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# KFIR

Klagenemnda for industrielle rettigheter

## **AVGJØRELSE**

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Sak: 22/00039  
Dato: 8. september 2022

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Klager: Skydrive Inc  
Representert ved: Acapo AS

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Klagenemnda for industrielle rettigheter sammensatt av følgende utvalg:  
Sarah Wennberg Svendsen, Martin Berggreen Rove og Liv Turid Myrstad  
har kommet fram til følgende

## AVGJØRELSE

### 1 Kort fremstilling av saken:

- 2 Saken gjelder klage over Patentstyrets avgjørelse av 13. desember 2021, hvor ordmerket SkyDrive, internasjonal registrering nr. 1413663, med søknadsnummer 201809529, ble nektet virkning for følgende varer:

Klasse 12: Driving motors for land vehicles; engine mounts for land vehicles; engines for land vehicles; jet engines for land vehicles; motors for land vehicles; propulsion mechanisms for land vehicles; turbines for land vehicles; axle bearings for land vehicles; axles for land vehicles; axle journals; axles for vehicles; cardan shafts for vehicles; universal joints for land vehicles; wheel bearings for land vehicles; automobile chains; connecting rods for land vehicles, other than parts of motors and engines; gear boxes for land vehicles; gearing for land vehicles; hydraulic circuits for vehicles; reduction gears for land vehicles; torque converters for land vehicles; transmission chains for land vehicles; transmission shafts for land vehicles; transmissions for land vehicles; power transmission belts for land vehicles; shock absorbing springs for vehicles; suspension shock absorbers for vehicles; torsion bars for vehicles; vehicle suspension springs; brake discs for vehicles; brake linings for vehicles; brake pads for automobiles; brake segments for vehicles; brake shoes for vehicles; brakes for vehicles; boats and ships; structural parts for boats; structural parts for ships; aircraft; structural parts for aircraft; airplanes; structural parts for airplanes; autogyros; gliders and structural parts therefor; turbo-jet airplanes; turbo-prop airplanes; tilt rotor aircraft; propeller airplanes; helicopters; structural parts for helicopters; empennages; propellers for aircraft; propeller blade protectors for aircraft; landing gear for aircraft; landing gear wheels for aircraft; fuselages for aircraft; hot air balloons; seaplanes; airships; rotor blades for helicopters; aircraft wings; fuel tanks for aircraft; tires for aircraft; civilian drones; airplane seats; electrically powered motor vehicles and structural parts therefor; electric tricycles and structural parts therefor; buses; trucks; ambulances; racing cars; amphibious vehicles; snowmobiles; armored vehicles; fork lift trucks; camping cars; tractors; trailers; trolley buses; automobiles and structural parts therefor; automobile tires; automobile wheels; seat covers for automobiles; steering wheel covers for automobiles; electric vehicles; amphibious airplanes; flying cars and structural parts therefor; shaped covers for flying cars; air vehicles; structural parts for air vehicles; shaped covers for air vehicles; powered motor vehicles for use in the air; structural parts for powered motor vehicles for use in the air; shaped covers for powered motor vehicles for use in the air; roadable aircrafts; structural parts for roadable aircrafts; shaped covers for roadable aircrafts; aircrafts having function of traveling on land; structural parts for aircraft having function of traveling on land; shaped covers for aircraft having function of traveling on land; rotorcraft; vertical take-off and landing propeller airplanes; vertical take-off and landing aircraft capable of road travel; vertical take-off and landing aircraft; short take-off and landing aircraft; structural parts for vertical take-off and landing aircraft capable of road travel; shaped covers for vertical take-off and landing aircraft capable of road travel; two-wheeled motor vehicles; bicycles; structural parts for motorcycles; structural parts for bicycles; covers for vehicle steering wheels; tires for vehicles; seat covers for vehicles; bodies for vehicles; propellers for vehicles; upholstery for vehicles; vehicle bumpers; vehicle

dashboards; vehicle seats; vehicle windows; security harness for vehicle seats; parachutes; electric motors for automobiles; electric motors for land vehicles; antitheft alarms for vehicles.

- 3 Varemerket ble nektet virkning som følge av at det ble ansett å være forvekselbart med eldre internasjonal registrering nr. 1143315, ordmerket SKY og internasjonal registrering nr. 1143332, ordmerket SKY, jf. varemerkeloven § 16 bokstav a, jf. § 4 første ledd bokstav b.
- 4 Varemerket ble av Patentstyret tilbudt virkning for følgende varer i klasse 9: «parachutes».
- 5 Internasjonal registrering nr. 1143315, ordmerket SKY, er gitt virkning for tjenester i klasse 35, herunder salg av «vehicles, apparatus for locomotion by land, air or water» og «motor vehicles and their parts» i klasse 35.
- 6 Internasjonal registrering nr. 1143315, ordmerket SKY, har virkning i Norge for følgende tjenester:

Klasse 35: Advertising and promotional services; business management; business administration; office functions; administration services for businesses; customer relationship management; organisation, operation and supervision of sales and promotional incentive schemes; provision of product information and advice to prospective purchasers of home entertainment equipment, multi-media apparatus and instruments, television and radio equipment, audio visual equipment, set top boxes, personal video recorders, video recorders, computer games software, hardware and peripheral devices; rental of advertising space; television advertising commercials; preparation and presentation of audio visual displays for advertising purposes; dissemination of advertising matter; arranging and conducting of trade shows and exhibitions; arranging and conducting trade show exhibitions in the field of electronic, computer and video games for the computer and video game industry; advertisement and promotion of television services; compilation of business statistics and commercial information; loyalty card services; marketing studies; marketing of radio programmes, television programmes, films, motion pictures, pre-recorded video tapes, audio and/or visual material, pre-recorded video cassettes, DVDs or pre-recorded video discs; monitoring and analysis of call information (office services); business planning, inspection, survey and appraisal services; managing and providing computerised business information data; compilation of business statistics and commercial information, all relating to television, radio, satellite broadcasting and video games; arranging magazine and newspaper subscriptions; the bringing together, for the benefit of others of a variety of goods namely bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, cleaning, bleaching and abrasive preparations and substances, all for laundry use, candles including all the aforesaid made from unbleached and/or organic and/or biodegradable ingredients, pharmaceutical and veterinary goods, industrial oils and greases, lubricants, fuels (including motor spirit) and illuminants, fuel additives and preparations for enhancing combustion of fuels, machines and machine tools, motors and engines, turbines for power generation, control panels for turbines for power generation, machines for household use, building, home improvement and gardening goods, home decorating equipment, paints and varnishes, hand tools, scientific,

nautical, surveying, photographic, cinematographic, optical, weighing, measuring, radio, television, sound recording, sound reproducing, telecommunications, signalling, checking (supervision) and teaching apparatus and instruments, apparatus for recording television programmes, apparatus for recording, transmission, reproduction or reception of sound, images or audio visual content, electrical and electronic apparatus for use in the reception of satellite, terrestrial or cable broadcasts, televisions, LCD and plasma screens, home cinema systems, amplifiers, speakers, radios, wireless audio and/or audio visual devices, portable wireless audio and/or audio visual devices, remote controls, games controllers, wireless gaming controllers, wireless keypads, television receivers including a decoder, set-top boxes, digital set-top boxes, high definition set top boxes, personal video recorder, set-top boxes for use in decoding and reception of satellite, terrestrial and cable broadcasts, apparatus for decoding encoded signals including set top boxes for television reception, set top box apparatus including a decoder and an interactive viewing guide, set top box apparatus including a decoder and a recorder for recording television and audio programmes, set top box apparatus including a decoder and a recorder programmable to transfer stored recordings to storage and also to delete the older recordings, satellite dishes, low noise blocks, satellite meters, computer software to enable searching of data, encoded programs for computers and for data processing and telecommunications, telephones, mobile telephones, PDAs, telephone and radio modems, television receivers including a decoder, set top boxes for use in decoding and reception of satellite, terrestrial cable and digital subscriber line (DSL), Internet or other electronic broadcasts, apparatus for decoding encoded signals, recorded television and radio programmes, recorded programmes for broadcasting or other transmission on television, radio, mobile telephones, PDAs and on PCs, video recordings, multimedia apparatus and instruments, portable or hand-held computers, DVD players, computers, computer hardware and peripheral devices, computer hardware, apparatus and instruments all for transmitting, displaying, receiving, storing and searching electronic information, computer programs, electronic computer games, electronic interactive computer games, computer software, computer software and telecommunications apparatus to enable connection to databases and the Internet, computer software supplied from the Internet, network termination equipment, wired and/or wireless computer network routers, modems, firewalls and/or bridges, computer software and computer programs for distribution to, and for use by, viewers of a digital television channel for the viewing and purchase of goods and services, computer games software and computer quiz software, computer video games and/or quizzes adapted for use with television receivers and screens or with video monitors or with computer screens, computer programs for interactive television and for interactive games and/or quizzes, electronic apparatus adapted for use with television receivers in playing games, games consoles, interactive video game devices comprised of computer hardware and software and accessories, namely game consoles, game controllers and software for operating game controllers, portable and/or hand-held electronic devices for interactive computer and video games, portable and/or hand-held electronic devices for receiving, playing and transmitting music, sounds, images, text, signals, information and code, portable wireless audio devices, virtual reality systems, home entertainment systems, multimedia equipment, audio visual equipment, video and television equipment, electronic publications, computer games, computer video games, video screens, video projectors, tapes, discs and wires, all being magnetic, cassettes and cartridges, all adapted for use with the aforesaid tapes, blank and pre-recorded audio and video cassettes, tapes and

cartridges, compact discs, DVD discs, phonographic records, laser readable discs for recording sound or video, ROM cartridges, CD-ROMs, cards and discs, integrated circuit cards, memory carriers, recording media, all pre-recorded with computer video games and/or quizzes, encoded cards, radio and television signal antennae, music, sounds, videos, images, text and information provided by a telecommunications network, by on-line delivery and by way of the Internet and/or the world-wide web or other communications network, interactive sound and/or audio recordings, music, video, sound and/or audio recordings (downloadable) provided from MP3 Internet websites, MP3 players, MP3 readers, audio and/or video file recorders and/or players, portable audio and/or video file recorders and/or players, personal video recorders, telephone ring tones (downloadable), apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus and instruments for the reception of radio and television broadcasts including the reception of cable, satellite and digital broadcasts, smart cards, credit cards, loyalty cards, acoustic apparatus or instruments, adaptors, aerials, antennae, amplifiers, amusement apparatus and instruments adapted for use with an external display screen or monitor, communication apparatus and instruments, encoded or magnetic banking or credit cards, cinematographic film, cinematographic instruments and apparatus, data carriers, data storage, electrical telecommunications and/or communications and/or broadcast and/or transmission and/or decoding and/or image processing and/or audio visual instruments and apparatus, electronic telecommunications and/or communications and/or broadcast and/or transmission and/or decoding and/or image processing and/or audio visual instruments and apparatus, film reproducing instruments and apparatus, hand held electrical telecommunications and/or communications and/or broadcast and/or transmission and/or decoding and/or image processing and/or audio visual instruments and apparatus, hand held electronic telecommunications and/or communications and/or broadcast and/or transmission and/or decoding and/or image processing and/or audio visual instruments and apparatus, interactive educational or entertainment games for use with television receivers and video apparatus, mobile telephones, motion pictures, telephone apparatus and equipment, parts and fittings for all the aforesaid goods, sunglasses, leather cases for holding mobile phones, e-sell through products, namely downloadable media content, including video and films, television programmes, computer games, music, images and ring tones provided by Internet, telephone line, cable, wireless transmission, satellite or terrestrial broadcast service, cases, containers, protective coverings and parts and fittings therefore, all for use with MP3 players, music storage devices, media storage devices and other consumer electronic devices, electrical, electronic and computer equipment for machinery for use in conservation, generation and efficient use of heat, light and water, including thermostatic controls, solar panels for electricity generation, photovoltaic devices, solar cells, turbines and motion detectors, electrical, electronic and computer equipment for use in the generation of alternative energy including wind power, hydroelectric power, tidal power, geothermal power, solar power, biomass, and biofuels, control and monitoring equipment for use in the generation of alternative energy including wind power, hydroelectric power, tidal power, geothermal power, solar power, biomass, and biofuels, electronic publications (downloadable), including electronic publications, magazines and newsletters regarding environmental protection, energy conservation and ecology, animal welfare and renewable energy projects, including wind power, hydroelectric power, tidal power, geothermal power, solar power, biomass, and biofuels, apparatus and

instruments for closed circuit television and surveillance systems, apparatus and instruments for personal security monitoring, apparatus and instruments for home security monitoring and control, home and personal security apparatus, home and personal security devices, home and personal security alarms, electronic protection equipment, including fire detecting and alarm equipment, intruder and burglar alarm equipment and motion detecting equipment, radio, telephonic, television and signalling apparatus and instruments, cameras, sound and video monitoring and recording and sound and video reproducing apparatus and instruments, all for control and telemetry purposes for the home and personal security, closed-circuit television systems (CCTV), monitors, cameras, optical lenses, camera casings, prepackaged cameras, infrared illuminators, videocassette recorders (VCRs), system controlling software, video monitoring apparatus, detectors, access control apparatus, readers, magnetic or encoded access control cards, monitoring apparatus, electronic panels for alarm management and monitoring, alarm panels, glass breakage detectors, smoke detectors, carbon monoxide detectors, digital audio recorders, digital video recorders, digital audio servers, digital video servers, electrical communication equipment, message programming equipment, radio paging equipment, electronic locking systems, life-saving apparatus and equipment, electric alarms, electronic devices for opening doors, electronic devices for protection, intruder alarms and anti-theft equipment, intruder detection apparatus, motion detecting equipment, electronic control apparatus, electronic apparatus for controlling operation of machines, remote apparatus for controlling operation of machines, computer apparatus for controlling operation of machines, electronic network equipment, electronic communication equipment, message programming devices, electronic locking apparatus, computer software, operating system software, devices, and hardware for transmitting, receiving, synchronizing, displaying, backing-up, monitoring, controlling, sharing, coding, decoding, encrypting, accessing, remotely accessing, creating, collecting, storing, securing, removing, transferring, disseminating, locating, organizing or otherwise utilizing data, voice, multimedia, audio, visual, music, photographs, drawings, images, audiovisual, video, text, graphics or other data, including over a global communications network, computer software, operating system software, devices, and hardware for synchronizing data, files, e-mails, contacts, calendars, task lists, text messages, photos, music, audio, visual, audio visual, video, text, graphics, programs and other information between computers and hand-held or other devices, and vice versa, communications platforms for enabling instantaneous, continuous, scheduled and perpetual synchronization of data between computers and hand-held or other devices, and vice versa, multimedia cards, memory cards, flash memory cards, memory chips, memory sticks, plugs, plug-in cards, magnetic cards, SIM cards, telephone calling cards, headphones, headsets, portable and/or hand held electronic devices for receiving, storing, playing and transmitting data, voice, multimedia, audio, visual, music, photographs, drawings, images, audiovisual, video, text, graphics or other data, online dictionaries, encyclopaedias, and reference texts (downloadable), online publications, including newspapers, magazines (periodicals), comics, journals (publications), books, user manuals, instructional and teaching materials (downloadable), online posters, photographs, pictures, articles, vouchers and tickets (downloadable), online electronic dictionaries, encyclopaedias and reference texts, computer software for processing electronic payments and transferring funds to and from others, online and downloadable authentication software, online conversion software and databases, including currency conversion and measurement conversion,

computer software for the purpose of monitoring online communications and chat room conversations and alerting third parties to the contents, computer software for monitoring the use of computers and the Internet by children, computer software relating to online protection and online security, spectacles, contact lenses, agricultural and horticultural goods, musical instruments, medical equipment, domestic electrical and electronic equipment including white goods, jewellery, clocks, watches, stationery, apparatus for controlling temperature including remote and computer apparatus and instruments, apparatus for controlling water supply, apparatus for controlling lighting including remote and computer apparatus and instruments, apparatus for energy efficient lighting, heating and water supply purposes, in particular, light bulbs, apparatus for water conservation and use minimization, automated control apparatus for local management of lighting, heating and water supplies, vehicles, apparatus for locomotion by land, air or water, vehicles adapted for use with renewable energy sources including wind power, hydroelectric power, tidal power, geothermal power, solar power, biomass, and biofuels, paper, paper articles, cardboard and cardboard articles, printed matter, publications, newspapers, magazines (periodicals), comics, journals (publications) and books, publications including strategy guides, user manuals, books and magazines all in the field of computer games, science fiction, games and entertainment, quiz books, shopping guides listing products for purchase, promotional literature relating to the promotion of goods for sale via digital television, the Internet or other telecommunication channels, photographs, instructional, and teaching materials (other than apparatus), posters, postcards and greeting cards, calendars, diaries, cards and stickers for collecting and collating in albums, writing requisites, rulers, erasers, writing paper, writing sets, catalogues and vouchers for holidays and for travel to and from the destination, adhesive stickers, advertising material, advertisements, bags, credit cards, instructional manuals, newsletters, pens, pencils, writing instruments, pen and pencil holders, programme guides, stationery, user guides or manuals, paper, cardboard and goods made from these materials, printed matter, bookbinding material, photographs, stationery, adhesives for stationery or household purposes, artists' materials, plastic materials for packaging, publications, magazines, including all the aforesaid made from recycled and/or unbleached materials and/or from organic matter, insulation materials, in particular, for the conservation of heat within residential and commercial buildings, leather and goods made of leather and not included in other classes, animal skins, hides, trunks and travelling bags, umbrellas, parasols and walking sticks, whips, harness and saddlery, handbags, backpacks, school bags, beach bags, travelling bags, suitcases, trunks, haversacks, bags for campers, fur-skins, collars for animals, covers for animals, boxes of leather or leather board, attaché cases, pocket wallets, school satchels and briefcases, key cases (leatherwear) attaché cases, backpacks, beach bags, briefcases, canes, card cases, key cases, leather shoulder belts net bags, parasols, pocket wallets, purses, pouches, rucksacks, school bags, school satchels, sling bags, shopping bags, suitcases, garment bags, tote bags, travelling trunks, valises, vanity cases, umbrella covers, and wallets, clothing, footwear, headgear, underclothing, clothing for men, women, children and infants, jeans, slacks, trousers, skirts, shorts, wraps, jerseys, sweaters, waistcoats, dresses, jumpers, sleepwear, robes, warm-up suits, rainwear, sweaters, scarves, hats, caps, mittens, snow suits, belts, smocks, swimwear, playsuits, bibs, stockings, socks, waterproof clothing, underwear, footwear for men, women, children, and infants shoes, sneakers, sandals, slippers, boots, headgear for men, women, children, and infants hats, headbands, earmuffs, caps, sweaters, dress shirts,

blouses, jackets, ties, suits, bathing suits, belts, skirts, dresses, coats, hats, caps, tuxedos, pants, vests, hosiery, scarves, pyjamas, underwear, kilts, mufflers, shawls, footwear, shoes, boots, slippers, and athletic shoes, blazers, headbands, wristbands, coveralls, overalls, sweat pants, and sleepwear, hair accessories, lighting, kitchenware, glassware, china, porcelain, ornaments, furniture, kitchens, sanitary ware, art, paintings, posters, postcards, prints, photographs, household containers and utensils, crockery, cutlery, furnishings, carpets, textiles, table linen, bed linen, haberdashery, sewing machines and equipment, toys, games and playthings, electronic games, handheld devices for playing electronic, computer or video games, video games apparatus, playing cards, card games, sporting articles, games involving gambling, amusement machines, amusement apparatus and instruments, interactive educational or entertainment games, playing cards, sports equipment, fitness equipment, camping equipment, pets goods, food and drink, apparatus for use in relaxation, motor vehicles and their parts, enabling customers to conveniently view and purchase those goods including via an Internet website, an interactive television shopping channel, a digital television shopping channel, an Internet walled garden or by means of interactive television and/or telecommunications (including voice, telephony and/or transfer of digital information or data) and/or interactive digital media; customer information and consultancy services for promotional, advertising and marketing purposes in relation to broadcast reception apparatus and instruments and parts and fittings therefor including cable, satellite and terrestrial, analogue or digital reception; advertising and promotional services in relation to lifestyle, ecological and environmental issues; business management and presentation of renewable energy projects, including wind power, hydroelectric power, tidal power, geothermal power, solar power, biomass, and biofuels and projects in connection with other renewable energy sources; collection and presentation of business experiences in connection with renewable energy projects, including wind power, hydroelectric power, tidal power, geothermal power, solar power, biomass, and biofuels, including compilation of statistics relating to operation and production; the bringing together for the benefit of others, of a variety of retail stores and presentation of applications providers, and other services, enabling customers to conveniently view and purchase those goods and services and make use of such facilities or download applications, including over a global communications network; presentation of service providers enabling customers to conveniently view and choose these services; updating, maintenance, systemization, compilation and retrieval of data, files, e-mails, contacts, calendars, task lists, text messages, photos, music, audio, visual, audio visual, video, text, graphic, programs and other data or information in computer databases; online auction services; provision of an online database of advertisements including personal advertisements, employment and placement opportunities advertisements and real estate advertisements; provision of online price comparison services; provision of online word processing, spreadsheet, calendar, presentation and database services; provision of virtual online office support staff services; online gift ordering services; online posting of rewards; provision of business information and advice; provision of online reward and incentive programs; provision of online reward and incentive programs relating to fitness tracking, health tracking, personal tracking, lifestyle tracking and emotional tracking; information and advisory services relating to all the aforesaid services; information relating to all the aforementioned services provided on-line from a computer database or via a helpline or the Internet.



- 7 Internasjonal registrering nr. 1143332, ordmerket SKY, er gitt virkning for varer og tjenester i klasse 16, 28, 36, 42 og 45, herunder varene «sporting articles» i klasse 28 og tjenestene «technical inspections of motor vehicles» i klasse 42.
- 8 Internasjonal registrering nr. 1143332, ordmerket SKY, har virkning i Norge for følgende varer og tjenester:

Klasse 16: Printed matter; photographs; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); printers' type; printing blocks; posters; albums; cards; books; newspapers; prospectuses; brochures; calendars; writing instruments; engravings or lithographic works of art; paintings (pictures) framed or unframed; watercolour pictures; patterns for dressmaking; drawings; drawing instruments; bags (envelopes, pouches) of plastics, for packaging; rubbish bags of plastics; printing products; photographs; 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; publications, newspapers, magazines (periodicals) except printed magazines distributed in-flight to airline passengers in connection with airline services and not predominantly being television or cinema listings, comics, journals (publications) and books; publications including strategy guides, user manuals, books and magazines all in the field of computer games, science fiction, games and entertainment; quiz books; shopping guides listing products for purchase; promotional literature relating to the promotion of goods for sale via digital television, the internet or other telecommunication channels; instructional and teaching material (except apparatus); posters; postcards and greeting cards; calendars; diaries; cards and stickers for collecting and collating in albums; writing requisites; rulers; erasers; writing sets; catalogues; vouchers, all for holidays and for travel to and from the destination; stickers; advertising material; advertisement boards of paper or cardboard; printed advertisements; plastic bags; credit cards; instruction manuals; newsletters; pens; pencils; writing instruments; pen and pencil holders; programme guides.

Klasse 28: Games and playthings; decorations for Christmas trees (except lighting articles), Christmas trees of synthetic materials; appliances for physical exercise or gymnastics; fishing tackle; gaming balls; billiard tables, cues and balls; card games or board games; ice skates and roller skates; scooters (toys); sailboards and surfboards; bats for games; snowshoes; skis; protective padding (parts of sports clothing); games, toys; gymnastic and sporting articles not included in other classes; electronic games; hand-held devices for playing electronic, computer or video games; video game machines; parts and fittings for all the aforesaid goods; playing cards; card games, sporting articles; games involving gambling; automatic games; amusement apparatus and instruments; interactive educational or entertainment games; protective body and limb pads for cycling; face masks for cycling; cases and/or bags designed for transporting bicycles; sporting items designed for protection; stationary exercise bicycles; rollers for bicycles; trainers for bicycles; turbo trainers for bicycles; rollers for stationary bicycles; computer controlled exercise apparatus; parts and fittings relating to all the aforesaid.

Klasse 36: Insurance; financial affairs; monetary affairs; real estate affairs, savings banks, home banking, issuing of travellers' cheques or issuance of credit cards, real estate appraisal, real estate management, financing services; financial analysis; mutual funds and capital investments; financial consulting services; financial evaluation (insurance, banking, real estate); investment of capital; provision of warranties, extended warranties and associated assistance; provision of warranties and extended warranties in relation to broadcast and/or telecommunications and/or communications reception apparatus and instruments and parts and fittings therefore including cable, satellite, terrestrial, analogue or digital reception equipment; financial services; financial management; financial sponsorship; banking and financial services; financial information; financial services provided via the internet; asset and fund management; financial, credit, debit, pre-payment, e-cash, cash management, loan and finance services; financial services relating to betting, gaming, gambling, lotteries or book making; credit services; credit card services; provision of financial information relating to betting, gaming, gambling, lotteries or book-making services; providing vouchers for holidays and for travel to and from the destination; providing vouchers; real estate investment; real estate agency services; real estate financing; real estate services; real-estate management; real estate administration; real estate leasing; real estate appraisal and valuation; real estate acquisition and sales; information, advice and consultancy services relating to real estate; price comparison services; online insurance services, insurance quotations and insurance quotation comparisons; provision of online credit reports; provision of online fraud protection services; provision of financial services online enabling donations to be made to charity; online clearing and reconciling of financial transactions; online processing and transmission of bills and payments; financial sponsorship of individual cyclists and/or cycling teams and/or cycling events; information, advice and assistance relating to all the aforesaid services provided on-line from a computer database or via a helpline or the internet.

Klasse 42: Engineering evaluations, estimates and research in the field of science and technology; design and development of computers and computer software; research and development of new products for others; technical project studies; architecture; interior decorating; development (design), installation, maintenance, updating or rental of software; computer programming; consultancy in the field of computers; conversion of data and computer programs except physical conversion; conversion of data or documents from physical media to electronic media; technical inspections of motor vehicles; graphic arts design service; styling (industrial design); authenticating works of art; scientific and technological services as well as related research and design services; industrial analysis and research services; design and development of computer hardware and software; including online technical storage facilities, online technical saving services and online technical back-up services, services for software as a service [SAAS], electronic storage of files, data, photographs, graphics, documents, videos, images, audio files, audio-visual files, visual files, computer files, computer applications, information for others and video conferencing services, except carrying out of chemical analysis; design, drawing and commissioned writing all for the compilation of web pages on the internet; hosting of websites; creating and maintaining websites; computer services for interactive communications and broadcasting; installation, rental and maintenance of computer software; computer services relating to entertainment, education, retrieval of information and data via telephone line, cable, wire or fibre, database network or computer network; computer

services for the retrieval of information, messages, texts, sounds, images and data by computer network, computer services relating to radio and television programmes, computer services; maintenance and repair of interactive video game devices comprised of computer software and accessories, namely software for operating game controllers; home computer services namely computer consultancy, installation, repair and maintenance of computer software, updating software and computer support services; computer services, namely the organisation of an infrastructure to enable television subscribers to access internet services via the television; advice relating to the development of computer systems; advisory services relating to computer based information systems; advisory services relating to computer hardware or software; design, installation, maintenance or updating of computer software; design of computer hardware; design services; designing electrical or electronic systems; design services for artwork for animated films; monitoring and analysis of call information; computer programming services; internet walled garden services; providing search engines; rental or leasing of computer hardware or software; testing, research, assessing, consultancy, advising or providing information in relation to the foregoing; computer services for on-line shopping; computer services relating to the processing of orders and payments; provision of information and advice with regard to environmental protection, energy conservation and alternative energy sources and ecology as well as conducting research and drawing up expert reports in the aforesaid fields; research and development of durable use of nature and the environment; technical assistance concerning environmental protection, energy conservation and alternative energy sources, ecology and animal welfare and effecting such projects; development and testing for renewable energy sources including wind power, hydroelectric power, tidal power, geothermal power, solar power, biomass, and biofuels, and components therefor; effecting research projects concerning environmental protection, energy conservation and alternative energy sources, ecology and animal welfare; provision of non-downloadable computer software for transmitting, receiving, synchronizing, displaying, backing-up, monitoring, controlling, sharing, coding, decoding, encrypting, accessing, remotely accessing, creating, collecting, storing, securing, removing, transferring, disseminating, locating, organizing or otherwise utilizing data, voice, multimedia, audio, visual, music, photographs, drawings, images, audiovisual, video, text, graphics or other data, including over a global communications network; application service provider services; technical advisory services including these services provided by a helpline; provision of software updates electronically; weather forecasting online; provision of online mapping; provision of customised webpages containing user defined information, search engines and links to other websites; online scanning, detecting, quarantining and eliminating of viruses, worms, trojans, spyware, malware and unauthorised data and programs on computers and electronic devices; online managing and filtering of electronic communications; online hosting services allowing users to publicize and share data online; provision of interactive calendars from a computer database or from the internet; provision of online information and general encyclopedic knowledge relating to computer security, online security, environmental protection, energy conservation, ecology, alternative energy sources, including wind power, hydroelectric power, tidal power, geothermal power, solar power, biomass and biofuels; provision of remote back-up services for computer data including services provided over a global communications network; information, advisory and consultancy services relating to all the aforesaid services; information relating to all the aforementioned services

provided on-line from a computer database or via a helpline or the internet; online storage of files, databases, photographs, graphics, documents, videos, images, audio files, audio-visual files, visual files, computer files, computer applications and information for others, electronic data storage services for personal and business use, and services for the electronic storage and organisation of files, images, music, audio files, videos, photographs, drawings, audio-visual files, texts, documents and data, but excluding business relocation services; electronic and online storage service; electronic and online retrieval of data, files, e-mails, contacts, calendars, task lists, text messages, photos, music, audio, visual, audio visual, video, text, graphics, programs and other data or information; provision of weather forecasts; data memory services (not including storage), data memory services via computer.

Klasse 45: Legal services; security services for the protection of property and individuals (except the transportation thereof); marriage agencies; horoscope casting agency; undertaking (funerary service); cremation services; night surveillance agencies; monitoring of anti-intrusion alarms; security consultancy; clothing rental; detective agencies; legal research; intellectual property consultancy; legal services; security services for the protection of property and individuals; personal and social services rendered by others to meet the needs of individuals; licensing of radio programmes, television programmes, films, motion pictures, pre-recorded video tapes, audio and/or visual material, pre-recorded video cassettes, DVDs or pre-recorded video discs; advisory services relating to intellectual property or industrial property licensing or protection; licensing of software; exploitation of copyright protected material; exploitation of rights of radio programmes, television programmes, films, pre-recorded video tapes, pre-recorded video cassettes, pre-recorded video discs or motion pictures; exploitation of transmission rights; exploitation of intellectual property or industrial property rights; issue of licensing rights; licensing services; management of intellectual property or industrial property rights; services for the exploitation of rights in radio programmes, television programmes, films, pre-recorded video tapes, pre-recorded video cassettes, pre-recorded video discs or motion pictures; services for the exploitation of intellectual property or industrial property rights; exploitation of printed matter (copyright); provision of horoscopes; real estate licensing; lobbying for political purposes, including political pressure concerning environmental protection, energy conservation and alternative energy sources, ecology and animal welfare; provision of home and personal monitoring and security alarm services; anti-theft and burglar alarm services; fire alarm and protection services; security assessment relating to the security of persons and domestic properties; computerised security services for persons and domestic properties; monitoring of personal security systems and security control apparatus; advisory services relating to security; rental of security apparatus; rental of security surveillance apparatus; electrical protection services for central offices; services for monitoring discharge systems and waterflow alarms; security and fire system monitoring services; site monitoring with regard to fire and security; security services with regard to protection against fires and break-ins; provision of information and general encyclopedic knowledge relating to security, security systems, personal security, business security, household security; online dating, friendship, introduction and social networking services; provision of horoscopes online; provision of online fraud protection services; provision of online personal monitoring, provision of online lifestyle monitoring, provision of emotional and health monitoring; legal assistance concerning environmental protection, energy conservation and alternative

energy sources, ecology and animal welfare and effecting such projects; information and advisory services relating thereto; information relating to all the aforementioned services provided on-line from a computer database or via a helpline or the internet.

- 9 Klage innkom 14. februar 2022. Patentstyret har vurdert klagen og ikke funnet det klart at den vil føre frem. Klagen ble deretter oversendt Klagenemnda for videre behandling den 22. mars 2022, jf. varemerkeloven § 51 andre ledd.

**10 Grunnene for Patentstyrets vedtak er oppsummert som følger:**

- Det foreligger fare for forveksling mellom det yngre ordmerket SkyDrive og de to eldre registreringene for de omsøkte varene i klasse 12, jf. varemerkeloven § 16 bokstav a og § 4 første ledd bokstav b.
- Det foreligger vare- og tjenesteslagslikhet mellom varene omfattet av innehavers merke i klasse 12, og enkelte varer og tjenester i klasse 28, 35 og 42, omfattet av de eldre merkene.
- Internasjonal registrering nr. 1143315, ordmerket SKY, gjelder for salg av blant annet kjøretøyer i klasse 35, dette er likeartet med det yngre merkets varer i klasse 12. Det at et varemerke gjelder for salg av svært mange varer, gjør ikke vernet svakere for hver enkelt salgsvare.
- De eldre merkene består begge av ordet SKY, merkene har normal grad av særpreget for de aktuelle varene og tjenestene.
- Det yngre merket SkyDrive består av de to vanlige engelske ordene SKY og DRIVE, og forbrukeren vil oppfatte disse som to selvstendige elementer.
- Merkedelen SKY har særpreget for de aktuelle varene, mens merkedelen DRIVE er beskrivende.
- Merkedelen SKY er identisk med de tidligere registrerte varemerkene. Det foreligger dermed visuelle, fonetiske og konseptuelle likheter mellom merkene. Sammenstillingen med DRIVE forhindrer ikke at merkene vil forveksles.
- Etter en konkret helhetsvurdering av vareslagslikheten og kjennetegnslikheten, har Patentstyret kommet til at gjennomsnittsforkbrukeren vil kunne tro at merkene har fellesskap i kommersiell opprinnelse og at innehavers ordmerke er en variant av de eldre merkene. Dermed foreligger det fare for forveksling, jf. varemerkeloven § 16 bokstav a, jf. § 4 første ledd bokstav b.
- I denne konkrete vurderingen konkluderes det med forvekselbarhet, og derfor legges det ikke avgjørende vekt på at registreringer som inneholder sammenstillinger med ordelementet SKY sameksisterer i Norge og i utlandet.

**11 Klager har for Klagenemnda i korte trekk gjort gjeldende:**

- Klager er uenig i Patentstyrets konklusjon om at det foreligger risiko for forveksling mellom SkyDrive og de eldre registreringene bestående av ordet SKY.
- Internasjonal registrering nr. 1143315 gjelder for salg, i klasse 35, av en så stor mengde varer at det nærmest gjelder alle tenkelige varer. Ettersom salgstjenestene er svært omfattende, kan ikke salget av de konkrete varene anses å ha et sterkt vern.
- Internasjonal registrering nr. 1143332 gjelder for tjenestene «technical inspections of motor vehicles», og klager vurderer at disse tjenestene ikke er likeartet med det yngre merkets varer i klasse 12.
- Denne saken dreier seg kun om likeartede varer og tjenester, og det foreligger ikke høy grad av likhet. Dette taler for en mindre streng helhetsvurdering av forvekselbarheten.
- Kjennetegnene er heller ikke identiske. De eldre registreringene består kun av det korte ordet SKY. Det yngre merket består av det mye lengre helhetlige uttrykket SkyDrive. Forskjellene blir dermed så store at merkene ikke vil forveksles. Det at alle merkene inneholder ordet SKY er ikke nok til at forbrukere vil forveksle dem.
- Patentstyret har delt opp SkyDrive på en unaturlig måte. Forbrukere vil ikke isolere SKY og anse dette ordet som den kommersielle opprinnelsen. Forbrukere vil heller oppfatte merket som et helhetlig uttrykk med betydningen «himmelkjøring», som skiller seg klart fra SKY alene.
- Klagers eget merke SKYLINER, internasjonal registrering nr. 1442450, er besluttet gjeldende av Patentstyret. Videre er SKYSHUTTLE, internasjonal registrering nr. 1433580 og SKYRAIL, internasjonal registrering nr. 1375665 besluttet gjeldende. Alle disse gjelder for klasse 12, uten at noen mothold er anført. Den innværende vurderingen er helt analog, og det er ingenting som tilsier at SkyDrive skulle få et annet utfall enn de nevnte registrerte varemerkene.
- Alle de nevnte internasjonale registreringene sameksisterer i en lange rekke jurisdiksjoner.
- De to tidligere registrerte varemerkene bør anses som defensive registreringer. Det vil kunne uthule hele registreringssystemet dersom disse merkene skal stoppe alle andre merker med ordet SKY i seg.

**12 Klagenemnda skal uttale:**

**13 Klagenemnda er kommet til et annet resultat enn Patentstyret.**

14 Det aktuelle varemerket er et ordmerke som består av teksten SkyDrive.

15 Spørsmålet om to varemerker er egnet til å forveksles med hverandre, skal avgjøres ut fra en helhetsvurdering der både vareslagslikheten og kjennetegnslikheten blir vektlagt, jf. varemerkeloven § 16 bokstav a og § 4 første ledd. De to elementene kan ikke vurderes

separat, jf. Høyesteretts dom i HR-1998-63-A COSMEA, og Annen avdelings avgjørelse 6747 side 11, CONDIS, samt EU-domstolens avgjørelser i sakene C-251/95 Sabèl/Puma, avsnitt 18 og C-39/97 Canon/Metro-Goldwyn-Mayer, avsnitt 17.

- 16 Forvekslingsfare må videre vurderes ut fra gjennomsnittsforbrukerens oppfatning av varemerkene. Spørsmålet er om en ikke ubetydelig del av omsetningskretsen for de varer det gjelder, kan komme til å ta feil av kjennetegnene (direkte forveksling), eller komme til å tro at det foreligger en kommersiell forbindelse mellom de to kjennetegnernes innehavere (indirekte forveksling), jf. HR-2008-1686-A SØTT + SALT, samt de ovenfor nevnte avgjørelsene fra EU-domstolen.
- 17 Det første spørsmålet er om det foreligger varer og tjenester av samme eller lignende slag.
- 18 Varefortegnelsen i den foreliggende internasjonale registreringen gjelder blant annet «driving motors for landvehicles; axles for land vehicles; boats and ships; structural parts for boats; aircraft; structural parts for aircraft; propellers for aircraft; seaplanes; airplane seats; electrically powered motor vehicles and structural parts therefor; electric vehicles; flying cars and structural parts therefor; shaped covers for flying cars; roadable aircrafts; two wheeled motor vehicles; bicycles; structural parts for motorcycles; covers for vehicle steering wheels; tires for vehicles; seat covers for vehicles; bodies for vehicles; vehicle seats; vehicle windows; security harness for vehicle seats» i klasse 12. Dette er varer som i korte trekk dekker kjøretøy som går til lands, på vanns og i luften og en rekke nærmere spesifiserte deler dertil.
- 19 Internasjonal registrering nr. 1143315, er gitt virkning i Norge for blant annet klasse 35 «the bringing together, for the benefit of others of a variety of goods namely (...) vehicles, apparatus for locomotion by land, air or water (...) motor vehicles and their parts, enabling customers to conveniently view and purchase those goods including via an Internet website, an interactive television shopping channel, a digital television shopping channel, an Internet walled garden or by means of interactive television and/or telecommunications (including voice, telephony and/or transfer of digital information or data) and/or interactive digital media». Dette er tjenester som blant annet dekker fremvisning av kjøretøyer, apparater for bevegelse/forflytning på land i luften eller på vannet og motorkjøretøyer og deler dertil, slik at kunder kan se og kjøpe slike varer via en nettside eller via salgskanaler på tv.
- 20 Klagenemnda anser at de aktuelle varene i klasse 12 inngår i ovennevnte fremhevede varer som dekkes av salgstjenesten i klasse 35 i den eldre internasjonale registreringen nr. 1143315. Dette er å anse som varer og tjenester av lignende slag, fordi varene og tjenestene har overlappende omsetningskrets, og den kommersielle opprinnelsen bak varene og tjenestene er ofte den samme, samt at varene som selges er identiske eller ligger svært tett opp til varene i klasse 12.

- 21 Klagenemnda går så over til å vurdere om det er vare- og tjenesteslagslikhet med hensyn til internasjonal registrering nr. 1143332. Klagenemnda mener det ikke foreligger vareslagslikhet mellom angivelsen «sporting articles», som omfatter stasjonære treningssykler, i klasse 28, og «bicycles» i klasse 12. Stasjonære treningssykler forflytter seg ikke fysisk, og dette medfører at varene både har ulike formål og bruksområder, men også klare artsmessige ulikheter. Varene er heller ikke komplementære og er ikke i direkte konkurranse med hverandre. Vi viser til Klagenemndas tidligere avgjørelse VM 20/00090 Ferda, avsnitt 20.
- 22 Internasjonal registrering nr. 1143332 sin tjeneste «technical inspections of motor vehicles», i klasse 42, og det yngre merkets varer «buses; trucks; ambulances» og «racing cars», i klasse 12, er ikke i direkte konkurranse med hverandre, og retter seg, i alle fall i utgangspunktet, mot forskjellige omsetningskretser. I tillegg er varer og tjenester, per definisjon, ulike i art, og distribueres normalt ikke gjennom samme kanaler. I den grad det foreligger vare- og tjenesteslagslikhet mellom det yngre merkets varer i klasse 12 og det eldre merkets tjenester i klasse 42, mener Klagenemnda at det kun er snakk om lav grad av likhet.
- 23 Klagenemnda er etter dette kommet til at innehavers varer i klasse 12 er av lignende slag som enkelte av internasjonal registrering nr. 1143315 sine tjenester i klasse 35, og enkelte av nr. 1143332 sine varer i klasse 42. Graden av likeartethet må anses å være lav mellom innehavers merke og internasjonal registrering nr. 1143332, og normal mellom innehavers merke og internasjonal registrering nr. 1143315. Dette innebærer at merkene må gi et relativt likt helhetsinntrykk for at forvekslingsfare skal være sannsynlig.
- 24 Det avgjørende spørsmålet er om det foreligger tilstrekkelig merkelikhet ut fra gjennomsnittsforbrukerens oppfatning av varemerkene. Her må det tas hensyn til gjennomsnittsforbrukerens oppmerksomhetsnivå, hvilke kategorier av varer eller tjenester det er snakk om og hvordan de omsettes.
- 25 Gjennomsnittsforbrukeren vil normalt oppfatte merkene som en helhet, uten å undersøke detaljer eller analysere merkenes enkelte deler. Han/hun må anses å være alminnelig opplyst, rimelig oppmerksom og velinformert, jf. EU-domstolens uttalelse i sak C-210/96, Gut Springenheide, avsnitt 31. Det må imidlertid tas hensyn til at gjennomsnittsforbrukeren normalt ikke vil ha mulighet til å sammenligne merkene, men må stole på det ufullstendige bildet han/hun har av dem i erindringen, jf. EU-domstolens avgjørelse i sak C-334/05 P Shaker, avsnitt 35 og C-342/97 Lloyd v. Klijsen, avsnitt 25.
- 26 Gjennomsnittsforbrukeren for varene i klasse 12 vil være både den alminnelige sluttbruker og profesjonelle næringsdrivende. For de fleste av varene vil gjennomsnittsforbrukeren ha et høyt oppmerksomhetsnivå. For enkelte varer, for eksempel «seat covers for automobiles», kan oppmerksomhetsnivået være noe lavere. De fleste varene vil derimot medføre en større investering, for eksempel «jet engines for land vehicles» og «vertical take-off and landing aircraft», og oppmerksomhetsnivået vil dermed være høyt. Klagenemnda legger derfor til grunn at oppmerksomhetsnivået kan variere fra normalt til høyt for varene i klasse 12.



27 Kjennetegnene som skal vurderes er følgende:

De eldre merkene	Klagers merke
SKY	SkyDrive

- 28 I henhold til rettspraksis må den konkrete forvekselbarhetsvurderingen skje i lys av hvor særpreget det eldste merket er. Et merke med høy grad av særpreg, enten iboende særpreg eller gjennom bruk, vil ha en større beskyttelsessfære enn et merke med mindre særpreg, jf. EU-domstolens uttalelser i C-251/95 Sabel/Puma avsnitt 24 og C-39/97 Canon/Metro-Goldwyn-Mayer avsnitt 18.
- 29 Ordet SKY i de eldre merkene har flere betydninger på norsk. Som adjektiv kan ordet bety «sjenert» og som substantiv kan ordet angi «skyer» i entallsform. På engelsk betyr ordet «himmel». Betydningene «sky» og «himmel» er mer nærliggende for de aktuelle varene og tjenestene i de eldre merkene enn betydningen «sjenert». Klagenemnda anser at SKY har normal grad av særpreg for de eldre merkene tjenester i klasse 35 og 42 som er av lignende slag som klagers varer i klasse 12, jf. vurderingen av vare- og tjenestelagsligheten ovenfor. Verneomfanget er lavere der SKY kan henspille på noen av tjenestenes egenskaper, for eksempel salg av «...apparatus for locomotion by [...] air...», som har tilknytning til himmelen. Men vurderingen av forvekslingsfare må uansett ta utgangspunkt for de tjenester hvor SKY har det sterkeste særpreget.
- 30 Ved vurderingen av kjennetegnslighet må det foretas en helhetsvurdering hvor blant annet graden av visuell, fonetisk, og konseptuell likhet må vektlegges, jf. C-251/95, Sabèl/Puma, avsnitt 23 og C-342/97, Lloyd v. Klijsen, avsnitt 27.
- 31 De to eldre registreringene består kun av det korte ordet SKY. Klagers merke består derimot av et lengre uttrykk der SKY er sammenstilt med DRIVE. Visuelt og fonetisk har merkene både likheter og ulikheter.
- 32 Klagenemnda er av den oppfatning at merkene skiller seg tydelig fra hverandre konseptuelt. De eldre merkene består kun av ordet SKY, og forbrukere vil forstå dette som et norsk ord med betydningene definert over, eller som «himmel» oversatt fra engelsk. Sammenstillingen SkyDrive vil forstås som et helhetlig engelsk uttrykk som kan oversettes til «himmelkjøre» eller «himmelkjøretur», og dette er et uvanlig uttrykk som vil utløse en viss undring hos forbrukeren. Klagenemndas oppfatning er at forestillingsbildet uttrykket gir, når forbrukere møter det i en kjøpsituasjon, helt tydelig skiller seg fra inntrykket SKY alene gir.

- 33 Hvorvidt det foreligger en risiko for forveksling, må bero på en helhetlig vurdering av vare- og tjenesteslagslikheten og kjennetegnslikheten, hvor alle momenter relevant for saken må vektlegges, jf. C-251/95, Sabèl/Puma, og C-39/97, Canon.
- 34 Klagenemnda er av den oppfatning at merkene, etter en konkret helhetsvurdering, ikke er egnet til å forveksles, jf. varemerkeloven § 16 bokstav a, jf. § 4 første ledd. I helhetsvurderingen har Klagenemnda lagt avgjørende vekt på merkenes klare konseptuelle forskjeller. Tilføyelsen av DRIVE gjør at SKYDRIVE får et tilstrekkelig annet meningsinnhold enn SKY alene. Videre har Klagenemnda lagt vekt på at merkene kun gjelder for likeartede varer og tjenester med lav til normal grad av likhet.
- 35 På denne bakgrunn har Klagenemnda kommet til at det ikke foreligger forvekslingsfare mellom de to eldre merkene bestående av ordet SKY og klagers internasjonale registrering nr. 1413663, ordmerket SkyDrive, jf. varemerkeloven § 16 første ledd bokstav a, jf. § 4 første ledd bokstav b.
- 36 Den internasjonale registreringen kan etter dette gis virkning i Norge for samtlige varer omfattet av utpekningen. Patentstyrets avgjørelse oppheves.

**Det avsies slik**

## **Slutning**

- 1 Klagen tas til følge.
- 2 Internasjonal registrering nr. 1413663, med søknadsnummer 201809529, ordmerket SkyDrive, gis virkning for samtlige varer.

Sarah Wennberg Svendsen  
(sign.)

Martin Berggreen Rove  
(sign.)

Liv Turid Myrstad  
(sign.)