

O-631-22

**TRADE MARKS ACT 1994
IN THE MATTER OF APPLICATION No. 3434026
BY ANDURIL TECH LTD
TO REGISTER THE TRADE MARK**

ANDURIL

IN CLASSES 9, 12, 28, 42 & 45

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER No. 419244 BY
ANDURIL INDUSTRIES INC.**

AND

**IN THE MATTER OF APPLICATION No. 3469469
BY ANDURIL INDUSTRIES INC
TO REGISTER THE TRADE MARK**

ANDURIL

IN CLASSES 7, 9,12, 13, 28, 37, 38, 42 & 45

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER No. 600001436 BY
ANDURIL TECH LTD**

BACKGROUND

1) On 4 October 2019, Anduril Tech Ltd (hereinafter Tech) applied to register the trade mark "Anduril" in respect of goods and services in classes 9, 12, 28, 42 & 45 (set out in detail at Annex 1).

2) The application was examined and accepted, and subsequently published for opposition purposes on 25 October 2019 in Trade Marks Journal No.2019/043.

3) On 27 January 2020 Anduril Industries Inc. (hereinafter Industries) filed a notice of opposition. The grounds of opposition are based upon a) section 5(4)(a) as the mark is identical to the mark which Industries has been using since 2017, and the goods and services applied for are identical or similar to those which Industries has used its mark upon; and b) section 3(6) on the basis that the application was made in bad faith.

4) On 20 April 2020 Tech filed a counterstatement, in which it denies the grounds of opposition stating that Industries has no reputation in the mark ANDURIL, nor has it any mark registered. Tech states that it has every intention of using the mark and denies any suggestion that they have registered other marks for blocking or other nefarious purposes. Tech states that they had never heard of Industries until the opposition was filed. Tech does not put Industries to proof of use.

5) On 24 February 2020 Industries applied to register the trade mark "Anduril" in respect of goods and services in classes 7, 9, 12, 13, 28, 37, 38, 42 & 45 (set out in detail at Annex 2).

6) The application was examined and accepted, and subsequently published for opposition purposes on 8 May 2020 in Trade Marks Journal No.2020/019.

7) On 10 November 2020 Tech filed a notice of opposition. The grounds of opposition are based upon sections 5(3) & 5(4). Tech claims that it has been using the identical mark on goods and services identical to or similar to those which Industries has applied for since 2012. The opposition only relates to classes 9, 12, 28, 42 & 45.

8) On 5 March 2021 Industries filed a counterstatement, in which it denies the grounds of opposition stating that Tech has no reputation in the mark ANDURIL. Both sides filed evidence. Both sides ask for an award of costs. I note that Industries is professionally represented whilst Tech represented itself. The matter came to be heard on 6 July 2022 when Mr Jennings of Messrs Lane IP Ltd represented Industries; Tech chose not to attend, nor did they provide written submissions.

9) Although the UK has left the EU, section 6(3)(a) of the European Union (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 Act relied upon in these proceedings are derived from an EU Directive. That is why this decision continues to refer to EU trade mark law.

DECISION

10) I shall firstly consider the application by Tech, and the first ground of opposition under Section 3(6) which reads:

“(6) A trade mark shall not be registered if or to the extent that the application is made in bad faith.”

11) In determining the issue I look to *Sky Limited & Ors v Skykick, UK Ltd & Ors*, [2021] EWCA Civ 1121 where the Court of Appeal considered the case law from *Chocoladefabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH*, Case C-529/07 EU:C:2009:361, *Malaysia Dairy Industries Pte. Ltd v Ankenævnetfor Patenter Varemærker* Case C-320/12, EU:C:2013:435, *Koton Mağazacılık Tekstil Sanayi ve Ticaret AŞ*, Case C-104/18 P, EU:C:2019:724, *Hasbro, Inc. v EUIPO, Kreativni Dogaaji d.o.o. intervening*, Case T-663/19, EU:2021:211, *pelicantravel.com s.r.o. v OHIM, Pelikan Vertriebsgesellschaft mbH & Co KG (intervening)*, Case T-136/11, EU:T:2012:689, and *Psytech International Ltd v OHIM, Institute for Personality & Ability Testing, Inc (intervening)*, Case T-507/08, EU:T:2011:46. It summarised the law as follows:

“68. The following points of relevance to this case can be gleaned from these CJEU authorities:

1. The allegation that a trade mark has been applied for in bad faith is one of the absolute grounds for invalidity of an EU trade mark which can be relied on before the EUIPO or by means of a counterclaim in infringement proceedings: *Lindt* at [34].
2. Bad faith is an autonomous concept of EU trade mark law which must be given a uniform interpretation in the EU: *Malaysia Dairy Industries* at [29].
3. The concept of bad faith presupposes the existence of a dishonest state of mind or intention, but dishonesty is to be understood in the context of trade mark law, i.e. the course of trade and having regard to the objectives of the law namely the establishment and functioning of the internal market, contributing to the system of undistorted competition in the Union, in which each undertaking must, in order to attract and retain customers by the quality of its goods or services, be able to have registered as trade marks signs which enable the consumer, without any possibility of confusion, to distinguish those goods or services from others which have a different origin: *Lindt* at [45]; *Koton Mağazacılık* at [45].
4. The concept of bad faith, so understood, relates to a subjective motivation on the part of the trade mark applicant, namely a dishonest intention or other sinister motive. It involves conduct which departs from accepted standards of ethical behaviour or honest commercial and business practices: *Hasbro* at [41].
5. The date for assessment of bad faith is the time of filing the application: *Lindt* at [35].
6. It is for the party alleging bad faith to prove it: good faith is presumed until the contrary is proved: *Pelikan* at [21] and [40].
7. Where the court or tribunal finds that the objective circumstances of a particular case raise a rebuttable presumption of lack of good faith, it is for the applicant to provide a plausible explanation of the objectives and commercial logic pursued by the application: *Hasbro* at [42].
8. Whether the applicant was acting in bad faith must be the subject of an overall assessment, taking into account all the factors relevant to the particular case: *Lindt* at [37].

9. For that purpose it is necessary to examine the applicant's intention at the time the mark was filed, which is a subjective factor which must be determined by reference to the objective circumstances of the particular case: *Lindt* at [41] – [42].

10. Even where there exist objective indicia pointing towards bad faith, however, it cannot be excluded that the applicant's objective was in pursuit of a legitimate objective, such as excluding copyists: *Lindt* at [49].

11. Bad faith can be established even in cases where no third party is specifically targeted, if the applicant's intention was to obtain the mark for purposes other than those falling within the functions of a trade mark: *Koton Mağazacılık* at [46].

12. It is relevant to consider the extent of the reputation enjoyed by the sign at the time when the application was filed: the extent of that reputation may justify the applicant's interest in seeking wider legal protection for its sign: *Lindt* at [51] to [52].

13. Bad faith cannot be established solely on the basis of the size of the list of goods and services in the application for registration: *Psytech* at [88], *Pelikan* at [54]".

12) According to *Alexander Trade Mark*, BL O/036/18, the key questions for determination in a claim of bad faith are:

(a) What, in concrete terms, was the objective that the applicant has been accused of pursuing?

(b) Was that an objective for the purposes of which the contested application could not be properly filed? and

(c) Was it established that the contested application was filed in pursuit of that objective?

13) It is necessary to ascertain what the applicant knew at the relevant date: *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited* [2012] EWHC 1929 (Ch). Evidence about subsequent events may be relevant, if it casts light backwards on the position at the relevant date: See *Hotel Cipriani SRL and others v Cipriani (Grosvenor Street) Limited and others*, [2009] RPC 9 (approved by the Court of Appeal in England and Wales: [2010] RPC 16).

14) Tech filed two witness statements and exhibits dated 23 July 2021 and 20 March 2022 by its Director, Mr Vladimir Afonin. Industries filed three witness statements and exhibits. These were by: Mr Babak Siavoshy, employed as General Counsel by Industries and based in California, dated 31 August 2020. Mr Steven Lane a director of Lane IP Ltd dated 1 September 2020 the Trade Mark Attorney for Anduril Industries Inc; Mr Matt Davis-Ratner an employee of Truepill Inc. a company based in California, USA (not a party in these proceedings) dated 24 August 2020. Three days prior to the hearing, Industries requested permission to file additional evidence, which it contended was not available earlier. In fact the evidence was partly available in July 2021 with the balance available in February 2022. The evidence revolves around the lack of activity by the companies for which Mr Afonin is the sole Director and in particular Tech in the instant case. The evidence shows that Tech has been dormant from 1 November 2019. Tech objected to this evidence being allowed in and described it as “useless information”. I agree with the view on the usefulness of the evidence and decline to admit it in to the case.

15) The statements filed by Industries claim that Mr Afonin has, under the guise of various companies of which he is a director, registered in the UK trade marks identical to trade marks (and for identical or similar goods and services) which are registered and used in the USA by a variety of independent companies with no link to Mr Afonin (Lane W/S and exhibits). These include:

- **Anduril Tech Inc**: founded in 2017 in the USA it is a defence technology company set up to solve complex national security challenges and so it builds a number of different cutting edge hardware and software to meet this goal. Their products are utilised in a wide variety of missions including defence of military bases, outposts and infrastructure. Broadly the products are used to monitor in and around the facilities using sensors, cameras, drones and Artificial Intelligence software enabling personnel to respond. Use of the mark from 2017 is provided. In September 2019 the company was valued at US\$1billion. In June 2019 it was announced that the company was working with the Royal Navy and Royal Marines to modernise the systems of the armed forces. This was covered by the press in the UK such as the Daily Telegraph on 3 October 2019 (exhibit BS3). Anduril Tech Ltd was incorporated on 4 October 2019, and application 3434026 was filed on 4 October 2019. The goods and services for which this mark is applied for covers the same territory as the

goods and services offered by Industries. The sole director of Anduril Tech Ltd is Mr Vladimir Afonin (exhibit BS6).

- **Truepill Inc:** a health-care company launched in the USA in 2016 with a vision to build the first pharmacy application programming interface. In March 2019 it announced it has raised US\$13.4 million to fund a forthcoming expansion to the UK. On 30 September 2019 it applied to register the mark TRUEPILL in the USA in relation to class 5 goods. This was granted registration on 28 April 2020 (Davis-Ratner exhibit 2). On 7 September 2019 application UK3426787 for the mark TRUEPILL with regard to classes 35, 42 & 44 was filed. On 12 October application UK3435976 for the mark “Truepill” with regard to class 5 was filed. Both applications were made by Mr Vladimir Afonin (Davis-Ratner exhibit 3).
- **Berbix Inc:** founded in 2018 in the USA with the aim of making it easy to verify phot IDs online. They filed for registration of the term BERBIX in the USA on 26 October 2017 in relation to goods and services in classes 9 & 42 (Lane exhibit SL2). The UK company Berbix Ltd filed for an identical mark BERBIX and for goods and services identical and/or highly similar to those registered in the USA on 1 October 2019. From its incorporation on 1 October 2019 until 20 January 2021 the sole Director of Berbix Ltd was Mr Vladimir Afonin (Lane exhibit 4).
- **Brex Inc:** Launched in 2018 it offers corporate credit cards along with accompanying services to technology companies. It assists startups to get credit cards with higher limits, and offers an accompanying cash management account, automated expense management and receipt tracking. In June 2019 it raised US\$100million in funding. The company owns the US trade mark 5582163 BREX in relation to classes 9, 35, 36 & 42 registered in 2018. Berbix Ltd, sole director Mr Afonin (Lane exhibit 4) applied for UK 3437818 BREX in relation to classes 9, 35, 36 and 42 on 20 October 2019.
- **Fourkites:** founded in 2014 in the USA and whose platform uses an algorithm to calculate shipment arrival times and enables customers to lower operating costs, improve on-time performance and strengthen end-customer relationships. On 9

September 2014 it achieved registration of its mark FourKites in class 42 in the USA. On 9 August 2019 it sought designation of its International Mark 1499174 in the EU and UK, these were granted on 22 June 2020 and 30 January 2020 respectively. On 11 September 2019 Fourkites Ltd was incorporated in the UK and on the same date sought to register a trade mark "FourKites" in respect of class 42 services in the UK. From its incorporation on 11 September 2019 the sole Director of Fourkites Ltd was Mr Vladimir Afonin (Lane exhibit 8).

- **Veridium IP Ltd:** founded in 2013 in the USA, it provides software which replaces passwords with biometric authentication, thereby improving security. On 14 January 2019 it filed, in the USA, two applications for the trade marks VERIDIUM and VERIDIUMID for goods in class 9 and services in class 42 respectively. The registrations were granted on 23 July 2019 and 17 September 2019 respectively. On 30 September 2019 in the UK, Karlin Realty Ltd filed for a UK trade mark VERIDIUM in class 42. From its incorporation on 7 December 2018 the sole Director of Karlin Realty Ltd was Mr Vladimir Afonin (Lane exhibit 12). This also reveals that he is a Russian living in France and working as an Estate Agent.

16) In his witness statements Mr Afonin denies all the allegations, stating that he had never heard of these companies before seeking to register his trade marks. It is also pointed out that ownership of several of the companies of which Mr Afonin was the sole director has been altered as they have been sold. It is claimed that Mr Afonin was acting on behalf of Mr Dimitry Zuev who asked Mr Afonin to registered the marks referred to by Industries.

Specifically the statement states:

"Truth is that Mr. Vladimir Afonin was approached by one of his associates circa summer of 2019 and was asked if he could act as a registered agent for a few UK registered companies and trademarks on behalf of that associate of his.

That person has Russian citizenship and was not sure if he could register UK companies and trademarks directly to his name. So Mr. Vladimir Afonin agreed and indeed acted as an agent registering those companies and trademarks on this person's behalf. This person's email screenshot where they admit that they had approached Mr. Vladimir Afonin with this specific request is shown in Exhibit VA1. So basically, that proves that Mr. Vladimir Afonin acted as a sub-registrar (or

whatever technical term for this would be) in a way doing the same work as UK IPO does and he should not in any way be responsible for any possible IP violations as he only provided service to another party which originally was provided by the UK IPO and to our understanding it is their responsibility to spot and warn about similar trademarks. Plus, Mr. Vladimir Afonin is not an attorney so he could not possibly know about possible trademark collisions and other IP nuances.”

17) Whether Mr Afonin was acting as an agent for another individual makes no difference to the case. If Mr Zuev had been registering the marks himself rather than via a third party the result is the same. I also note that Tech filed a number of exhibits that purported to show use of the mark ANDURIL prior to the start-up date of Industries. These are less than convincing and do not, in my opinion, show use in the UK, or indeed anywhere.

18) I must keep in mind that an allegation of bad faith is a serious allegation which must be distinctly proved, but in deciding whether it has been proved, the usual civil evidence standard applies (i.e. balance of probability). This means that it is not enough to establish facts which are as consistent with good faith as bad faith: *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited* [2012] EWHC 1929 (Ch).

19) Tech has made reference to various cases pointing out that seeking registration in the UK of marks used in other jurisdictions is not considered an act of bad faith. I accept that although it may be a relevant factor, the mere fact that the applicant knew that another party was using the trade mark in another territory does not establish bad faith: *Malaysia Dairy Industries Pte Ltd v Ankenævnet for Patenter og Varemærker* Case C-320/12. I also note the case of *Wright v Dell Enterprises Inc.* (HOGS AND HEFFERS), BL O/580/16, where, given the territorial nature of IP rights, the mere appropriation of a name registered/used abroad (in that case the USA) was not enough under UK law: there must be something else involved before this can justify a finding of bad faith. Similarly, the mere fact that the applicant knew that another party used the trade mark in the UK does not establish bad faith: *Lindt, Koton* (paragraph 55). The applicant may have reasonably believed that it was entitled to apply to register the mark, e.g. where there had been honest concurrent use of the marks: *Hotel Cipriani*. However, I note that in the instant case there is no credible claim, or acceptable evidence of any use of any mark by Tech, Mr Afonin or any of the companies he controlled.

20) However, an application to register a mark is likely to have been filed in bad faith where the applicant knew that a third party used the mark in the UK, or had reason to believe that it may wish to do so in future, and intended to use the trade mark registration to extract payment/consideration from the third party, e.g. to lever a UK licence from an overseas trader: *Daawat Trade Mark*, [2003] RPC 11, or to gain an unfair advantage by exploiting the reputation of a well-known name: *Trump International Limited v DDTM Operations LLC*, [2019] EWHC 769 (Ch). I also note that in *Copernicus-Trademarks v EUIPO (LUCEO) Case T-82/14*, the General Court found that the filing of EU trade marks for the purposes of blocking applications by third parties, and without an intention to use the mark, was an act of bad faith.

21) I also note that in *Trump International Limited v DDTM Operations LLC*, [2019] EWHC 769 (Ch), Mr Justice Henry Carr considered an appeal from a decision of the registrar to refuse TRUMP TV as a trade mark on the ground that the application had been filed in bad faith. Part of the registrar's reasoning depended on similar fact evidence going to a pattern of behaviour on the part of the applicant's sole director. Carr J. found as follows:

"39. The principles on which similar fact evidence is admissible in civil cases were explained by the House of Lords in *O'Brien v Chief Constable of South Wales Police* [2005] UKHL 26. The Court of Appeal had held that similar fact evidence was only admissible in a civil suit if it was likely to be reasonably conclusive of a primary issue in the proceedings or alternatively if it had enhanced relevance so as to have substantial probative value. The House of Lords held that this test was too restrictive. There should be a two-stage enquiry where the admissibility of such evidence was challenged: first, whether the evidence was potentially probative in the proceedings; and secondly, whether the admission of such evidence would accord with the overriding objective of deciding cases justly. It is necessary to understand the reasons underlying each limb of the two stage enquiry.

40. As to probative value, Lord Bingham said at [3] – [4]:

"3. Any evidence, to be admissible, must be relevant. Contested trials last long enough as it is without spending time on evidence which is irrelevant and cannot affect the outcome. Relevance must, and can only, be judged by reference to the issue which the court (whether judge or jury) is called upon to decide. As Lord Simon of Glaisdale observed in *Director of Public Prosecutions*

v Kilbourne [1973] AC 729, 756, “Evidence is relevant if it is logically probative or disprobative of some matter which requires proof... relevant (i.e. logically probative or disprobative) evidence is evidence which makes the matter which requires proof more or less probable.”

4. That evidence of what happened on an earlier occasion may make the occurrence of what happened on the occasion in question more or less probable can scarcely be denied. If an accident investigator, an insurance assessor, a doctor or a consulting engineer were called in to ascertain the cause of a disputed recent event, any of them would, as a matter of course, enquire into the background history so far as it appeared to be relevant. And if those engaged in the recent event had in the past been involved in events of an apparently similar character, attention would be paid to those earlier events as perhaps throwing light on and helping to explain the event which is the subject of the current enquiry. To regard evidence of such earlier events as potentially probative is a process of thought which an entirely rational, objective and fair-minded person might, depending on the facts, follow. If such a person would, or might, attach importance to evidence such as this, it would require good reasons to deny a judicial decision-maker the opportunity to consider it...”

41. As to the second stage, Lord Bingham said at [5]:

“5. The second stage of the enquiry requires the case management judge or the trial judge to make what will often be a very difficult and sometimes a finely balanced judgment: whether evidence or some of it (and if so which parts of it), which *ex hypothesi* is legally admissible, should be admitted. For the party seeking admission, the argument will always be that justice requires the evidence to be admitted; if it is excluded, a wrong result may be reached. In some cases, as in the present, the argument will be fortified by reference to wider considerations: the public interest in exposing official misfeasance and protecting the integrity of the criminal trial process; vindication of reputation; the public righting of public wrongs. These are important considerations to which weight must be given. But even without them, the importance of doing justice in the particular case is a factor the judge will always respect. The strength of the argument for admitting the evidence will always depend primarily on the

judge's assessment of the potential significance of the evidence, assuming it to be true, in the context of the case as a whole.”

42. These principles will no doubt be familiar to intellectual property practitioners. In relation to allegations of copyright infringement, it is necessary to decide, as a matter of fact, whether copying has occurred. As with claims of bad faith, direct evidence of copying is rarely available. In this context, it is well established that similar fact evidence may be admissible. The case law is considered in *Copinger and Skone James on Copyright*, Vol 1, 17th Edition at [21-393]:

“...where the issue in a copyright case is whether the similarity between the claimant's work and the defendant's work is due to copying or is a coincidence, it is relevant to know that the defendant has produced works which bear a close resemblance to works other than the work in question which are the subject of copyright. Whereas similarity between two works might be mere coincidence in one case, it is unlikely that there could be coincidental similarity in, say, four cases. The probative force of several resemblances together is much better than one alone.”

This reasoning may well apply, depending on the facts, to an allegation that a third-party trade mark has been applied for in bad faith. The probative force of several instances of such applications, by the same or a connected party who has applied to register a third-party trade mark, is obvious. Such instances, if based on solid grounds, are likely to require evidence from the applicant to refute the inference of bad faith that may otherwise be drawn from them”.

22) It is abundantly clear from the evidence set out above that Mr Afonin and the various companies he controlled when he was the sole director were engaged in deliberately registering marks they had no intention of using but applied for simply to block the rightful owners of the marks from seeking registration in the UK when they wished to expand their business from the USA to the UK. The pattern of behaviour is very clear, shortly after a mark is applied for in the USA if it looks likely that it might come to the UK, Mr Afonin or one of the companies under his control would apply for the same mark in respect of identical or highly similar goods and services in the UK. If and when the USA company sought a registration in the UK they would find an existing registration and would be met with a blank

denial of knowledge that the American company might come to the UK. Put bluntly Mr Afonin is a chancer whose modus operandi is very clearly set out in the evidence of Industries. To my mind, there can be no doubt that the application was applied for in bad faith and offends against section 3(6) of the Act. As a result the mark 3434026 will be refused registration.

23) Although the above finding determines the whole case, I will go on to consider the ground of opposition under section 5(4)(a) which reads:

“(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented-

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

(aa) [...]

(b) [...]

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an “earlier right” in relation to the trade mark.”

24) Subsection (4A) of Section 5 states:

“(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application.”

25) In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

“55. The elements necessary to reach a finding of passing off are the ‘classical trinity’ of that tort as described by Lord Oliver in the *Jif Lemon* case (Reckitt & Colman

Product v Borden [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56. In relation to deception, the court must assess whether "*a substantial number*" of the Claimants' customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21)."

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

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

- (1) that a name, mark or other distinctive indicium used by the claimant has acquired a reputation¹ among a relevant class of persons; and
- (2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other indicium which is the same or sufficiently similar that the defendant's goods or business are from the same source² or are connected.

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

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

- (a) the nature and extent of the reputation relied upon,
- (b) the closeness or otherwise of the respective fields of activity in which the claimant and the defendant carry on business;
- (c) the similarity of the mark, name etc used by the defendant to that of the claimant;

- (d) the manner in which the defendant makes use of the name, mark etc complained of and collateral factors; and
- (e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.

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

27) In *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O-410-11, Mr Daniel Alexander QC as the Appointed Person considered the relevant date for the purposes of s.5(4)(a) of the Act where one or both of the parties have used the mark(s) at issue prior to the date of the application to register the contested mark(s). He explained that:

“41. There are at least three ways in which such use may have an impact. The underlying principles were summarised by Geoffrey Hobbs QC sitting as the Appointed Person in *Croom’s TM* [2005] RPC 2 at [46] (omitting case references):

- (a) The right to protection conferred upon senior users at common law;
- (b) The common law rule that the legitimacy of the junior user’s mark in issue must normally be determined as of the date of its inception;
- (c) The potential for co-existence to be permitted in accordance with equitable principles.

42. As to (b), it is well-established in English law in cases going back 30 years that the date for assessing whether a claimant has sufficient goodwill to maintain an action for passing off is the time of the first actual or threatened act of passing off: *J.C. Penney Inc. v. Penneys Ltd.* [1975] FSR 367; *Cadbury-Schweppes Pty Ltd v. The Pub Squash Co. Ltd* [1981] RPC 429 (PC); *Barnsley Brewery Company Ltd. v. RBNB* [1997] FSR 462; *Inter Lotto (UK) Ltd. v. Camelot Group plc* [2003] EWCA Civ 1132 [2004] 1 WLR 955: “date of commencement of the conduct complained of”. If there was no right to

prevent passing off at that date, ordinarily there will be no right to do so at the later date of application.

28) In *Smart Planet Technologies, Inc. v Rajinda Sharma* [BL O/304/20], Mr Thomas Mitcheson QC, as the Appointed Person, pointed out that “*the start of the behaviour complained about*” is not the same as the date that the user of the applied-for mark acquired the right to protect it under the law of passing off. Rather, it is the date that the user of that mark committed the first external act about which the other party could have complained (if it knew about it) as an act of actual or threatened passing off. Typically, this will be the date when first offer was made to market relevant goods or services under the mark. However, it could also be the date the first public-facing indication was made that sales were proposed to be made under the mark in future. If the user of the applied-for mark was not passing off at the time such use commenced (usually because no one else had acquired a protectable goodwill under a conflicting mark at that time), he or she will not normally be passing off by continuing to use the mark.

29) In the instant case Tech claims to have been using their mark since 2012 on security and protection systems. Tech also states its belief that Industries came across Tech’s brochures, distributed in 2016, and decided to use the same trade name. At exhibit 1 Mr Afonin provides a screenshot from the website “open corporates” which states that Anduril Enterprise Ltd was formed in Cyprus in 2009. Exhibit 2 appears to be a page generated by Tech which purports to show that it began an advertising campaign in 2012, whilst exhibits 3 & 4 are maps of Europe, Tukey and the UK on internal documents which claim to show the area where the company traded. Exhibit 5 is said to be a copy of a brochure, but is in fact merely a single typed sheet which might have fronted a brochure. Exhibits 6-10 are said to be pages from a brochure but are merely typed pages, not professionally printed. Exhibit 11 is a screenshot from the web.archive.org site which shows a company called Mungara. It is a single page which has very small print but which offers “design / architect / construction / engineering / ecology and innovation / power network /water supply and sewage / ventilation and air conditioning / fire protection systems / video monitoring and security systems / audio systems installation / video systems installation”. There is no detail as to where these services are offered, nor any detail as to what precisely the services entail. Exhibit 12 shows a video surveillance camera typical of the type found in any city centre or factory. There are no turnover or advertising figures, no independent

corroboration of any of the claims and the exhibits are mostly the type of document used internally and drawn up in preparation of trading before getting professional printers to print colour brochures etc. There is no evidence of any actual trading or even offering to carry out services for consumers in the UK. I must also consider how much weight to attach to the claims made given the earlier finding. Whilst it is not possible to state categorically that the evidence has been fabricated, it is less than convincing in the light of the track record of Mr Afonin and companies under his control such as Tech.

30) I therefore find that there was no use by Tech prior to the application date and so the relevant date for this ground of opposition is 4 October 2019. I must now consider whether as at this date Industries had goodwill and if so in what goods and services. In considering this I take into account the views expressed in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 (HOL):

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start.”

31) Industries filed a witness statement by its in-house General Counsel, Babak Siavoshy dated 31 August 2020. This include exhibits from the Wayback Machine, the UK press and media which shows the ANDURIL mark being used on a wide range of goods and services such as computer software and hardware, drones, security services, training in security and use of security and surveillance systems amongst a range of goods and services provided to the US and UK military and government organisations in both countries. Obviously if the company is providing goods and services to the Ministry of Defence and various arms of the United States Military one would correctly assume that the company has been vetted at considerable depth. This will provide confidence to any other consumer looking for the defence or security technology and services offered by Industries. As part of its TM7 Industries provided a list of goods and services which it had reputation and goodwill in which was three pages long. Rather than reproduce that list here I merely confirm that I have studied the list against the evidence provided and believe the list to be reasonable and that Industries has goodwill in these goods and services. Industries therefore clears the first hurdle with room to spare.

32) When comparing this list to the list of goods and services which Tech is seeking to register it is clear that there is for the most part overlap, or at least close similarity between the goods and services of the two parties such that if the mark in suit were used by Tech on any of the goods and services sought to be registered there would be misrepresentation with a considerable number of actual or potential consumers of Industries being deceived into thinking that the goods and services of Tech came from Industries. The second hurdle is therefore easily cleared.

33) Turning to the issue of damage in a *quia timet* action it is clearly not possible to show that damage has been suffered. In *Draper v Trist and Trisbestos Brake Linings Ltd* [1939] 56 RPC 429 Goddard L.J. stated:

“But in passing-off cases, the true basis of the action is that the passing-off by the defendant of his goods as the goods of the plaintiff injures the right of property in the plaintiff, that right of property being his right to the goodwill of his business. The law assumes, or presumes, that if the goodwill of a man’s business has been interfered with by the passing-off of goods, damage results therefrom. He need not wait to show that damage has resulted, he can bring his action as soon as he can prove passing-off; because it is one of the class of cases in which the law presumes that the Plaintiff has suffered damage. It is in fact, I think, in the same category in this respect as an action for libel. We know that for written defamation a plaintiff need prove no actual damage. He proves his defamation. So, with a trader; the law has always been particularly tender to the reputation and goodwill of traders. If a trader is slandered in the way of his business, an action lies without proof of damage.”

34) Consequently in the instant case as Industries has established a goodwill and shown deception then damage can be considered as the automatic sequitur and the three elements of the classic trinity of passing-off have been established. The ground of opposition under section 5(4)(a) succeeds.

35) Given the above findings the opposition 60001436 to application 3469469 cannot be sustained as there is no earlier right for Tech to rely upon, and its case under Section

5(4)(a) cannot succeed as I have found that Tech has not shown any evidence of goodwill in the UK, or indeed, anywhere.

CONCLUSION

36) The oppositions by Industries under sections 3(6) and 5(4)(a) succeed. Trade mark 3434026 is to be denied registration. This means that Tech has no earlier right to rely upon in its opposition 600001436 to Industries application 3469469, and so trade mark 3469469 will be registered.

COSTS

37) As Industries has been successful it is entitled to a contribution towards its costs. Tech have been found to have applied for their trade mark in bad faith, and their evidence in the instant case is questionable as are many of its claims. I have therefore awarded costs at the higher end of the scale.

Preparing a statement and considering the other side's statement x 2	£1300
Expenses	£200
Preparing evidence	£1500
Attendance at hearing	£1500
TOTAL	£4500

38) I order Anduril Tech Ltd to pay Anduril Industries Inc. the sum of £4,500. This sum to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 25th day of July 2022

G W Salthouse

For the Registrar

the Comptroller-General

Annex 1

Class 9

3D computer graphics software;Acceleration sensors;Access control devices;Accumulators, electric;Aerial amplifiers;Aerials;Aerials for radios;Aerials for telecommunications networks;Aerials for wireless communications apparatus;Aeronautical communications apparatus;Aeronautical radio communication machines and apparatus;AI software;Aiming sights [telescopic];Aiming telescopes;Air pollution measuring devices;Air quality sensors;Air temperature sensors;Air traffic control apparatus;Alarm central units;Alarm installations;Alarm monitoring systems;Alarm sensors;Alarm signalling receivers;Alarm signalling transmitters;Alarm systems;Alarms;Alarms and warning equipment;Altimeters;Antenna boosters;Antenna cables;Antenna masts;Antenna parameter measuring apparatus;Antenna positioners;Antenna transmission wire;Antennas;Antennas [aerials];Antennas and aerials as communications apparatus;Antennas and aerials as components;Antennas for wireless communications apparatus;Anti theft warning devices;Anti-intrusion alarms;Anti-theft alarms not for vehicles;Anti-theft alarms [other than for vehicles];Anti-theft warning apparatus;Apparatus and instruments for processing data;Apparatus and instruments for processing images;Apparatus and instruments for processing sound;Apparatus and instruments for recording of data;Apparatus and instruments for recording of images;Apparatus and instruments for recording sound;Apparatus and instruments for transmitting data;Apparatus and instruments for transmitting images;Apparatus for the processing of data;Apparatus for the processing of images;Apparatus for transmission of communication;Apparatus providing night vision;Application development software;Application software;Application software for cloud computing services;Application software for mobile phones;Application software for smart phones;Artificial intelligence and machine learning software;Artificial intelligence software;Artificial intelligence software for analysis;Artificial intelligence software for surveillance;Augmented reality game software;Augmented reality software;Automated drone detection systems;Automatic pilots;Big data management software;Computer application software;Computer game software;Computer hardware;Computer hardware for tracking driver behaviour;Computer software for Global Positioning Systems (GPS);Computer software for the remote control of security apparatus;Computer software to

operate vehicles;Computer systems for automated vehicle control;Digital signal processors;Drone detection systems;Electronic article surveillance [EAS] software;Electronic surveillance apparatus;Global Positioning System [GPS] apparatus;GPS software;Infrared cameras;Infrared detection apparatus;Infrared devices for aiming weapons;Infrared devices for guiding weapons;Infrared remote controllers;Intruder detecting apparatus [other than for vehicles];Intruder detection apparatus;Machine learning software;Machine learning software for surveillance;Masts for aerials;Masts for wireless aerials;Masts [wireless aerials];Metal masts [aerials];Metal poles [aerials];Motion sensors;Motion-activated cameras.

Class 12

Air and space vehicles;Aircraft;Airplane propellers;Airplanes;Airplanes and structural parts therefor;Alarm systems for aircraft;Apparatus for locomotion by air;Apparatus for locomotion by land, air or water;Automatic guided vehicles;Autonomous vehicles;Bodies for aircraft;Camera drones;Camera drones, other than toys;Delivery drones;Driverless transporter vehicles;Drone;Drones;Drones with aerial photography feature;Electric vehicles;Electrically operated vehicles;Electrically powered aircraft;Gliders [aircraft];Helicopters;Hovercraft;Jet aircraft;Military aircraft;Military drones;Plastic wings for use on aircraft;Powered vehicles for use in the air;Propeller airplanes;Propeller blade protectors for aircraft;Propeller feathering units;Propellers for air vehicles;Remote alarms for air vehicles;Remote control vehicles not toys;Remote control vehicles, other than toys;Remote controlled flying objects;Remote controlled vehicles;Remotely operated vehicles;Rescue drones;Screw-propellers;Self-driving cars;Self-propelled electric vehicle;Self-propelled electric vehicles;Space vehicles;Spacecraft;Structural parts for helicopters;Tilt rotor aircraft;Ultralight aircraft;Ultralight airplanes;Unmanned aerial vehicles;Unmanned aerial vehicles (UAVs);Unmanned vehicles;Vehicles adapted for military purposes;Vehicles for locomotion by land, air, water or rail;Vehicles for travel by air;Wings for aircraft.

Class 28

Drones [toys];Remote control toys;Remote controlled flying toys;Remote controlled toys in the form of vehicles;Remote-controlled toy vehicles.

Class 42

Advisory services relating to technological research;Airborne remote monitoring relating to environmental explorations;Airborne remote

monitoring relating to scientific explorations;Airborne remote sensing relating to environmental explorations;Aircraft design;Civil engineering;Civil engineering design services;Cloud computing;Collection of information relating to the environment;Computer analysis services;Computer and information technology consultancy services;Computer engineering;Computer hardware and software design;Computer hardware (Consultancy in the design and development of -);Computer hardware (Consultancy in the field of -);Computer hardware (Design of -);Computer hardware development;Computer hardware leasing;Computer hardware rental;Computer programming and maintenance of computer programs;Computer programming for data processing and communication systems;Computer programming services for commercial analysis and reporting;Computer programming services for electronic data security;Computer security consultancy;Computer services;Computer software design and development;Computer software development;Computer software engineering;Computer software installation;Computer software installation and maintenance;Conducting sampling and analysis services to check for contamination;Consultancy and information services relating to information technology;Consultancy (Computer software -);Consultancy in the field of computer hardware;Consultancy in the field of computer security;Creating programmes for data processing;Design and development of electronic data security systems;Design and development of new technology for others;Design and development of software and hardware for signal amplification and transmission;Design and development of software for control, regulation and monitoring of solar energy systems;Design and development of video game software;Design and development of virtual reality software;Design and development of wireless data transmission apparatus, instruments and equipment;Design, development and programming of computer software;Design of computer game software;Design of computer hardware;Design of computer hardware for the manufacturing industries;Design of hardware for audio and video operators;Design of hardware for digital signal processing;Design of operating system software;Developing and updating computer software;Development of aircraft;Development of computer game software;Development of computer hardware;Development of computer hardware for computer games;Development of computer hardware for the manufacturing industries;Development of systems for the processing of data;Development of vehicles;Development of virtual reality software;Engineering;Engineering consultancy services;Engineering design and consultancy;Engineering research;Engineering services relating to computer programming;Engineering services relating to information technology;Engineering services relating to

robotics;Environmental surveys;Industrial analysis and research;Information technology services;IT services;Marine, aerial and land surveying;Meteorological research;Monitoring of activities which influence the environment within buildings;Monitoring of audio warning signals;Monitoring of building structures;Monitoring of computer systems by remote access;Monitoring of contaminated land;Monitoring of water quality;Oil burner inspection;Oil field surveying;Pipeline inspection services;Product development;Professional advisory services relating to computer hardware;Professional advisory services relating to computer software;Providing information about industrial analysis and research services;Providing science technology information;Providing scientific information in the field of climate change;Providing weather information;Research and consultancy services relating to computer hardware;Research and development of new products;Research in the area of environmental protection;Research in the field of climate change;Research in the field of computer hardware;Research in the field of ecology;Research in the field of energy;Research relating to technology;Software as a service [SaaS];Software as a service [SaaS] featuring computer software platforms for artificial intelligence;Software as a service [SaaS] featuring software for deep learning;Software as a service [SaaS] featuring software for deep neural networks;Software as a service [SaaS] featuring software for machine learning;Software as a service [SaaS] featuring software platforms for electronic gaming;Surveying;Surveying and exploration;Surveying of land;Surveying services;Technical advice relating to safety;Technical research;Technical research in the field of aeronautics;Technological consultancy in the field of aerospace engineering;Technological research;Toy design.

Class 45

Alarm monitoring services;Closed-circuit surveillance;Consulting services in the field of national security;Electronic monitoring services for security purposes;Industrial property watching services;Monitoring of burglar and security alarms;Monitoring of security systems;Physical security services;Rental of security surveillance equipment;Safety, rescue, security and enforcement services;Security guard services for the protection of property and individuals;Security guarding for facilities;Security monitoring services;Security services;Security services for the physical protection of tangible property;Security services for the protection of property;Surveillance services.

Annex 2

Class 7

Industrial robots and their parts; Industrial robots for use in security, safety and inspection applications; Industrial robots for use in logistics applications; Robotic exoskeleton suits; Engines and motors for aircraft and unmanned vehicles, and their parts; Thrusters for machinery; Generators of electricity; Electrical power generators; Power management systems; Engines other than for land vehicles; Propulsion systems; Machines for use in assembly of vehicles.

Class 9

Computers; Computer hardware; Computer peripherals; Communications equipment; Solar panels for production of electricity; Computer software; Software; Downloadable computer software; Downloadable mobile applications; Downloadable software for radar, radio frequency, and signal jamming; Downloadable software for detecting, countering, disabling, and/or destroying robots, vehicles, and drones; Radar, radio frequency, and signal jamming apparatus and equipment; Electronic equipment for detecting, countering, disabling, and/or destroying robots, vehicles, and drones; Electronic equipment for disabling and destroying drones and unmanned aerial systems (UAS) by interfering with or impeding radio frequencies; Downloadable artificial intelligence software; Downloadable virtual reality and augmented reality software and mobile applications; Virtual reality and augmented reality apparatus, hardware, and peripherals; Virtual reality software and hardware; Augmented reality software and hardware; Mixed reality software and hardware; Downloadable computer graphics software and applications; Computer software for management, storage and network management of digital media and enhancement of graphical and video display; Computer software for operation of integrated circuits, semiconductors, computer chipsets and micro-processors; Machine learning processors; Computer software for performing computer graphics operations and improving graphical and video display capabilities; Computer software for coordinating the operation and management of a variety of sensors, computer hardware, communications equipment, and unmanned vehicles; Computer software for operating and managing unmanned vehicles with the aid of artificial intelligence; Computer hardware and recorded software system for remotely monitoring environmental conditions and controlling devices within a building, facility, grounds, or designated spatial area; Computer software for the security of persons and premises, for surveillance, and for reconnaissance; Computer software for operating and deploying weapon systems; Computer

hardware and software for artificial intelligence, machine learning, deep learning, natural language generation, statistical learning, supervised learning, un-supervised learning, data mining, predictive analytics and business intelligence applications; Computer software for implementing swarm intelligence programs and algorithms; Computer hardware and software systems for artificial intelligence, computer vision, and mesh networking; Telecommunication towers; Telecommunications terminals; Telecommunication tower systems for security and surveillance, comprised primarily of wireless transmitters and receivers, computer hardware, computer software, cameras, solar panels, and electronic sensors, and also containing mounting hardware, telecommunications tower bases, lights, and metal poles; Software and hardware for use in operating artificial intelligence platforms; Data processing equipment; apparatus, instruments and equipment for electronic warfare, namely, electronic jamming devices and radar jamming devices; Laser object detectors for use on vehicles; Lasers for measuring purposes; Lidar apparatus; Lidar sensors; Radar apparatus; Sensors (hardware and software) for the detection of electromagnetic, ultraviolet and infrared radiation; Infrared sensors; Collision warning sensors and radars; Surveillance cameras, vision equipment and electronic and optical sensors for manned and unmanned vehicles; Software for detecting and identifying vehicles; Laser warning apparatus; Thermal imaging apparatus and daytime vision apparatus; Thermal imaging hardware, namely, near infrared (NIR), short-wave infrared (SWIR), medium-wave infrared (MWIR), and long-wave infrared (LWIR) devices; Downloadable software for automotive technology, namely, software comprised of artificial intelligence and systems for autonomous navigation of motor vehicles; Programmable electronic controllers for autonomous vehicles; Electronic devices for preventing the detonation of explosives and munitions; Computer hardware and software for detecting, classifying and analyzing presence, location, motion and nature of vehicles, aircraft, tanks, marine vessels, weapons platforms and personnel; Central processing units for processing information, data, sound or images; Automatic altitude indicators, speed indicators, level indicators and temperature indicators; Power supplies for lights, cameras, surveillance equipment, sirens and public address systems; Security surveillance robots; Guidance and navigation systems; Motion detection software and hardware; Global Positioning Systems (GPS); Software for developing, manufacturing, controlling, flying, steering, navigating, monitoring vehicles; Electronic equipment and systems namely, computer hardware and software for directing combat operations; Software for recording and processing data for controlling, flying, steering, navigating, monitoring and securing vehicles; Electronic communications, navigation, collision warning and pilot assistance

systems for vehicles; Navigational instruments for vehicles on-board computers; Hardware and software for land or air vehicles for recording vehicle data and mission data; Software for planning and managing intelligence gathering requests; Hardware and software for surveillance and monitoring; Data processing apparatus and computers; Satellite transmitters and receivers; Power converters and transponders; Software for secure communications; Software for satellite imaging and data; Hardware and software for target recognition, target identification and target tracking; Multi-sensor platforms for vehicles; Downloadable software for 3D-visualization, 3D modeling and 3D rendering; Software for image rendering, modeling, and image manipulation and processing; Electronic computer vision accelerators, namely, artificial intelligence, machine learning, deep learning, high performance computing, and simulation hardware and software; Electronic video streaming system and products, namely, electronic components of security systems; Mesh networking software and hardware; Wireless mesh sensing hardware and software; Mesh communication devices; Perimeter awareness systems; Head-mounted displays; Virtual reality headsets; Augmented reality headsets; Virtual reality glasses; Virtual reality software for operating virtual reality headsets; Augmented reality glasses; Augmented reality software for operating augmented reality headsets; Gesture recognition software; Motion tracking sensors for augmented reality technology; Motion tracking sensors for virtual reality technology; Virtual reality software for navigating a virtual reality environment; Virtual reality software for object tracking, motion control and content visualization; Augmented reality software for navigating an augmented reality environment; Software for recording, storing, transmitting, receiving, displaying and analyzing data from wearable computer hardware; Software, firmware and hardware for use in visual, voice, audio, motion, eye and gesture tracking and recognition; Software for wireless content, data and information delivery; Sensor fusion hardware and software; Downloadable software and algorithms for sensor fusion; Electronic computer vision accelerators; Artificial intelligence apparatus, namely, computer hardware and software for enhancing products and services with artificial intelligence technology; Automated self-contained video streaming devices that can be deployed to gather and analyze information in remote locations; Computer hardware and computer software system that detects, classifies, triangulates, and tracks real world objects using computer vision sensors; Hardware systems comprised of cameras, switchers, monitors, microphones, recorders, transmitters and video streaming devices for IP (Internet protocol) video surveillance, namely, transmission of data; Mobile computers and mobile communications devices, namely, portable digital audio, video and multimedia transmitters and receivers for use with

text, audio, video, images, still and motion pictures, graphics, signals, messages, multimedia files, and other digital data; Computer hardware and software for processing, reproducing, synchronizing, recording, organizing, downloading, uploading, transmitting, streaming, receiving, playing and viewing text, multimedia and data files; Computer hardware and software for use in artificial intelligence applications and computer vision; Computer vision software; Pattern recognition software; Computer hardware and software, and communications hardware and software for the operation, control, maintenance, and management of vehicles; Computer hardware and software for vehicle components for the purpose of vehicle navigation, travel and trip planning and communication with vehicles; Computer hardware and software for collecting, tracking, analyzing, and reporting data and information in the field of self-driving and autonomous vehicles; Software and hardware that facilitates data transmission, data collection, data analysis, and decision-making; Computer hardware for IP video streaming; Software for navigation, steering, tracking, communication, object detection, controlling cameras and sensors, and image processing; Software for steering and navigation of autonomous vehicles; Software for communicating with autonomous vehicles; Software for searching, locating, compiling, indexing, correlating, navigating, obtaining, downloading, receiving, encoding, decoding, playing, storing and organizing text, data, images, graphics, audio and video on a global computer network; Software for collecting, managing, editing, organizing, modifying, transmitting, sharing, and storing of data; Software platforms for artificial intelligence applications; Software, namely, an interpretive interface for facilitating interaction between humans and machines; Software for compute intensive processing, processing architecture, smart infrastructure, predictive intelligence, execution planning and operating sensor devices for use in the fields of artificial intelligence, machine learning, deep learning, high performance computing, distributed computing, virtualization, natural language generation, statistical learning, supervised learning, un-supervised learning, data mining, predictive analytics and business intelligence; Software for modifying and enabling transmission of images, audio, audio visual and video content and data; Software and hardware for battlefield awareness; Software and hardware for threat assessment and intelligence; Software for processing images, graphics, audio, video, and text; Voice command and recognition software, speech to text conversion software; Voice processing software, namely, software for the control of voice controlled information and communication devices; Wireless controllers to monitor and control the functioning of other electronic devices; Electronic components, namely, circuit boards, Field Programmable Gate Array IP Cores, artificial neural networks, electronic thermal sensors, geofencing sensors, electromagnetic sensors,

mechanical sensors, optical sensors, proximity sensors, image sensors, and motion sensors; Software for connecting, operating and managing networked computing systems, sensors, actuators, robotic systems, communication systems, and test systems; Scientific instruments, namely, instruments for gathering, measuring and processing data for use in the fields of artificial intelligence, machine learning, deep learning, high performance computing, distributed computing, virtualization, natural language generation, statistical learning, supervised learning, un-supervised learning, data mining, predictive analytics and business intelligence; Software, firmware and hardware for use in the fields of edge computing, artificial intelligence, high performance computing, distributed computing, machine learning, automation controls, data collection and data analytics; Wireless communication software for voice, audio, video, and data transmission; Robotic systems comprised of actuators, controllers and computer processors, all for use in the fields of artificial intelligence, machine learning, deep learning, high performance computing, distributed computing, virtualization, natural language generation, statistical learning, supervised learning, un-supervised learning, data mining, predictive analytics and business intelligence; Communication transceivers, and power supplies for use in the fields of network edge computing, artificial intelligence, high performance computing, distributed computing, machine learning, automation controls, data collection and data analytics; Software development tools; Electronic display interfaces; Equipment for data processing and computers, namely, computer hardware and computer peripherals which integrate machine learning and artificial intelligence technology; Hardware and software for detecting objects, user gestures and commands; Hardware and software for operating sensor devices; Computer hardware for artificial intelligence and machine learning technology; Portable electronic devices for receiving and reading text, images and sound through wireless internet access; Simulation, modeling and data processing software and hardware for use in data visualization, data analysis, data mining, data interpretation, predictive analytics, accessing and editing large-scale data, interactive visual computing, design of information graphics, video streaming, maximizing graphics processing and performance; Electronic computing software platform for self-driving and autonomous vehicles; Self-driving and autonomous vehicle electronic driving system and equipment in the nature of artificial intelligence, machine learning, deep learning, high performance computing, and simulation software and hardware; Software for image analysis, content classification and categorization; Electronic sensors; Electronic controllers and control devices; Sensors for detecting and measuring acceleration; Sensors for detecting and measuring motion; Sensors for monitoring physical movements; Sensors for detecting and measuring the position of objects; Sensors for detecting and

measuring temperature and pressure; Electronic night vision devices and apparatus; Electronic thermal vision devices and apparatus; Motion control devices and apparatus; Navigation apparatus; Vehicle navigation devices; Global positioning systems (GPS); Vehicle tracking devices; Tracking devices using sensor fusion; Batteries; Batteries for vehicles; Security cameras; Apparatus and instruments for conveying, distributing, transforming, storing, regulating or controlling electricity; Security surveillance robots; Tactical robots; Wireless communication equipment, apparatus, and peripherals; Optical and aiming instruments and devices; Air traffic control apparatus and equipment; Wireless transmitters and receivers; Antennas, aerials, and parts and accessories therefor; Apparatus and instruments for recording, analyzing, processing, and transmitting data, sound, images, and video; Automated drone detection systems; Automatic piloting and navigation software; Downloadable computer software for the collection, editing, organizing, modifying, book marking, transmission, storage, and sharing of data and information; Unmanned and robotic vehicle control computer systems; Unmanned and robotic vehicle navigation computer systems; Electronic surveillance apparatus and equipment; Cameras; Infrared cameras; Infrared detection apparatus; Infrared devices; Intruder detecting apparatus; Motion-activated cameras; Industrial automation controls; Software for controlling edge devices; Software for controlling self-driving and autonomous vehicles; Parts and fittings for all the aforesaid goods.

Class 12

Vehicles; Unmanned aerial vehicles (UAVs); Drones; Camera drones; Remote controlled air, land, water and space vehicles; Military drones; Military decoys in the nature of unmanned aerial vehicles; Military vehicles for transport; Robotic transport vehicles; Structural parts of aircraft; Structural parts of drones; Air and space vehicles, and structural parts therefor; Aircraft; Helicopters; Rotorcraft; Vehicle propellers and blades therefor; Hovercraft; Jet aircraft; Military aircraft; Marine vehicles; Boats; Ships; Thrusters for vehicles; Remote control aircraft; Unmanned aircraft; Amphibious airplanes; Gliders; Light aircraft; Apparatus for locomotion by land, air, water or rail; Space vehicles; Launch vehicles in the nature of spacecraft; Self-driving transport vehicles; Vehicular balloons; Aeronautical apparatus, namely, remote-controlled aircraft other than toys; Land vehicles and structural parts therefor; Automobiles; Autonomous vehicles, namely, unmanned vehicles and self-driving vehicles; Robotic cars; Structural parts for autonomous vehicles; Vehicles featuring autonomous driving features and structural parts and accessories therefor; Driverless vehicles; Driverless transporter vehicles,

namely, self-driving transport vehicles; Driverless cars, namely, autonomous cars; Electric vehicles; Autonomous vehicles based on artificial intelligence solutions; Robotic and self-driving transport vehicles that transport people, packages, supplies and freight; Driverless land vehicles; Connected vehicles, namely, vehicles connected to internet; Remote controlled vehicles; Structural electrical assemblies adapted for vehicles; Vehicles for neutralizing and destroying other vehicles.

Class 13

Ammunition; Munitions; Explosives; Ballistic weapons; Projectiles [weapons]; Guided projectiles; Missiles; Bombs; Firearms and artillery; Kinetic weapons for disabling and destroying drones and unmanned aerial systems (UAS); Remotely-operated kinetic projectiles for disabling and destroying drones and unmanned aerial systems (UAS); Remotely-operated kinetic projectiles in the nature of drones for disabling and destroying other drones and unmanned aerial systems (UAS) via impact; Air to surface weapons; Surface to air weapons; Decoy weapons; Weapon-launching apparatus; Electronically-controlled weapons platforms that may also be used as decoys and for reconnaissance; Remotely-operated weapons; Ballistic weapons and projectiles for use with robots, vehicles and drones; Ballistic weapons and projectiles for countering, disabling, and/or destroying robots, vehicles and drones; Detonators; explosive armor plating, namely, armor plating for military vehicles comprising explosives between metal plates; Gun turrets, gun carriages, missile launchers, countermeasure launchers, and decoy weapon launchers for later installation in or on aircraft, unmanned vehicles, drones, land vehicles, or marine vehicles; Defensive weapon systems; directional infrared (IR) and laser devices for defending against weapon attacks, namely, directional infrared countermeasures (DIRCM) systems comprised mainly of sensors, infrared signal transmitters, lasers, directional aiming devices and associated computer processing systems for threat assessment, weapon tracking and directing energy from such infrared sensors and lasers onto attacking weapons to neutralize the threat; drone and UAS defense system comprised of signal jammers, precision targeted weapons, and /or lasers with kill assessment capabilities for the purpose of intercepting and destroying enemy drones and UAS; firing control installations in the nature of sighting devices, other than telescopic sights, for firearms; parts and fittings of the aforesaid goods.

Class 28

Toy drones, and parts and accessories therefor; Toy vehicles, and parts and accessories therefor; Remote control toys, and parts and accessories therefor; Remote controllers for toy vehicles; Toy model kits; Scale model kits.

Class 37

Construction services; Repair, maintenance, and installation of computer hardware, electronics, and electrical devices; Vehicle repair, maintenance, and installation services; Aircraft and spacecraft repair, maintenance, and installation services; Drone repair, maintenance, and installation services; Unmanned vehicle repair, maintenance, and installation services; Technical maintenance and repair services relating to computer hardware, electronics, electrical devices, vehicles, aircraft, spacecraft, drones, and unmanned vehicles; Consulting, advisory, and information services relating to the aforesaid.

Class 38

Telecommunications services; Aeronautical telecommunication services; Electronic transmission of messages and data; Telecommunication services, namely, local and long-distance transmission of voice, data, graphics and video by means of wired and wireless networks; Telecommunication services, namely, providing access to pictures, video, alarm status, building plans and other building and security information at a remote station; Telecommunication services, namely, providing electronic message alerts over wireless networks relating notifying individuals of a changed status or condition of sensing devices, robots, and unmanned vehicles in a security and/or surveillance system; Electronic exchange of voice, data, audio, video, text and graphics accessible via computer and telecommunications networks; Teleconferencing services; Telephony communication services; Streaming and live streaming of video, audiovisual, and interactive audiovisual content via the internet; Providing technical support services regarding the usage of communications equipment; Providing access to computer, electronic and online databases; Telecommunications services, namely, electronic transmission of data, messages, graphics, images, audio, video and information; Computer transmission of communications, images and sounds; Communications by computer terminals; Communications by computer networks; Providing of access to electronic databases for drawings, images, photographs, graphic representations, aerial and satellite images and surface models; Providing of access to databases via the internet; Digital and satellite transmission; On-board wireless and satellite data networks, namely, transmission of data between linked computer systems.

Class 42

Software as a services (SAAS) services; Online non-downloadable software; Platform as a Services (PAAS) services; Interactive websites; Providing online non-downloadable software for radar, radio frequency, and signal jamming; Providing online non-downloadable software for detecting, countering, disabling, and/or destroying robots, vehicles, and drones; Advanced product research in the field of artificial intelligence; Providing non-downloadable artificial intelligence software; Providing non-downloadable virtual reality and augmented reality software; Providing non-downloadable computer graphics software and applications; Providing non-downloadable software for management, storage and network management of digital media and enhancement of graphical and video display; Providing non-downloadable software for operation of integrated circuits, semiconductors, computer chipsets and micro-processors; Providing non-downloadable software for performing computer graphics operations and improving graphical and video display capabilities; Providing non-downloadable software for coordination the operation and management of a variety of sensors, computer hardware, communications equipment, and unmanned vehicles; Providing non-downloadable software for operating and managing unmanned vehicles with the aid of artificial intelligence; Providing non-downloadable software for artificial intelligence, machine learning, deep learning, natural language generation, statistical learning, supervised learning, un-supervised learning, data mining, predictive analytics and business intelligence applications; Providing non-downloadable software for enabling electronic devices to share data and communicate with each other; Providing non-downloadable software for operating system programs; Providing non-downloadable software for developing machine learning, deep learning, or artificial intelligence applications; software and hardware for image recognition programs; Providing non-downloadable software for implementing swarm intelligence programs and algorithms; Providing non-downloadable software for artificial intelligence, computer vision, and mesh networking; Providing non-downloadable software for image rendering, modeling, and image manipulation and processing; Providing non-downloadable software for remotely monitoring environmental conditions and controlling devices within a building, facility, grounds, or designated spatial area; Providing non-downloadable software for the security of persons and premises, for surveillance, and for reconnaissance; Providing non-downloadable software for operating and deploying weapon systems; Scientific research and technological services; Research and development services; Robotic engineering services; Product testing; Product design; Engineering; Computer

services; Cloud computing; Cloud computing services featuring software for compute intensive processing for use in the fields of artificial intelligence, machine learning, deep learning, high performance computing, distributed computing, virtualization, natural language generation, statistical learning, supervised learning, un-supervised learning, data mining, predictive analytics and business intelligence; Computer software and technology consulting; Consultation in the design and development of computer hardware and software; Consulting services in the field of design and development, selection, implementation and use of computer hardware, software, applications, and networks; Computer programming; Computer services, namely, providing remote management of devices via computer networks, wireless networks and the Internet; Computer software design, computer programming, or maintenance of computer software; Maintenance, testing, updating, and installation of computer software; Design, testing, and development in the field of computer hardware and software; Design, testing, and development of military weapon and surveillance systems; Design, testing, and development of security systems; Design, testing, and development of surveillance systems; Design, testing, and development of robots and unmanned vehicles; Design, testing, and development of aircraft and spacecraft; Design, testing, and development of communications systems; Design, testing, and development of artificial intelligence systems; Design, testing, and development of virtual reality and augmented reality systems; Design and development of virtual reality hardware and software; Design and development of augmented reality hardware and software; Design and development of mixed reality hardware and software; Design and development of computer software for vehicle simulation; Design and development of software for fine-tuning, development, diagnostics for vehicles, calibration, configuration and diagnostics of electronic systems; Design and development of computer hardware and software; Design and development of computer hardware and software in the fields of artificial intelligence, machine learning, deep learning, and deep neural networks; Design and development of computer hardware and software in the fields of self-driving and autonomous vehicle electronic computing platforms and systems; Design, development, and testing of vehicle simulators; Electronic data collection services; Design of computer hardware, software and peripherals for others; Design, research and development of software; Industrial analysis and research services in the field of vehicle technology, vehicle simulations and vehicle test stands; Data storage; Data encryption; Data conversion; Computer security services; Remote monitoring of computer systems, electronic security and surveillance systems, computer networks, robots, and unmanned vehicles to ensure proper functioning; Industrial design in the field of artificial intelligence; Information, advisory and consultancy

services relating to voice command and recognition software, speech to text conversion software, and voice-enabled software applications; Consulting services in the field of mobile computer and mobile communications device hardware and software design; Remote monitoring of computerized data and computer systems and networks for security purposes; Providing non-downloadable software for the operation, control, maintenance, and management of vehicles; Providing non-downloadable cloud-based software for compute intensive processing for use in the fields of artificial intelligence, machine learning, deep learning, high performance computing, distributed computing, virtualization, natural language generation, statistical learning, supervised learning, un-supervised learning, data mining, predictive analytics and business intelligence; Providing non-downloadable software enabling hardware and electronic devices to communicate with each other; Providing non-downloadable software enabling hardware and electronic devices to share data and communicate with each other; Providing non-downloadable software for artificial intelligence, machine learning, deep learning, natural language generation, statistical learning, supervised learning, un-supervised learning, data mining, predictive analytics and business intelligence; Providing non-downloadable wireless communication software for voice, audio, video, and data transmission; Providing non-downloadable software for controlling electronic control systems for vehicles; Providing non-downloadable software in the field of self-driving and autonomous vehicles, for self-driving and autonomous vehicle component operation, control, maintenance, management and communication; Providing non-downloadable software for artificial intelligence, machine learning, data analysis, high performance computing, distributed computing, data virtualization, and predictive analytics; Providing non-downloadable software for natural language processing, machine learning, voice command and recognition, converting speech to text, data analytics, and artificial intelligence; Providing non-downloadable software featuring knowledge-based artificial intelligence software platforms, data analytics software platforms, and automation software platforms; Providing non-downloadable software for self-driving and autonomous vehicle simulation; Providing non-downloadable software for detecting objects, user gestures and commands; Providing non-downloadable software for facilitating interaction between humans and machines; Providing non-downloadable software for language translation and image recognition programs; Providing non-downloadable software for object tracking, motion control and content visualization; Providing non-downloadable software for operating sensor devices; Providing non-downloadable software for others to use for the development of software for self-driving and autonomous vehicle electronic computing platforms and systems; Providing non-downloadable software for

processing images, graphics, audio, video, and text; Providing non-downloadable software for operation, control, maintenance, and management of vehicle components, vehicle navigation, for travel and trip planning and for communications with vehicles; Providing non-downloadable software for collecting, tracking, analyzing, and reporting data and information in the field of self-driving and autonomous vehicles; Providing non-downloadable software for transmitting, sharing, receiving, downloading, displaying, interacting with and transferring content, text, visual works, audio works, audiovisual works, data, files, documents and electronic works; Providing non-downloadable software for use in electronic storage of data; Providing non-downloadable software for use in visual, voice, audio, motion, eye and gesture tracking and recognition; Research and design in the field of artificial intelligence, natural language processing and machine learning; Research and design in the field of vehicle technology, vehicle simulation and vehicle testing; Scientific and technological services and research and design in the fields of artificial intelligence, machine learning, deep learning, high performance computing, distributed computing, virtualization, natural language generation, statistical learning, supervised learning, un-supervised learning, data mining, predictive analytics and business intelligence; Software development in the field of artificial intelligence and machine learning; Software development services in the fields of artificial intelligence, machine learning, deep learning, high performance computing, distributed computing, virtualization, natural language generation, statistical learning, supervised learning, un-supervised learning, data mining, predictive analytics and business intelligence; Software for integrating electronic data with real world environments for the purpose of capturing, processing, and visualizing modeling and placement of goods of others and visual image markers; Technical research, development, and design of computer software, in the fields of artificial intelligence, machine learning, natural language processing, high performance computing, and data virtualization; Technical support, namely, troubleshooting of computer software application problems, and consultation services for developing computer software applications for others; Technical support services, namely, troubleshooting in the nature of diagnosing computer hardware and software problems; Technical support services, namely, troubleshooting of computer software and hardware problems; Updating and maintenance of on-line database systems; Scientific and technological services, namely, product development and engineering, product development support and testing; Research and design, namely, quality engineering, cloud engineering, software engineering; Hardware and software development for industrial equipment for use in the fields of artificial intelligence, machine learning, deep learning, high performance computing, distributed computing, virtualization, natural

language generation, statistical learning, supervised learning, un-supervised learning, data mining, predictive analytics and business intelligence; Providing non-downloadable software for performing learning algorithms; Providing non-downloadable software for navigation, steering, tracking, communication, object detection, controlling cameras and sensors, and image processing; Providing non-downloadable software for battlefield awareness; Providing non-downloadable software for threat assessment and intelligence; Providing non-downloadable software for steering and navigation of autonomous vehicles; Providing non-downloadable software for communicating with autonomous vehicles; Providing non-downloadable software powered by artificial intelligence for analyzing user data; Providing non-downloadable software to enable users to program, organize and access artificial intelligence, machine learning, deep learning, natural language generation, statistical learning, supervised learning, un-supervised learning, data mining, predictive analytics and business intelligence models; Industrial design services; Industrial research services in the fields of aerospace and aeronautics; Scientific and technological services, namely, research and design in the fields of aerospace and aeronautics; Technical support services; Military science services, namely, analyzing war strategies; Consulting, advisory, and information services relating to the aforesaid.

Class 45

Security services; Security services for protecting persons and physical premises; Security guard services; Security guard services provided through robotic and unmanned vehicle surveillance and security systems; Providing information in the field of the military, military tactics and strategies; Providing information in the field of security tactics and strategies; Consulting, information, and advisory services related to security, surveillance, and reconnaissance; Consulting in the fields of personal security, national defense, national security, defense security, security intelligence, the security of critical information and infrastructure and security threat analysis for protecting public safety; Military and defense analysis and consulting; Security project management services; Information, advice and consultancy relating to security; Analysis, consulting and advice in relation to national security; User verification services; Identification verification services; Licensing of intellectual property.