

O-582-22

**TRADE MARKS ACT 1994
IN THE MATTER OF
INTERNATIONAL TRADE MARK NO. WO1547986
DESIGNATING THE UNITED KINGDOM
IN THE NAME OF FLOWBIRD
TO REGISTER**


flowbird.

**AS A TRADE MARK
IN CLASSES 9, 35, 36, 37, 38, 39 & 42
AND OPPOSITION THERETO (UNDER NO.422240)
BY
APCOA PARKING HOLDINGS GMBH**

Background and pleadings

1. FLOWBIRD (“the holder”) is the holder of International Registration (“IR”) no. WO0000001547986 (“the designation”) in respect of the trade mark set out on the title page. Protection in the UK was requested on 20 April 2020 and claimed a priority date of 25 October 2019 from France in respect of the goods and services set out in Annex 1 of this decision.

2. The IR was published in the UK for opposition purposes on 2 October 2020. On 27 November 2020 APCOA Parking Holding GmbH (“the opponent”) opposed the designation in full under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) on the basis of its two EU earlier registrations. The details of the earlier registrations are set out below whilst the full list of goods and services are set out in Annex 2 of this decision. The goods and services are virtually identical for both earlier rights save for a duplication of the term *card reading equipment* in class 9 of No.177883605.

EU TM No. 017883605	EU TM No.17770124
FLOW	
Classes 9, 35, 36, 37, 38, 39, 42 & 45 Filing date: 4 April 2018 Registration date: 15 August 2018	Classes 9, 35, 36, 37, 38, 39, 42 & 45 Filing date: 2 February 2018 Registration date: 6 June 2018

3. The holder filed a defence and counterstatement denying that neither the goods or services nor the marks were similar and commenting that the opponent had made no attempt to set out in detail where the likelihood of confusion lay.

4. Both parties have been represented throughout these proceedings. The opponent has been represented by Laytons LLP and the holder by Swindell & Pearson Ltd.

5. No hearing was requested in these proceedings. Both parties filed submissions in lieu. I make this decision based on a reading of the material before me.

Preliminary issues

6. It is convenient to set out at this stage the law that applies to the proceedings, and the impact of the end of the Brexit transitional period. The IR was designated for protection as a trade mark in the United Kingdom before IP Completion Day (being 11pm on 31 December 2020), on 20 April 2020. The opposition was launched on 27 November 2020, also before IP Completion Day. The transitional provisions set out in the Trade Marks (Amendment etc.) (EU Exit) Regulations 2019 state that the proceedings should continue to be dealt with under the Act as it existed before IP Completion Day. The effect of this is that the opponent may rely on its EU TMs as earlier marks.

7. Section 6(3)(a) of the European (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Trade Marks Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

Decision

8. Section 5(2)(b) of the Act states:

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

(a)...

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, or there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

9. The opponent's registrations are both earlier marks, but neither are subject to proof of use. This is because, at the date of designation of the contested IR, neither of the earlier marks had been registered for five years.¹

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

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

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

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

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

¹ See section 6A(3)(a) of the Act (added by virtue of the Trade Marks Regulations 2018: SI 2018/825) which came into force on 14th January 2019.

permissible to make the comparison solely on the basis of the dominant elements;

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

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

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

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

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

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

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

Comparison of goods & services

11. With regard to assessing similarity between goods and services, I bear in mind the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*,² in which the court stated at paragraph 23 of its judgment that:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary”.

12. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case³, for assessing similarity were:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for

² Case C-39/97.

³ [1996] R.P.C. 281

instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.”

13. The goods and services must be given their ordinary and natural meanings. In *YouView Ltd v Total Ltd*,⁴ Floyd J stated:

“...Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. *Treat* was decided the way it was because the ordinary and natural, or core, meaning of ‘dessert sauce’ did not include jam, or because the ordinary and natural description of jam was not ‘a dessert sauce’. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question”.

14. In *Sky v Skykick*⁵, Arnold LJ considered the validity of trade marks registered for, amongst many other things, the general term ‘computer software’. In the course of his judgment he set out the following summary of the correct approach to interpreting broad and/or vague terms:

“...the applicable principles of interpretation are as follows:

(1) General terms are to be interpreted as covering the goods or services clearly covered by the literal meaning of the terms, and not other goods or services.

(2) In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms.

⁴ [2012] EWHC 3158 (Ch) at [12].

⁵ *Sky v Skykick* [2020] EWHC 990 (Ch)

(3) An unclear or imprecise term should be narrowly interpreted as extending only to such goods or services as it clearly covers.

(4) A term which cannot be interpreted is to be disregarded.”

15. When it comes to assessing goods and services which are identically worded to those of the opponent, or those terms in either parties’ specifications which are broad enough to encompass narrower terms then I shall rely on the principle outlined in *Gérard Meric v Office for Harmonisation in the Internal Market*,⁶ in which the General Court (“GC”) stated that:

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

16. In terms of complementarity, the GC, in *Sanco SA v OHIM*⁷, indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. *chicken* against *transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited*⁸:

⁶ Case T- 133/05.

⁷ *Sanco SA v OHIM*, Case T-249/11

⁸ BL-0-255-13

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes.”

Whilst on the other hand:

“.....it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.

Approach for the comparison of goods and services

17. I have read and noted the contents of the previous decision, O/537/21, which was an opposition concerning the same parties as in these proceedings. Whilst the holder’s mark differed in its stylisation in the previous case (although had same word element), the goods and services are virtually the same with only some minor changes and the earlier rights remain the same. I see no reason to not follow the structure of the previous decision’s comparison of goods and services but will refer to changes of wording in the holder’s current specifications, where it occurs, when it is necessary to do so. I may also adopt the same conclusions drawn in the previous decision where it is appropriate to do so. The goods and services to be compared are those contained in Annex 1 and 2 of this decision and the contested terms will be grouped together as per *Separode*.⁹

Class 9

Electronic terminals of information, of sale of goods and/or services; electronic remote recognition terminals enabling the output of services sold

18. These are electronic terminals which enable the sale or provision of goods and services. I find the opponent’s terms *Apparatus for the transmission of data* and *Computer software and software for automated calculations and payment services* will encompass the holder’s term on the *Meric* principle as such terminals will be controlled by software enabling payment or goods and services purchased or monitoring provision of goods and services.

⁹ Separode BL O/399/10

19. In the alternative, if I am wrong about identity, then there is a high degree of similarity regarding the nature and purpose of the goods as well as an overlap in users and trading channels. The respective goods may also be seen as competitive.

Interactive information terminals

20. This term does not restrict the information provided so therefore could relate to information on any subject matter including car parking and other transport information available at a terminal. I find this term to be similar to a medium degree to the opponent's term *Computer applications (downloadable) and mobile apps for searching for, reserving, use and paying for parking spaces*. The nature of a terminal, which suggests a fixed piece of apparatus, may be different but it certainly shares a purpose with a computer application, namely that it has an interactive function by providing specific information to those using it. Such users will likely overlap as well. The goods are also competitive as a consumer may use one instead of the other, and both could also be considered as complementary in that an app could interact with a terminal by means of scanning, QR code or other relevant technology

Electronic automata for dispensing parcels and/or goods

21. In this term, I take *automata* to mean a variety of electronic apparatus or machines to allow parcels or other goods to be dispensing to those collecting by some automatic means. From my own experience this is often achieved by means of a user access card or other scanning/QR technology. Therefore, I find these goods to be complementary to the opponent's *Card reading equipment; Electronic card readers; Software for card readers* as one would be needed for accessing the other. Overall I find there is a low degree of similarity.

Electronic parking terminals including electronic off-street terminals; parking meters including electronic memory parking meters; parking meters operated by a magnetic card, coins or tokens; parking meters operated by electronic memory cards; parking meters for multi-media communication; parking meters operated by cards with

microprocessors; Electronic apparatus for vehicle parking management, especially on-street or in a closed park, especially automatic pay stations;

22. Parking terminals, meters and pay stations are essentially payment receiving fixed point apparatus which control on-street and off-street parking and can also be used in other facilities like car parks. I find these goods to be similar to a medium degree to the opponent's *Computer applications (downloadable) and mobile apps for searching for, reserving, use and paying for parking spaces; Encoded cards Encoded cards for use in point of sale transactions; Cards bearing electronically recorded data; Encoded cards for use in relation to the electronic transfer of funds; Smart cards [integrated circuit cards]*. Both apps and terminals, meters and pay stations enable the reservation, use and payment of parking spaces so have the same purpose, although their natures are different. The goods are competitive insofar as the average consumer may decide to reserve and/or pay for parking spaces on an app or physically at a terminal, meter or pay station. Where meters are operated by cards then such coded cards will be also considered complementary as the functionality needs one to connect with the other in order to access, reserve and/or pay for parking spaces. Overall I find there is a low degree of similarity between the respective goods.

Memory cards intended for use with parking pay points; electronic memory cards for access to public transport

23. As these goods are a form of *encoded card* with specific functionality, I find the term to be identical on the *Merck* principle with the opponent's broader term.

Electronic parking ticket accessible via a digital application (software)

24. I find these goods to be identical to the opponent's *Computer applications (downloadable) and mobile apps for searching for, reserving, use and paying for parking spaces.*

Time and date stamping machines including on-street time and date stamping machines; electronic apparatus for communication between time and date stamping machines and a central computer; electronic apparatus for communication (sub-assemblies in communication) to be located in the time and date stamping machines

25. These are various apparatus for time-monitoring purposes which can be used in relation to the duration of parking. The opponent's *apparatus for the transmission of data* is broad enough to include time and date information. Whilst there is a shared electronic nature allowing the transmission of data, the use differs as the applicant's above goods are specifically for use within/as part of time and date stamping machines whereas the opponent's goods are for the transmission of data. The users and trade channels may be shared where the opponent's goods are part of the applicant's goods, within which the goods would also be complementary. The goods do not compete. I find there is a low similarity between the holder's goods with the opponent's *apparatus for the transmission of data*.

Electronic reading and writing apparatus for memory cards for use in parking pay points, parking meters, time and date stamping machines,

26. I find these goods are encompassed by the opponent's *card reading equipment* at large and are therefore identical on the *Meric* principle.

Electronic apparatus for access security apparatus for vehicle parking management; electronic apparatus for control of access for car parks

27. The opponent's *Radio-frequency identification (RFID) tags* are used to transfer data through radio frequency which could include enabling cars affixed with RFID tags to access specific areas such as car parks that have RFID functionality. The opponent also has *Devices for automated parking checks and number plate recognition* which enable access and egress to parking facilities. I consider both RFID and automated checking and number plate recognition to be similar to a medium degree to the holder's goods on the basis of a similar purpose, i.e. providing access to car parking facilities. I further find there will be overlap of use, user and trade channels, with a level of complementarity and competition where the parties' goods may incorporate one another or be used together to allow access or to issue parking tickets, for instance.

Software, servers, computers and communication terminals for the management of car parks; apparatus for transmitting vehicle parking data, data in connection with the recharging of electric vehicles, ticketing data; electronic and/or computer apparatus

for navigation, orientation, location and positioning of available parking spaces, vehicle recharging points, particularly by means of satellite geolocation

28. The above terms are all largely electronic apparatus by which data relating to car parking is managed or transmitted. The opponent has *Apparatus for the transmission of data* at large, which will encompass the holder's terms so is therefore Meric identical. If I am wrong on this point, the opponent also has *car park services; providing of information relating to parking options on the internet, on telecommunications networks and via mobile telephone* in its class 39 specification. These services are complementary to the holder's class 9 goods as users will regard the management and transmission of car parking data to be essential to providing that data as part of a car park information service. Therefore, I find there is a high degree of complementarity between these respective goods and services.

Software for use in issuance of public transport tickets; software, servers, computers and communication terminals for the management of electronic apparatus for issuance of public transport tickets; Electronic apparatus for issuance of public transport tickets; electronic memory cards for access to public transport

29. The opponent has *computer software and software for automated calculations and payment services* which I find to be similar to a medium degree since it is likely that software for use in issuing tickets would also have the functionality to calculate the cost of the ticket purchase. Therefore, there is an overlap of purpose, user and trading channels. In addition, the opponent has *encoded cards* at large which would encompass the holder's *electronic memory cards*.

Software, servers, computers and communication terminals for monitoring, management and delivery of parcels and goods

30. These are a wide range of computing and communication goods relating to the handling parcels and goods. The opponent's *Computer software and software for automated calculations and payment services* are similar to a low degree based on them both including software and there being some overlap of use, user and trading channels.

Interfaces (computing) and software (recorded programs) for electronic payment transactions; electronic payment instruments and apparatus

31. I take the term *interface* to be a means by which a user can interact with a computer system. As such I find the opponent's *Computer software and software for automated calculations and payment services* to be highly similar to the holder's goods. The nature may be somewhat different on the basis that interfaces are not usually software, but they connect to software. However, the overall purpose is the same and the users and trading channels will likely overlap.

Cash or ticket dispensers

32. I find there is some complementarity between these terms and the opponent's *Computer software and software for automated calculations and payment services* which could include software with functionality to enable a cash or tickets dispenser to operate and deduct money from a bank account or via a credit card transaction. As such I find there is a low degree of similarity

Magnetic or chip payment, credit or debit cards

33. The above cards all store data and enable payments to be made. The opponent has *Encoded cards; Labels and cards with integrated RFID chips; Cards bearing electronically recorded data*, which encompass the holder's goods. As such it is considered as *Merit* identical.

Software for accessing databases, telecommunication services, computer networks and electronic bulletin boards

34. The above terms primarily concern access functionality and is unrestricted as to the content or subject matter of the databases, networks and bulletin boards so could include car parking matters. The opponent has *Telecommunications, mobile telephone services, radio communications and providing access to application software (apps) for providing information on the internet for searching for, reserving, use and paying for parking spaces; Delivery of messages and data by electronic transmission; Data transmission* in its class 38 specification which I find to have some complementarity with the holder's goods as it is necessary to utilise software to access a wider telecommunication network. Overall I find there is a low degree of similarity.

Computer software for document management; Downloadable software for the supply and monitoring of information relating to the distribution and delivery of coin-operated apparatus

35. Whilst downloadable software for the supply and monitoring of information relating to the distribution and delivery of coin-operated apparatus is self-evidently to enable the management of the latter apparatus, computer software for document management is used to organise files and documents. The opponent has coverage for various types of software, including *computer programs and software for data transmission between devices over short distance via radio technology; computer software and software for automated calculations and payment services; computer applications for automated vehicle parking control; computer applications (downloadable) and mobile apps for searching for, reserving, use and paying for parking spaces*. Whilst the opponent's software shares the same nature, the purpose is somewhat different and, likewise, is the use and user. Whilst some trading channels may be shared by the same producer, there is no competition or complementarity between the goods. The respective parties' goods are of very low similarity.

Class 35

Business management assistance, commercial business expertise in the field of parking, electric vehicle recharging points and ticketing

36. The opponent has *Business management and professional business consultancy relating to the construction and management of parking spaces, in particular multi-storey car parks, car parks and other parking installations; Administrative management of multi-storey car parks, parking spaces and other parking facilities*, which encompasses the holder's services. Therefore, I find Meric identity between the services.

Providing marketing and commercial information in the field of parking vehicles, recharging electric vehicles or e-ticketing

37. The opponent has *Professional business consultancy, for others, regarding market-development measures, including sales, marketing, advertising campaigns and development and implementation of marketing concepts in relation to the management, by means of rental and leasing, of parking spaces, as well as the*

design and marketing thereof which will likely include commercial information and measures like e-ticketing as part of that service offering. It also contains references to parking spaces at large which could cover those spaces with electric charging points. Taking this into account I find there is a high degree of similarity between the services.

Providing subscriptions to a telephone service, providing subscriptions to a database, providing subscriptions to a database server

38. The purpose of the service provider providing these services is to manage a third party's subscriptions. The opponent's *Data processing for the collection of data for business purposes* similarly involves the processing of data, which could include that pertaining to subscriptions. Whilst both services generally assist the user managing its business and share some trading channels, the services differ in nature and use. They are not competitive, though the management of subscription services may include the collection of data and be important in that regard. The respective services have a low degree of similarity.

Collection and systematization of data in a central file

39. The holder's term does not restrict the purpose of the collected and systemised data so it could include data for business purposes. Therefore, it encompasses the opponent's term *Data processing for the collection of data for business purposes* and is considered as *Meric* identical.

Computer file management; computer file management, in particular via the Internet, extranets or intranets

40. These services involve collating and managing computer files into accessible formats. The opponent's *Data processing for the collection of data for business purposes* similarly collates and manages data. The services share a similar nature and may coincide in trading channels, purpose and user. The services are not competitive, though they are complementary insofar as data processing is important in order to manage computer files since computer files contain data. I find these respective services to have a medium degree of similarity.

Online retail sales store services providing transport tickets, vehicle reservation tickets, in particular via the Internet, intranets or extranets

41. I find this term to be similar to a low degree to *Shuttle services* in the opponent's class 39. Shuttle services are used to transport passengers between destinations and part of that service can be to sell tickets for such a purpose. I accept that the nature and purpose of the respective services may differ, but the users and trading channels may overlap. In addition, the sale of tickets to use a transport service can be considered complementary to the transport service itself.

Online retail sales store services providing parking spaces, in particular via the Internet, intranets or extranets

42. I find this term to mean that use of parking spaces can be purchased through an online single point of sale. As such I find these services to be similar to a medium degree with the opponent's terms *Rental of parking spaces and other parking facilities; Rental and leasing of parking spaces; Reservation and booking of parking spaces on the internet, telecommunications networks and via mobile telephone and applications software (apps)* in class 39. The respective terms have a similar nature and purpose in that all involve payable transactions to enable a parking space to be utilised for a varying period of time. The users will also overlap.

Online retail sales store services providing gas cylinders, in particular via the Internet, intranets or extranets

43. The opponent submits that "gas cylinders are a product which may be available in parking facilities for liquid petroleum gas (LPG) vehicles" and as such these services is similar to its own terms *Business management and professional business consultancy relating to the construction and management of parking spaces, in particular multi-storey car parks, car parks and other parking installations*. I disagree with this submission. Retail services have a different nature and purpose to those stated by the opponent. The users are also likely to be different. A motorist or business purchasing gas cylinders is unlikely to be the same as someone requiring professional consultancy for the construction or management of car parks. Furthermore, the services are neither competitive nor complementary. As such I find the services to be dissimilar.

Promoting the goods and services of others by means of discount card schemes, discount vouchers; management of a discount program enabling participants to obtain discounts on goods and services; loyalty programs

44. These services specifically relate to discount schemes and loyalty programs, some of which are provided for others. The opponent's *Professional business consultancy, for others, regarding market-development measures, including sales, marketing, advertising campaigns and development and implementation of marketing concepts in relation to the management, by means of rental and leasing, of parking spaces, as well as the design and marketing thereof* uses the word "including" in order to specify a range of example professional consultancy services provided, albeit this word does not limit the services to such examples. Whilst the nature of the respective services differs, the opponent's services enable the management of a business whilst the holder's are for the provision of advertising/promotional themselves. Though there is a level of complementarity and some competition where business consultants also advise on the remit of promotions and discounts. The services likely have an overlap in use, user and trading channels. The respective services have a medium level of similarity.

Class 36

Payment services by mobile telephone or Internet for parking spaces, electric vehicle recharging, transportation tickets; provision of electronic funds transfer services and on-line transaction facilities; on-line payment services on an electronic communication network

45. These services are encompassed by the opponent's terms, namely *Electronic payment services, including via the internet and mobile terminals (via SMS and application software or apps); Payment by means of radio frequency identification (RFID); Automated payment services; Money transfer services utilising electronic cards; Processing electronic payments made through prepaid cards* and are therefore *Meric* identical.

Services in relation to bank cards, credit cards, debit cards and electronic payment cards.

46. These services are identical, albeit slightly differently worded, to the opponent's *Bank card, credit card, debit card and electronic payment card services.*

Information and consultation in relation to payment

47. The term could include information regarding different payment methods and electronic payments. The opponent's *Electronic payment services, including via the internet and mobile terminals (via SMS and application software or apps)* would likely provide information about the payment services. For example, information on how to make the electronic payments. Whilst the nature of the services differ, the user, use and trading channels may overlap. The services do not compete generally, though as part of the electronic payment service, information may be provided, so there is a level of complementary. There is a high degree of similarity between these respective goods.

Class 37

Maintenance services (servicing, repair) for electronic information terminals and/or sale of goods/services, remote recognition terminals allowing the debiting of services sold, interactive information terminals, electronic machines for dispensing parcels and/or goods, parking terminals, parking meters, time and date stamping machines, electronic apparatus for vehicle parking management, electronic apparatus for access security to apparatus for vehicle parking management, electronic apparatus for control of access for car parks, electronic apparatus for communication between time and date stamping machines and a central computer, electronic communication apparatus (communication sub-assemblies) to be located in time and date stamping machines, electronic apparatus for issuance of public transport tickets, electronic apparatus for writing/reading for memory cards used in parking terminals, parking meters, time and date stamping machines, electronic apparatus for issuance of public transport tickets.

48. These are a range of maintenance service for various electronic terminals relating mainly to car parking. The opponent has coverage of a range of services affiliated with car parks, including *Car park services* and *Operation of multi-storey car parks and parking facilities*. Whilst the opponent's terms are for the provision of the car park services, they include facilitating and overseeing the management of terminals used to pay and access the car park itself. The nature of the parties services differ, and the use and user differ insofar as the public use the opponent's services whereas the holder's services are likely used by the car park business itself. The

services do not compete, though I find they are complementary as part of a car park service, a user may expect maintenance services to be undertaken by the same economic entity. Overall, I find a low degree of similarity between the respective services.

Class 38

Transmission of data from parking pay points, parking meters, time recorders, automatic parking lot pay terminals, vehicle recharge points and electronic apparatus for issuing transportation tickets to a computer center (one or more computers), for real-time management of parking lots, electric vehicle recharging points and seats on public transportation; transmission and reception of information, messages, via mobile telephones; information transmission services concerning news via mobile telephone; information transmission from a computer data bank; transmission services relating to vehicle parking, rental of car parking spaces, public transport, carpooling, car-sharing, car rental.

49. The above services are for various types of data and information transmission. The opponent has broad coverage of *data transmission*, as such there is identity between this term and the above services on the principle outlined in Meric.

Current affairs information services via mobile telephones

50. I find this term to be similar to a low degree to the opponent's *Delivery of messages and data by electronic transmission* and *Data transmission* services. The opponent's terms are not restricted by subject matter and could therefore cover current affairs information and electronic transmission can cover mobile telephones. As such the terms coincide in their nature, purpose and users.

Call center services

51. Call centre services handle telephone queries and are usually provided as part of a business or via a third party representing that business. The opponent has coverage of *delivery of messages and data by electronic transmission*, which likely refers to messages, such as via short message services (SMS). The services are not complementary, but they may compete where a business handles communications via SMS rather than via a telephone at a call centre. The respective services are of a

very low similarity on the basis that whilst the specific nature and use differs, there may be some general overlap between the user and trading channels.

Telecommunication services in relation to vehicle parking, rental of car parking spaces, public transport, carpooling, car-sharing, car rental; information relating to telecommunications in relation to vehicle parking, rental of car parking spaces, public transport, carpooling, car-sharing, car rental; electronic display services (telecommunications) in relation to vehicle parking, rental of car parking spaces, public transport, carpooling, car-sharing, car rental

52. These are a range of telecommunication services and the associated provision of information regarding various forms of transportation. Electronic display services are a form of telecommunication. The opponent has coverage of *Telecommunications, mobile telephone services, radio communications and providing access to application software (apps) for providing information on the internet for searching for, reserving, use and paying for parking spaces* within which there is a clear overlap in relation to the coverage of parking spaces. There is identity between such telecommunication services.

53. With regards to the other aspects relating to the holder's telecommunications services, namely those services which relate to *public transport, carpooling, car-sharing, car rental*, I find whilst the nature differs, there is an overlap in use, user and trading channels. Whilst the services are not competitive, they are complementary as information provided may enable a user to take different options regarding their transport arrangements. Therefore, I find there is a medium degree of similarity between the opponent's aforementioned term.

Class 39

Providing car parks; vehicle parking services

54. These are virtually identical to the opponent's *provision of car parks and car parking services*.

Services for reserving public transport tickets by public automatic electronic apparatus

55. The applicant's above services are used by the average consumer to reserve public transport tickets. The opponent has coverage of *shuttle services*, which would encompass shuttles that transport passengers from one location to another. Part of this service would likely involve the reservation of tickets, whether by automatic electronic apparatus or otherwise. Whilst the nature and use of the services differ, there is an overlap in user and trading channels. The goods do not compete, but they may be complementary. The opponent's *Computer software and software for automated calculations and payment services* has a medium level of similarity to the applicant's above services.

56. The applicant's automated electronic apparatus would be reliant on software that enables automated services, e.g. the user selects the passenger details and travel destination and is then provided with a ticket cost and ability to reserve the ticket. Whilst the nature differs, the opponent also has coverage of *Computer software and software for automated calculations and payment services*. These services facilitate the service that the applicant provides. There is a general overlap in use, user and trading channels – though I appreciate the opponent's software services can be used in a much broader context. The goods and services do not compete, though they are complementary. Overall, I consider that the opponent's *Computer software and software for automated calculations and payment services* has a low to medium level of similarity to the applicant's above services.

Services for reserving parking spaces provided online via the Internet or mobile telephone; providing information relating to available parking spaces; rental of vehicle parking spaces

56. I find these services to be literally and *Meric* identical to the opponent's *Rental and leasing of parking spaces; Arranging of parking spaces, for others, in particular via the Internet; Providing of information relating to parking options on the internet, on telecommunications networks and via mobile telephone; Reservation and booking of parking spaces on the internet, telecommunications networks and via mobile telephone and applications software (apps)*.

Navigation (guiding) of vehicles to available parking spaces, parking pay points, electric vehicle recharging points

57. These services cover a range of services available to vehicle drivers, either in relation to parking or electric vehicle recharging. Car parks can have indication boards and electronic signage to guide vehicles to specific parking spaces and equipment that enables parking spaces to be paid for. Most car parks also have electric vehicle recharging points. As such there is an overlap between the above services and the opponent's *Provision of car parks and car parking services*, which I find to be identical on the principle outlined in *Meric*. In the alternative, if I am wrong in this, I find the services are of a very high similarity on the basis of an overlap of use, user, trading channels.

58. With regards to the provision of electric vehicle recharging points, the opponent also has coverage of *Reservation and booking of electric charging bays on the internet, on telecommunications networks and via mobile telephone services and application software (apps)*. Whilst the navigation of such services differ in nature to the service itself, the general trading channels, use and user is shared. Although the services do not compete, they are complementary. There is, therefore, a high degree of similarity between these services.

Information relating to transport, travel

59. I find these terms to be similar to a low degree to the opponent's class 37 services *Delivery of messages and data by electronic transmission* as these are unrestricted by subject matter and could therefore cover information on transport and travel.

Information services relating to vehicle parking

60. I find this term to be identical to the opponent's *Providing of information relating to parking options on the internet, on telecommunications networks and via mobile telephone*.

Information services relating to mobility, namely, recharge terminals for electric cars

61. I find this term to be highly similar to the opponent's *Providing of information concerning electrical charging options on the internet, on telecommunications networks and via mobile telephone* services in its class 37. The respective terms

share the same nature, purpose and trading channels to inform users of the location of charging points.

Information services relating [to] road traffic; information services relating to mobility, namely, car-sharing, carpooling

62. All the holder's information services all relate in some way to cars or motoring. I find there is a low degree of similarity to the opponent's *Providing of information relating to parking options on the internet, on telecommunications networks and via mobile telephone; Traffic management services* as there is an overlap of nature, purpose and users namely that information may be providing on parking options that would enable car sharing or pooling. Similarly, the management of traffic is likely to include provision of information on traffic conditions.

Information relating to vehicle rental; information services relating to mobility, namely vehicle rental; vehicle rental; rental of bicycles; information services relating to the rental of vehicles and bicycles; vehicle equipment and accessory rental services.

The opponent has no equivalent rental services for physical vehicles, bicycles or accessories thereof. Its rental services concern car parking space. As such I do not find there is a similarity of nature or purpose. There may be some overlap of users and trading channels, but I do not find any competition or complementarity between the services. Therefore, I find the services to be dissimilar.

Class 42

Software and database development (design) intended for operating or controlling apparatus for vehicle parking management, apparatus for issuance of public transport tickets, interactive terminals; updating of software and databases,

63. I find that the opponent's term *Software design and development* at large will encompass the holder's services on the *Merck* principle.

Computer programming services for electronic memory cards intended for apparatus for vehicle parking management

64. I find that this terms to be highly similar to the opponent's *Design and development of computer programs and apparatus for detecting of parking manoeuvres, parking checks and for processing of payment procedures* as the

respective services both seek to use computer programming to enable optimum parking management.

Average consumer and the purchasing act

65. I next consider who the average consumer is for the contested goods and the way in which those goods are purchased. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer, Case C-342/97*.

66. In *Hearst Holdings Inc*¹⁰, Birss J. described the average consumer in these terms:

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

67. The average consumer for the contested goods and services are the general public and businesses. There are a variety of goods and services and therefore a consequent variety of price points such as the relatively low cost of a short stay in a multistorey car park compared to leasing an entire parking area on the basis of a business service agreement, to give just one example. The levels of attention paid will also vary. However even for goods and services at the lower end of price scale, consumers would be paying at least a medium degree of attention, say to the location of a car park, number of available parking spaces, charging points and

¹⁰ *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch)

opening hours. That level of attention will increase for higher cost goods and services such as the provision of software for an automated parking facility or traffic management. The purchasing process is likely to be a primarily visual one as users seek out information online or at the parking facility itself.


Comparison of the marks

68. It is clear from *SABEL* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated in *Bimbo* that:

“... it is necessary to ascertain in each individual case, the overall impression made on the target public by the sign for which the registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”¹¹

69. It would be wrong, therefore, artificially to dissect the marks, although it is necessary to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

70. The respective marks to be compared are shown below:

Opponent’s earlier registrations	Holder’s mark
EU TM No.17883605 FLOW EU TM No. 17770124	

¹¹ Paragraph 34.



71. The opponent's earlier registration ending '605 consists of the word FLOW in plain block capitals and has no other aspect to it. The overall impression is derived solely from the word.

72. The opponent's earlier figurative registration ending '124 is a composite arrangement of a device followed by the word FLOW in a slightly stylised typeface. The device element comprises three parallelogram shapes, two of the same length and one shorter, depicted in white, all set within a green square with rounded corners. The positioning of the three parallelogram shapes resembles a capital letter F. Because of its positioning at the front of the mark, I find the device does make a contribution to the overall impression of the mark, but I consider the word element dominates as that is how a consumer would refer to the mark.

73. The holder's mark consists of the word FLOWBIRD in a stylised typeface with a colour gradation starting from pink at the beginning and turning to purple by the end of the word. In addition there is a dot above the letter "i" and a full stop, both sharing the same colour. Whilst the presentation of the word is not negligible, to my mind the word itself plays the greater role in the overall impression of this mark.

74. In a visual comparison, all marks share the word FLOW. This comprises the entirety of the earlier '605 mark and the word element of the '124 mark. As points of difference, the '124 mark contains a device and the IR has the additional word element BIRD which doubles its length and it ends in a full stop. However, punctuation marks can often be overlooked if they appear in the correct grammatical place. It is settled case law¹² that a consumer's focus is more often on the beginnings of words, rather than on their ends. Taking these factors into account, I find there is a medium degree of visual similarity between the '605 earlier mark and

¹² *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

the holder's mark but this reduces to a low degree of visual similarity between the '124 mark and the IR because of the visual impact of the device element.

75. In an aural comparison, the device, stylisation and full stop will not feature so it's a straight comparison of the word elements. The shared word element FLOW will be given its usual pronunciation which is identical for all marks. The IR will additionally have its BIRD element pronounced given that it is presented as a single word. As such I find there is a medium degree of aural similarity between the respective marks.

76. Turning now to the conceptual comparison, it is settled case law that for a conceptual message to be relevant it must be capable of immediate grasp by the average consumer.¹³ In its submissions the opponent contends that,

“With regard to a conceptual comparison the word ‘flow’ is typically understood to refer to the steady movement of something. In both the Opponent’s and the Applicant’s marks, ‘flow’ will evoke a message surrounding this concept.... In the contested mark, consumers will break the mark down into parts that suggest a concrete meaning, or that resemble words that they already know. Therefore, the relevant public will break it down into the words ‘flow’ and ‘bird’. The subsequent word ‘bird’ adds a concept that is not present in the Opponent’s earlier marks but it does not completely change the meaning of the word ‘flow’ within the contested mark. In both the Opponent’s and the Applicant’s marks, the word ‘flow’ continues to mean “the steady movement of something”; the only difference is that in the contested mark that “something” is a bird. The word ‘bird’ does not qualify the word ‘flow’ and the words ‘flow’ and ‘bird’ do not come together to convey an altered “conceptual hook”. The average consumer would recognise the concepts of the word ‘flow’ and ‘bird’ separately in the Applicant’s mark”.

77. I note the opponent's submissions. However in my view the combination of FLOW and BIRD in the holder's mark can lead to an altered conceptual hook from

¹³ This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM* [2006] e.c.r.-I-643; [2006] E.T.M.R. 29.

simply the word FLOW, even if that different concept has no apparent conventional meaning or is indeed meaningless. In other words I find some consumers may lean toward a singular concept of FLOWBIRD being more than the sum of its parts whereas other consumers may simply attribute the concept of the word FLOW and the concept of the word BIRD. Taking all this into account I find the respective marks are conceptually similar only to a low degree by virtue of the shared FLOW element.

Distinctive character of the earlier mark

78. The degree of distinctiveness of the earlier mark must be assessed. This is because the more distinctive the earlier mark, based either on inherent qualities or because of use made, the greater the likelihood of confusion. In *Lloyd Schuhfabrik Meyer*¹⁴ the CJEU stated that:

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

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

¹⁴ *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97

chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

79. There is no evidence of distinctiveness before me in these proceedings, so I only have the inherent position to consider. Registered trade marks possess varying degrees of inherent distinctive character starting from the very low, because they are suggestive of, or allude to, a characteristic of the goods or services, scaling up to those with high inherent distinctive character, such as invented words.

80. In the holder’s pleadings it contends that,

“Flow is of low or no distinctiveness for any goods and services that assist or promote ‘flow’ in car parks and parking structures i.e. and for goods and services that help vehicles and customers to flow into, through and out of car parks and parking structures”

81. I agree with the holder in part in relation to some of the opponent’s services like *Transport and traffic logistics, in particular operation and control of traffic and parking guidance systems for moving and stationary traffic; Traffic management services* for which I find the word FLOW is allusive and suggestive of such services. However, for the other goods and services, I find the level of distinctiveness is medium as the word does not describe or allude to the goods or services. I would categorise the opponent’s figurative mark as having medium distinctiveness due to its device element.

Likelihood of confusion

82. In assessing the likelihood of confusion, I must adopt the global approach advocated by case law and take into account the fact that marks are rarely recalled perfectly, the consumer relying instead on the imperfect picture of them that they have kept in mind.¹⁵ I must also keep in mind the average consumer for the goods, the nature of the purchasing process and have regard to the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be

¹⁵ *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* paragraph 27

offset by a greater degree of similarity between the respective goods and vice versa.

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

84. In *L.A. Sugar Limited*¹⁶ Mr Iain Purvis Q.C., as the Appointed Person, explained that:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark

85. Whereas in *Liverpool Gin Distillery*¹⁷, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Arnold LJ agreed, pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion. Moreover, it is not sufficient that a mark merely calls to

¹⁶ *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10

¹⁷ *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207

mind another mark as set out in *Duebros*¹⁸. This is mere association not indirect confusion.

86. So far in this decision I have found that

- the goods and services are identical and similar to varying degrees save for those terms I have specifically identified as having no similarity
- The average consumer will pay a medium to high level of attention during the primarily visual purchasing process
- there is a medium degree of visual similarity between the earlier word mark (ending '605) and the IR
- there is a low degree of visual similarity between the earlier figurative mark (ending '124) mark and the IR
- there is a medium degree of aural similarity between the respective marks
- the respective marks are conceptually similar to a low degree
- the earlier word mark I found to be distinctive to a low degree for those goods and services which involve some allusion/suggestiveness to 'flow' such as traffic management but that distinctiveness level rises to medium for the other goods and services
- The earlier figurative mark I also found to be distinctive to a medium level

87. Considering direct confusion first, the respective marks clearly share four letters, namely FLOW. However even taking into account the case law relating to the beginnings of words and the notion of imperfect recollection, I find this similarity is outweighed by the differences, namely the additional device in the opponent's earlier figurative mark and more notably the additional word BIRD, in the holder's mark, which in my view changes things sufficiently for the average consumer not to directly confuse the marks, that is to mistake one mark for the other even where the goods and services are considered identical. As such I do not find there is a likelihood of direct confusion.

¹⁸ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

88. Having found no likelihood of direct confusion, I now go on to consider the possibility of indirect confusion. I remind myself of the guidance given in *L.A. Sugar* that indirect confusion requires a consumer to undertake a thought process whereby they acknowledge the differences between the marks yet attribute the common element to a shared undertaking, taking the later mark to be a possible brand extension or sub brand of the earlier mark. I am also alert to the guidance in *Duebros* that a finding of indirect confusion should not be made simply because two marks share a common element.

89. I do not find that FLOW is the dominant element of the IR nor do I find that additional letters, BIRD, constitute a plausible brand extension or sub brand. Indeed, I am guided by the comments made by Arnold J in *Whyte and Mackay*¹⁹ where he said

“The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components.”

90. I believe that is the case here. For some consumers, the IR when seen as a whole may be seen as conceptually different from the opponent’s marks, as the word may be seen as more than the sum of its parts. For other consumers the word elements FLOW and BIRD may be seen as having separate concepts but it does not follow that either concept stands out as having independently distinctive significance from the other. I do not find that consumers will be confused into thinking the goods emanate from the same or connected undertakings. If one mark is brought to mind by the other on the basis of the shared letters, FLOW, then I put this down to mere association not indirect confusion as per *Duebros*. Therefore, I do not find there is a likelihood of confusion on the basis of indirect confusion.

¹⁹ *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), [20]

Conclusion

91. The opposition fails in its entirety and subject to any appeal against this decision, the designation will proceed to registration.

Costs

92. The holder has been successful and is entitled to a contribution to its costs. Awards of costs are governed by Annex A of Tribunal Practice Notice (TPN) 2/2016. Bearing in mind the guidance given in TPN 2/2016, I award costs to the holder as follows:

£400 Preparing a statement and considering the opponent's statement

£400 Preparing written submissions

£800 Total

93. I order APCOA Parking Holdings GmbH to pay FLOWBIRD the sum of £800. This sum is to be paid within 21 days of the expiry of the appeal period or within 21 days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 8th day of July 2022

June Ralph

For the Registrar

The Comptroller-General

Annex 1 – Holder’s goods and services

Class 9: Electronic terminals of information, of sale of goods and/or services; electronic remote recognition terminals enabling the output of services sold; interactive information terminals; electronic automata for distributing parcels/goods, electronic parking terminals including electronic off-street parking terminals; memory cards intended for use with parking pay points; parking meters including electronic memory parking meters; parking meters operated by a magnetic card, coins or tokens; parking meters operated by electronic memory cards; parking meters for multi-media communication; parking meters operated by cards with microprocessors; time and date stamping machines including on-street time and date stamping machines; electronic parking ticket accessible via a digital application (software); electronic apparatus for vehicle parking management, especially on-street or in a closed park, especially automatic pay stations; electronic apparatus for access security apparatus for vehicle parking management; electronic apparatus for control of access for car parks; software, servers, computers and communication terminals for the management of car parks; electronic apparatus for communication between time and date stamping machines and a central computer; electronic apparatus for communication (sub-assemblies in communication) to be located in the time and date stamping machines; electronic apparatus for issuance of public transport tickets; software for use in issuance of public transport tickets; electronic memory cards for access to public transport; software, servers, computers and communication terminals for the management of electronic apparatus for issuance of public transport tickets; software, servers, computers and communication terminals for monitoring, management and delivery of parcels and goods; electronic reading and writing apparatus for memory cards for use in parking pay points, parking meters, time and date stamping machines, electronic apparatus for issuance of public transport tickets; apparatus for transmitting vehicle parking data, data in connection with the recharging of electric vehicles, ticketing data; electronic and/or computer apparatus for navigation, orientation, location and positioning of available parking spaces, vehicle recharging points, particularly by means of satellite geolocation; interfaces (computing) and software (recorded programs) for electronic payment transactions; computer software for document management; electronic

payment instruments and apparatus; cash or ticket dispensers; magnetic or chip payment, credit or debit cards; software for accessing databases, telecommunication services, computer networks and electronic bulletin boards; downloadable software for the supply and monitoring of information relating to the distribution and delivery of coin-operated apparatus.

Class 35: Business management assistance, commercial business expertise in the field of parking, electric vehicle recharging points and ticketing; providing marketing and commercial information in the field of parking vehicles, recharging electric vehicles or e-ticketing; providing subscriptions to a telephone service, providing subscriptions to a database, providing subscriptions to a database server; collection and systematization of data in a central file; computer file management; computer file management, in particular via the Internet, extranets or intranets; online retail sales store services providing transport tickets, vehicle reservation tickets, parking spaces, gas cylinders, in particular via the Internet, intranets or extranets; promoting the goods and services of others by means of discount card schemes, discount vouchers; management of a discount program enabling participants to obtain discounts on goods and services; loyalty programs.

Class 36: Payment services by mobile telephone or Internet for parking spaces, electric vehicle recharging, transportation tickets; provision of electronic funds transfer services and on-line transaction facilities; information and consultation in relation to payment; on-line payment services on an electronic communication network; services in relation to bank cards, credit cards, debit cards and electronic payment cards.

Class 37: Maintenance services (servicing, repair) for electronic information terminals and/or sale of goods/services, remote recognition terminals allowing the debiting of services sold, interactive information terminals, electronic machines for dispensing parcels and/or goods, parking terminals, parking meters, time and date stamping machines, electronic apparatus for vehicle parking management, electronic apparatus for access security to apparatus for vehicle parking management, electronic apparatus for control of access for car parks, electronic apparatus for communication between time and date stamping machines and a central computer,

electronic communication apparatus (communication sub-assemblies) to be located in time and date stamping machines, electronic apparatus for issuance of public transport tickets, electronic apparatus for writing/reading for memory cards used in parking terminals, parking meters, time and date stamping machines, electronic apparatus for issuance of public transport tickets.

Class 38: Transmission of data from parking pay points, parking meters, time recorders, automatic parking lot pay terminals, vehicle recharge points and electronic apparatus for issuing transportation tickets to a computer center (one or more computers), for real-time management of parking lots, electric vehicle recharging points and seats on public transportation; transmission and reception of information, messages, via mobile telephones; information transmission from a computer data bank; current affairs information services via mobile telephones; call center services; telecommunication services in connection with vehicle parking, rental of car parking spaces, public transport, car pooling, car sharing, car rental; information relating to telecommunications in relation to vehicle parking, rental of car parking spaces, public transport, carpooling, car-sharing, car rental; electronic display services (telecommunications) in relation to vehicle parking, rental of car parking spaces, public transport, carpooling, car-sharing, car rental; transmission services relating to vehicle parking, rental of car parking spaces, public transport, carpooling, car-sharing, car rental.

Class 39: Providing car parks; services for reserving public transport tickets by public automatic electronic apparatus; vehicle parking services; services for reserving parking spaces provided online via the Internet or mobile telephone; providing information relating to available parking spaces; navigation (guiding) of vehicles to available parking spaces, parking pay points, electric vehicle recharging points; information relating to transport, travel or vehicle rental; rental of vehicle parking spaces; information services relating to vehicle parking, road traffic; information services relating to mobility, namely, car-sharing, carpooling, vehicle rental, recharge terminals for electric cars; vehicle rental; rental of bicycles; information services relating to the rental of vehicles and bicycles; vehicle equipment and accessory rental services.

Class 42: Software and database development (design) intended for operating or controlling apparatus for vehicle parking management, apparatus for issuance of public transport tickets, interactive terminals; updating of software and databases, computer programming services for electronic memory cards intended for apparatus for vehicle parking management.

Annex 2 – Earlier Rights goods and services

Class 9: Computer programs and software for recognising and identifying vehicles and numberplates; Computer programs and software for detecting and identifying mobile communications devices and radio frequency identification tags (RFID); Computer programs and software for data transmission between devices over short distance via radio technology; Apparatus for the transmission of data; Computer programs and software for recognising parking manoeuvres; Computer software and software for automated calculations and payment services; Computer applications for automated vehicle parking control; Devices for automated parking checks and number plate recognition; Computer applications (downloadable) and mobile apps for searching for, reserving, use and paying for parking spaces; Radio-frequency identification (RFID) tags; Labels and cards with integrated RFID chips; Readers for radio frequency identification (RFID) and recognition of data codes; Card reading equipment; Encoded cards; SIM cards; Electronic card readers; Software for card readers; Encoded cards for use in point of sale transactions; Cards bearing electronically recorded data; Encoded cards for use in relation to the electronic transfer of funds; Smart cards [integrated circuit cards]; Smart card readers.

Class 35: Business management and professional business consultancy relating to the construction and management of parking spaces, in particular multi-storey car parks, car parks and other parking installations; Administrative management of multi-storey car parks, parking spaces and other parking facilities; Professional business consultancy, for others, regarding market-development measures, including sales, marketing, advertising campaigns and development and implementation of marketing concepts in relation to the management, by means of rental and leasing, of parking spaces, as well as the design and marketing thereof; Data processing for the collection of data for business purposes; Collection of data relating to parking manoeuvres about users and vehicles for commercial purposes.

Class 36: Rental and leasing and management of properties; Financial affairs and payment collection in relation to parking charges and fines; Electronic

payment services, including via the internet and mobile terminals (via SMS and application software or apps); Payment by means of radio frequency identification (RFID); Automated payment services; Money transfer services utilising electronic cards; Processing electronic payments made through prepaid cards; Bank card, credit card, debit card and electronic payment card services.

Class 37: Providing of information concerning electrical charging options on the internet, on telecommunications networks and via mobile telephone; Reservation and booking of electric charging bays on the internet, on telecommunications networks and via mobile telephone services and application software (apps).

Class 38: Telecommunications, mobile telephone services, radio communications and providing access to application software (apps) for providing information on the internet for searching for, reserving, use and paying for parking spaces; Delivery of messages and data by electronic transmission; Data transmission.

Class 39: Car park services; Car parking; Car park services; Provision of car parks and car parking services; Rental of multi-storey car parks, parking spaces and other parking facilities; Operation of multi-storey car parks and parking facilities; Rental, leasing and reservation of parking areas, in particular of multi-storey car parks, parking spaces and other parking facilities, on the basis of rental, leasing and business service agreements, in particular providing tailored services for parking customers; Rental and leasing of parking spaces; Arranging of parking spaces, for others, in particular via the Internet; Providing of information relating to parking options on the internet, on telecommunications networks and via mobile telephone; Reservation and booking of parking spaces on the internet, telecommunications networks and via mobile telephone and applications software (apps); Transport and traffic logistics, in particular operation and control of traffic and parking guidance systems for moving and stationary traffic; Traffic management services; Taxi management; Shuttle services.

Class 42: Technical consultancy for the design, development and building design of parking areas, in particular of multi-storey car parks, parking spaces

and other parking facilities; Design and development of computer programs and apparatus for recognition of numberplates and vehicles, for navigation in buildings, for radio frequency identification, for technology for data transmission between devices over short distance via radio technology, for detecting of parking manoeuvres, parking checks and for processing of payment procedures; Technical consultancy for design, development and building design of parking facilities with automated parking checks and automated payment services; Software design and development; Design and development of computer hardware.

Class 45: Licensing of computer software for the use of Internet platforms for online and offline management of parking spaces; Licensing of software for the recognition of number plates and vehicles, for navigation in buildings, for radio frequency identification, for technology for data transmission between devices over short distance via radio technology, for detecting of parking manoeuvres, parking checks and for processing of payment procedures; Monitoring of parking areas, in particular of multi-storey car parks, parking spaces and other parking facilities (security services); Monitoring of compliance with parking and usage rules and imposing penalties (legal services and security services).