primarily visual, particularly for mobile application software and for mobile phones. For more important and more expensive software, and some software as a service (depending on its purpose), there may be more of an aural element to the purchase as a result of discussions as to suitability, longevity and security for the purchaser.

Likelihood of confusion

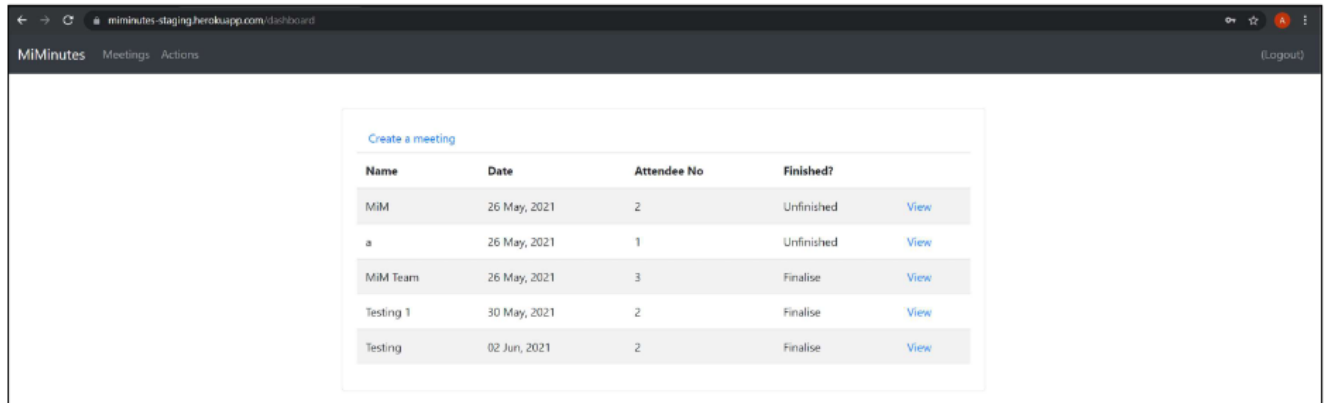
67. Deciding whether there is a likelihood of confusion is not scientific; it is a matter of considering all the factors, weighing them and looking at their combined effect, in accordance with the authorities set out earlier in this decision. One of those principles states that a lesser degree of similarity between goods and services may be offset by a greater degree of similarity between the trade marks, and vice versa. In this case, there are some identical goods and a range of similarity between goods and services, from high to low.

68. As set out earlier in this decision, Mr Ratcliffe makes the following statement in his counterstatements:

“MiMinutes” is an online platform to record minutes of meetings.”

69. The following screenshot is attached to the counterstatements:

As you can see below, the MiMinutes trademark is associated with the recording and production of meeting minutes:



70. Mr Ratcliffe also states:

“If the Applicant’s trade mark was XiaomiMinutes the grounds for objection would be understandable, but the use of Mi in this instance (as the pro-noun preceding Minutes – MiMinutes) is difficult to associate with, for example, the “Xiaomi Mi 11 Mobile Telephone””; and

““Mi” trademark is used in isolation accompanied by additional product information, whereas the Mi in “MiMinutes” is always followed by the word Minutes.”

71. Mr Ratcliffe signed the counterstatements which contain a statement of truth. This means that his statements and the attachment have evidential weight and can be taken to be an example of paradigm use of his trade mark. Paradigm use in trade mark law was explained by Mr Justice Neuberger (as he then was) in the following way:²⁶

“In my judgment, in the absence of argument or evidence to the contrary, the way in which the proprietor actually uses the mark can be said, at the very least *prima facie*, to be the paradigm case of its use in a normal and fair manner.”

72. The Court of Appeal stated in *Open Country Trade Mark*:²⁷

²⁶ *Premier Brands UK Ltd v Typhoon Europe Ltd* [2000] FSR 767 at page 779.

²⁷ [2000] RPC 477 at page 482.

“... no court would be astute to believe that the way that an applicant has used his trade mark was not a normal and fair way to use it, unless the applicant submitted that it was not. It does not follow that the way that the applicant has used his trade mark is the only normal and fair manner. However in many cases actual use by an applicant can be used to make the comparison.”

73. *Kerly's Law of Trade Marks and Trade Names* 16th Edition says at paragraph 11-088:

“If in fact it is known what use an applicant intends to make of their mark, then consideration of that use cannot be excluded.”

74. This shows that the way in which an applicant intends to use the mark, even if no use has actually taken place, is relevant. Earlier in this decision, I explained that the comparison of goods and services must be approached on a notional basis; that is, all the goods and services in the parties' specifications. All the goods and services which had been applied for in the opposed applications were considered, and the terms in the opposed specifications cover Mr Ratcliffe's proposed use as an online platform for recording the minutes of meetings, as well as other types of software. This is notional and fair use, which is also a consideration regarding the marks themselves. Notional and fair use of the parties' plain word marks takes into account how the marks could reasonably, or fairly, be used. I have already found that Mi is notional and fair use of MI, for example. Where an applicant shows how the mark will be, or is, in fact used, this is notional and fair use of a paradigm type, unless that use is, for example, highly stylised (of a kind not applied for).

75. Mr Ratcliffe's intention is for his mark to be used as MiMinutes. This intended use follows a similar pattern to the way in which he states the opponent uses its mark: “Mi” followed by a elements which are non-distinctive or descriptive of the goods. Minutes is descriptive of software for use in relation to meeting minutes. The Mi element will be seen separately to minutes, so that the perception is of the trade mark Mi followed by a word which is the ‘product information’ about the goods and services. There is a likelihood of confusion on this basis. However, even without the example of paradigm

use, there is a likelihood of confusion for all the opposed goods and services, as I shall now explain.

76. Direct confusion occurs where marks are mistaken for one another, flowing from the principle 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 which has been retained in the mind. The goods and services in my primary comparison (between the contested goods and services and the earlier mobile application software) were all identical or similar to a low to medium degree. The earlier mark has an uplifted level of distinctive character to a medium degree and the average consumer's level of attention, at its lowest, is medium. The first two letters of miminutes are identical to the earlier mark, and the remainder of miminutes is the word minutes, which is descriptive of goods and services relating to meeting minutes. If the average consumer overlooks minutes because it is simply descriptive, focussing on MI/mi/Mi, the marks will be mis-recalled and confused for one another.

77. What is also likely is that the marks will be indirectly confused. Indirect confusion was explained by Mr Iain Purvis QC, sitting as the Appointed Person, in *Back Beat Inc v L.A. Sugar (UK) Limited*, 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.).

(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).”

78. That the three categories in that case are non-exhaustive was confirmed by the Court of Appeal in *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others*.²⁸ Whilst the categories described in *LA Sugar* are non-exhaustive, in fact, I consider that category (b) is relevant to the present case. The point of similarity between the marks, MI/mi/Mi, is positioned at the start of the opposed mark and is followed by a descriptive word, minutes. As said earlier, notional use of MI includes lower case and upper case format. If different casing is used it is unlikely to be recalled and will not be enough to point away from a conclusion that the undertakings using the marks are the same or economically related in some way. Even if it is recalled, the assumption will be that the parties’ marks are brand variants, brand updates or, particularly, indicate expansions to what goods and services are offered.

²⁸ [2021] EWCA Civ 1207

79. Mr Ratcliffe's evidence that the opponent no longer uses Mi/MI is not relevant because it is still an earlier registered trade mark under section 6 of the Act. The use made of it at the dates on which the contested applications were filed is what must be considered, where relevant to do so (such as for proof of use and for reputation). I have already addressed the points made in the counterstatements, repeated in Mr Ratcliffe's evidence, regarding co-branding with XIAOMI in my proof of use assessment and my analysis of the evidence in relation to enhanced distinctive character through use.

80. I find that the section 5(2)(b) ground of opposition succeeds in relation to all the goods and services in the contested applications on the basis of earlier mark (iii). The opponent's strongest case is based upon its mobile software applications; however there is also a likelihood of confusion in relation to its mobile phones, for which it has an enhanced degree of distinctive character, despite the lesser similarity between mobile phones and the contested goods and services. Earlier mark (iii) is the closest of the earlier marks in terms of the marks and the goods and services. Turning briefly to the other two earlier marks, I also find a likelihood of confusion in relation to earlier mark (i). Although this is a stylised version of Mi, it is hardly stylised and is in a normal font or typeface. This mark is not subject to proof of use and covers *mobile software applications* and *computer software platform*. I find that the remainder of the analysis I have made above also applies to this mark. Even if the evidence of enhanced distinctiveness does not extend to this registered form (although I consider that it does), *Computer software platform* is identical to the contested class 9 goods which I found to be only similar rather than identical for earlier mark (iii). This increased degree of similarity between the goods and the services, even if the distinctiveness of the mark is lower, is sufficient to find a likelihood of confusion. It is unnecessary to make a finding in relation to mark (ii), but I observe here that it is highly stylised and it is far from certain that it would be seen as the letters MI without some other indicia to educate consumers to that view. Other indicia is not relevant in the comparison because I can only consider what is in the mark as registered.

Section 5(2)(b) outcome

81. The section 5(2)(b) ground of opposition succeeds.

Section 5(3) of the Act

82. Section 5(3) states:

“(3) A trade mark which-

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 and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark”.

(3A) Subsection (3) applies irrespective of whether the goods and services for which the trade mark is to be registered are identical with, similar to or not similar to those for which the earlier trade mark is protected.”

83. 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 C-383/12 P, *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) the more immediately and strongly the earlier mark is brought to mind by the later mark, the greater the likelihood that use of the latter will take unfair advantage of, or will be detrimental to, the distinctive character or the repute of the earlier mark; *L'Oreal v Bellure NV*, paragraph 44.

(g) 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.

(h) 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.

(i) 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. The stronger the reputation of the earlier mark, the easier it will be to prove that detriment has been caused to it; *L'Oreal v Bellure NV*, paragraph 44.

(j) 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*).

84. For a successful claim under section 5(3), cumulative conditions must be satisfied by the opponent: similarity between the marks; a qualifying reputation in the earlier mark(s); a link between the marks (the earlier mark(s) will be brought to mind on seeing the later mark); and one (or more) of the claimed types of damage. It is not necessary 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 relevant public will make a link between the marks.

85. Approaching the matter from an assessment against earlier mark (iii), the first condition of similarity between the marks is satisfied, as found earlier in this decision.

86. The next condition is reputation. Reliance upon this ground requires evidence of a reputation amongst a significant part of the relevant public, as stated in *General Motors*:

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

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

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

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation 'in the Member State'. In the absence of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation 'throughout' the territory of the Member State. It is sufficient for it to exist in a substantial part of it."

87. As the earlier trade mark is a comparable mark, paragraph 10 of Part 1, Schedule 2A of the Act is relevant. It reads:

"10.— (1) Sections 5 and 10 apply in relation to a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the reputation of a comparable trade mark (EU) falls to be considered in respect of any time before IP completion day, references in sections 5(3) and 10(3) to—

(a) the reputation of the mark are to be treated as references to the reputation of the corresponding EUTM; and

(b) the United Kingdom include the European Union".

88. This means that the high rankings of the opponent's mobile phone sales in Spain, France and Italy can be taken into account. I find that the opponent had a significant qualifying reputation in mobile phones at the relevant dates. According to the

popularity/download figures for its mobile apps in the UK, it also had a qualifying reputation for these goods. For these, the evidence shows a modest reputation. Although the opponent can rely upon use in the EU for a qualifying reputation, it will be difficult to establish a link between the parties' marks without there also being a sufficient degree of knowledge of the earlier mark amongst the UK relevant public. I find, as I did earlier in relation to enhanced distinctive character, that the opponent had a reputation in relation to mobile phones and mobile application software amongst the UK relevant public at the relevant dates.²⁹

89. Given my findings that there is a likelihood of confusion in relation to the contested goods and services when compared with mobile phones and mobile application software, it follows that there is a link between the marks in the minds of the relevant public. One of the claims made by the opponent is that the relevant public will believe that Mr Ratcliffe's goods and services come from the opponent or an undertaking linked to the opponent, leading to unfair advantage. The likelihood of confusion means that unfair advantage will be automatic because sales will be achieved under the contested mark as a result of the confusion with the earlier mark. In the event that I am wrong about there being a likelihood of confusion, there is no basis in the evidence for any other kind of unfair advantage. This is because the evidence does not reveal any particular image which may be transferred, causing the consumers of the contested mark to be more likely to buy the goods and services as a result of e.g. prestige, 'brand coolness', innovation or value for money. The evidence does not show, or show sufficiently, an image or brand message attaching to the earlier mark.

90. There is no detriment to the repute of the earlier mark on the pleaded basis that the goods and services of the contested mark could be of a poorer quality than those of the opponent. Although this is a legitimate type of damage where misrepresentation is established under the law of passing off, speculation about poor quality goods and services harming the earlier mark, when there is no evidence that the later mark has been used, is not a basis for a claim to detriment to repute under section 5(3).³⁰

²⁹ Reputation is a knowledge threshold, as set out in *Burgerista Operations GmbH v Burgista Bros Limited* [2018] EWHC 35 (IPEC) at paragraph 69.

³⁰ *Champagne Louis Roederer v J Garcia Carrion S.A. & Others* [2015] EWHC 2760 (Ch) and *Unite The Union v The Unite Group Plc*, Case BL O/219/13, Ms Anna Carboni, sitting as the Appointed Person.

91. As set out in *Intel*, detriment to the distinctive character of an 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 because the earlier mark no longer arouses immediate association with the opponent's goods or services (*L'Oreal v Bellure NV*, paragraph 39). Any finding in favour of the opponent must not be the result of mere suppositions. Whilst the opponent does not have to provide evidence of actual detriment, there must be a serious risk of such detriment arising from logical deduction. In *Environmental Manufacturing LLP v OHIM*, the CJEU's requirement for evidence of a change in the economic behaviour of consumers in dilution cases was predicated on there being no likelihood of confusion. Although I have found a likelihood of confusion, I consider that the opponent uses its MI/Mi mark with various descriptors without diminishing its distinctive character. Therefore, I see no reason to conclude that a mistaken belief (i.e. confusion) that the opponent uses the contested mark would make MI any less distinctive of the opponent.

92. However, if I am wrong about there being a likelihood of confusion, then I find that there is detriment to the distinctive character of the earlier mark. In *Citibank N.A. and anor v Huntsworth plc*, the Registrar's hearing officer, Mr Allan James, observed (in a case about financial services, footnote omitted):³¹

"159. Use of a mark that causes consumers to wonder whether the provider of the services in question might be economically connected to an undertaking that is well known to provide financial services under a similar mark appears to me to present a likelihood of dilution. This is not the same as a likelihood of confusion because being caused to wonder whether there might be an economic connection does not mean that consumers will positively believe that there is such a connection. Whether or not consumers later realise that there is no connection between the users of the marks, the initial doubt means that the senior mark's continued ability to create an immediate association with services from a specific commercial origin is likely to be loosened and weakened. Over a period of time such uses are likely to erode the distinctive character of the

³¹ BL O/066/13.

senior mark. That is likely to affect the functions of the senior mark, including the origin and advertising functions, which enable it to attract and retain customers. This is seriously likely to result in an eventual change in the economic behaviour of the opponents' customers and potential customers, i.e. with less distinctive brands the opponents' financial services will stand out less from the crowd and consumers will therefore be less likely to select those financial services compared to those of the opponents' competitors".

93. I find that the opponent's customers will wonder if there might be an economic connection between the parties' marks. This will create at least an initial doubt, weakening the hitherto immediate association of the earlier mark with the opponents' goods and services. Such a weakening will lead to the opponent's mark standing out less from its competitors, and its customers will be less likely to choose the opponent's goods and services than those of its competitors.

Section 5(3) outcome

94. The section 5(3) ground of opposition succeeds.

Section 5(4)(a)

95. Section 5(4)(a) states:

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

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

(aa) [...]

(b) [...]

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

96. Subsection (4A) of Section 5 states:

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

97. The three elements which the opponent must show are well known. In *Discount Outlet v Feel Good UK* [2017] EWHC 1400 (IPEC), Her Honour Judge Melissa Clarke, sitting as a Deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

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

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

98. The concept of goodwill was explained in *Inland Revenue Commissioners v Muller & Co’s Margarine Ltd* [1901] AC 217 at 223:

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing

which distinguishes an old-established business from a new business at its first start.”

99. As this is a case where the contested mark is unused, it is the dates when the contested applications were made which are the relevant dates for the purposes of section 5(4)(a) of the Act.³² The opponent must show that it had sufficient goodwill at those dates to bring the claim. I find that it has shown evidence of a goodwill in relation to a business selling mobile phones and mobile application software in the UK. The sign MI is distinctive of that goodwill.

100. Although the average consumer test is not strictly the same as the ‘substantial number’ test, in the light of the Court of Appeal’s judgment in *Comic Enterprises Ltd v Twentieth Century Fox Film Corporation* [2016] EWCA Civ 41, it seems doubtful whether the difference between the legal tests will (all other factors being equal) produce different outcomes. This is because they are both normative tests intended to exclude the particularly careless or careful, rather than quantitative assessments. In *Neutrogena Corporation and Another v Golden Limited and Another* [1996] RPC 473, Morritt LJ stated that:

“There is no dispute as to what the correct legal principle is. As stated by Lord Oliver of Aylmerton in *Reckitt & Colman Products Ltd. v. Borden Inc.* [1990] R.P.C. 341 at page 407 the question on the issue of deception or confusion is “is it, on a balance of probabilities, likely that, if the appellants are not restrained as they have been, a substantial number of members of the public will be misled into purchasing the defendants’ [product] in the belief that it is the respondents’ [product]”.

101. As for the outcome under section 5(2)(b), I find that a substantial number of the opponent’s actual and potential customers would believe that the opponent had expanded its business to other types of software and software as a service. This is misrepresentation.

³² 12 February 2021 and 1 March 2021. *Advanced Perimeter Systems Limited v Multisys Computers Limited* [2012] R.P.C. 14, Mr Daniel Alexander KC, sitting as the Appointed Person.

102. In *Ewing v Buttercup Margarine Company, Limited*, [1917] 2 Ch. 1 (COA), Warrington L.J. stated that:

“To induce the belief that my business is a branch of another man's business may do that other man damage in various ways. The quality of goods I sell, the kind of business I do, the credit or otherwise which I enjoy are all things which may injure the other man who is assumed wrongly to be associated with me.”

103. In *W.S. Foster & Son Limited v. Brooks Brothers UK Limited*, Mr Iain Purvis QC, sitting as a deputy judge of the Patents County Court observed:³³

“Although proof of damage is an essential requirement of passing off cases, it will generally be presumed where a misrepresentation leading to a likelihood of deception has been established, since such deception will be likely to lead to loss of sales and/or more general damage to the exclusivity of the Claimant's unregistered mark.”

104. The facts which I have considered above lead me to conclude that use of the applications would lead to damage, such as diversion of trade and/or injurious association. I find that the opponent was entitled to restrain the use of the contested applications under the law of passing off, at the relevant dates. This means that the oppositions succeed under section 5(4)(a) of the Act.

Overall outcome

105. The oppositions are successful under sections 5(2)(b), 5(3) and 5(4)(a) of the Act. The applications are refused.

³³ [2013] EWPC 18.

Costs

106. The opponent has been successful and is entitled to a contribution towards its costs. Awards of costs are made on the basis of the scale set out in Tribunal Practice Notice 2/2016, and the opponent indicated that it was content for an award of costs to be on the scale. Taking into account the economies of consolidation and the repetitious nature of the pleadings, I award costs to the opponent as follows:

Official fee for filing the oppositions x 2	£400
Preparing and filing the notices of opposition and considering the counterstatements x 2	£400
Filing evidence and considering Mr Ratcliffe's evidence	£700
Preparation for and attendance at the hearing	£700
Total	£2200

107. I order Andrew Ratcliffe to pay to Xiaomi Inc. the sum of **£2200**. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 31st day of May 2023

Judi Pike
For the Registrar

Annex

Earlier mark (i) IR 1462437

Class 9: Notebook computers; pedometers; apparatus to check franking; cash registers; mechanisms for coin-operated apparatus; dictating machines; holograms; hemline markers; voting machines; lottery machines; face recognition equipment; photocopying machines; bathroom scales; dressmakers' measures; flashing lights [luminous signals]; smartphones; dashboard camera; cameras [photography]; measuring instruments; air analysis apparatus; speed checking apparatus for vehicles; connected bracelets [measuring instruments]; audiovisual teaching apparatus; inductors [electricity]; simulators for the steering and control of vehicles; mirrors [optics]; materials for electricity mains [wires, cables]; wafers for integrated circuits; chips [integrated circuits]; rheostats; electrical adapters; video screens; electronic key fobs being remote control apparatus; optical fibers [fibres] [light conducting filaments]; electric installations for the remote control of industrial operations; 3D spectacles; mobile power (rechargeable battery); transparencies [photography]; lightning conductors [rods]; ionization apparatus not for the treatment of air or water; fire extinguishing apparatus; radiology screens for industrial purposes; respirators for filtering air; alarms; portable remote control car stop; mobile software applications, downloadable; humanoid robots with artificial intelligence; tablet computers; interactive touch screen terminals; smart watches (data processing); smart glasses (data processing); computer peripheral devices; protective films adapted for smartphones; egg-candlers; dog whistles; decorative magnets; electrified fences; cases for smartphones; wearable activity trackers; virtual reality headsets; camcorders; electronic collars to train animals; sports whistle; headphones; cabinets for loudspeakers; biochips; sockets, plugs and other contacts [electric connections]; protective masks; wearable computer; computer software platform, recorded or downloadable; earphones; remote control apparatus; amplifiers; electronically encoded identity wristbands; thin client computers; electronic pocket translators; computer screen saver software, recorded or downloadable; downloadable graphics for mobile phones; personal digital assistants [PDAs]; telecommunication apparatus in the form of jewellery; selfie sticks for cellphones; satellite finder meters; television apparatus; selfie lenses; teaching robots; electric wire harnesses for automobiles; anti-dazzle shades; batteries, electric; security surveillance robots; encoded identification

bracelets, magnetic; wireless router; flash-bulbs [photography]; selfie sticks [hand-held monopods]; LCD projectors; video projectors; on-board tape players; portable media players; sensors; switches, electric; radios; charging device for motor vehicles; wrist-worn smart phone; car phone brackets; GPS receiver; computer keyboards; wireless mouse for computer; sunglasses; biologic fingerprint lock; rechargeable battery; chargers for electric batteries.

Class 11: Lamps; lights for vehicles; germicidal lamps for purifying air; curling lamps; acetylene flares; cooking apparatus and installations; lava rocks for use in barbecue grills; refrigerators; air purifying apparatus and machines; hair driers [dryers]; water heaters; stage fog machine; heating installations; watering installations, automatic; solar heaters for baths; filters for drinking water; radiators, electric; lighters; polymerisation installations; air cleaner; household air cleaner; portable electric fans; fans [air-conditioning]; household electric fans; LED lamps; air conditioners; air filters for air conditioning; portable headlight; household electric water purifier; water filtering apparatus; reading lamps; desk lamps; electric cooker; coffee percolators, electric; kettles, electric; household faucet filters; water purifying apparatus; household humidifier; coffee machines, electric; multicookers; ceiling lights; bathroom warmers; household electric kettle; bread toasters; microwave ovens [cooking apparatus].

Class 35: Presentation of goods on communication media, for retail purposes; commercial intermediation services; provision of an on-line marketplace for buyers and sellers of goods and services; personnel management consultancy; relocation services for businesses; compilation of information into computer databases; accounting; rental of vending machines; sponsorship search; rental of sales stands; retail services for pharmaceutical, veterinary and sanitary preparations and medical supplies; wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; promoting goods and services via sports events sponsorship; displaying goods and services via electronic means for teleshopping and online shopping; provision of space on websites for advertising goods and services; promoting serial movies for others; conducting market research by using computer data base; negotiation and conclusion of commercial transactions for third parties; providing business information services via internet; market information services; arranging and organizing market promotions for others; automobiles auctioneering;

targeted marketing; marketing in the framework of software publishing; import-export agency services.

Earlier mark (ii) 917601667

Class 9: Notebook computers; pedometers; apparatus to check franking; cash registers; ticket dispensers; dictating machines; holograms; hemline markers; voting machines; Lottery Machine; Electronic recognition apparatus for animals; face recognition apparatus; punched card machines for offices; dressmakers' measures; electronic notice boards; mobile telephones; electronic book readers; projection screens; measuring instruments; air analysis apparatus; speed checking apparatus for vehicles; connected bracelets [measuring instruments]; audiovisual teaching apparatus; inductors [electricity]; simulators for the steering and control of vehicles; mirrors [optics]; materials for electricity mains [wires, cables]; galena crystals [detectors]; printed circuit boards; variometers; electrical adapters; video screens; remote control apparatus; optical fibers [light conducting filaments]; heat regulating apparatus; lightning conductors [rods]; electrolyzers; fire extinguishing apparatus; radiological apparatus for industrial purposes; protective helmets; theft prevention installations, electric; spectacles; mobile power pack (built-in battery); animated cartoons; portable remote car arrester; Downloadable software in the nature of a mobile application; humanoid robots with artificial intelligence; tablet computers; interactive touch screen terminals; smartwatch (data-processing); smart glasses (data-processing); computer peripheral devices; protective films adapted for smartphones; cases for smartphones; wearable activity trackers; virtual reality headsets; camcorders; headphones; cabinets for loudspeakers; biochips; sockets, plugs and other contacts [electric connections]; protective masks; batteries, electric; chargers for electric batteries; scales with body mass analysers; decorative magnets; electrified fences; electronic collars to train animals; stickers on refrigerator, magnetic; encoded identification bracelets, magnetic; Routers; television apparatus; drive recorder; cameras [photography]; selfie sticks [hand-held monopods]; 3D spectacles; Smart card readers; LED screens; scales; plugs; speakers; Cases for mobile phones; in-ear earphones; screens for mobile telephones and television apparatus; wireless communication devices; VR glasses; Intelligent wearable apparatus; smartphones; adapters; power banks; humanoid robots with artificial intelligence, in particular for babies purpose, and controlled by electronic devices; tablet computers used for

children education; two way radios; remote control apparatus for intelligent household appliances; remote controls; amplifiers for signal; charging equipments for vehicle; testing and quality control devices, namely for testing quality of air indoors.

Class 35: Presentation of goods on communication media, for retail purposes; commercial intermediation services; provision of an on-line marketplace for buyers and sellers of goods and services; personnel recruitment; relocation services for businesses; systemization of information into computer databases; book-keeping; rental of vending machines; sponsorship search; retail or wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; rental of sales stands; data search in computer files for others; marketing; arrangement and organization of market promotion for others; television advertising; advertising; negotiation and conclusion of commercial transactions for third parties; providing business information via a web site; Provision of space on websites for advertising goods and services.

Class 42: technical research; quality testing; surveying; chemical research; biological research; meteorological information; material testing; industrial design; design of interior décor; dress designing; electronic data storage; conversion of data or documents from physical to electronic media; updating of computer software; computer programming; providing search engines for the internet; cloud computing; providing information on computer technology and programming via a web site; software as a service [SaaS]; computer software design; off-site data backup; authenticating works of art; handwriting analysis [graphology]; cloud seeding; art design for graphic; weighing goods for other person; cartography services.

Earlier mark (iii) 909822751

Class 9: Teaching apparatus and instruments; computer programs and computer software; electronic publications provided on-line from a computer database or from a global computer network; audio and video recordings; magnetic data media; optical data media; tapes, discs and laser discs, CDs, CD ROMs, DVDs, audio cassettes; apparatus for recording, transmitting and/or reproducing sound and/or video images; electronic diaries; personal organisers; parts and fittings for all the aforesaid goods.

Class 16: Printed matter, printed publications, periodicals, books, text books, diaries, agendas, calendars, notebooks, manuals, handbooks, booklets, leaflets, pamphlets, brochures, newsletters, posters, stationery, instructional and teaching material, printed forms, examination papers, study texts, cards; printed forms, certificates; technical drawings, pop up stands.

Class 35: Exhibition services; arranging, organising, promoting, conducting and management of fairs, exhibitions, stands, displays, trade shows, conventions and product launches including the commissioning and decommissioning of exhibition stands, floor and wall coverings, all for use in relation to exhibitions; marketing services; business project management; management relating to exhibitions; advertising, placing of advertisements; direct mail advertising services; marketing and promotional services relating to exhibitions, all provided by direct communications, telephone, fax and/or e-mail; on-line ordering services; promotion of tickets; business services, all relating to the administering and conducting of registrations, providing registration systems, providing registration equipment, administering, managing, co-ordinating and conducting of registrations, all in relation to exhibitions, shows and/or conferences; provision of information relating to the fields of marketing, management, and business; procurement of tickets for exhibitions, shows and conferences.

Class 41: Education, training, teaching, tuition and instruction in the fields of marketing, finance, management, and business; education, training, teaching, tuition and instruction in the fields of marketing, finance, management and business provided on-line from a computer database or from a global computer network; arranging, organising and conducting lectures, meetings, conferences, exhibitions, workshops, tutorials and seminars; provision of educational, training, teaching, tuition and instruction facilities relating to marketing, finance, management and business; publishing; providing electronic publications on-line from a computer database or from a global computer network; production, distribution and rental of films, video recordings and audio recordings, television and radio programmes, instructional materials, teaching materials, printed publications and printed matter; examination services; issuing of certificates and qualifications; organising and arranging sports events, competitions, circuses, shows, concerts, exhibitions, seminars and informal

events; provision of audio-visual equipment for exhibitions including video packages, video walls, TV monitor type walls for video, sound packages, sound accessories, video reply facilities, system upgrades; booking, reservation, issuance of tickets for exhibitions, shows and conferences; arranging, organising, conducting and management of conferences, events and seminars; show management; provision of services related to the reservation and distribution of tickets for entertainment, exhibitions and conferences; provision of electrical items for exhibitions (material used in exhibitions, namely, projectors and presentation equipment); provision of lighting.

Class 42: Rental of computers, computer systems and networks, equipment for the display of computer data, all for use in exhibitions and training, teaching and tuition; graphic and design services for exhibitions and training, teaching and tuition; drafting and planning services.

Class 43: Provision of facilities for exhibitions, conferences, conventions, awards ceremonies, meetings, religious gatherings, trade and fashion shows, musical and sporting events; catering, restaurant, cafe and cafeteria services; accommodation, room and lodging services.