

**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. 241635 and in the matter of an Opposition thereto.

STONE ELECTRICAL LIMITED

Applicant

BRITISH SKY BROADCASTING GROUP PLC

Opponent

The Application

1. On 26 May, 2009 (the relevant date), Stone Electrical Limited, an Irish company, of Kilmurray, Redcross, Co. Wicklow, Ireland made application (No. 2009/00924) under Section 37 of the Trade Marks Act, 1996 (“the Act”) to register the sign,



(hereafter referred to as “SKYVolt” or the “Disputed Mark”) as a Trade Mark in respect of the following goods and services:

Class 7: Generators of electricity

Class 9: Photovoltaic cells

Class 37: Building construction, repair, installation services, electric appliance installation & repair

2. The application was accepted for registration and advertised accordingly under No. 241635 in Journal No. 2133 dated 16 September, 2009.
3. Notice of Opposition to the registration of the mark pursuant to Section 43 of the Act was filed on 15 December, 2009 by British Sky Broadcasting Group PLC (“BSkyB”), of Grant Way, Isleworth, TW7 5QD, Middlesex, United Kingdom, in relation to all the goods and services covered by the application. The Applicant filed a counter-statement

on 1 March, 2010 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. The opposition became the subject of a hearing before me, acting for the Controller, on 4 December, 2013. The parties were notified on 24 January, 2014 that I had decided to dismiss the opposition and to allow the application to proceed to registration. 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

5. In its Notice of Opposition the Opponent states it is the proprietor of a number of Community Trade Mark (CTM) Registrations and Application, and an International Registration designating Ireland, for the word SKY, and have used the marks throughout Ireland and the European Union in relation to a wide range of goods and services covered by the said registrations and application. A summary of the marks upon which the Opponent relies, confined to the classes at issue, is contained in Annex 1. The Opponent states it has a substantial reputation in Ireland and the European Union in its earlier marks, which are entitled to protection under the Paris Convention as well-known trade marks.
6. The Opponent then raises objection to the present application under certain sections of the Act, which I shall summarise as follows:

Section 8(4)(a) – use of the mark is prohibited in the State by any enactment or rule of law or by any provision of Community law;

Section 10(2)(b) – 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, distinctive character or reputation of the Opponent’s Trade Marks;

Section 10(4) – the use of the mark in the State is liable to be prevented by any rule of law protecting an unregistered trade mark or other sign;

Sections 37(2) and 42(3) – the Applicant has failed to satisfy the requirements of registration in that the Applicant does not use or have a bona fide intention of using the mark;

The application should be refused in the Controller’s discretion.

Counter-Statement

7. In its Counter Statement the Applicant states that SKYVolt is involved in the supply and installation of micro-generators powered by renewable energy. SKYVolt products include wind turbines, photovoltaic cells and hydroelectric generators. All of this energy is measured in volts and comes from the sky. BSkyB is involved in television broadcasting, broadband and phone, and operates in fundamentally different economic sectors to SKYVolt. The marks are not similar and there is no likelihood of confusion. SKYVolt does not infringe BSkyB's IP rights and is not contrary to the Trade Marks Act, 1996 or international trade mark law. There exists other third party trade marks that contain the word SKY and BSkyB's objection to the instant application is inconsistent and without merit. BSkyB does not yet own the sky.

Rule 20 Evidence

8. Evidence submitted by the Opponent under Rule 20 consists of two Statutory Declarations and supporting evidence. One a declaration, dated 8 September 2010 and supporting evidence, by way of forty-seven exhibits (marked "Exhibit 1" to "Exhibit 47"), of Simon Robert MacLennan, Solicitor and Head of Intellectual Property at BSKYB. The other a declaration, dated 2 December 2010, of Simon Gray, Trade Mark Attorney and Managing Partner of Tomkins & Co., of 5 Dartmouth Road, Dublin, with supporting evidence contained in four exhibits ("SV1" to "SV4").

9. In his declaration Mr. MacLennan chronicles the development of the BSkyB business, the main details for the purposes of these proceedings being as follows:

- (a) The SKY brand dates from 1984 with the launch of SKY Channel.
- (b) SKY Channel became available in Ireland in 1988 with 22 networks providing the broadcasts to over 300,000 households.
- (c) In 1988 British Satellite Broadcasting (BSB) launched a rival satellite channel.
- (d) SKY Television was launched in December 1988 with the addition of SKY Movies and SKY News to SKY Channel.
- (e) In July 1989 SKY One was launched.
- (f) In November 1990 SKY Television and BSB merged and the SKY brand was used thereafter.

- (g) In 1991 SKY Sports was launched and in 1992 BSkyB joined with the BBC in signing an agreement for exclusive rights to provide television coverage of UK Premier League football for 5 years at a cost of £304 million.
- (h) By June 1994 400,000 Irish cable viewers were receiving one or more SKY branded channels in addition to many “Direct to Home” (satellite) subscribers.
- (i) By 1995 BSkyB were spending vast amounts of money on advertising and were listed in the FTSE100.
- (j) In 1998 BSkyB invested £62 million in digital technology, with the introduction of encryption over set-top boxes, and launched SKY Digital in Ireland.
- (k) In 2002 BSkyB launched SKY Active in Ireland.
- (l) By September 2003 there were 297,000 BSkyB Direct-to-Home subscribers in Ireland with a further 579,000 homes receiving broadcasts via cable and MMDS networks.
- (m) SKY+ and SKY News Ireland were launched in 2004.
- (n) The total number of Direct-to-Home subscribers in Ireland increased to 363,000 in 2005, 427,000 in 2006 and 497,000 in 2007. When cable and MMDS services are included the total number of homes in Ireland into which BSkyB channels are received are 948,000 (in 2005), 1,031,000 (2006) and 1,090,000 (2007).
- (o) Total marketing expenditure for the year 1 July 2005 to 30 June 2006 reached £622 million, with advertising expenditure in Ireland alone exceeding £2 million in 2007.
- (p) Throughout the period in which BSkyB have been broadcasting in Ireland there has been widespread coverage of its activities in the press and other media. BSkyB have an online presence since 1996, including websites with .IE domain names, which attract large numbers of visitors.
- (q) BSkyB publish a monthly magazine (SKY MAG)
- (r) SKY Media provide services to businesses, with SKY Media Ireland having 12 staff and revenue exceeding €150 million since its launch in 2000.

10. For his part Mr. Gray states in his declaration the Opponent enjoys a substantial reputation and protectable goodwill in its SKY trade marks, and in particular the word ‘SKY’, in Ireland. Much of his declaration is argument and opinion regarding the construct of the respective marks, the similarities between the marks and the goods and services at issue, and the likelihood of confusion, all of which should be held in reserve for presentation at the Hearing. Mr. Gray attached, for my assistance, at exhibit “SV1”, definitions of the word ‘VOLT’ (a “*unit used to measure electric potential at a given*”

point, usually in an electric circuit” or a “unit used in measuring the force driving electricity through a circuit, or the strength of an electric current”).

11. At exhibit “SV2” he attaches details of four companies (Volt Electric Limited, Hi-Volt Ireland Limited, Voltcon Engineering Limited and Voltec Electrical Limited) which make use of the word VOLT. Also attached are exhibits ‘SV3’ and ‘SV4’ which contain, respectively, extracts from the Applicant’s website (www.skyvolt.ie) and a printout from the Irish Domain Registry confirming the Applicant is the owner of the said website. Mr. Gray points out that the Opponent consistently uses its SKY mark with a number of other descriptive words to denote particular services offered to its customers (e.g. SKY MOVIES, SKY MOBILE, SKY TRAVEL, SKY SPORT) and, accordingly, the public are used to seeing the word SKY deployed in such a manner. The Applicant is adopting a similar practice by using the word SKY in conjunction with the descriptive word VOLT.

Rule 21 Evidence

12. Evidence submitted under Rule 21 consisted of a Statutory Declaration dated 9 March, 2011, of Peter Stone, Managing Director of the Applicant and seven supporting exhibits “PS1” to “PS7”. Mr. Stone states he is a fully qualified electrician and incorporated Stone Electrical Limited in 1994. He states that in or about February 2009 the Irish Government introduced legislative change which for the first time allowed connection of micro-generators to the National Grid and, in light of that and his company’s experience in the field of electrical contracting, his company decided to establish a new renewable energy division to research, develop, supply, install and service micro generators.
13. Mr. Stone states SKYVolt was registered as his company’s business name and attaches at exhibit “PS1” a copy of the certificate of registration. The company also established a website and registered it with the host provider Digiweb. The company was officially launched at the Tinahely Agricultural Show, in County Wicklow, in or about August 2009. At that event dozens of brochures were distributed and the company’s stand attracted significant interest. At no stage throughout the promotion did any member of the public confuse the service provided by SKYVolt with any service provided by the Opponent. He attached at exhibit “PS2” photographs taken at the show and copies of promotional material distributed thereat, all bearing the Applicant’s mark.

14. His company installed its first micro-generator (a 6Kw Proven type wind turbine) in October 2009 and began advertising in the Wicklow People newspaper (he attached a copy of the said advertisement at exhibit “PS3”). In February 2010 his company installed a prototype 5Kw wind turbine, which was developed in cooperation with Kevin Street Institute of Technology. Exhibit “PS4” contains photographs of this development as well as a product fact-sheet, which prices the unit at €22,786, including VAT.
15. His company has undertaken significant promotional activity in relation to its mark and has expended approximately €130,000 developing its renewable energy division. At no stage has there ever been any confusion between his company’s mark and those of the Opponent.
16. Mr. Stone chronicles events around the application for his company’s mark and the opposition thereto by the Opponent. He attaches at exhibit “PS5” copies of two letters from the Opponent’s Trade Mark Attorneys (the second being a “GENTLE REMINDER” of the contents of the first) sent after the Opponent filed its Notice of Opposition, requesting the Applicant to immediately withdraw its application in order to avoid lengthy opposition proceedings, and to furnish the Opponent with a written undertaking that the Applicant will rebrand its business and refrain from using the word SKY in relation to its business in the future.
17. His company’s “**SKYVolt Generators powered by Wind, Sun and Water**” mark is pertinent to, and inextricably linked with, the goods and services provided by the Applicant and relate solely and exclusively to the generation of electricity in a specialised market. The goods and services bear no relation to the activities of the Opponent or those described in the Statutory Declarations filed by the Opponent. His company supplies micro generators powered by the elements – sun for the solar panels, wind for the wind turbines and rainfall water for the hydro turbines. All these elements come from the sky, hence the “SKYVolt” part of the mark.
18. Mr. Stone states that the Opponent has failed to offer any evidence of confusion or deception in the minds of the public.
19. He states the word SKY is used in different ways by numerous brands in the Irish market and attaches at exhibit “PS6” details of some of these companies, namely, Skyclad, Skytours, Sky Valley Wind Company, Skyrota LGC, Private Sky, Sky Shades Ireland and Blue Sky Financial.

Rule 22 Evidence

20. Evidence submitted by the Opponent under Rule 22 consisted of a second Statutory Declaration of Simon Gray, wherein he questions the relevance and/or probative value of virtually the entire content of the Statutory Declaration of Peter Stone and all seven accompanying exhibits. He states that the letters (attached at exhibit “PS5” of the Applicant’s evidence) are of a standard nature and sent in order to afford the Applicant an opportunity to withdraw its application before progressing with the Opposition, and that this is standard practice.

21. In response to the Applicant’s arguments that the Opponent is relying on marks bearing the single word SKY and that other marks cited in the evidence of Simon Robert MacLennon all refer to separate words, being SKY and an add-on word or words, Mr. Gray states that this is not so, and attaches, at Exhibit SPG1, print-outs of registry entries for UK and Community Trade Marks for SKYARTS, SKY1, SKYBET and other similarly constructed marks.

22. Mr. Gray states that, contrary to Mr. Stone’s assertions, the Opponent’s SKY trade mark has been registered in respect of turbines for power generation. He goes on to say the Opponent has an active interest in environmental issues and wind powered energy in particular. In 2006 the Opponent took the decision to become carbon neutral and each year it offsets its net emissions by investing in voluntary carbon emission reduction projects provided by the Carbon Neutral Company including wind power projects in China and India. He attached at Exhibit “SPG2” information about the Opponent’s carbon neutral status and policies.

The Hearing

23. At the Hearing the Opponent was represented by Mr. Paul Coughlan BL, instructed by Hazel Tunney, Trade Mark Agent of Tomkins & Co., and the Applicant by its Managing Director, Mr. Peter Stone.

24. From the outset Mr. Coughlan stated he would confine his arguments to the grounds of opposition based on Section 10 of the Act, namely 10(2)(b), 10(3) and 10(4)(a), but that none of the grounds of opposition set forth in the Notice of Opposition were being abandoned. However, I am satisfied that I must reject the opposition, in respect of any ground set forth in the Notice of Opposition which has not been supported by either

evidence or argument. Accordingly, I have decided to dismiss the opposition in respect of Section 8(4)(a), Sections 37(2) and Section 42(3).

Section 10(2)(b)

25. Mr. Coughlan began by dealing with Section 10(2)(b) which 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.

26. 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.

27. The first of these conditions is clearly fulfilled in this case. The Opponent’s marks (cited in Annex 1) were filed, at either this Office or the Office for Harmonisation of the Internal Market (OHIM), prior to 26 May, 2009 (the relevant date) 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

28. Turning to the comparison of the trade mark applied for and the Opponent’s earlier marks Mr. Coughlan argued the dominant element of the Disputed Mark is ‘**SKY**’. It is encountered first, it is bigger, it is attention-grabbing and, unlike ‘**Volt**’ and the miniscule caption ‘**Generators Powered by Wind, Sun and Water**’ underneath, it is in capital letters. Furthermore, ‘**SKY**’ is coloured white, while ‘**Volt**’ is yellow. Thus the Applicant’s mark incorporates the entirety of the Opponent’s marks and possesses visual, aural and conceptual similarity as a consequence. Also, ‘**Volt**’ is a generic term pertaining to matters electrical that is in general and frequent use and it does not lessen or alter the similarity created by placing ‘**SKY**’ at the forefront of the Disputed Mark.

29. Mr. Coughlan argued the Applicant has made no attempt to address the obvious identity/similarity between the Opponent's marks and the Disputed Mark. While the Applicant had argued that the businesses of the parties in Ireland were different, that is irrelevant. What matters are the goods and services for which the Opponent's earlier marks stand protected. The Opponent's long-established and highly distinctive SKY marks possess a higher degree of protection and the question is "*would consumers be lead to believe that the Applicant's mark was connected to or emanated from the SKY brand-holder?*" He referred me to an earlier decision of mine in *SKY BUSINESS CENTRES*¹ where I found:

"The Opponent's marks may be regarded as having a medium degree of inherent distinctiveness. Nonetheless, they have the capacity to identify the services for which they are registered as being those of a particular undertaking and thus to distinguish those services from those of other undertakings. However, as the Opponents 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."

30. For his part Mr. Stone argued that no part of the Applicant's mark was meant to be dominant. If there was a dominant element it was the yellow 'Volt'. He argued that the respective marks were different and that the circumstances of the *SKY BUSINESS CENTRES* case were not repeated here.

31. 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*)² 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.

¹ Decision dated 31st January 2013.

² Paragraph 23 of decision dated 11 November, 1997

32. There is some visual, aural and conceptual similarity between the marks. Visually, the Applicant's mark consists of the words 'SKYVolt Generators powered by Wind, Sun and Water'. The words 'Generators powered by Wind, Sun and Water' are significantly smaller than the 'SKYVolt' element and I am satisfied that they would be seen by the average consumer as no more than a description of the goods and services being provided under the 'SKYVolt' brand. As such that element does not serve to put distance between the parties' marks.
33. There was much argument regarding whether the 'SKYVolt' element consists of one or two words. I am satisfied that this element would, in the eyes of consumers, be seen as two words joined together as distinct from a single invented word. However, I do not agree with Mr. Coughlan that the word 'SKY' is the dominant element of the Applicant's mark. In my opinion in order for one component of a multi-element mark to dominate the mark that component must stand way above all other components to such a degree that it renders the other components insignificant or negligible. The 'SKY' element is in upper-case and is slightly larger than the 'Volt' element. But the thicker lettering and, in particular the striking yellow colour of 'Volt' make it eye-catching and instantly noticeable. Therefore I am satisfied that 'SKY' alone cannot be regarded as the dominant element. In my opinion the entire 'SKYVolt' element dominates the mark.
34. The word SKY comprises the entirety of the marks upon which the Opponent relies and it is fully contained in, and is the initial element of, the Applicant's mark. The Opponent argues that SKY is a highly distinctive mark that is well-known and that consumers are well used to the Opponent's use of the word SKY with other elements to denote the Opponent's vast range of goods and services. These factors and the fact that consumers generally tend to focus on the first element of a sign are particularly relevant when assessing the likelihood of confusion between the respective marks.
35. The Opponent claimed the term 'Volt' represents the intended purpose of the goods for which registration was sought and as such it lacks distinctiveness when used in the Applicant's mark and fails to lessen or alter the similarity between the respective marks. Clearly the term Volt has meaning in relation to electrical matters and could be regarded as being descriptive of "*generators of electricity*" and "*photovoltaic cells*". However, volt is not used on its own, it is used in conjunction with other elements. While I am happy that the '*Generators of power by Wind, Sun and Water*' element of the

Applicant's mark would be overlooked or totally disregarded by the average consumer, I am not prepared to disregard the 'Volt' element in my assessment of likelihood of confusion under Section 10(2)(b).

36. Clearly there is some level of visual and aural similarity between the marks, but there are differences also. Each letter of the word SKY in the Applicant's mark is depicted in white with a shadow and with a non-uniform or somewhat ruffled outline. In its evidence the Applicant claimed that this format was chosen to represent clouds and I can see that in the mark. The words SKY in the Opponent's mark are all in plain font. The 'Volt' element exists in the Applicant's mark alone and is depicted in yellow. The Applicant's mark has a logo element in the form of a grey background with the words '*Generators of power by Wind, Sun and Water*' presented in white with a navy background. Having disregarded the purely descriptive element '*Generators of power by Wind, Sun and Water*', I would assess the respective marks as sharing a medium level of visual and aural similarity.

37. Conceptually the Opponent's marks convey the unambiguous message that they relate to the wild blue yonder above us. The Applicant's mark has a different meaning in that it conveys the message of something from the sky as opposed to the sky itself, just as space is a different concept to a space-ship. My instinctive impression of the 'SKYVolt' element is that it relates to a bolt or flash of lightening, or in other words electrical activity in the sky. In my opinion, the marks share a low level of conceptual similarity. Accordingly, I would assess the overall level of similarity between the marks as low to medium. They are more dissimilar than they are similar.

Comparison of the Goods and Service

38. The specification of the Opponent's Community Trade Mark No. 6870992 includes "*turbines for power generation*" in Class 7; "*solar panels for electricity generation*" and "*photovoltaic devices, solar cells*" in Class 9 and "*maintenance, repair and installation of apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity*" and "*construction, installation, maintenance and repair of power plants*" in Class 37. The other marks cited in the Notice of Opposition also contain mention of some of the aforementioned goods and services. Therefore, I am satisfied that the goods and services for which the Applicant seeks registration can be considered identical to those protected by the Opponent's earlier marks.

Likelihood of Confusion

39. Having decided the goods are identical, and that there is some degree of similarity between the marks, the question of likelihood of confusion rests on whether that similarity is sufficient to come within the meaning of Section 10(2)(b) of the Act.
40. In answering that question I must judge the matter of the assessment of likelihood of confusion in accordance with CJEU guidance to decision-makers, which can be summarised as follows: *Imagine a typical purchasing scenario involving the average person who already knows the product sold under the earlier trade mark and ask yourself whether it is likely that he will select and purchase a product bearing the mark put forward for registration in the mistaken belief that it is the product he knows by the earlier mark (direct confusion) or that it is related to that product (indirect confusion by association).* The confusion in question may be direct confusion, whereby the Applicant's product is mistaken for that of the Opponent, or indirect confusion, whereby the Applicant's product is associated in the mind of the consumer with that of the Opponent and a common commercial origin is inferred. It is not necessary to find that every consumer would be confused and nor is it sufficient to find that some consumers might be confused in order to refuse registration of a trade mark under the section. The question is whether it is likely or unlikely that the average person would be confused in the course of the typical purchasing scenario.
41. The Applicant maintains the parties are engaged in different businesses and that no confusion has arisen or is likely to arise. Mr. Coughlan argued that whatever difference exist between the businesses of the Opponent and the Applicant in Ireland is irrelevant; what matters is the goods and services of the Opponents earlier marks. The Applicant claims no confusion has ever arisen and that that must be a determining factor in assessing the likelihood of future confusion, while the Opponent maintains that oftentimes there is confusion without it being reported.
42. The Opponent submitted details of hundreds of trade marks registered in its name. The marks on which the Opponent relies upon in these proceedings are all 'SKY' simpliciter; use of which has earned the Opponent a right to substantial additional protection based on renown and reputation. The Opponent claims the public is well used to seeing its highly reputed SKY trade marks in combination with other words (for example SKY News, Sky Sports, SKYBet, SKY1) and that the mark at issue would be seen as another

mark belonging to the SKY family. The Applicant pointed to the existence of other marks, starting with the word SKY but not owned by the Opponent, and argued that the public do not associate every mark commencing with the word SKY with the Opponent.

43. I have no doubt that the vast majority of the Irish general public were aware of the Opponent's SKY trade marks prior to the relevant date, particularly in relation to use in respect of media and entertainment (e.g. television, movies, sports, news, communications, games, magazines and betting). However, no evidence was submitted in support of the opposition that would lead me to conclude that consumers are aware the Opponent's SKY marks are protected for the goods and services for which the Applicant seeks registration. In fact, no evidence whatsoever of any use of the Opponent's marks, in Ireland or the European Union, in relation to the goods and services at issue was laid before the Controller. As such, the "*average person who already knows the product sold under the earlier mark*" may not exist. Nonetheless, the Opponent has rights in the goods and services for which it has registered its SKY trade marks and those rights will continue to provide protection until successfully challenged. Accordingly, I must base my decision on the concept of fair use of the respective marks and reach conclusions on what would be the case if the average consumer had knowledge of the Opponent's earlier marks and then subsequently encountered the Applicant's mark in respect of identical goods and services.

44. It is generally accepted that in order for any evidence filed in opposition proceedings to be considered relevant it must pre-date the application date. However, the possibility exists that evidence which post-dates the application date may be taken into account in order to gain a greater understanding of the circumstances surrounding a particular case. The Court found in *Alcon*³ that it is possible, without inconsistency in reasoning or error of law, for material to be taken into account which, although subsequent to the date of filing the application, enables the drawing of conclusions on the situation as it was on that date. In the instant case I consider the fact-sheet and financial quote for a 5Kw wind turbine attached at "PS4" of the Applicant's evidence to fall within that scope. The cost of the installation of the wind turbine and associated works is quoted as €22,786, including VAT.

³ *Alcon Inc. v. OHIM* (CJEU Case C-192/03)

45. It is clear from this document and from the “*Generators powered by Wind, Sun and Water*” element of the Applicant’s mark that the mark will be used in relation to the sale, installation and maintenance of significant pieces of electricity generating infrastructure. The average consumer of such goods is not an electrical engineer and would know little or nothing about these products. Consumers would be reliant upon the advice and expertise of experts in the field before making any purchase. The cost of generators of electricity, which includes wind and water turbines, and photovoltaic solar panels, is substantial and, in my opinion, no-one would embark on a project requiring such funding without extensive research and plenty of thought.
46. I am satisfied that the general public would associate the trade mark SKY exclusively with the Opponent, but that does not extend to any and all marks beginning with that word. The public’s view of such composite marks will be guided by their appreciation of what the mark stands for, the goods and services for which it is proposed to be used and their understanding of whether or not the Opponent trades in these goods and services, or whether they are goods and services for which the Opponent is likely to trade or be associated with. So, each case must be dealt with according to its merits.
47. In the instant case the goods and services at issue are not widely available. They are not sold in retail stores, bought over the counter, or ordered by phone or online. In my opinion the average consumer would have to undertake some research simply to identify an undertaking that provides these goods and services. Also, it is more likely that consumers would be once-off users of the goods in question rather than frequent or repeat purchasers. The nature of the goods, consumer behaviour in relation to the goods, the channels through which they are traded, the expertise required to be provided to consumers, the significant investment undertaken and the infrequency of purchases are all factors that I feel I must take into account in considering a likelihood of confusion.
48. Bearing in mind the Court of Justice of the European Union (CJEU) found in *SABEL*⁴ “*the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details*”, I am satisfied that the Applicant’s mark would be understood by consumers to relate to the particular brand ‘SKYVolt’. The average consumer would not disregard the ‘Volt’ element but would look at the mark and instinctively understand it to convey the message of goods (i.e. generators of renewable

⁴ *Sabel BV v. Puma AG*, (case C-251/95 at paragraph 23)

energy, powered by the wind, sun or water) from the brand owners of SKYVolt, not the brand owners of SKY.

49. While use of the Applicant's mark may result in mere association, in the sense that the Applicant's mark may bring the Opponent's earlier marks to mind, the Court found in SABEL⁵ that "*the mere association which the public might make between two trade marks as a result of their analogous semantic content is not in itself a sufficient ground for concluding that there is a likelihood of confusion within the meaning of that provision [Section 10(2)(b) of the Act]*". The type of association that Section 10(2)(b) of the Act seeks to avoid is one that causes the public to wrongly believe that the respective goods come from the same or economically linked undertakings. Taking all the relevant factors of this case into account I do not believe that any association, if one was made, reaches that threshold.
50. Having considered all relevant factors, I am satisfied that the respective marks are more dissimilar than similar. I find there is no real likelihood that a consumer, who is aware of and uses the Opponent's goods and services, under its SKY marks, would, when encountering the Applicant's SKYVolt mark, be liable to be confused or be led to believe that the Applicant's mark is associated with the Opponent. Therefore I dismiss the opposition in respect of Section 10(2)(b) of the Act.

Section 10(3)

51. Section 10 (3) of the Act 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."

52. At the Hearing Mr. Coughlan confined his arguments on Section 10(3) to the Applicant's attempts to "coat-tail" on the reputation of the Opponent's mark. No evidence or argument was advanced in respect of detriment to the distinctive character or reputation of the Opponent's marks. Nonetheless I have considered the objection under Section 10(3) with regard to the full breadth of the provision.

⁵ Sabel BV v. Puma AG, (case C-251/95 at paragraph 26).

53. I am satisfied the evidence shows that the Opponent's marks enjoy extensive market share, have intensive geographical penetration, are extremely well-known and that significant investment in them has been undertaken. In light of that, it is fair to say the Opponent's marks enjoy a reputation in the State. I am satisfied that the reputation of the Opponent's SKY mark extends beyond the limited class of consumers of the Opponent's goods and to penetrate the consciousness of the wider public such that a substantial number of people would know and recognise the mark even if they had never used the Opponent's goods. In my opinion, the Opponent's SKY marks had, on the relevant date, reached the level of recognition and reputation that Section 10(3) seeks to protect.

54. However, I have already found that the level of similarity between the marks is low to medium and the issue rests on whether such a level of similarity is sufficient to come within the scope of protection afforded well-known marks under Section 10(3) of the Act. The Courts have not suggested that there is a particular similarity threshold above which marks fall foul of Section 10(3) or that the level of similarity required is equal to that which is liable to cause a likelihood of confusion. In fact the CJEU suggests that a lesser degree of similarity may be sufficient to invoke Section 10(3) than is required under Section 10(2), where in *Intel Corporation Inc. v. CPM United Kingdom Ltd*⁶, the CJEU observed, at paragraph 30:

*“The types of injury referred to in Article 4(4)(a) of the Directive, where they occur, are the consequence of a certain degree of similarity between the earlier and later marks, by virtue of which the relevant section of the public makes a connection between those two marks, that is to say, establishes a link between them even though it does not confuse them (see, in relation to Article 5(2) of the Directive, *General Motors*, paragraph 23; *Adidas-Salomon and Adidas Benelux*, paragraph 29, and *Adidas and Adidas Benelux*, paragraph 41).” [My emphasis]*

55. It is clear that what is required is a link between the marks, which exists on foot of some degree of similarity, which may not be sufficient to cause confusion but will nonetheless enable the consumer to make a connection between the marks. The Court does not expand upon its findings to identify, with precision, what type of connection must be made or how strong that connection must be. It leaves that assessment, which is to be made on the basis of the particular circumstances of each case, to the decision-maker. However, I am satisfied that the connection the Court refers to is a connection in trade, or, more specifically, a connection in respect of the essential function of a trade mark;

⁶ Case C-252/07 (Judgement of 27 November 2008).

which is to act as a guarantee of origin by distinguishing the goods or services of one undertaking from those of other undertakings.

56. Mr. Coughlan argued that on the basis of there being a considerable degree of similarity between SKY and the Disputed Mark, the requirement of a link is amply satisfied in this case. Therefore, it must be shown that *“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”*. Mr. Coughlan referred me to the recent consideration of this concept by the Court of Justice in *L’Oreal v. Bellure*⁷, where the court stated:

- “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).*
43. *It follows that an advantage taken by a third party of the distinctive character or the repute of the mark may be unfair, even if the use of the identical or similar sign is not detrimental either to the distinctive character or to the repute of the mark or, more generally, to its proprietor.*
44. *In order to determine whether the use of a sign takes unfair advantage of the distinctive character or the repute of the mark, it is necessary to undertake a global assessment, taking into account all factors relevant to the circumstances of the case, which include the strength of the mark’s reputation and the degree of distinctive character of the mark, the degree of similarity between the marks at issue and the nature and degree of proximity of the goods or services concerned. As regards the strength of the reputation and the degree of distinctive character of the mark, the Court has already held that, the stronger that mark’s distinctive character and reputation are, the easier it will be to accept that detriment has been caused to it. It is also clear from the case-law that, the more immediately and strongly the mark is brought to mind by the sign, the greater the likelihood that the current or future use of the sign is taking, or will take, unfair advantage of the distinctive character or the repute of the mark or is, or will be, detrimental to them (see, to that effect, Intel Corporation, paragraphs 67 to 69).*

⁷ Court of Justice of the European Union Case C-487/07 (Judgment of 18th June 2009)

45. *In addition, it must be stated that any such global assessment may also take into account, where necessary, the fact that there is a likelihood of dilution or tarnishment of the mark.*

...

49. *In that regard, where a third party attempts, through the use of a sign similar to a mark with a reputation, to ride on the coat-tails of that mark in order to benefit from its power of attraction, its reputation and its prestige, and to exploit, without paying any financial compensation and without being required to make efforts of his own in that regard, the marketing effort expended by the proprietor of that mark in order to create and maintain the image of that mark, the advantage resulting from such use must be considered to be an advantage that has been unfairly taken of the distinctive character or the repute of that mark.*

50. *In the light of the above, the answer to the fifth question is that Article 5(2) of Directive 89/104 must be interpreted as meaning that the taking of unfair advantage of the distinctive character or the repute of a mark, within the meaning of that provision, does not require that there be a likelihood of confusion or a likelihood of detriment to the distinctive character or the repute of the mark or, more generally, to its proprietor. The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an advantage taken unfairly by that third party of the distinctive character or the repute of the mark where that party seeks by that use to ride on the coat-tails of the mark with a reputation 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."*

57. Mr. Coughlan maintained that the circumstances of the present case are such that BSKyB is gravely concerned that the Applicant is attempting to benefit from "*the power of attraction, the reputation and the prestige of*" and to "*ride on the coat-tails of*" the SKY organisation and its trade marks. The Opponent is simply protecting its property and makes no apologies for doing so in a determined manner.

58. For his part Mr. Stone argued that the respective marks are different and that his company's mark reflected the nature of its business and that there was no attempt by his company to take any advantage of the Opponent's trade marks. He claimed the Opponent was using its muscle and bully-boy tactics to push a legitimate business out of the market and attempting to monopolise the word SKY. In reply Mr. Coughlan argued the Applicant's general protestations were expected, but irrelevant to the matter at hand, and dismissed claims of attempts to create a monopoly as groundless, on the

basis that there are many trade marks using the word SKY that the Opponent does not take issue with.

59. I can understand the Opponent's concerns regarding others seeking to take advantage of its trade marks and their repute. The Opponent has invested heavily in its brands and is entitled to prevent others from riding on the coat-tails of its success. However, in the matter at hand, in my opinion, the level of similarity between the respective marks is not sufficient to cause the relevant section of the public to establish a link or connection in trade between the marks. Where there is no such connection, unfair advantage cannot be taken, nor will it cause detriment to the distinctive character or the repute of the Opponent's marks, as the Court found in *Intel Corporation Inc. v. CPM United Kingdom Ltd*⁸, where at paragraph 31 it observed:

“In the absence of such a link in the mind of the public, the use of the later mark is not likely to take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier mark.”

60. Therefore, I am satisfied the Applicant's mark does not fall foul of Section 10(3) and I dismiss the opposition on this ground.

Section 10(4)(a)

61. The final ground of opposition that falls to be considered is under Section 10(4) of the Act, the relevant part of which reads as follows:

“A trade mark shall not be registered if, or to the extent that, its use in the State 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,”

62. Whether use of a mark should actually be prevented under the law of passing off is a matter for the Court to decide in a given case and, in so deciding, the Court is performing a different function to that performed by the Controller when considering an application for registration. In my opinion, the proper application of Section 10(4)(a) insofar as the question of passing off is concerned requires a determination by the Controller as to whether the fundamental ingredients of an action for passing off would be present if the mark for which registration is requested were used in the State by the

Applicant. A decision one way or the other on that question does not amount to a finding of fact as to whether there is or has been passing off as that is clearly a matter for the Court to decide in any given case.

63. In order to succeed in its opposition under this Section, the Opponent must establish that the use by the Applicant of the disputed mark in relation to the goods and services covered by the application would, as of the relevant date, have constituted a misrepresentation that those goods and services were the goods and services of the Opponent and that such misrepresentation is calculated to damage the business, goodwill or reputation of the Opponent (in the sense that this is a reasonably foreseeable consequence) and that actual damage will be caused or, in a *quia timet* action, will probably be caused.

64. As regards the test for passing off, Mr. Coughlan relied upon what was laid down by Lord Oliver in *Reckitt & Colman Products Limited v. Borden Inc*⁹. (the so-called “*Jif Lemon*” case) as applied by MacMenamin J (with whom Denham CJ, Hardiman and Clarke JJ concurred) in the Supreme Court in *McCambridge Ltd v. Joseph Brennan Balerics*¹⁰ as follows:

"The law of passing off can be summarised in one short proposition, no man may pass off his goods as those of another. More specifically, it may be expressed in terms of the elements which the plaintiff in such an action has to prove in order to succeed. These are three in number. Firstly, he must establish a goodwill or reputation attached to the goods or services which he supplies in the mind of the purchasing public by association with the identifying "get-up" (whether it consists simply of a brand name or a trade description, or the individual features of labelling or packaging) under which his particular goods or services are offered to the public, such that the get up is recognised by the public as distinctive specifically of the plaintiff's goods or services. Secondly, he must demonstrate a misrepresentation by the defendant to the public (whether or not intentional) leading or likely to lead the public to believe that goods or services offered by him are the goods or services of the plaintiff. Whether the public is aware of the plaintiff's identity as the manufacturer or supplier of the goods or services is immaterial, as long as they are identified with a particular source which is in fact the plaintiff. For example, if the public is accustomed to rely on a particular brand name in purchasing goods of a particular description, it matters not at all that there is little or no public awareness of the identity of the proprietor of the brand name. Thirdly, he must demonstrate that he suffers or, in a quia timet action, that he is likely to suffer damage by reason of the erroneous belief engendered by the defendant's misrepresentation that the

⁸ Case C-252/07 (Judgement of 27 November 2008).

⁹ [1990] 1 WLR 491, 499

¹⁰ [2013] ILRM 369, 376 (paragraph 19)

source of the defendant's goods or services is the same as the source of those offered by the plaintiff."

65. Mr. Coughlan maintained that, for the same reasons as were set forth in respect of the objection under Section 10(3), the evidence tendered demonstrates that BskyB has goodwill (in the passing off sense) in respect of the mark SKY and indeed a family of sub-brands incorporating SKY. The use of the disputed mark in respect of the various goods and services for which registration is sought would operate as misrepresentation as to a connection with BskyB, particularly in light of the prominence given to the word SKY in the disputed mark.
66. The proprietor of an earlier trade mark is entitled to rely on the protection that registration confers upon its mark, whether or not the mark is actually being used. Such is the case in relation to a likelihood of confusion under Section 10(2)(b) of the Act. However, the question arises as to whether or not such protection extends to marks which are not used on the goods or services which are central to a claim of passing off. It appears to me from the findings in *McCambridge Ltd v. Joseph Brennan Baleries*¹¹ that the Court suggests that goodwill can only be gained in relation to goods and services actually offered to the purchasing public when the Court found:

"Firstly, he must establish a goodwill or reputation attached to the goods or services which he supplies in the mind of the purchasing public by association with the identifying "get-up" (whether it consists simply of a brand name or a trade description, or the individual features of labelling or packaging) under which his particular goods or services are offered to the public." (My emphasis)

67. No evidence was adduced by the Opponent to indicate that it was trading in "generators of electricity" or "photovoltaic cells" or that the relevant public was aware that it trades in such goods. However, at the Hearing Mr. Coughlan drew my attention to another authority which indicates that use on the same goods and services is not a prerequisite, where, in *Harrods v. Harrodian School*¹² Millet LJ, stated:

"There is no requirement that the defendant should be carrying on a business which competes with that of the plaintiff or which would compete with any natural extension of the plaintiff's business"

It is clear from the authorities quoted above that, depending on the circumstances of each case, passing off may exist whether or not use is made by the Plaintiff of the mark on the

¹¹ [2013] ILRM 369, 376 (paragraph 19)

¹² [1996] RPC 697

goods or services at the centre of an action for passing off. Therefore, use or non-use is one of many factors that I must consider in the global assessment of this case.

68. I must also heed the guidance of the Court in *Harrods v. Harrodian School*¹³ that the question “*why the defendant chose to adopt a particular name or get up is always highly relevant*”. The Applicant selected a trade mark sufficiently dissimilar to the Opponent’s marks for goods and services that have a direct conceptual link to the mark chosen. The Applicant provided an explanation of how it came to adopt its mark, pointing to the connection wind, sun and water (the three forces driving its electricity generators) has with the sky. This is a plausible explanation and I am satisfied it gives the Applicant reasonable cause to use its mark.

69. In order to succeed in its opposition under this Section, the Opponent must establish that the use by the Applicant of the said mark in relation to the goods and services covered by the application would, as of the relevant date, have constituted a misrepresentation that those goods or services were the goods or services of the Opponent and that such misrepresentation would have caused damage to the Opponent. However, no evidence has been advanced that points to the Applicant selecting the mark in an attempt to pass off or misrepresent his goods or services as those of the Opponent, or of it setting out with an intention to damage the Opponent’s business as might be the case if the Applicant chose the mark “SKY Generators powered by Wind, Sun and Water”.

70. Mr. Coughlan argues that SKY is a brand known by all and associated with technology. As such it has earned goodwill in the minds of the general public in respect of the goods and services at issue. Notwithstanding how well-known the Opponent’s SKY brand is, it cannot be assumed that goodwill is attached to it in respect of all manner of technology. There is no evidence pointing to the Opponent having acquired any goodwill in technology used in the generation of electricity. In its evidence the Opponent states that, in 2006, it took the decision to become carbon neutral and each year it offsets its net emissions by investing in voluntary carbon emission reduction projects provided by the Carbon Neutral Company including wind power projects in China and India. The attached Exhibit SPG2 provides information about the Opponent’s carbon neutral status and policies. That pursuit may be noble but it does not point to use of the Opponent’s marks in Ireland or the European Union, in relation to the generation of renewable

¹³ [1996] RPC 697

energy. In my opinion, the Irish public will only associate a trader's reputation with a limited field of commercial activity and while everyone may know of the Opponent, the Opponent is not known for everything. I am satisfied that the public do not attach any goodwill to the Opponent in the technology at issue.

71. In the absence of any likelihood of confusion or association between the respective marks, the Opponent's lack of goodwill in relation to the goods and services at issue and the due cause the Applicant had in adopting its mark, I cannot see how there could be any misrepresentation as to the provenance of the Applicant's goods or services by virtue of the use of the Applicant's mark. In my opinion, it is not conceivable that the Opponent could suffer loss or damage if the Applicant's mark were used in a normal and fair manner as a trade mark for the goods and services for which registration is sought. The basic ingredients of an action for passing off have not been established and I do not believe, therefore, that the use by the Applicant of the mark propounded for registration would have been liable to be prevented by the law of passing off and I dismiss the opposition under Section 10(4) accordingly.

72. For the reasons outlined above, I have decided to dismiss the opposition and to allow the mark to proceed to registration.

Dermot Doyle

Acting for the Controller

13 August, 2014

ANNEX I

Trade Mark Registrations Referred to in the Schedule to the Notice of Opposition

Number	Date	Mark	Owner
Community Trade Mark No. 0828572	16/07/2003	SKY	British Sky Broadcasting Group PLC
<p>Class 9: Photographic, cinematographic, weighing, measuring, radio, television, sound recording, sound reproducing, telecommunications, signalling, checking (supervision), teaching apparatus and instruments; apparatus for recording television programmes; apparatus for recording, transmission, reproduction or reception of sound or images; electrical and electronic apparatus for use in the reception of satellite, terrestrial or cable broadcasts; television receivers including a decoder; 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; recorded television and radio programmes; recorded programmes for broadcasting on television and on radio; video recordings; computers; computer programmes; electronic computer games; electronic interactive computer games; 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; computer games software and computer quiz software; computer video games and/or quizzes adapted for use with television receivers and screens or with video monitors or with computer screens; computer programmes for interactive television and for interactive games and/or quizzes; electronic publications, computer software, computer games, computers video games, all relating to betting, gaming, gambling, lottery or book making services; 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; parts and fittings for all the aforesaid goods; sunglasses.</p>			

Number	Date	Mark	Owner
Trade Mark Registration No. 03203411	30/04/2003	SKY	Sky International AG
<p>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; automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishing apparatus; including data storage apparatus and instruments, software and data storage software, and software for video-conferencing, but excluding car batteries.</p>			

Number	Date	Mark	Owner
Community Trade Mark No. 5765615	16/03/2007	SKY	Sky International AG
<p>Class 37: Maintenance services; repair services; installation services; maintenance, repair and installation services in relation to broadcast and/or telecommunications and/or communications reception apparatus and instruments and parts and fittings therefor including cable, satellite, terrestrial, analogue or digital reception equipment; maintenance, repair and installation of telecommunications and/or communications and/or broadcasting apparatus and equipment including broadband apparatus and equipment; maintenance, repair and installation of apparatus for recording television programmes; maintenance, repair and installation of apparatus for recording, transmission, reproduction or reception of sound, images or audio visual content; maintenance, repair and installation of electrical and electronic apparatus for use in the reception of satellite, terrestrial or cable broadcasts; maintenance and repair of televisions; maintenance and repair of LCD and plasma screens; maintenance, repair and installation of home cinema systems; maintenance, repair and installation of amplifiers; maintenance, repair and installation of speakers; maintenance, repair and installation of radios; maintenance, repair and installation of wireless audio and/or audio visual devices; maintenance, repair and installation of portable wireless audio and/or audio visual devices; maintenance and repair of remote controls; maintenance and repair of games controllers; maintenance and repair of wireless gaming controllers; maintenance and repair of wireless keypads; maintenance, repair and installation of television receivers including a decoder; maintenance, repair and installation of set-top boxes; maintenance, repair and installation of digital set-top boxes; maintenance, repair and installation of high definition set top boxes; maintenance, repair and installation of personal video recorders; maintenance, repair and installation of set-top boxes for use in decoding and reception of satellite, terrestrial and cable broadcasts; maintenance, repair and installation of apparatus for decoding encoded signals including set top</p>			

boxes for television reception; maintenance, repair and installation of set top box apparatus including a decoder and an interactive viewing guide; maintenance, repair and installation of set top box apparatus including a decoder and a recorder for recording television and audio programmes; maintenance, repair and installation of set top box apparatus including a decoder and a recorder programmable to transfer stored recordings to storage and also to delete the older recordings; maintenance, repair and installation of satellite dishes; maintenance, repair and installation of low noise blocks; maintenance, repair and installation of satellite meters; maintenance, repair and installation of telephones; maintenance and repair of PDAs; maintenance, repair and installation of telephone and radio modems; maintenance, repair and installation of set top boxes for use in decoding and reception of satellite, terrestrial cable and digital subscriber line (DSL), Internet or other electronic broadcasts; maintenance, repair and installation of apparatus for decoding encoded signals; maintenance and repair of recorded television and radio programmes; maintenance and repair of recorded programmes for broadcasting or other transmission on television, radio, mobile telephones, PDAs and on PCs; maintenance and repair of video recordings; maintenance, repair and installation of multimedia apparatus and instruments; maintenance and repair of portable or hand-held computers; maintenance, repair and installations of computers; maintenance, repair and installation of computer hardware; maintenance, repair and installation of computer hardware, apparatus and instruments all for transmitting, displaying, receiving, storing and searching electronic information; maintenance and repair of electronic computer games [hardware]; maintenance and repair of electronic interactive computer games [hardware]; maintenance, repair and installation of telecommunications apparatus to enable connection to databases and the Internet; maintenance, repair and installation of network termination equipment; maintenance, repair and installation of wired and/or wireless computer network routers, modems, firewalls and/or bridges; maintenance and repair of computer video games and/or quizzes adapted for use with television receivers and screens or with video monitors or with computer screens; maintenance, repair and installation of electronic apparatus adapted for use with television receivers in playing games; maintenance and repair of games consoles; maintenance and repair of interactive video game devices comprised of computer hardware and software and accessories, namely game consoles, game controllers and software for operating game controllers; maintenance and repair of portable and/or hand-held electronic devices for interactive computer and video games; maintenance and repair of portable and/or hand-held electronic devices for receiving, playing and transmitting music, sounds, images, text, signals, information and code; maintenance, repair and installation of amusement machines; maintenance and repair of video screens; maintenance, repair and installation of video projectors; maintenance and repair of radio and television signal antennae; maintenance and repair of MP3 players and MP3 readers; maintenance and repair of audio and/or video file recorders and/or players; maintenance and repair of portable audio and/or video file recorders and/or players; maintenance, repair and installation of apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; maintenance, repair and installation of apparatus and instruments for the reception of radio and television broadcasts including the reception of cable, satellite and digital broadcasts; maintenance, repair and installation of parts and fittings for all the aforesaid goods; information and advisory services relating to maintenance repair and installation, provided on-line from a computer database or the Internet; information and advisory services relating to all the aforesaid services.

Number	Date	Mark	Owner
Community Trade Mark No. 6870992	18/04/2008	SKY	British Sky Broadcasting Group plc
<p>Class 7: Turbines for power generation; control panels for turbines for power generation; parts and fittings for all the aforesaid goods.</p>			
<p>Class 9: Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; electrical, electronic and 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; electrical, electronic and 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; parts and fittings for all the aforesaid goods.</p>			
<p>Class 37: Maintenance services; repair services; installation services; maintenance, repair and installation services in relation to broadcast and/or telecommunications and/or communications reception apparatus and instruments and parts and fittings therefore including cable, satellite, terrestrial, analogue or digital reception equipment; maintenance, repair and installation of telecommunications and/or communications and/or broadcasting apparatus and equipment including broadband apparatus and equipment; maintenance, repair and installation of apparatus for recording television programmes; maintenance, repair and installation of apparatus for recording, transmission, reproduction or reception of sound, images or audio visual content; maintenance, repair and installation of electrical and electronic apparatus for use in the reception of satellite, terrestrial or cable broadcasts; maintenance and repair of televisions; maintenance and repair of LCD and plasma screens; maintenance, repair and installation of home cinema systems; maintenance, repair and installation of amplifiers; maintenance, repair and installation of speakers; maintenance, repair and installation of radios; maintenance, repair and installation of wireless audio and/or audio visual devices; maintenance, repair and installation of portable wireless audio and/or audio visual devices; maintenance and repair of remote controls; maintenance and repair of games controllers; maintenance and repair of wireless gaming controllers; maintenance and repair of wireless keypads; maintenance, repair and installation of television receivers including a decoder; maintenance, repair and installation of set-top boxes; maintenance, repair and installation of digital set-top boxes; maintenance, repair and installation of high definition set top boxes; maintenance, repair and installation of personal video recorders; maintenance, repair and installation of set-top boxes for use in decoding and reception of satellite, terrestrial and cable broadcasts; maintenance, repair and installation of apparatus for decoding encoded signals including set top boxes for television reception, maintenance, repair and installation of set top box apparatus including a decoder and an interactive viewing guide; maintenance, repair and installation of set top box apparatus including a decoder and a recorder for recording television and audio programmes; maintenance, repair and installation of set top box apparatus including a decoder and a recorder programmable to transfer stored recordings to storage and also to delete the older recordings; maintenance, repair and installation of satellite dishes; maintenance, repair and installation of low noise blocks; maintenance, repair and installation of satellite meters; maintenance, repair and installation of telephones; maintenance and repair of PDAs; maintenance, repair and installation of telephone and radio modems; maintenance, repair and installation of set top boxes for use in decoding and reception of satellite, terrestrial cable and digital subscriber line (DSL), Internet or other electronic broadcasts; maintenance, repair and installation of apparatus for decoding</p>			

encoded signals; maintenance and repair of recorded television and radio programmes; maintenance and repair of recorded programmes for broadcasting or other transmission on television, radio, mobile telephones, PDAs and on PCs; maintenance and repair of video recordings; maintenance, repair and installation of multimedia apparatus and instruments; maintenance and repair of portable or hand-held computers; maintenance, repair and installations of computers; maintenance, repair and installation of computer hardware; maintenance, repair and installation of computer hardware, apparatus and instruments all for transmitting, displaying, receiving, storing and searching electronic information; maintenance and repair of electronic computer games [hardware]; maintenance and repair of electronic interactive computer games [hardware]; maintenance, repair and installation of telecommunications apparatus to enable connection to databases and the Internet; maintenance, repair and installation of network termination equipment; maintenance, repair and installation of wired and/or wireless computer network routers, modems, firewalls and/or bridges; maintenance and repair of computer video games and/or quizzes adapted for use with television receivers and screens or with video monitors or with computer screens; maintenance, repair and installation of electronic apparatus adapted for use with television receivers in playing games; maintenance and repair of games consoles; maintenance and repair of interactive video game devices comprised of computer hardware and accessories, namely game consoles and game controllers; maintenance and repair of portable and/or hand-held electronic devices for interactive computer and video games; maintenance and repair of portable and/or hand-held electronic devices for receiving, playing and transmitting music, sounds, images, text, signals, information and code; maintenance, repair and installation of amusement machines; maintenance and repair of video screens; maintenance, repair and installation of video projectors; maintenance and repair of radio and television signal antennae; maintenance and repair of MP3 players and MP3 readers; maintenance and repair of audio and/or video file recorders and/or players; maintenance, repair of portable audio and/or video file recorders and/or players; maintenance, repair and installation of apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; maintenance, repair and installation of apparatus and instruments for the reception of radio and television broadcasts including the reception of cable, satellite and digital broadcasts; installation, inspection, maintenance and emergency call services for home and personal monitoring and control and security management; installation, inspection, demonstration, repair and maintenance of apparatus for electronic home and personal security systems; installation, inspection, demonstration, maintenance and repair of apparatus and instruments for controlling and rescue, of automatic discharge systems for fire protection, of electronic protection equipment, of fire alarm and detection equipment, of alarm central stations, of monitoring central stations, equipment for monitoring anti-theft and break-in alarm equipment, motion sensing equipment, electronic network equipment, electronic communication equipment, message programming equipment, electronic locking systems; service call services for building management (upkeep and maintenance services); construction, installation, maintenance and repair of power plants, turbines, thermostatic controls, solar panels for electricity generation, photovoltaic devices, solar cells and motion detectors and other machinery for use in connection with generating and processing renewable energy sources including wind power, hydroelectric power, tidal power, geothermal power, solar power, biomass, and biofuels; maintenance, repair and installation of parts and fittings for all the aforesaid goods; information and advisory services relating to maintenance repair and installation, provided on-line from a computer database or the Internet; information and advisory services relating to all the aforesaid services; information relating to all the aforementioned services provided on-line from a computer database or via the Internet.