

**DECISION OF THE CONTROLLER OF PATENTS, DESIGNS AND TRADE MARKS IN
PROCEEDINGS UNDER THE TRADE MARKS ACT, 1996**

In the matter of an application for registration of Trade Mark No. 1273344 and in the matter of an Opposition thereto.

SKYWORTH GROUP COMPANY LIMITED

Applicant

SKY INTERNATIONAL AG

Opponent

The Application

1. On 18 November 2014 (the relevant date), Skyworth Group Company Limited (hereinafter “the Applicant”), of Shennan Ave, Nanshan District, 518057 Shenzhen, Guangdong, China made an application for an International Registration designating Ireland (No. 1273344) under the Madrid Protocol to register SKYWORTH as a Trade Mark in respect of the following goods:

Class: 7

Agricultural machines; net hauling machines [fishing]; woodworking machines; papermaking machines; diaper production machines; printing machines; machines for the textile industry; dyeing machines; food preparation machines, electromechanical; brewing machines; cigarette machines for industrial purposes; leather-working machines; sewing machines; machines for the bicycle industry; computer aided carver; machines for battery industry; enamel manufacturing machines; lamp bulbs manufacturing machines; wrapping machines; honeycomb briquette manufacturing machines; kitchen machines, electric; washing machines; machines for pharmaceutical industry; vulcanisation apparatus; glass working machines; electromechanical machines for chemical industry; rolling mills; oil refining machines; mixing machines; hoists; derricks; hammers [parts of machines]; moulding machines; fittings for engine boilers; hydroelectric power generating equipment; clip manufacturing machines; button manufacturing machines; machines for manufacturing electric wires and cables; hand-held tools, other than hand-operated; optics cold processing equipment and machines; gas separating equipment; painting machines; starters for motors and engines; control mechanisms for machines, engines or motors; mufflers for automobile engine; pumps [machines]; valves [parts of machines]; compressed air machines; compressors for refrigerators; hydraulic couplers; connecting rods for machines, motors and engines; speed governors for machines, engines and motors; belts for machines; electric welding machines; washing apparatus; shoe polishers, electric; electroplating machines; condensing installations.

Class: 9

Computers; computer memories; monitors [computer hardware]; laptop computers; notebook computers; processors [central processing units]; USB flash drives; computer peripheral devices; computer keyboards; mouse [computer peripheral]; electronic pocket translators; computer software, recorded; electronic pens [visual display units]; computer game software; electronic publications, downloadable; wireless network cards; touch screens; personal digital assistants (PDA); time recording apparatus; cheque recording apparatus; ticket dispensers; electronic tags for goods; lottery machines; facsimile machines; weighing machines; measures; electronic notice boards; neon signs; portable telephones; transmitters of electronic signals;

radar apparatus; navigational instruments; global positioning system [GPS] apparatus; network communication equipment; optical communication equipment; navigation apparatus for vehicles [on-board computers]; stored program control (SPC) telephone switching equipment; television apparatus; monitoring apparatus, electric; tape recorders; video recorders; camcorders; DVD players; headphones; electronic teaching and learning machines; portable media players; television cameras; electronic voice text machines; set top boxes; cameras [photography]; projection machines; projection machines for teaching purposes; surveying apparatus and instruments; aerometers; automatic indicators of low pressure in vehicle tires [tyres]; speed checking apparatus for vehicles; gasometers [measuring instruments]; kilometer recorders for vehicles; meters for internal combustion engines; logs [measuring instruments]; milage recorders for vehicles; hydrometers; audiovisual teaching apparatus; measuring devices, electric; probes for scientific purposes; optical apparatus and instruments; materials for electricity mains [wires, cables]; semi-conductors; integrated circuits; electronic chips; light-emitting diode (LED); stabilized voltage supply; low-voltage power supply; fluorescent screens; video screens; remote controllers for household purpose; optical fibers [fibres] [light conducting filaments]; regulating apparatus, electric; electric installations for the remote control of industrial operations; lightning conductors [rods]; electrolyzers; fire extinguishers; radiological apparatus for industrial purposes; protection devices for personal use against accidents; alarms; spectacles [optics]; batteries, electric; animated cartoons; remote controlled car arresters, portable; clothing, electrically heated; reversing radars; car monitors; liquid crystal displays; apparatus to check franking.

Class: 11


Air conditioning installations; light-emitting diodes [LED] lighting apparatus; pressure cookers [autoclaves], electric; microwave ovens [cooking apparatus]; freezers; refrigerators; ventilation [air-conditioning] installations and apparatus; fans [air-conditioning]; solar water heaters; bathroom heat lamp installations; disinfectant apparatus; drinking water dispensers; lamps; lighting apparatus and installations; cooking apparatus and installations; lighting apparatus for vehicles; germicidal lamps for purifying air; curling lamps; electric water heaters; lava rocks for use in barbecue grills; refrigerating appliances and installations; air conditioning installations; air conditioning apparatus; electric hair driers; heating apparatus; soap bubble and foam generators for shows; hot water heating installations; ornamental fountains; sanitary apparatus and installations; water purification installations; disposable sterilization pouches; radiators, electric; lighters; nuclear reactors.

2. The notification of the designation was received from the International Bureau of the World Intellectual Property Organisation (WIPO) on 17 November 2015. The application was accepted for registration and advertised accordingly in Journal No. 2315 dated 7 September 2016.
3. Notice of Opposition to the registration of the mark pursuant to Section 43 of the Act was filed on 21 October 2016 by Sky International AG (hereinafter “Sky” or “the Opponent”) of Stockerhof, Dreikonigstrasse, 31a, CH-8002 Zurich, Switzerland, in relation to all the goods covered by the application. The Applicant filed a counter-statement on 26 January 2017 and evidence was, in due course, filed by the parties under Rules 20, 21 and 22 of the Trade Marks Rules, 1996 (“the Rules”).

4. Following the submission of evidence by the parties, on 20 December 2018 the Opponent notified the Controller that it intended to prosecute the opposition only to the extent that the mark covers goods in Class 9 and that it no longer wished to pursue the opposition in respect of goods in Classes 7 and 11.
5. The opposition became the subject of a hearing before me, acting for the Controller, on 10 January 2019. The parties were notified on 16 January 2019 that I had decided to uphold the opposition and to refuse the registration of the mark. I now state the grounds of my decision and the materials used in arriving thereat in response to a request by the Opponent in that regard pursuant to Rule 27(2) of the Rules.

Grounds of the Opposition

6. In its Notice of Opposition, the Opponent states that it is the proprietor of the following European Union Trade Mark Registrations and Applications (EUTM's) comprising of or including the word SKY and it has used these earlier marks throughout Ireland and the European Union in relation to a wide range of goods covered by these registrations/applications in Class 9.

EUTM No.	Mark	Date of Application
9129909		25 May 2010
10032282	SKY	9 June 2011
10155331	SKY TV	27 July 2011
12044244	SKY+	6 August 2013
13085972	SKY WORLD	16 July 2014
14893176	SKY	9 December 2015

7. The specification of Class 9 goods covered by the marks upon which the Opponent relies are not uniform. They are vast, and I need not fill page after page in reproducing them here. However, I have listed the Class 9 goods covered by EUTM No. 13085972 in Annex 1, which for all intents and purposes contains the Class 9 goods covered by all the Opponent's other relied upon marks.
8. The Opponent claims it has a substantial reputation in Ireland and the European Union in respect of these marks and then raises objection to the present application under certain sections of the Act, which I summarise as follows:

- Section 8(3)(b) – *the mark is of such a nature as to deceive;*

- Section 8(4)(a) – *use of the mark is prohibited in the State by law or by provision of Community law;*
- Section 10(2)(a) and (b) – *use of the mark would result in a likelihood of confusion on the part of the public, including a likelihood of association with the Opponent’s trade marks;*
- Section 10(3) – *use of mark would take unfair advantage of or be detrimental to the distinctive character or reputation of the Opponent’s trade marks;*
- Section 10(4)(a) – *the use of the mark in the State is liable to be prevented by the law of passing off;*
- Section 37(2) and 42(3) – *the Applicant has failed to satisfy the requirements of registration in that the Applicant does not use nor have a bona fide intention of using the mark in relation to the goods covered by the designation;*
- *The application should be refused at the Controller’s discretion.*

Counter-Statement

9. In its Counter Statement the Applicant denies each and every allegation made by the Opponent in its Notice of Opposition.

Rule 20 Evidence

10. Evidence submitted by the Opponent under Rule 20 consists of a Statutory Declaration and supporting evidence by way of twenty-one exhibits (labelled “DK1” to “DK21”) dated 7 July 2017, of David Kelly, Solicitor for the Sky Group of companies, and a Statutory Declaration and supporting evidence by way of twenty-one exhibits, labelled “JM1” to “JM21”, also dated 7 July 2017, of Judy McCullagh, European Trade Mark Attorney of Tomkins & Co.

11. For his part Mr. Kelly lays out a substantial volume of evidence across the following seven areas, of all which are supported by materials contained within the exhibits he attaches to his declaration;

- i. A chronological overview of the milestones in the evolution of the SKY brand from its inception in 1984.
- ii. Details of the intensity of the use of the SKY brand, including turnover, subscriber figures, routes to market, Sky’s websites and social media presence.
- iii. Information on the diversity of Sky’s products and services, including details of the SKY television channels, viewing figures, consumer electronic products, telephony and broadband services.

- iv. Sky's use of technology and innovative convergence of products.
- v. Sky's advertising and marketing expenditure, rankings, press coverage and awards.
- vi. Sky's trade mark portfolio and enforcement activities.
- vii. The SKYWORTH dispute with the Applicant in terms of the marks, products and damage.

12. Mr. Kelly paints a picture of a long-established and extremely successful brand that has significant market penetration in Ireland and elsewhere, built on the back of substantial investment, marketing, product development and innovation. While the evidence shows impressive subscriber, revenue and profit numbers for the Sky Group, the figures presented are in respect of the United Kingdom and Ireland combined. Taking the year 2014 by way of example, these amounted to 14.73 million subscribers (including households, pubs and clubs etc.), £7,617 million in revenue and £1,260 million in operating profit. Nonetheless, even by applying a crude calculation based on the population ratio (approximately 14:1) of the two countries, it is not unreasonable to extrapolate from these figures that the SKY brand is known and used by hundreds of thousands of Irish consumers and generates huge revenue and profit in Ireland.

13. He says the Opponent products have been made available to Irish consumers through a variety of independent retailers and The Carphone Warehouse and that since 2012 Sky has opened 36 retail spaces across Ireland that provide advice, assistance and sales service in relation to its products.

14. Mr. Kelly says the Opponent has a significant online presence, through which it advertises and sells its products. These include its own websites, such as ww.sky.com and www.sky.ie, as well as across a number of third-party digital companies, including Amazon, play.com and QVC. The number of Irish visits to the Opponent's main English language websites (www.sky.com, www.news.sky.com and www.skysports.com) is in the order of 250 million per annum. He says the Opponent is also very active on social media (Facebook, Twitter etc.) and through blogs and chat rooms, which allow consumers to interact with the Opponent and each other.

15. Mr. Kelly states the Opponent's products include over 240 TV channels and 61 radio stations. He says that since 2017 the Opponent has arrangements with Virgin Media Ireland Limited, Vodafone Ireland Limited and Eir Limited for the retransmission of certain SKY channels to their subscribers. In the exhibits he provides statistics compiled by Tam Ireland, AC Nielsen and Arianna detailing the average monthly reach of core SKY TV channels between 2008 and 2016.

Figures for 2016 show the Opponent's SKY channels reached approximately 2.4 million Irish televisions (potentially being viewed by more than 50% of the population) per month. Figures for the years 2008-2015 were even higher.

16. Mr. Kelly provided evidence regarding the Opponent's broadband, telephony and next generation television products (SKY Broadband, SKY Talk and SKY Q respectively) that are available in Ireland, with each having tens of thousands of customers.
17. He also provided details of the Opponent's innovation, including in areas such as digital television, electronic programme guides, interactive services, on-screen graphics, high-definition and 3D television, video on demand, record and playback, mobile phone, streaming, mobile recording and tablet apps. Many are packaged under the opponent's brands SKY GO, SKY MOBILE, SKY PLAYER, and SKY 3D.
18. Mr. Kelly states the Opponent has invested significantly in its products. He provides figures for each financial year from 1998/1999 to 2013/2014 and states, quoting from the Sky Group's audited Annual Report, that in 2013/2014 the Opponent spent over a billion pounds (£1,199 million) on advertising and promoting its products in the UK and Ireland. While there are no separate figures for Ireland, he provides at Exhibit DK15 samples of advertising and promotional materials used in Ireland where the prices of SKY products are given in Euro.
19. He says the Opponent has been ranked as the number one "above the line" (advertising spent with an agency) advertiser in Ireland between 2013 and 2016 (the last full year prior to the date of making his declaration). He states Irish consumers are not only exposed to Ireland specific advertising but also to the overspill of UK advertising, which further increases awareness of Sky and its SKY branded products and services in Ireland.
20. Mr. Kelly states the Opponent has a significant trade mark portfolio with SKY-derivative brands for a wide range of goods and services, particularly in Classes 9, 38 and 41, in many countries across the world, including Ireland. The Opponent has 43 Irish national trade marks, 18 international registrations and 317 European Union Trade Marks (all these figures include applications filed but not yet registered). He says the Opponent is extremely active and very successful in enforcing its trade mark rights. As of April 2017, Sky had been successful in 600 opposition, invalidity and litigation actions taken around the world in relation to third parties attempting to use or register SKY formative marks.

21. He states that more than 300 positive decisions have been gained with effect in the EU, more than 170 relating to European Union Trade Marks (40 of which have been confirmed by Boards of Appeal and 7 by the General Court) and four relating to United Kingdom marks. The remainder have been issued by national intellectual property offices including those in Austria, Bulgaria, Cyprus, the Czech Republic, Denmark, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and in the Benelux Intellectual Property Office. Among the marks successfully opposed were RUN2SKY, SKYBUBB and SKYPE.
22. Mr. Kelly mentions the Opponent's successful opposition to SKY BUSINESS CENTRES in 2013 in Ireland; highlighting that the Controller found that the evidence advanced by Sky in those proceedings was such that Sky was entitled to the added protection afforded to well-known marks under the Paris Convention. He says since then the SKY mark has become even stronger, and each year Sky further enhances its position as a company renowned for its innovation in the fields of entertainment and communications, increasing the diversity of its offerings to include telephony and broadband services, introducing new services such as betting, insurance, ticketing, marketing and advertising. He says the enhanced distinctiveness acquired through use has been recognised by the Controller, the EUIPO, the EU General Court and in the UK. The SKY family of marks has also been recognised widely.
23. Turning his focus towards the disputed mark, Mr. Kelly states that Sky has been extremely successful in attacking applications and registrations for the mark SKYWORTH, including in Ireland and in more than 10 other EU Member States.
24. Mr. Kelly provides details of the Applicant's business, in particular its plans to launch a range of SKYWORTH branded televisions across Europe, noting that they are now available through certain retailers in the EU and on the Applicant's www.skywortheurope.com website. He states this is of serious concern to the Opponent and identifies some of the identical products which have been sold by the Opponent and the Applicant, including televisions, set-top boxes and remote controls.
25. He states any advertising and sale of SKYWORTH branded products is likely to cause brand confusion amongst consumers which in turn will irreparably damage the Opponent's business and its SKY brand through the loss of sales, tarnishing and blurring and will ultimately result in the dilution of the SKY brand.

26. For her part Ms. Judy McCullagh focuses on the products sold by the Applicant, the Opponent and other traders in the consumer electronics business. She speaks about smart home technology and how electronic appliances can be linked and centrally controlled. She notes that variously branded electronic products are sold side-by-side in retail stores and attaches exhibits demonstrating this by way of numerous photographs taken at Curry's PC World, B&Q, Harvey Norman, Tesco Extra, Power City and Argos. Ms. McCullagh states that "smart home" technology is expanding the importance of what historically was seen as TV related technology to all parts of the home. The level of convergence is leading to an overlap in the functionality of many household items and it is not unreasonable to see many such items being combined into one.

Rule 21 Evidence

27. Evidence submitted under Rule 21 consisted of a Statutory Declaration dated 18 April 2018, of Li Cunxian, manager for Skyworth Group Co. Limited. and twelve supporting exhibits labelled "1" to "12".

28. Mr. Li states Skyworth was established in 1988 and employs over 35,000 individuals. It develops and manufactures a substantial range of consumer electronics products such as televisions, set-top boxes, security monitors, semi-conductors, refrigerators, washing machines, mobile phones and LED lighting. Skyworth supplies its products to consumers across the EU, Asia, Eastern Europe (including Russia), the United States, South America and the Middle East. Skyworth's worldwide revenues for the financial year 2016 was \$HK42.695 billion (approximately €4.6 billion).

29. Mr. Li attaches at Exhibit "1" printouts from the ebay.ie and amazon.co.uk websites offering SKYWORTH branded products (predominantly televisions, remote controls and set-top boxes) for sale. The listings identify these products as coming from Italy, Spain, France, Germany and the UK.

30. Mr. Li attaches at Exhibit "2" invoices for thousands of SKYWORTH branded televisions from Metz Consumer Electronics GmbH in Germany to an address in Italy and another in Poland. Exhibit "3" consists of invoices from two sales of SKYWORTH branded goods in Germany to a company in France, one sale of goods from France to the Czech Republic and one sale from Poland to France. The exhibit also contains slides from a presentation launching the SKYWORTH brand in France.

31. He attaches at Exhibit “4” invoices and shipping documents in respect of the sale of SKYWORTH goods from China into Greece. His Exhibit “5” consists of Tesco Hungary catalogue advertisements promoting SKYWORTH televisions in Hungary, while Exhibit “6” consists of an invoice in respect of the sale of 3 televisions from Germany into Sweden.
32. Mr. Li attaches at Exhibit 7 an article from the Daily Mail Online dated 25 October 2017 titled “*The flat screen TV that’s thinner than two coins combined: Chinese brand unveils world’s skinniest TV set which is half as thick as an iPhone 8*”. He says the news website receives 33 million visitors per month including a substantial number of Irish visitors.
33. Mr. Li attaches at Exhibit “8” Irish Census 2016 figures showing the number of nationals from each of the EU Member States mentioned above who reside in Ireland claiming that they would be very familiar with the goods sold under the SKYWORTH mark. He attaches at Exhibit “9” the first four pages of a Google.ie search for “SKYWORTH” where all the results relate only to the goods of the Applicant and no other party’s goods.
34. Turning his attention to some earlier disputes between the parties, Mr. Li attaches at Exhibit “10” details of the registration of SKYWORTH for goods in Classes 7 and 11 in the UK, following the withdrawal of the Opponent’s opposition to the registration of that application for those two classes.
35. Mr. Li identifies other successes against the Opponent in New Zealand (partial revocation of the trade mark SKY NEWS), Germany (cancellation of the trade mark SKY SCREEN), Japan (two cancellations of the trade mark SKY), Taiwan (cancellation of trade mark SKY). He also mentions the registration of the trade mark SKYVOLT in Ireland, in the name of Stone Electrical Limited, following the dismissal by the Controller of an opposition by British Sky Broadcasting Group Plc (the predecessor in title of the Opponent). He attaches at Exhibit “11” copies of the above decisions which are available in English.
36. Mr. Li concludes his declaration by stating the existence of SKY sub-brands does not mean the Opponent is entitled to claim exclusive rights in a family of SKY trade marks, such that any other trade mark which includes the word SKY would necessarily be assumed to emanate from the Opponent as well. He says that while David Kelly has made an assertion that confusion between the respective brands is likely to occur, then surely the Opponent would be able to point to some examples of confusion which have already occurred over the previous 27 years during which the Applicant’s mark has been in extensive use worldwide and alongside the

Opponent's marks. The lack of any examples of confusion is indicative of the fact that such confusion has not and is not likely to occur.

Rule 22 Evidence

37. Evidence submitted by the Opponent under Rule 22 consisted of a Statutory Declaration dated 16 August 2018, of William Simon Corbett, Solicitor for the Opponent, and four exhibits labelled "WSC.1" to "WSC.4". Mr. Corbett sets out his evidence under four areas: (i) sales of SKYWORTH branded products in the EU; (ii) proceedings between Sky and the Skyworth groups of companies; (iii) damage to the SKY brand that will be caused by the use of the SKYWORTH trade mark; and (iv) comments in reply to Mr. Li Cuxian's observations on Sky's evidence.
38. In relation to (i) above Mr. Corbett states that any sales claimed by the Applicant in the EU are irrelevant, as these proceedings are being conducted on the basis of a comparison between the respective parties' marks. In any event, the Opponent considers the promotion and sale of SKYWORTH branded products in the EU as infringing on the Opponent's registered trade mark rights. He says the Opponent has taken legal action against the Applicant's SKYWORTH applications and registrations in many territories worldwide, including action in 27 of the 28 EU Member States (the other being Malta, wherein the Applicant has no live applications or registrations for the mark SKYWORTH). He says his Company has been successful in all these actions in the EU to date.
39. Mr. Corbett states that when in 2016 the Opponent became aware the Applicant was about to launch SKYWORTH televisions in Europe, the Opponent sought and was awarded a pan-EU preliminary injunction by the Alicante Commercial Court, sitting as an EUTM Court, against the Applicant placing SKYWORTH branded products on the EU market. That court granted Sky a full pan-EU injunction on 1 September 2017, which was confirmed on appeal in June 2018 and is still in force.
40. Similarly, when Sky became aware of a website being launched by the company STRONG (a Skyworth group company) with the intention of offering SKYWORTH branded televisions and set-top boxes in France and Belgium, Sky was granted another pan-EU preliminary injunction by the Vienna Commercial Court, sitting as an EUTM Court. That court granted a full pan-EU injunction in March 2018, which was confirmed on appeal in July 2018, and no further ordinary appeal is permissible. Mr. Corbett attaches at Exhibit WSC.1 copies of the two Spanish and two Austrian decisions, with English translations.

41. Mr. Corbett states, in the Opponent's view, any evidence submitted by Mr. Li which shows use of the SKYWORTH brand on televisions and set-top boxes amounts to trade mark infringement and if such infringement is linked back to the parties who are subject to the injunctions and the use is ongoing, this will be a very serious matter evidencing breach of those court orders.
42. Mr. Corbett states that evidence submitted by the Applicant does not all relate to the sale of SKYWORTH branded products. He attaches at Exhibit WSC.2 four of the invoices submitted by Mr. Li and he says having searched the internet to identify the models mentioned in these invoices, the results pointed to televisions branded TURBO-X or TEXLA, not SKYWORTH. He states the evidence submitted by the Applicant does not relate to sale of products in the EU; it relates to plans to sell SKYWORTH products by companies who are enjoined from doing so; much of it is undated and uncorroborated and none of it points to the sale of any SKYWORTH products in Ireland. Furthermore, he says there is nothing in the evidence to explain why foreign nationals living in Ireland would be aware of very recent attempts by the Applicant to launch SKYWORTH branded televisions in their home countries.
43. Turning to proceedings between the parties, Mr. Corbett states the Applicant has not succeeded in any oppositions concerning the disputed mark that necessitated the assessment of that mark in terms of the likelihood of confusion or damage to the reputation of the Opponent's earlier marks. He provides a table containing details of a number of cases across the EU in which the Opponent was successful and attaches at Exhibit WSC.3 copies of the English translation of the decisions, or English translations of extracts of the decisions.
44. Regarding Mr. Li Cunxian's exhibition of negative customer comments Mr. Corbett states the Opponent has a European customer base of 22.5 million and almost 60 million products. He says the Opponent is proud of its market-leading customer service, product innovation and excellence. He provides a slide which notes the Opponent's broadband service had been voted by Ofcom to have offered Best Customer Satisfaction for 5 years in a row. He says that since the Opponent's Statutory Declaration under Rule 20, at the main hearing of the Alicante litigation, a member of senior management at Sky explained and compared the design and innovation of Sky's higher quality products to the lower quality and lesser design features of SKYWORTH branded products. The purpose of this comparison was to highlight the negative impact on the Opponent of sales of inferior products bearing a trade mark similar to those of the Opponent.
45. Mr. Corbet rejects the Applicant's arguments that if the marks and goods were confusingly similar then actual confusion would have occurred during the 30 years in which goods bearing the

respective parties marks were available. He says the claim is misguided as the Applicant only recently attempted to launch a range of SKYWORTH televisions and set-top boxes in the EU. He says that according to investigations conducted by the Opponent's trade mark counsel that this was around 2016/2017. He says the Opponent took immediate steps to prohibit the distribution and sale of SKYWORTH products and that no such products were available in Ireland at any time.

The Hearing

46. The Applicant elected not to attend the Hearing and not to file written submissions in lieu of being heard. At the Hearing the Opponent was represented by Mr. Paul Coughlan BL, instructed by Ms. Judy McCullagh, Trade Mark Attorney of Tomkins & Co.
47. At the outset Mr. Coughlan stated that the Opponent wished only to prosecute the opposition in respect of Class 9 alone. He also confirmed the grounds upon which the Opponent was relying would be confined to the issues of the likelihood of confusion (Section 10(2)(b)), taking unfair advantage of the Opponent's reputation and detriment to the Opponent's earlier marks (Section 10(3)), and passing-off (Section 10(4)(a)).
48. Mr. Coughlan spoke of the Sky group's long-established and widely-known business in broadcasting, entertainment and communications services, and the supply of consumer electronic products. He argued the SKY brand has been in use in the State for upwards of 30 years to the point that it is now undoubtedly a household name of which the Irish public is well aware, even if they are not users of SKY products and services. He pointed to the extensive use and registration by companies in the Sky group of SKY sub-brands that combine SKY with other words (e.g. SKY NEWS, SKY SPORTS, SKY ATLANTIC and SKY PLUS).

Section 10(2)(b)

49. Turning his attention to the ground of opposition based on the likelihood of confusion Mr. Coughlan argued that, as a brand, SKY possesses both inherent and acquired distinctiveness, as was found to be the case in *Sky Business Centres*¹ where I, acting as Hearing Officer, stated:

“... as the Opponent's marks are long established, recognised easily and well known in the State, I am satisfied that it has acquired substantial additional distinctiveness through use and promotion.”

¹ Sky Business Centres, 31 January 2013, at paragraph 77

50. Mr. Coughlan argued that while SKYWORTH is not a known word in the English language, it is a neologism resulting from the combination of the pre-existing words SKY and WORTH and it will be perceived as such by the average English-speaking consumer in Ireland. The appearance of the word SKY at the beginning of SKYWORTH points to SKY being the dominant element of the mark and this is reinforced by the fact that the word WORTH appears second and has a laudatory connotation in the sense that WORTH means value, superiority or excellence.

51. His position was the word SKY is either the sole or the dominant element in all of the Opponent's earlier marks and its presence in the disputed mark renders it similar to each of the earlier marks. He argued there was an especially high degree of similarity as between SKYWORTH and SKY WORLD because the first six letters of each are the same. This is particularly so from a visual and aural perspective (as regards the latter the first two syllables are identical), with the same conceptual similarity applying with all of the other earlier marks given that SKY "... *relates to only one thing – the region above us ...*"² and SKYWORTH as a whole has no discrete meaning capable of referring to a different concept.

52. Turning to a comparison between the goods at issue in Class 9, Mr. Coughlan argues there was either identity or a high degree of similarity with the Class 9 goods for which the Opponent's earlier marks are registered.

53. Section 10(2)(b) of the Act is written in the following terms:

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

(a) ...

(b) it is similar to an earlier trade mark and would 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 of the later trade mark with the earlier trade mark.

54. It is evident that four basic requirements must be met in order for an objection under it to succeed. They are (i) there must be "an earlier trade mark", (ii) the mark applied for must be similar to that earlier trade mark, (iii) the goods of the application must be identical with or similar to those in respect of which the earlier trade mark is protected, and, (iv) there must be a resultant likelihood of confusion on the part of the public.

² Sky Business Centres, 31 January 2013, at paragraph 73

55. The first of these conditions is clearly fulfilled in this case. Five of the marks upon which the Opponent relies were filed at the European Union Intellectual Property Office (EUIPO) between May 2010 and July 2014 (i.e. prior to the relevant date of 18 November 2014) and, by virtue of Section 11(1)(b) of the Act, are earlier trade marks as against the present application for the purposes of Section 10.

Comparison of the marks

56. I have compared the respective marks of the parties on the criteria of visual, aural and conceptual similarity and have attempted to make an overall assessment of the extent to which they should be regarded as similar or different. It is important to stress that this is an assessment of the overall impression the marks make on me, having put myself in the shoes of the average consumer of the goods for which the Applicant is seeking protection. Notwithstanding the detailed comparisons I make below I am mindful that the European Court of Justice has noted (*Sabel BV v Puma AG and Rudolf Dassler Sport Case C-251/95*)³ that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. For this reason, the appreciation of the visual, aural and conceptual similarity of the marks must be based on the overall impressions given by them, rather than on specific points of detail that are likely to go unnoticed by the average consumer.

57. There is visual and aural similarity between the marks. Visually, the Applicant's mark consists of a single invented word SKYWORTH, the origins of which I am satisfied the average Irish consumer would recognise as the simple joining of the words SKY and WORTH. The Opponent's single-word SKY marks share a medium level of visual similarity with the Applicant's mark. However, the Opponent's SKY WORLD mark, which Mr. Coughlan rightly identifies as having the strongest basis upon which to ground the opposition under Section 10(2)(b), is highly similar to the Applicant's SKYWORTH mark. Each of the two marks contain 8 letters with both sharing the same first 6 letters in precisely the same order. The space between SKY and WORLD in the Opponent's mark does not, in any discernible manner, serve to put distance between the two marks. Accordingly, I would assess the level of visual similarity as being very high.

58. When spoken, the Opponent's marks SKY WORLD sounds extremely close to the Applicant's SKYWORTH mark. The pronunciation is virtually identical with the only difference being the final sound of the "LD" on the one hand and "TH" on the other; though these endings are similar in that the very end of the final syllable of each has a "TH" sound, albeit that it is more

³ Paragraph 23 of decision dated 11 November, 1997

pronounced and slightly longer in the Opponent's SKYWORTH mark. Having compared the respective marks from an aural perspective I find the Opponent's SKY WORLD mark to have an extremely high level of similarity with the Applicant's mark.

59. The assessment of a mark from a conceptual perspective cannot be carried out in complete isolation from the goods or services covered by the mark. Where a mark contains an element that describes a characteristic of the goods offered, it conveys a particular type of message to the consumer. In the present case the message conveyed by the respective marks are simple and obvious. In respect of the Applicant's mark the message is that the goods are SKY products that have value, high quality or that justify the price-tag. The Opponent's SKY WORLD conveys the message that the products bearing the mark are part of a global brand SKY. Irish consumers are well aware of the Opponent's SKY brand, so they would not view this message as a mere aspirational goal, but a marketplace reality. While the respective messages are not identical, neither are they dissimilar. I find there is a medium to high conceptual similarity between the SKYWORTH and SKY WORLD marks.

60. Having compared the marks from a visual, aural and conceptual view I am satisfied that, overall, they share an extremely high level of similarity.

Comparison of the goods

61. The goods at issue are those in Class 9. Having compared the respective specification related to the parties' marks I am satisfied the Applicant's Class 9 goods are either identical or highly similar to the Class 9 goods for which the Opponent's earlier SKY and SKY WORLD marks are registered.

Likelihood of confusion

62. The question now is whether the overall similarity is sufficient to warrant a refusal under Section 10(2)(b) of the Act? The criteria against which that assessment should be made have been enunciated in a number of decisions of the European Court of Justice⁴ in this area and they include the following:

- a. The more distinctive the earlier mark, the greater will be the likelihood of confusion;

⁴ Sabel BV –v- Puma AG and Rudolph Dassler Sport (Case C-251/95) [1998] 1 CMLR 445; Canon Kabushiki Kaisha –v- Metro-Goldwyn-Mayer Inc. (Case C-39/97) [1999] 1 CMLR 77; Lloyd Schuhfabrik Meyer & Co. GmbH –v- Klijsen Handel BV (Case C-342/97) [1999] 2 CMLR 1343

- b. In determining the distinctive character of the earlier mark, it is necessary to make an overall assessment of its capacity to identify the goods for which it is registered as coming from a particular undertaking and thus to distinguish those goods from those of other undertakings;
- c. In making that assessment, account should be taken of the inherent characteristics of the mark; the market share held by it; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested in its promotion; the proportion of the relevant public which, because of the mark, identifies the goods as originating from a particular undertaking; and statements from chambers of commerce and industry and other trade and professional associations;
- d. A global appreciation of the likelihood of confusion must, as regards the visual, aural and conceptual similarity of the marks in question, be based on the overall impression created by them, and the importance to be attached to each of those elements must take account of the category of goods and the way in which they are marketed;
- e. The assessment must be made from the perspective of the average consumer who is deemed to be reasonably well-informed, observant and circumspect but who rarely has the chance to make a direct comparison of the marks and must rely on the imperfect picture that he has of them in his mind;
- f. The likelihood of confusion must be appreciated globally, taking into account all of the factors relevant to the circumstances of the case;
- g. A lesser degree of similarity between the goods may be offset by a greater degree of similarity between the marks, and vice versa.

63. Having considered all the factors I am satisfied the Opponent's SKY marks are inherently distinctive and have the capacity to identify the goods for which they are registered as being those of a particular undertaking and thus to distinguish those goods from those of other undertakings. The evidence submitted to support a claim of additional distinctiveness acquired through use in Ireland is extremely strong. The Opponent's SKY marks are very well-known, and extensively used and advertised throughout the State. Accordingly, in my opinion, the Opponent's marks have acquired a level of additional distinctiveness through use in the State for the goods at issue, which bolsters the Opponent's case that confusion would occur.

64. There is no doubt that the vast majority of the Irish public were aware of the SKY brand prior to the relevant date, particularly for television-based services. However, the Applicant has claimed no confusion has ever arisen and that that must be a determining factor in assessing the likelihood of future confusion. At the Hearing Mr. Coughlan emphasised that the claimed lack

of any actual confusion was down to the vigorous, extensive, prolonged and successful measures employed by the Opponent worldwide to stop SKYWORTH branded products being placed on the market in jurisdictions where the Opponent's SKY brands are registered. He pointed to the complete lack of evidence to show or even suggest the Applicant had ever offered any goods for sale under the SKYWORTH mark to Irish consumers. I fully accept Mr. Coughlan arguments on that point.

65. In my opinion, there is a real likelihood that a consumer, for example who purchased a SKY WORLD branded television, who then encounters the Applicant's mark on another television, would be liable to be confused or be led to believe that the Applicant's mark is associated with those of the Opponent. This is an unescapable conclusion that must be reached where the relevant marks are highly similar, and the goods are identical or extremely similar. Therefore, I have no hesitation in finding the SKYWORTH mark offends against Section 10(2)(b) of the Act and the application must be refused.

Section 10(3)

66. There are a number of conditions which must be fulfilled in order for an opposition to succeed under Section 10 (3) of the Act, which is written in the following terms:

“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 State (or, in the case of a Community trade mark, in the Community) and the use of the later trade mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or reputation of the earlier trade mark.”

67. Firstly, there must be identity or similarity of the marks at issue; secondly, the earlier mark (or marks, as in this case) must have a reputation in the State; thirdly, the use of the later trade mark must be without due cause; and fourthly, that use must take unfair advantage of, or be detrimental to, the distinctive character or reputation of the earlier marks.

68. I have already found there is a high level of similarity between the mark at issue and the Opponent's marks. Evidence provided by the Opponent shows that its marks enjoy extensive market share, have intensive geographical penetration, are extremely well known and that significant investment in them has been undertaken. In my opinion, at the relevant date, the Opponent's reputation had extended beyond the consciousness of consumers of the Opponent's goods and had penetrated the minds of the wider public such that, at the relevant date, most people in Ireland would have known and recognised the Opponent's SKY marks, even if they

had never been consumers of the Opponent's goods and services. Accordingly, I am satisfied the first two conditions have been met.

69. Turning now to the consideration of the condition concerning "use of the later mark without due cause". The Applicant is SKYWORTH GROUP COMPANY LIMITED, and it may be argued that a company has every right, and therefore due cause, to seek to register its name as a trade mark. But it is important to differentiate between due cause in applying for the registration of the mark in question and due cause regarding its use. Section 10(3) is not concerned with whether or not the Applicant had due cause to apply for the disputed mark, it is concerned with whether or not it has due cause to use the mark. It cannot be the case that a justification based solely on the use of the Applicant's name is sufficient to allow me to find it has due cause to use the mark. It is not difficult to register a company name that is extremely similar to a well-known company or brand. So, the "due cause" question must be considered in the context of the marketplace, in particular other operators, their marks and the knowledge the Applicant had of these factors.
70. The evidence shows that there is a long-running conflict (dating back to 2006) between the parties throughout Europe in respect of the SKYWORTH mark. An earlier attempt to register SKYWORTH as a mark in Ireland in 2008 was opposed by the Opponent and the Applicant withdrew the application following the opposition. The Opponent has succeeded in numerous other opposition and revocation cases concerning the registration of SKYWORTH marks within the European Union. Despite the numerous rejections, it appears to me the Applicant is not deterred and remains particularly dogged in its pursuit of the registration of its SKYWORTH mark in European jurisdictions in which the Opponent has earlier rights. Based on the many earlier rejections of the Applicant's mark, the Opponent's reputation, long-standing use and promotion of its SKY and SKY WORLD marks, and the Applicant's obvious knowledge of same, I am satisfied the Applicant has no due cause to use the SKYWORTH mark in Ireland.
71. Having reached these findings I must now consider whether they are enough to conclude that use of the disputed mark would take unfair advantage of, or be detrimental to, the Opponent's earlier marks. To find in favour of the Opponent I need not find that both outcomes would result. But I must be satisfied the Opponent would be injured in some way. The injury would flow from a link being established between the parties resulting from the use of the disputed

mark by the Applicant. The types of injury that could be caused have been identified by the Court of Justice in *L’Oreal v. Bellure*⁵, where the court stated:

“39 *As regards detriment to the distinctive character of the mark, also referred to as ‘dilution’, ‘whittling away’ or ‘blurring’, such detriment is caused when that mark’s ability to identify the goods or services for which it is registered is weakened, since use of an identical or similar sign by a third party leads to dispersion of the identity and hold upon the public mind of the earlier mark. That is particularly the case when the mark, which at one time aroused immediate association with the goods or services for which it is registered, is no longer capable of doing so (see, to that effect, Intel Corporation*⁶, paragraph 29).

40 *As regards detriment to the repute of the mark, also referred to as ‘tarnishment’ or ‘degradation’, such detriment is caused when the goods or services for which the identical or similar sign is used by the third party may be perceived by the public in such a way that the trade mark’s power of attraction is reduced. The likelihood of such detriment may arise in particular from the fact that the goods or services offered by the third party possess a characteristic or a quality which is liable to have a negative impact on the image of the mark.*

41 *As regards the concept of ‘taking unfair advantage of the distinctive character or the repute of the trade mark’, also referred to as ‘parasitism’ or ‘free-riding’, that concept relates not to the detriment caused to the mark but to the advantage taken by the third party as a result of the use of the identical or similar sign. It 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.*

42 *Just one of those three types of injury suffices for Article 5(2) of Directive 89/104 to apply (see, to that effect, Intel Corporation, paragraph 28).*

72. The Court also found in *Intel Corporation* that “*the more immediately and strongly the mark is brought to mind by the later mark, the greater the likelihood that the current or future use of the mark is taking, or will take, unfair advantage of the distinctive character or the repute of the mark ...*”. I am satisfied Irish consumers would, on encountering the Applicant’s mark, be reminded immediately of the Opponent’s marks.

73. It is clear that on the relevant date the Applicant was well aware of the Opponent’s business, its reputation and its strength in the marketplace. It appears to me that use of the Applicant’s mark would take advantage of that reputation by coat-tailing on the high level of public awareness of the Opponent’s marks, in order to promote interest in its own goods. The advantage gained is by way of savings on investment in marketing and advertising of its goods because the Applicant is

⁵ Court of Justice of the European Union Case C-487/07 (Judgment of 18th June 2009)

⁶ Court of Justice of the European Union Case C-252/07 *Intel Corporation Inc. v CPM United Kingdom Ltd*

benefiting, in an unfair manner, from the power of attraction of the Opponent's marks and the high level of investment by the Opponent.

74. As regards detriment, in my opinion, it is possible that "blurring" may occur, whereby the Opponent's mark's capacity to identify the goods as being those of the Opponent is insidiously eroded over time by the use of the same or a similar mark in relation to identical or highly similar goods that have another commercial origin. In light of the strength of the Opponent's marks, their reputation and the degree of inherent and acquired distinctiveness, the degree of similarity between the respective marks and the closeness of the goods concerned, in my opinion, it is inevitable that detriment would be caused to them should the Applicant mark be placed on goods in Ireland. Accordingly, I find the application offends against Section 10(3) and must be refused.

75. Having refused the application on grounds that it offends against Sections 10(2)(b) and 10(3) of the Act, I need not consider the opposition on the grounds raised in respect of Section 10(4)(a). Based on the foregoing, I refuse to allow the application to proceed to registration.

Dermot Doyle

Acting for the Controller

31 May 2019

Annex 1

EUTM No. 013085972 - SKY WORLD - Class 9 Goods

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; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment; computers; computer software; fire-extinguishing apparatus; Abacuses; Accumulators, electric; Acid hydrometers; Acidimeters for batteries; Acoustic conduits; Acoustic couplers; Actinometers; Adding machines; Aerials; Aerometers; Air analysis apparatus; Alarm bells, electric; Alarms; Alcoholmeters; Alidades; Altimeters; Ammeters; Amplifiers; Amplifying tubes; Anemometers; Animated cartoons; Anode batteries; Anodes; Answering machines; Anti-glare glasses; Anti-glare visors; Anti-interference devices [electricity]; Anti-theft warning apparatus; Anticathodes; Apertometers [optics]; Apparatus and installations for the production of X-rays, not for medical purposes; Apparatus and instruments for astronomy; Apparatus and instruments for physics; Apparatus for changing record player needles; Apparatus for editing cinematographic film; Apparatus for fermentation [laboratory apparatus]; Apparatus for measuring the thickness of skins; Apparatus to check franking; Appliances for measuring the thickness of leather; Armatures [electricity]; Asbestos clothing for protection against fire; Asbestos gloves for protection against accidents; Asbestos screens for firemen; Audio- and video-receivers; Audiovisual teaching apparatus; Automated teller machines [ATM]; Automatic indicators of low pressure in vehicle tires; Azimuth instruments; Bags adapted for laptops; Balances [steelyards]; Balancing apparatus; Bar code readers; Barometers; Batteries, electric; Batteries, electric, for vehicles; Batteries for lighting; Battery boxes; Battery chargers; Battery jars; Beacons, luminous; Bells [warning devices]; Betatrons; Binoculars; Blinkers [signalling lights]; Blueprint apparatus; Boiler control instruments; Branch boxes [electricity]; Breathing apparatus, except for artificial respiration; Breathing apparatus for underwater swimming; Bullet-proof waistcoats; Buzzers; Cabinets for loudspeakers; Cables, electric; Calculating disks; Calculating machines; Calibrating rings; Calipers; Camcorders; Cameras [photography]; Capacitors; Capillary tubes; Carpenters' rules; Carriers for dark plates [photography]; Cases especially made for photographic apparatus and instruments; Cases fitted with dissecting instruments [microscopy]; Cash registers; Cassette players; Cathodes; Cathodic anti-corrosion apparatus; Cell phone straps; Centering apparatus for photographic transparencies; Central processing units [processors]; Chargers for electric batteries; Chemistry apparatus and instruments; Chips [integrated circuits]; Choking coils [impedance]; Chromatography apparatus for laboratory use; Chronographs [time recording apparatus]; Cinematographic cameras; Cinematographic film, exposed; Circuit breakers; Circuit closers; Cleaning apparatus for phonograph records; Clinometers; Clothing especially made for laboratories; Clothing for protection against accidents, irradiation and fire; Clothing for protection against fire; Coaxial cables; Coils, electric; Coin-operated mechanisms for television sets; Collectors, electric; Commutators; Compact disc players; Compact discs [audio-video]; Compact discs [read-only memory]; Comparators; Compasses [measuring instruments]; Computer game software; Computer keyboards; Computer memory devices; Computer operating programs, recorded; Computer peripheral devices; Computer programmes [programs], recorded; Computer programs [downloadable software]; Computer software, recorded; Computers; Conductors, electric; Connections for electric lines; Connectors [electricity]; Contact lenses; Contacts, electric; Containers for contact lenses; Containers for microscope slides; Control panels [electricity]; Converters, electric; Copper wire, insulated; Correcting lenses [optics]; Cosmographic instruments; Couplers [data processing equipment]; Couplings, electric; Covers for electric outlets; Crash test

dummies; Cupels [laboratory]; Current rectifiers; Cyclotrons; Darkroom lamps [photography]; Darkrooms [photography]; Data processing apparatus; Decompression chambers; Decorative magnets; Demagnetizing apparatus for magnetic tapes; Densimeters; Densitometers; Detectors; Diagnostic apparatus, not for medical purposes; Diaphragms [acoustics]; Diaphragms for scientific apparatus; Diaphragms [photography]; Dictating machines; Diffraction apparatus [microscopy]; Digital photo frames; Directional compasses; Disk drives for computers; Disks, magnetic; Distance measuring apparatus; Distance recording apparatus; Distillation apparatus for scientific purposes; Distribution boards [electricity]; Distribution boxes [electricity]; Distribution consoles [electricity]; Divers' masks; Diving suits; DNA chips; Dog whistles; Dosimeters; Downloadable image files; Downloadable music files; Downloadable ring tones for mobile phones; Dressmakers' measures; Drying apparatus for photographic prints; Drying racks [photography]; Ducts [electricity]; DVD players; Dynamometers; Ear plugs for divers; Eggcandlers; Electric apparatus for commutation; Electric apparatus for remote ignition; Electric discharge tubes, other than for lighting; Electric door bells; Electric installations for the remote control of industrial operations; Electric loss indicators; Electricity conduits; Electrified fences; Electrified rails for mounting spot lights; Electro-dynamic apparatus for the remote control of railway points; Electro-dynamic apparatus for the remote control of signals; Electrolysers; Electromagnetic coils; Electronic agendas; Electronic notice boards; Electronic pens [visual display units]; Electronic pocket translators; Electronic publications, downloadable; Electronic tags for goods; Encoded identification bracelets, magnetic; Encoded magnetic cards; Enlarging apparatus [photography]; Epidiascopes; Ergometers; Exposure meters [light meters]; Eyeglass cases; Eyeglass chains; Eyeglass cords; Eyeglass frames; Eyepieces; Facsimile machines; False coin detectors; Fibre [fiber (Am)] optic cables; Film cutting apparatus; Films, exposed; Filters for respiratory masks; Filters for ultraviolet rays, for photography; Filters [photography]; Fire alarms; Fire beaters; Fire blankets; Fire boats; Fire engines; Fire escapes; Fire extinguishers; Fire hose; Fire hose nozzles; Fire pumps; Flash-bulbs [photography]; Flashlights [photography]; Floppy disks; Fluorescent screens; Fog signals, non-explosive; Food analysis apparatus; Frames for photographic transparencies; Frequency meters; Furniture especially made for laboratories; Fuse wire; Fuses; Galena crystals [detectors]; Galvanic batteries; Galvanic cells; Galvanometers; Garments for protection against fire; Gas testing instruments; Gasometers [measuring instruments]; Gauges; Glass covered with an electrical conductor; Glazing apparatus for photographic prints; Global Positioning System [GPS] apparatus; Gloves for divers; Gloves for protection against accidents; Gloves for protection against X-rays for industrial purposes; Goggles for sports; Graduated glassware; Grids for batteries; Hands free kits for phones; Head cleaning tapes [recording]; Headphones; Heat regulating apparatus; Heliographic apparatus; Hemline markers; High-frequency apparatus; Holders for electric coils; Holograms; Horns for loudspeakers; Hourglasses; Hydrometers; Hygrometers; Identification sheaths for electric wires; Identification threads for electric wires; Identity cards, magnetic; Incubators for bacteria culture; Inductors [electricity]; Instruments containing eyepieces; Integrated circuit cards [smart cards]; Integrated circuits; Intercommunication apparatus; Interfaces for computers; Inverters [electricity]; Invoicing machines; Ionization apparatus not for the treatment of air or water; Jigs [measuring instruments]; Juke boxes for computers; Juke boxes, musical; Junction boxes [electricity]; Junction sleeves for electric cables; Knee-pads for workers; Laboratory centrifuges; Laboratory trays; Lactodensimeters; Lactometers; Laptop computers; Lasers, not for medical purposes; Lens hoods; Lenses for astrophotography; Letter scales; Levelling instruments; Levels [instruments for determining the horizontal]; Life belts; Life buoys; Life jackets; Life nets; Life saving apparatus and equipment; Life-saving rafts; Light conducting filaments [optical fibers [fibres]]; Light dimmers [regulators], electric; Light-emitting diodes [LED]; Light-emitting electronic pointers; Lighting ballasts; Lightning arresters; Limiters [electricity]; Locks, electric; Logs [measuring instruments]; Loudspeakers; Magic lanterns; Magnetic data media; Magnetic encoders; Magnetic tape units for computers; Magnetic tapes; Magnetic wires; Magnets; Magnifying glasses [optics]; Manometers; Marine compasses; Marine depth finders; Marking buoys; Marking gauges [joinery]; Masts for wireless aerials; Material testing instruments and machines; Materials for electricity mains [wires,

cables]; Mathematical instruments; Measures; Measuring apparatus; Measuring devices, electric; Measuring instruments; Measuring spoons; Mechanical signs; Mechanisms for coin-operated apparatus; Mechanisms for counter-operated apparatus; Megaphones; Mercury levels; Metal detectors for industrial or military purposes; Meteorological balloons; Meteorological instruments; Meters; Metronomes; Micrometer screws for optical instruments; Micrometers; Microphones; Microprocessors; Microscopes; Microtomes; Milage recorders for vehicles; Mirrors for inspecting work; Mirrors [optics]; Modems; Money counting and sorting machines; Monitoring apparatus, electric; Monitors [computer hardware]; Monitors [computer programs]; Mouse [data processing equipment]; Mouse pads; Nautical apparatus and instruments; Naval signalling apparatus; Navigation apparatus for vehicles [on-board computers]; Navigational instruments; Neon signs; Nets for protection against accidents; Nose clips for divers and swimmers; Notebook computers; Objectives [lenses] [optics]; Observation instruments; Octants; Ohmmeters; Optical apparatus and instruments; Optical character readers; Optical condensers; Optical data media; Optical discs; Optical glass; Optical goods; Optical lamps; Optical lenses; Oscillographs; Ovens for laboratory use; Oxygen transvasing apparatus; Ozonisers [ozonators]; Parking meters; Particle accelerators; Pedometers; Peepholes [magnifying lenses] for doors; Periscopes; Personal stereos; Petri dishes; Petrol gauges; Phonograph records; Photocopiers [photographic, electrostatic, thermic]; Photographic racks; Photometers; Phototelegraphy apparatus; Photovoltaic cells; Pince-nez; Pipettes; Pitot tubes; Plane tables [surveying instruments]; Planimeters; Plates for batteries; Plotters; Plugs, sockets and other contacts [electric connections]; Plumb bobs; Plumb lines; Pocket calculators; Polarimeters; Portable media players; Portable telephones; Precision balances; Precision measuring apparatus; Pressure indicator plugs for valves; Pressure indicators; Pressure measuring apparatus; Printed circuit boards; Printed circuits; Printers for use with computers; Prisms [optics]; Probes for scientific purposes; Projection apparatus; Projection screens; Protection devices against X-rays, not for medical purposes; Protection devices for personal use against accidents; Protective helmets; Protective helmets for sports; Protective masks; Protective suits for aviators; Protractors [measuring instruments]; Punched card machines for offices; Push buttons for bells; Pyrometers; Quantity indicators; Radar apparatus; Radio pagers; Radiological apparatus for industrial purposes; Radiology screens for industrial purposes; Radios; Radiotelegraphy sets; Radiotelephony sets; Railway traffic safety appliances; Readers [data processing equipment]; Record players; Reducers [electricity]; Reflecting discs for wear, for the prevention of traffic accidents; Refractometers; Refractors; Regulating apparatus, electric; Relays, electric; Remote control apparatus; Resistances, electric; Respirators for filtering air; Respirators, other than for artificial respiration; Resuscitation mannequins [teaching apparatus]; Retorts; Retorts' stands; Revolution counters; Rheostats; Riding helmets; Road signs, luminous or mechanical; Rods for water diviners; Rods [surveying instruments]; Rulers [measuring instruments]; Rules [measuring instruments]; Saccharometers; Safety restraints, other than for vehicle seats and sports equipment; Safety tarpaulins; Salinometers; Satellite navigational apparatus; Satellites for scientific purposes; Scales; Scanners [data processing equipment]; Screens for photoengraving; Screens [photography]; Screw-tapping gauges; Semi-conductors; Sextants; Sheaths for electric cables; Shoes for protection against accidents, irradiation and fire; Shutter releases [photography]; Shutters [photography]; Sighting telescopes for firearms; Signal bells; Signal lanterns; Signalling buoys; Signalling panels, luminous or mechanical; Signalling whistles; Signals, luminous or mechanical; Signs, luminous; Simulators for the steering and control of vehicles; Sirens; Sleeves for laptops; Slide calipers; Slide projectors; Slide-rules; Slides [photography]; Smoke detectors; Socks, electrically heated; Solar batteries; Solderers' helmets; Solenoid valves [electromagnetic switches]; Sonars; Sound alarms; Sound locating instruments; Sound recording apparatus; Sound recording carriers; Sound recording strips; Sound reproduction apparatus; Sound transmitting apparatus; Sounding apparatus and machines; Sounding leads; Sounding lines; Spark-guards; Speaking tubes; Spectacle cases; Spectacle frames; Spectacle lenses; Spectacles [optics]; Spectrograph apparatus; Spectroscopes; Speed checking apparatus for vehicles; Speed indicators; Speed measuring apparatus [photography]; Speed regulators for record players; Spherometers; Spirit levels; Spools

[photography]; Sprinkler systems for fire protection; Stage lighting regulators; Stands for photographic apparatus; Starter cables for motors; Steering apparatus, automatic, for vehicles; Step-up transformers; Stereoscopes; Stereoscopic apparatus; Stills for laboratory experiments; Stroboscopes; Styli for record players; Sulphitometers; Sunglasses; Surveying apparatus and instruments; Surveying chains; Surveying instruments; Surveyors' levels; Switchboards; Switchboxes [electricity]; Switches, electric; Tachometers; Tape recorders; Taximeters; Teaching apparatus; Teeth protectors; Telegraph wires; Telegraphs [apparatus]; Telemeters; Telephone apparatus; Telephone receivers; Telephone transmitters; Telephone wires; Teleprinters; Teleprompters; Telerupters; Telescopes; Television apparatus; Temperature indicator labels, not for medical purposes; Temperature indicators; Terminals [electricity]; Test tubes; Testing apparatus not for medical purposes; Theft prevention installations, electric; Theodolites; Thermionic tubes; Thermometers, not for medical purposes; Thermostats; Thermostats for vehicles; Ticket dispensers; Time clocks [time recording devices]; Time recording apparatus; Time switches, automatic; Tone arms for record players; Totalizers; Traffic cones; Traffic-light apparatus [signalling devices]; Transformers [electricity]; Transistors [electronic]; Transmitters of electronic signals; Transmitters [telecommunication]; Transmitting sets [telecommunication]; Transponders; Triodes; Tripods for cameras; Urinometers; USB flash drives; Vacuum gauges; Vacuum tubes [radio]; Variometers; Vehicle breakdown warning triangles; Vehicle radios; Verniers; Video cassettes; Video game cartridges; Video recorders; Video screens; Video telephones; Videotapes; Viewfinders, photographic; Viscosimeters; Voltage regulators for vehicles; Voltage surge protectors; Voltmeters; Voting machines; Wafers for integrated circuits; Waling glasses; Walkie-talkies; Washing trays [photography]; Water level indicators; Wavemeters; Weighbridges; Weighing apparatus and instruments; Weighing machines; Weights; Whistle alarms; Wind socks for indicating wind direction; Wire connectors [electricity]; Wires, electric; Workmen's protective face-shields; Wrist rests for use with computers; X-ray apparatus not for medical purposes; X-ray films, exposed; X-ray photographs, other than for medical purposes; X-ray tubes not for medical purposes; data storage apparatus and instruments, software and data storage software, and software for video-conferencing, radio, television, sound recording, sound reproducing, telecommunications and teaching apparatus and instruments; apparatus for recording television programmes; apparatus for reproduction or reception of sound, images or audio visual content; electrical and electronic apparatus for use in the reception of satellite, terrestrial or cable broadcasts; televisions; LCD and plasma screens; home cinema systems; amplifiers; speakers; radios; wireless audio and/or audio visual devices; portable wireless audio and/or audio visual devices; remote controls; wireless keypads; television receivers including a decoder; set-top boxes; digital set-top boxes; high definition settop boxes; personal video recorder; set-top boxes for use in decoding and reception of satellite, terrestrial and cable broadcasts; apparatus for decoding encoded signals including set-top boxes for television reception; set-top box apparatus including a decoder and an interactive viewing guide; set-top box apparatus including a decoder and a recorder for recording television and audio programmes; set-top box apparatus including a decoder and a recorder programmable to transfer stored recordings to storage and also to delete the older recordings; satellite dishes; low noise blocks; satellite meters; computer software to enable searching of data; encoded programs for computers and for data processing and telecommunications; telephones; mobile telephones; PDAs; telephone and radio modems; television receivers including a decoder; set-top boxes for use in decoding and reception of satellite, terrestrial cable and digital subscriber line (DSL), Internet or other electronic broadcasts; apparatus for decoding encoded signals; recorded television and radio programmes; recorded programmes for broadcasting or other transmission on television, radio, mobile telephones, PDAs and on PCs; video recordings; multimedia apparatus and instruments; portable or hand-held computers; DVD players; computers; computer hardware; firmware, computer firmware; computer hardware, apparatus and instruments all for transmitting, displaying, receiving, storing and searching electronic information; computer programs; electronic computer games; electronic interactive computer games; computer software; computer software and telecommunications apparatus to enable connection to databases and the Internet; computer

software supplied from the Internet; network termination equipment; wired and/or wireless computer network routers, modems, firewalls and/or bridges; computer software and computer programs for distribution to, and for use by, viewers of a digital television channel for the viewing and purchase of goods and services; computer games software and computer quiz software; computer programs for interactive television and for interactive games and/or quizzes; interactive video game devices comprised of computer hardware and software and accessories, namely software for operating game controllers; portable and/or hand-held electronic devices for receiving, playing and transmitting music, sounds, images, text, signals, information and code; electronic publications; computer games; computer video games; video screens; video projectors; tapes, discs and wires, all being magnetic; cassettes and cartridges, all adapted for use with the aforesaid tapes; blank and pre-recorded audio and video cassettes, tapes and cartridges; compact discs; DVD discs; phonographic records; laser readable discs for recording sound or video; ROM cartridges, CD ROMs, cards and discs, integrated circuit cards, memory carriers, recording media, all pre-recorded with computer video games and/or quizzes; encoded cards; radio and television signal antennae; music, sounds, videos, images, text and information provided by a telecommunications network, by on-line delivery and by way of the Internet and/or the world-wide web or other communications network; interactive sound and/or audio recordings; music, video, sound and/or audio recordings (downloadable) provided from MP3 Internet websites; MP3 players, MP3 readers; audio and/or video file recorders and/or players; portable audio and/or video file recorders and/or players; telephone ring tones (downloadable); apparatus and instruments for the reception of radio and television broadcasts including the reception of cable, satellite and digital broadcasts; smart cards; credit cards; loyalty cards; acoustic apparatus or instruments, namely, acoustic discs, acoustic meters, acoustic sound alarms; adaptors; aerials; antennae; amplifiers; communication apparatus and instruments; encoded or magnetic banking or credit cards; cinematographic film; cinematographic instruments and apparatus; data carriers; data storage apparatus, equipment and instruments; electrical telecommunications and/or communications and/or broadcast and/or transmission and/or decoding and/or image processing and/or audio visual instruments and apparatus; electronic telecommunications and/or communications and/or broadcast and/or transmission and/or decoding and/or image processing and/or audio visual instruments and apparatus; film reproducing instruments and apparatus; hand held electrical telecommunications and/or communications and/or broadcast and/or transmission and/or decoding and/or image processing and/or audio visual instruments and apparatus; hand held electronic telecommunications and/or communications and/or broadcast and/or transmission and/or decoding and/or image processing and/or audio visual instruments and apparatus; mobile telephones; motion pictures; telephone apparatus and equipment; parts and fittings for all the aforesaid goods; sunglasses, leather cases for holding mobile phones; e-sell through products, namely downloadable media content, including video and films, television programmes, computer games, music, images and ring tones provided by internet, telephone line, cable, wireless transmission, satellite or terrestrial broadcast service; cases, containers, protective coverings and parts and fittings therefor, all for use with MP3 players, music storage devices, media storage devices and other consumer electronic devices; computer equipment for machinery for use in conservation, generation and efficient use of heat, light and water, including thermostatic controls, solar panels for electricity generation, photovoltaic devices, solar cells turbines and motion detectors; computer equipment for use in the generation of alternative energy including wind power, hydroelectric power, tidal power, geothermal power, solar power, biomass, and biofuels; control and monitoring equipment for use in the generation of alternative energy including wind power, hydroelectric power, tidal power, geothermal power, solar power, biomass, and biofuels; automated control apparatus for local management of lighting, heating and water supplies; electronic publications (downloadable), including electronic publications, magazines and newsletters regarding environmental protection, energy conservation and ecology, animal welfare and renewable energy projects, including wind power, hydroelectric power, tidal power, geothermal power, solar power, biomass, and biofuels; apparatus and instruments for closed circuit television and surveillance systems; apparatus and instruments for

personal security monitoring; apparatus and instruments for home security monitoring and control; home and personal security apparatus; home and personal security devices; home and personal security alarms; electronic protection equipment, including fire detecting and alarm equipment, intruder and burglar alarm equipment and motion detecting equipment; radio, telephonic, television and signalling apparatus and instruments, cameras, sound and video monitoring and recording and sound and video reproducing apparatus and instruments, all for control and telemetry purposes for the home and personal security; closed-circuit television systems (CCTV); monitors; cameras; optical lenses; camera casings; prepackaged cameras; videocassette recorders (VCRs); system controlling software; video monitoring apparatus; detectors; access control apparatus; readers; magnetic or encoded access control cards; monitoring apparatus; electronic panels for alarm management and monitoring; alarm panels; glass breakage detectors; smoke detectors; carbon monoxide detectors; digital audio recorders; digital video recorders; digital audio servers; digital video servers; electrical communication equipment; message programming equipment; radio paging equipment; electronic locking systems; life-saving apparatus and equipment; electric alarms; electronic devices for opening doors; electronic devices for protection; intruder alarms and anti-theft equipment; intruder detection apparatus; motion detecting equipment; electronic control apparatus; electronic apparatus for controlling operation of machines; remote apparatus for controlling operation of machines; computer apparatus for controlling operation of machines; electronic network equipment; electronic communication equipment; message programming devices; electronic locking apparatus; parts and fittings for all the aforesaid goods; computer software, operating system software, devices, and hardware for transmitting, receiving, synchronizing, displaying, backing-up, monitoring, controlling, sharing, coding, decoding, encrypting, accessing, remotely accessing, creating, collecting, storing, securing, removing, transferring, disseminating, locating, organizing or otherwise utilizing data, voice, multimedia, audio, visual, music, photographs, drawings, images, audiovisual, video, text, graphics or other data, including over a global communications network; computer software, operating system software, devices, and hardware for synchronizing data, files, e-mails, contacts, calendars, task lists, text messages, photos, music, audio, visual, audio visual, video, text, graphics, programs and other information between computers and hand-held or other devices, and vice versa; communications platforms for enabling instantaneous, continuous, scheduled and perpetual synchronization of data between computers and hand-held or other devices, and vice versa; multimedia cards, memory cards, flash memory cards, memory chips, data storage media devices, plugs, plug-in cards, magnetic cards, SIM cards, telephone calling cards, headphones, headsets, portable and/or hand held electronic devices for receiving, storing, playing and transmitting data, voice, multimedia, audio, visual, music, photographs, drawings, images, audiovisual, video, text, graphics or other data; online dictionaries, encyclopaedias, and reference texts (downloadable); online publications, including newspapers, magazines (periodicals), comics, journals (publications), books, user manuals, instructional and teaching materials (downloadable); online posters, photographs, pictures, articles, vouchers and tickets (downloadable), online electronic dictionaries, encyclopaedias and reference texts (downloadable); computer software for processing electronic payments and transferring funds to and from others; online and downloadable authentication software; online conversion software and databases, including currency conversion and measurement conversion; computer software for the purpose of monitoring online communications and chat room conversations and alerting third parties to the contents; computer software for monitoring the use of computers and the Internet by children; computer software relating to online protection and online security; protective clothing for cycling; locks (electric) for bicycles; parts and fittings for all the aforesaid goods; satellite navigational system for bicycles; global positioning systems for use with bicycles; computers for use with bicycles; ergometers; computer apparatus for remote meter reading; bicycle meters; distance meters; power meters; speed meters; eyewear; sports eyewear; sun visors; protective eyewear; sunglasses; cases for eyewear; cases for sunglasses; frames for eyewear; lenses for eyewear; straps for sunglasses and eyewear; helmets; cyclists helmets; crash helmets; protective sports helmets; sports bags for protective helmets; protective articles for sport purposes for

protection against accident or injury; protective gloves; visors; radios; communicators; aerials for radios; parts for radios; carrying cases for radios; electronic radio apparatus; mobile radios; mounting fittings for radios; radio receivers and transmitters; radio transceivers; radios for vehicles; solar powered radios; electrical and electronic equipment for machinery for use in conservation and efficient use of heat, light and water, including thermostatic controls, solar panels for electricity generation, photovoltaic devices, solar cells turbines and motion detectors; parts and fittings for all of the above.