

O/0891/24

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 3757433
IN THE NAME OF MACRO-VIDEO TECHNOLOGIES CO., LTD
TO REGISTER THE FOLLOWING TRADE MARK:



xiaovv

IN CLASS 9

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 435422
BY XIAOMI INC.

Background and pleadings

1. On 21 February 2022, Macro-video Technologies Co., Ltd (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the UK, under number 3757433 (“the applicant’s mark”). Details of the application were published for opposition purposes on 6 May 2022. Registration is sought for the following goods:

Class 9: Camcorders; video recorders; electronic monitoring instruments, other than for medical use; baby monitors; computer programs, downloadable; downloadable mobile applications; monitors [computer programs]; facial recognition apparatus; radios; chips [integrated circuits]; theft prevention installations, electric.

2. On 5 August 2022, Xiaomi Inc. (“the opponent”) opposed the applicant’s mark under sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”).

3. For the purposes of its claims under sections 5(2)(b) and 5(3), the opponent relies upon the following trade marks:

i) **XIAOMI**

UK registration no. 3489301

Filing date: 13 May 2020

Registration date: 28 August 2020

(“the opponent’s first mark”)

ii) **xiaomi**

International registration designating the UK no. 1650229

UK designation date: 13 July 2021

Protection conferred date: 16 September 2022

(“the opponent’s second mark”)

4. The opponent's first mark is registered for goods and services in classes 9, 35 and 38, whereas its second mark is protected for a wide range of goods and services in 23 classes. These are set out in full in the annex to this decision.

5. The opponent's marks qualify as earlier trade marks in accordance with section 6 of the Act. As they had not completed their respective registration/protection processes five years or more before the filing date of the applicant's mark, they are not subject to the use provisions.

6. Under section 5(2)(b), the opponent relies upon all the class 9 goods of its marks and argues that these are identical or similar to the applied-for goods. Moreover, it contends that the competing marks are similar. On this basis, the opponent submits that there is a likelihood of confusion, including the likelihood of association.

7. Turning to section 5(3), the opponent claims that both of its marks enjoy a reputation in the UK in respect of all their goods and services. It submits that the reputation is such that use of the applicant's mark would, without due cause, take unfair advantage of, and/or be detrimental to, the repute and distinctive character of its marks. The opponent also contends that the relevant public would believe there is an economic connection between the users of the competing marks.

8. As for section 5(4)(a), the opponent claims that it has goodwill in relation to which it has used the sign **XIAOMI** throughout the UK since 2011. The goods for which the sign is said to have been used are shown below. The opponent claims that use of the applicant's mark would be contrary to the law of passing off.

Computer hardware; computer peripheral equipment; computer software; data processing equipment; computer memory devices; pedometers; smartphones; mobile phone accessories; global positioning system apparatus; sound recording devices; headphones; cameras; portable media players; video cameras; smart watches; electronic sensors; security cameras; vehicles; electric vehicles; electric scooters; self-balancing scooters; self-balancing boards; scooters [toys]; remote-controlled toy vehicles; drones [toys]; toy

vehicles; toys; retail services; repair and maintenance services for vehicles, electric vehicles, electric scooters and scooters.

9. The applicant filed a counterstatement, denying the grounds of opposition. Although the applicant concedes that the parties' class 9 goods are similar, it denies that the marks are similar and that there is a likelihood of confusion. Moreover, the applicant puts the opponent to proof of its reputation, denies that a link would be made between the competing marks and denies that damage would arise. Finally, the applicant puts the opponent to proof of its goodwill and denies that consumers would be deceived through use of the applicant's mark.

10. Both parties are professionally represented; the opponent by Abion UK Limited and the applicant by Springbird IP Limited. Only the opponent filed evidence. No hearing was requested and only the opponent filed written submissions in lieu of attendance.¹ This decision is taken following careful consideration of all the papers before me.

Relevance of EU law

11. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

Evidence and submissions

12. The opponent's evidence is given in the witness statement of Shen Chong and 29 exhibits (SC1-SC29). Mr Chong is the IP Director in the Legal Department of the opponent. He provides evidence about use of the opponent's marks.

¹ Although a hearing was originally listed because of a request from the opponent, this was vacated after it indicated that it no longer wished to attend. The applicant had already confirmed its intention not to attend the hearing.

13. The opponent also filed written submissions dated 11 January 2024.

14. I have taken the evidence and submissions into account in reaching my decision and will refer to them below where necessary.

Section 5(2)(b)

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

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

[...]

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

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

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

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

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed

and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

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

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

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

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

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

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

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

Comparison of goods

17. The relevant goods are outlined at paragraph 1 and in the annex to this decision. I will bear in mind the applicant's concession that the parties' goods are similar when making the comparison.

18. In addition to situations where goods are literally identical, the law requires that goods be considered identical where one party's description of its goods encompasses the specific goods covered by the other party's description (and vice versa).²

19. The applicant's *camcorders* and *theft prevention installations, electric* also appear in the specifications of the opponent's first and second marks. These goods are clearly identical.

20. It is my understanding that a camcorder is a type of video camera. Therefore, *camcorders* of the opponent's first and second marks are included within the applicant's broader term *video recorders*. These goods are to be regarded as identical.

21. Although the applicant's *electronic monitoring instruments, other than for medical use* and *electronic monitoring apparatus* of the opponent's second mark are worded slightly differently, they describe the same goods. They are identical. I also consider the applied-for goods to be identical to *wearable activity trackers* of the opponent's first mark. This is because wearable activity trackers are used to monitor an individual's activity, though not necessarily for medical purposes. The applicant's goods, therefore, encompass the opponent's goods.

² *Gérard Meric v OHIM*, Case T-133/05

22. The applicant's *baby monitors* fall within the scope of *video monitors* and *electronic monitoring apparatus* of the opponent's first and second mark, respectively. These goods are identical.

23. The applicant's *computer programs, downloadable* are plainly identical to the same term of the opponent's first mark. I also consider these goods to be identical (though expressed slightly differently) to *computer software applications, downloadable* and *computer programs, recorded* of the opponent's second mark.

24. *Downloadable mobile applications* describe the same goods as *application software for cellular phones, downloadable* and *mobile phone software applications, downloadable* of the opponent's first and second mark, respectively. These goods are identical.

25. The applicant's *monitors [computer programs]* are a type of computer program and are, therefore, included within *computer programs, recorded* of the opponent's first and second marks. These goods are identical.

26. *Facial recognition apparatus* in the applicant's specification and *facial recognition device* of the opponent's first mark are identical goods. This is because they either describe the same goods or fall within the scope of one another. The applied-for goods also fall within the remit of *theft prevention installations, electric* of the opponent's second mark, since facial or other biometric authentication may be used as part of anti-theft security systems. These goods are identical.

27. *Radios* in the applicant's specification and *radio sets* of the opponent's second mark describe the same goods. They are identical. The applied-for goods also fall within *apparatus for [...] transmission [...] of sound* of the opponent's first mark.

28. The applicant's *chips [integrated circuits]* and *electronic chips* of the opponent's first and second marks describe the same goods. They are identical.

Average consumer and the nature of the purchasing process

29. As the case law above indicates, I must determine who the average consumer is for the parties' goods and the manner in which they are likely to select those goods. The average consumer has been described in these terms:³

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

30. The average consumer of the goods at issue is likely to comprise members of the general public and business/professional users (particularly considering goods such as *chips [integrated circuits]* and *facial recognition apparatus*). The goods range from inexpensive, more frequent purchases, such as *downloadable mobile applications*, to more expensive, less frequent purchases, such as *facial recognition apparatus*. Whilst it follows that the average consumer's level of attention is likely to vary, overall, I find that a medium level of attentiveness will be paid during the purchasing process. This is because, even in relation to the inexpensive, more frequent purchases, the average consumer will consider factors such as cost, compatibility and content when selecting the goods. I accept that business users will be alive to the potentially negative consequences of making the wrong selection on their own business; therefore, they are likely to exhibit a slightly higher level of attention (but not the highest). The goods will be purchased from retail establishments, suppliers, and their online equivalents. It is my view that the purchasing process is likely to be predominantly visual, with the goods being purchased after viewing the products or information on shelves, websites, 'app stores' or in brochures. However, I do not discount aural considerations entirely

³ *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), paragraph 60

as the average consumer may receive word-of-mouth recommendations or discuss the products with sales assistants.

Distinctive character of the earlier marks

31. In *Lloyd Schuhfabrik Meyer*, the Court of Justice of the European Union stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *WindsurfingChiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

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

32. Registered trade marks possess varying degrees of inherent distinctive character. These range from the very low, such as those which are suggestive or allusive of the goods, to those with high inherent distinctive character, such as invented words. The degree of distinctiveness is an important factor as it directly relates to whether there is a likelihood of confusion; the more distinctive the earlier mark, the greater the

likelihood of confusion. The distinctive character of a mark may be enhanced as a result of it having been used in the market.

33. The opponent's first mark is in word-only format and comprises the word 'XIAOMI' with no other elements. The word has no obvious meaning. Rather, it appears to be an invented word. As such, it has a high level of inherent distinctive character.

34. The opponent's second mark consists of the word 'xiaomi' in a slightly stylised font. The distinctive character of the mark overwhelmingly lies in the word. As outlined above, this appears to be an invented word with no meaning. The font used is, ultimately, unremarkable and does not imbue the mark with any additional distinctive character. Overall, the opponent's second mark also has a high level of inherent distinctive character.

35. The opponent has filed evidence and I must now determine whether it has demonstrated that its marks had an enhanced distinctive character at the relevant date of 21 February 2022.

36. Xiaomi was formed in 2010.⁴ Mr Chong says that the opponent has used its first mark since 2010 and its second mark since 2021. The opponent is said to design and manufacture various consumer electronics and other goods, such as smartphones, computer software, smart watches, security cameras, clothing, and toys. These goods are said to be sold online and within carefully selected physical outlets in many countries including the UK.

37. The opponent has featured in BrandZ's Top 100 Most Valuable Global Brands; it was 74th in 2019, 81st in 2020, and 70th in 2021.⁵ It had a 6.3% share of the global smartphone market in 2017, an 8.7% share in 2018, and a 17.1% share as of June 2021.⁶ Globally, the opponent has made the following shipments of smartphones:⁷

⁴ Exhibit SC1

⁵ Exhibit SC2

⁶ Exhibit SC3

⁷ Exhibit SC4

Year	Shipments (millions)
2017	91.4
2018	118.7
2019	124.6
2020	146.4
2021	190.3
Total	671.4

38. The opponent also sells smart bands.⁸ In the second quarter of 2021, the company overtook Apple to become the top-shipping wearable band vendor.⁹ In the second quarter of 2020, it made 7.8million shipments and had a 20.1% share of the market.¹⁰ In the second quarter of 2021, it made 8million shipments and had a 19.6% share of the market.¹¹

39. As for the UK, the opponent had a 1.57% share of the smartphone market between July 2020 and January 2021, and a 2.25% share between July 2021 and July 2022.¹² In both time periods, its share was the fifth largest behind Apple, Samsung, Huawei and Motorola. Mr Chong says that its first 'XIAOMI' store was opened in the UK (in London) on 18 November 2018. Printouts from a YouTube video have been provided, which shows the store front, as well as goods such as smartphones, televisions, smart bands, phone chargers and computer mice within the store.¹³ The store was closed during the COVID-19 pandemic but reopened in July 2021.¹⁴ In 2019, 'XIAOMI' products were available in the UK through third parties such as Amazon, Three, Argos, John Lewis, Currys and Very.¹⁵

40. The opponent's global retail website, mi.com, was the 714th most popular website as of February 2021.¹⁶ It had 215.9million visits between December 2020 and

⁸ Which appears to be another name for a wearable fitness tracker/smartwatch.

⁹ Exhibit SC6

¹⁰ Exhibit SC6

¹¹ Exhibit SC6

¹² Exhibit SC5

¹³ Exhibit SC9

¹⁴ Exhibit SC10

¹⁵ Exhibit SC11

¹⁶ Exhibit SC7

February 2021 from internet users predominantly based in China, India, Taiwan, Russia and Spain.¹⁷ The UK accounted for 1.41% of the visits.¹⁸ By my calculations, this would equate to around 3million visits. The website was the 2,738th most popular website in the UK during this period.¹⁹ Printouts from the opponent's UK website, mi.com/uk, dated between 11 December 2018 and 16 March 2021, are in evidence.²⁰ Goods such as smartphones, power banks, smart bands, headphones and home security cameras are clearly visible. The branding is predominantly 'Mi' (as a plain word and in a stylised font). However, the words 'XIAOMI UK' can be seen at the top of the website. Moreover, the word 'XIAOMI' sometimes precedes product names (for example, XIAOMI MI MIX 3 and XIAOMI Band 3) and appears in the copyright notices.

41. Printouts have also been provided from the websites of third-party UK retailers, showing 'XIAOMI' products for sale.²¹ Although the product pages appear to be undated, customer reviews are included. There are reviews on Amazon UK from verified purchasers of 'XIAOMI' smartphones dated between 30 August 2018 and 6 August 2020, 'XIAOMI' smart bands dated between 13 October 2016 and 21 September 2020, and 'XIAOMI' wireless earphones dated between 16 July 2019 and 2 January 2021. I also note reviews on Carphone Warehouse for a 'XIAOMI' smartphone. These are undated but are labelled as being from "2 years ago"; assuming the printouts were obtained on the date of Mr Chong's statement, they would be from January 2021.

42. Mr Chong says that the opponent has released a number of software applications to UK consumers. From his narrative evidence and extracts from App Annie,²² an independent application analytics company, I note the following:

¹⁷ Exhibit SC7

¹⁸ Exhibit SC8

¹⁹ Exhibit SC8

²⁰ Exhibit SC12

²¹ Exhibit SC13

²² Exhibit SC14

Application name	Release date	Best performance in UK download charts²³
Mi Wi-Fi	24 April 2014	353 rd in 'productivity' (24 February 2015)
Mi Fit	5 December 2014	7 th in 'health & fitness' (27 December 2020)
Mi Home – Xiaomi smarthome	27 January 2015	7 th in 'lifestyle' (25 December 2020)
Mi Store	15 July 2015	69 th in 'shopping' (28 November 2019)
Mi Community – Xiaomi Forum	20 August 2016	76 th in 'social' (13 October 2018)
Mi Calculator	31 August 2017	180 th in 'tools' (4 September 2017)
Mi Browser Pro	26 February 2020	7 th in 'tools' (22 May 2020)
Mi File Manager	-	327 th (27 February 2018)

43. Mr Chong gives turnover figures as well as company annual reports in support.²⁴

From the sum of this narrative and documentary evidence, I note the following:

Year	Sales (RMB in millions)
2015	66,811.3
2016	68,434.2
2017	114,624.7
2018	174,915.4
2019	205,838.7
2020	245,865.6
2021	328,309.1
Total	1,204,799

²³ Google Play and iOS stores.

²⁴ Exhibit SC28

44. A significant proportion of these sales are said to have been made in the UK and EU. Mr Chong provides figures for sales outside of China and further annual reports in support.²⁵ From the sum of this narrative and documentary evidence, I note the following:

Year	Sales (RMB in millions)
2017	32,081
2018	69,970
2019	91,230
2020	122,381
2021	163,591
Total	447,172

45. These sales are said to have been predominantly made in Western Europe, India and Indonesia. The reports describe the figures as relating to the rest of the world (other than mainland China). There is nothing that would enable be to ascertain what proportion of the sales were specific to the UK; the figures have not been further broken down.

46. Mr Chong provides details of awards that the opponent has won. Only one of these is specific to the UK: USwitch 'Best Newcomer of the Year' at the Broadband & Mobile Awards 2019.²⁶ I also note that the opponent has won several design awards for its products.²⁷ However, there is no explanation as to whether any of these awards relate to activities in the UK or whether any of the awarding bodies are based in the UK. The documentary evidence is also unclear on this point. They appear to either relate to Asia/China or to the opponent's global activities.

47. According to Mr Chong, the opponent has hosted conferences to launch 'XIAOMI' products in the UK. Printouts from its YouTube channel have been provided which

²⁵ Exhibit SC29

²⁶ Exhibit SC19

²⁷ Exhibit SC20

show still images from a video of the launch of the Mi 8 Pro smartphone in London on 8 November 2018.²⁸

48. 'XIAOMI' has featured in the UK press. Printouts of articles from several outlets referencing the company and its products are in evidence.²⁹ I note, for example, that 'XIAOMI' appeared in *BBC News*, *The Sun* and *The Guardian* between 18 May 2015 and 27 January 2019. *ITProPortal* stated in an article dated 18 May 2015 that 'XIAOMI' products were being made available to UK consumers through mi.com the following day.

49. As for social media, I note that, as of 21 May 2019, the opponent's Instagram page had 1.5m followers. As of 21 March 2019, its Twitter page had 1.14million followers and its Facebook page had over 5.6million followers.³⁰ Further printouts are provided which show its Instagram page with 3.8million followers, its Twitter page with 2.8million followers, and its Facebook page with over 10.7million followers. Mr Chong says that these are from "the present day" (which I take to be the date of his statement). However, I note that all of this social media evidence is taken from the opponent's global accounts and no indication is given as to how many of the followers were based in the UK. Printouts from the opponent's YouTube page have also been provided, showing 1.17million subscribers, but this, too, appears to be a global account.³¹ Examples of video reviews from YouTube users have been provided,³² but there is no indication as to whether any are based in the UK. Further, the opponent has what Mr Chong describes as "fan clubs". Printouts from social media accounts and websites which appear to be dedicated to 'XIAOMI' products have been provided.³³ However, these are from Germany, Italy, Spain and Portugal, rather than the UK.

50. I note that the opponent was consistently in the top 100 most valuable brands between 2019 and 2021, and that it had significant shares of the smartphone and smart band markets the year before the relevant date. Moreover, the opponent made

²⁸ Exhibit SC21

²⁹ Exhibit SC22

³⁰ Exhibit SC23

³¹ Exhibit SC24

³² Exhibit SC25

³³ Exhibit SC26

around 670million shipments of smartphones in the five years preceding the relevant date. It also accrued a significant turnover between 2015 and 2021. Furthermore, the opponent won several design awards and had a significant following on social media prior to the relevant date, whilst its website attracted over 200million visits between December 2020 and February 2021. However, the relevant market for assessing enhanced distinctive character is the UK market. None of this evidence reflects the position in the UK and, therefore, it does not assist the opponent.

51. At the relevant date, the opponent had around a 2% share of the UK smartphone market.³⁴ A physical store was opened in London in 2018 and 'XIAOMI' products could be purchased through several UK retailers in 2019. The evidence shows that the opponent's website had around 3million visits from UK internet users between December 2020 and February 2021. A dedicated UK part of the website was in operation between December 2018 and March 2021. The opponent's products were reviewed by verified purchasers from the UK prior to the relevant date. The opponent released several software applications before the relevant date and some of these reached the top 10 for downloads in certain categories. The opponent won a UK-based award in 2019 and was referred to in several UK press articles before the relevant date. Nevertheless, the (slightly) more specific turnover figures that have been provided, showing sales of around 440,000million RMB, reflect the position in all territories other than China; they have not been broken down further, meaning that it is not possible to ascertain what the UK turnover was. It is also not broken down by the particular goods sold. As for the market share, the opponent has not provided any evidence or information about the size of the market as a whole. It is my impression that the smartphone market in the UK must be extremely large, given that a large majority of the UK population uses one. Whilst a 2% share of such a market is unlikely to be economically insignificant, it is my view that it still reflects a small proportion of the market as a whole. I also note that no information has been provided about advertising expenditure in relation to the UK market. There is no evidence of exposure on social media in the UK. The opponent has not given any indication as to how many goods were sold through its UK store, or through third party UK retailers, and the

³⁴ As outlined above, its share as of January 2021 was 1.57% and its share as of July 2022 was 2.25%. The latter figure is after the relevant date, meaning that the share may have been less in February of that year.

presence of one store in London is not indicative of geographically widespread use. Taking all of the evidence into account, I am not satisfied that the evidence establishes that the inherent distinctiveness of the opponent's marks had been enhanced through use at the relevant date. I should add that, even if it did, this would not be to such an extent that it would have any material effect on the outcome of these proceedings (the opponent's marks both being highly distinctive inherently).

Comparison of trade marks

52. It is clear from *Sabel* that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the 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 *Bimbo* 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.”

53. Therefore, it would be wrong to dissect the trade marks artificially, though it is necessary to take into account the distinctive and dominant components of the marks; due weight must be given to any other features which are not negligible and hence contribute to the overall impressions created by the marks.

54. The marks to be compared are as follows:

The opponent's marks	The applicant's mark
<p data-bbox="437 421 552 450">XIAOMI</p> <p data-bbox="292 528 695 600">xiaomi</p>	<p data-bbox="882 434 1318 533">xiaovv</p>

Overall impressions

55. The opponent's first mark is in word-only format and consists of the word 'XIAOMI' with no other elements. The overall impression of the mark lies in the word itself.

56. The opponent's second mark is figurative and comprises the word 'xiaomi' in a slightly stylised font. The overall impression is dominated by the word. The font plays a much lesser role, if any.

57. The applicant's mark is figurative and consists of the word 'xiaovv'. There may be some consumers who do not see the first letter as such and, instead, perceive it as a device. However, there will be at least a significant proportion of consumers who see it as a letter 'x', albeit highly stylised. I will focus on these consumers since it represents the opponent's best case. The overall impression of the mark is dominated by the word 'xiaovv'. The heavy stylisation of the letter 'x' also plays a significant role. The slightly stylised font used for the other letters plays a much lesser role, if any.

Visual comparison

58. The opponent's first mark and the applicant's mark are visually similar in that they are both six-letter words which share four letters in the same order, i.e. 'XIAO'/'xiao'. This similarity appears at the beginning of the competing marks, a position which tends

to have more impact.³⁵ The difference in letter case is not significant, since the registration of word-only marks provides protection for the words themselves, irrespective of whether they are presented in upper, lower or title case.³⁶ Moreover, given that it provides protection for use of the words in any font type,³⁷ I do not consider the difference created by the font used in most of the applicant's mark to be significant. However, the letter 'x' in the applicant's mark is heavily stylised and does constitute a material point of difference. In addition, the ends of the competing marks are different; the opponent's mark ends with the letters 'MI', whereas the applicant's ends in the letters 'vv'. Bearing in mind my assessment of the overall impressions, I find that there is a medium degree of visual similarity between the competing marks.

59. The opponent's second mark and the applicant's mark also coincide in the shared letters 'xiao' at their respective beginnings. The competing marks are visually different in the letters which follow; 'mi' in the opponent's mark and 'vv' in the applicant's mark. The competing marks also diverge in their use of different fonts. However, the only real point of significance in this is the presentation of the letter 'x'; the other letters in the marks are presented in basic fonts. Taking all of this into account, I find that there is a medium degree of visual similarity between the competing marks.

Aural comparison

60. The stylisation in the competing marks will not affect how the word is pronounced. Therefore, the comparison is between the words 'xiaomi' and 'xiaovv'. As UK consumers will be unfamiliar with both words, there is no standard way in which they will be pronounced. Although there may be a variety of ways consumers attempt this, to my mind, the most likely pronunciations of the opponent's marks and the applicant's mark will be "ZY-AH-OH-MI" and "ZY-AH-OV", respectively. The competing marks are aurally similar in that they coincide in their first two syllables. They differ in their respective endings. Overall, I find that there is a medium degree of aural similarity between the competing marks.

³⁵ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

³⁶ *Migros-Genossenschafts-Bund v EUIPO*, Case T-189/16

³⁷ *LA Superquímica, SA v EUIPO*, Case T-24/17

Conceptual comparison

61. None of the marks has an obvious or clear meaning. As such, the conceptual position is effectively neutral.

Likelihood of confusion

62. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. One such factor is the interdependency principle, i.e. a lesser degree of similarity between the competing marks may be offset by a greater degree of similarity between the respective goods, and vice versa. As mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's marks, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be mindful that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

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

64. Earlier in this decision, I concluded that:

- The parties' goods are identical;
- The average consumer may be a member of the general public or a business/professional user, the former demonstrating a medium level of attention and the latter a slightly higher level;

- The purchasing process is predominantly visual in nature, though aural considerations have not been excluded;
- The opponent's marks possess a high level of inherent distinctive character;
- The overall impression of the opponent's first mark lies in the word 'XIAOMI';
- The overall impression of the opponent's second mark is dominated by the word 'xiaomi', whilst the stylisation plays a much lesser role;
- The overall impression of the applicant's mark is dominated by the word 'xiaovv', whilst the heavily stylisation of the letter 'x' plays a significant role and the stylisation of the remaining letters plays a much lesser role;
- The competing marks are visually and aurally similar to a medium degree, whilst the conceptual position is neutral.

65. I acknowledge that the competing marks are both six letters long and that the first four of these are identical. I also accept that the marks do not convey different meanings (or any meanings, for that matter). Nevertheless, there are visual and aural differences between the marks which are not negligible. Although the beginnings of marks tend to have the most impact, this is not necessarily decisive.³⁸ The word elements of the competing marks end with different letters, and these letters contribute to the overall impressions thereof as part of the single words. As such, these letters are unlikely to be overlooked. Moreover, the applicant's mark begins with a heavily stylised letter 'x'; the heavy stylisation of this letter provides a significant contribution to the overall impression of the mark and is unlikely to be overlooked. This stylisation is markedly different from how the letter 'x' is presented in the opponent's second mark, and normal and fair use of the opponent's first mark would not allow for the letter 'x' to be presented in this way. Taking all of the above factors into account, it is my view that the differences between the competing marks are likely to be sufficient for the average consumer, paying at least a medium level of attention, to distinguish

³⁸ *CureVac GmbH v OHIM*, T-80/08

between them and avoid mistaking them for one another. Consequently, notwithstanding the principles of imperfect recollection and interdependency, I find that there is no likelihood of direct confusion, even in relation to identical goods.

66. That leaves indirect confusion to be considered. In *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, Mr Iain Purvis QC, sitting as the Appointed Person, explained that:

“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).”

67. These three categories are not exhaustive. Rather, they were intended to be illustrative of the general approach.³⁹ I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark.⁴⁰ It has also been emphasised that, where there is no direct confusion, there must be a proper basis for finding indirect confusion.⁴¹

68. Applying these principles, and taking into account all the above factors, I do not believe that the average consumer, having noticed the differences between the competing marks, will assume that the opponent and the applicant are economically linked undertakings. I am not convinced that the average consumer would assume a commercial association or licencing agreement between the parties, or sponsorship on the part of the opponent, merely because of the four shared letters. Although the opponent’s marks are highly distinctive, this lies in the totality of the word element.⁴² The average consumer would not dissect this distinctive word and separate the first four letters. The letters form part of different words in the competing marks. There is no sharing of an independent distinctive element which could give rise to indirect confusion. Moreover, the differences between the competing marks are not simple additions or removals of non-distinctive elements. Further, the differences are not consistent with any logical brand extensions with which the average consumer would be familiar. Although adopting a variant mark with heavier stylisation or a different font may be, I can see no reason why an undertaking would remove two letters from a highly distinctive invented word and add different letters, resulting in a different mark.

³⁹ As was confirmed by the Court of Appeal in *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207, paragraph 12.

⁴⁰ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

⁴¹ See the Court of Appeal’s comments in *Liverpool Gin Distillery*, paragraph 13.

⁴² The stylisation in the opponent’s second mark being immaterial to its distinctiveness.

Whilst acknowledging that the above categories are not exhaustive, I can see no basis for concluding that the average consumer, even paying no more than a medium level of attention, would assume an economic connection between the parties. Taking all of this into account, I find that there is no likelihood of indirect confusion, even for identical goods.

Conclusion

69. The opponent's claim under section 5(2)(b) is dismissed.

Section 5(3)

70. Section 5(3) of the Act 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”.

71. Section 5(3A) states:

“(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”.

72. 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'Oréal v Bellure*, Case C-323/09, *Marks and Spencer v Interflora* and Case C383/12P, *Environmental Manufacturing LLP v OHIM*. The law appears to be as follows:

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

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

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

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

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel, paragraph 68*; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel, paragraph 79*.

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

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

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

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

73. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that its marks are similar to the applicant's mark.⁴³ Secondly, the opponent must show that its marks have achieved a level of knowledge, or reputation, amongst a significant part of the public. Thirdly, the opponent must establish that the public will make a link between the marks, in the sense of its marks being brought to mind by the applicant's mark. Fourthly, assuming the foregoing conditions have been met, section 5(3) requires that one or more types of damage claimed by the opponent will occur. It is not necessary for the purposes of section 5(3) that the goods are similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

⁴³ Given my findings at paragraphs 58-60, this condition is clearly satisfied.

74. The relevant date for the assessment under this ground is the filing date of the applicant's mark, that being 21 February 2022.

Reputation

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

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

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

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

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

76. I have already assessed the opponent's evidence above. Although I do not doubt that the opponent was commercially active prior to the relevant date, for the same reasons given at paragraph 51, I am unable to conclude that the opponent's marks had qualifying reputations in the UK at the relevant date.

77. Even if that is not correct and a qualifying reputation ought to be found, I consider it unlikely that the opponent's marks would be brought to mind by the applicant's mark. This is on the basis of the same reasons given at paragraphs 65 and 68. If any link

was made, it is my view that this would be too fleeting to result in any damage arising. The evidence could, at best, support a finding of only a weak reputation. I say this because of the deficiencies in the opponent's evidence as well as a 2% share (whilst not insignificant) representing a small proportion of the smartphone market. In such circumstances, there would be no material change in economic behaviour, even in relation to identical goods.

Conclusion

78. The opponent's claim under section 5(3) is dismissed.

Section 5(4)(a)

79. 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.”

80. 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.”

81. 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).”

82. Halsbury’s Laws of England Vol. 97A (2021 reissue) provides further guidance with regard to establishing the likelihood of deception. In paragraph 636 it is noted (with footnotes omitted) that:

“Establishing a likelihood of deception generally requires the presence of two factual elements:

(1) that a name, mark or other distinctive indicium used by the claimant has acquired a reputation among a relevant class of persons; and

(2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other indicium which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as two successive hurdles which the claimant must surmount, consideration of these two aspects cannot be completely separated from each other.

The question whether deception is likely is one for the court, which will have regard to:

- (a) the nature and extent of the reputation relied upon,
- (b) the closeness or otherwise of the respective fields of activity in which the claimant and the defendant carry on business;
- (c) the similarity of the mark, name etc used by the defendant to that of the claimant;
- (d) the manner in which the defendant makes use of the name, mark etc complained of and collateral factors; and
- (e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.

In assessing whether deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action”.

83. As no evidence has been filed by the applicant to show that its mark has been used, the relevant date for the purposes of the opponent’s claim under section 5(4)(a) is the filing date of the applicant’s mark, namely 21 February 2022.⁴⁴

⁴⁴ *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O/410/11

Goodwill

84. The first hurdle for the opponent is to show that it had the necessary goodwill in the sign relied upon at the relevant date. Goodwill was described in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 (HOL), in the following terms:

“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.”

85. I have already found that the evidence provided by the opponent is insufficient to establish enhanced distinctive character or a reputation in a registered mark identical to the sign relied upon under this ground. Nevertheless, that does not preclude a finding of goodwill since a small business which has more than a trivial goodwill can protect signs which are distinctive of that business under the law of passing off even though its goodwill and reputation may be small.⁴⁵

86. Goodwill results from trading activities. I remind myself that, at the relevant date, the opponent had a share of around 2% of the smartphone market in the UK, the fifth largest in this territory; a physical ‘XIAOMI’ store had been opened in London and products had been available to purchase from a range of UK retailers; the opponent’s website had around 3million visits from UK consumers and it also operated a dedicated UK part of the website; ‘XIAOMI’ products had been reviewed by a number of verified UK purchasers; ‘XIAOMI’ software applications had been made available through the Google Play and iOS stores, with some of these featuring in the top 10 for downloads in particular categories; the opponent had won a UK-based award; and ‘XIAOMI’ had featured in several UK press articles. Whilst I have already outlined the shortcomings of the opponent’s evidence, I am satisfied that it is sufficient for

⁴⁵ See, for instance, *Lumos Skincare Limited v Sweet Squared Limited and others* [2013] EWCA Civ 590.

establishing that the opponent's business enjoyed a protectable level of goodwill at the relevant date. I am also satisfied that the 'XIAOMI' sign was distinctive of that goodwill. Nevertheless, given the issues with the evidence (not least the lack of UK-specific turnover figures), I can only conclude that the level of goodwill was low.

87. In deciding in which goods that goodwill existed, I remind myself of the following comments of Dr Brian Whitehead, sitting as the Appointed Person, in *Mercis B.V. v Bunnyjuice, Inc.*, BL O/0064/24:

“In trade mark law, the analysis of proof of use, reputation and enhanced distinctive character needs to be performed on a granular basis, looking at each of the individual goods and services in turn. [...] In passing off law, however, goodwill attaches to a business, rather than to isolated individual goods and services. Of course, when assessing goodwill, it is necessary to ask, “What is the nature of the business?”, but it is not appropriate to break the business down at the same level of granularity as is done for assessing trade mark use etc.”

88. In light of these comments, although one of the limitations of the opponent's evidence is that the turnover figures have not been broken down by reference to particular goods, that is not necessarily fatal to its case under this ground. I note that smartphones, smartphone accessories, smart bands, computer peripherals, software applications, scooters, headphones, power banks and home security cameras all feature in the documentary evidence relevant to the UK. On the balance of the evidence, I am prepared to accept that the opponent has demonstrated goodwill in its business of *smartphones, smart bands, headphones and software applications*. However, the evidence relating to the other goods is simply too limited to sustain a claim for passing off; they appear sporadically and infrequently in the evidence, and the images of them on the opponent's website and in YouTube videos are not supported by additional evidence as is the case with the other goods (such as, for example, market share information, customer reviews or press references).

Misrepresentation

89. 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]”

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

And later in the same judgment:

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

90. In *Marks and Spencer PLC v Interflora* [2012] EWCA (Civ) 1501, Lewison LJ cast doubt on whether the test for misrepresentation for passing off purposes came to the same thing as the test for a likelihood of confusion under trade mark law. He pointed out that it is sufficient for passing off purposes that “a substantial number” of the

relevant public are deceived, which might not mean that the average consumer is confused. However, considering the Court of Appeal's later 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.⁴⁶ This is because they are both normative tests intended to exclude the particularly careless or careful, rather than quantitative assessments.

91. I note that the goods for which the opponent has established goodwill are slightly different from the goods relied upon under the 5(2)(b) ground. However, the goods relied upon under section 5(2)(b) were all identical; the goods in which the opponent has goodwill are no more similar. Having found no likelihood of direct or indirect confusion based upon the opponent's best case, i.e. identical goods, I do not consider that a substantial number of members of the relevant public will be misled into purchasing the applicant's goods in the mistaken belief that they are the goods of the opponent. This is on the basis of the same reasons outlined at paragraphs 65 and 68, combined with the low level of goodwill.

Conclusion

92. The opponent's claim under section 5(4)(a) is dismissed.

Overall outcome

93. The opposition under sections 5(2)(b), 5(3) and 5(4)(a) of the Act has been unsuccessful. Subject to any appeal against this decision, the applicant's mark will proceed to registration in the UK.

⁴⁶ Although this was an infringement case, the principles are equally applicable to section 5(2) of the Act: *Soulcycle Inc v Matalan Ltd* [2017] EWHC 496 (Ch).

Costs

94. The opposition having failed, the applicant is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 2/2016.⁴⁷ The applicant did not engage with the proceedings after the pleadings stage, filing no evidence or written submissions. In the circumstances, I award the applicant the sum of **£300** as a contribution towards the costs of considering the opponent's statement and preparing a counterstatement.

95. I order Xiaomi Inc. to pay Macro-video Technologies Co., Ltd the sum of **£300**. This sum is to be paid within 21 days of the expiry of the appeal period or within 21 days of the final determination of the proceedings if any appeal against this decision is unsuccessful.

Dated this 13th day of September 2024

James Hopkins
For the Registrar

⁴⁷ The proceedings having commenced after 1 July 2016 but before 1 February 2023.

Annex

Goods and services of the opponent's first mark (UK00003489301)

Class 9: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; Apparatus for recording, transmission or reproduction of sound or images; Magnetic data carriers, recording discs; Compact discs, DVDs and other digital recording media; Smart phones; mobile phones; mobile phone accessories; headphones; earphones; ear buds; speakers; portable speakers; televisions; set-top boxes; Notebook computers; Computers; Computer programs, recorded; Computer programs, downloadable; Computer software, recorded; Electronic publications, downloadable; Recorded computer game programs; Ink cartridges, unfilled, for printers and photocopiers; Downloadable image files; Humanoid robots with artificial intelligence; Wearable computers; Computer software platforms, recorded or downloadable; Downloadable graphics for mobile phones; Computer peripheral devices; Interactive touch screen terminals; Computer screen saver software, recorded or downloadable; Encoded electronic identification bracelets; Smart band; Tablet computers; Encoded identification bracelets, magnetic; Mouse pads; Mouse[computer peripheral]; Photo printers; Computer bags; Electronic card readers; Computer keyboards; USB flash drives; Application software for cellular phones, downloadable; Ink jet printers; Smartwatches (data processing); Downloadable ring tones for mobile phones; Smartglasses (data processing); Electronic pocket translators; Pedometers; Apparatus to check franking; Cash registers; Mechanisms for coin-operated apparatus; Dictating machines; Holograms; Hemline markers; Voting machines; Lottery machine; Facial recognition device; Photocopiers[photographic, electrostatic, thermic]; Bathroom scales; Body fat scale for household purposes; Measures; Electronic notice boards; Selfie sticks for mobile phone; Cell phone holders; Smartphones in the shape of a watch; Intercoms; Electronic navigational and positioning apparatus and instruments; Cellular phones; Mobile phone holders for vehicles; Telecommunication apparatus in the form of jewellery; Cases for cellular phones; Covers for cellular phones; Cell phone straps; Protective films adapted for

cellular phones; Network routers; SIM cards; Cabinets for loudspeakers; Video monitors; Virtual reality headsets; Portable media players; Audio-and video-receivers; Wearable video display monitors; Headsets; Camcorders; Rearview cameras for vehicles; Driving recorder; Touch screen pens; Learning machines; Television apparatus; Sound recording apparatus; Set-top boxes; Digital photo frames; Selfie-sticks [hand-held monopods]; Cameras [photography]; Connected bracelets [measuring instruments]; Audiovisual teaching apparatus; Teaching robots; Air analysis apparatus; Thermometers, not for medical purposes; Hygrometers; Optical apparatus and instruments; USB cables; Materials for electricity mains [wires, cables]; Semi-conductors; Conductors, electric; Electric sockets; Sensors; Temperature sensors; Switches, electric; Power adapters; Electrical adapters; Change-over switches for telecommunication apparatus; Remote control apparatus; Remote controls for household purposes; Optical fibers [light conducting filaments]; Heat regulating apparatus; Lightning rods; Electrolysers; Fire extinguishing apparatus; Radiological apparatus for industrial purposes; Protection devices for personal use against accidents; Protective masks; Protective helmets; Goggles; Theft prevention installations, electric; Alarms; Biometric fingerprint door locks; Electric door bells; Eyeglasses; Sunglasses; Batteries, electric; Chargers for electric batteries; Power bank [rechargeable batteries]; Wireless charger; Animated cartoons; Egg-candlers; Dog whistles; Decorative magnets; Electrified fences; Electronic collars to train animals; Portable remote controls for kick-up block; Electronic watchbands for health monitoring that communicate real-time data to other electronic devices; Wearable communications apparatus; Wearable digital electronic devices capable of providing access to the internet; Wearable smart devices; Personal digital assistants in the shape of a watch; Wearable activity trackers; Refrigerator magnet; Measuring instruments; Measuring devices, electric; Electronic chips; Multimedia projectors; Weighing apparatus and instruments; Counters; Computer hardware; Downloadable music files; Peepholes for doors; Video screens; Simulators for the steering and control of vehicles; Automatic indicators of low pressure in vehicle tires; Stands for photographic apparatus; Bicycle helmets; Automated teller machines [ATM].

Class 35: Advertising; Presentation of goods on communication media, for retail purposes; Business information; Provision of an online marketplace for buyers and sellers of goods and services; Sales promotion for others; Personnel management

consultancy; Relocation services for businesses; Compilation of information into computer databases; Book-keeping; Rental of vending machines; Sponsorship search; Rental of sales stands; Retail services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Marketing; Promotional services; Providing shopping information; Presentation of goods on communication media, for retail purposes; Retail services connected to the sale of chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry, unprocessed artificial resins, unprocessed plastics, manures, fire extinguishing compositions, tempering and soldering preparations, chemical substances for preserving foodstuffs, tanning substances, adhesives used in industry; Retail services connected to the sale of unprocessed plastics in the form of liquids, chips or granules, paints, varnishes, lacquers, preservatives against rust and against deterioration of wood, colorants, mordants, raw natural resins, metals in foil and powder form for painters, decorators, printers and artists; Retail services connected to the sale of bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, deodorants, perfumes, toiletries, creams, gels, lotions, foams, soaps, talcum powder, shampoos, conditioners, sprays, body paint, antiperspirants, body and facial scrubs, breath fresheners; Retail services connected to the sale of pre-shave and aftershave preparations, shaving preparations, cosmetic preparations, laundry detergent and fabric conditioners, vegetable dye skin transfers, boot cream and polish, car cleaning preparations, cushions filled with fragrant or perfumed substances, room fragrancing products; Retail services connected to the sale of industrial oils and greases, lubricants, dust absorbing preparations, wetting and binding compositions, fuels and illuminants, candles and wicks for lighting, combustible fuels and scented candles; Retail services connected to the sale of pharmaceutical and veterinary preparations, sanitary preparations for medical purposes, dietetic food and substances adapted for medical or veterinary use, food for babies, dietary supplements for humans and animals, plasters, materials for dressings, material for stopping teeth, dental wax, disinfectants, preparations for destroying vermin, fungicides, herbicides; Retail services connected to the sale of badges made of common metals and their alloys, vehicle badges, buckles, busts, figurines, hooks, key rings, keys, memorial plates and plaques, ornaments, monuments, signs, number plates, statues and statuettes, ferrules for walking sticks,

works or art, all made wholly or principally of metal, bronzes; Retail services connected to the sale of common metals and their alloys, metal building materials, transportable buildings of metal, materials of metal for railway tracks, non-electric cables and wires of common metal, ironmongery, small items of metal hardware, pipes and tubes of metal, safes, ores, trophies of common metal; Retail services connected to the sale of machines, namely coffee machines and food processing machines, machine tools, motors and engines (except for land vehicles), machine coupling and transmission components (except for land vehicles), agricultural implements other than hand-operated, incubators for eggs, automatic vending machines; Retail services connected to the sale of hand tools and hand operated implements, cutlery, side arms, razors, electric razors and hair cutters; Retail services connected to the sale of scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs, mechanisms for coin operated apparatus; Retail services connected to the sale of calculating machines, data processing equipment and computers, fire-extinguishing apparatus, magnetic and magnetically encoded cards, programmable cards, smart cards, cards for bearing data, apparatus for processing card transactions and data relating thereto and for payment processing, cash registers; Retail services connected to the sale of apparatus for verifying data on magnetically encoded cards, sound and/or video recordings, tapes, cassettes, compact discs, films, slides, video recorders, video cassettes, video discs, DVDs, computer games, video games, computer software, Computer game software for use on mobile and cellular phones, Downloadable graphics for mobile phones, Application software for mobile phones, Computer game software for computers, mobile phones and tablet computers; Retail services connected to the sale of software for tablet computers, computer hardware, computer peripherals, mouse mats, screensavers, publications in electronic format, data processing apparatus, electric and electronic scoreboards, photographic and cinematographic apparatus and instruments, time recording devices, cameras, camcorders, Cases especially made for photographic apparatus and instruments, telecommunications apparatus, equipment and accessories; Retail services connected to the sale of broadcasting apparatus and instruments, telephones, mobile

phones, mobile phone accessories, cases and covers for mobile phones, cases and covers for computer tablets, cases and covers for computer hardware, sunglasses, sunglass cases, sunglass frames, eyeglasses, eyeglass cases, eyeglass frames, eyeglasses for sports, goggles, protective clothing and protective footwear, magnets, fridge magnets, decorative magnets, USB flash drives; Retail services connected to the sale of surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth, orthopaedic articles, suture materials, massage apparatus, supportive bandages, furniture adapted for medical use; Retail services connected to the sale of apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, air conditioning apparatus, electric kettles, gas and electric cookers, vehicle lights and vehicle air conditioning units; Retail services connected to the sale of vehicles, apparatus for locomotion by land, air or water, wheelchairs, motors and engines for land vehicles, vehicle body parts and transmissions; Retail services connected to the sale of firearms, ammunition and projectiles, explosives, fireworks; Retail services connected to the sale of precious metals and their alloys, Jewellery, precious stones, Horological and chronometric instruments, Alarm clocks, Alloys of precious metal, Amulets, Atomic clocks, Badges of precious metal, Beads for making jewellery, Boxes of precious metal, Bracelets, Brooches, Busts of precious metal, Cases for clock- and watchmaking, Cases for watches [presentation], Chains [jewellery], Charms [jewellery], Chronographs [watches]; Retail services connected to the sale of chronometers, Chronometrical instruments, Chronoscopes, Clock cases, Clocks, Clocks and watches, electric, Clockworks, Coins, Copper tokens, Cuff links, Diamonds, Earrings, Gold thread [jewellery], Gold, unwrought or beaten, Hat ornaments of precious metal, Ingots of precious metals, Iridium, Jewellery, Jewellery cases [caskets], Jewellery of yellow amber, Key rings [trinkets or fobs], Locketts [jewellery], Master clocks, Medals; Retail services connected to the sale of Necklaces [jewellery], Ornamental pins, Ornaments [jewellery], Pearls [jewellery], Pins [jewellery], Precious metals, unwrought or semi-wrought, Precious stones, Rings [jewellery], Semi-precious stones, Shoe ornaments of precious metal, Silver thread, Silver, unwrought or beaten, Spun silver [silver wire], Statues of precious metal, Statuettes of precious metal, Stopwatches, Sundials, Tie clips, Tie pins; Retail services connected to the sale of Watch bands, Watch cases, Watch chains, Watch glasses, Watch springs, Watches, Wire of precious metal [jewellery], Works of art of precious metal, Wristwatches, wrist bands, team and player

trading pins (jewellery), pin badges, trophies of precious metals, headphones, parts and fittings for all the aforesaid goods, trophies of precious metals; Retail services connected to the sale of musical instruments, stands and cases adapted for musical instruments; Retail services connected to the sale of printed matter, book binding material, photographs, stationery, adhesives for stationery or household purposes, artists' materials, paint brushes, typewriters and office requisites (except furniture), instructional and teaching material (except apparatus), plastic materials for packaging, printers' type, printing blocks, cardboard and plastic cards, booklets, posters, bookmarks, flags, banners; Retail services connected to the sale of paper, cardboard, note-paper transfers, decalcomanias, labels, wrapping and packaging materials, trading cards, periodical publications, newspapers, books, magazines, albums, pens, pencils, rulers, pencil cases, writing paper, car tax disc holders, stickers, vehicle stickers, writing and drawing instruments, greeting cards, instructional and teaching material, calendars, diaries, address books, folders, files, writing instruments of precious metal; Retail services connected to the sale of cheque book holders, paper coasters, coasters of cardboard, printed publications, journals, brochures, leaflets, catalogues, circulars, manuals, programmes, directories, annuals, prospectuses, temporary tattoos, note pads, paper pennants, postcards, collectible cards, collectible card holders, souvenir programs for sports events; Retail services connected to the sale of plastic materials for packaging, printers' type, printing blocks, rubber, gutta-percha, gum, asbestos, mica, plastics in extruded form for use in manufacture, semi-finished plastics materials for use in further manufacture, stopping and insulating materials, flexible non-metallic pipes; Retail services connected to the sale of Leather and imitations of leather, Animal skins, hides, trunks and travelling bags, umbrellas, parasols and walking sticks, whips, harness and saddlery, keycases, purses, bags, handbags, boot bags, holdalls, luggage, suitcases, rucksacks, backpacks, sporting bags; Retail services connected to the sale of wallets, credit card holders, briefcases, card cases, luggage label holders, belts, strips, collars for pets, luggage straps and luggage tags made of leather, school bags, document cases, passport cases; Retail services connected to the sale of non-metallic building materials, non-metallic rigid pipes for building, asphalt, pitch and bitumen, non-metallic transportable buildings, non-metallic monuments, non-metallic framed conservatories; Retail services connected to the sale of doors and windows, furniture, mirrors, picture frames, wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl,

meerscham and plastic, garden furniture, pillows and cushions; Retail services connected to the sale of household or kitchen utensils and containers, combs and sponges, brushes, brush-making materials, articles for cleaning purposes, steel wool, articles made of ceramics, glass, porcelain or earthenware, electric and non-electric toothbrushes, scale models [ornaments] of plastic and wood, coasters (tableware), mugs, ceramic mugs, porcelain mugs, cups and mugs, bottle openers, drinking bottles for sport; Retail services connected to the sale of ropes, string, nets, tents, awnings, tarpaulins, sails, sacks for transporting bulk materials, padding and stuffing materials which are not made of rubber or plastics, raw fibrous textile materials; Retail services connected to the sale of yarns and threads for textile use; Retail services connected to the sale of Textiles, flags, not made of paper, bath linen, bed covers, curtains of textile or plastic, sleeping bag sheet liners, bean bag covers, fabric for use in the manufacture of bags, fibre fabrics for use in the manufacture of bags, quilt bags, handkerchiefs, tea towels, textile wall hangings, bar towels, towels, pennants, napkins and tablecloths, badges made of fabric material; Retail services connected to the sale of Clothing, footwear, headgear, sportswear, wrist bands; Retail services connected to the sale of lace and embroidery, ribbons and braid, hooks and eyes, pins and needles, artificial flowers, badges, cloth badges, other badges not of precious metal or cloth, rosettes, ornamental novelty badges, buttons, braids, tassels, brooches for clothing; Retail services connected to the sale of decorative pins and badges not made of precious metal, hair bands, hair pins, pins of non-precious metal, cords for clothing (straps), buckles of precious metal, pin cases, badges for wear, embroidered badges; Retail services connected to the sale of carpets, rugs, mats and matting, linoleum and other materials for covering existing floors, wall hangings (non-textile), wallpaper; Retail services connected to the sale of games and playthings, gymnastic and sporting articles, toys, board games, hand-held, self-contained games apparatus, computer game apparatus, footballs, balls, bags adapted for carrying sporting articles and apparatus, goal posts, goal nets, reduced sized goal posts, sports training apparatus, hurdles for use in athletics training, blocking dummies, protective padding for sports, shin pads, football gloves; Retail services connected to the sale of miniature replica football kits, darts and flights therefor, balloons, coin/counter operated games, ordinary playing cards, games adapted for use with television receivers, models being toys, plastic models being toys, teddy bears, stuffed toy bears, puzzles, Soap bubbles [toys], bubble making wand and solution sets, poker chips, indoor football tables, table

football tables, scale of models being toys, plastic models being toys; Retail services connected to the sale of meat, fish, poultry and game, meat extracts, preserved, dried and cooked fruits and vegetables, jellies, jams, compotes, eggs, milk and milk products, edible oils and fats, prepared meals, soups and potato crisps; Retail services connected to the sale of Coffee, tea, cocoa and artificial coffee, Rice, Tapioca and sago, Flour and preparations made from cereals, Bread, pastry and confectionery, Edible ices, Sugar, honey, treacle, Yeast, baking-powder, Salt, Mustard, Vinegar, sauces (condiments), Spices, Ice, Non-medicated confectionery, chocolate based confectionery, frozen confectionery, chilled desserts; Retail services connected to the sale of snack foods, prepared meals and snacks, sauces, condiments, preparations made from cereals, bread, pastry and confectionery, crisps made of cereals or potato flour, salad dressings, artificial coffee, sweets [candy], candy bars and chewing gum, chocolate sweets, chocolate, biscuits; Retail services connected to the sale of agricultural, horticultural and forestry products, live animals, fresh fruits and vegetables, seeds, natural plants and flowers, foodstuffs for animals, malt, food and beverages for animals; Retail services connected to the sale of beers, Mineral and aerated waters and other non-alcoholic beverages, Fruit beverages and fruit juices, Syrups and other preparations for making beverages, isotonic drinks, syrups and other preparations for making beverages; Retail services connected to the sale of alcoholic beverages (except beers), alcoholic wines, spirits and liqueurs, alcopops, alcoholic cocktails; Retail services connected to the sale of tobacco, smokers' articles, matches, lighters for smokers.

Class 38: Telecommunications; Broadcasting; Communications services; Wireless broadcasting; television broadcasting; Providing service of telecommunications connectivity to the global computer network; streaming of data; computer aided transmission of messages and images; providing user access to global computer networks; providing access to databases; providing internet chatrooms; providing online forums; video-on-demand transmission; message transmission; Mobile telephone communication; Network transmission of sound, images, signals and data; electronic data transmission; News transmission.

Goods and services of the opponent's second mark (WO0000001650229)

Class 2: Dyes; watercolour paints; food dyes; toner cartridges, filled, for printers and photocopiers; ink for printers and photocopiers; ink cartridges, filled, for printers and photocopiers; coatings [paints]; anti-tarnishing preparations for metals; mastic [natural resin].

Class 3: Baby wipes impregnated with cleaning preparations; cakes of toilet soap; detergent; shining preparations [polish]; sharpening preparations; essential oils; cosmetics; dentifrices; potpourris [fragrances]; non-medicated mouth washes for pets; air fragrancing preparations.

Class 7: Agricultural machines; agricultural implements other than hand-operated; aerating pumps for aquaria; mechanized livestock feeders; electronic feeders for animals; milking machines; hair cutting machines for animals; woodworking machines; papermaking machines; diaper producing equipment; printing presses; darning machines; dyeing machines; food preparation machines, electromechanical; beverage preparation machines, electromechanical; brewing machines; tobacco processing machines; leather-working machines; ironing machines; machines for the bicycle industry; machines for the ceramic industry [including ceramic machines for the construction industry]; engraving machines; industrial inkjet printing machines; machines for battery industry; cord making machines; pen making machines; light bulb making machines; electric vacuum food sealers for household purposes; electric juicers; juice extractors, electric; dishwashers; coffee grinders, other than hand-operated; kitchen machines, electric; blenders, electric, for household purposes; mills for household purposes, other than hand-operated; food processors, electric; electrical coffee grinders; mixing machines; washing machines [laundry]; wringing machines for laundry; disintegrators; embossing machines; glass-working machines; electromechanical machines for chemical industry; rinsing machines; cutters [machines]; drilling rigs, floating or non-floating; mixers [machines]; whitewashing machines; lifting apparatus; handling apparatus for loading and unloading; conveyors [machines]; electric hammers; foundry machines; steam condensers [parts of machines]; carburettors; hydraulic turbines; industrial robots; handling machines, automatic [manipulators]; cowlings [parts of machines]; electric wire and cable

manufacturing machines; electromotion screwdriver; electric hand-held drills; hand-held electric drills [excluding electric coal drill]; painting machines; dynamos; filters for cleaning cooling air, for engines; motors, electric, other than for land vehicles; pumps [machines]; pneumatic pumps; valves [parts of machines]; aerocondensers; hydraulic couplers; transmissions for machines; control mechanisms for machines, engines or motors; bearings [parts of machines]; belts for machines; rubber tracks being parts of crawlers on construction machines; welding apparatus, gas-operated; rechargeable sweepers; floor scrubbing machines; machines and apparatus for cleaning, electric; electric cordless sweepers; cordless vacuum cleaners; vacuum cleaners; electric vacuum cleaners; steam mops; brushes for vacuum cleaners; dust filters and bags for vacuum cleaners; sifting installations; curtain drawing devices, electrically operated; drums [parts of machines]; 3D printers; shoe polishers, electric; racket stringing machines; vending machines; labellers [machines]; robotic exoskeleton suits, other than for medical purposes; 3D printing pens; electroplating machines.

Class 8: Abrading instruments [hand instruments]; agricultural implements, hand-operated; garden tools, hand-operated; instruments and tools for skinning animals; harpoons; razors, electric or non-electric; electric hair crimper; nail clippers; beard clippers; razor blades; electric irons for styling hair; electric hair straighteners; screwdrivers, non-electric; flat irons; tweezers; knives; side arms, other than firearms; table cutlery [knives, forks and spoons]; handles for hand-operated hand tools; hand tools, hand-operated.

Class 9: Computer software applications, downloadable; computer peripheral devices; notebook computers; mobile phone software applications, downloadable; laser printers; tablet computers; telepresence robots; humanoid robots with artificial intelligence; computers; photo printers; ink-jet document printers; toner cartridges, unfilled, for printers and photocopiers; ink cartridges, unfilled, for printers and photocopiers; liquid crystal displays; LED displays; memory cards; USB flash drives; computer keyboards; mouse [computer peripheral]; mouse pads; smartwatches [data processing]; electronic pocket translators; operating system programs; touch screen pens; electronically encoded identity wristbands; smartglasses; cases adapted for computers; encoded identification bracelets, magnetic; processors [central processing units]; graphics processor units (gpu); computer programs, recorded; monitors

[computer hardware]; couplers [data processing equipment]; digital to analogue converters; pedometers; apparatus to check franking; automated teller machines [ATM]; mechanisms for coin-operated apparatus; dictating machines; holograms; hemline markers; voting machines; face recognition apparatus; fingerprint identifier; photocopiers [photographic, electrostatic, thermic]; bathroom scales; body fat scale for household purposes; electronic bathroom scales; scales; measures; digital signs; cell phones; wearable activity trackers; Global Positioning System [GPS] apparatus; network routers; smartphones; navigational instruments; electro-dynamic apparatus for the remote control of signals; sound locating instruments; satellite navigational apparatus; equipment for communication network; navigation apparatus for vehicles [on-board computers]; selfie sticks for mobile phones; smartphones in the shape of a watch; intercoms; transmitters of electronic signals; wireless routers; transponders; communication modems; wireless local area network controllers; cell phone cases; protective films adapted for smartphones; waterproof cases for smart phones; monopods used to take photographs by positioning a smartphone or camera beyond the normal range of the arm; television displays; microphones; audio- and video-receivers; head-mounted video displays; web cameras; audio equipment; electronic audible devices with books; noise cancelling earphones; radio sets; rearview cameras for vehicles; camcorder waterproof cases; security surveillance robots; cabinets for loudspeakers; earphone; camcorders; electronic monitoring apparatus; television apparatus; ear pads for headphones; bluetooth earphones; headphones; electronic book readers; teaching apparatus with artificial intelligence; event data recorders; set-top boxes; wearable video display monitors; virtual reality headsets; multimedia projectors; cameras [photography]; mini beam projectors; selfie sticks [hand-held monopods]; measuring apparatus; air analysis apparatus; hygrometers; telemeters; tire pressure gauges; automatic indicators of low pressure in vehicle tyres; temperature indicators; connected bracelets [measuring instruments]; laboratory robots; teaching robots; audiovisual teaching apparatus; teaching apparatus; measuring devices, electric; inductors [electricity]; simulators for the steering and control of vehicles; stereoscopes; materials for electricity mains [wires, cables]; USB cables; adapter cables for headphones; semi-conductors; electronic chips; integrated circuits; magnetic materials and devices; amplifiers; conductors, electric; electric plugs; sensors; power adapters; switches, electric; alarm sensors; motion recognizing sensors; plugboards; optical sensors; temperature sensors; plugs, sockets and other

contacts [electric connections]; power adaptors; electric sockets; touch sensors; touchscreen sensors; adapter plugs; connections for electric lines; electricity switchboard of high or low voltage; plug connectors; video screens; remote control apparatus; remote controls for household purposes; optical fibers [fibres] [light conducting filaments]; electric installations for the remote control of industrial operations; lightning conductors; electrolyzers; fire extinguishing apparatus; radiological apparatus for industrial purposes; protection devices for personal use against accidents; bicycle helmets; goggles; protective helmets; life saving apparatus and equipment; theft prevention installations, electric; biometric fingerprint door locks; electronic locks; electromagnetic locks; alarms; alarms for the detection of inflammable gases; smoke detectors; peepholes [magnifying lenses] for doors; digital door locks; electric door bells; eyeglasses; sunglasses; 3D glasses; cyclists' glasses; USB chargers; battery charge devices; wireless chargers; battery chargers for mobile phones; batteries, electric; chargers for electric batteries; mobile power supply [rechargeable battery]; cell phone battery chargers for use in vehicles; animated cartoons; sports whistles; egg-candlers; dog whistles; decorative magnets; electrified fences; fridge magnets.

Class 10: Surgical robots; vibromassage apparatus; esthetic massage apparatus; thermometers for medical purposes; massage apparatus; massaging apparatus for personal use; sphygmomanometers; dental apparatus, electric; electric acupuncture instruments; soporific pillows for insomnia; sanitary masks for medical purposes; teething rings; contraceptives, non-chemical; robotic exoskeleton suits for medical purposes; orthopaedic articles; suture materials.

Class 11: Lamps; lighting apparatus; desk lamps; electric night lights; portable headlamps; ceiling lights; light bulbs; torches for lighting; lights for vehicles; germicidal lamps for purifying air; curling lamps; oil lamps; electric saucepans; pressure cookers [autoclaves], electric; tortilla presses, electric; gas burners; kettles, electric; electric toasters [for household purposes]; electrical rice cookers / electric rice cookers; electric kettles [for household purposes]; electromagnetic induction cookers; electric frying pans; air fryers; electric egg boilers; electric coffee machines / electric coffee brewers; microwave oven (kitchen appliance); soya milk making machines, electric; baking ovens [for household purposes]; electric cooking stoves [for household

purposes]; electrically-heated mugs; lava rocks for use in barbecue grills; refrigerators; air purifiers; humidifiers for household purposes; air sterilisers; garment steamers; dehumidifiers for household purposes; electric fans; humidifiers; air filtering installations; extractor hoods for kitchens; air conditioners; clothes dryers; electric clothes dryers; fans [air-conditioning]; air reheaters; hair driers [dryers]; water heaters; fog generators; automatic faucets; ornamental fountains; hydromassage bath apparatus; heating lamps for bath; hand drying apparatus for washrooms; sanitary apparatus and installations; water dispensers; electric water purifiers for household purposes; water filtering apparatus; apparatus for filtering drinking water; pocket warmers; radiators, electric; lighters; polymerisation installations.

Class 12: Rolling stock for railways; automobiles; driverless cars [autonomous cars]; push scooters [vehicles]; bicycles; collapsible bicycles; self-balancing scooters; go-karts; electric bicycle; self balancing electric scooters; electrically powered scooters [vehicles]; pumps for bicycle tyres; bicycle pumps; aerial conveyors; pushchairs; fold-up pushchairs; wheelchairs; trolleys; rescue sleds; tyres for vehicle wheels; repair outfits for inner tubes; photography drones; air vehicles; water vehicles; treads for vehicles [roller belts]; roof-mounted luggage racks for vehicles; safety seats for children, for vehicles; electrical anti-theft installations for vehicles; electric vehicles; vehicles for locomotion by land, air, water or rail; remote control vehicles, other than toys.

Class 14: Precious metals; boxes of precious metal; jewellery boxes; works of art of precious metal; necklaces [jewellery, jewelry (Am.)]; figurines [statuettes] of precious metal; jewellery; wristwatches; watch straps; alarm clocks.

Class 15: Electronic musical instruments; pianos; guitars; violins; horns [musical instruments]; musical instruments; bags specially adapted for holding musical instruments; musical boxes; music stands.

Class 16: Paper; black paperboard for photography; laser printing paper; toilet paper; napkin paper; advertisement boards of paper or cardboard; stickers; calendars; writing paper pads; envelopes; figurines made from paper; printed publications; children's books incorporating electronic audible device; newsletters; pictures; bags [envelopes,

pouches] of paper or plastics, for packaging; garbage bags of paper or of plastics; stapling presses [office requisites]; office requisites, except furniture; stationery; Indian inks; stamps [seals]; pens; adhesive bands for stationery or household purposes; drawing instruments; drawing materials; inking ribbons; teaching materials [except apparatus]; tailors' chalk; architects' models.

Class 18: Leather, unworked or semi-worked; bags; travelling trunks; school bags; gym bags; small backpacks; rucksacks; trunks [luggage]; all-purpose sports bags; trimmings of leather for furniture; leather thongs; umbrellas; walking sticks; clothing for pets.

Class 21: Containers for household or kitchen use; cooking pots; frying pans; deep fryers, non-electric; rice cooking pots [non-electric]; cups; food preserving jars of glass; ceramics for household purposes; works of art made of crystal; thermos cups; coffee filters not of paper being part of non-electric coffee makers; clothes racks, for drying / clothes drying hangers; toilet utensils; trash cans; drying racks for laundry; height adjustable ceiling-mounted drying racks for laundry; toothbrush holders; candle warmers, electric and non-electric; aromatic oil diffusers, other than reed diffusers, electric and non-electric; combs; brushes; material for brush-making; water apparatus for cleaning teeth and gums; toothbrushes, electric; heads for electric toothbrushes; manual toothbrushes; toothbrushes; toothpicks; cosmetic utensils; thermally insulated containers for food; ice cube trays; cloth for washing floors; mops; cleaning instruments, hand-operated; lint removers, electric or non-electric; glass, unworked or semi-worked, except building glass; animal activated livestock waterers; animal-activated pet feeders; animal activated animal feeders; indoor terrariums [vivariums]; plug-in diffusers for mosquito repellents; ultrasonic mosquito repellents; ultrasonic pest repellents.

Class 24: Fabric; filtering materials of textile; filtering cloth; silk fabrics for printing patterns; felt; face towels of textile; bed linen; quilts; tablemats of textile; curtains of textile; curtains of textile or plastic; fitted toilet lid covers of fabric; marabouts [cloth]; banners of textile or plastic; shrouds; household linen.

Class 28: Games; apparatus for games; electronic games for the teaching of children; video game interactive control floor pads or mats; slides [playthings]; building blocks, large size; smart electronic toy vehicles; toy robots; toy models; smart toys; drones [toys]; toys; toy vehicles; baby gyms; battery operated toys; play sets for action figures; scooters [toys]; building blocks [toys]; remote-controlled toy vehicles; cube-type puzzles; balls for games; stationary exercise bicycles; exercise steppers; running machines; body-training apparatus; bows for archery; machines for physical exercises; jump ropes; skateboards; hunting game calls; swimming pools [play articles]; protective paddings [parts of sports suits]; gloves for games; in-line roller skates; ornaments for Christmas trees, except lights, candles and confectionery; rods for fishing; twirling batons; camouflage screens [sports articles]; scratch cards for playing lottery games; grips for rackets; grip tapes for golf clubs.

Class 35: Advertising; pay per click advertising; online advertising on a computer network; presentation of goods on communication media, for retail purposes; providing business information via a web site; commercial intermediation services; commercial administration of the licensing of the goods and services of others; commercial information and advice for consumers in the choice of products and services; provision of an on-line marketplace for buyers and sellers of goods and services; sales promotion for others; procurement services for others [purchasing goods and services for other businesses]; import-export agency services; recruitment; search engine optimization for sales promotion; conducting data searches in computer files for others; compiling indexes of information for commercial or advertising purposes; sponsorship search; rental of vending machines; rental of sales stands; retail services for pharmaceutical, veterinary and sanitary preparations and medical supplies.

Class 36: Providing information relating to insurance; financial management; e-wallet payment services; jewellery appraisal; real estate agency services; financial customs brokerage services; surety services; charitable fund raising; fiduciary; lending against security.

Class 37: Providing construction information; building of fair stalls and shops; quarrying services; upholstery; heating equipment installation and repair; installation, maintenance and repair of computer hardware; interference suppression

in electrical apparatus; medical apparatus installation and repair; motor vehicle maintenance and repair; airplane maintenance and repair; shipbuilding; photographic apparatus repair; clock and watch repair; installation, changing, replacement and repair of locks; re-tinning; repair of rubber tires; furniture restoration; cleaning of clothing; sterilization of medical instruments; elevator installation and repair; burglar alarm installation and repair; telephone repair; pump repair and maintenance; parasol repair; artificial snow-making services; restoration of works of art; tuning of musical instruments; rental of drainage pumps; swimming-pool maintenance; repair of power lines; hand tool repair; installation and repair of entertainment and sports equipments; rental of dish washing machines; repair of binoculars; repair of toys or dolls; repair of game machines and apparatus; repair and maintenance of smartphones; telephone installation and repair; cell phone battery charging services; rental of carpet cleaning machines; maintenance and repair of mobile phones; cleaning services for extractor hoods; maintenance and repair of telescopes.

Class 38: News agency services; wireless broadcasting; message sending; providing telecommunication channels for teleshopping services; computer aided transmission of messages and images; providing internet chatrooms; providing user access to global computer networks; providing online forums; video-on-demand transmission; teleconferencing services; videoconferencing services; communications by computer terminals; transmission of digital files; providing access to databases.

Class 39: Transportation logistics; freighting; unloading cargo; packaging of goods; piloting; hauling; vehicle breakdown towing services; freight [shipping of goods]; car transport; replenishment of vending machines; air transport; car rental; car sharing services; horse rental; storage; rental of diving suits; distribution of energy; operating canal locks; courier services [messages or merchandise]; parcel delivery; delivery of goods; travel reservation; transport by pipeline; rental of wheelchairs; launching of satellites for others; bottling services; push-chair rental.

Class 41: Instruction services; correspondence courses; arranging and conducting of seminars; organization of competitions [education or entertainment]; lending library services; providing on-line electronic publications, not downloadable; on-line publication of electronic books and journals; distribution of video tapes; providing

online videos, not downloadable; production of radio and television programmes; video production; entertainment services; entertainer services; game services provided online from a computer network; health club services [health and fitness training]; toy rental; games equipment rental; conducting guided tours; art exhibitions; animal training; modelling for artists; organization of lotteries; rental of indoor aquaria; operating of lotteries.

Class 42: Research and development of new products for others; technological research; quality system certification; product quality testing services; surveying; meteorological information; material testing; packaging design; design of telephones; design of interior decor; dress designing; software design and development; research and development of computer software; updating and maintenance of computer software; cloud computing; platform as a service [PaaS]; software as a service [SaaS]; consultancy in the design and development of computer hardware; providing information on computer technology and programming via a web site; electronic data storage; authenticating works of art; graphic arts design; cloud seeding; handwriting analysis [graphology]; cartography services; rental of meters for the recording of energy consumption.

Class 45: Monitoring of burglar and security alarms; lifeguard services; monitoring of security systems; chaperoning; personal wardrobe styling consultancy; funerary undertaking; opening of security locks; online social networking services; fire-fighting; organization of religious meetings; adoption agency services; lost property return; rental of safes; genealogical research; planning and arranging of wedding ceremonies; releasing doves for special occasions; dating services; leasing of internet domain names; intellectual property consultancy.