

**TRADE MARKS ORDINANCE (Cap. 559)**

**OPPOSITION TO TRADE MARK APPLICATION NO.: 303288871**



**MARK:**

**CLASSES:** 9, 16, 35, 38, 41 and 42

**APPLICANT:** ALIBABA GROUP HOLDING LIMITED

**OPPONENT:** KUNSHAN XINHAIYUN TRADING CO., LTD. (昆山欣海韵贸易有限公司)

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**STATEMENT OF REASONS FOR DECISION**

**Background**

1. On 30 January 2015, Alibaba Group Holding Limited (“the Applicant”) filed an application (“the subject application”) under the Trade Marks Ordinance (Cap. 559) (“the Ordinance”) for the registration of the series of marks



“ ” (“the subject marks”).

2. Registration is sought in respect of goods and services in classes 9, 16, 35, 38, 41 and 42 (“the subject goods and services”) (see Annex).
3. Particulars of the subject application were published on 21 August 2015. Kunshan Xinhaiyun Trading Co., Ltd. (昆山欣海韵贸易有限公司) (“the

Opponent”) filed on 20 November 2015 a notice of opposition to the subject application together with a statement of grounds of opposition (“Notice of Opposition”). A counter-statement (“Counter-statement”) was filed by the Applicant on 3 March 2016 in response to the Notice of Opposition filed.

4. As evidence in support of the opposition, on 1 December 2016 the Opponent filed under rule 18 of the Trade Marks Rules (Cap.559, sub. leg.) (“the Rules”) a statutory declaration, together with exhibits, made by Zhang Dan as authorized by the Opponent (“Zhang’s SD”). The Applicant filed on 1 June 2017 under rule 19 of the Rules a statutory declaration, together with exhibits, made by Li Kam Ming Angela, Senior Legal Counsel, Head of Soft IP of the Applicant in support of its application (“Li’s SD”).
5. The opposition hearing was heard on 21 November 2018. The Opponent was represented by Ms. Wendy Wong of CLT Patent & Trademark (H.K.) Limited and the Applicant was represented by Mr. Douglas Clark, Counsel, instructed by Mayer Brown.

### **Notice of Opposition**

6. The Opponent pleads in the Notice of Opposition that each of the subject marks, which consists of the Chinese simplified word “双” and numerals “十一”, is a familiar expression which designates either four numeral one (i.e. 1111) or the calendar date 11<sup>th</sup> November; it can be used, *inter alia*, on packaging and in advertising and promotion to designate the production or expiry date of a product, the date of rendering of services, the date of a festival, an event or incident, etc.
7. It is also pleaded that the expression “双十一” is commonly used in everyday language as well as in trade to designate the calendar date 11<sup>th</sup> November; as the subject marks can designate that calendar date in relation to any traders’ goods or services of the kind applied for, they cannot serve to distinguish the Applicant’s subject goods and services from those of other undertakings; and the representation of the subject marks does not endow the marks with any distinctive character.

8. Further, the Opponent pleads that the subject marks consist of signs which have become customary in the current language, or in the honest and established practices of trade, including without limitation the trade in the subject goods and services; insofar as the subject marks are applied to goods or services that are not produced or rendered on 11<sup>th</sup> November, that do not relate to a festival, an event or incident that takes place on 11<sup>th</sup> November, or that do not expire on 11<sup>th</sup> November, the subject marks are alleged to be deceptive; and the range of the subject goods and services is so broad and diverse that the subject application could not have been filed in good faith.
9. The Opponent seeks to oppose registration of the subject marks pursuant to sections 11(1)(b), 11(1)(c), 11(1)(d), 11(4)(b) and 11(5)(b) of the Ordinance. The Opponent requests that the subject application be refused with costs to be awarded in favour of the Opponent.

### **Counter-Statement**

10. The Applicant pleads in the Counter-statement that the subject marks consist of two stylized composite marks of the term “双十一” in series, which are coined by the Applicant; the coined term “双十一” is not a familiar expression for the numeral “1111” or the calendar date 11<sup>th</sup> November, and it completely lacks the minimum information required for designation of a specific date (namely, reference to a day, month and year), as such it cannot be used on packaging, advertisements or promotional materials to designate the production or expiry date of a product, the date on which services are rendered, etc.
11. It is also pleaded that the coined term “双十一” on its own is sufficiently distinctive and the stylized representation of the Chinese simplified word “双” as a ribbon knot and numerals “十一” as a series of square blocks further increases the overall distinctiveness of the subject marks; as such, the subject marks are sufficiently distinctive to distinguish the Applicant’s goods and services from those of other traders, and are incapable of application to the goods and services of any other trader.

12. The Applicant pleads that the coined term “双十一” is not commonly used in everyday language or in trade to designate the calendar date 11<sup>th</sup> November and has never been used or understood in Hong Kong as a reference to 11<sup>th</sup> November; the coined term is a fanciful creation designed and used exclusively by the Applicant and it has acquired additional distinctive character exclusively associated with the Applicant through substantial use and promotion; as such, the subject marks comprising of such distinctive term are sufficiently distinctive to differentiate the Applicant’s goods and services from those of other traders.
13. It is also averred that the coined term “双十一” does not exist in authoritative Chinese dictionaries and has not become customary in the current language of trade; prior to its creation and adoption by the Applicant, the term “双十一” had not been used or referred to in trade; the Applicant is the first business entity to use the term “双十一” in trade and given the extensive use and promotion of the term, it has become known and associated exclusively with the Applicant’s sales and promotional campaign and their related goods and services; the subject marks consist of stylized designs and distinctive features and the subject marks do not consist exclusively of signs which have become commonplace, and cannot be said to be customary in the current language of trade.
14. The Applicant pleads that the subject marks are not deceptive because the coined term “双十一” does not designate the calendar date 11<sup>th</sup> November and there are other distinctive elements of the subject marks which are unrelated to any calendar dates; and that the subject application was filed in good faith as the subject goods and services are directly relevant to the Applicant’s diverse businesses and the Applicant honestly intends to use and/or allow others to use the subject marks in relation to the subject goods and services.
15. The Applicant denies all grounds pleaded in the Notice of Opposition and avers that the Opponent filed the subject opposition proceedings as a deliberate and unreasonable act to disrupt the Applicant’s business and to obstruct the Applicant from obtaining its legitimate right and interest in the subject marks, since the coined term has acquired a distinct and clear reputation, and is exclusively associated with the Applicant given the unique meaning attributed to it by the

Applicant's use and promotion.

16. The Applicant requests that the subject application be allowed to proceed to registration and the opposition be dismissed with costs against the Opponent.

### **Relevant date**

17. The relevant date for considering the opposition is 30 January 2015, that is the filing date of the subject application for registration.

### **The Opponent's evidence**

18. Mr. Clark of the Applicant submits that Zhang's SD adduced by the Opponent is inadmissible as the notary did not sign on it and it does not appear to have been signed by Zhang before the notary; accordingly, the opposition should be deemed to have been withdrawn under rule 18(3) of the Rules.
19. The issue of whether Zhang has actually made the declaration before the notary as required by rule 80(1)(b)<sup>1</sup> of the Rules has been raised by the Registrar in her letter of 9 February 2017.
20. Ms. Wong of the Opponent explains that due to some communication problems with the previous agent, the Opponent was not able to answer the Registrar's queries in time. She has now confirmed with the Opponent that Zhang has actually signed the declaration before the notary in the Mainland China. It is submitted that the standard wording used by the Chinese notary on the notarial certificate attached to Li's SD could have no other meaning but to confirm that Zhang has actually made and signed the declaration before the notary, and therefore Zhang's SD should not be denied its effectiveness.
21. I have to point out that although the notary's signature block on the declaration is

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<sup>1</sup> Rule 80(1)(b) of the Rules provides that "(1) For the purposes of any proceedings before the Registrar, a statutory declaration or affidavit may be made and subscribed as follows-(a)... ; and (b) in any place outside Hong Kong, before any court, judge, justice of the peace, notary, notary public, consul or other person authorized by law to administer an oath or to exercise notarial functions in that place for the purpose of any legal proceeding."

left blank, the notary has actually signed on a notarial certificate which is placed at the last page of the well-bound document which comprises Zhang's SD and exhibits and the notarial certificate. It is stated on the English translation of the notarial certificate, *inter alia*, that "This is to certify that Zhang Dan the appointed agent of KUNSHAN XINHAIYUN TRADING COMPANY LIMITED attended my office on 28 October 2016 and signed the Declaration."<sup>2</sup>

22. After considering all the relevant circumstances and the parties' submissions, including the fact that Zhang has personally attended the notary's office and signed on the declaration as well as the cover sheets for each of the exhibits on the same date as the notary signed on the notarial certificate, I accept that Zhang's SD was actually made and signed before the notary.
23. According to Zhang's SD, the Opponent is a limited liability company established in the Mainland China. Attachment-1 to Zhang's SD contains a copy of the Opponent's business licence.
24. Zhang repeats considerably what has been pleaded in the Notice of Opposition. It is further elaborated that the expression "双十一" is clearly referable to the calendar date 11<sup>th</sup> November and similar expressions have been commonly used to refer to a date, festival, an incident or event, such as "十一國慶" for the National Day of China on 1<sup>st</sup> October, "七一回歸" for the anniversary date of HK's reunification with China on 1<sup>st</sup> July, "五四運動" for the May Fourth Movement on 4<sup>th</sup> May, "九一八事變" for the Manchurian incident on 18<sup>th</sup> September 1931, "七七事變" for the Marco Polo Bridge incident on 7<sup>th</sup> July 1937, "雙十二事變" for the Xian incident on 12 December 1936, "雙十節" for the Double Ten Festival of Taiwan, "雙七" for the 7<sup>th</sup> day of July of the Lunar calendar, "雙六" for an ancient game, etc. Attachment-2 to Zhang's SD includes relevant printouts downloaded from the Internet.
25. In order to support the allegation that the expression "双十一" has become

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<sup>2</sup> 中文原文: "茲証明昆山欣海韻貿易有限公司的委托代理人張聘于二〇一六年十月二十八日來到我處, 在前面聲明文件上簽字。"

customary in the current language and/or in the honest and established practices of trade to designate the calendar date 11<sup>th</sup> November, attachment-3 to Zhang's SD includes copies of various articles and promotional materials on the use of the expression “双十一” in trade in Mainland China.

### **The Applicant's evidence**

26. According to Li's SD, the Applicant is a company incorporated under the laws of Cayman Islands. The Applicant and its affiliates (collectively, the “Alibaba Group”) is a family of Internet-based businesses whose mission is to make it easy for anyone to buy and sell online anywhere in the world. Since its establishment in 1999, the Applicant has established a premier online marketplace for businesses and consumers and the Alibaba Group has developed leading businesses in e-commerce, online payment services and cloud computing, etc. reaching internet users in more than 240 countries and regions. Exhibits LKMA-1 to LKMA-3 to Li's SD include printouts of the Applicant's website setting out the different businesses, selected events, milestones and accomplishments of the Applicant, and extracted copies of the Applicant's Annual Reports of 2015 and 2016.
27. Alibaba Group's businesses include e-commerce business, cloud computing, mobile media and entertainment, and other innovation initiatives. The Applicant's e-commerce business is comprised of marketplaces operating in retail and wholesale commerce in China, and international and cross-border commerce. Alibaba Group's websites can be accessed worldwide and the Applicant's services are available to users worldwide, including Hong Kong.
28. In September 2014, Alibaba Group completed its initial public offering on the New York Stock Exchange which generated a lot of press coverage worldwide in media such as Bloomberg, Forbes, and Reuters.
29. In 2008, Alibaba Group launched a B2C (business-to-consumers) platform under the brand “Taobao Mall” in English and “淘宝商城” in Chinese (the “Taobao Mall”). The Taobao Mall was rebranded in 2010 as Tmall and “天猫” and an

independent platform was launched. The Taobao Mall and Tmall, since their respective launch, have been accessible worldwide, including Hong Kong. Tmall was the largest B2C platform in China in terms of monthly active users in 2015. As of 31 March 2016, there were over 100,000 brands on Tmall including some major international brands.

30. Tmall Global was launched in 2014 as an extension of Tmall, designated to address the increasing demand from Chinese consumers for international products and brands that do not have a presence in China. There is a dedicated page for products from Hong Kong brand owners on the Tmall Global platform and a printout of the dedicated page is displayed at exhibit LKMA-6.
31. Tmall.com is consistently in the top 50 most visited website globally and ranked 14 amongst the top 100 websites in the world in 2017. The value of confirmed orders of products and services on Tmall (including Tmall Global) for 2013 to 2016 increases from RMB 253 billion to 1215 billion, with an average of RMB 705 billion per annum. The number of active buyers on the Applicant's China retail marketplaces (including Tmall) for 2014 to 2016 increases from 255 million to 423 million. Copies of extracts of the Applicant's 2016 Annual Report are included at exhibit LKMK-8.
32. In 2009, Tmall first designated the calendar date 11<sup>th</sup> November and promoted it by the coined term “双十一” (known as “Double 11” in English) as an annual promotional shopping day in China. The Applicant's Double 11 campaign has since become the most important shopping event in China. The sales figures of the annual campaign increased from RMB 50 million in 2009 to 91 billion in 2015, with an average of RMB 29.6 billion per annum. Copies of contracts with some of the merchants for the campaign are displayed at exhibit LKMA-5.
33. Alibaba Group has invested a lot of money, time and effort to create consumer recognition of the subject marks and/or its variants and/or the coined term “双十一” (collectively, the “Applicant's Marks”) throughout the world, including in Hong Kong. The Applicant's Marks have been widely promoted and advertised and have acquired a considerable level of fame and recognition among the public. Since their first use, the Applicant's Marks have received a lot of media coverage,

through publications and articles relating to the Applicant's Marks and the founder of the Applicant, Mr. Jack Ma. Exhibit LKMA-7 includes sample copies of such media coverage.

34. The Applicant's Double 11 campaign has been widely promoted and advertised in China. Included at exhibits LKMA-17 to LKMA-22 are photos of advertisements placed at Beijing airport, apartment buildings, bus stops, underground stations and other places in various cities in China, and a sample copy of an advertising contract.
35. Prior to the Applicant coining the term “双十一”, no one would refer to the date of 11<sup>th</sup> November as “双十一” and it is not a common expression for 11<sup>th</sup> November. By comparison, 2<sup>nd</sup> February is not commonly known as “Double 2”, nor is 6<sup>th</sup> June known as “Double 6”.
36. Previously 11<sup>th</sup> November was commonly referred to as “Singles' Day”<sup>3</sup> which was popular among young and single mainland Chinese people. A number of social gatherings for singles would be held on this day, with the aim of helping single men and women find their life partners.
37. The Applicant coined the Applicant's Marks and was the first commercial undertaking to use such marks in connection with its Double 11 campaign and related goods and services. The Applicant's Marks have no dictionary meaning and can distinguish the Applicant's goods and services from those of others. While Singles' Day on 11<sup>th</sup> November primarily targets singles, the Applicant's Double 11 campaign is targeted at all people and has no connection with Singles' Day or the calendar date 11<sup>th</sup> November as the campaign lasts for a few months every year and not just one day on 11<sup>th</sup> November.
38. The term “双十一” or its English translation “Double 11” is not listed in authoritative Chinese or English dictionaries as an existing term or a common name for a particular kind of goods or services. The subject marks are now known by the general public particularly those in the retail and wholesale

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<sup>3</sup> The Singles Day is named as “光棍節” or “光光節” in Chinese. It is also called “脫光節”, namely the day to celebrate not being single any more.

business and consumers who enjoy online shopping due to the extraordinary success of the Applicant's Double 11 campaign. Alibaba Group has spent a great deal of time, effort and money in promoting the Applicant's Double 11 campaign together with the subject goods and services and the Applicant enjoys a substantial reputation and goodwill in the Applicant's Marks, including the subject marks. In the minds of the public, the subject marks have become exclusively and distinctively associated with the Applicant.

39. On 11<sup>th</sup> November 2015, the Applicant's Double 11 campaign 2015 achieved total sales of US\$9.3 billion. Consumers from 217 countries and territories placed some 278 million orders for about a million different products during that 24-hour period. Copies of various newspaper articles from South China Morning Post, Wen Wei Po and Hong Kong Economic Times downloaded from the internet are displayed at exhibit LKMA-9.
40. In 2016, the Applicant's Double 11 campaign was again conducted in Hong Kong, Taiwan and overseas. In Hong Kong, the campaign was promoted through billboards at the airport, major MTR stations, trams, online social media and internet platforms, with additional coverage in the lead-up to 11<sup>th</sup> November to reinforce the message of Tmall's arrival in Hong Kong. Exhibits LKMA-10 to LKMA-16 include photos of advertisements and screenshots of online platforms and newspaper websites. The Applicant's Double 11 campaign in 2016 in Hong Kong incurred an expenditure of HK\$2.22 million and achieved a total of 0.17 billion eyeball exposure.
41. The Applicant has applied for or registered the subject marks and/or the Applicant's Marks in various places including China, Hong Kong, Japan, Macau, Malaysia, Singapore, South Korea and Taiwan. A list of the relevant worldwide applications and registrations and sample copies of the trade mark registration certificates are set out at exhibit LKMA-23.
42. Specifically, the Applicant has obtained registration for the plain word mark “双十—” in classes 35, 38 and 41 in China. In an invalidation action filed against the Applicant's plain word mark “双十—” in class 35 under registration no. 10136470 in China, the Chinese Trademark Office held in its decision that the

mark possesses distinctiveness as it was coined and had been continuously used and promoted by the Applicant; the mark has obtained a high reputation through the Applicant's long term use on the Taobao and Tmall platforms; the registration was maintained as the mark had distinctiveness and did not consist of a word or name commonly used to describe or refer to services in class 35. A copy of the relevant decision is displayed at exhibit LKMA-24.

### **Opposition under section 11(1)(d) of the Ordinance**

43. Section 11(1)(d) of the Ordinance precludes registration of trade marks which consist exclusively of signs which have become customary in the current language or in the honest and established practices of the trade.
44. It is the Opponent's pleaded case that the term “双十一” is commonly used in everyday language as well as in trade to designate the calendar date 11<sup>th</sup> November; and therefore the subject marks consist exclusively of signs which have become customary in the current language and/or in the honest and established practices of the trade, including without limitation the trade in the subject goods and services.
45. As pointed out by Mr. Clark, the Opponent has filed evidence with an attempt to show that similar expressions consisting of the Chinese character “双” in front of numeral(s) can be used to indicate a date where the day of the month is the same as the number for the month (such as “双十” for 10<sup>th</sup> October) (see paragraph 24 above). However, I note that the examples of “雙十節” and “雙十二事變” are only used to designate specific memorial dates and historical events and there are other descriptive words such as “節” and “事變” in the expressions. I do not find it is a norm to use similar expressions to designate any other dates of the calendar. Therefore, I do not accept that expressions starting with “双” and ending with numeral(s) are commonly used in everyday language to designate any calendar date, such as “双十一” for 11<sup>th</sup> November.
46. With regard to the allegation that the term “双十一” has become customary in

the honest and established practices of trade to designate the calendar date 11<sup>th</sup> November on which large scale online sales promotions are held, the evidence adduced by the Opponent is only relevant to the Mainland. Ms. Wong submits that the evidence in the Mainland is relevant to the Hong Kong market to some extent due to the close connection between Hong Kong and the Mainland. But she does not elaborate or explain how and to what extent it is relevant and there is no evidence such as market survey result in support of her submission.

47. On the other hand, Mr. Clark submits that the term “双十一” is coined by the Applicant and it has not been used in trade before the Applicant started using it. It is only through the Applicant’s extensive use and promotion of the term that it has become known and associated exclusively with the Applicant’s Double 11 campaign and the related goods and services in the Mainland China.
48. He emphasizes that the Opponent’s evidence only relates to the Mainland and not Hong Kong. He also submits that the subject goods and services cover a very wide range of goods and services in various classes but the Opponent has not identified for which goods and/or services the subject marks are customarily used in trade. Moreover, Mr. Clark contends that it will never be honest for someone to use the subject marks which are stylized.
49. I agree with the Applicant that the term “双十一” does not exist in authoritative Chinese dictionaries and had not been used or referred to in common language or in trade in Hong Kong before its use by the Applicant in relation to its Double 11 campaign in the Mainland China. I note from Zhang’s SD that all uses of the Applicant’s Marks, including the term “双十一” and the subject marks, are only relevant to the Mainland China market, and as shown from Li’s SD the Applicant only started promoting and using such term and marks exclusively with the Applicant’s Double 11 campaign in Hong Kong in 2016 (which post-dated the relevant date). Accordingly, there is nothing to support the assertion that the term “双十一” or the subject marks have become customary in the honest and established practices of trade in Hong Kong at or before the relevant date.
50. I therefore do not find the subject marks have become customary in the current

language or in the honest and established practices of the trade in Hong Kong at or before the relevant date. The opposition under section 11(1)(d) of the Ordinance must fail.

### **Opposition under section 11(1)(c) of the Ordinance**

51. Section 11(1)(c) of the Ordinance excludes from registration trade marks which consist exclusively of signs which may serve, in trade or business, to designate the kind, quality, quantity, intended purpose, value, geographical origin, time of production of goods or rendering of services, or other characteristics of the goods or services in respect of which registration is sought.

52. The said provision is broadly similar to Article 7(1)(c) of the Council Regulation (EC) No. 40/94 of 20 December 1993 on the Community Trade Mark. In *Wm. Wrigley Jr Co v OHIM* [2004] R.P.C. 18, the European Court of Justice (“the ECJ”) discussed the approach to the said regulation and stated the following principles :-

“31. By prohibiting the registration as Community trade marks of such signs and indications, Article 7(1)(c) of Regulation No. 40/94 pursues an aim which is in the public interest, namely that descriptive signs or indications relating to the characteristics of goods or services in respect of which registration is sought may be freely used by all. That provision accordingly prevents such signs and indications from being reserved to one undertaking alone because they have been registered as trade marks (see, inter alia, in relation to the identical provisions of Article 3(1)(c) of First Council Directive 89/104/EEC of 21 December, 1988 to approximate the laws of the Member States relating to trade marks ( [1989] O.J. L40/1 ), *Windsurfing Chiemsee*, para.25, and *Joined Cases C-53/01 to C-55/01 Linde and Others* [2003] E.C.R. I-0000, para.73).

32. In order for OHIM to refuse to register a trade mark under Article 7(1)(c) of Regulation No. 40/94, it is not necessary that the signs and indications composing the mark that are referred to in that article actually be in use at the time of the application for registration in a way that is descriptive of goods or

services such as those in relation to which the application is filed, or of characteristics of those goods or services. It is sufficient, as the wording of that provision itself indicates, that such signs and indications could be used for such purposes. A sign must therefore be refused registration under that provision if at least one of its possible meanings designates a characteristic of the goods or services concerned.”

53. In the light of these principles, for a mark to be precluded from registration under section 11(1)(c) of the Ordinance, it does not have to be the normal way of describing the goods or services in question. It is sufficient if the mark could be used for the purpose of designating the characteristics of such goods or services. The mark is therefore objectionable if at least one of its possible meanings designates a characteristic of the goods or services in question.
54. It is the Opponent’s pleaded case that the term “双十一” is a familiar expression which designates either four numeral one (i.e. 1111) or the calendar date 11<sup>th</sup> November, and can be used, *inter alia*, on the packaging of goods and in advertising and promotion of goods and services, to designate the production or expiry date of a product, the date of rendering of services, the date of a festival, an event or incident, etc.
55. Each of the subject marks consists of three Chinese character and numerals “双十一” in stylized representation with “双” as a ribbon knot and “十一” as a series of square blocks. The character and numerals “双” and “十一” mean “double” and “eleven” respectively. In Chinese, we do not call 1<sup>st</sup> January as “雙一” or 2<sup>nd</sup> February as “雙二”, etc. The alleged designations of 10<sup>th</sup> October and 12<sup>th</sup> December as “雙十節” and “雙十二事變” are unique as 10<sup>th</sup> October is the Establishment Day of the Republic of China and there was an important historical incident happened on 12<sup>th</sup> December in 1936. Moreover, it is important to note that we do not call those events “雙十” and “雙十二” but “雙十節” and “雙十二事變” instead. In my view, the term “双十一”, without any other word, could not possibly designate the calendar date of 11<sup>th</sup> November.
56. In the circumstances, when the subject marks are applied on the subject goods

and services, I do not find they may designate the production or expiry date of the subject goods in classes 9 and 16, or the date on which the subject services in classes 35, 38, 41 and 42 are rendered, or other characteristics of the subject goods and services.

57. As I find each of the subject marks is not descriptive of the subject goods and services, the opposition under section 11(1)(c) of the Ordinance must fail.

### **Opposition under section 11(1)(b) of the Ordinance**

58. Section 11(1)(b) of the Ordinance precludes registration of trade marks which are devoid of any distinctive character.

59. It is similar to section 3(1)(b) of the 1994 Act which prevents from registration, without proof of distinctiveness, trade marks which are not so wholly lacking in trade mark content as to be registrable at all but which, without evidence of use, do not display a sufficiently distinctive content.

60. A mark possesses a distinctive character within the meaning of section 11(1)(b) only if it, assuming no use, serves to identify the goods and services in respect of which registration is applied for as originating from a particular undertaking, and thus to distinguish those goods and services from goods and services of other undertakings. Such distinctiveness must be assessed by reference to, first, the goods or services in respect of which registration is sought and, second, the perception of the relevant persons, i.e. the presumed expectations of an average consumer of the category of goods or services in question, who is reasonably well informed and reasonably observant and circumspect (*Nestlé SA's Trade Mark Application (HAVE A BREAK)* [2004] F.S.R. 2, applying *Linde AG v Deutsches Patent- und Markenamt* [2003] R.P.C. 45).

61. The Opponent pleads that each of the subject marks is a familiar expression of the calendar date 11<sup>th</sup> November which can be used to designate the production or expiry date of a product, the date of rendering of services, the date of a festival, an event or incident, etc.; as such the subject marks can designate that calendar date in relation to any traders' goods or services of the kind applied for and

cannot serve to distinguish the Applicant's subject goods and services from those of other undertakings. Further, it is pleaded that the representation of the subject marks does not endow the marks with any distinctive character; there is nothing in the subject marks which serves to distinguish the subject goods and services of the Applicant from those of another trade origin.

62. I have already held in paragraph 57 above that the subject marks are not descriptive of the subject goods and services. And I agree with the Applicant that the stylized representation of the subject marks, with the character “双” as a ribbon knot and the numerals “十一” as a series of square blocks, has actually endowed some distinctiveness to the subject marks. In my view, each of the subject marks, without evidence of use, displays a sufficiently distinctive content and is able to distinguish the subject goods and services of the Applicant from those of other undertakings. Hence, the subject marks are not devoid of any distinctive character in relation to the subject goods and services.
63. Therefore, the opposition under section 11(1)(b) of the Ordinance must fail.

#### **Opposition under section 11(4)(b) of the Ordinance**

64. Section 11(4)(b) of the Ordinance provides that a trade mark shall not be registered if it is likely to deceive the public. It is an absolute ground for refusal and is concerned with deceptiveness which is inherent in the mark itself, as opposed to deception caused by the similarity of the mark to another under section 12.<sup>4</sup> Whether a mark as a whole is deceptive must be considered against the goods and services applied for and in the general context of the relevant trade. If a mark gives rise to an expectation which will not be fulfilled, then registration will be refused. The expectation must be a real one, as opposed to something obscure or fanciful, arising from the mark itself.<sup>5</sup> The relevant public is the consumer who is reasonably observant and circumspect and thus sufficiently alert and sensible such as not to need protection from claims

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<sup>4</sup> *QS by S. Oliver Trade Mark* [1999] R.P.C. 520 at 524; *Kerley's Law of Trade Marks and Trade Names* (15<sup>th</sup> Edition) para. 8-201.

<sup>5</sup> *Kerley's Law of Trade Marks and Trade Names* (15<sup>th</sup> edition), paragraphs 8-200 and 8-201.

that might only deceive a relatively small number of customers.<sup>6</sup> For this ground of refusal to apply, there must be actual deceit or a sufficiently serious risk that the consumer will be deceived.<sup>7</sup>

65. It is pleaded by the Opponent that insofar as the subject marks are applied to goods or services that are not produced or rendered on 11<sup>th</sup> November, that do not relate to a festival, an event or incident that takes place on 11<sup>th</sup> November, or that do not expire on 11<sup>th</sup> November, the subject marks are deceptive.
66. As indicated above, section 11(4)(b) is concerned with deceptiveness which is inherent in the mark itself and registration will be refused if a mark gives rise to an expectation which will not be fulfilled. I have already found in paragraph 55 above that the term “双十一” does not designate the calendar date 11<sup>th</sup> November. I do not see how the subject marks, when considered against the subject goods and services and in the general context of the relevant trade, would give rise to an expectation which will not be fulfilled.
67. As I am not convinced that there is actual deceit or a sufficiently serious risk that the relevant consumer will be deceived, the ground of opposition under section 11(4)(b) of the Ordinance fails.

### **Opposition under section 11(5)(b) of the Ordinance**

68. Section 11(5)(b) of the Ordinance provides that:

“(5) A trade mark shall not be registered if, or to the extent that –

...

(b) the application for registration of the trade mark is made in bad faith.”

69. The term “bad faith” is not defined in the Ordinance. In *Gromax Plasticulture Ltd v Don & Low Nonwovens Ltd* [1999] R.P.C. 367 at 379, Lindsay J. said in relation to section 3(6) of the UK Trade Marks Act 1994 (equivalent to section

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<sup>6</sup> *Smirnoff Trade Marks* (UK Reg) (23 Nov 2001) [2006] RPC 16, upheld on appeal ([2003] EWHC 970(CH)).

<sup>7</sup> *Emanuel v Continental Shelf* [2006] ETMR 56

11(5)(b) of the Ordinance):

“I shall not attempt to define bad faith in this context. Plainly it includes dishonesty and, as I would hold, includes also some dealings which fall short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the particular area being examined. Parliament has wisely not attempted to explain in detail what is or is not bad faith in this context: how far a dealing must so fall-short in order to amount to bad faith is a matter best left to be adjudged not by some paraphrase by the courts (which leads to the danger of the courts then construing not the Act but the paraphrase) but by reference to the words of the Act and upon a regard to all material surrounding circumstances.”

70. In *Harrison v Teton Valley Trading Co (CHINAWHITE)* [2005] F.S.R. 10, the English Court of Appeal said (at paragraph 26):

“The words “bad faith” suggest a mental state. Clearly when considering the question of whether an application to register is made in bad faith all the circumstances will be relevant. However the court must decide whether the knowledge of the applicant was such that his decision to apply for registration would be regarded as in bad faith by persons adopting proper standards.”

71. Further, in *Ajit Weekly Trade Mark* [2006] R.P.C. 25, the Appointed Person stated as follows:

“The subjective element of the test means that the tribunal must ascertain what the defendant knew about the transaction or other matters in question. It must then be decided whether in the light of that knowledge, the defendant’s conduct is dishonest judged by ordinary standards of honest people, the defendant’s own standards of honesty being irrelevant to the determination of the objective element.”

72. An allegation that a trade mark has been applied for in bad faith is a serious allegation. It should not be made unless it can be fully and properly pleaded and should not be upheld unless it is distinctly proved and this will rarely be possible by a process of inference (*ROYAL ENFIELD Trade Marks* [2002] R.P.C.

24 at paragraph 31).

73. It is the Opponent's case that the range of goods and services being applied for under the subject application is so broad and diverse that the subject application could not have been filed in good faith.
74. The Applicant avers that it has filed the subject application in good faith and there is no basis or evidence to suggest otherwise; the subject goods and services are directly relevant to the Applicant's diverse businesses, including, without limitation, its (and/or its affiliates') operation of online platforms on which a wide range of goods and services are traded, and its (and/or its affiliates') provision of a wide range of technology-related goods and services; and the Applicant has a legitimate right and honestly intends to use and/or allow others to use the subject marks in relation to the subject goods and services.
75. Mr. Clark reiterates the Applicant's reply in Li's SD that there is no limitation as to the number of goods or services to be applied for in a trade mark application and it is not necessary to submit evidence of use in order to obtain a trade mark registration in Hong Kong; so long as the marks in question are being used by the Applicant in relation to the subject goods or services, or so long as the Applicant honestly intends to use the subject marks, or allows them to be used, in relation to those goods or services, he is not aware of any circumstances under which the subject marks would give rise to a reasonable suspicion of the Applicant's entitlement to the subject marks or the honesty of its intention.
76. In the present case, I accept that at the relevant date the Applicant has an honest intention to use the subject marks in relation to the subject goods and services. There is evidence that the Applicant has used or allowed the subject marks to be used for the sales and promotion of a very wide range of goods and services on its various online marketplaces in relation to its Double 11 campaign in the Mainland China before the relevant date. The Applicant has also adduced evidence of use of the subject marks for the Applicant's Double 11 campaign in Hong Kong after the relevant date.
77. Taking into account all the relevant circumstances of this case, I do not find there is any basis for concluding that the Applicant's decision to apply for registration

of the subject marks in respect of the subject goods and services would be regarded as in bad faith by persons adopting proper standards. The ground of opposition under section 11(5)(b) of the Ordinance is not made out.

### **Conclusion**

78. The opposition against the subject application fails as none of the Opponent's grounds of opposition has been made out.

### **Costs**

79. As the opposition has failed, I award the Applicant costs. Subject to any representations as to the amount of costs or calling for special treatment, which either party makes within one month from the date of this decision, costs will be calculated with reference to the usual scale in Part I of the First Schedule to Order 62 of the Rules of the High Court (Cap. 4A) as applied to trade mark matters, unless otherwise agreed between the parties.

(Connie Law)  
for Registrar of Trade Marks

25 March 2019

Class 9

Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; computer programs; software for processing electronic payments to and from others; authentication software; computer software supplied on the Internet; on-line electronic publications (downloadable from the Internet or a computer network or a computer database); downloadable computer software to facilitate the electronic transmission of information, data, documents, voice, and images over the Internet; downloadable computer software which allows users to participate in web-based meetings and classes, with access to data, documents, images and software applications through a web browser; downloadable computer software for accessing, viewing, and controlling remote computers and computer networks; downloadable electronic publications in the nature of articles, papers, and instructional materials in the fields of telecommunications, the Internet, training, business, sales, and marketing; computer software, computer peripherals; notebook computers; laptop computers; portable computers; handheld computers; personal digital assistants; personal media players; mobile telephones; smart phones; digital cameras; computer workstations; computer servers; computer and telecommunications networking hardware; computer network adaptors, switches, routers and hubs; wireless and wired modems and communication cards and devices; laptop holders, computer bags; fire-extinguishing apparatus; computer hardware and firmware; computer software (including software downloadable from the Internet); compact discs; digital music (downloadable from the Internet); telecommunications apparatus; mouse mats; mobile phone handsets; mobile phone accessories; downloadable games, pictures, motion pictures, movies and music; alarm systems; security cameras; mobile radio and television broadcasting units; television broadcasting equipment; cameras; video cameras; headphones; telephone ear pieces; speakers; Global Positioning System (GPS) apparatus and equipment; computer, electronic and video games programmes and software (including software downloadable from the Internet); liquid crystal displays for telecommunications and electronic equipment; set top box; remote control; data storage programs; spectacles

and sunglasses; electronic signboards; encoded or magnetic bank credit, debit, cash and identification cards; automatic teller machines, cash dispensers; computer software applications, downloadable; electronic book readers; toner cartridges, unfilled, for printers and photocopiers; baby monitors; video baby monitors; lens hoods; tablet computers; encoded key cards; 3D spectacles; memory cards for video game machines; all included in class 9.

### Class 16

Newspapers; magazines; periodicals; journals; paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; 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, pamphlets, posters, printed cards, circulars, catalogues, calendars, price tags, price labels; carry bags of paper, cardboard and plastic; printed telephone, facsimile, electronic mail and website directories; cards in the form of debit cards, credit cards, charge cards and telephone cards other than encoded and magnetic cards; marketing and promotional materials being printed matter; printed advertisements; user manuals; packaging materials made of paper, plastic or cardboard; tissues; handkerchiefs made of paper; models and figurines made of paper; paper party bags for packaging; page holders; all included in class 16.

### Class 35

Advertising; business management; business administration; office functions; organisation, operation and supervision of loyalty and incentive schemes; advertising services provided via the Internet; production of television and radio advertisements; accountancy; auctioneering; organizing of trade fairs; opinion polling; data processing; provision of business information; advertising agency services; advertising services provided for others; database management; compilation of information into computer databases; business consulting services; business consulting services in the field of web based events, conferences, training programs, learning programs, and seminars; business consulting services in the field of delivering web-based knowledge; business consulting services in the field of online collaboration and collaboration technologies;

business consulting services in the fields of sales and marketing; business project management services; business project management services relating to development, set up, staging, production, recording, monitoring and follow-up for web based events, conferences, training programs, learning programs, and seminars; market research and business consulting services; business consultancy services relating to facilitating the transaction of business via local and global computer networks by locating and providing referrals for the delivery of a wide variety of business and consumer products and services; dissemination of business information of goods and services of others via local and global computer networks; business consultancy services relating to providing a web site on a global computer network by which third parties can offer and source goods and services, place, determine the status of and fulfill trade leads and orders, enter into contracts and transact business; providing computerized online ordering services; advertising of goods and services of others via local and global computer networks; international import and export agency services; rental of advertising space on communication media; online trading services relating to electronic auctioneering and providing online business evaluation relating thereto; online retail services of consumer products; providing a directory of third party web sites to facilitate business transactions; business consultancy services relating to operating an electronic marketplace for the buyers and sellers of goods and/or services on a global computer network; business assistance relating to facilitating business transaction via local and global computer networks; corporate management consultancy services; marketing and promotion services; publication of publicity materials; marketing of vacant premises; dissemination of advertising materials, updating of advertising materials, compilation of advertisements for use as web pages on the Internet; rental of advertising space; computer data processing; sales, business and promotional information services; telephone answering (for unavailable subscribers); telephone answering (for others); auctioneering provided on the Internet; personnel management; provision of sales, business, advertising and promotional information through a global computer network and via the Internet; presentation of goods on communication media for retail purposes; the bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods from a general merchandise Internet web site and in a wholesale outlet; the bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods from a general merchandise catalogue by mail order or by means of telecommunications; the bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods from retail outlets; retail and wholesale of telephones,

mobile phone handsets, mobile phone accessories, electronic and telecommunications goods, computer hardware and computer software, batteries, battery chargers, apparatus and instruments for recording, receiving, transmitting and/or reproducing data, information, pictures, images and/or sound, precious metals, jewellery, precious stones, printed matter, stationery and magnetic and non magnetically encoded cards, furniture, picture frames, household and kitchen utensils, glassware, porcelain and earthenware, textiles, clothing, footwear, headgear, laces and embroidery, buttons, ribbons, pins and needles, artificial flowers, carpets, rugs, games and electronic toys, chemicals used in industry, science, photography and agriculture, paints, varnishes and lacquers, personal hygiene products, soaps, perfumery, cosmetics, hair and body lotions, essential oils, cleaning and bleaching preparations, lubricants, fuels, candles, pharmaceutical, veterinary and sanitary preparations, ironmongery and small items of metal hardware, machines and machine tools, cutlery, razors and hand tools, computers, calculating machines, electrical, photographic, cinematographic and optical apparatus and instruments, spectacles and sun glasses, surgical and medical apparatus and instruments, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, vehicles, firearms, fireworks, silverware, horological and chronometric instruments, musical instruments, magazine, cards, paper and cardboard products, picture, typewriters and office requisites, packaging materials, rubber and plastics for manufacture use, packing and insulating materials, leather and imitations of leather and goods made from these materials, handbags, purses, wallets, leather holders, bags, luggage, umbrellas, mirrors, ropes, string, nets, tents, yarns and threads for textile use, coat hangers, place mats, dressmaker's articles, bed and table covers, playthings and sporting articles, foodstuffs and beverages, meat, fish, poultry, preserved, dried and cooked fruits and vegetables, jams and fruits sauces, eggs, milk and milk products, edible oils and fats, coffee, tea, cocoa, sugar, rice, flour, bread and cakes, condiments, fresh fruit and vegetables, beer, mineral water, fruit juices and other non-alcoholic drinks, alcoholic beverages, floral products, tobacco, smokers' articles and matches; direct mail advertising; buying and selling agency services; selection of goods and procurement of goods for individuals and businesses; ordering services [for others]; department store retailing services; supermarket retailing services; secretarial services; provision of business statistical information; organisation of exhibitions for commercial or advertising purposes; business assistance services relating to compilation and rental of mailing lists; business investigation; business administration services for the processing of sales made on the Internet; business referral services and personnel placement; import-export clearance agencies (import-export agency

services); agency for newspapers subscriptions; document reproduction; transcription (including stencil-paper writing); rental of office equipment; customer relationship management; business management services relating to electronic commerce; business management and administration services relating to sponsorship programmes; accounting services; charitable services, namely business administration relating to organizing and conducting volunteer programmes and community service projects; rental of sales stands; provision of commercial and business contact information; search engine optimization; web site traffic optimization; pay per click advertising; commercial intermediation services; business management for freelance service providers; negotiation and conclusion of commercial transactions for third parties; updating and maintenance of data in computer databases; business project management services for construction projects; providing business information via a web site; consultancy, information and advisory services relating to the aforesaid services; all included in class 35.

### Class 38

Telecommunications services; providing web-based multimedia teleconferencing, videoconferencing, and online meeting services that allow simultaneous and asynchronous viewing, sharing, editing, and discussion of documents, data, and images by participants via a web browser; providing customers with online access to online reports regarding the performance, effectiveness, and status of web-based applications, teleconferences, videoconferences, and meetings; providing users with secure remote access via the Internet to private computer networks; providing information in the fields of secured transmission of data and information; consulting services in the fields of secured data and information transmission services; providing online collaboration services allowing users to access applications, platforms, jointly-shared documents, data, task lists, and discussion forums; Internet broadcasting services, providing an online database of information regarding web-based broadcasting complaint submission platform; provision of telecommunication access and links to computer database and to the Internet; electronic communication services; interactive telecommunications services; telecommunication of information (web pages), computer programs and data; providing telecommunications connections to the Internet or data bases; provision of telecommunication access to world-wide web facilities and structures; communication by computer terminals; communication by fibre optic networks; computer aided transmission of messages and images; facsimile transmission; message sending;

paging services; rental of modems; data communication services by electronic means; rental of telecommunication equipment; electronic message sending, receiving and forwarding services; collection, transmission and delivery of data by electronic means; collection, transmission and delivery of mail messages, still picture and/or moving picture information such as characters, messages, music and images, telegrams, information and data by mechanical, electronic, telephone, telex, cable, computer and satellite means; transmission, broadcast and reception of audio, video, still and moving images and data whether in compressed or uncompressed form and whether in real or delayed time; electronic messaging, conferencing and order-transmission services; video conferencing services; communication by electronic bulletin board that enables users to perform a real-time interactive talk between a computer terminal and an electronic bulletin board containing still picture and moving picture information and voice information such as characters; providing electronic bulletin boards and message boards for transmission of messages; provision of online discussion forums; television broadcasting services; broadcasting and transmission of radio and television programmes; music broadcasting; transmission of music, films, interactive programmes, videos, electronic computer games; transmission of information relating to on-line shopping and general retail services; video-on-demand transmission services; news agency services; providing access to computer database on the global computer network for searching and retrieving information, data, web sites and resources available on computer networks; providing user access to a computer database containing electronic publications, bulletin boards, database and information accessible via computer; operation of chat rooms (chat room services); multiple user access to global computer information networks for the transfer and dissemination of a wide range of information; providing access to a website on a global computer network by which third parties can offer goods and services, place and fulfill orders, enter into contracts and transact business; providing access to an interactive website on a global computer network for third parties to post information, respond to requests and place and fulfill orders for products, services and business opportunities; communication services, namely, text and numeric digital messaging services; transmission of information by data communications for assisting decision making; transmission of information through video communication systems; web conferencing services; electronic communication services for establishing virtual chatrooms via text messaging; providing electronic bulletin boards for the posting and transmission of messages among and between computer users concerning products, services and business leads and opportunities; providing an online interactive bulletin board for the posting, promotion, sale and resale of items via a global computer

network; providing electronic mail and electronic mail forwarding services; audio and video communication via computers and computer networks, and via a global communications network; providing computer access and leasing access time to online interactive bulletin boards and databases; providing access to electronic bulletin boards for the posting and transmission of messages among and between computer users concerning products, services and business opportunities; providing access to electronic calendar, address book and electronic notebook, via local and global computer networks; providing distant video and/or telephone conferencing access and facilities; providing computer links to third party web sites to facilitate e-commerce and real world business transactions; consultancy, information and advisory services relating to the aforesaid services; all included in class 38.

#### Class 41

Education; providing of training; entertainment; sporting and cultural activities; publication of texts, books and journals (others than publicity texts); publication of diagrams, images and photographs; publication of newspapers, magazines and periodicals; education, training and instruction services relating to telecommunications, computers, computer programs, web site design, e-commerce, business management and advertising; provision of education, recreation, instruction, tuition and training both interactive and non-interactive; design of educational courses, examinations and qualifications; entertainment provided via electronic and digital interactive media; electronic games services provided by means of the Internet; provision of information relating to education, training, entertainment, recreation, sporting, social and cultural activities; providing on-line electronic publications (not downloadable); arranging, organizing, hosting and conducting singing competitions; arranging, organizing, hosting and conducting concerts; arranging, organizing, hosting and conducting events and competitions for education or entertainment purposes; arranging, organizing, hosting and conducting game shows and quests; entertainment ticket agency services; information relating to entertainment or education, provided online from a computer database or the Internet; providing digital music (not downloadable) from the Internet; providing digital music (not downloadable) from MP3 (Moving Picture Experts Group-1 audio layer 3) Internet web sites; entertainment and education services relating to planning, production and distribution of sound, images, digital music, movies, live or recorded audio, visual or audiovisual material for broadcasting on terrestrial cable, satellite channels, the Internet, wireless or wire-link systems and other means of communications; music entertainment

services; rental of sound recordings; preparation of entertainment, educational, documentary and news programmes for broadcasting; news reporters' services; information relating to sporting or cultural events, current affairs and breaking news provided by satellite television transmission, the Internet or by other electronic means; television programmes, radio and film production; preparation and production of television programmes; provision of information, data, graphics, sound, music, videos, animation and text for entertainment purpose; game services; provision of club recreation, sporting and gymnasium facilities; band performances; club entertainment, discotheque, fashion show and night club services; club services relating to entertainment, education and cultural services; arranging, conducting and provision of conferences, conventions, congresses, seminars and training workshops; organizing and conducting exhibitions, fashion shows, educational shows and cultural shows and performances; art exhibition and gallery services; art gallery services relating to fine arts leasing; training services in relation to occupation health and safety, and environmental conservation; provision of cigar classes, wine tasting classes; providing education information about research materials and agency thereof; arranging, organizing, planning and management of seminars; animal training; direction in producing broadcasting programs; instructional services relating to operation of machines and equipment, including audiovisual equipment, which is used for the production of broadcasting programs; providing audio and visual studios; providing sports facilities; providing facilities for movies, shows, plays, music or educational training; entertainment booking agencies; rental and leasing of motion pictures (cine-films); rental and leasing of musical instruments; rental and leasing of television programmes; rental and leasing of television sets; lending libraries; archive library services; subtitling services; sign language interpretation services; rental of entertainment software; providing video games, computer games, sound or images, or movies through telecommunication or computer networks; providing online computer games and contests; rental of pre-recorded video tapes; rental and leasing of game machines; lending of arcade game equipment; lending of pictures; photography; translation; language interpretation; educational and training programs in the field of risk management; educational and training programs relating to certification; provision of news; lottery services; providing on-line videos, not downloadable; tutoring; consultancy, information and advisory services relating to the aforesaid services; all included in class 41.

## Class 42

Scientific and technological services and research and design relating thereto, industrial analysis and research services; design and development of computer hardware and software; computer services in connection with transmitting information, data, documents, and images over the Internet; application service provider (ASP) services, namely, hosting computer software applications of others; application service provider (ASP) services providing software in the fields of web-based conferencing, audio conferencing, electronic messaging, document collaboration, video conferencing, and voice and call processing; providing online non-downloadable software for facilitating the interoperability of multiple software applications; technical support (technical consultancy) services relating to computer software and applications provided online, by email and by telephone; computer services, namely, creating an on-line community for registered users to participate in discussions, get feedback from their peers, form virtual communities, engage in social networking, and exchange documents; computer technology advice provided to Internet users by means of a support hotline; computer service relating to creating indexes of information, sites and resources on computer networks; providing search engines; design of computers, notebook computers, laptop computers, portable computers and handheld computers; design of personal digital assistants and personal media players; design of mobile telephones and smart phones; design of digital cameras; computer services; computer programming; computer integration services; computer analysis services; computer programming in relation to the defence against virus; computer system software services; computer services in relation to providing direct connection services between computer users for exchanging data; computer software design; computer system design; design and development of webpages; hosting webpages for others; hosting computer application software for searching and retrieving information from databases and computer networks; providing technical information at the specific request of end-users by means of telephone or global computer network; consultancy services in relation to computer software; computer services relating to customized searching of computer databases and websites; computer and electronic signal coding and decoding; conversion of physical data and documents into electronic media format; product testing and evaluation services; architectural and design services; interior designs of buildings, offices and apartments; computer and computer network information services; provision of computer security risk management programs; computer security information, knowledge, and testing services; quality assurance services; computer services relating to certification of business transactions and preparation of reports therefor; access control to (security

services for-) computers, electronic networks and databases; security of data transmission and of transactions via computer networks; consultancy in the field of data security; technological consultancy concerning securing telecommunications; computerized communication network security services; providing information in the fields of Internet, world wide web and computerized communication network security; consulting services in the fields of Internet, world wide web and computerized communication network security services, information security services; authentication services for computer security; off-site data backup; electronic data storage; providing information on computer technology and programming via a web site; cartography services; cloud computing; consultancy, information and advisory services relating to the aforesaid services; all included in class 42.