

TRADE MARKS ORDINANCE (Cap. 559)

APPLICATION NO.: 300469422

MARK: IMAGE BANK
CLASSES: 9, 16, 35, 42
APPLICANT: Getty Images (US), Inc.

STATEMENT OF REASONS FOR DECISION

Background

1. On 3 August 2005, Getty Images (US), Inc. (“the Applicant”) applied to register the mark shown below (“the subject mark”) in classes 9, 16, 35 and 42 pursuant to the Trade Marks Ordinance (Cap. 559) (“the Ordinance”).

IMAGE BANK

A full list of the specification is set out in **Annex A** to this decision.

2. At the examination stage, objection was raised under section 11(1)(b) of the Ordinance on the basis that the subject mark is devoid of any distinctive character.
3. In support of the subject application, the Applicant had filed the following statutory declarations (collectively, the “Declarations”) with a view to showing that the subject mark had in fact acquired a distinctive character as a result of the use made of it in Hong Kong prior to the date of application for the purpose of section 11(2) of the Ordinance:
 - (i) declaration of Jeffrey L. Beyle, Director of the Applicant, of 21 August 2006 (“**Beyle Declaration**”)
 - (ii) declaration of Rachel Dennis, Regional Marketing, Asia Pacific for the

Applicant, of 7 August 2007 (“**Dennis Declaration**”); and

(iii) declaration of Ellen Maxon, Assistant Secretary of the Applicant, of 21 August 2008 (“**Maxon Declaration**”).

4. A hearing on the registrability of the subject mark took place before me on 27 August 2008, at which Mr. Barry Yen of Messrs. So Keung Yip & Sin, Solicitors & Notaries, appeared for the Applicant. I reserved my decision at the conclusion of the hearing.

The Ordinance

5. The absolute grounds for refusal of an application for registration are contained in section 11 of the Ordinance. The relevant provisions under section 11(1) read as follows:

“(1) Subject to subsection (2), the following shall not be registered:-
(a) ...;
(b) trade marks which are devoid of any distinctive character;”
(c) ...

6. Notwithstanding the provisions in the preceding paragraph, section 11(2) provides that:

“(2) A trade mark shall not be refused registration by virtue of subsection (1)(b), (c) or (d) if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.”

Decision

Inherent registrability

7. The test for distinctiveness was laid down by Mr. Justice Jacob in *British Sugar Plc v James Robertson and Sons Ltd* [1996] RPC 281, at page 306:

“What does *devoid of any distinctive character* mean? I think the phrase requires consideration of the mark on its own, assuming no use. Is it the sort of word (or other sign) which cannot do the job of distinguishing without first educating the public that it is a trade mark?”

8. The approach in assessing distinctiveness was made clear in *Nestle SA's Trade Mark Application (Have a Break)* [2004] FSR 2:

“The distinctiveness to be considered is that which identifies a product as originating from a particular undertaking. Such distinctiveness is to be considered by reference to goods of the class for which registration is sought and consumers of those goods. In relation to the consumers of those goods the court is required to consider the presumed expectations of reasonably well informed, and circumspect consumers.”

9. It is also established that marks possessing distinctive character must be able to guarantee the identity of a trade origin. In *Libertel Groep BV v Benelux-Merkenbureau* Case C-104/01 [2003] ETMR 63, the European Court of Justice held, at paragraph 62, that—

“It is settled case-law that the essential function of a trade mark is to guarantee the identity of the origin of the marked goods or services to the consumer or end user by enabling him, without any possibility of confusion, to distinguish the goods or services from others which have another origin... A trade mark must distinguish the goods or services concerned as originating from a particular undertaking...”

10. Applying the above legal principles, I must assess the distinctiveness of the subject mark in relation to the goods and services for which the Applicant seeks registration in classes 9, 16, 35 and 42. I must also have regard to how the subject mark is likely to be perceived by a consumer who is reasonably well-informed and reasonably observant and circumspect. On this assessment I must assume fair and normal use of the subject mark in relation to the provision of the goods and services applied for.

11. In the present case, the application covers a wide range of goods and services relating to storing or displaying photographs, images or illustrations in or through various media. These goods and services are couched in terms as follows: -

compact discs and CD-ROMS containing photographs, stock photographs, or archival photographs, art, illustrations, graphic designs, stock video; photographic, cinematographic, optical apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; computer software; computer software on CD-ROM disks or downloadable format for use in the fields of creating and manipulating visual media, graphical images, news images, illustrations, digital animation, video clips, film footage and audio data; computer software on CD-ROM disks or downloadable format for clip art and photographic images; photographic slide transparencies; pre-recorded digital CD-ROM disks featuring pictures, images; optical storage devices; file management computer software for searching, browsing, selecting, and retrieving files within a program and for opening and saving images to various file formats in class 9, mounted or unmounted photographs; photographic prints; brochures and catalogues featuring graphical images; postcards; illustrations; calendars' paper goods and printed matter; photographs in class 16, retail services via interactive computer databases and global communication networks, in the field of photographs of sports and other events, stock photographs, archival photographs and visual content and CD-ROMS; on-line retail services in the field of art, namely, original and reproduced paintings, printed art reproductions, colour pictures, photographs; retail storage of electronic media, namely images, text and audio data in class 35, and leasing of reproduction rights to illustrations, motion picture films, video tapes, video disc and obtaining assignment work and acting as booking agent for illustrators and cinematographers; licensing services, namely, licensing of images for reproduction to others via computer networks and global communications networks, licensing of films, video and audiovisual content and CD-ROMS for others in class 42.

12. The average consumers of the Applicant are clients seeking such goods and services including the general public and professionals. They are likely to come across the subject mark in the advertisements, promotional materials or websites for promoting the goods and services of the Applicant or on the goods themselves and their packaging.

13. The subject mark consists of the words "IMAGE BANK" in plain block capitals. According to the *Collins English Dictionary* (Millennium Edition), the word

“image” means “an optically formed reproduction of an object, such as one formed by a lens or mirror”. For the word “bank”, it includes the meaning of “any supply, store, or reserve, for future use: a data bank; a blood bank”. As a whole the subject mark “IMAGE BANK” carries the obvious meaning of supply, storage, or reserve of optically formed reproduction of an object for future use.

14. When used in relation to the goods applied for in classes 9 and 16, the average consumer is likely to construe the subject mark “IMAGE BANK” as meaning that the goods themselves are or consist of a supply, storage or reserve of photographs, images, illustrations and so on for future use. When used in relation to the services applied for in classes 35 and 42, the average consumer is likely to perceive the subject mark as indicating that the services are provided in relation to the supply, storage or reserve of photographs, images, illustrations *et cetera*. As such, consumers are unlikely to perceive the subject mark as indicating the trade origin of the applied for goods and services. The subject mark is therefore devoid of any distinctive character.
15. At the hearing, Mr Yen submits that that the unusual representation of the subject mark as a whole creates a perceptible difference from its individual elements. He argues that the subject mark is not a mark used in the common parlance of the average consumers for the goods and services applied for and is not apt to describe the goods and services applied for. Mr Yen also submits that the combination was created by the Applicant and has not been used in the public domain in Hong Kong by third parties to describe the goods and services applied for, and therefore the originality contributes to creating a distinctive character of the subject mark.
16. I cannot agree with Mr Yen’s submission that the subject mark is distinctive for registration. When viewed in its entirety, the subject mark is no more than the mere sum of its individual descriptive components. Arranging the words “image” and “bank” together does not, in my view, create a distinctive combination. Even if the subject mark was created by the Applicant and no one else in the trade has used the mark, it does not necessarily mean the mark must be distinctive and capable of identifying the trade origin. In fact, as shown in the

Internet references provided to the Applicant during the examination stage on 24 November 2005 and 31 March 2008, “image bank” is a term used to promote and describe other traders’ goods and services similar to those applied for. Excerpts of the Internet references showing how the term is used are provided in **Annex B**.

17. Mr Yen submits that the consumers, when seeing the word “bank” in the subject mark, are likely to perceive it as referring to financial or monetary matters such as banking, and since many of the applied for goods and services are unrelated to financial or monetary matters or banking, consumers would have to wonder what the subject mark means.
18. I am not persuaded by Mr Yen’s submission. Whether the sign consisting of the words “IMAGE BANK” possesses a distinctive character cannot be considered in the abstract, and must be considered in relation to the goods and services for which registration is sought. When the word “bank” is read together with the word “image” in the context of the applied for goods and services, the words would be perceived as indicating that those goods and services are related to the supply, storage or reserve of images etc. and no more. The subject mark merely informs customers something about the use or nature of the goods and services, rather than indicating the trade origin of the goods and services. Accordingly, consumers are unlikely to perceive the subject mark as an indication of trade origin.
19. Mr. Yen also seeks to draw support from the cases of *Bank für Arbeit und Wirtschaft AG v OHIM (the “EASYBANK” case)* [2001] E.T.M.R. 68 and *David West (t/a Eastenders) v Fuller Smith & Turner plc* [2003] E.W.C.A. Civ 48. Mr. Yen referred to the statement in the “EASYBANK” case that “*to satisfy the requirement of distinctiveness for being a trade mark, a very limited degree of distinctiveness is sufficient*”. In the *David West* case, it was stated that the word “devoid” should be construed strictly. Mr. Yen therefore suggests that a mark should be debarred from registration only if it does not possess any trace of distinctive character.
20. I do not find the “EASYBANK” case or the *David West* case (paragraph 24, *supra*)

to be of assistance to the Applicant. In the “EASYBANK” case, the statement about the degree of distinctiveness being a very limited one is actually part of the arguments advanced by the Applicant in the case. All that the court has said is that “*the absence of distinctive character cannot arise merely from the finding that the sign in question lacks an additional element of imagination or does not look unusual or striking*” (para 39). Rather, as stipulated in paragraph 40 of the judgment in that case, the examiner should consider “*whether there appears to be no possibility that the sign in question may be capable of distinguishing, in the eyes of the public to which it is addressed, the products or services referred to from those of a different origin, where that public was called upon to make its choice in commerce*”. The reliance by Mr. Yen on the *David West* case was also misplaced. That case was concerned with the revocation of a registered mark and in making the statement Mr. Yen referred to, the court was in fact dealing with the situation where concession had been made by the party seeking revocation that the mark possessed distinctiveness *in vacuo* (*supra*, at page 825).

21. After all, the crux of the test to determine a mark is distinctive or not is whether the relevant consumers will perceive it first and foremost as a badge of origin. As I have already found above, the consumers’ immediate perception of the subject mark in its entirety is likely to be origin-neutral.

22. For the reasons stated above, I am of the view that the subject mark cannot fulfill the essential function of identifying the trade origin of the goods and services applied for so as to distinguish them from those of other undertakings. Therefore, the subject mark is devoid of any distinctive character and is precluded from registration under section 11(1)(b) of the Ordinance.

Foreign registrations of the subject mark

23. Mr Yen also refers me to the registration of the subject mark in other jurisdictions including Argentina, Austria, France, Great Britain, Indonesia, Ireland, Japan, South Korea and the United States. I have considered these overseas registrations but do not find them of assistance to this application. It must be

borne in mind that domestic trade mark rights are territorially limited and granted independently of each other. The bare fact of registration in other countries is not sufficient to establish that a sign is eligible for registration here (*Automotive Network Exchange Trade Mark* [1998] RPC 885). I must examine the registrability of the subject mark against the registration requirements laid down in the Ordinance and against the principles established in case law. As there are valid reasons for refusing the subject application, I should not simply follow the registration of other registries. This is especially so when the reasons and rationale behind the acceptances are not available before me.

Acquired distinctiveness

24. Although I have found that the subject mark has no inherent distinctive character and not registrable under section 11(1)(b) in respect of the applied for goods and services, if the subject mark has in fact acquired a distinctive character as a result of the use made of it in respect of those goods and services for the purpose of section 11(2), the application for registration of the subject mark should not be refused. I shall therefore proceed to consider whether the subject mark has in fact acquired a distinctive character in respect of the goods and services applied for with reference to the evidence of use filed under the Declarations.

25. To assess the acquired distinctiveness of a mark, the ECJ stated in *Windsurfing Chiemsee Produktions Und Vertriebs GmbH v. Boots-Und Segelzubehor Wlater Huber* (Joined Cases C-108 and 109/97), [2000] Ch. 523 at 556:

“a trade mark acquires distinctive character following the use which has been made of it where the mark has come to identify the product in respect of which registration is applied for as originating from a particular undertaking and thus to distinguish that product from goods of other undertakings.”

26. Although the above case is concerned with the interpretation of Article 3(3) of the First Council Directive 89/104/EEC, the provisions of the article are broadly similar to section 11(2) of the Ordinance and I find that the relevant principle is applicable to the subject application. Further to the principle above, the

competent authority must make an overall assessment of the evidence in determining the question.








27. The relevant date in determining whether the subject mark has in fact acquired a distinctive character is 3 August 2005, the filing date of the subject application. No fixed rule can be laid down as to the minimum period of use necessary, although the Registrar looks for a reasonable period of use, usually about five years prior to the application date. Extensive use over a shorter period may well be sufficient, although use for less than two years prior to the date of application would very unlikely be regarded as sufficient.

28. According to paragraph 5 of the Beyle Declaration and paragraph 8 of the Dennis Declaration, the Applicant only claimed use of the subject mark in Hong Kong in respect of some of the applied for goods and services (“claimed goods and services”). A list of the claimed goods and services is set out in Annex C. The Declarations provide no information on the use of the subject mark in relation to the rest of the goods and services in classes 9, 16, 35 and 42 that are included in the specification of this application (“unclaimed goods and services”). The Applicant has thus failed to establish that the subject mark has acquired a distinctive character through use in respect of the unclaimed goods and services. I shall turn to consider whether the evidence filed shows the acquisition of a distinctive character in respect of the claimed goods and services.

29. Paragraph 6 of the Beyle’s Declaration, rectified and further clarified by paragraph 10 of the Dennis Declaration, gives the retail sales figures of goods and services under the subject mark for the years 2001 to 2006. Exhibit B of the Beyle’s Declaration, purportedly in support of these sales figures, contains copies of invoices of the Applicant from 2001 to 2006. The subject mark, however, does not appear in the invoices. Rather, they show use of a different mark, that is, **gettyimages**[®]. Besides, the kind of goods and services being provided cannot be ascertained. I do not see the relevance of those invoices to the subject application.

30. Mr Beyle deposed in paragraph 9 of the Beyle Declaration that during the period that the subject mark has been used in Hong Kong, the Applicant has extensively promoted the subject mark by distributing catalogues and advertisements in newspapers and magazines in Hong Kong. This claim is, however, not substantiated by the evidence filed.

31. From the copies of catalogues appearing in Exhibit A of the Beyle Declaration and Exhibit E of the Maxon Declaration, it is observed that the following different versions of marks have been used by the Applicant (or its predecessor in title) in catalogues:

Date	Mark(s) used	
1992	(i) 	(ii) 
1996/1997	(iii) 	(iv) 
1997	(v) 	(vi) 
2002	(vii) 	

32. As per the manner of use set out above, I observe that the subject mark only appears in versions (iv) and (vi) which were used in 1996 and 1997. There is nothing to show use of the subject mark in relation to catalogues after 1997, or that such use of the subject mark had been continuous up to the date of application in August 2005.

33. In paragraph 5 of Maxon Declaration, Ms Maxon states that the penultimate page of the catalogues list the address of the Applicant's Hong Kong office and show that the catalogues were printed and colour-separated by two companies in Hong Kong. At the hearing, Mr Yen submits that the fact that many of the catalogues were produced in Hong Kong and also bear the contact details of the Hong Kong office is strong evidence that the catalogues were available in Hong Kong. It is

Mr Yen's submission that it is highly unlikely that a company with an office in Hong Kong and which produces catalogues in Hong Kong would not circulate those in Hong Kong.

34. I cannot agree with Mr Yen's submission. Even if the catalogues were printed and colour-separated by companies in Hong Kong, it does not necessarily mean that the catalogues themselves are circulated in Hong Kong. In the instant case, there is no evidence regarding the advertising expenditures incurred by the Applicant in promoting the use of the subject mark in Hong Kong. The Applicant has not provided in the Declarations any advertising expenditure spent in the promotion of the mark in respect of the claimed goods and services in Hong Kong within five years before the date of application. As stated by Mr Beyle in paragraph 10 of the Beyle Declaration, "*exact figures for advertising expenditures in Hong Kong are not available*". In the absence of evidence of the circulation of the said catalogues within Hong Kong before the relevant date, namely, to whom in Hong Kong those catalogues were distributed, how frequently they were distributed or what the scale of distribution was prior to the application date, I cannot ascertain how and to what extent the subject mark has been used and promoted in Hong Kong, if at all, by the Applicant prior to the application date.

35. The Applicant also seeks to rely on a piece of advertisement produced in Exhibit C to the Beyle Declaration. According to Mr Beyle, the advertisement was published in MEDIA magazine in 2001 in Hong Kong (paragraph 10 of the Beyle Declaration). However, the date of the advertisement cannot be verified from the document itself and in any event, the advertisement does not show use of the



subject mark but a different mark

36. The distinctiveness acquired by the use of the mark must exist before the date of the application to register. No consideration will be given to any likelihood that the mark will become distinctive, due to any advertising or promotion by the mark's owner. I note that the marketing material produced at Exhibit A of the Dennis Declaration is undated and it is not apparent on the face of it whether the material was used in Hong Kong. Similarly, the website materials produced at

Exhibit B of the Dennis Declaration bear a copyright notice of 1999 to 2007. I cannot ascertain whether and if so, to what extent those materials would be dated before the application date. In any event, the subject mark is nowhere to be found on these materials.

37. The Applicant also seeks to rely on the copies of historic screen shots and a site overview brochure from the Applicant's website archived at Archive.org and a screen shot from the Applicant's web page with relevant metadata which are contained in Exhibit J to the Maxon Declaration. Ms Maxon avers in paragraph 10 of the Maxon Declaration that those materials, appeared throughout the world including in Hong Kong before the application date, show use of the subject mark.

38. To my mind, those materials neither show that the subject mark has been used, nor that it has been used in Hong Kong. In so far as I find the words "Image Bank" appearing in these materials, they are part of the term "The Image Bank" which, judged from the context in which it appears, was used as a business name rather than as a sign to distinguish the goods and services offered or provided from those of another. Moreover, even if my aforesaid finding is wrong, the contents of those materials are not verified or substantiated by statistics or figures to show that there is indeed use or sales in Hong Kong in respect of the subject mark prior to the application date and none of these materials seems to relate to the conditions or otherwise connected to the relevant markets in Hong Kong. This is especially so when I observe that at page 11 of the site overview brochure exhibited thereto there is no contact information of the Applicant's Hong Kong office whereas the contact information of the Applicant's offices in other places are provided. I am not satisfied that the materials serve to establish that the subject mark has acquired a distinctive character as a result of the use made of it in Hong Kong, let alone at a time prior to the application date.

39. For completeness, I should also mention that the agreements which consist of an exclusive agency agreement and an artistic confidentiality agreement signed by the Applicant with photographers as well as two agreements signed by the Applicant with the Hong Kong China Tourism Press provided at Exhibit F to Exhibit I to the Maxon Declaration do not assist the Applicant in establishing that

the subject mark has in fact acquired a distinctive character as a result of the use made of it in Hong Kong. First of all, contrary to Ms Maxon's proposition that the subject mark appears on the agreements, I find those agreements show use of the following marks:-



40. In paragraph 9 of the Maxon Declaration, Ms Maxon relied on two agreements signed with the Hong Kong China Tourism Press exhibited to Exhibits H and I thereto and stated that the mark “IMAGE BANK” now belongs to the Applicant. Even if the ownership of the subject mark by the Applicant is established, it does not necessarily mean that the public is likely to perceive the subject mark immediately as indicating the Applicant as the trade origin in light of the claimed goods and services. In addition, I do not consider that those agreements illustrate how the consumers are educated about the use of the subject mark as a trade mark. Nor are those agreements evidence that consumers will recognize the subject mark as indicating only the Applicant as the source of the claimed goods and services. As such, I am not satisfied that the websites and agreements provided are of assistance in overcoming the objection under section 11(1)(b) of the Ordinance.
41. Having thus considered the totality of the evidence filed, I am not satisfied that the subject mark has indeed, before the date of application for registration, acquired a distinctive character in respect of the goods and services applied for as a result of the use made of it in Hong Kong for the purpose of section 11(2) of the Ordinance. The evidence filed failed to overcome the objections raised under section 11(1)(b) of the Ordinance.

Conclusion

42. In this decision, I have carefully considered all the evidence filed by the Applicant, the submissions of the Applicant's agent and all the relevant facts and circumstances of the case. For the reasons given, I find that the subject mark is

precluded from registration by section 11(1)(b) of the Ordinance. The subject application is accordingly refused under section 42(4)(b) of the Ordinance.

Jessica Law
For Registrar of Trade Marks
20 November 2008

Annex A

Class 9

Compact discs and CD-ROMS containing photographs, stock photographs, or archival photographs, art, illustrations, graphic designs, stock video, stock music, stock audio, sound effects and/or sound recordings; electrical and scientific apparatus and instruments; nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers; recording discs; automatic vending machines and mechanisms for coin operated apparatus; cash registers; calculating machines, data processing equipment and computers; computer software; computer software on CD-ROM disks or downloadable format for use in the fields of creating and manipulating visual media, graphic images, news images, illustrations, digital animation, video clips, film footage and audio data; computer software on CD-ROM disks or downloadable format for desktop publishing, electronic publishing and printing of type faces, clip art and photographic images, but expressly excluding book publishing; photographic slide transparencies; pre-recorded digital CD-ROM disks featuring pictures, images, text, and sound; interactive multimedia apparatus; computer software and CD-ROM disks for accessing, via a global computer network, digital media products for commercial use, still images, moving images, audio and text; the computer software being provided as a product on a computer-readable media, namely, ROM, random access memory, EEPROM (electrically erasable programmable read only memory), flash memory, magnetic storage device, CD-ROM, DVD, optical storage devices, magnetic tape, magnetic tape cassettes, magnetic hard disk storage and floppy disks and the computer software on a communications media, namely wired network, direct wired connection, acoustic, radio frequency and infrared for accessing via a global computer network to digital media products for the business user; file management computer software for searching, browsing, selecting, and retrieving files within a program and for opening and saving images to various file formats; parts and fittings for the aforesaid goods; fire-extinguishing apparatus; all included in Class 9.

Class 16

Mounted or unmounted photographs; photographic prints; brochures and catalogues featuring graphic images; plastic or paper transparencies; postcards; slide mounts; illustrations; posters; calendars; and paper clips; paper goods and printed matter; book binding material; paper, cardboard and goods made from these materials, not included in other classes; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); printers' type; printing blocks; books; catalogues; brochures; directories; printed materials in the fields of visual media, graphic images, printing, printed images of photography, art, graphic design, clip art, news images, illustrations, digital animation, video clips, film footage, audio data, desktop publishing

and electronic publishing; original and reproduced paintings; lithographs; art etchings; drawings; images of sculptures and decorative art objects; graphic art reproductions; art prints; printed art reproductions; all included in Class 16.

Class 35

providing business information via computer networks and global communications networks in the fields of and business and corporate presentations; retail services via interactive computer databases and global communication networks, in the field of photographs of sports and other events, stock photographs, archival photographs and visual content and CD-ROMs; advertising; business management; advertising and business advisory services; business administration; office functions; bringing together, for the benefit of others, a variety of goods enabling customers to conveniently view and purchase those goods via a global computer network; retail sales of photography; on-line retail services in the field of art, namely, original and reproduced paintings, printed art reproductions, colour prints, colour pictures, art prints, limited edition prints and posters, photographs, lithographs, pictorial prints, cartoons, art etchings, drawings and sculptures and decorative objects and framing for works of art; storage of electronic media, namely images, text and audio data; advertising; all included in class 35.

Class 42

Leasing of reproduction rights to illustrations, motion picture films, video tapes, video disc and obtaining assignment work and acting as booking agent for illustrators and cinematographers; licensing services, namely, licensing of images for reproduction to others via computer networks and global communications networks, licensing of films, video and audiovisual content and CD ROMS for others.

Annex B

http://www.epictura.com/home_en.php?osCsid=e1b38dfef

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Annex C

Class 9

Compact discs and CD-ROMS containing photographs, stock photographs, or archival photographs, art, illustrations, graphic designs, stock video, stock music, stock audio, sound effects and/or sound recordings; computer software; computer software on CD-ROM disks or downloadable format for use in the fields of creating and manipulating visual media, graphic images, news images, illustrations, digital animation, video clips, film footage and audio data; computer software on CD-ROM disks or downloadable format for desktop publishing, electronic publishing and printing of type faces, clip art and photographic images, but expressly excluding book publishing; photographic slide transparencies; pre-recorded digital CD-ROM disks featuring pictures, images, text, and sound; interactive multimedia apparatus; computer software and CD-ROM disks for accessing, via a global computer network, digital media products for commercial use, still images, moving images, audio and text; the computer software being provided as a product on a computer-readable media, namely, ROM, random access memory, flash memory, magnetic storage device, CD-ROM, DVD, file management computer software for searching, browsing, selecting, and retrieving files within a program and for opening and saving images to various file formats;

Class 16

Mounted or unmounted photographs; photographic prints; brochures and catalogues featuring graphic images; plastic or paper transparencies; postcards; slide mounts; illustrations; posters; calendars; and paper clips; paper goods and printed matter; photographs; books; catalogues; brochures; directories; printed materials in the fields of visual media, graphic images, printing, printed images of photography, art, graphic design, clip art, news images, illustrations, digital animation, video clips, film footage, audio data, desktop publishing and electronic publishing;

Class 35

retail services via interactive computer databases and global communication networks, in the field of photographs of sports and other events, stock photographs, archival photographs and visual content and CD-ROMs; storage of electronic media, namely images, text and audio data; advertising;

Class 42

Leasing of reproduction rights to illustrations, motion picture films, video tapes, video disc and obtaining assignment work and acting as booking agent for illustrators and cinematographers; licensing services, namely, licensing of images for reproduction to others via computer networks and global communications networks, licensing of films, video and audiovisual content and CD ROMS for others.