

THIS OPINION IS NOT A
PRECEDENT OF THE
TTAB

Oral Hearing: December 10, 2019

Mailed: July 21, 2020

United States Patent and Trademark Office

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Trademark Trial and Appeal Board
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Sky International AG

v.

Sky Cinemas LLC
—————

Opposition No. 91223952
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Mark H. Tidman, Jacqueline M. Lesser, and Lisa Bollinger Gehman of Baker & Hostetler LLP, for Sky International AG.

Baxter W. Banowsky of Banowsky & Levine PC, for Sky Cinemas LLC.
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Before Cataldo, Wolfson, and Heasley,
Administrative Trademark Judges.

Opinion by Wolfson, Administrative Trademark Judge:

Sky Cinemas LLC (“Applicant”) seeks to register the standard character mark SKY CINEMAS (“Cinemas” disclaimed) on the Principal Register for “Movie theaters” in International Class 41.¹

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¹ Application Serial No. 86481934 was filed on December 16, 2014, based on Applicant’s allegation of a bona fide intent to use the mark in commerce under Trademark Act Section 1(b), 15 U.S.C. § 1051(b).

Sky International AG (“Opposer”) opposes registration of Applicant’s mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), claiming likelihood of confusion with a number of its “SKY” formative marks, each of which has been used and registered for various entertainment and communication services, and related goods.² The registrations are as follows:³

1. Reg. No. 2912783 for the mark: SKY NEWS (typeset,⁴ “News” disclaimed) registered December 21, 2004 for services in International Class 41, renewed;
2. Reg. No. 2932761 for the mark: SKY NEWS (typeset, “News” disclaimed) registered March 15, 2005 for services in International Classes 38 and 41, renewed;

² Notice of Opposition, 1 TTABVUE 81. Applicant objects to all evidence of alleged global use of “SKY related marks” as being beyond the scope of the pleadings. 92 TTABVUE 70. We agree that in the context of Opposer’s claim under Section 2(d), its use of its marks outside the U.S. is irrelevant. Because a Section 2(d) claim requires assertion of a mark registered with the USPTO or “previously used in the United States,” and there is no indication of the effect of Opposer’s alleged global use on U.S. consumers, we sustain Applicant’s objection to evidence of Opposer’s use outside the U.S. *See generally Person’s Co. v. Christman*, 900 F.2d 1565, 1569 14 USPQ2d 1477, 1479 (Fed. Cir. 1990). Applicant further objects to Opposer’s evidence of use of any “SKY” related mark as being based on an unpleaded claim. However, the Notice of Opposition includes the allegation: “Opposer uses and promotes the SKY marks in such a way that the public associates the SKY marks exclusively with the Opposer and Opposer’s goods and services.” As noted, we read “the SKY marks” as referring to Opposer’s pleaded registered marks, including claims to use of its pleaded marks. To the extent Applicant’s objection relates to alleged use rights in unpleaded marks, the objection is moot. We have not considered any marks beyond those pleaded. *See, e.g., Harry Winston, Inc. v. Bruce Winston Gem Corp.*, 111 USPQ2d 1419, 1424 n.14 (TTAB 2014) (opposer may not rely on registrations that were unpleaded); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 309.03(c)(1) (2019) (“plaintiff must specifically plead any registrations on which it is relying”).

³ At 48 TTABVUE 76-181, Exhs. C-L. Record citations are to TTABVUE, the Trademark Trial and Appeal Board’s publicly available docket history system. *See Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014).

⁴ A typed mark is the legal equivalent of a standard character mark. *In re Viterra, Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1909 n.2 (Fed. Cir. 2012).

3. Reg. No. 3232370 for the mark: SKY SPORTS NEWS (standard characters, “Sports News” disclaimed) registered April 24, 2007 for “entertainment services, namely, an ongoing television sports news program” in International Class 41, renewed;
4. Reg. No. 4771128 for the mark:  (“News” disclaimed) registered July 14, 2015 for goods and services in International Classes 9, 35, 38, 41 and 42;
5. Reg. No. 4771127 for the mark: SKY NEWS ARABIA (standard characters, “News Arabia” disclaimed) registered July 14, 2015 for goods and services in International Classes 9, 38, 41 and 42;
6. Reg. No. 4806322 for the mark:  (“News” and the non-Latin characters that translate to “Arabia” disclaimed), registered September 8, 2015 for goods and services in International Classes 9, 35, 38, 41 and 42;
7. Reg. No. 4771129 for the mark:  (“Sports” disclaimed) registered July 14, 2015 for goods and services in International Classes 9, 35, 38, 41 and 42;
8. Reg. No. 4710310 for the mark:  registered March 31, 2015 for goods and services in International Classes 9, 38 and 41.
9. Reg. No. 3110386 for the mark: SKY TG24 (standard characters), which was cancelled on February 3, 2017 under Section 8 of the Trademark Act, 15 U.S.C. § 1058. Accordingly, the registration forms no part of this decision.
10. Reg. No. 4473260 for the mark: SKY PRO CYCLING (standard characters, “Pro Cycling” disclaimed) for services in Class 35, which Opposer admits has been abandoned. Opposer’s Answer to Third Amended Counterclaim, 82 TTABVUE 7. Because Applicant filed a counterclaim to cancel Reg. No. 4473260, judgment is hereby entered against Opposer, and Applicant’s counterclaim granted, with respect to Reg. No. 4473260. Accordingly, the registration will be cancelled in due course and forms no part of this decision.

11. Reg. No. 4405345 for the mark: SKY PRO CYCLING (standard characters, “Pro Cycling” disclaimed) for goods and services in Classes 9, 10, 11, 12, 14, 16, 18, 21, 25, 28, 35, 38, 39, and 41, which Opposer admits has been abandoned. Opposer’s Answer to Third Amended Counterclaim, 82 TTABVUE 7. Because Applicant filed a counterclaim to cancel Reg. No. 4405345, judgment is hereby entered against Opposer, and Applicant’s counterclaim granted, with respect to Reg. No. 4405345. Accordingly, the registration will be cancelled in due course and forms no part of this decision.


Opposer also pleaded use prior to any date on which Applicant may rely of “the SKY marks,” which we read as referring to Opposer’s pleaded registered marks.




Applicant denied the salient allegations in Opposer’s Notice of Opposition and filed counterclaims to cancel seven of Opposer’s live pleaded registrations (five are listed below; the sixth and seventh are Reg. Nos. 4473260 and 4405345, discussed above).⁵

1. Reg. No. 4771128 for  ;
2. Reg. No. 4771127 for SKY NEWS ARABIA;
3. Reg. No. 4806322 for SKY NEWS العربية;

⁵ 77 TTABVUE (Amended Answer and Counterclaims). Applicant also asserted the affirmative defenses of laches, waiver, acquiescence and estoppel. However, because Applicant did not pursue them at trial they are deemed waived. *See, e.g., Alcatraz Media, Inc. v. Chesapeake Marine Tours, Inc.*, 107 USPQ2d 1750, 1753 (TTAB 2013) (respondent’s affirmative defense of failure to state a claim not argued in brief deemed waived), *aff’d mem.*, 565 F. App’x 900 (Fed. Cir. 2014); *Miller v. Miller*, 105 USPQ2d 1615, 1616 n.3 (TTAB 2013) (affirmative defense of unclean hands deemed waived because applicant failed to argue and present evidence regarding the defense at trial). Moreover, in general laches is not a proper defense against an opposition, and we therefore give the allegation no consideration. *Nat’l Cable Television Ass’n Inc. v. Am. Cinema Editors Inc.*, 937 F.2d 1572, 19 USPQ2d 1424, 1432 (Fed. Cir. 1991).

4. Reg. No. 4771129 for ;

5. Reg. No. 4710310 for .

Applicant alleged that Opposer did not have a bona fide intent to use these marks as of the filing date of each respective underlying application.⁶ Applicant also alleged that Opposer never used the mark  on any goods or services and has thus abandoned it; and that Opposer abandoned the marks SKY NEWS ARABIA, SKY NEWS عربية,  and  with respect to all goods and services except “in connection with the provision of a streaming news service.”⁷ Opposer, as counterclaim defendant, denied the salient allegations in Applicant’s counterclaims.⁸

⁶ 64 TTABVUE 22, 41, 63, 85, 98, and 111.

⁷ 64 TTABVUE 112-13; refiled at 77 TTABVUE. The exhibits attached to Applicant’s amended Answer at 64 TTABVUE, as well as those attached to Applicant’s refiling of its amended Answer at 77 TTABVUE, are not of record in this proceeding. *Poly-Am., L.P. v. Ill. Tool Works Inc.*, 124 USPQ2d 1508, 1510 (TTAB 2017). (“Except in limited circumstances, which are not present here, an exhibit to a pleading is not evidence on behalf of the party to whose pleading the exhibit is attached unless identified and introduced in evidence as an exhibit during the period for the taking of testimony.”) (citing Trademark Rules 2.122(c) and 2.122(d)(1); 37 C.F.R. § 2.122(c) and 37 C.F.R. § 2.122(d)(1)).

⁸ Opposer also alleged that Applicant’s counterclaims are barred by laches, waiver, acquiescence and estoppel. 82 TTABVUE 2-9. Opposer did not pursue these affirmative defenses as counterclaim defendant, so they are considered waived. *See, e.g., Baroness Small Estates Inc. v. Am. Wine Trade Inc.*, 104 USPQ2d 1224, 1225 n.2 (TTAB 2012) (in cancellation, affirmative defenses of lack of standing, laches and unclean hands waived because respondent did not pursue these defenses in its brief).

I. Applicant's counterclaims

In defense of Applicant's counterclaims, Opposer's Head of International IP at Sky International AG, Brett Shelton, expressly limited the goods and services of Opposer's registrations. 85 TTABVUE 6. Arguing that Applicant "ignored the public documents of use" and alleging that Opposer "has use of its mark in U.S. commerce on the following goods and services as contained in these registrations," Shelton enumerates the goods and services in these registrations with which Opposer claims it has used its marks. 85 TTABVUE 6-12.

In its Combined Reply and Response brief, Opposer confirmed that it "has limited the goods and services of its existing registrations under attack, as set forth in the below chart, and submitted valid evidence of use in U.S. commerce for each of those marks." 93 TTABVUE 25; chart at 25-29. Opposer further argued that Applicant "has the burden to object to specific wording" if it had objections to Opposer's "limited identifications of goods and services." 93 TTABVUE 26 n.11.

As per Opposer's chart, Opposer has limited the identifications of goods and services for each of the registrations under attack to the following:

1. Reg. No. 4771128 for 

Class 9: computer software to enable searching of data; computer software for use in database management, use as a spreadsheet, word processing in the field of news, sports, entertainment; computer software to enable connection to databases and the internet; computer software supplied from the internet for use in database management, use as a spreadsheet, word processing in the field of news, sports, entertainment; computer software and computer programs for distribution to, and for use by, viewers of a digital

television channel for the viewing of goods and services; downloadable music, sounds, videos, images, text and information provided by a telecommunications network, by online delivery and by way of the internet and/or the world-wide web in the field of news, sports and entertainment

Class 38: telecommunications services, namely, providing telecommunication access services, electronic transmission of data, messages and information, providing online and telecommunication facilities for real-time interaction between and among users of computers, mobile and handheld computers, and wired and wireless communication devices, local and long distance transmission of, data, graphics by means of telephone, cable, and satellite transmissions relating to advertising, media, sports, news, entertainment; communications services, namely, transmission of voice, data, graphics, images and video by means of telecommunications networks, wireless communication networks, and the internet; satellite, and radio communication services; television and radio broadcasting; satellite and television transmission and communication services; broadcasting and/or transmission of radio and/or television programs and/or films; satellite, dtt, cable, dsl and broadband broadcasting and/or transmission of audio and/or audio visual programming; transmission of audio, video and/or audio visual programming by electronic transmission, online broadband, satellite; broadcasting of programming by means of or aided by computer; transmission of audio, video and/or audio visual programming by internet protocol (iptv); electronic transmission of text, messages, sound and/or pictures providing telecommunication access and/or communication and/or broadcast and/or transmission of audio visual content; communications services by satellite, television and/or radio transmission; news agency services for electronic transmission; telecommunications services, namely, providing access to news, current affairs and sports information for electronic transmission: video on demand and near on demand telecommunication and/or communication and/or broadcast and/or transmission services; streaming delivery of video on demand streams to viewers; providing access to internet websites to mobile telephone users; broadcast and/or transmission of radio programs, television

programs, films; transmission of radio programs, television programs; e-mail, email notification and alert services via the internet

Class 41: education and entertainment services, namely, production and distribution of sports, news, entertainment, videos;⁹ provision of audio visual performances, namely, news programs, sports competitions; production of films for television; live show production services of news programs, sports competitions; production, presentation and distribution of radio and television programs, interactive television, interactive entertainment for others; provision of news, current affairs and sports information; distribution of radio programs, television programs, pre-recorded video tapes, audio and/or visual material; television programs, films;¹⁰ online news reporters services

2. Reg. No. 4771127 for SKY NEWS ARABIA and

Reg. No. 4806322 for SKY NEWS عربية

Class 9: computer software to enable searching of data; computer software for use in database management, use as a spreadsheet, word processing in the field of news, sports, entertainment; computer software to enable connection to databases and the internet; computer software supplied from the internet for use in database management, use as a spreadsheet, word processing in the field of news, sports, entertainment; computer software and computer programs for distribution to, and for use by, viewers of a digital television channel for the viewing of goods and services; downloadable music, sounds, videos, images, text and information provided by a telecommunications network, by online delivery and by way of the internet and/or the world-wide web in the field[s] of news, sports and entertainment

⁹ As “videos” is not included in the recitation of services as currently listed, “videos” has not been added to the services covered by the registration. 37 C.F.R. § 2.71(a).

¹⁰ As there is no recitation in the registration for “television programs; films” we have amended this statement to “production, editing, hire, leasing, rental, exhibition of, preparation, and provision of television programs, films; presentation of films.” These services are currently present in Reg. No. 4771128.

Class 38 for: telecommunications services,¹¹ namely providing local and long distance transmission of, [sic] data, graphics by means of telephone, cable, and satellite transmissions relating to advertising, media, sports, news, entertainment; communications services, namely, transmission of voice, data, graphics, images and video by means of telecommunications networks, wireless communication networks, and the internet; satellite, [sic] and radio communication services; television and radio broadcasting; satellite and television transmission and communication services; broadcasting and/or transmission of radio and/or television programs and/or films; satellite, dtt, cable, dsl and broadband broadcasting and/or transmission of audio and/or audio visual programming; transmission of audio, video and/or audio visual programming by electronic transmission, online broadband, satellite; broadcasting of programming by means of or aided by computer; transmission of audio, video and/or audio visual programming by internet protocol (iptv); electronic transmission of text, messages, sound and/or pictures; providing telecommunication access and/or communication and/or broadcast and/or transmission of audio visual content; communications services by satellite, television and/or radio transmission; news agency services for electronic transmission; telecommunications services, namely, providing access to news, current affairs and sports information for electronic transmission:[sic, ;] video on demand and near on demand telecommunication and/or communication and/or broadcast and/or transmission services; streaming delivery of video on demand streams to viewers; providing access to internet websites to mobile telephone users; broadcast and/or transmission of radio programs, television programs, films and [sic]; transmission of radio programs,

¹¹ Opposer proposes adding “telecommunication services, namely, providing telecommunication access services, electronic transmission of data, messages and information, providing online and telecommunication facilities for real-time interaction between and among users of computers, mobile and handheld computers, and wired and wireless communication devices” to the services recited in Reg. Nos. 4771127 and 2806322. However, these services are not listed in the registration and may not be added. Trademark Rule 2.71(a), 37 C.F.R. § 2.71(a).

television programs; e-mail, e[-]mail notification and alert services via the internet

Class 41: education and entertainment services, namely, production and distribution of sports, news, entertainment, videos;¹² provision of audio visual performances, namely, news programs, sports competitions; production of films for television; live show production services of news programs, sports competitions, [sic, ;] production, presentation and distribution of radio and television programs, interactive television, interactive games, interactive entertainment for others; provision of news, current affairs and sports information; distribution of radio programs, television programs, prerecorded video tapes, audio and/or visual material; television programs, films;¹³ online news reporters services

3. Reg. No. 4771129 for 

Class 9: computer software to enable searching of data; computer software for use in database management, use as a spreadsheet, word processing in the field of news, sports, entertainment, games; computer software to enable connection to databases and the internet; computer software supplied from the internet for use in database management, use as a spreadsheet, word processing in the field of news, sports, entertainment, games; computer software and computer programs for distribution to, and for use by, viewers of a digital television channel for the viewing of goods and services; downloadable 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 worldwide web in the field of news, sports and entertainment

¹² As “videos” is not included in the recitation of services as currently listed, “videos” has not been added to the services covered by the registration. 37 C.F.R. § 2.71(a).

¹³ As there is no recitation in the registrations for “television programs; films” we have amended this statement to “production, editing, hire, leasing, rental, exhibition of, preparation, and provision of television programs, films; presentation of films.” These services are currently present in Reg. Nos. 4771127 and 4806322.

Class 38: telecommunications services, namely, providing telecommunication access services, electronic transmission of data, messages and information, providing online and telecommunication facilities for real-time interaction between and among users of computers, mobile and handheld computers, and wired and wireless communication devices, local and long distance transmission of data, graphics by means of telephone, cable, and satellite transmissions relating to advertising, media, sports, news, entertainment, games; communications services, namely, transmission of data, graphics, images and video by means of telecommunications networks, wireless communication networks, and the internet; satellite, and radio communication services; television and radio broadcasting; satellite and television transmission and communication services; broadcasting and/or transmission of radio and/or television programs and/or films; satellite, dtt, cable, dsl and broadband broadcasting and/or transmission of audio and/or audio visual programming; transmission of audio, video and/or audio visual programming by electronic transmission, online broadband, satellite; broadcasting of programming by means of or aided by computer; transmission of audio, video and/or audio visual programming by internet protocol (iptv); electronic transmission of text, messages, sound and/or pictures; providing telecommunication access and/or communication and/or broadcast and/or transmission of audio visual content; communications services by satellite, television and/or radio transmission; news agency services for electronic transmission; telecommunications services, namely, providing access to news, current affairs and sports information for electronic transmission: video on demand and near on demand telecommunication and/or communication and/or broadcast and/or transmission services; streaming delivery of video on demand streams to viewers; providing access to internet websites to mobile telephone users; broadcast and/or transmission of radio programs, television programs, films; transmission of radio programs, television programs; e-mail, email notification and alert services via the internet

Class 41: education and entertainment services, namely, production and distribution of sports, news, entertainment,

videos;¹⁴ training services in the field of sports; provision of audio visual performances, namely, news programs, sports competitions; production of films for television; live show production services of news programs, sports competitions; production, presentation and distribution of radio and television programs, interactive television, interactive games, interactive entertainment for others; provision of news, current affairs and sports information; distribution of radio programs, television programs, pre-recorded video tapes, audio and/or visual material; television programs, films;¹⁵ online news reporters services

4. Reg. No. 4710310 for




Class 38: communications services, namely, transmission of, data, graphics, images and video by means of telecommunications networks, wireless communication networks, and the internet; television broadcasting; satellite and television transmission and communication services; broadcasting and/or transmission of television programs and/or films; satellite, dtc, cable, dsl and broadband broadcasting and/or transmission of audio and/or audio visual programming; transmission of audio, video and/or audio visual programming by electronic transmission, online broadband, satellite; providing telecommunication access and/or communication and/or broadcast and/or transmission of audio visual content; communications services by satellite, television transmission; news agency services for electronic transmission; telecommunications services, namely, providing access to news, current affairs and sports information for electronic transmission; broadcast and/or transmission of television programs

¹⁴ As “videos” is not included in the recitation of services as currently listed, “videos” has not been added to the services covered by the registration. 37 C.F.R. § 2.71(a).

¹⁵ As there is no recitation in the registration for “television programs; films” we have amended this statement to “production, editing, hire, leasing, rental, exhibition of, preparation, and provision of television programs, films; presentation of films.” These services are currently present in Reg. No. 4771129.

Class 41: PROPOSED - education and entertainment services, namely, production and distribution of sports, news, entertainment, videos; provision of news, current affairs and sports information; distribution television programs, pre-recorded video tapes, audio and/or visual material; television programs, films; online news reporters services

With respect to Reg. No. 4710310 for the mark , the services in Class 41 in association with which Opposer claims to have used the mark (listed as “Proposed” above) do not easily track those currently recited in the registration. Opposer may not add new services to the registration, but may only limit the scope of the existing services. 37 C.F.R. § 2.71(a). We have amended the recitation in compliance with Trademark Rule 2.71(a) to recite only those services within the scope of the existing services, namely:

Class 41: production of films for television and cinema featuring sports, news, entertainment; providing access to videos to viewers on demand; hiring, rental and leasing of videos; provision of news programs and sports competitions; provision of news, current affairs and sports information; distribution of television programs, pre-recorded video tapes, audio and/or visual material; production of radio programs, television programs, films, motion pictures, pre-recorded video tapes, audio and/or visual material, pre-recorded video cassettes, dvds or pre-recorded video discs featuring sports, news, entertainment; production, editing, hire, leasing, rental, exhibition of, preparation, and provision of television programs, films; presentation of films; online news reporters services.

Because Opposer concedes its non-use with respect to the goods and services not set forth above (the “abandoned goods and services”), Applicant’s counterclaims are granted in part and judgment is entered against Opposer as to the abandoned goods

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and services in Reg. Nos. 4771128, 4771127, 4806322, 4771129, and 4710310.¹⁶ 37
C.F.R. § 2.133(a).¹⁷

II. Focus on SKY NEWS in pleaded Registration Nos. 2912783 and 2932761

We focus on Opposer's pleaded Registration Nos. 2912783 and 2932761 for the standard character mark SKY NEWS, registered in International Class 38 for "broadcasting and transmission of news programmes by satellite, television and radio" and in Class 41 for "news agency services, namely, gathering and dissemination of news; news reporting services" and "television and radio news reporting services; production of radio and television news programmes."¹⁸

The mark in these registrations is more similar to Applicant's mark SKY CINEMAS than are Opposer's other marks. In particular, we note that they are standard character marks, which means that they are devoid of potentially distinguishing graphical elements, *see, e.g., In re Viterra, Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1910-11 & n.4 (Fed. Cir. 2012), and also that the sole additional non-SKY term ("NEWS") is, in our view, the closest to the non-SKY term in the applied-

¹⁶ The abandoned goods and services are listed in Appendix A (Parts 1-4) attached to this decision. The USPTO will enter appropriate amendments to the identifications in each registration.

¹⁷ We make no determination as to whether Opposer has proven use of any of its marks for any of the goods or services that remain in the identifications following amendment of the registrations.

¹⁸ Reg. No. 2932761 covers the services in Class 38 and news agency services in Class 41; the registration has been renewed. Reg. No. 2912783 covers television and radio news reporting services and programs in Class 41; it has been renewed.

for mark (“CINEMAS”). We also note that the recitation of services is no less similar to Applicant’s services than the services in any of the other pleaded registrations, as amended in accordance with our partial grant of Applicant’s counterclaims. If we find confusion likely between SKY NEWS and Applicant’s mark, we need not consider likelihood of confusion with any of Opposer’s other marks. *See N. Face Apparel Corp. v. Sanyang Indus. Co.*, 116 USPQ2d 1217, 1225 (TTAB 2015); *In re Max Capital Grp. Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010).

III. The Parties

Opposer Sky International AG is an indirect subsidiary of Sky plc., “one of the largest entertainment companies in Europe.”¹⁹ Sky plc. began as a broadcaster of satellite and cable television programming through predecessor companies in the early 1980’s;²⁰ today it owns over 600 pay channels watched by 22.5 million customers worldwide.²¹ In the United States, SKY NEWS, “a 24 hour multimedia news source,”²² has been available on Opposer’s website since March 2000;²³ “on tv through Apple TV and ROKU” since 2013;²⁴ and “streaming on YouTube starting in 2014.”²⁵

¹⁹ 56 TTABVUE 5 (Shelton Decl.).

²⁰ 56 TTABVUE 5.

²¹ 56 TTABVUE 6.

²² 50 TTABVUE 3 (Levy Decl.).

²³ 56 TTABVUE 7.

²⁴ 50 TTABVUE 4; Exh. C (announcing Apple’s software update for Apple TV to include live streaming of Sky News) and Exhs. E and F (youtube.com Sky News printouts).

²⁵ *Id.*

In 2012, Parthenon Media Group, trading as Sky Vision, (“Sky Vision”) was acquired as an indirect subsidiary of Sky UK Ltd.²⁶ Sky Vision produces video programming that has aired in the U.S. on “internet streaming services, traditional network broadcasters, and tiered cable networks.”²⁷ In 2018, Comcast, Inc. won an auction bid to acquire the “Sky business” for a sum of \$40 billion.²⁸

Applicant Sky Cinemas LLC was formed as a Delaware limited liability company in August 2014.²⁹ The company opened a movie theater in Dripping Springs, Texas, under the mark SKY CINEMAS in January 2018.³⁰ It has “14 auditoriums, and plays a wide variety of films, including all or most of the mainstream Hollywood films, as well as a number of popular art films.”³¹

²⁶ Davis Decl. Exh. B, 53 TTABVUE 160; Millichip Decl. 54 TTABVUE 4. Sky UK Ltd. is listed in the 2017 Annual Report submitted by Opposer as a “direct subsidiary of the Company.” Davis Decl, 53 TTABVUE 4, Exh. F (53 TTABVUE 772) (listing all subsidiaries to “the Company,” including Sky UK Ltd. The “Company” is not defined in the 2017 report but is defined as British Sky Broadcasting Group plc in the 2013 Annual Report, 53 TTABVUE 148, which also defines “Sky” as “British Sky Broadcasting Group Plc and its subsidiary undertakings.” *Id.* at 142). In 2014, after completing the acquisition of Sky Italia and Sky Deutschland, “the company, formerly known as British Sky Broadcasting Group plc changed its name to Sky plc.” Shelton Decl., 56 TTABVUE 6.

²⁷ 54 TTABVUE 5.

²⁸ 56 TTABVUE 6.

²⁹ Wm. Banowsky Decl., 70 TTABVUE 3.

³⁰ *Id.* at 5.

³¹ *Id.* at 6.

IV. Preliminary Issue – Applicant’s Renewed Motion to Strike³²

In its initial disclosures and pretrial disclosures, Opposer identified Jonathan Levy, John Jelley, Gavin Davis, Jane Millichip, and Brett Shelton as potential lay witnesses.³³ Opposer did not identify any expert witnesses. Opposer submitted testimony declarations from these five witnesses. Applicant renewed its motion to strike “the final paragraph of each of the Levy, Jelly [sic], Davis and Millichap Declarations on the grounds that the statements therein constitute undisclosed and impermissible expert opinions, and to strike the Shelton Declaration in its entirety on the same grounds.³⁴ Applicant also moves to strike the witnesses’ testimony “for failure to demonstrate that such testimony is based upon personal knowledge.”³⁵ In its Reply Brief to its renewed pre-trial motion, Applicant requested, in the alternative, that the Board “disregard those portions of the declarations which constitute undisclosed expert testimony or about which the witness fails to demonstrate personal knowledge.”³⁶

³² Applicant’s further objections, filed at 92 TTABVUE 55-77, to portions of the Shelton Rebuttal Testimony Declaration and certain exhibits attached to the declaration, will be addressed as necessary in connection with Applicant’s counterclaims to cancel Opposer’s registrations.

³³ 95 TTABVUE 2.

³⁴ Applicant’s “Renewed Motion to Strike Testimony,” 91 TTABVUE.

³⁵ *Id.* at 3.

³⁶ 98 TTABVUE 11.

A. Are the Witnesses' Statements Based on Personal Knowledge?

The Federal Rules of Evidence provide that “[a] witness may not testify to matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.” Fed. R. Evid. 602.³⁷ The witnesses attested to their personal knowledge of the matters stated in their declarations,³⁸ except for Jelley. However, we find Jelley, as the VP of Business Development for SKY UK Limited for over ten years, has demonstrated sufficient personal knowledge of the company to attest to its investments, sponsorships, and presence at conferences and to authenticate the exhibits attached to his declaration.³⁹ The remainder of Jelley’s declaration is disregarded.

Applicant’s motion to strike the witnesses’ testimony for failure to demonstrate that such testimony is based upon personal knowledge is denied. To the extent some

³⁷ The Federal Rules of Evidence are made applicable to TTAB proceedings by Trademark Rule 2.116(a), 37 C.F.R. § 2.116(a).

³⁸ Applicant objected to the witnesses’ statement of personal knowledge on the ground that each witnesses’ declaration was “at best, a mixture of testimony based upon personal knowledge, document review and hearsay....” 91 TTABVUE 9. However, the Board recognizes that a declarant may testify “based on his or her personal knowledge from a review of the contents of files and records.” *Ava Ruha Corp.*, 113 USPQ2d at 1578 (admitting declaration in support of summary judgment motion of a company executive based on that executive’s “personal knowledge and review of company files on the relevant matters”). Accordingly, statements based on a declarant’s review of records kept by his or her company are admissible; however, statements made on hearsay conversations, as discussed herein, are not and have been disregarded.

³⁹ We have disregarded all hyperlinks to Internet materials contained in any of the declarations. *See In re Planalytics*, 70 USPQ2d 1453, 1458 (TTAB 2004) (providing a link to a website does not suffice to put information in the record because of the transitory nature of the information available through the link).

portions appear not to be based on personal knowledge, we disregard them. *See Ava Ruha Corp. v. Mother's Nutritional Ctr., Inc.*, 113 USPQ2d 1575, 1578 (TTAB 2015) (“To the extent some portions of the declaration may not be based on personal knowledge, the proper remedy is to simply disregard those portions.”).

B. Are the Witnesses’ Statements Undisclosed Expert Testimony?

Rule 701 of the Federal Rules of Evidence provides that “[i]f a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness’s perception;
- (b) helpful to clearly understanding the witness’s testimony or to determining a fact in issue; and
- (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.⁴⁰

The “Notes of Advisory Committee on Rules (1972)” explains that “Limitation (a) [that testimony must be rationally based on the witness’s perception] is the familiar requirement of first-hand knowledge or observation.”⁴¹ Limitation (b) [that testimony must be helpful] calls for “exclusion for lack of helpfulness” where “attempts are made

⁴⁰ Fed. R. Evid. 702 provides: “A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.”

⁴¹ The “Committee Notes on Rules—2000 Amendment confirms” that the “amendment does not purport to change this analysis.”

to introduce meaningless assertions which amount to little more than choosing up sides.” Regarding Limitation (c), the “Committee Notes on Rules—2000 Amendment” explains that “to the extent that the witness is providing testimony based on scientific, technical, or other specialized knowledge within the scope of Rule 702,” such testimony “must be scrutinized under the rules regulating expert opinion.”

In recent Board precedent, certain opinion testimony proffered by a lay witness based on his or her own personal experience was admissible as lay opinion. *Kohler Co. v. Honda Giken Kogyo K.K.*, 125 USPQ2d 1468, 1484-1485 (TTAB 2017). *Kohler Co.* appears to be the first Board case to consider the extent to which lay opinion testimony is admissible. “The parties have not cited, and we have not found, any precedential Board decisions on the distinction between expert opinion that is not disclosed prior to trial, and permissible lay opinion.” *Id.* In *Kohler Co.*, testimony from an engineer with personal knowledge of automobile engine technology was admissible to the extent it related to the manufacturing and functional advantages and disadvantages of a particular engine. By contrast,

[o]ther portions of Mr. Whitmore’s challenged testimony, however, leave the realm of informed lay opinion. These are: the claimed “industry standard” shape and configuration of engines; the claimed impact on competitors from registration of applied-for mark; and the claimed bases for visual distinctiveness of GX Engine.

Kohler Co., 125 USPQ2d at 1485.

Drawing upon the Board’s rationale in that case, we admit as lay opinion testimony information based on a witness’s knowledge and participation in the day-to-day affairs of the business, such as that regarding Opposer’s business investments,

its programming, affiliated co-producers of content, and equity interests. Testimony on these subjects is based on the witnesses' personal experiences as Opposer's employees, and reflects their familiarity with Opposer's competitive marketplace. We find inadmissible the testimony purporting to describe the impressions or beliefs of third parties as well as any opinions made by any declarant on ultimate conclusions as to whether consumers are likely to be confused. *Edwards Lifesciences Corp. v. Vigilanz Corp.*, 94 USPQ2d 1399, 1402 (TTAB 2010) (Board does "not substitute the opinion of a witness, even an expert witness, for our evaluation of the facts") (citing *Fisons Ltd v. UAD Labs., Inc.*, 219 USPQ 661, 663 (TTAB 1983) (opinions of witnesses "should not be substituted for the opinion of the tribunal charged with the responsibility for the ultimate opinion on the question.")).

In sum, while we have not excluded in toto the testimony of any witness, we have considered only the portions thereof that are based on personal knowledge and that are not mere statements of opinion, conjecture, or belief on ultimate conclusions as to likelihood of confusion.

V. Description of the Record

The record includes the pleadings and the file of each application or registration opposed or sought to be cancelled in this proceeding.⁴² Trademark Rule 2.122(b)(1), 37 C.F.R. § 2.122(b)(1). In addition, the parties introduced the following evidence:

⁴² In the typical case, a plaintiff's registrations are not considered part of the record by virtue of Trademark Rule 2.122(b)(1). That provision makes of record applications or registrations which are subject to the opposition or cancellation, i.e., those belonging to the defendant. But in this case, each party is in the position of both plaintiff and defendant. Accordingly, each

A. Opposer

1. Testimony declarations and accompanying exhibits of the following witnesses:
 - a. Jonathan Levy, Director of Newsgathering and Operations for Sky UK Limited; 50 TTABVUE⁴³;
 - b. John Jelley, Vice President of Business Development for Sky UK Limited; 52 TTABVUE;
 - c. Gavin Davis, Director of Corporate Communications and Campaigns for Sky UK Limited; 53 TTABVUE;
 - d. Jane Millichip, Managing Director of Parthenon Entertainment Limited trading as Sky Vision; 54 TTABVUE;⁴⁴ and
 - e. Testimony Declaration of Brett Shelton, counsel for Opposer and Head of International IP at Sky International AG; 5-57 TTABVUE.

application or registration opposed or sought to be cancelled is of record pursuant to Trademark Rule 2.122(b)(1).

⁴³ The portions of the Levy testimony designated confidential are posted at 51 TTABVUE, which allows access only by the Board. Bulky exhibits (contained in a compact disc) to the Levy testimony are posted at 61 TTABVUE.

⁴⁴ The portions of the Millichip testimony designated confidential are posted at 55 TTABVUE.

2. Oral cross-examination testimony and accompanying exhibits of William S. Banowsky, Jr., member and Manager of Sky Cinemas, LLC; 83 TTABVUE;
3. Rebuttal testimony declaration and accompanying exhibits of Brett Shelton; 85 TTABVUE;
4. Notice of Reliance on Opposer's pleaded registrations, news articles, and Internet materials at 48 TTABVUE; Applicant's "Executive Summary and Information Package" (confidential) at 49 TTABVUE; and
5. Rebuttal Notice of Reliance on Applicant's discovery responses, trademark search report for the SKY CINEMAS mark, email correspondence, and further Internet materials; 84 TTABVUE.

B. Applicant

1. Testimony declaration and accompanying exhibits of the following witnesses:
 - a. Baxter W. Banowsky, counsel for Applicant; 67 TTABVUE; and
 - b. William S. Banowsky, Jr. of Sky Cinemas; 70 TTABVUE.⁴⁵
2. Supplemental testimony declaration and accompanying exhibits of William S. Banowsky, Jr.; 87 TTABVUE (April 13, 2019);
3. Notice of Reliance on third-party registrations and Internet materials, purporting to show weakness of Opposer's marks; 66 TTABVUE; and
4. Second Notice of Reliance on email correspondence; 88 TTABVUE.

VI. Opposer's Standing

Standing is a threshold issue that must be proven by the plaintiff in every inter partes case. *See Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014), *cert. denied*, 135 S. Ct. 1401 (2015); *John W.*

⁴⁵ The portions of the William Banowsky testimony designated confidential are posted at 69 TTABVUE.

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Carson Found. v. Toilets.com, Inc., 94 USPQ2d 1942, 1945 (TTAB 2010). Opposer's standing in this proceeding is established by its eight pleaded registrations, which the record shows to be valid and subsisting, and owned by Opposer.⁴⁶ *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); *Otter Prods. LLC v. BaseOneLabs LLC*, 105 USPQ2d 1252, 1254 (TTAB 2012).

VII. Priority

Priority is not an issue with respect to the goods and services identified in Opposer's three pleaded registrations against which Applicant did not assert a counterclaim. *Penguin Books Ltd. v. Eberhard*, 48 USPQ2d 1280, 1286 (TTAB 1998) (citing *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974)). *Cf. Massey Junior Coll., Inc. v. Fashion Inst. of Tech.*, 492 F.2d 1399, 181 USPQ 272, 275 n.6 (CCPA 1974) ("prior use need not be shown by an opposer relying on a registered mark unless the applicant counterclaims for cancellation"); *Cent. Garden & Pet Co. v. Doskocil Mfg. Co.*, 108 USPQ2d 1134, 1139 (TTAB 2013) (plaintiff must prove priority in cancellation and in oppositions where there is a counterclaim to cancel its pleaded registration).

VIII. Likelihood of Confusion

Our determination under Trademark Act Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177

⁴⁶ 48 TTABVUE 7-161.

USPQ 563, 567 (CCPA 1973) (“*DuPont*”); *see also In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019) (Board considers each relevant *DuPont* factor for which there is evidence and argument). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. *See In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”); *see also In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (“The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but ‘may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods’”) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 64 USPQ2d at 1375, 1380 (Fed. Cir. 2002)).

A. Opposer’s Alleged Family of Marks

We begin our likelihood of confusion analysis by determining whether a pleaded family of marks has been proven under the ninth *DuPont* factor because that will inform our later comparison of the marks and services. *See, e.g., New Era Cap Co. v. Pro Era, LLC*, 2020 USPQ2d 10596, at *6-7 (TTAB 2020) (explaining two ways how a mark being part of a “family of marks” could impact other factors). This factor focuses on the variety of goods on or in connection with which a mark is or is not used, i.e., as a “house mark, ‘family’ mark, [or] product mark.” *DuPont*, 177 USPQ at 567;

see also New Era Cap Co., 2020 USPQ2d 10596, at *6-*7 (analyzing family of marks under the ninth factor); *In re Hitachi High-Techs. Corp.*, 109 USPQ2d 1769, n.11 (TTAB 2014) (“The *du Pont* case mentions as its ninth confusion factor the variety of goods on which a cited registered mark is used or whether a family of marks exists.”). Throughout the Notice of Opposition, Opposer uses shorthand to refer to its registered marks as the “SKY” marks, but does not claim that it owns a family of SKY-formative marks, that is, marks that share a common characteristic (the SKY family “name”). However, in its trial brief, Opposer now argues that it “has registered a SKY family of marks” that “are characterized by the recognizable use of SKY, including the uncontested registrations for SKY NEWS, and SKY SPORTS NEWS, so that the purchasing public would understand that there is a common characteristic indicative of a common origin.”⁴⁷ Applicant objects to “any consideration” of Opposer’s marks as a “family,” and asserts that Opposer’s claim of owning a family of marks “is well beyond the scope of Opposer’s pleadings.”⁴⁸

We agree with Applicant that the Notice of Opposition provides insufficient notice that Opposer was pleading a “family” of marks. “A plaintiff must plead ownership of a family of marks in its complaint in order to rely on the marks as a family as a basis for sustaining the opposition at trial or in a motion for summary judgment.” *Bell’s Brewery, Inc. v. Innovation Brewing*, 125 USPQ2d 1340, 1349 (TTAB 2017) (quoting

⁴⁷ 90 TTABVUE 27-28.

⁴⁸ 92 TTABVUE 46.

Wise F&I, LLC v. Allstate Ins. Co., 120 USPQ2d 1103, 1107 (TTAB 2016)); *cf. In re LC Trademarks, Inc.*, 121 USPQ2d 1197, 1204 (TTAB 2016) (“Mere ownership of a series of similar marks does not suffice to establish a family of marks.”).⁴⁹

We also find that Opposer’s family of marks claim was not tried by implied consent. Although Brett Shelton, Opposer’s corporate IP counsel, testified to an asserted family of marks, his testimony does not directly address the specific extent to which or manner in which the pleaded marks are claimed to be used in the United States. Shelton testified that Opposer “uses a wide variety of sub-brands” including SKY and another word. He asserts that these marks make up the “SKY family of marks.”⁵⁰ He asserts that Opposer owns “over 3000 applications and registrations for the mark SKY and for SKY-formative marks that make up the Sky Family of marks in 136 trademark territories (150 trademark countries).”⁵¹ Attached to his declaration are examples of Opposer’s use of SKY-formative marks, but the cited exhibits, while establishing some measure of use of SKY-formative marks, “also [are] relevant to

⁴⁹ In paragraph 2 of the Notice, Opposer pleaded that it “uses and promotes the SKY marks in such a way that the public associates the SKY marks exclusively with the Opposer and Opposer’s goods and services.” 1 TTABVUE 81. The phrase “SKY marks” was not defined. Opposer filed a motion for leave to amend the Notice of Opposition to add a claim under Article 6*bis* of the Paris Convention for the Protection of Industrial Property that would have also added SKY and SKY CINEMA to its claim of marks ownership, and an allegation that Opposer’s website offers “links to the whole family of SKY websites.” 35 TTABVUE 10. The motion was denied. 35 TTABVUE 13 (motion); 40 TTABVUE (Board order).

⁵⁰ 56 TTABVUE 8.

⁵¹ *Id.* at 11. Ownership of registrations outside the U.S. are irrelevant to the inquiry. Moreover, “registrations alone do not demonstrate the extent to which customers have been exposed to the marks, or the extent to which customers ... perceive [the marks] as a source indicator[s].” *LC Trademarks*, 121 USPQ2d at 1204.

Opposer’s pleaded claim that confusion is likely as to each of its marks individually.” *Bell’s Brewery*, 125 USPQ2d at 1349 (evidence insufficient to put Applicant on notice “that Opposer was proffering it in support of a conjoint use claim”); *see also J & J Snack Foods Corp. v. McDonald’s Corp.*, 932 F.2d 1460, 18 USPQ2d 1889, 1891 (Fed. Cir. 1991) (“Simply using a series of similar marks does not of itself establish the existence of a family. There must be a recognition among the purchasing public that the common characteristic is indicative of a common origin of the goods.”). Shelton summarizes, “The SKY website www.sky.com is now the ‘home’ of Sky on the web, offering quick links to the whole family of SKY websites and Sky’s corporate micro-sites, as well as allowing customers to read articles on programmes and find information on SKY products.”⁵² Shelton’s testimony conflates Opposer’s use of its marks internationally with use specifically directed to the United States. This is simply insufficient to have alerted Applicant that Opposer intended to claim a family of marks in the United States. Further, Applicant objected to Opposer’s reliance on any but the pleaded registrations.⁵³

Even if we were to find the matter tried by implied consent, we would nonetheless deny the claim, as Opposer has not established the existence of a family of SKY marks. To prove the existence of a family of marks, Opposer “must show that its putative family: (1) has a recognizable common characteristic; (2) that is distinctive;

⁵² 56 TTABVUE 26.

⁵³ 92 TTABVUE 9.

and (3) that has been promoted in such a way as to create ‘recognition among the purchasing public that the common characteristic is indicative of a common origin of the goods or services.’” *LC Trademarks*, 121 USPQ2d at 1204 (quoting *Wise F&I, LLC*, 120 USPQ2d at 1109).

We recognize that Opposer uses several different SKY marks in connection with its entertainment and news services. The mere fact of adoption, use and registration of such SKY marks does not in itself establish that a family of marks exists. The mark SKY, used alone, is not strictly speaking a member of Opposer’s claimed SKY family of marks because it lacks a suffix. *See McDonald’s Corp. v. McSweet, LLC*, 112 USPQ2d 1268, 1276 (TTAB 2014) (finding the “Mc” mark not part of McDonald’s family of “Mc-formative” marks). In *McDonald’s*, the Board found, based on witness testimony, that consumers spontaneously used the “Mc” prefix in connection with opposer’s goods; that opposer used ten “Mc”-formative marks,⁵⁴ operated over 14,000 restaurants across the U.S. and served an average of 26 million people every day, exposing a high level of purchasers to its marks. *Id.*; *see also Han Beauty Inc. v. Alberto-Culver Co.*, 236 F.3d 1333, 57 USPQ2d 1557, 1559 (Fed. Cir. 2001) (finding that plaintiff had marketed multiple marks including the family “prefix” for at least thirty years before defendant’s filing date; that most of plaintiff’s marks appeared in the marketplace at least eight years before such date, and that defendant’s

⁵⁴ The Board found two of these (“McDonalds” and “McFlurry”) were not “strictly speaking” members of the family because the “Mc” therein were not followed by generic or descriptive terms.

“stipulation and other evidence of record provide substantial evidence to support the Board’s conclusion” that plaintiff owned a family of marks.); *Int’l Diagnostics Tech., Inc. v. Miles Labs., Inc.*, 746 F.2d 798, 223 USPQ 977, 978 (Fed. Cir. 1984) (observing that millions of dollars in advertising contributed to recognition of a family of STIX marks).

Here, Opposer has shown that it uses several marks that combine “SKY” with other terms such as “NEWS” and “SPORTS,” but it has not shown extensive usage and promotion of these various marks or that consumers tend to perceive “SKY” in combination with any other term as an indicator of Opposer’s involved services.

Neither the mere intention to create a family of marks, nor ownership of multiple registrations containing the family term, is sufficient to establish that a party owns a family of marks. *Am. Standard Inc. v. Scott & Fetzer Co.*, 200 USPQ 457, 461 (TTAB 1978); *Consol. Foods Corp. v. Sherwood Med. Indus. Inc.*, 177 USPQ 279, 282 (TTAB 1973); *Witco Chem. Co. v. Chemische Werke Witten GmbH*, 158 USPQ 157, 160 (TTAB 1968); *cf. Plastilite Corp. v. Kassnar Imps.*, 508 F.2d 824, 184 USPQ 348, 350 (CCPA 1975) (finding public perception, rather than owner’s intent to create a mark “is to be measured” in determining whether a designation primarily indicates source). We find that, in addition to having failed to plead a family of marks, Opposer has failed to demonstrate the existence of a family of marks prior to Applicant’s constructive use date of December 16, 2014, the filing date of the involved application. *See TPI Holdings, Inc. v. TrailerTrader.com, LLC*, 126 USPQ2d 1409, 1419 (TTAB 2018) (party asserting family of marks must show use of family of marks prior to any date

adverse party can rely upon for purposes of priority, and recognition by purchasers of the common characteristic as indicating origin).⁵⁵

Accordingly, we find that Opposer has not established a family of SKY marks. *DuPont* factor nine is neutral.

B. The Strength of Opposer’s mark SKY NEWS

We next examine the strength of Opposer’s mark to determine the scope of protection to which it is accorded. A mark’s strength is measured both by its conceptual, or inherent, strength and its commercial, or marketplace, strength. *In re Chippendales USA, Inc.*, 622 F.3d 1346, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010); *see also Bell’s Brewery*, 125 USPQ2d at 1345 (“In determining strength of a mark, we consider both inherent strength, based on the nature of the mark itself, and commercial strength or recognition.”); 2 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 11:80 (5th ed. 2020) (“The first enquiry is for conceptual strength and focuses on the inherent potential of the term at the time of its first use. The second evaluates the actual customer recognition value of the mark at the time registration is sought or at the time the mark is asserted in litigation to prevent another’s use.”).

Although *DuPont* factor five refers to the “fame” of a plaintiff’s mark, rather than its “strength,” subsequent decisional law on likelihood of confusion indicates this factor measures the degree of strength of a plaintiff’s mark – that is, the combination

⁵⁵ The majority of Opposer’s web pages do not indicate the date they were accessed. For example, the web page with the tag line “The Sky Difference” (56 TTABVUE 66) and the web page from www.skysports.com are undated (85 TTABVUE 62).

of a mark's inherent strength and its commercial strength – along a continuum. Inherent strength is determined along the “fanciful-suggestive-descriptive-generic continuum.” *In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 1570, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987); *see also In re Nett Designs, Inc.*, 236 F.3d 1339, 1341, 57 USPQ2d 1564, 1565 (Fed. Cir. 2001) (“Placement of a term on the fanciful-suggestive-descriptive-generic continuum is a question of fact.”).

Commercial strength also “varies along a spectrum from very strong to very weak.” *Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 122 USPQ2d 1733, 1734 (Fed. Cir. 2017) (holding that under the fifth factor, a finding of fame for purposes of likelihood of confusion is not “an all-or-nothing measure”) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005)). We consider the extent of commercial strength or weakness in the marketplace under the fifth and sixth *DuPont* factors, “fame of the prior mark (sales, advertising, length of use)” and “the number and nature of similar marks in use on similar goods.” *DuPont*, 177 USPQ at 567.⁵⁶

⁵⁶ The fifth *DuPont* factor (fame) examines the extent to which the public perceives the mark as indicating a single source of origin. Conversely, the sixth factor, “the number and nature of similar marks in use on similar goods,” mitigates against a mark's potential recognition by considering whether, because of widespread third-party use of similar marks (their component terms or of a plaintiff's mark as a whole) in the marketplace, “customers have been educated to distinguish between different such marks on the bases of minute distinctions.” *Palm Bay Imps.*, 73 USPQ2d at 1694. Our analysis of commercial strength here is under the fifth factor because there is no record evidence that third parties use marks similar to Opposer's marks.

1. Inherent or Conceptual Strength of SKY NEWS

“In order to determine the conceptual strength of the cited mark, we evaluate its intrinsic nature, that is, where it lies along the generic-descriptive-suggestive-arbitrary (or fanciful) continuum of words.” *In re Davia*, 110 USPQ2d 1810, 1815 (TTAB 2014). Opposer’s mark SKY NEWS is entitled to a rebuttable presumption that the mark is inherently distinctive as evidenced by its registration on the Principal Register without a claim of acquired distinctiveness under Section 2(f) of the Trademark Act. *Tea Bd. of India v. Republic of Tea, Inc.*, 80 USPQ2d 1881, 1899 (TTAB 2006).⁵⁷ 15 U.S.C. §1057(b). Notwithstanding, “evidence of third-party registrations [for the same or similar goods or services] is relevant to ‘show the sense in which a mark is used in ordinary parlance,’ ... that is, some segment that is common to both parties’ marks may have ‘a normally understood and well-recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak.’” *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millenium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015) (quoting *Juice Generation, Inc. v. GS Enters., LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675 (Fed. Cir. 2015)); *see also In re I-Coat Co.*, 126 USPQ2d 1730, 1735 (TTAB 2018) (third-party registrations can be used to demonstrate that a term may have a

⁵⁷ Opposer argues that “SKY is conceptually strong since it is a distinctive mark.” 90 TTABVUE 33. Because Opposer does not own a registration for the mark SKY, and has not pleaded rights to SKY alone, but only in combination with other terms, we need not, and do not, determine whether SKY alone is a strong mark.

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commonly accepted meaning); *Top Tobacco LP v. N. Atl. Operating Co.*, 101 USPQ2d 1163, 1173 (TTAB 2011) (third-party registrations indicate term CLASSIC has suggestive meaning as applied to tobacco products).

Applicant introduced copies of third-party registrations printed from the USPTO Trademark Status and Document Retrieval system (TSDR) to show that the shared term (in this case, “sky”) may have a commonly accepted meaning as applied to the involved services. Of the submitted registrations, the following are for services that appear to be similar to Opposer’s services:

Reg. No. 3,840,188 for the mark: SKY U TV for provision of continuing television programs;⁵⁸

Reg. No. 4,102,133 for the mark: SKY SILVER for multimedia entertainment services in the nature of recording, production and post-production services in the fields of music, video, and films...motion picture film and video production...production and distribution of television shows and movies...film and video tape film production...cinematography services...;⁵⁹

Reg. No. 4,763,502 for the mark:
for production of films;⁶⁰



Reg. No. 4,792,939 for the mark: SKY CLUB for production and post-production services in the fields of music, video,

⁵⁸ 66 TTABVUE 163-67, Exh. T.

⁵⁹ 66 TTABVUE 278-83, Exh. AM.

⁶⁰ 66 TTABVUE 351-57, Exh. BB.

and films...production of sound and music video recordings;⁶¹

Reg. No. 2,169,832 for the mark: SKY DANCERS for entertainment services in the nature of a series of animated films;⁶²

Reg. No. 3,120,346 for the mark: SKY OVER THE WORLD TRAVEL SERIES for educational travel show broadcast over television, satellite, audio, and video media;⁶³

The above registrations tend to show that the term SKY, when registered for film or television programs, may suggest aerial or satellite transmission, but the registrations do not support a conclusion that the term is inherently weak. On the other hand, because NEWS is descriptive of Opposer's news streaming services, it is a weak component of the mark. Accordingly, the mark as a whole is no more than suggestive for Opposer's news streaming services.

2. Commercial Strength of Opposer's Mark

Commercial strength is the extent to which the relevant public recognizes a mark as denoting a single source, *Tea Bd. of India*, 80 USPQ2d at 1899, and may be measured indirectly or circumstantially "by the volume of sales and advertising expenditures of the [services] traveling under the mark, and by the length of time

⁶¹ 66 TTABVUE 339-341 and 348, Exh. BA.

⁶² 66 TTABVUE 38-42, Exh. D.

⁶³ 66 TTABVUE 193-97, Exh. Z.

those indicia of commercial awareness have been evident.” *Couch/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC*, 110 USPQ2d 1458, 1476 (TTAB 2014). It is considered from the perspective of “the class of customers and potential customers” of the relevant services, in this case consumers and potential consumers of news and sports programming, television productions and films.⁶⁴ *Palm Bay*, 73 USPQ2d at 1695 (The relevant consuming public consists of the “class of customers and potential customers of a product or service, not the general public”); *see also Joseph Phelps*, 122 USPQ2d at 1734 (focusing on “the class of customers and potential customers of a product or service, and not the general public.”).

Opposer contends that SKY is “a strong and well-known mark in the U.S.”⁶⁵ In support, Opposer provided a variety of circumstantial evidence of commercial strength of its SKY NEWS mark, some of which is confidential and therefore will be discussed only in general terms. Opposer’s Director of Newsgathering and Operations for Sky UK Limited, Jonathan Levy, testified that according to ALLRefer.com,⁶⁶ “SKY NEWS is the “fourth highest rank [sic] news source worldwide,” is available at all hours on multiple sources, and reaches “102 million homes worldwide.”⁶⁷ Levy testified that the United States represents “the third largest number of Facebook fans for SKY NEWS, and the second highest number of Twitter account users [are from

⁶⁴ Shelton Decl., 56 TTABVUE 7.

⁶⁵ Opposer’s Brief, p. 12 (90 TTABVUE 20).

⁶⁶ At www.allrefer.com/top-120-popular-news-channels-world, 50 TTABVUE 12-27 (Exh. A).

⁶⁷ 50 TTABVUE 3, Exh. B. (50 TTABVUE 29-30).

the United States].”⁶⁸ Other platforms for content from the SKY NEWS channel include “travel hubs across the world including airports, trains and bus stations and in hotel lobbies and sports stadiums.”⁶⁹ In 2017-18, in the United States, there were over 5 million unique visitors to two of Opposer’s mobile applications (Sky News International and Sky News App), over 650,000 unique U.S. visitors to Opposer’s streaming service at news.sky.com/watch-live, and slightly over 22 million to Opposer’s website, news.sky.com.⁷⁰ Opposer provides news footage to networks such as Fox News and CBS; by agreement Fox News displays Opposer’s SKY NEWS mark on screen shots to attribute the story to Opposer.⁷¹

Without comparative numbers or market share percentages for the United States, the site visitor numbers to Opposer’s mobile applications and streaming services lack the context needed for us to determine the extent of the commercial impact the impressions made or whether the amount*s stated are significant in the industry. *See Bose Corp. v. QSC Audio Prods. Inc.*, 293 F.3d 1367, 63 USPQ2d 1303, 1309 (Fed. Cir. 2002) (“some context in which to place raw statistics is reasonable”); *cf. Mini Melts, Inc. v. Reckitt Benckiser LLC*, 118 USPQ2d 1464, 1480 (TTAB 2016) (probative value of sales revenue figures quantified as doses sold is diminished by the fact that the amount is just a raw number without context as to applicant’s market

⁶⁸ 50 TTABVUE 6, Exh. N (50 TTABVUE 117).

⁶⁹ 56 TTABVUE 10.

⁷⁰ 50 TTABVUE 5-6; Exh. J (confidential version at 51 TTABVUE).

⁷¹ 50 TTABVUE 7, Exh. Q (50 TTABVUE 146).

share or whether this amount is significant in the industry). Moreover, although Opposer's submitted annual turnover figures and advertising expenses for the "Sky group of companies for the years 2002 to 2017"⁷² appear to include U.S. sales, prior to 2015, annual turnover was generated "primarily in the UK and Ireland," and for the additional two years for which figures are provided (2016 and 2017), advertising and promotional efforts are described as "spillover into the U.S."⁷³ Opposer's marketing expenses also suffer from similar defects: in particular, they do not divide U.S. sales and expenses from those of other parts of the world.

Opposer could have submitted evidence showing that consumers were regularly exposed to the SKY NEWS mark on a nationwide scale. *See, e.g., Omaha Steaks Int'l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1690 (Fed. Cir. 2018) (finding market share "but one way of contextualizing ad expenditures or sales figures" and noting opposer's significant targeted marketing via mail, email, and social media platforms; radio and television campaigns; product placements; and unsolicited media mentions). On the other hand, there is no record evidence that third parties use marks similar to Opposer's marks.⁷⁴ Considering both inherent and

⁷² 56 TTABVUE 8-10 (confidential version at 57 TTABVUE).

⁷³ 56 TTABVUE 7.

⁷⁴ Although, as shown above, Applicant has adduced evidence of third-party registrations, "[t]hird-party registrations standing alone, are not evidence that the registered marks are in use on a commercial scale, let alone that consumers have become so accustomed to seeing them in the marketplace that they have learned to distinguish among them by minor differences." *In re Morinaga Nyugyo Kabushiki Kaisha*, 120 USPQ2d 1738, 1745 (TTAB 2016).

commercial strength, we find Opposer's mark SKY NEWS is entitled to an ordinary scope of protection.

C. Similarity of the Marks

Under the first *DuPont* factor, we determine the similarity or dissimilarity of the parties' marks in their entireties, taking into account their appearance, sound, connotation and commercial impression. *DuPont*, 177 USPQ at 567; *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014); *Palm Bay*, 73 USPQ2d at 1692. "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Davia*, 110 USPQ2d at 1812; *accord Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) ("It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.") (citation omitted)." *In re Inn at St. John's, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff'd mem.*, 777 F. App'x 516 (Fed. Cir. 2019). "The proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that persons who encounter the marks would be likely to assume a connection between the parties." *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (internal quotation marks omitted). *See also Mini Melts, Inc.*, 118 USPQ2d at 1470; *In re Mr. Recipe, LLC*, 118 USPQ2d 1084, 1089 (TTAB 2016).

Applicant's mark is SKY CINEMAS. Opposer's mark is SKY NEWS. The marks are similar in appearance and pronunciation due to the presence of the shared and

most distinctive term, SKY. The term SKY is dominant in both marks because it appears first and because the other terms are merely descriptive of the parties' respective services and have been disclaimed. *See Palm Bay Imports*, 73 USPQ2d at 1692 ("Veuve" is the most prominent part of the mark VEUVE CLICQUOT because "veuve" is the first word in the mark and the first word to appear on the label); *Cunningham*, 55 USPQ2d at 1846 ("Regarding descriptive terms, this court has noted that the 'descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion.") (quoting *In re Nat'l Data Corp.*, 224 USPQ at 752 (finding "nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entireties")); *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 876, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992) (Board correctly found that "Century" is the "dominant element of CENTURY LIFE OF AMERICA due to applicant's disclaimer of the rest of its mark" and because "upon encountering each mark, consumers must first notice this identical lead word").

Although the marks are similar in appearance and pronunciation, they are only somewhat similar in connotation. While both bring to mind "the area above one's head," the term SKY in Opposer's mark may also bring to mind the satellite transmission of international news, while Applicant's mark may bring to mind the concept of a vast expanse of sky, denoting the desirable qualities of a big screen, or alluding to drive-ins under the sky. *See, e.g., Coach Servs., Inc.*, 101 USPQ2d at 1721

“Opposer’s COACH mark, when applied to fashion accessories is clearly either arbitrary or suggestive of carriage or travel accommodations [e.g., stagecoach, train, motor coach, etc.] thereby engendering the commercial impression of a traveling bag [e.g., a coach or carriage bag]. On the other hand, applicant’s COACH marks call to mind a tutor who prepares a student for an examination.”).

Despite the possible nuanced meanings of “sky” inhering in the parties’ marks, given that the marks look and sound alike and are somewhat similar in meaning, we find that the marks in their entireties create similar overall commercial impressions. *See, e.g., Giant Food, Inc. v. Nation’s Foodserv., Inc.*, 710 F.2d 1565, 218 USPQ 390, 395 (Fed. Cir. 1983) (“Another factor weighing heavily in our decision is that the dominant portion of both parties’ marks sounds the same when spoken. ...”); *Holiday Casuals v. M. Beckerman & Sons, Inc.*, 228 F.2d 224, 108 USPQ 140, 141 (CCPA 1955) (“sound alone or appearance alone may be sufficient to create likelihood of confusion”) (citations omitted).

In view thereof, the *DuPont* factor of the similarity of the marks favors a finding of likelihood of confusion.

D. Similarity of the Services

Under the second *DuPont* factor, we consider “[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration....” *DuPont*, 177 USPQ at 567; *see also Stone Lion Capital*, 110 USPQ2d at 1159; *Octocom Sys., Inc. v. Houst. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). Relatedness focuses on the goods and services set forth in the parties’

involved applications and registration, not on what the parties may currently be offering in the marketplace. *Hewlett Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004-05 (Fed. Cir. 2002). Likelihood of confusion can be found “if the respective goods [or services] are related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that they emanate from the same source.” *Coach Servs.*, 101 USPQ2d at 1722 (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); see also *In re Martin’s Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

Opposer argues that the services for which it has registered SKY NEWS (“television and radio news reporting services; production of radio and television news programmes;” “broadcasting and transmission of news programmes by satellite, television and radio;” and “news agency services, namely, gathering and dissemination of news; news reporting services”) are “legally equivalent” to Applicant’s movie theater services.⁷⁵ We find no record evidence supporting this assertion. On this record, Opposer has not met its burden to show that Applicant’s movie theater services are the same as, or overlap with, Opposer’s news programming or reporting services.

However, Opposer also contends that Applicant’s movie theaters are within Opposer’s natural zone of expansion. Generally, the doctrine of natural expansion “is

⁷⁵ 90 TTABVUE 30.

used in the context of parties' dueling claims of priority." *Orange Bang, Inc. v. Olé Mexican Foods, Inc.*, 116 USPQ2d 1102, 1119 (TTAB 2015). Here, priority is not at issue; we consider the natural expansion doctrine as "merely another facet" of the relatedness of services inquiry. *J.C. Hall Co. v. Hallmark Cards, Inc.*, 340 F.2d 960, 144 USPQ435, 438-39 (CCPA 1965) (finding opposer likely to bridge the gap from its greeting card business to blank checks under identical mark). Opposer maintains that "[t]he record in this case supports that Opposer has had on-site, U.S. theatrical film releases; it produces films that are distributed to the U.S.; it has produced films in the U.S.; and it has a significant presence as a producer and distributor of films to the U.S. market."⁷⁶ Accordingly, Opposer asserts that it is entitled to "bridge the gap" to movie theater operation. Applicant argues that the evidence does not demonstrate that Opposer "has used any of its registered marks in connection with movie theaters, and the evidence of such use under different marks is ambiguous at best."⁷⁷ Applicant asserts that "the only use from which Opposer could 'bridge the gap' is news and sports news services" and that "the gap between news and sports news services and retail movie theaters is a gap too far."⁷⁸

"Under the doctrine of natural expansion, the first user of a mark in connection with particular goods or services possesses superior rights in the mark not only as

⁷⁶ 90 TTABVUE 30.

⁷⁷ 92 TTABVUE 47.

⁷⁸ 92 TTABVUE 50.

against subsequent users of the same or similar mark for the same or similar goods or services, but also as against subsequent users of the same or similar mark for any goods or services which purchasers might reasonably expect to emanate from it in the normal expansion of its business under the mark.” *Mason Eng’g and Design Corp. v. Mateson Chem. Corp.*, 225 USPQ 956, 962 (TTAB 1985). The application of the doctrine is strictly limited to those cases where the expansion, whether actual or potential, is “natural,” that is, where the goods or services of the subsequent user, on the one hand, and the goods or services as to which the first user has prior use, on the other, are of such nature that purchasers would generally expect them to emanate from the same source. *Mason Eng’g*, 225 USPQ at 962 (citing *Sheller-Globe Co. v. Scott Paper Co.*, 204 USPQ 329 (TTAB 1979)). However, the doctrine applies “whether or not the first user of the mark has actually expanded its use of its mark, after the commencement of the subsequent user’s use, to goods or services which are the same as or closely related to those of the subsequent user.” *Id.*; see also *May Dep’t Stores Co. v. Prince*, 200 USPQ 80, 808-9 (TTAB 1978) (finding a natural expansion from plaintiff’s health and beauty aids to shampoo; “as the first commercial user of the mark, opposer possessed the right to preclude the registration by a subsequent user of the same or a similar mark for any goods which purchasers might reasonably be likely to assume emanate from it in the normal expansion of its business under the mark notwithstanding that the expansion to a particular product might be subsequent in time to that of another party.”).

Among the factors to be considered in determining whether an expansion is natural are:

- (1) whether the second area of business (that is, the subsequent user's area of business, into which the first user has or potentially may expand) is a distinct departure from the first area of business (of the prior user), thereby requiring a new technology or know-how, or whether it is merely an extension of the technology involved in the first area of business;
- (2) the nature and purpose of the goods or services in each area;
- (3) whether the channels of trade and classes of customers for the two areas of business are the same, so that the goodwill established by the prior user in its first area of business would carry over into the second area; and
- (4) whether other companies have expanded from one area to the other.

Mason Eng'g, 225 USPQ at 962.

As explained in more detail below, Opposer's argument fails because the evidence does not establish that any such "natural expansion" would have been expected or assumed by the purchasers of Opposer's services when Applicant entered the field. Even if we measure from the time of Applicant's actual opening of its theater in January 2018, rather than from the earlier December 16, 2014, filing date of its application, the result would be the same. As Jonathan Levy, Opposer's Director of Newsgathering and Operations for Sky UK Limited, states, "In the U.S., SKY NEWS is an emerging market."⁷⁹ Opposer has expanded beyond traditional network

⁷⁹ 50 TTABVUE 3.

broadcasting only to such related fields as video programming, internet streaming services, and tiered cable networks. Opposer is not entitled to rely on a “bridge the gap” argument under these circumstances.

1. Whether the operation of movie theaters is a distinct departure from those services Opposer has performed under its marks?

Opposer has had limited involvement with motion picture film production; its involvement primarily has been directed to the European market, and has been under the SKY mark (not SKY NEWS). In the United States, Opposer (or a related company) released four films: “Michelangelo,” “Vatican Museums 3D,” “Raphael,” and “St. Peter’s and the Papal Basilicas of Rome” for screening in movie theaters.⁸⁰ The theatrical release of “Vatican Museums 3D” in the United States was corroborated by a confidential business record that indicated “Vatican Museums 3D” had theatrical releases in the U.S. in 2014 while each of the other films were distributed in the United States between the years 2016 and 2018.⁸¹

Although this evidence shows an interdependence between operating a movie theater and motion picture production and distribution, the record does not demonstrate that a motion-picture production company would or could ordinarily go into the business of operating a movie theater without significant new technology or know-how. This factor thus favors a finding that relevant consumers are unlikely to

⁸⁰ 56 TTABVUE 22.

⁸¹ 56 TTABVUE 22, Exh. R (confidential version at 58 TTABVUE).

perceive the operation of a movie theater as being within the natural zone of expansion of streaming or film production services.

2. Whether the nature and purpose of movie theaters and movie/film production are similar?

The ultimate purpose of Applicant's and Opposer's services is to bring films to live audiences in a movie theater or over a customer's personal device. However, the point at which each company links into the distribution channel differs; production, distribution, and exhibition are different phases in the process of creating and bringing content to the viewers. Thus, while the purpose of each company's services is similar, the nature of each is dissimilar. This factor weighs in Applicant's favor.

3. Whether the channels of trade and classes of customers for the two areas of business are the same?

Both parties advertise to the same classes of consumers, those who are interested in entertainment and art content, including movies. Opposer has demonstrated that it shows entertainment and art content over its streaming service.⁸² Referring to "Sky Arts programming," Shelton testifies that "We had U.S. theatrical releases of several SKY produced films on various artists,"⁸³ including producing a remake of the movie "Catch-22, which has been commissioned for release in 2019 by Hulu."⁸⁴ Applicant exhibits movies, but as Banowsky explained of his company Magnolia Pictures, a

⁸² 56 TTABVUE 10. "Sky promotes its entertainment products and services both 'on air' and 'out of home'."

⁸³ 56 TTABVUE 21.

⁸⁴ 56 TTABVUE 22.

movie theater may also seek to distribute movies that it owns over streaming services:⁸⁵

A. The business plan was essentially we thought there was an opportunity at that time to develop a cinema network at a reasonable cost, and we believed if there were a number of undistributed, quality independent films that we could acquire at a reasonable cost, there would be some synergy in the two.

Q. Did you only distribute those films to the movie theaters that were part of Magnolia Pictures?

A. No.

Q. So you distributed them to other -- where did you distribute them?

A. To other movie theaters that were interested in playing those films.

Q. Is that the -- did you only distribute to movie theaters or are there other platforms for distribution of films?

A. There are other platforms. We distributed them through DVD. This was in 2001, '2, '3. It was before some of the platforms that have emerged since.

Q. What platforms have emerged since?

A. Well, there's platforms like Netflix, for example.

Q. Streaming services?

A. Yes.

Banowsky further testified that "it's fair to say" some films are distributed over television and others in the movie theaters:⁸⁶

⁸⁵ 83 TTABVUE 13.

⁸⁶ 83 TTABVUE 88.

Q. Okay. So you're familiar with a device that actually shows you movies on your screen?

A. Yes.

Q. Okay. And it's fair to say that is how some films are distributed?

A. Yes.

Q. And oftentimes the same films are distributed through either streaming or a set-top box and in the movie theaters at the same time. Isn't that fair to say?

A. Yes, although you confused me there because when you said streaming or set-top box, I'm sort of thinking of those as the same.

He agreed that "it's not uncommon for an independent film" to show in the movie theaters and on Netflix at the same time (discussing the movie "Roma").⁸⁷

Producers of movies for at-home viewing and movie theater operators are competing for the same spending dollars from individuals who want to watch movies. The overlap of customers and the direct competition between Applicant's and Opposer's services support a finding that movie theaters are in Opposer's natural zone of expansion.

4. Whether other companies have expanded from one area to the other?

There is no record evidence showing that companies that produce films or distribute films over users' personal devices have expanded to owning or running

⁸⁷ 83 TTABVUE 90-91.

movie theaters. This factor supports a finding that movie theaters are not in Opposer's natural zone of expansion.

5. Weighing the elements.

Opposer has expanded its offering of streaming services to include a variety of platforms, including mobile devices, laptops, and desktop computers. Opposer has expanded its business into production of films that have been shown in movie theaters. Nonetheless, Opposer has not shown that when Applicant commenced use of its mark or filed its application for "movie theaters," purchasers of Opposer's services would have expected or assumed that "movie theaters" were within Opposer's "natural zone of expansion."

Thus, we find that the services are not related. Accordingly, the second *DuPont* factor favors a finding of no likelihood of confusion.

E. Trade Channels and Classes of Consumers

Under *DuPont*, we also assess the similarity of the parties' established, likely-to-continue trade channels and the classes of customers to whom the services are sold. With regard to the channels of trade, in the absence of specific limitations in the cited registration and the application, we must presume that Applicant's movie theater services and Opposer's streaming services will travel in all normal and usual channels of trade and methods of distribution for those services. *See Stone Lion Capital*, 110 USPQ2d at 1161-1162; *see also In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992) (because there are no limitations as to channels of trade or classes of purchasers in either the application or the cited registration, it is presumed that

the services in the registration and the application move in all channels of trade normal for those services, and that the services are available to all classes of purchasers for the listed services). In this regard, we find that Opposer's services ("broadcasting and transmission of news programmes by satellite, television and radio," "news agency services, namely, gathering and dissemination of news; news reporting services" and "television and radio news reporting services; production of radio and television news programmes") primarily focus on news programs available to the consumer on a television screen or radio, or over the Internet. Although the same consumers may seek to watch movies at home on their television sets, mobile devices or computers, and to watch movies at a movie theater, the normal channels of trade for Opposer's services has not been shown to include movie theaters.

Applicant acknowledges that it competes with other sources for films and movies, such as streaming services and cable television,⁸⁸ but disputes Opposer's claim that the trade channels and classes of consumers of the parties' services are competitive. Applicant argues that Opposer "provides news and sports news services ... via the internet or via set top boxes," while Applicant is "an exhibitor" whose customers are "retail movie goers."⁸⁹ Opposer states in its brief that in the United States, "the trade channels for [its] education, entertainment and news services are primarily online whether it be directly from Sky's websites, mobile and tablet applications, and

⁸⁸ 49 TTABVUE 194 (confidential).

⁸⁹ 92 TTABVUE 48.

online channels or through an authorized third-party reseller, such as Apple TV and Netflix.”⁹⁰ Its consumers include “both end user consumers, viewers and businesses, such as film studios, and third-party content providers.”⁹¹

In sum, we find that although consumers of both parties’ services are movie enthusiasts, the substantial differences in channels of trade weigh against a finding of likelihood of confusion.

F. Applicant’s intent in adopting SKY CINEMAS

Under the thirteenth *DuPont* factor, which focuses on “any other established fact probative of the effect of use,” evidence of an applicant’s bad faith adoption of its mark is relevant to our likelihood of confusion analysis. *Edom Labs., Inc. v. Lichter*, 102 USPQ2d 1546, 1553 (TTAB 2012); *L.C. Licensing Inc.*, 86 USPQ2d at 1891 (bad faith is strong evidence that confusion is likely, as such an inference is drawn from the imitator’s expectation of confusion). Establishing bad faith requires a showing that the applicant intentionally sought to trade on the goodwill or reputation associated with an opposer’s mark. *See also J & J Snack Foods*, 18 USPQ2d at 1891 (“Whether there is evidence of intent to trade on the goodwill of another is a factor to be considered, but the absence of such evidence does not avoid a ruling of likelihood of confusion.”); *Tea Bd. of India*, 80 USPQ2d at 1902.

⁹⁰ 90 TTABVUE 17.

⁹¹ 90 TTABVUE 18.

Opposer suggests that Applicant chose SKY for its mark “precisely because it overlapped with Opposer’s services,” and that as a “veteran movie business executive,” Applicant’s founder William Banowsky had to have known of Opposer’s SKY marks when Applicant applied for its SKY CINEMAS mark.⁹² Banowsky testified that he founded and ran Magnolia Pictures for sixteen years; that he was CEO of “a large chain of art theaters” called Landmark Theaters for four years (from 2003 to 2007); that he founded Carolina Cinemas in 2008 and Violet Crown cinemas in 2011; and that he served on the board of a television company called LIN Television and was still affiliated with LIN in 2017.⁹³ Banowsky testified that he was familiar with SKY NEWS programming in Europe and of the 2018 bidding wars for Sky plc.⁹⁴ Banowsky testified that he “would almost be certain that my attorney would have done a trademark search before we filed our application” and that if he (Banowsky) conducted a Google search in the U.S., the “Sky mark” would have “come up.”⁹⁵ Moreover, Applicant produced a search report for the SKY CINEMAS mark that had been conducted before Applicant filed its application that revealed Opposer’s SKY NEWS and other pleaded marks as well as Opposer’s use and pending application of its mark SKY CINEMA. Nonetheless, Banowsky asserts that Applicant only became aware of Opposer’s marks when his attorney “pointed them out” after this proceeding

⁹² 90 TTABVUE 39, 41.

⁹³ 83 TTABVUE 21-24; 48 TTABVUE 3-4

⁹⁴ 83 TTABVUE 53, 97.

⁹⁵ 83 TTABVUE 54.

had commenced.⁹⁶ He testified that he chose SKY CINEMAS because of the “beautiful sky of Dripping Springs” (Texas, where the movie theatre is located) and because “sky” is the last 3 letters of his last name.⁹⁷

After careful review of the evidence of record, we conclude that Opposer has not established that Applicant adopted its mark in bad faith. Applicant has provided a plausible explanation as to why it adopted the SKY CINEMAS mark. Although we agree with Opposer that Banowsky knew of Opposer and its European market, his testimony that he was unaware of Opposer’s business in the United States is credible. Applicant’s search revealed Opposer’s marks, but Applicant received an opinion of counsel (which is of record) that the mark was available.⁹⁸ *See Sweats Fashions Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 4 USPQ2d 1793, 1798 (Fed. Cir. 1987) (refusing to infer bad faith where applicant received clearance from its trademark attorney after conducting a search).

Accordingly, this *DuPont* factor is neutral.

G. Actual Confusion

The seventh *DuPont* factor is the “nature and extent of any actual confusion, while the eighth *DuPont* factor considers the “length of time during and conditions under which there has been concurrent use without evidence of actual confusion.” *DuPont*, 177 USPQ at 567. Applicant’s founder testified that “[d]uring the time the Dripping

⁹⁶ 83 TTABVUE 70.

⁹⁷ 83 TTABVUE 33.

⁹⁸ 88 TTABVUE 10-487, Exh. B (search report), 88 TTABVUE 494-95 Exh. D (opinion).

Springs, Texas theater has been operating under the SKY CINEMAS brand, I have not been made aware of any circumstances wherein our movie theater was mistakenly associated with Opposer in any way.”⁹⁹ Opposer argues in response that since Applicant only opened its theater in 2018, the length of time the marks have co-existed is insufficient to support a determination that confusion is likely.¹⁰⁰

In its decision on remand from the Federal Circuit’s decision in *Guild Mortg.*, 129 USPQ2d 1160, the Board recently held that the eighth *DuPont* factor “requires us to look at actual market conditions, to the extent there is evidence of such conditions of record.” *In re Guild Mortg. Co.*, 2020 USPQ2d 10279, at *15 (TTAB 2020). The absence of any reported instances of confusion is meaningful only if the record indicates appreciable and continuous use by Applicant of its mark for a significant period in the same markets as those served by Opposer under its mark. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 94 USPQ2d 1645, 1660 (TTAB 2010), *aff’d*, 637 F.3d 1344, 98 USPQ2d 1253 (Fed. Cir. 2011); *see also Barbara’s Bakery Inc. v. Landesman*, 82 USPQ2d 1283, 1287 (TTAB 2007) (probative value of the absence of actual confusion depends on there being a significant opportunity for actual confusion to occur).

⁹⁹ 7 TTABVUE 6.

¹⁰⁰ 94 TTABVUE 13.

Here, Applicant operates a single movie theater since 2018 under the SKY CINEMAS mark. There is no evidence of record as to the extent to which Applicant has advertised or promoted its mark or how many customers it has attracted.

The factors bearing on actual confusion are neutral.

H. Balancing the Factors

The SKY NEWS mark is entitled to a normal scope of protection as an inherently distinctive and suggestive mark, and the SKY NEWS and SKY CINEMAS marks are more similar than they are dissimilar in sight, sound, meaning and overall commercial impression. We also find that the classes of consumers are the same. These factors favor a finding of likelihood of confusion. However, the services are not related, nor are they offered through the same trade channels, and Opposer has not shown that Applicant's movie theaters are within Opposer's natural area of expansion. We find, therefore, that Applicant's mark SKY CINEMAS for "movie theaters" is not likely to cause confusion with Opposer's registered SKY NEWS mark for news related services.

Decision: The opposition under Section 2(d) on the ground of likelihood of confusion is dismissed.

In view of our dismissal of the opposition, the application will move forward and a Notice of Allowance will issue in due course. If Applicant wishes to pursue its remaining counterclaims, it should notify the Board within twenty days of the mailing date of this decision which ones it wishes to pursue and against which registrations, failing which all remaining counterclaims will be dismissed.

APPENDIX A (Part 1)

GOODS AND SERVICES DELETED FROM 

REG. NO. 4771128

CLASS 9

apparatus for recording television programs; apparatus for recording, transmission, 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, namely, display panels; home cinema systems comprising of DVD and high definition disc players, HD boxes, internet TV boxes, audio amplifiers, audio speakers, AV receivers; amplifiers; speakers; radios; wireless audio and/or audio visual devices, namely, radios, televisions and stereos; portable wireless audio and/or audio visual devices, namely, radios, televisions and stereos; remote controls for radios, televisions, and stereos; wireless computer keypads; television receivers including a decoder; set-top boxes; digital set-top boxes; high definition set top boxes; personal video recorder; set-top boxes for use in decoding and reception of satellite, terrestrial and cable broadcasts; apparatus for decoding encoded signals, namely, set top boxes for television reception; set top box apparatus, namely, a decoder and an interactive viewing guide; set top box apparatus, namely, a decoder and a recorder for recording television and audio programs; set top box apparatus, namely, a decoder and a recorder programmable to transfer stored recordings to storage and also to delete the older recordings; satellite dishes; low noise blocks, namely, electronic apparatus for use in noise reduction; satellite meters; encoded programs for computers and for data processing and telecommunications, namely, computer software for use in word processing in the field of movies, games; telephones; mobile telephones; personal digital assistants; 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; pre-recorded DVDs featuring television and radio programs; pre-recorded DVDs featuring programs for broadcasting or other transmission on television, radio, mobile telephones, PDAs and on pcs; musical video recordings; multimedia apparatus and instruments being portable or hand-held computers; DVD players; computers; computer hardware; computer hardware, apparatus and instruments all for transmitting, displaying, receiving, storing and searching electronic information; computer programs for use in database management, use as a spread sheet, word processing in the fields of news, sports, entertainment, movies games; electronic computer software games; electronic interactive computer software games; computer software for use in word processing in the field of movies games; telecommunications apparatus to enable connection to databases and the internet; computer software supplied from the internet for use in movies, games; 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 purchase of goods and services; computer games software and computer quiz software; computer programs for interactive television and for interactive games and/or quizzes; electronic apparatus adapted for use with television receivers in playing games; downloadable electronic publications in the nature of magazines and articles in the field of news, sports, entertainment, movies, and games; computer game software; video screens; video projectors; blank tapes, discs and wires, all being magnetic; blank cassettes and cartridges, all adapted for use with the aforesaid tapes; blank and pre-recorded audio and video cassettes, tapes and cartridges featuring news, sports, entertainment, movies, games ; compact discs featuring news, sports, entertainment, movies, games; DVD discs featuring news, sports, entertainment, movies, games; phonographic records featuring news, sports, entertainment, movies, games; laser readable discs for recording sound or video featuring news, sports, entertainment, movies, games; 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 magnetic cards; radio and television signal antennae; interactive musical sound and/or audio recordings; music, video, sound and/or audio recordings, downloadable, provided from mp3 internet websites featuring news, sports, entertainment, movies, games; 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 conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus and instruments for the reception of radio and television broadcasts including the reception of cable, satellite and digital broadcasts; blank smart cards; credit cards magnetically encoded; loyalty cards magnetically encoded; acoustic apparatus or instruments, namely, conduits, couplers, membranes and meters; adaptors; aerials; antennae; amplifiers; communication transmission apparatus and instruments, namely, for recording, transmission or reproduction of sound or images; encoded or magnetic banking or credit cards; cinematographic film exposed; cinematographic instruments and apparatus; blank magnetic data carriers; data storage computer 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 computer hardware; electronic telecommunications and/or communications and/or broadcast and/or transmission and/or decoding and/or image processing and/or audio visual computer hardware instruments and apparatus; film reproducing instruments and apparatus, namely, film scanners; 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, namely, integrated circuits, integrated circuit chips, and integrated circuit modules for encoding and decoding digital video; interactive downloadable educational or entertainment games for use with television receivers and video apparatus; mobile telephones; motion pictures about children's stories, horror, science fiction stories, dramatic stories,

comedy stories, adventure stories, sports events; telephone apparatus and equipment; structural parts and fittings for all the aforesaid goods; sunglasses, leather cases for holding mobile phones; e-sell through products, namely, downloadable media content, namely, video, films and television programs featuring entertainment, education, travel, dining, news and sports, 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 structural parts and fittings therefore, all for use with mp3 players, music storage devices, media storage devices and other consumer electronic devices; electrical, electronic and computer equipment for machinery for use in conservation, generation and efficient use of heat, light and water, namely, thermostatic electric controllers, solar panels for electricity generation, photo voltaic solar modules for production of electricity, solar cells, motion detectors; control and monitoring computer hardware for use in the generation of alternative energy, namely, wind power, hydroelectric power, tidal power, geothermal power, solar power, bio mass, and bio fuels; electronic publications downloadable, namely, 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, bio mass, and bio fuels; apparatus and instruments for closed circuit television and surveillance systems, namely, cameras, switchers, monitors, microphones, alarms and recorders; apparatus and instruments for personal security monitoring, namely, cameras, switchers, monitors, microphones, alarms and recorders; apparatus and instruments for home security monitoring and control, namely, alarms, cameras, switchers, monitors, microphones, and recorders; home and personal security apparatus, namely, alarms, cameras, switchers, monitors, microphones, and recorders; home and personal security devices, namely, alarms, cameras, switchers, monitors, microphones, and recorders; home and personal security alarms; electronic protection equipment, namely, fire detecting and alarm equipment, intruder and burglar alarm; radio, telephonic, television and signaling 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 home security and personal security; closed circuit television systems (ccTV), namely, transformers, baluns, cables used in connection with computers, computer peripheral devices, televisions, audio-video equipment; television monitors; cameras; optical lenses; camera cases; prepackaged cameras; videocassette recorders (vcrs); system controlling software for use in monitoring and controlling communication between computers and automated machine systems; video monitoring apparatus, namely, cameras, switchers, monitors, microphones, and recorders; fire and smoke detectors; access control monitoring systems; electronic card readers; magnetic or encoded access control cards; alarm monitoring systems; electronic panels for alarm management and monitoring; electronic alarm panels for controlling alarm systems; glass breakage alarm detectors; smoke detectors; carbon monoxide detectors; digital audio recorders; digital video recorders; digital audio

servers; digital video servers; electrical communication equipment, namely, phones, pagers, beepers, walkie talkies; message programming equipment, namely, encoded electronic chip cards, and encoded integrated circuit cards, namely, smart cards containing programming used to program transmit and receive messages; radio paging equipment, namely, radio pagers; electronic programmable locking systems comprised of electronic cylindrical lock sets and keypads; life-saving apparatus and equipment, namely, life rafts; electric burglar alarms; electronic devices for protection, namely, portable led safety lighting devices for personal use for safety purposes, and a non-lethal security device that uses a light source to detect, warn, repel, temporarily blind, disorient, nauseate, disable, confuse, debilitate, stun, subdue, stop, or incapacitate persons or animals; intruder alarms and anti-theft equipment, namely, theft alarms; intruder detection apparatus, namely, motion, sound and heat detectors; motion detecting equipment, namely, motion sensitive security lights, security control panels and motion detectors; electronic control apparatus, namely, controls for motors; electronic apparatus for controlling operation of machines; remote apparatus for controlling operation of machines; computer apparatus for controlling operation of machines; electronic network equipment, namely, reconfigurable processors for use in wireless communication handsets and network equipment in the field of wide band communications; electronic communication equipment, namely, integrated circuits and integrated circuit cores for use in wireless communications and wireless communication equipment and apparatus and digital signal processors (dsp); portable telecommunications instant messaging devices; electronic locking apparatus, namely, programmable locking systems consisting of electronic cylindrical lock sets and keypads; operating system software; computer software, portable tablet computer, smart phones, computer servers, PDA's, and computer 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, over a global communications network; computer software, devices, and computer 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 computer software platforms for enabling instantaneous, continuous, scheduled and perpetual synchronization of data between computers and hand-held or other devices, and vice versa; multimedia memory cards, memory cards, flash memory cards, computer memory chips, data storage media devices, namely, cd, DVD, flash drives, electrical plugs, plug-in memory cards, magnetic coded cards, blank sim cards, pre-paid telephone calling cards magnetically encoded, headphones, headsets, portable and/or hand held electronic devices PDA, media players for receiving, storing, playing and transmitting data, voice, multimedia, audio, visual, music, photographs, drawings,

images, audiovisual, video, text, graphics or other data; online downloadable dictionaries, encyclopedias, and reference texts; online publications, namely, newspapers, magazines, comics, journals, books, user manuals, instructional and teaching materials all being downloadable featuring news, entertainment, dining, cooking, sports, and other general interests; online posters, photographs, pictures, articles, vouchers and tickets all being downloadable; online downloadable electronic dictionaries, encyclopedias and reference texts; computer software for processing electronic payments and transferring funds to and from others; online downloadable authentication software; online conversion software and databases, namely, downloadable 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 for protection against accident; electric locks for bicycles; structural 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 for use in sound making, speed control and reporting, distance measuring and recording, and equipment functioning diagnosis; ergo meters not for medical purposes; computer apparatus for remote meter reading; electronic distance meters; electronic power meters; electronic speed meters; eyewear; sports eyewear; protective eyewear; sunglasses; cases for eyewear; cases for sunglasses; frames for eyewear; lenses for eyewear; straps for sunglasses and eyewear; helmets for cycling, diving, football, baseball, motorcyclists; cyclists helmets; crash safety helmets; protective sports helmets; sporting articles for protective purposes, namely, articles of protective clothing for wear by cyclists for protection against accident or injury, protective active cooling vest, active cooling seats, active cooling head cap and active cooling blankets to prevent injury due to overheating; radios; communicators, namely, phones and hand held computers; aerials for radios; parts for radios, namely, devices for wireless radio transmission, antennas, radio frequency repeaters used in long range communication for tracking and monitoring energy usage, filters for radio interference suppression; carrying cases for radios; electronic radio apparatus, namely, devices for wireless radio transmission, antennas, radio frequency repeaters used in long range communication for tracking and monitoring energy usage, filters for radio interference suppression; mobile radios; mounting fittings for radios; radio receivers and transmitters, radio transceivers; radios for vehicles; solar powered radios; power meters for bicycles; structural parts and fittings for all of the above

CLASS 35: ALL SERVICES IN THIS CLASS ARE DELETED

CLASS 38:

local and long distance transmission of telecommunications services, namely, providing local and long distance transmission of voice, by means of satellite transmissions relating to movies, games; mobile and fixed telephone

telecommunications services; cellular communication services; transmission of video films by satellite; broadcasting and transmission of television programs and films to personal computers; telecommunications services over the internet, namely, services provided using voice over internet protocol (voip); provision of access and/or connectivity to broadband communication networks whether fixed, portable or wireless; communication of information, namely, web pages and data by radio, telecommunications and by satellite; telephone, mobile telephone, message collection and transmission, radio-paging, call diversion call waiting, call identification, call forwarding, and message waiting; personal numbering services, namely, issuing of telephone numbers, routing and gateway services; television screen based information broadcasting and retrieval services, namely, for use in providing access to films and television programs provided via a video-on-demand service; leasing of replacement telecommunications and communications apparatus and instruments in case of breakdown, loss or theft; computer aided transmission of messages and images; messaging services namely, sending, receiving and forwarding messages in the form of text, audio, graphic images or video or a combination of these formats; instant messaging; short message services (sms); multimedia messaging services (mms); unified messaging services; voicemail services; video conferencing services; video telephone services; providing access to telecommunications infrastructures for other operators; provision of access to electronic conferencing, discussion groups and chat rooms; provision of internet chat rooms; leasing or rental of apparatus, instruments, installations or components for use in the provision of the aforementioned services; advisory, information and consultancy services relating to all the aforementioned; telecommunications services, namely, providing access to news, current affairs and sports information for electronic transmission; rental and leasing of communications apparatus; electronic mail services; telecommunication services, namely, internet broadcasting services; telecommunication of information, namely, web page links which transfer the web site user to other local and global web pages; provision of co-location based services for telecommunications and communications apparatus and instruments, namely, repair services and installation services; provision of information about telecommunications and communications apparatus and instruments; provision of telecommunications links which transfer the user to other computer databases and websites on the internet; providing access to telecommunications services dedicated to retailing goods and services of others through providing interactive communications with customers; telecommunication access services, namely, providing interactive television services being telecommunications and/or communications and/or broadcasting and/or transmission services; telecommunications access services, namely, providing interactive services for television viewers including those watching on mobile telephones and pcs being telecommunications and/or communications and/or broadcasting and/or transmission services; television broadcasting services incorporating interactive services for viewing guides and intelligent automated selection for program recording; interactive services for television viewers facilitating the recording of programs automatically

initiated on the basis of customer viewing habits/preferences being telecommunications and/or communications and/or broadcasting and/or transmission services; providing interactive television viewers, including those watching on their mobile telephones or pcs, with access to information, data, graphics, audio and/or audio-visual content from a restricted group of internet websites or portals; broadcasting and transmission of interactive television, interactive games, interactive news, interactive sport, interactive entertainment and interactive competitions; consulting services in the field of communications, namely, professional consultancy services relating to broadcasting; providing access to a database storing information relating to a variety of goods and services; enabling access to the internet; provision of a telecommunication connection between websites and television viewers via an interactive television portal; provision of wireless broadband website services namely wireless broadband communication services; interactive television portal services providing access to internet websites for television viewers via their television receiving equipment including digital television receiving equipment; professional consultancy and information and advisory services relating to all the aforesaid services; rental of access time to an information database; telecommunications information services; providing factual information services relating to television broadcasting; audio visual television communication services; data communication services by electronic mail; electronic transmission of voice, data, and images by television and video broadcasting; delivery of messages by electronic transmission; broadcast and/or transmission of motion pictures; broadcast and/or transmission of audio and/or visual material and material from pre-recorded video tapes: transmission of films, motion pictures, pre-recorded video tapes, audio and/or visual material, pre-recorded video cassettes, DVDs or pre-recorded video discs; rental or leasing of communications equipment; message sending via a web site; telephonic or telephone communications services; wireless communication services by cellular telephone; organization of call information, namely, call hunting and call tracking; call screening services; telecommunications services, namely, providing message alerts via the internet; computer services for providing connections to communications or computer network; computer services for providing connections to entertainment, education, information and data via telephone, line, cable, wire or fiber, database or computer network; computer services for providing connections to information, messages, text, sound, images and data via a computer or computer network; computer services for providing connections to radio and television programs; consultancy in the field of telecommunications services, namely, synchronization, transfer and transmission of programs, data, files, e-mails, contacts, calendars, task lists, text messages, photos, music, audio, visual, audio visual, video, text, graphics, programs and other information via telecommunications and global communications networks; providing data synchronization over telecommunications, communications and computer networks; provision of access to data or documents stored electronically in central files for remote consultation; online instant messaging; provision of online conferencing, discussion groups, message boards and

chat rooms for transmission of messages among computer users in the field of general interest; online telecommunications access services to enable the accessing and retrieving of data, files, e-mails, contacts, calendars, task lists, text messages, photos, music, audio, visual, audio visual, video, text, graphics, programs and other information via a computer or computer network or electronic device including services provided over a global communications network; online telecommunications services, namely, providing webcasting and podcasting services provided over a global communications network; peer to peer network computer services, namely, electronic transmission of audio, video and other data and documents among computers; provision of interactive polling services being telecommunications and/or communications; advising or providing information in relation to the foregoing; information relating to all the aforementioned services provided on-line from a computer database or via a help line or the internet; transmission of programs by television, the internet or other telecommunication channels for the future interactive viewing, selection and purchase of goods

CLASS 41:

education and entertainment services, namely, production and distribution of movies, games, namely, videos and motion pictures; training services in the field of advertising, media, sports, news, entertainment, movies, games; provision of audio visual performances, namely comedy shows, drama shows, game shows, and reality shows; hiring, rental and leasing of cinema films, videos, dvds, sound recordings, sound recording apparatus, sports apparatus, television sets and video recorders, dvd recorders and radio recorders; production of films for cinema; providing on-line electronic publications, not downloadable in the nature of books, magazines and brochures in the fields of advertising, media, sports, news, entertainment, movies, games; publication of magazines, books, texts and printed matter; publication of electronic books or journals on-line in the field of children's stories, fiction, non-fiction, biographies, auto-biographies, fitness, exercise, diet, sports, and self-help; provision of non-downloadable electronic publications in the nature of books, magazines and brochures in the fields of advertising, media, sports, news, entertainment, movies, games; providing on-line non-downloadable dictionaries, encyclopedias, and reference texts; non-downloadable online publications, namely, newspapers, magazines periodicals, comics, journals being publications, books, user manuals, instructional and teaching materials in the field advertising, media, sports, news, entertainment, movies, games; providing online non-downloadable posters, photographs, pictures, articles in the fields of advertising, media, sports, news, entertainment, movies, games; provision of recording studio facilities; live show production services of musical shows, variety shows, comedy shows, drama shows, games shows, reality shows; organizing of community sporting activities and competitions; box office services, namely, entertainment ticket agency services; ticket reservation services relating to entertainment, namely, arranging for ticket reservations for shows and other entertainment events; production, presentation and distribution of interactive games, providing movies, videos and television programs

to viewers on demand; organizing community sporting and cultural activities; betting, casino gaming and gambling services; credit betting, casino gaming, gambling, lottery or bookmaking services; credit card betting, gaming, gambling, lottery or bookmaking services; arranging and conducting competitions for video game players and computer game players; pay to play online video game services; providing online non-downloadable peer to peer interactive video game and video gaming services; providing online non-downloadable interactive poker games and gaming including single and multi-player gaming formats; presentation and production of poker competitions, tournaments, games and gaming; providing educational or entertainment games played online; electronic desktop publishing services; videotaping and filming services; information and advisory services relating to the aforesaid services; information and advisory services relating to television and radio programs, to educate in the fields of recreation, entertainment, music and sports; information and advisory services relating to television and radio programs for the purpose of education in the fields of recreation, entertainment, music and sports, provided on-line from a computer database or the internet or to mobile telephones; training services in the fields of sports, fitness, cycling, competitions and racing; instruction services in the fields of cycling, and cycling equipment use; advisory services relating to entertainment; arranging conferences, seminars, symposiums or workshops in the fields of sports, news, entertainment, music, games; arranging exhibitions or festivals in the nature of sports, news, entertainment, music; booking agency services, namely, booking of seats for shows; cinema services; cinema studio services; distribution of films, motion pictures, pre-recorded video cassettes, DVDs or pre-recorded video discs for others; production of radio programs, television programs, films, motion pictures, pre-recorded video tapes, audio and/or visual material, pre-recorded video cassettes, DVDs or pre-recorded video discs; editing of radio programs, motion pictures, pre-recorded video tapes, audio and/or visual material, pre-recorded video cassettes, DVDs or pre-recorded video discs; hire, leasing or rental of radio programs, motion pictures, pre-recorded video tapes, audio and/or visual material, pre-recorded video cassettes, DVDs or pre-recorded video discs; exhibition of radio programs, motion pictures, pre-recorded video tapes, audio and/or visual material, pre-recorded video cassettes, DVDs or pre-recorded video discs for entertainment, educational, sporting or cultural purposes; amusement park services with a theme of films, radio or television productions; providing of amusement parks and theme parks; organization of entertainment, namely, producing live variety shows, musical shows, sporting events; preparation of radio programs, pre-recorded video tapes, DVDs, audio and/or visual material, pre-recorded video cassettes, pre-recorded video discs or motion pictures for distribution for transmission or broadcast by any means; provision of radio programs, audio and/or visual material or motion pictures online, not downloadable recordings in the fields of children's stories, fiction, nonfiction, biographies, auto-biographies, fitness, exercise, diet, sports, and self-help; multimedia publication of printed media and recordings in the fields of children's stories, fiction, non-fiction, biographies, autobiographies, fitness, exercise, diet,

sports, and self-help; digital imaging services; dubbing; video tape editing; film production; rental of motion pictures; movie studios; providing movie theatres facilities; video film tape production; rental of audio equipment; rental of lighting apparatus for theatrical sets or television studios; rental of motion picture; rental of movie projectors and accessories; rental of radio equipment; rental of televisions and television equipment; rental of sports equipment; rental of video cameras; rental of video tapes; rental of video recorders; theatre productions; movie studio services; organizing or hosting awards ceremonies relating to advertising, media, sports, news, movies, games; presentation of films; production of special effects for films; ticket reservation services, included in this class, for sporting, scientific, political and cultural events; production of artwork for animated films; recording studio services; education and providing of training in connection with environmental protection, energy conservation and ecology and animal welfare; providing educational training in connection with alternative energy sources, including wind power, hydroelectric power, tidal power, geothermal power, solar power, bio mass, and bio fuels; publication of instructional material and promotional material relating to environmental protection, energy conservation and ecology and animal welfare; arranging and conducting of seminars and workshops and training in the fields of fitness, exercise, cycling, outdoor survival, bicycle racing, long distance cycling; establishing training programs and training manuals in the field of music, art and history; organizing and conducting safety courses and educational courses in the field of cycling; online provision of information and general encyclopedic knowledge relating to entertainment, education, training, sports, culture, news, current affairs, satellite, television and radio programs, music, films, books and other printed matter, video games, computer games, amusement machines, amusement centers or amusement parks, namely, providing an online encyclopedia; online translation services; online library services, namely, the lending and exchanging of books and other publications and photographs; provision of online classes, seminars, workshops, exhibitions and display exhibitions in the fields of fitness, exercise, cycling, outdoor survival, bicycle racing, long distance cycling; providing online card games; organization of running events; organization of cycling events; providing a website featuring online fitness tracking and monitoring; consultancy, information and advisory services relating to all the aforesaid services; advising or providing information in relation to the foregoing; information relating to all the aforementioned services provided on-line from a computer database or via a help line or the internet

CLASS 42: ALL SERVICES IN THIS CLASS ARE DELETED

APPENDIX A (Part 2)

GOODS AND SERVICES DELETED FROM

SKY NEWS ARABIA and SKY NEWS عربية

REG. NOS. 4771127 and 4806322

CLASS 9:

apparatus for recording television programs; apparatus for recording, transmission, 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, namely, display panels; home cinema systems comprising of DVD and high definition disc players, HD boxes, internet TV boxes, audio amplifiers, audio speakers, AV receivers; amplifiers; speakers; radios; wireless audio and/or audio visual devices, namely, radios, televisions and stereos; portable wireless audio and/or audio visual devices, namely, radios, televisions and stereos; remote controls for radios, televisions, and stereos; wireless computer keypads; television receivers including a decoder; set-top boxes; digital set-top boxes; high definition set top boxes; personal video recorder; set-top boxes for use in decoding and reception of satellite, terrestrial and cable broadcasts; apparatus for decoding encoded signals, namely, set top boxes for television reception; set top box apparatus, namely, a decoder and an interactive viewing guide; set top box apparatus, namely, a decoder and a recorder for recording television and audio programs; set top box apparatus, namely, a decoder and a recorder programmable to transfer stored recordings to storage and also to delete the older recordings; satellite dishes; low noise blocks, namely, electronic apparatus for use in noise reduction; satellite meters; encoded programs for computers and for data processing and telecommunications, namely, computer software for use in word processing in the field of movies, games; telephones; mobile telephones; personal digital assistants; 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; pre-recorded DVDs featuring television and radio programs; pre-recorded DVDs featuring programs for broadcasting or other transmission on television, radio, mobile telephones, PDAs and on pcs; musical video recordings; multimedia apparatus and instruments being portable or hand-held computers; DVD players; computers; computer hardware; computer hardware, apparatus and instruments all for transmitting, displaying, receiving, storing and searching electronic information; computer programs for use in database management, use as a spread sheet, word processing in the fields of news, sports, entertainment, movies games; electronic computer software games; electronic interactive computer software games; computer software for use in database management, use as a spreadsheet, word processing in the field of news, sports, entertainment, movies games; telecommunications apparatus to enable connection to databases and the internet; computer software

supplied from the internet for use in word processing in the field of movies, games; 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 purchase of goods and services; computer games software and computer quiz software; computer programs for interactive television and for interactive games and/or quizzes; electronic apparatus adapted for use with television receivers in playing games; downloadable electronic publications in the nature of magazines and articles in the field of news, sports, entertainment, movies, and games; computer game software; video screens; video projectors; blank tapes, discs and wires, all being magnetic; blank cassettes and cartridges, all adapted for use with the aforesaid tapes; blank and pre-recorded audio and video cassettes, tapes and cartridges featuring news, sports, entertainment, movies, games ; compact discs featuring news, sports, entertainment, movies, games; DVD discs featuring news, sports, entertainment, movies, games; phonographic records featuring news, sports, entertainment, movies, games; laser readable discs for recording sound or video featuring news, sports, entertainment, movies, games; 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 magnetic cards; radio and television signal antennae; interactive musical sound and/or audio recordings; music, video, sound and/or audio recordings, downloadable, provided from mp3 internet websites featuring news, sports, entertainment, movies, games; 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 conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus and instruments for the reception of radio and television broadcasts including the reception of cable, satellite and digital broadcasts; blank smart cards; credit cards magnetically encoded; loyalty cards magnetically encoded; acoustic apparatus or instruments, namely, conduits, couplers, membranes and meters; adaptors; aerials; antennae; amplifiers; communication transmission apparatus and instruments, namely, for recording, transmission or reproduction of sound or images; encoded or magnetic banking or credit cards; cinematographic film exposed; cinematographic instruments and apparatus; blank magnetic data carriers; data storage computer 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 computer hardware; electronic telecommunications and/or communications and/or broadcast and/or transmission and/or decoding and/or image processing and/or audio visual computer hardware instruments and apparatus; film reproducing instruments and apparatus, namely, film scanners; 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, namely, integrated circuits, integrated circuit chips, and integrated circuit modules for encoding and decoding digital video; interactive downloadable educational or entertainment games

for use with television receivers and video apparatus; mobile telephones; motion pictures about children's stories, horror, science fiction stories, dramatic stories, comedy stories, adventure stories, sports events; telephone apparatus and equipment; structural parts and fittings for all the aforesaid goods; sunglasses, leather cases for holding mobile phones; e-sell through products, namely, downloadable media content, namely, video, films and television programs featuring entertainment, education, travel, dining, news and sports, 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 structural parts and fittings therefore, all for use with mp3 players, music storage devices, media storage devices and other consumer electronic devices; electrical, electronic and computer equipment for machinery for use in conservation, generation and efficient use of heat, light and water, namely, thermostatic electric controllers, solar panels for electricity generation, photo voltaic solar modules for production of electricity, solar cells, motion detectors; control and monitoring computer hardware for use in the generation of alternative energy, namely, wind power, hydroelectric power, tidal power, geothermal power, solar power, bio mass, and bio fuels; electronic publications downloadable, namely, 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, bio mass, and bio fuels; apparatus and instruments for closed circuit television and surveillance systems, namely, cameras, switchers, monitors, microphones, alarms and recorders; apparatus and instruments for personal security monitoring, namely, cameras, switchers, monitors, microphones, alarms and recorders; apparatus and instruments for home security monitoring and control, namely, alarms, cameras, switchers, monitors, microphones, and recorders; home and personal security apparatus, namely, alarms, cameras, switchers, monitors, microphones, and recorders; home and personal security devices, namely, alarms, cameras, switchers, monitors, microphones, and recorders; home and personal security alarms; electronic protection equipment, namely, fire detecting and alarm equipment, intruder and burglar alarm; radio, telephonic, television and signaling 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 home security and personal security; closed circuit television systems (ccTV), namely, transformers, baluns, cables used in connection with computers, computer peripheral devices, televisions, audio-video equipment; television monitors; cameras; optical lenses; camera cases; prepackaged cameras; videocassette recorders (vcrs); system controlling software for use in monitoring and controlling communication between computers and automated machine systems; video monitoring apparatus, namely, cameras, switchers, monitors, microphones, and recorders; fire and smoke detectors; access control monitoring systems; electronic card readers; magnetic or encoded access control cards; alarm monitoring systems; electronic panels for alarm management and monitoring; electronic alarm panels for

controlling alarm systems; glass breakage alarm detectors; smoke detectors; carbon monoxide detectors; digital audio recorders; digital video recorders; digital audio servers; digital video servers; electrical communication equipment, namely, phones, pagers, beepers, walkie talkies; message programming equipment, namely, encoded electronic chip cards, and encoded integrated circuit cards, namely, smart cards containing programming used to program transmit and receive messages; radio paging equipment, namely, radio pagers; electronic programmable locking systems comprised of electronic cylindrical lock sets and keypads; life-saving apparatus and equipment, namely, life rafts; electric burglar alarms; electronic devices for protection, namely, portable led safety lighting devices for personal use for safety purposes, and a non-lethal security device that uses a light source to detect, warn, repel, temporarily blind, disorient, nauseate, disable, confuse, debilitate, stun, subdue, stop, or incapacitate persons or animals; intruder alarms and anti-theft equipment, namely, theft alarms; intruder detection apparatus, namely, motion, sound and heat detectors; motion detecting equipment, namely, motion sensitive security lights, security control panels and motion detectors; electronic control apparatus, namely, controls for motors; electronic apparatus for controlling operation of machines; remote apparatus for controlling operation of machines; computer apparatus for controlling operation of machines; electronic network equipment, namely, reconfigurable processors for use in wireless communication handsets and network equipment in the field of wide band communications; electronic communication equipment, namely, integrated circuits and integrated circuit cores for use in wireless communications and wireless communication equipment and apparatus and digital signal processors (dsp); portable telecommunications instant messaging devices; electronic locking apparatus, namely, programmable locking systems consisting of electronic cylindrical lock sets and keypads; operating system software; computer software, portable tablet computer, smart phones, computer servers, PDA's, and computer 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, over a global communications network; computer software, devices, and computer 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 computer software platforms for enabling instantaneous, continuous, scheduled and perpetual synchronization of data between computers and hand-held or other devices, and vice versa; multimedia memory cards, memory cards, flash memory cards, computer memory chips, data storage media devices, namely, cd, DVD, flash drives, electrical plugs, plug-in memory cards, magnetic coded cards, blank sim cards, pre-paid telephone calling cards magnetically encoded, headphones, headsets, portable and/or

hand held electronic devices PDA, media players for receiving, storing, playing and transmitting data, voice, multimedia, audio, visual, music, photographs, drawings, images, audiovisual, video, text, graphics or other data; online downloadable dictionaries, encyclopedias, and reference texts; online publications, namely, newspapers, magazines, comics, journals, books, user manuals, instructional and teaching materials all being downloadable featuring news, entertainment, dining, cooking, sports, and other general interests; online posters, photographs, pictures, articles, vouchers and tickets all being downloadable; online downloadable electronic dictionaries, encyclopedias and reference texts; computer software for processing electronic payments and transferring funds to and from others; online downloadable authentication software; online conversion software and databases, namely, downloadable 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 for protection against accident; electric locks for bicycles; structural 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 for use in sound making, speed control and reporting, distance measuring and recording, and equipment functioning diagnosis; ergo meters not for medical purposes; computer apparatus for remote meter reading; electronic distance meters; electronic power meters; electronic speed meters; eyewear; sports eyewear; protective eyewear; sunglasses; cases for eyewear; cases for sunglasses; frames for eyewear; lenses for eyewear; straps for sunglasses and eyewear; helmets for cycling, diving, football, baseball, motorcyclists; cyclists helmets; crash safety helmets; protective sports helmets; sporting articles for protective purposes, namely, articles of protective clothing for wear by cyclists for protection against accident or injury, protective active cooling vest, active cooling seats, active cooling head cap and active cooling blankets to prevent injury due to overheating; radios; communicators, namely, phones and hand held computers; aerials for radios; parts for radios, namely, devices for wireless radio transmission, antennas, radio frequency repeaters used in long range communication for tracking and monitoring energy usage, filters for radio interference suppression; carrying cases for radios; electronic radio apparatus, namely, devices for wireless radio transmission, antennas, radio frequency repeaters used in long range communication for tracking and monitoring energy usage, filters for radio interference suppression; mobile radios; mounting fittings for radios; radio receivers and transmitters, radio transceivers; radios for vehicles; solar powered radios; power meters for bicycles; structural parts and fittings for all of the above

CLASS 35: ALL SERVICES IN THIS CLASS ARE DELETED

CLASS 38:

telecommunications services, namely, providing local and long distance transmission of voice and graphics by means of telegraphic transmissions relating to movies, games; mobile and fixed telephone telecommunications services; cellular communication services; television and radio broadcasting; transmission of video films by satellite; broadcasting and transmission of television programs and films to personal computers; telecommunications services over the internet, namely, services provided using voice over internet protocol (voip); provision of access and/or connectivity to broadband communication networks whether fixed, portable or wireless; communication of information, namely, web pages and data by radio, telecommunications and by satellite; telephone, mobile telephone, message collection and transmission, radio-paging, call diversion call waiting, call identification, call forwarding, and message waiting; personal numbering services, namely, issuing of telephone numbers, routing and gateway services; television screen based information broadcasting and retrieval services, namely, for use in providing access to films and television programs provided via a video-on-demand service; leasing of replacement telecommunications and communications apparatus and instruments in case of breakdown, loss or theft; computer aided transmission of messages and images; messaging services namely, sending, receiving and forwarding messages in the form of text, audio, graphic images or video or a combination of these formats; instant messaging; short message services (sms); multimedia messaging services (mms); unified messaging services; voicemail services; video conferencing services; video telephone services; providing access to telecommunications infrastructures for other operators; provision of access to electronic conferencing, discussion groups and chat rooms; provision of internet chat rooms; leasing or rental of apparatus, instruments, installations or components for use in the provision of the aforementioned services; advisory, information and consultancy services relating to all the aforementioned; rental and leasing of communications apparatus; electronic mail services; telecommunication services, namely, internet broadcasting services; telecommunication of information, namely, web page links which transfer the web site user to other local and global web pages; provision of co-location based services for telecommunications and communications apparatus and instruments, namely, repair services and installation services; provision of information about telecommunications and communications apparatus and instruments; provision of telecommunications links which transfer the user to other computer databases and websites on the internet; providing access to telecommunications services dedicated to retailing goods and services of others through providing interactive communications with customers; telecommunication access services, namely, providing interactive television services being telecommunications and/or communications and/or broadcasting and/or transmission services; telecommunications access services, namely, providing interactive services for television viewers including those watching on mobile telephones and pcs being telecommunications and/or communications and/or broadcasting and/or transmission services; television broadcasting services incorporating interactive services for

viewing guides and intelligent automated selection for program recording; interactive services for television viewers facilitating the recording of programs automatically initiated on the basis of customer viewing habits/preferences being telecommunications and/or communications and/or broadcasting and/or transmission services; providing interactive television viewers, including those watching on their mobile telephones or pcs, with access to information, data, graphics, audio and/or audio-visual content from a restricted group of internet websites or portals; broadcasting and transmission of interactive television, interactive games, interactive news, interactive sport, interactive entertainment and interactive competitions; consulting services in the field of communications, namely, professional consultancy services relating to broadcasting; providing access to a database storing information relating to a variety of goods and services; enabling access to the internet; provision of a telecommunication connection between websites and television viewers via an interactive television portal; provision of wireless broadband website services, namely, wireless broadband communication services; interactive television portal services providing access to internet websites for television viewers via their television receiving equipment including digital television receiving equipment; professional consultancy and information and advisory services relating to all the aforesaid services; rental of access time to an information database; telecommunications information services; providing factual information services relating to television broadcasting; audio visual television communication services; data communication services by electronic mail; electronic transmission of voice, data, and images by television and video broadcasting; delivery of messages by electronic transmission; broadcast and/or transmission of motion pictures; broadcast and/or transmission of audio and/or visual material and material from pre-recorded video tapes: transmission of films, motion pictures, pre-recorded video tapes, audio and/or visual material, pre-recorded video cassettes, DVDs or pre-recorded video discs; rental or leasing of communications equipment; message sending via a web site; telephonic or telephone communications services; wireless communication services by cellular telephone; organization of call information, namely, call hunting and call tracking; call screening services; telecommunications services, namely, providing message alerts via the internet; computer services for providing connections to communications or computer network; computer services for providing connections to entertainment, education, information and data via telephone, line, cable, wire or fiber, database or computer network; computer services for providing connections to information, messages, text, sound, images and data via a computer or computer network; computer services for providing connections to radio and television programs; consultancy in the field of telecommunications services, namely, synchronization, transfer and transmission of programs, data, files, e-mails, contacts, calendars, task lists, text messages, photos, music, audio, visual, audio visual, video, text, graphics, programs and other information via telecommunications and global communications networks; providing data synchronization over telecommunications, communications and computer networks; provision of access to data or documents

stored electronically in central files for remote consultation; online instant messaging; provision of online conferencing, discussion groups, message boards and chat rooms for transmission of messages among computer users in the field of general interest; online telecommunications access services to enable the accessing and retrieving of data, files, e-mails, contacts, calendars, task lists, text messages, photos, music, audio, visual, audio visual, video, text, graphics, programs and other information via a computer or computer network or electronic device including services provided over a global communications network; online telecommunications services, namely, providing webcasting and podcasting services provided over a global communications network; peer to peer network computer services, namely, electronic transmission of audio, video and other data and documents among computers; provision of interactive polling services being telecommunications and/or communications; advising or providing information in relation to the foregoing; information relating to all the aforementioned services provided on-line from a computer database or via a help line or the internet; transmission of programs by television, the internet or other telecommunication channels for the future interactive viewing, selection and purchase of goods

CLASS 41:

education and entertainment services, namely, production and distribution of movies, and motion pictures; training services in the field of advertising, media, sports, news, entertainment, movies, games; provision of audio visual performances, namely, musical shows, variety shows, comedy shows, drama shows, game shows, and reality shows; hiring, rental and leasing of cinema films, videos, dvds, sound recordings, sound recording apparatus, sports apparatus, television sets and video recorders, dvd recorders and radio recorders; production of films for cinema; providing on-line electronic publications, not downloadable in the nature of books, magazines and brochures in the fields of advertising, media, sports, news, entertainment, movies, games; publication of magazines, books, texts and printed matter; publication of electronic books or journals on-line in the field of children's stories, fiction, non-fiction, biographies, auto-biographies, fitness, exercise, diet, sports, and self-help; provision of non-downloadable electronic publications in the nature of books, magazines and brochures in the fields of advertising, media, sports, news, entertainment, movies, games; providing on-line non-downloadable dictionaries, encyclopedias, and reference texts; non-downloadable online publications, namely, newspapers, magazines periodicals, comics, journals being publications, books, user manuals, instructional and teaching materials in the field advertising, media, sports, news, entertainment, movies, games; providing online non-downloadable posters, photographs, pictures, articles in the fields of advertising, media, sports, news, entertainment, movies, games; provision of recording studio facilities; live show production services of musical shows, variety shows, comedy shows, drama shows, games shows, reality shows; organizing of community sporting activities and competitions; box office services, namely, entertainment ticket agency services; ticket reservation services relating to entertainment, namely, arranging for ticket

reservations for shows and other entertainment events; organizing community sporting and cultural activities; betting, casino gaming and gambling services; credit betting, casino gaming, gambling, lottery or bookmaking services; credit card betting, gaming, gambling, lottery or bookmaking services; arranging and conducting competitions for video game players and computer game players; pay to play online video game services; providing online non-downloadable peer to peer interactive video game and video gaming services; providing online non-downloadable interactive poker games and gaming including single and multi-player gaming formats; presentation and production of poker competitions, tournaments, games and gaming; providing educational or entertainment games played online; electronic desktop publishing services; videotaping and filming services; information and advisory services relating to the aforesaid services; information and advisory services relating to television and radio programs, to educate in the fields of recreation, entertainment, music and sports; information and advisory services relating to television and radio programs for the purpose of education in the fields of recreation, entertainment, music and sports, provided on-line from a computer database or the internet or to mobile telephones; training services in the fields of sports, fitness, cycling, competitions and racing; instruction services in the fields of cycling, and cycling equipment use; advisory services relating to entertainment; arranging conferences, seminars, symposiums or workshops in the fields of sports, news, entertainment, music, games; arranging exhibitions or festivals in the nature of sports, news, entertainment, music; booking agency services, namely, booking of seats for shows; cinema services; cinema studio services; distribution of films, motion pictures, pre-recorded video cassettes, DVDs or pre-recorded video discs for others; production of radio programs, television programs, films, motion pictures, pre-recorded video tapes, audio and/or visual material, pre-recorded video cassettes, DVDs or pre-recorded video discs; editing of radio programs, television programs, films, motion pictures, pre-recorded video tapes, audio and/or visual material, pre-recorded video cassettes, DVDs or pre-recorded video discs; hire, leasing or rental of radio programs, television programs, films, motion pictures, pre-recorded video tapes, audio and/or visual material, pre-recorded video cassettes, DVDs or pre-recorded video discs; exhibition of radio programs, television programs, films, motion pictures, pre-recorded video tapes, audio and/or visual material, pre-recorded video cassettes, DVDs or pre-recorded video discs for entertainment, educational, sporting or cultural purposes; amusement park services with a theme of films, radio or television productions; providing of amusement parks and theme parks; organization of entertainment, namely, producing live variety shows, musical shows, sporting events; preparation of radio programs, television programs, films, pre-recorded video tapes, DVDs, audio and/or visual material, pre-recorded video cassettes, pre-recorded video discs or motion pictures for distribution for transmission or broadcast by any means; provision of radio programs, television programs, films, audio and/or visual material or motion pictures online, not downloadable recordings in the fields of children's stories, fiction, nonfiction, biographies, auto-biographies, fitness, exercise, diet,

sports, and self-help; multimedia publication of printed media and recordings in the fields of children's stories, fiction, non-fiction, biographies, autobiographies, fitness, exercise, diet, sports, and self-help; digital imaging services; dubbing; video tape editing; film production; rental of motion pictures; movie studios; providing movie theatres facilities; video film tape production; rental of audio equipment; rental of lighting apparatus for theatrical sets or television studios; rental of motion picture; rental of movie projectors and accessories; rental of radio equipment; rental of televisions and television equipment; rental of sports equipment; rental of video cameras; rental of video tapes; rental of video recorders; theatre productions; movie studio services; organizing or hosting awards ceremonies relating to advertising, media, sports, news, movies, games; presentation of films; production of special effects for films; ticket reservation services, included in this class, for sporting, scientific, political and cultural events; production of artwork for animated films; recording studio services; education and providing of training in connection with environmental protection, energy conservation and ecology and animal welfare; providing educational training in connection with alternative energy sources, including wind power, hydroelectric power, tidal power, geothermal power, solar power, bio mass, and bio fuels; publication of instructional material and promotional material relating to environmental protection, energy conservation and ecology and animal welfare; arranging and conducting of seminars and workshops and training in the fields of fitness, exercise, cycling, outdoor survival, bicycle racing, long distance cycling; establishing training programs and training manuals in the field of music, art and history; organizing and conducting safety courses and educational courses in the field of cycling; online provision of information and general encyclopedic knowledge relating to entertainment, education, training, sports, culture, news, current affairs, satellite, television and radio programs, music, films, books and other printed matter, video games, computer games, amusement machines, amusement centers or amusement parks, namely, providing an online encyclopedia; online translation services; online library services, namely, the lending and exchanging of books and other publications and photographs; provision of online classes, seminars, workshops, exhibitions and display exhibitions in the fields of fitness, exercise, cycling, outdoor survival, bicycle racing, long distance cycling; providing online card games; organization of running events; organization of cycling events; providing a website featuring online fitness tracking and monitoring; consultancy, information and advisory services relating to all the aforesaid services; advising or providing information in relation to the foregoing; information relating to all the aforementioned services provided on-line from a computer database or via a help line or the internet

CLASS 42 – ALL SERVICES IN THIS CLASS ARE DELETED

APPENDIX A (Part 3)

GOODS AND SERVICES DELETED FROM



REG. NO. 4771129

CLASS 9

apparatus for recording television programs; apparatus for recording, transmission, 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, namely, display panels; home cinema systems comprising of DVD and high definition disc players, HD boxes, internet TV boxes, audio amplifiers, audio speakers, AV receivers; amplifiers; speakers; radios; wireless audio and/or audio visual devices, namely, radios, televisions and stereos; portable wireless audio and/or audio visual devices, namely, radios, televisions and stereos; remote controls for radios, televisions, and stereos; wireless computer keypads; television receivers including a decoder; set-top boxes; digital set-top boxes; high definition set top boxes; personal video recorder; set-top boxes for use in decoding and reception of satellite, terrestrial and cable broadcasts; apparatus for decoding encoded signals, namely, set top boxes for television reception; set top box apparatus, namely, a decoder and an interactive viewing guide; set top box apparatus, namely, a decoder and a recorder for recording television and audio programs; set top box apparatus, namely, a decoder and a recorder programmable to transfer stored recordings to storage and also to delete the older recordings; satellite dishes; low noise blocks, namely, electronic apparatus for use in noise reduction; satellite meters; encoded programs for computers and for data processing and telecommunications, namely, computer software for use in database management, use as a spreadsheet, word processing in the field of news, sports, entertainment, movies, games; telephones; mobile telephones; personal digital assistants; 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; pre-recorded DVDs featuring television and radio programs; pre-recorded DVDs featuring programs for broadcasting or other transmission on television, radio, mobile telephones, PDAs and on pcs; musical video recordings; multimedia apparatus and instruments being portable or hand-held computers; DVD players; computers; computer hardware; computer hardware, apparatus and instruments all for transmitting, displaying, receiving, storing and searching electronic information; computer programs for use in database management, use as a spread sheet, word processing in the fields of news, sports, entertainment, movies games; electronic computer software games; electronic interactive computer software games; computer software for word processing in the field of movies; telecommunications apparatus to enable connection to databases and the internet; computer software supplied from the internet for use in word processing in the field of movies, 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 purchase of goods and services; computer games software and computer quiz software; computer software video games and/or quizzes adapted for use with television receivers and screens or with video monitors or with computer screens; computer programs for interactive television and for interactive games and/or quizzes; downloadable electronic publications in the nature of magazines and articles in the field of news, sports, entertainment, movies, and games; computer game software; video screens; video projectors; blank tapes, discs and wires, all being magnetic; blank cassettes and cartridges, all adapted for use with the aforesaid tapes; blank and pre-recorded audio and video cassettes, tapes and cartridges featuring news, sports, entertainment, movies, games; compact discs featuring news, sports, entertainment, movies, games; DVD discs featuring news, sports, entertainment, movies, games; phonographic records featuring news, sports, entertainment, movies, games; laser readable discs for recording sound or video featuring news, sports, entertainment, movies, games; 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 magnetic cards; radio and television signal antennae; interactive musical sound and/or audio recordings; music, video, sound and/or audio recordings, downloadable, provided from mp3 internet websites featuring news, sports, entertainment, movies, games; 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 conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus and instruments for the reception of radio and television broadcasts including the reception of cable, satellite and digital broadcasts; blank smart cards; credit cards magnetically encoded; loyalty cards magnetically encoded; acoustic apparatus or instruments, namely, conduits, couplers, membranes and meters; adaptors; aerials; antennae; amplifiers; communication transmission apparatus and instruments, namely, for recording, transmission or reproduction of sound or images; encoded or magnetic banking or credit cards; cinematographic film exposed; cinematographic instruments and apparatus; blank magnetic data carriers; data storage computer 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 computer hardware; electronic telecommunications and/or communications and/or broadcast and/or transmission and/or decoding and/or image processing and/or audio visual computer hardware instruments and apparatus; film reproducing instruments and apparatus, namely, film scanners; 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, namely, integrated circuits, integrated circuit chips, and integrated circuit modules for encoding and decoding digital video; interactive downloadable educational or entertainment games

for use with television receivers and video apparatus; mobile telephones; motion pictures about children's stories, horror, science fiction stories, dramatic stories, comedy stories, adventure stories, sports events; telephone apparatus and equipment; structural parts and fittings for all the aforesaid goods; sunglasses, leather cases for holding mobile phones; e-sell through products, namely, downloadable media content, namely, video, films and television programs featuring entertainment, education, travel, dining, news and sports, 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 structural parts and fittings therefore, all for use with mp3 players, music storage devices, media storage devices and other consumer electronic devices; electrical, electronic and computer equipment for machinery for use in conservation, generation and efficient use of heat, light and water, namely, thermostatic electric controllers, solar panels for electricity generation, photo voltaic solar modules for production of electricity, solar cells, motion detectors; control and monitoring computer hardware for use in the generation of alternative energy, namely, wind power, hydroelectric power, tidal power, geothermal power, solar power, bio mass, and bio fuels; electronic publications downloadable, namely, 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, bio mass, and bio fuels; apparatus and instruments for closed circuit television and surveillance systems, namely, cameras, switchers, monitors, microphones, alarms and recorders; apparatus and instruments for personal security monitoring, namely, cameras, switchers, monitors, microphones, alarms and recorders; apparatus and instruments for home security monitoring and control, namely, alarms, cameras, switchers, monitors, microphones, and recorders; home and personal security apparatus, namely, alarms, cameras, switchers, monitors, microphones, and recorders; home and personal security devices, namely, alarms, cameras, switchers, monitors, microphones, and recorders; home and personal security alarms; electronic protection equipment, namely, fire detecting and alarm equipment, intruder and burglar alarm; radio, telephonic, television and signaling 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 home security and personal security; closed circuit television systems (ccTV), namely, transformers, baluns, cables used in connection with computers, computer peripheral devices, televisions, audio-video equipment; television monitors; cameras; optical lenses; camera cases; prepackaged cameras; videocassette recorders (vcrs); system controlling software for use in monitoring and controlling communication between computers and automated machine systems; video monitoring apparatus, namely, cameras, switchers, monitors, microphones, and recorders; fire and smoke detectors; access control monitoring systems; electronic card readers; magnetic or encoded access control cards; alarm monitoring systems; electronic panels for alarm management and monitoring; electronic alarm panels for

controlling alarm systems; glass breakage alarm detectors; smoke detectors; carbon monoxide detectors; digital audio recorders; digital video recorders; digital audio servers; digital video servers; electrical communication equipment, namely, phones, pagers, beepers, walkie talkies; message programming equipment, namely, encoded electronic chip cards, and encoded integrated circuit cards, namely, smart cards containing programming used to program transmit and receive messages; radio paging equipment, namely, radio pagers; electronic programmable locking systems comprised of electronic cylindrical lock sets and keypads; life-saving apparatus and equipment, namely, life rafts; electric burglar alarms; electronic devices for protection, namely, portable led safety lighting devices for personal use for safety purposes, and a non-lethal security device that uses a light source to detect, warn, repel, temporarily blind, disorient, nauseate, disable, confuse, debilitate, stun, subdue, stop, or incapacitate persons or animals; intruder alarms and anti-theft equipment, namely, theft alarms; intruder detection apparatus, namely, motion, sound and heat detectors; motion detecting equipment, namely, motion sensitive security lights, security control panels and motion detectors; electronic control apparatus, namely, controls for motors; electronic apparatus for controlling operation of machines; remote apparatus for controlling operation of machines; computer apparatus for controlling operation of machines; electronic network equipment, namely, reconfigurable processors for use in wireless communication handsets and network equipment in the field of wide band communications; electronic communication equipment, namely, integrated circuits and integrated circuit cores for use in wireless communications and wireless communication equipment and apparatus and digital signal processors (dsp); portable telecommunications instant messaging devices; electronic locking apparatus, namely, programmable locking systems consisting of electronic cylindrical lock sets and keypads; operating system software; computer software, portable tablet computer, smart phones, computer servers, PDA's, and computer 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, over a global communications network; computer software and computer 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 computer software platforms for enabling instantaneous, continuous, scheduled and perpetual synchronization of data between computers and hand-held or other devices, and vice versa; multimedia memory cards, memory cards, flash memory cards, computer memory chips, data storage media devices, namely, cd, DVD, flash drives, electrical plugs, plug-in memory cards, magnetic coded cards, blank sim cards, pre-paid telephone calling cards magnetically encoded, headphones, headsets, portable and/or

hand held electronic devices PDA, media players for receiving, storing, playing and transmitting data, voice, multimedia, audio, visual, music, photographs, drawings, images, audiovisual, video, text, graphics or other data; online downloadable dictionaries, encyclopedias, and reference texts; online publications, namely, newspapers, magazines, comics, journals, books, user manuals, instructional and teaching materials all being downloadable featuring news, entertainment, dining, cooking, sports, and other general interests; online posters, photographs, pictures, articles, vouchers and tickets all being downloadable; online downloadable electronic dictionaries, encyclopedias and reference texts; computer software for processing electronic payments and transferring funds to and from others; online downloadable authentication software; online conversion software and databases, namely, downloadable 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 for protection against accident; electric locks for bicycles; structural 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 for use in sound making, speed control and reporting, distance measuring and recording, and equipment functioning diagnosis; ergo meters not for medical purposes; computer apparatus for remote meter reading; electronic distance meters; electronic power meters; electronic speed meters; eyewear; sports eyewear; protective eyewear; sunglasses; cases for eyewear; cases for sunglasses; frames for eyewear; lenses for eyewear; straps for sunglasses and eyewear; helmets for cycling, diving, football, baseball, motorcyclists; cyclists helmets; crash safety helmets; protective sports helmets; sporting articles for protective purposes, namely, articles of protective clothing for wear by cyclists for protection against accident or injury, protective active cooling vest, active cooling seats, active cooling head cap and active cooling blankets to prevent injury due to overheating; radios; communicators, namely, phones and hand held computers; aerials for radios; parts for radios, namely, devices for wireless radio transmission, antennas, radio frequency repeaters used in long range communication for tracking and monitoring energy usage, filters for radio interference suppression; carrying cases for radios; electronic radio apparatus, namely, devices for wireless radio transmission, antennas, radio frequency repeaters used in long range communication for tracking and monitoring energy usage, filters for radio interference suppression; mobile radios; mounting fittings for radios; radio receivers and transmitters, radio transceivers; radios for vehicles; solar powered radios; power meters for bicycles; structural parts and fittings for all of the above

CLASS 35: ALL SERVICES IN THIS CLASS ARE DELETED

CLASS 38:

telecommunications services, namely, providing local and long distance transmission of voice by means of telegraphic transmissions relating to movies; mobile and fixed telephone telecommunications services; communications services, namely, transmission of voice, data, graphics, images and video by means of telecommunications networks, wireless communication networks, and the internet; cellular communication services; transmission of video films by satellite; broadcasting and transmission of television programs and films to personal computers; telecommunications services over the internet, namely, services provided using voice over internet protocol (voip); provision of access and/or connectivity to broadband communication networks whether fixed, portable or wireless; communication of information, namely, web pages and data by radio, telecommunications and by satellite; telephone, mobile telephone, message collection and transmission, radio-paging, call diversion call waiting, call identification, call forwarding, and message waiting; personal numbering services, namely, issuing of telephone numbers, routing and gateway services; television screen based information broadcasting and retrieval services, namely, for use in providing access to films and television programs provided via a video-on-demand service; leasing of replacement telecommunications and communications apparatus and instruments in case of breakdown, loss or theft; computer aided transmission of messages and images; messaging services namely, sending, receiving and forwarding messages in the form of text, audio, graphic images or video or a combination of these formats; instant messaging; short message services (sms); multimedia messaging services (mms); unified messaging services; voicemail services; video conferencing services; video telephone services; providing access to telecommunications infrastructures for other operators; provision of access to electronic conferencing, discussion groups and chat rooms; provision of internet chat rooms; leasing or rental of apparatus, instruments, installations or components for use in the provision of the aforementioned services; advisory, information and consultancy services relating to all the aforementioned; rental and leasing of communications apparatus; electronic mail services; telecommunication services, namely, internet broadcasting services; telecommunication of information, namely, web page links which transfer the web site user to other local and global web pages; provision of co-location based services for telecommunications and communications apparatus and instruments, namely, repair services and installation services; provision of information about telecommunications and communications apparatus and instruments; provision of telecommunications links which transfer the user to other computer databases and websites on the internet; providing access to telecommunications services dedicated to retailing goods and services of others through providing interactive communications with customers; telecommunication access services, namely, providing interactive television services being telecommunications and/or communications and/or broadcasting and/or transmission services; telecommunications access services, namely, providing interactive services for television viewers including those watching on mobile telephones and pcs being

telecommunications and/or communications and/or broadcasting and/or transmission services; television broadcasting services incorporating interactive services for viewing guides and intelligent automated selection for program recording; interactive services for television viewers facilitating the recording of programs automatically initiated on the basis of customer viewing habits/preferences being telecommunications and/or communications and/or broadcasting and/or transmission services; providing interactive television viewers, including those watching on their mobile telephones or pcs, with access to information, data, graphics, audio and/or audio-visual content from a restricted group of internet websites or portals; broadcasting and transmission of interactive television, interactive games, interactive news, interactive sport, interactive entertainment and interactive competitions; consulting services in the field of communications, namely, professional consultancy services relating to broadcasting; providing access to a database storing information relating to a variety of goods and services; enabling access to the internet; provision of a telecommunication connection between websites and television viewers via an interactive television portal; provision of wireless broadband website services namely wireless broadband communication services; interactive television portal services providing access to internet websites for television viewers via their television receiving equipment including digital television receiving equipment; professional consultancy and information and advisory services relating to all the aforesaid services; rental of access time to an information database; telecommunications information services; providing factual information services relating to television broadcasting; audio visual television communication services; data communication services by electronic mail; electronic transmission of voice, data, and images by television and video broadcasting; delivery of messages by electronic transmission; broadcast and/or transmission of motion pictures; broadcast and/or transmission of audio and/or visual material and material from pre-recorded video tapes; transmission of films, motion pictures, pre-recorded video tapes, audio and/or visual material, pre-recorded video cassettes, DVD s or pre-recorded video discs; rental or leasing of communications equipment; message sending via a web site; telephonic or telephone communications services; wireless communication services by cellular telephone; organization of call information, namely, call hunting and call tracking; call screening services; telecommunications services, namely, providing message alerts via the internet; computer services for providing connections to communications or computer network; computer services for providing connections to entertainment, education, information and data via telephone, line, cable, wire or fiber, database or computer network; computer services for providing connections to information, messages, text, sound, images and data via a computer or computer network; computer services for providing connections to radio and television programs; consultancy in the field of telecommunications services, namely, synchronization, transfer and transmission of programs, data, files, e-mails, contacts, calendars, task lists, text messages, photos, music, audio, visual, audio visual, video, text, graphics, programs and other information via telecommunications and global

communications networks; providing data synchronization over telecommunications, communications and computer networks; provision of access to data or documents stored electronically in central files for remote consultation; online instant messaging; provision of online conferencing, discussion groups, message boards and chat rooms for transmission of messages among computer users in the field of general interest; online telecommunications access services to enable the accessing and retrieving of data, files, e-mails, contacts, calendars, task lists, text messages, photos, music, audio, visual, audio visual, video, text, graphics, programs and other information via a computer or computer network or electronic device including services provided over a global communications network; online telecommunications services, namely, providing webcasting and podcasting services provided over a global communications network; peer to peer network computer services, namely, electronic transmission of audio, video and other data and documents among computers; provision of interactive polling services being telecommunications and/or communications; advising or providing information in relation to the foregoing; information relating to all the aforementioned services provided on-line from a computer database or via a help line or the internet; transmission of programs by television, the internet or other telecommunication channels for the future interactive viewing, selection and purchase of goods

CLASS 41:

education and entertainment services, namely, production and distribution of movies and motion pictures; training services in the field of advertising, media, news, entertainment, movies, games; provision of audio visual performances, namely, musical shows, variety shows, comedy shows, drama shows, game shows, and reality shows; hiring, rental and leasing of cinema films, videos, dvds, sound recordings, sound recording apparatus, sports apparatus, television sets and video recorders, dvd recorders and radio recorders; production of films for cinema; providing on-line electronic publications, not downloadable in the nature of books, magazines and brochures in the fields of advertising, media, sports, news, entertainment, movies, games; publication of magazines, books, texts and printed matter; publication of electronic books or journals on-line in the field of children's stories, fiction, non-fiction, biographies, auto-biographies, fitness, exercise, diet, sports, and self-help; provision of non-downloadable electronic publications in the nature of books, magazines and brochures in the fields of advertising, media, sports, news, entertainment, movies, games; providing on-line non-downloadable dictionaries, encyclopedias, and reference texts; non-downloadable online publications, namely, newspapers, magazines periodicals, comics, journals being publications, books, user manuals, instructional and teaching materials in the field advertising, media, sports, news, entertainment, movies, games; providing online non-downloadable posters, photographs, pictures, articles in the fields of advertising, media, sports, news, entertainment, movies, games; provision of recording studio facilities; live show production services of musical shows, variety shows, comedy shows, drama shows, games shows, reality shows; organizing of community sporting activities and

competitions; box office services, namely, entertainment ticket agency services; ticket reservation services relating to entertainment, namely, arranging for ticket reservations for shows and other entertainment events; providing movies, videos and television programs to viewers on demand; organizing community sporting and cultural activities; betting, casino gaming and gambling services; credit betting, casino gaming, gambling, lottery or bookmaking services; credit card betting, gaming, gambling, lottery or bookmaking services; arranging and conducting competitions for video game players and computer game players; pay to play online video game services; providing online non-downloadable peer to peer interactive video game and video gaming services; providing online non-downloadable interactive poker games and gaming including single and multi-player gaming formats; presentation and production of poker competitions, tournaments, games and gaming; providing educational or entertainment games played online; electronic desktop publishing services; videotaping and filming services; information and advisory services relating to the aforesaid services; information and advisory services relating to television and radio programs, to educate in the fields of recreation, entertainment, music and sports; information and advisory services relating to television and radio programs for the purpose of education in the fields of recreation, entertainment, music and sports, provided on-line from a computer database or the internet or to mobile telephones; training services in the fields of sports, fitness, cycling, competitions and racing; instruction services in the fields of cycling, and cycling equipment use; advisory services relating to entertainment; arranging conferences, seminars, symposiums or workshops in the fields of sports, news, entertainment, music, games; arranging exhibitions or festivals in the nature of sports, news, entertainment, music; booking agency services, namely, booking of seats for shows; cinema services; cinema studio services; distribution of films, motion pictures, pre-recorded video cassettes, DVDs or pre-recorded video discs for others; production of radio programs, motion pictures, pre-recorded video tapes, audio and/or visual material, pre-recorded video cassettes, DVDs or pre-recorded video discs; editing of radio programs, motion pictures, pre-recorded video tapes, audio and/or visual material, pre-recorded video cassettes, DVDs or pre-recorded video discs; hire, leasing or rental of radio programs, television programs, films, motion pictures, pre-recorded video tapes, audio and/or visual material, pre-recorded video cassettes, DVDs or pre-recorded video discs; exhibition of radio programs, television programs, films, motion pictures, pre-recorded video tapes, audio and/or visual material, pre-recorded video cassettes, DVDs or pre-recorded video discs for entertainment, educational, sporting or cultural purposes; amusement park services with a theme of films, radio or television productions; providing of amusement parks and theme parks; organization of entertainment, namely, producing live variety shows, musical shows, sporting events; preparation of radio programs, television programs, films, pre-recorded video tapes, DVDs, audio and/or visual material, pre-recorded video cassettes, pre-recorded video discs or motion pictures for distribution for transmission or broadcast by any means; provision of radio programs, television programs, films, audio and/or visual material

or motion pictures online, not downloadable recordings in the fields of children's stories, fiction, nonfiction, biographies, auto-biographies, fitness, exercise, diet, sports, and self-help; multimedia publication of printed media and recordings in the fields of children's stories, fiction, non-fiction, biographies, autobiographies, fitness, exercise, diet, sports, and self-help; digital imaging services; dubbing; video tape editing; film production; rental of motion pictures; movie studios; providing movie theatres facilities; video film tape production; rental of audio equipment; rental of lighting apparatus for theatrical sets or television studios; rental of motion picture; rental of movie projectors and accessories; rental of radio equipment; rental of televisions and television equipment; rental of sports equipment; rental of video cameras; rental of video tapes; rental of video recorders; theatre productions; movie studio services; organizing or hosting awards ceremonies relating to advertising, media, sports, news, movies, games; presentation of films; production of special effects for films; ticket reservation services, included in this class, for sporting, scientific, political and cultural events; production of artwork for animated films; recording studio services; education and providing of training in connection with environmental protection, energy conservation and ecology and animal welfare; providing educational training in connection with alternative energy sources, including wind power, hydroelectric power, tidal power, geothermal power, solar power, bio mass, and bio fuels; publication of instructional material and promotional material relating to environmental protection, energy conservation and ecology and animal welfare; arranging and conducting of seminars and workshops and training in the fields of fitness, exercise, cycling, outdoor survival, bicycle racing, long distance cycling; establishing training programs and training manuals in the field of music, art and history; organizing and conducting safety courses and educational courses in the field of cycling; online provision of information and general encyclopedic knowledge relating to entertainment, education, training, sports, culture, news, current affairs, satellite, television and radio programs, music, films, books and other printed matter, video games, computer games, amusement machines, amusement centers or amusement parks, namely, providing an online encyclopedia; online translation services; online library services, namely, the lending and exchanging of books and other publications and photographs; provision of online classes, seminars, workshops, exhibitions and display exhibitions in the fields of fitness, exercise, cycling, outdoor survival, bicycle racing, long distance cycling; providing online card games; organization of running events; organization of cycling events; providing a website featuring online fitness tracking and monitoring; consultancy, information and advisory services relating to all the aforesaid services; advising or providing information in relation to the foregoing; information relating to all the aforementioned services provided on-line from a computer database or via a help line or the internet.

CLASS 42: ALL SERVICES IN THIS CLASS ARE DELETED

APPENDIX A (Part 4)

DELETED GOODS AND SERVICES FROM



Reg. No. 4710310

CLASS 9: ALL GOODS IN THIS CLASS ARE DELETED

CLASS 38:

Telecommunications services, namely, providing telecommunication access services, electronic transmission of data, messages and information, providing online and telecommunication facilities for real-time interaction between and among users of computers, mobile and handheld computers, and wired and wireless communication devices, local and long distance transmission of voice, data, graphics by means of telephone, telegraphic, cable, and satellite transmissions relating to advertising, media, sports, news, entertainment, movies, games; mobile and fixed telephone telecommunications services; communications services, namely, transmission of voice by means of telecommunications networks, wireless communication networks, and the internet; satellite, cellular and radio communication services; radio broadcasting; broadcasting and/or transmission of radio; transmission of video films by satellite; broadcasting and transmission of television programs and films to personal computers; broadcasting of programming by means of or aided by computer; transmission of audio, video and/or audio visual programming by internet protocol (iptv); telecommunications services over the internet, namely, services provided using voice over internet protocol (voip); provision of access and/or connectivity to broadband communication networks whether fixed, portable or wireless; electronic transmission of text, messages, sound and/or pictures; communication of information, namely, web pages and data by radio, telecommunications and by satellite; telephone, mobile telephone, message collection and transmission, radio-paging, call diversion call waiting, call identification, call forwarding, and message waiting; personal numbering services, namely, issuing of telephone numbers, routing and gateway services; television screen based information broadcasting and retrieval services, namely, for use in providing access to films and television programs provided via a video-on-demand service; leasing of replacement telecommunications and communications apparatus and instruments in case of breakdown, loss or theft; computer aided transmission of messages and images; messaging services namely, sending, receiving and forwarding messages in the form of text, audio, graphic images or video or a combination of these formats; instant messaging; short message services (sms); multimedia messaging services (mms); unified messaging services; voicemail services; video conferencing services; video telephone services; providing access to telecommunications infrastructures for other operators; provision of access to electronic conferencing, discussion groups and chat rooms; provision of internet chat rooms; leasing or rental of apparatus, instruments, installations or components for use in the provision of the aforementioned services; advisory, information and

consultancy services relating to all the aforementioned; communications services by radio transmission; rental and leasing of communications apparatus; electronic mail services; telecommunication services, namely, internet broadcasting services; telecommunication of information, namely, web page links which transfer the web site user to other local and global web pages; provision of co-location based services for telecommunications and communications apparatus and instruments, namely, repair services and installation services; provision of information about telecommunications and communications apparatus and instruments; provision of telecommunications links which transfer the user to other computer databases and websites on the internet; providing access to telecommunications services dedicated to retailing goods and services of others through providing interactive communications with customers; telecommunication access services, namely, providing interactive television services being telecommunications and/or communications and/or broadcasting and/or transmission services; telecommunications access services, namely, providing interactive services for television viewers including those watching on mobile telephones and pcs being telecommunications and/or communications and/or broadcasting and/or transmission services; television broadcasting services incorporating interactive services for viewing guides and intelligent automated selection for program recording; interactive services for television viewers facilitating the recording of programs automatically initiated on the basis of customer viewing habits/preferences being telecommunications and/or communications and/or broadcasting and/or transmission services; providing interactive television viewers, including those watching on their mobile telephones or pcs, with access to information, data, graphics, audio and/or audio-visual content from a restricted group of internet websites or portals; broadcasting and transmission of interactive television, interactive games, interactive news, interactive sport, interactive entertainment and interactive competitions; video on demand and near on demand telecommunication and/or communication and/or broadcast and/or transmission services; streaming delivery of video on demand streams to viewers; providing access to movies, videos and television programs to viewers on demand and near on demand; consulting services in the field of communications, namely, professional consultancy services relating to broadcasting; providing access to a database storing information relating to a variety of goods and services; enabling access to the internet; provision of a telecommunication connection between websites and television viewers via an interactive television portal; provision of wireless broadband website services; interactive television portal services providing access to internet websites for television viewers via their television receiving equipment including digital television receiving equipment; providing access to internet websites to mobile telephone users; professional consultancy and information and advisory services relating to all the aforesaid services; rental of access time to an information database; telecommunications information services; providing factual information services relating to television broadcasting; audio visual television communication services;

data communication services by electronic mail; electronic transmission of voice, data, and images by television and video broadcasting; delivery of messages by electronic transmission; broadcast and/or transmission of radio programs, films and motion pictures; broadcast and/or transmission of audio and/or visual material and material from pre-recorded video tapes: transmission of radio programs, television programs, films, motion pictures, pre-recorded video tapes, audio and/or visual material, pre-recorded video cassettes, dvds or pre-recorded video discs; rental or leasing of communications equipment; message sending via a web site; telephonic or telephone communications services; wireless communication services by cellular telephone; e-sell through services, namely, providing access by telecommunication of media content, including video and films, television programs, computer games, music, images and ring tones provided by internet, telephone line, cable, wireless transmission, satellite or terrestrial broadcast service; organization of call information, namely, call hunting and call tracking; call screening services; telecommunications services, namely, providing message alerts via the internet; computer services for providing connections to communications or computer network; computer services for providing connections to entertainment, education, information and data via telephone, line, cable, wire or fiber, database or computer network; computer services for providing connections to information, messages, text, sound, images and data via a computer or computer network; computer services for providing connections to radio and television programs; consultancy in the field of telecommunications services, namely, synchronization, transfer and transmission of programs, data, files, e-mails, contacts, calendars, task lists, text messages, photos, music, audio, visual, audio visual, video, text, graphics, programs and other information via telecommunications and global communications networks; providing data synchronization over telecommunications, communications and computer networks; provision of access to data or documents stored electronically in central files for remote consultation; e-mail, e-mail notification and alert services via the internet; online instant messaging; provision of online conferencing, discussion groups, message boards and chat rooms for transmission of messages among computer users in the field of general interest; online telecommunications access services to enable the accessing and retrieving of data, files, e-mails, contacts, calendars, task lists, text messages, photos, music, audio, visual, audio visual, video, text, graphics, programs and other information via a computer or computer network or electronic device including services provided over a global communications network; online telecommunications services, namely, providing webcasting and podcasting services provided over a global communications network; peer to peer network computer services, namely, electronic transmission of audio, video and other data and documents among computers; provision of interactive polling services being telecommunications and/or communications; advising or providing information in relation to the foregoing; information relating to all the aforementioned services provided on-line from a computer database or via a helpline or the internet;

transmission of programs by television, the internet or other telecommunication channels for the future interactive viewing, selection and purchase of goods

CLASS 41:

Training services in the field of advertising, media, sports, news, entertainment, movies, games; provision of audio visual performances, namely, musical shows, variety shows, news programs, sports competitions, comedy shows, drama shows, games shows, and reality shows; hiring, rental and leasing of cinema films, dvds, sound recordings, sound recording apparatus, sports apparatus, television sets and video recorders, dvd recorders and radio recorders; production of films for television and cinema; providing on-line electronic publications, not downloadable in the nature of books, magazines and brochures in the fields of advertising, media, sports, news, entertainment, movies, games; publication of magazines, books, texts and printed matter; publication of electronic books or journals on-line in the field of children's stories, fiction, non-fiction, biographies, auto-biographies, fitness, exercise, diet, sports, and self help; provision of non-downloadable electronic publications in the nature of books, magazines and brochures in the fields of advertising, media, sports, news, entertainment, movies, games; providing on-line non-downloadable dictionaries, encyclopedias, and reference texts; non-downloadable online publications, namely, newspapers, magazines periodicals, comics, journals being publications, books, user manuals, instructional and teaching materials in the field advertising, media, sports, news, entertainment, movies, games; providing online non-downloadable posters, photographs, pictures, articles in the field of sports, news and entertainment; provision of recording studio facilities; live show production services of musical shows, variety shows, news programs, sports competitions, comedy shows, drama shows, game shows, reality shows; organizing of community sporting activities and competitions; ticket reservation services relating to entertainment, namely, arranging for ticket reservations for shows and other entertainment events; providing movies, television programs to viewers on demand and near video on demand; organizing community sporting and cultural activities; betting, casino gaming and gambling services; credit betting, casino gaming, gambling, lottery or bookmaking services; credit card betting, gaming, gambling, lottery or bookmaking services; arranging and conducting competitions for video game players and computer game players; pay to play online video game services; providing online non-downloadable peer to peer interactive video game and video gaming services; providing online non-downloadable interactive poker games and gaming including single and multi-player gaming formats; presentation and production of poker competitions, tournaments, games and gaming; providing educational or entertainment games played online; electronic desktop publishing services; videotaping and filming services; information and advisory services relating to the aforesaid services; news, current affairs and educational information services; training services in the fields of sports, fitness, cycling, competitions and racing; instruction services in the fields of cycling and cycling equipment use; advisory services relating to entertainment; arranging conferences, seminars, symposiums or

workshops in the fields of sports, news, entertainment, music, games; arranging exhibitions or festivals in the nature of sports, news, entertainment, music; booking agency services, namely, booking of seats for shows; cinema services; cinema studio services; distribution of radio programs, motion pictures, pre-recorded video tapes, audio and/or visual material, pre-recorded video cassettes, dvds or pre-recorded video discs for others; production of radio programs, motion pictures, pre-recorded video tapes, audio and/or visual material, pre-recorded video cassettes, dvds or pre-recorded video discs; editing of radio programs, motion pictures, pre-recorded video tapes, audio and/or visual material, pre-recorded video cassettes, dvds or pre-recorded video discs; hire, leasing or rental of radio programs, motion pictures, pre-recorded video tapes, audio and/or visual material, pre-recorded video cassettes, dvds or pre-recorded video discs; exhibition of radio programs, motion pictures, pre-recorded video tapes, audio and/or visual material, pre-recorded video cassettes, dvds or pre-recorded video discs for entertainment, educational, sporting or cultural purposes; amusement park services with a theme of films, radio or television productions; providing of amusement parks and theme parks; preparation of radio programs, pre-recorded video tapes, dvds, audio and/or visual material, pre-recorded video cassettes, pre-recorded video discs or motion pictures for distribution for transmission or broadcast by any means; provision of radio programs, audio and/or visual material or motion pictures online, not downloadable recordings in the fields of children's stories, fiction, non-fiction, biographies, auto-biographies, fitness, exercise, diet, sports and self help; multimedia publication of printed media and recordings in the fields of children's stories, fiction, non-fiction, biographies, auto-biographies, fitness, exercise, diet, sports and self help; digital imaging services; dubbing; video tape editing; film production; rental of motion pictures; movie studios; providing movie theatres facilities; video film tape production; rental of audio equipment; rental of lighting apparatus for theatrical sets or television studios; rental of motion picture; rental of movie projectors and accessories; rental of radio equipment; rental of televisions and television equipment; rental of sports equipment; rental of video cameras; rental of video tapes; rental of video recorders; theatre productions; movie studio services; organizing or hosting awards ceremonies relating to advertising, media, sports, news, movies, games; presentation of films; production of special effects for films; ticket reservation services for sporting, scientific, political and cultural events; production of artwork for animated films; recording studio services; education and providing of training in connection with environmental protection, energy conservation and ecology and animal welfare; publication of instructional material and promotional material relating to environmental protection, energy conservation and ecology and animal welfare; arranging and conducting of seminars and workshops and training in the fields of fitness, exercise, cycling, outdoor survival, bicycle racing, long distance cycling; establishing training programs and training manuals in the field of music, art and history; organizing and conducting safety courses and educational courses in the field of cycling; online provision of information and general encyclopedic knowledge relating to

entertainment, education, training, sports, culture, news, current affairs, satellite, television and radio programs, music, films, books and other printed matter, video games, computer games, amusement machines, amusement centers or amusement parks, namely, providing an online encyclopedia; online translation services; online library services, namely, the lending and exchanging of books and other publications and photographs; provision of online classes, seminars, workshops, exhibitions and display exhibitions in the fields of fitness, exercise, cycling, outdoor survival, bicycle racing, long distance cycling; providing online card games; organization of cycling events; providing a website featuring online fitness tracking and monitoring; consultancy, information and advisory services relating to all the aforesaid services; advising or providing information in relation to the foregoing; information relating to all the aforementioned services provided on-line from a computer database or via a helpline or the internet

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