

**O/0016/26**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NUMBER 3823320**

**BY FORSTA AS**

**TO REGISTER THE FOLLOWING TRADE MARK:**

The trade mark consists of the letters 'L' and 'X' in a bold, black, sans-serif font. The 'L' is a simple vertical bar with a horizontal base. The 'X' is formed by two diagonal bars meeting at the center, with a horizontal bar at the top and bottom.

**IN CLASSES 9, 35, 38, 41 AND 42**

**AND**

**AN OPPOSITION THERETO UNDER NUMBER 438292**

**BY**

**LX HOLDINGS CORP.**

## Background and pleadings

1. Forsta AS (“the applicant”) applied to register the trade mark ‘LX’ in the UK on 24 August 2022 (UK Trade Mark No: 3823320). It was accepted and published in the Trade Marks Journal on 23 September 2022 in respect of the goods/services annexed to this decision.

2. LX Holdings Corp. (“the opponent”) opposes the trade mark on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). This is on the basis of the following International Registrations (“IR”):

IR no: WO1587349



UK designating date: 11 March 2021

Date protection granted in the UK: 26 August 2021

Claiming a priority date of: 2 March 2021

Priority country: Republic of Korea

(“the first earlier mark”)

The following goods are relied upon in this opposition:

Class 9 - Optical glass; electric locks; physical and chemical laboratory apparatus and instruments; optical apparatus and instruments except for glasses and photographic apparatus; photographic apparatus and instruments; precision measuring apparatus; spectacles [optics]; fire-extinguishers; alarms; electrical controllers; solar modules; secondary cells; electric batteries; solar batteries; lithium-ion secondary batteries; separator for lithium-ion secondary batteries; rechargeable batteries; battery packs; medium and large size battery packs; electric or magnetic meters and testers; electric wires and cables; optical fibers; electric audio and visual apparatus and instruments; earphones; electrical communication machines and instruments; cellular phones; headsets;

computer application software for cellphones; computers; computer components and parts; display panels and parts thereof; organic light-emitting diodes [OLED]; microchips; multiprocessor chips; semi-conductors; photo-semiconductors; semiconductor component; semiconductor wafers; semiconductor elements; integrated circuits; electronic circuits; control circuits; transistors; electrical plugs; video game cassettes; phonograph records; transportation card incorporating IC chip; downloadable coupon; downloadable electronic publications.

This mark is relied upon against the applicant's goods and services in Classes 9, 38, 41 and 42.

IR no: WO1588343



UK designating date: 11 March 2021

Date protection granted in the UK: 28 October 2021

Claiming a priority date of: 2 March 2021

Priority country: Republic of Korea

("the second earlier mark")<sup>1</sup>

The following services are relied upon in this opposition:

Class 35 - Advertising; business marketing; supply chain management services; trade information; advisory services relating to business administration; database management; import-export agency services; intermediary services relating to the trading of goods and services; employment outplacement services; secretarial services; promoting the goods and services by means of operating an on-line comprehensive shopping mall; retail store

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<sup>1</sup> As the opponent's earlier marks are identical, I shall refer to them in the singular unless it becomes necessary to distinguish between them.

services connected with the sale of chemicals used in industry and science; retail store services connected with the sale of unprocessed artificial and synthetic resins; wholesale store services connected with the sale of coal; retail store services connected with the sale of coal; wholesale store services connected with the sale of oil-gas; retail store services connected with the sale of oil-gas; wholesale store services connected with the sale of steel in sheet, rod, bar or billet form; retail store services connected with the sale of steel in sheet, rod, bar or billet form; wholesale store services connected with the sale of electric batteries; retail store services connected with the sale of electric batteries; wholesale store services connected with the sale of medical diagnostic apparatus and instruments; retail store services connected with the sale of medical diagnostic apparatus and instruments; retail store services connected with the sale of semi-conductors; retail store services connected with the sale of semiconductor component; retail store services connected with the sale of light-emitting diodes [LED]; retail store services connected with the sale of OLED (Organic light emitting diode) display panels; retail store services connected with the sale of window frame systems of metal; retail store services connected with the sale of sinks; retail store services connected with the sale of parts and fittings for automobiles; retail store services connected with the sale of building insulation materials; retail store services connected with the sale of plastic film, other than for wrapping; retail store services connected with the sale of imitation leather; retail store services connected with the sale of glass for building; retail store services connected with the sale of construction timber; retail store services connected with the sale of artificial stone; retail store services connected with the sale of flooring, not of metal; retail store services connected with the sale of wall paper.


This mark is relied upon against the applicant's services in Class 35.

3. By virtue of their earlier filing date, the opponent's marks constitute earlier trade marks within the meaning of section 6 of the Act. As the marks had not completed their registration process more than five years before the relevant date (the filing date of the contested mark), they are not subject to proof of use pursuant to section 6A of the

Act. The opponent can, therefore, rely upon all of the goods/services it has identified in both earlier marks.

4. The opponent claims that there is a likelihood of confusion because the parties' respective marks are similar, and the goods/services are identical or similar.

5. The applicant filed a counterstatement denying the claims made and submitting as follows:

“1.1 The applicant denies that the trade marks LX and  LX are similar in and the opponent is put to strict proof thereof.

1.2 The applicant denies that the goods and services covered by their trade mark no. UK00003823320 (“the application”) in Classes 9, 38, 41 and 42 are identical or similar to the goods covered by the opponent's earlier trade mark no. WO0000001587349 and the opponent is put to strict proof thereof.

1.3 The applicant denies that the services covered by the application in Class 35 are identical or similar to the services covered by the opponent's earlier trade mark WO0000001588343 and the opponent is put to strict proof thereof”.

## **Representation**

6. The opponent is represented by Boult Wade Tennant LLP; the applicant is represented by Barker Brettell LLP<sup>2</sup>. Only the opponent filed evidence in these proceedings. Neither party requested a hearing, but both parties filed written submissions in lieu of a hearing dated 22 April 2025 and 23 April 2025 respectively. These submissions will not be summarised but will be referred to as and where appropriate during this decision. This decision is taken following a careful perusal of the papers.

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<sup>2</sup> The applicant was initially represented by FRKelly, however, a TM33 was filed by the applicant dated 3/6/2024 appointing Barker Brettell LLP as the applicant's representative

## **Relevance of EU Law**

7. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

## **Evidence**

8. The opponent has filed evidence in the form of a witness statement of Henry Schlaefli, of Boulton Wade Tennant LLP, dated 16 January 2025. Mr Schlaefli is the Trade Mark Attorney for the opponent. The statement is accompanied by fifteen exhibits. Mr Schlaefli provides extracts from Collins Online Dictionary to show that the letters LX have no comprehensive meaning as well as various extracts from the Apple App Store showing downloadable applications. The opponent relies upon this evidence which they state speaks to "the inherent distinctiveness of the Mark and the similarity of the Applicant's Goods and Services with the Opponent's Goods and Services".

9. I have given due consideration to all of the documents filed by both parties but will only refer to the evidence/submissions as appropriate within my decision.

## **Decision**

### **Section 5(2)(b)**

10. Section 5(2)(b) of the Act is as follows:

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

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

5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

## **Relevant Law**

11. The following principles are gleaned from the decisions of the Court of Justice of the European Union (“CJEU”) in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

### The principles

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

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

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

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

components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

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

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

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

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

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

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

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

### **Comparison of goods and services**

12. The goods and services in issue have been set out in full in both the Annex to this decision and paragraph 2. I undertake my comparison below.

13. In comparing the respective specifications, all relevant factors should be considered, as per *Canon*, where the CJEU stated at paragraph 23 of its judgment:

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

14. The relevant factors identified by Jacob J. (as he then was) in the *Treat case*, [1996] R.P.C. 281, for assessing similarity were:

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

15. In *Gérard Meric v OHIM*, Case T- 133/05, the General Court (“GC”) stated that:

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

where the goods designated by the trade mark application are included in a more general category designated by the earlier mark.”

16. Further, in *Kurt Hesse v OHIM*,<sup>3</sup> the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*,<sup>4</sup> the GC stated that “complementary” means:

“...there is close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking.”

17. In *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that:

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

18. I bear in mind that it is permissible to group goods and services together for the purposes of the assessment<sup>5</sup>.

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<sup>3</sup> Case C-50/15 P

<sup>4</sup> Case T-325/06

<sup>5</sup> *Separode Trade Mark* O/399/10

## Class 9

19. The applicant submits the following in relation to the comparison of their Class 9 goods:

“The majority of the Applicant’s Goods in Class 9...are clearly limited to very specific fields or very specific uses. Given the nature of the specific fields and uses, it is evident that all of the above highlighted goods are dissimilar to the majority of the Opponent’s Goods and Services”.

### *Downloadable electronic publications*

20. Both the applicant’s mark and the first earlier mark include the term *downloadable electronic publications*. These terms are self-evidently identical.

*Downloadable documents and content in the nature of downloadable written articles about business, academic, market research, analysis, surveys, customer research, demographics, employee engagement, employee management, employee development and employer-employee relationships; Downloadable documents and content in the nature of written articles about business, academic, market research, analysis, surveys, customer research, demographics, employee engagement, employee management, employee development and employer-employee relationships;*

21. The applicant’s above terms both relate to different types of downloadable documents. In this instance, I consider the applicant’s use of the phrase “in the nature of” to mean including, but not limited to the particular examples given. Both of the applicant’s above terms include *downloadable documents and content*. The opponent’s first earlier mark includes the term *downloadable electronic publications* in Class 9, which I understand to be digital versions of traditional printed material, supplied electronically and accessible on tablets smart phones and computers. I consider this to be a wider term than those in the applicant’s specification and they are therefore identical on the principles outlined in *Meric*.

*Downloadable computer software applications; Downloadable Computer software for processing and analyzing financial and market data; Downloadable computer software*

*for market analysis, customer surveys and performance measurement of financial markets; Computer software for electronic processing of data; software applications arranging for participants to take part in multimedia or text surveys without an Internet connection; Computer software and downloadable software for electronic data processing (EDP) in the field of market analysis and consumer and employee surveys; computer software and downloadable software for data acquisition and market analysis.*

22. The opponent submits:

“34. The opponent’s 349 Registration covers the term “computer application software for cellphones”. This is plainly identical to the Applicant’s “Downloadable computer software *applications; Downloadable Computer software for processing and analyzing financial and market data; Downloadable computer software for market analysis, customer surveys and performance measurement of financial markets; Computer software for electronic processing of data; software applications arranging for participants to take part in multimedia or text surveys without an Internet connection; Computer software and downloadable software for electronic data processing (EDP) in the field of market analysis and consumer and employee surveys; computer software and downloadable software for data acquisition and market analysis*” on Meric principles and these goods are marked in blue in Annex 1. Further or in the alternative, the goods are highly similar on the basis that the method of use, end users, trade channels and nature of the goods are identical, and they are likely to be in competition with each other.

35. Further or in the alternative those of the Applicant’s Class 9 goods marked in blue are highly similar to the Opponent’s “*electric audio and visual apparatus and instruments; earphones; electrical communication machines and instruments; cellular phones; headsets; computers; computer components and parts; display panels and parts thereof; video game cassettes; phonograph records*” covered by the 349 Registration. This is on the basis that the Opponent’s goods would be used to host or interact with the Applicant’s software goods, and are likely to be sold alongside each other”.

23. The applicant's aforementioned terms all relate to different types of computer software, the majority of which relate to data processing. The second earlier mark's specification includes *computer application software for cellphones* in Class 9 which I find to be a wide term which would encompass (or vice versa) the applicant's above terms and is therefore identical on the principles outlined in *Meric*. If I am wrong about that, I consider that the purpose and uses of the goods will overlap, and the goods are likely to be accessed by the same or similar users and may utilise the same trade channels. There will be an overlap in the nature of the goods, which may also be competitive; however, I do not find any obvious complementarity between them. I find a high degree of similarity between the parties' goods.

*Downloadable webinars, podcasts and video recordings; Downloadable webinars in the field of business, academic, market research, analysis, surveys, customer research, demographics, product and brand development, employee engagement, employee management, employee development and employer-employee relationships; video recordings featuring business, academic, market research, analysis, surveys, customer research, demographics, product and brand development, employee engagement, employee management, employee development and employer-employee relationships; Downloadable webinars and video recordings in the field of business, academic, market research, analysis, surveys, customer research, demographics, product and brand development, employee engagement, employee management, employee development and employer-employee relationships;*

24. The applicant submits:

"The majority of the Applicant's Services in Class 41...are clearly limited to very specific fields or very specific uses. Given the nature of the specific fields and uses, it is evident that all of the above highlighted services are dissimilar to the majority of the Opponent's Goods and Services ... because they are different in nature, intended purpose, method of use, they are not in competition, and they are not complementary".

25. The opponent submits:

“40. The remainder of the Applicant’s goods in Class 9 fall within a broad category of downloadable webinars, podcasts, and video recordings, marked in pink in Annex 1.

41. The goods are highly similar to the Opponent’s “*downloadable electronic publications*”. The goods share the same end user, purpose (to inform), method of use (to download and view), the producer and trade channels are likely to be the same and they are likely to be in competition with each other (as, for example, a consumer could choose to read an article on the content of a webinar/podcast/video recording rather than watching or listening to the same)”).

26. The applicant’s terms include various types of downloadable content in the form of webinars, podcasts and video recordings. The first earlier mark includes the term *downloadable electronic publications* in Class 9. I would consider this to include downloadable content that can be copied into the memory of a computer, telephone, tablet or smart device and can then be used independently of its source. I understand ‘publications’ to include formats such as e-books, e-journals and digital magazines. The opponent’s specification covers downloadable written material, whereas the applicant’s specification includes downloadable video and audio material. However, I accept that some downloadable electronic applications may include both written digital multi-media content, as well as webinars and podcasts. Therefore, there may be some overlap in the purpose and nature of the goods. The uses of the goods will also differ as the opponent’s goods are read, whereas the applicant’s goods are watched or listened to. Trade channels may overlap, as it is foreseeable that a company which provides downloadable publications may also provide downloadable podcasts or video recordings. The goods may be in competition, as a consumer may choose to read an electronic publication as opposed to listening to a podcast or watching a video. I do not find complementarity, as it is not the case that one is indispensable or important for the use of the other. I find these goods to be similar to a medium degree.

### Class 35

27. In regard to the services in Class 35, the applicant submits as follows:

“The majority of the Applicant’s Services in Class 35...are clearly limited to very specific fields or very specific uses. Given the nature of the specific fields and uses, it is evident that all of the above highlighted services are dissimilar to the majority of the Opponent’s Goods and Services (in particular, the Opponent’s Goods and Services in categories 1-10 and 16-17), because they are different in nature, intended purpose, method of use, they are not in competition, and they are not complementary.

With regards to the Opponent’s Services in Categories 11-15, we would submit these are only similar to a low degree with the Applicant’s Services highlighted above because broadly speaking, there is a loose connection in the sense that the services relate to business, however they have a different nature, intended purpose, method of use, they are not in competition and they are not complementary.”

*Business marketing consulting services;*

28. The second earlier mark includes the term *business marketing services* in Class 35. I consider that this is a wider term than the applicant’s above term and therefore is identical on the principles outlined in *Meric*.

*Business analysis, research and information services;*

29. The opponent submits that the applicant’s above term is highly similar to the term *advisory services relating to business administration* in Class 35 in their second earlier mark for the following reasons:

“The services share the same nature, purpose, method of use and end users, and are offered by the same kind of specialised undertakings. The Opponent’s services are intended to support and provide assistance with the efficacy, effectiveness, and practical running of a business, including the management of information (including analysis and research). They are therefore also complementary according to the *Boston Scientific* principle and the statement in *Kurt Hesse* applies (although, in any event, the other *Canon* and *British Sugar* factors are present)”.

30. I consider that *business analysis, research and information services* is the practice of identifying business needs, defining problems, and recommending solutions to drive organisational change, improve processes, and deliver value, acting as a bridge between stakeholders (like management) and technical teams to ensure changes align with strategic goals. I would consider *advisory services relating to business administration* to be, the giving of advice in relation to managing an organisation's daily operations, resources, and people to achieve its goals, encompassing functions like finance, marketing, HR, and strategic planning to ensure efficiency and profitability. Therefore, the nature and purpose of the services may overlap, as one identifies business needs, whereas the other offers advisory services in relation to those needs. I anticipate that users may overlap. Trade channels may also overlap. I do not find competition or complementarity, as whilst the services may be used in combination, I do not consider that a consumer would assume that they were provided by the same or a related commercial undertaking. I therefore find them similar to a medium degree.

*Advising and consulting in connection with the design, customization and analysis of business concept testing surveys, employee evaluations, business engagement and feedback surveys, market surveys, business research surveys, academic business research surveys and customer surveys; providing information online in the fields of market research statistics, customer satisfaction, employee engagement, brand development, brand evaluation, statistics for business or commercial purposes, online data collection for business research and surveys, market research, business management, business data analysis, customer research, demographics, brand development, employee engagement, employee management, employee development, and employer-employee relationships; advising and consulting in connection with the design, customization and analysis of product research and concept testing surveys, employee evaluations, engagement and feedback surveys, market surveys, business research surveys, academic research surveys and customer surveys;*

31. The opponent submits as follows:

“The Applicant’s remaining services...are highly similar to the Opponent’s “*advertising; business marketing; advisory services relating to business administration; database management*”. The Applicant’s services can be

broadly categorised as business and market analysis and market research. These services underpin the Opponent's "*advertising*" and "*business marketing*" services and are themselves underpinned and assisted by the Opponent's "*advisory services relating to business administration; database management*". All of these services are tools within a business' process of gathering information about target markets and consumers and understanding who they are and what they need (and then targeting the same). The services therefore share the same purpose, nature, method of use and end users. They share the same trade channels and are both in competition and complementary to one another".

32. The opponent also submits:

"49. The Opponent's app software covers a broad range of software, which could include software specialising in market research (including surveys), employment management (including surveys for evaluations, engagement and feedback), market and business analysis.

50. Indeed, as Schlaefli 1 demonstrates, it is common for mobile applications to specialise in market research (including surveys), employment management/engagement, market and business analysis and/or to be of such a nature that they are instrumental for and indispensable for businesses:

50.1 HS3: is a print from the UK Apple App Store which shows an app called 'Survey Pop: Make Money Fast'. This app pays consumers moneys for completing surveys.

50.2 HS4: is a print from the UK Apple App Store which shows an app called 'SurveyMonkey'. This app allows users to create surveys and feedback forms. The third image from the in-app 'Screenshots' (page 2) includes a template for market research and product testing. The earliest review shown in the screenshot dates from December 2018 (i.e. prior to the Filing Date).

50.3 HS5: is a print from the UK Apple App Store which shows an app called 'Google Opinion rewards'. This app allows consumers to earn money by completing surveys. The earliest review shown in the screenshot dates from March 2020 and the copyright notice (on page 2) is dated 2017 (i.e. both prior to the Filing Date).

50.4 HS6: is a print from the UK Apple App Store which shows an app called 'Qmee UK Paid Surveys for Money'. This app allows consumers to earn money by completing surveys. The earliest review shown in the screenshot dates from October 2020 (i.e. prior to the Filing Date)

50.5 HS7 is a print from the UK Apple App Store which shows an app called 'Branded Surveys: Paid Rewards'. This app allows consumers to earn money by completing surveys.

50.6 HS8: is a print from the UK Apple App Store which shows an array of apps (over 235,000, as page 2 explains) that "[p]ower" business and "[t]ransform how you get things done". Examples are shown on pages 3 to 8, which include multitasking apps, software such as Excel and PowerPoint, Cisco web-conferencing software and salesforce apps.

50.7 HS9: contains prints from [www.joinblink.com](http://www.joinblink.com) and the UK Apple App Store. These show a 'super app' for business which offers an 'employee experience platform, to, among other things, increase communication within a business (pages 2-3) and analyse human intelligence, i.e. information (pages 3-4), as well as offering employee surveys (page 4). The earliest review shown in the screenshot from the App Store (page 8) dates from October 2021 (i.e. prior to the Filing Date).

50.8 HS10: contains prints from the UK Google Play Store which show an app called 'ArcGIS Business Analyst' and the corresponding website. The app provides intelligence for market planning, site selection, and customer segmentation (page 2). The website offers pricing for business analyst services (page 3).

50.9 HS11: contains prints of an app on the UK Apple App Store called 'LinkedIn Learning'. The app offers online courses to allow the user to achieve their "next career goal", based on skill and career insights from the platform LinkedIn. The app promises that users can learn from "industry experts on the most in-demand **business**, tech and creative skills" (emphasis added, quotation from page 2). The earliest review shown in the screenshots dates from January 2019 (i.e. prior to the Filing Date).

50.10 HS12: contains prints of a website for a business called 'Zoho Analytics' which offers a business intelligence app available on the App Store and Google Play (pages 2 and 4). The app allows users to analyse and gain insight from their business data and offers services such as data integration and preparation and governance and administration (pages 2 and 5).

51. The goods and services therefore share the nature, method of use, end users and trade channels and they are likely to be in competition with each other. They are also complementary".

32. Within their evidence, the opponent has identified that the applicant's above terms are similar to their Class 9 *computer application software for cellphones*. I note that the opponent's specification includes computer application software as goods, whereas the applicant's above terms relate to services in Class 35. However, the opponent's evidence shows that there is a level of similarity between the two, as computer application software can be used for surveys and market research, for example. The nature of the goods/services will differ, as will the purpose, however, there may be an overlap in uses and users, as it is foreseeable that a consumer seeking market research may use a computer application for this. Trade channels will not overlap, and I do not find competition or complementarity, as I do not consider that the average consumer would believe that one would be indispensable or important for the use of the other. I therefore find the goods/services similar to a medium degree.

*Providing and creating analytics to assist in the management, tracking and application of survey data; providing information online in the fields of market research statistics,*

*academic research statistics, customer satisfaction, employee engagement and product and brand development and testing; Market research; Market research services, namely, sampling of survey populations for market research, data processing, online reporting of customer survey results, and custom community development for use in market research; market research services, namely, development of online surveys; Market research consultation; Market research, namely, providing focus groups for market research that are accessible by remote audio and video access; Analysing and compiling data for measuring the performance of financial markets; market analysis services; Compilation of data into computer databases; business modelling consulting services, namely, business consulting, management, planning and supervision; information and data compiling and analyzing relating to business management;*

33. I consider that the applicant's above terms all relate to market research, albeit different types. I consider market research to be the process of gathering, analysing, and interpreting information about a market, including details about potential customers, competitors, and industry trends, with the purpose of helping businesses make informed decisions about products, services, and strategies. The second earlier mark includes the terms *advertising; business marketing; advisory services relating to business administration* and *database management* in Class 35, which the opponent submits are highly similar to the applicant's above terms. In the absence of specific submissions, I consider that business marketing encompasses the strategies and activities a company undertakes to promote its products or services to potential customers. Therefore, whilst I do not consider *business marketing* and *market research* to be the same, I consider that the two are linked, as someone who requires business marketing, may carry out market research in order to influence their marketing decisions. I therefore consider that the nature and purpose of the services differ, but users may overlap, as may trade channels. I do not find competition or complementarity. Overall, I consider that they are similar to a medium degree.

*Data processing services, namely, electronic data processing services; data processing services, namely, electronic data processing services; analysing of unstructured data and social media, namely, business and marketing data analysis;*

*providing and creating business analytics to assist in the management, tracking and application of survey data;*

34. The applicant's aforementioned terms all relate to the provision of services relating to different types of data processing. In the absence of detailed submissions, I anticipate that data processing services involve collection, analysing, storing, cleaning, transforming and organising data. The opponent's second earlier mark includes *database management* in Class 35, which I understand to refer to the process of storing, organising, securing and retrieving data. I therefore consider that there will be an overlap between the parties' services, as whilst the services may have a different purpose, there will be an overlap in uses and there may be an overlap in end user. I also consider that there may be complementarity as a consumer would consider that one would be indispensable or important for the use of the other and therefore may assume that an economic undertaking which provides data processing services for data analysis may also provide database services. As a result, trade channels may also overlap. I do not consider that there will be competition between the services. Therefore, I find a medium degree of similarity.

#### Class 38

*Electronic transmission of data and images by video broadcasting of market research interviews; streaming of audio, visual and audiovisual material via a global computer network and wireless broadcasting in the field of market research; Video transmission of market research interviews over the Internet using webconferencing and video streaming technology; providing video content management services for focus group research, namely, video teleconferencing and video-streaming.*

35. The opponent submits:

"The Applicant's Class 38 services...are highly similar to the Opponent's "computer application software for cellphones" in the 349 Registration. The Applicant services provide access to and facilitate the Opponent's goods. The goods and services share the same purpose (providing access to 'content', e.g. data, images, audio and visual material) and end users. They may also share the same trade channels (for example, Cisco provides communications

services, and as HS8 shows, it also has an app (page 4) and producers. They are also complementary, according to the principle in *Boston Scientific*. Accordingly, *Kurt Hesse* applies (although, in any event, the other *Canon* and *British Sugar* factors are present).

Further or in the alternative, the Applicant's goods are similar to the Opponent's terms "*electric audio and visual apparatus and instruments; electrical communication machines and instruments; cellular phones; computers; computer components and parts; display panels and parts thereof; video game cassettes; phonograph records*" covered by the 349 registration. The Opponent's goods will be used to transmit and stream content and data, and well as to display the content and data thus transmitted and streamed. Therefore, the goods and services share the same purpose (providing access to 'content' and data) and end users. They may also share the same trade channels and producers and they are complementary (cf. *Boston Scientific* and *Kurt Hesse*)"

36. The applicant submits:

"We would submit that all of the above Services are dissimilar to the majority of the Opponent's Goods and Services and this is obvious from the nature of the above Services; they are broadcasting/streaming/transmission services (and related management services) which differ not only in nature, but also in intended purpose and method of use. Furthermore, they are not in competition, nor are they complementary. It could be argued there is a possible similarity with the Opponent's Services in category 11 based on subject matter, but this would only amount to a very low level of similarity given the substantial differences in nature and method of use."

I note that the applicant accepts that some of their services may be similar to the opponent's goods/services to a low degree.

37. I remind myself that the opponent's goods fall within Class 9 of their first earlier mark which includes "mainly apparatus and instruments for scientific or research purposes, audiovisual and information technology equipment, as well as safety and

life-saving equipment” whereas the applicant’s services fall within Class 38 which includes telecommunications services and “mainly services that allow at least one party to communicate with another, as well as services for the broadcasting and transmission of data” as per the Nice Classification. I will compare this with the opponent’s *computer application software for cellphones* goods in Class 9, which I consider to be its best case.

38. I find that the nature of the goods/services differ. However, *computer application software for cellphones* may be used for a wide variety of purposes, such as video transmission. I agree with the opponent’s submission that the applicant’s services may provide access to and facilitate the opponent’s goods, and therefore I find that users may overlap. I note that the opponent has submitted evidence that trade channels may overlap (using the example that Cisco provides communications services, and also has an app<sup>6</sup>), which I accept. I do not find competition; however, I accept that the goods/services may be complementary as one would be important or indispensable for the use of the other and consumers would assume that both the goods/services are provided by the same undertaking. Overall, I find the goods/services to be similar to a medium degree.

#### Class 41

39. In regard to their services in Class 41, the applicant submits:

“The majority of the Applicant’s Services in Class 41, highlighted [above] in yellow, are clearly limited to very specific fields or very specific uses. Given the nature of the specific fields and uses, it is evident that all of the above highlighted services are dissimilar to the majority of the Opponent’s Goods and Services (in particular, the Opponent’s Goods and Services in categories 1-9 and 12-17), because they are different in nature, intended purpose, method of use, they are not in competition, and they are not complementary.

With regards to the Opponent’s Services in Category 11, we would submit these are only similar to a low degree with some of the Applicant’s Services highlighted above because they share a similar subject matter (namely

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<sup>6</sup> Exhibit HS8

marketing/market research), however they have a different nature, intended purpose, method of use, they are not in competition, and they are not complementary.

With regards to the Opponent's Goods in category 10, we would submit these are only similar to a low degree with the Applicant's Services highlighted above because the Applicant's Services are clearly intended for use in very specific fields/ways, whereas the Opponent's Goods in category 10 are unspecified and could therefore be used in an entirely different field and/or for an entirely different purpose. Due to the broad nature of the Opponent's Goods in category 10, it cannot be inferred that these goods fall within the same field or uses as the Applicant's Services and therefore, it cannot be inferred that they share the same nature, intended purpose or method of use, or that they are in competition or are complementary."

I note that the applicant accepts that some of their services are similar to the opponent's goods/services to a low degree.

*Provision of online non-downloadable electronic publications; Providing online non-downloadable articles and non-downloadable educational webinars in the field of statistics, popular culture, current events, historic events, online data collection, business, academic, market research, analysis, surveys, customer research, demographics, product and brand development, employee engagement, employee management, employee development and employer-employee relationships; Providing online non-downloadable articles and educational webinars in the field of statistics, popular culture, current events, historic events, online data collection, business, academic, market research, analysis, surveys, customer research, demographics, product and brand development, employee engagement, employee management, employee development and employer-employee relationships; providing educational information online about research conducted by educational institutions; providing educational and entertainment information online in the field of statistics, popular culture, current events, historic events, online data collection, business, academic, market research, analysis, surveys, customer research, demographics, product and brand development, employee engagement, employee management, employee development and employer-employee relationships;*

40. The opponent submits:

“The Applicant’s services marked in yellow in Annex 1 are highly similar to the Opponent’s 349 goods “downloadable electronic publications”. The Applicant’s services make available or provide goods which constitute downloadable electronic publications of their equivalent (e.g. information available online which can be shared, downloaded and/or printed). As a result, the goods and services share the same end user, purpose (to inform), method of use (to view and intake information, which could be downloaded), the trade channels are likely to be the same, and they are likely to be in competition with each other (as, for example, a consumer could choose to read the information online rather than downloading the same). They are also complementary on *Boston Scientific* principles (cf. also *Kurt Hesse*)”.

41. The applicant’s specification includes *non-downloadable electronic publications* in Class 41 in various different fields, whereas the opponent’s first earlier mark includes the term *downloadable electronic publications* at large in Class 9. The opponent’s goods are likely to be in the form of e-books, e-journals and articles in various formats such as PDF, whereas the applicant’s specification includes the services for providing *non-downloadable electronic publications*. The nature of the respective goods and services is not the same, with the applicant’s services being the provision of non-downloadable publications as a service, and the opponent’s goods consisting of the provision of downloadable publications, and the method of use might differ accordingly, the purpose of the goods and services will overlap to a degree as they both provide the end-user with access to the same sort of publications. The goods and services are not complementary but can be in competition, and might share trade channels, and producers as the same publisher might make its publications available through the provision of non-downloadable publications as well as in the form of downloadable electronic publications. These goods/services are similar to a high degree.

*Conducting seminars, events in the nature of workshops, and classes about business, academic, market research, analysis, surveys, customer research, demographics, product and brand development, employee engagement, employee management, employee development and employer-employee relationships; providing recognition*

*by way of arranging and conducting awards ceremonies to promote excellence in the field of business, academic, market research, analysis, surveys, customer research, demographics, product and brand development, employee engagement, employee management, employee development and employer-employee relationships;*

42. The opponent has identified that the applicant's above terms are highly similar to their *downloadable electronic publications* in Class 9 of the first earlier mark on the basis that "the content of the opponent's goods could replace and/or complement the Applicant's educational and/or informative services"<sup>7</sup>. I consider that the nature and purpose of the goods/services will differ, as will uses. There may be an overlap in users at a general level. I do not consider that trade channels will overlap. I do not find competition, however, there may be complementarity on the basis that those who are providing the services of conducting seminars and workshops, may also provide materials to support their teaching in the form of downloadable publications. I consider that the one would be important or indispensable for the use of the other and that the average consumer would assume that these publications would be provided by the provider of the services. I find the goods/services to be similar to a low degree.

*Provision of tutorials, workshops and seminars; provision of educational information; providing information online in the field of popular culture, current events, historic events, academic research study, academic research statistics;*

43. The applicant's above terms are all concerned with the provision of education/information in various fields. The opponent's first earlier mark includes the term *downloadable electronic publications* in Class 9. The opponent submits that these goods/services are highly similar as "the content of the Opponent's goods could replace and/or complement the Applicant's educational and/or informative services. The goods and services share the same end user, purpose (to inform and teach), method of use (to view), the trade channels are likely to be the same and they are likely to be in competition with each other (as, for example, a consumer could choose to read an article on the content of a tutorial/workshop/ seminar/video recording rather

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<sup>7</sup> As per the AP, Ian Purvis KC in the matter of *SmartX* O/0911/24 "9. In a case like this where the marks cover a multitude of different goods, it is obviously necessary for the Opponent to identify with precision, both in its pleaded case and in any submissions made to the Registry, which goods of its own registrations are alleged to be similar to which goods of the Application"

than watching, listening to, or attending the same). The goods and services are also complementary on *Boston Scientific* principles (cf. also *Kurt Hesse*) – the Opponent’s goods could be provided as part of or an accompaniment to the Applicant’s services”.

44. The nature and use of the goods/services will differ, however, there is some overlap in purpose, as the opponent’s goods may be used to provide the end-users with educational information which may be used within the applicant’s tutorials, workshops and seminars. I do not consider that trade channels will overlap. However, there is the potential for competition, as downloadable publications could be used instead of attending in-person courses. There may be a complementary relationship between the goods/services as electronic publications may be used as supplementary teaching aids and may be produced by the same educational establishments. As such, I find the services are similar to a medium degree.

*Education and entertainment services in the form of production of digital and motion picture films, radio and television programs and television shows; education and entertainment services in the form of production of digital and motion picture films, radio and television programs and shows; provision of online non-downloadable videos; providing video content management services for focus group research, namely, videotape production services.*

45. The applicant’s above terms all relate to the provision of video content, albeit in different fields. The first earlier mark includes the terms *electric audio and visual apparatus and instruments, earphones, electrical communication machines and instruments, cellular phones, headsets, computer application software for cellphones, computers, computer components and parts, display panels and parts thereof, video game cassettes and phonograph records* in Class 9. Whilst the purpose of the goods/services will differ, as will the nature, it is foreseeable that there will be an overlap as *electric audio and visual apparatus and instruments* will be used in the production of video content, for example, and therefore there may be an overlap in use. Trade channels will not overlap, as those who are providing education and entertainment services, would not also be providing the equipment. I do not consider that there will be competition, but there may be complementarity as the goods/services will be important and indispensable to each other and the average consumer is likely

to believe that they are from the same undertaking. Overall, I find a low degree of similarity.

#### Class 42

46. In respect of their Class 42 services, the applicant submits:

“The majority of the Applicant’s Services in Class 42...are clearly limited to very specific fields or very specific uses. Given the nature of the specific fields and uses, it is evident that all of the above highlighted services are dissimilar to the majority of the Opponent’s Goods and Services (in particular, the Opponent’s Goods and Services in categories 1-7, 9-10 and 12-17), because they are different in nature, intended purpose, method of use, they are not in competition and they are not complementary.

With regards to the Opponent’s Services in category 11, we would submit these are only similar to a low degree with the Applicant’s Services highlighted above because the Applicant’s Services highlighted above could be used within the same field as the Opponent’s Services in category 11, however there are significant differences including nature and method of use. In addition, they are not in competition, and they are not complementary.

With regards to the Opponent’s Goods in category 8, we would submit these are only similar to a low degree with the Applicant’s Goods highlighted above because they share a similar nature. However, the Applicant’s Services highlighted above are clearly intended for use in very specific fields/ways, whereas the Opponent’s Goods in category 8 are unspecified and could therefore be used in an entirely different field and/or for an entirely different purpose. Due to the broad nature of the Opponent’s Goods in category 8, it cannot be inferred that these goods fall within the same field or uses as the Applicant’s Services and therefore, it cannot be inferred that they share the same intended purpose or method of use, or that they are in competition or are complementary.”

47. The opponent submits that “the Applicant’s services in Class 42 are similar to the Opponent’s Class 9 Goods “computer application software for cellphones””.

*Providing software as a service (SAAS) to measure, prioritize, and optimize the customer, product, employee and brand responses, and to display relevant concurrences using statistically driven data sets; Software as a service (SAAS) in the fields of business research, academic research, market research, market development and market growth, consumer research and customer satisfaction surveys, product research, brand research and concept testing surveys, employee evaluations and feedback surveys, all to measure, prioritize, and optimize the customer, product, employee and brand responses, and to display relevant concurrences using statistically driven data sets; Software as a service (SAAS) for designing, conducting and analyzing surveys, survey data and consumer feedback; Software as a service (SAAS) for providing and creating analytics to assist in the management, tracking and application of survey and contact data; providing temporary use of non-downloadable computer software accessed via the Internet in the field of business, academic, market research, analysis, surveys, customer research, demographics, product and brand development, employee engagement, employee management, employee development and employer employee relationships, all to measure, prioritize, and optimize the customer, product, employee and brand responses, and to display relevant concurrences using statistically driven data sets; providing software as a service (SAAS), accessed via the Internet and offline featuring software for contact information, data feedback, data evaluation, and research surveys, data collection, data integration, data management, data analysis, follow-up to survey responses and generating reports for use in consulting with respect thereto; computer services, namely, hosting and maintaining an on-line web site and web facilities for others for conducting consumer surveys, employee surveys and business research and analyzing resulting data; SAAS in the fields of business research, academic research, market research, market development and market growth, consumer research and customer satisfaction surveys, product research, brand research and concept testing surveys, employee evaluations and feedback surveys; SAAS for designing, conducting and analyzing surveys, survey data and consumer feedback; SAAS for providing and creating analytics to assist in the management, tracking and application of survey and contact data; providing temporary use of non-*

*downloadable computer software accessed via the Internet in the field of business, academic, market research, analysis, surveys, customer research, demographics, product and brand development, employee engagement, employee management, employee development and employer-employee relationships; Software as a service (SaaS) services featuring software for the collection, storage, organization, management, searching, manipulation and analysis of data in the fields of marketing, marketing research, qualitative and quantitative research and focus groups; software as a service (SaaS) services featuring software for management of marketing and market research projects; software as a service (SaaS) services featuring software for management of marketing and market research projects, including creation and tracking of budgets for such projects and management of vendors; Software as a service (SAAS) services featuring software for creating and deploying online dashboard reporting solutions for market research and customer experience management.*

48. The applicant's above terms all include *software as a service [saas]*, albeit in different fields. The second earlier mark includes the term *computer application software for cellphones* in Class 9. I note that some of the applicant's terms include "featuring" and "in the fields of", which are ambiguous, but I would consider this to be indicative of an example, rather than strictly limiting the services to those terms listed thereafter. Therefore, the comparison of the services at issue should not be limited merely to the fields which have been identified by the applicant within their specification. The nature and method of use may have some differences given that the Class 9 goods are physical software goods, and these are services. However, there may be some competition. There may be an overlap in trade channels, and the goods/services may also be competitive; however, I do not find any obvious complementarity between them. I find at least a medium degree of similarity between the parties' goods/services.

*Rental of computer software; Providing temporary use of on-line non-downloadable software for use in performing and compiling market research; Providing temporary use of online, non-downloadable software for electronic transmission of data and images by video broadcasting of market research interviews; providing temporary use of online, non-downloadable software for streaming of audio, visual and audiovisual*

*material via a global computer network and wireless broadcasting in the field of market research;*

49. The opponent's first earlier mark includes the term *computer application software for cellphones* in Class 9. The applicant's above terms all relate to rental and/or the temporary provision of software. The uses of the respective goods/services will differ, however there may be an overlap in user, as it is foreseeable that a consumer who wishes to purchase computer software, may also wish to rent the same. As such, there will be an overlap in trade channels. There may be competition, as a consumer may choose to purchase or download as opposed to renting. I do consider that the goods/services are complementary, in that one is indispensable to the other and would be considered to be provided by the same undertaking. I find a medium degree of similarity between the goods/services.

*Providing information online in the field of product development and product testing; Advising and consulting in connection with the design, customization and analysis of product research; providing information online in the field of product development and testing; consulting services in the design, selection, implementation and use of computer hardware and software for others; computer consulting services, namely, design and implementation of software platforms to enable registered users to receive feedback from employees;*

50. The opponent submits:

"The Applicant's services consist of services making available or information which is equivalent to downloadable electronic publications (e.g. information available online which can be shared, downloaded and/or printed). As a result, the goods and services share the same end user, purpose (to inform), method of use (to view and intake information, which could be downloaded), the trade channels are likely to be the same, and they are likely to be in competition with each other (as, for example, a consumer could choose to read the information online rather than downloading the same). They are also complementary on *Boston Scientific* principles (cf. *Kurt Hesse*)"

And further:

“In particular, product research overlaps with market research in that both focus on consumer needs and fall within business marketing. Such surveys and product research could be offered via the Opponent’s *“computer application software for cellphones”*. The goods and services therefore overlap in purpose, end user, will be in competition and complementary (cf. Kurt Hesse), and will share the same trade channels”.

51. I consider that the applicant’s above services relate to providing information and consultancy services in connection with product development, design and testing. Generally speaking, consultancy refers to a professional service provided by specialists in the field who are able to provide advice and recommendations. The opponent’s Class 9 specification in their first earlier mark includes *computer application software for cellphones*. However, I do not agree with the opponent’s submission that the applicant’s services are equivalent to the opponent’s goods. The nature and purpose of the goods/services will plainly differ. There may be an overlap in users. I do not consider that trade channels will overlap, nor will there be competition. Also, I do not believe that the contested services are complementary to the opponent’s Class 9 goods/services, to the extent that consumers would believe the responsibility for the goods and services lies with the same undertakings. I find the goods/services similar to a low degree.

*Computer website design, namely, design of education and entertainment blogs; Computer programming of software for purposes of electronic data processing; application service provider featuring software use for the design and development of marketing campaigns, performing and compiling market research, organizing and analyzing market research data in the field of market research;*

52. As previously stated above, the opponent’s *computer application software for cellphones* in their first earlier mark are a type of software. Whilst it is acknowledged that services are not the same as goods, I consider the opponent’s computer applications in Class 9 to be the end result of its design, development and programming. As such, I find that there exists a complementary relationship with the above contested services and the opponent’s computer applications, on the basis that without the above services there would be no mobile application (software) end product. Whilst I acknowledge that the nature, purpose and method of use of the goods

and services at issue is different, there may be an element of competition, with the consumer selecting either bespoke goods from the designer or choosing specific apparatus or software already on the market. As such, I do not consider it unreasonable for the consumer to believe that the goods and services derive from the same or related undertakings. Overall, I find there to be a medium degree of similarity between the above services and the opponent's *computer application software for cellphones*.

*Computer programming for others; computer programming of computer software in the fields of electronic data processing, employment, employer and employee relations, customer feedback management, and market research; computer services, namely, computer programming for software platforms to enable registered users to receive feedback from employees;*

53. The applicant's above services are concerned with the programming of computer software. As previously stated above, the opponent's computer applications are a type of software. Whilst it is acknowledged that services are not the same as goods, I consider the opponent's mobile applications in Class 9 to be the end result of computer programming. As such, I find that there exists a complementary relationship with the above contested services and the opponent's computer applications, on the basis that without the above services there would be no computer application (software) end product. Whilst I acknowledge that the nature, purpose and method of use of the goods and services at issue is different, there may be an element of competition, with the consumer selecting either bespoke goods from the designer or choosing specific apparatus or software already on the market. As such, I do not consider it unreasonable for the consumer to believe that the goods and services derive from the same or related undertakings. Overall, I find there to be a medium degree of similarity between the above services and the opponent's *computer application software for cellphones* in Class 9.

*Platform as a service (PAAS) services featuring software for electronic transmission of data and images by video broadcasting of market research interviews; platform as a service (PAAS) services featuring software for streaming of audio, visual and audiovisual material via a global computer network and wireless broadcasting in the field of market research;*

54. Platform as a service [PaaS] is a category of cloud computing that allows users to manage the combination of a computing platform with computer applications. Accordingly, I find that there is an overlap between these services and *computer application software for cellphones*, contained in Class 9 of the opponent's first earlier mark. It is possible that a user of mobile applications would also use a platform system that allows the use of applications within a cloud environment. As such, I find there to be a medium degree of similarity between the above services and the opponent's *computer application software for cellphones*, insofar as they are likely to share intended purposes, uses, end users and trade channels. Additionally, they may also be in competition. I therefore find these goods/services to be similar to a medium degree.

*Application service provider (ASP) featuring software for use in designing surveys for market research use;*

55. In the absence of specific submissions, I understand an application service provider (ASP) to be a third-party entity that provides access to software applications and related services over the Internet, allowing users to use software applications without having to install and maintain them on their own systems. Accordingly, I find that there is a degree of similarity between these services and *computer application software for cellphones* contained in Class 9 of the first earlier mark. Whilst I acknowledge that the nature, purpose and method of use of the goods and services at issue are different, I do not consider it unreasonable for the consumer to believe that the goods and services at issue derive from the same or related undertakings. Overall, I find there to be a medium degree of similarity between the above services and the opponent's aforementioned *computer application software for cellphones* in Class 9.

### **Average consumer and the purchasing act**

56. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods/services. I must then determine the manner in which the goods/services are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem*

*Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

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

57. The average consumer for the goods and services is most likely to be a business user, although may include ‘tech-savvy’ members of the general public. In my view, the goods and services are likely to vary in cost but will be reasonably infrequent purchases. Various factors will be taken into account such as reputation of the provider, cost of the goods/services on offer, ease of access/use and suitability for particular requirements. Even for goods or services that might be used more frequently and be of lower (or no) cost, such as some types of software, the average consumer is likely to consider factors such as financial security and functionality. Consequently, I consider that a reasonably high degree of attention will be paid during the purchasing process (although not the highest degree).

58. The goods/services are likely to be purchased following perusal of signage on physical premises, advertisements and/or websites. Consequently, I consider that the purchasing process will be predominantly visual. However, I do not discount an aural component to the purchase given that word-of-mouth recommendations may also play a part.

### **Comparison of marks**


59. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions

created by the marks, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

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

61. The respective trade marks are shown below:

Earlier trade marks	Contested trade mark
	LX

62. The opponent submits as follows:

“9. Visually, the Application and the Earlier Marks are near identical as they both consist of the identical lettering LX. The additional device element to the Opponent’s Earlier Marks does not detract from the visual similarity between the marks, and consumers would view both marks as “LX”.

10. Aurally, the marks are clearly identical. The additional device element to the Earlier Marks is not pronounceable and has no bearing on the pronunciation of

the sign. Consumers would therefore pronounce the Application and the Earlier Marks the same.

11. Conceptually, the marks have no meaning.

12. For the reasons set out above, the Application is visually and aurally identical or alternatively highly similar to the Earlier Marks. There is a high degree of overall similarity between the sign of the Application and the Earlier Marks.”

24. The applicant submits:

“The Opponent’s Earlier Trade Mark and the Applicant’s Trade Mark are comprised of only three and two letters respectively. Therefore, both marks are short marks, which means the visual differences will be more apparent and allow consumers to distinguish between the marks. In addition, Opponent’s Earlier Trade Mark and the Applicant’s Trade Mark differ at the beginning of the marks, which has a greater impact on the overall impression produced by the marks in the mind of the relevant consumer.

With the above in mind:

- Visually, the Opponent’s Earlier Trade Mark comprises firstly of a highly distinctive stylised letter “L” which features in a white stylised font on a burgundy rounded square device, followed by the less prominent letters “LX” in a differing brown colour and a differing font. The beginning position, bright colouring and larger sizing of the first “L”, in contrast with the following letters “LX”, result in the first letter “L” and the device upon which it sits being the most dominant and distinctive element of the mark as it is the most eye catching to the relevant consumer. Furthermore, we would submit the use of colouring, graphics, and stylisation, and the positioning of Opponent’s Earlier Trade Mark creates the overall visual impression of a logo rather than a word. On the other hand, the Applicant’s trade mark is a word, featuring only the letters “LX” in equal positioning. It follows that there are significant visual differences between the

marks, such that the Applicant's Trade Mark and the Opponent's Earlier Trade Mark are only visually similar to a very low degree.

- Aurally, the marks clearly have different phonetic structures. The inclusion of a second letter "L" in the middle of the Earlier Trade Mark introduces an additional consonant which is not present in the Applicant's Trade Mark. This means that there is a different overall aural impression created for each mark. The marks are therefore aurally different and distinguishable.
- Conceptually, neither of the marks have a meaning for the public under assessment. Since a conceptual comparison is not possible, the conceptual aspect does not influence the assessment of the similarity of the marks."

### **Overall impression**

63. Given that the earlier marks are identical I will consider them collectively. I note that the earlier marks are figurative marks which include two letters, 'LX' and a device. The letters 'LX' appear in a brown simple stylised font. To the left-hand side of the letters is a large red square, which is the same size as the letters, with a white squiggle inside, which may be interpreted as a stylised letter 'L'. Whilst the stylisation contributes to the mark, the overall impression lies in the letters, which are the dominant element of the mark.

64. The contested mark is a word only two-letter mark, 'LX'. There are no additional elements to the mark and therefore the overall impression lies in the letters themselves.

### **Visual comparison**

65. Visually, the competing marks are similar to the extent that they share the same letters 'LX'. Whilst the opponent's mark is stylised, the dominant element of the mark is the letters 'LX', factoring in that a word trade mark registration protects the word itself, irrespective of font, capitalisation or otherwise. Whilst the device is a point of difference between the marks, the overall impression is dominated by the letters LX for the reasons set out above. Weighing up the differences as against the similarities, I consider there to be a high degree of visual similarity between the marks.

### **Aural comparison**

66. Since no consideration will be given to the stylisation or the device when the marks are pronounced, both marks comprise of the letters 'LX'. They will be given their ordinary pronunciation ELL-EX. I note that the applicant submits that the mark will be read as 'LLX', due to the device being interpreted as an additional 'L', however, I do not agree with this submission and consider that if the shape inside the box is interpreted as an 'L', this will merely serve to accentuate the letters and will not be read as another letter within the mark. Therefore, as the marks will be pronounced in the same way, they are aurally identical.

### **Conceptual comparison**

67. The assessment must be made from the point of view of the average consumer.

68. Conceptually, both marks comprise of two letter words that have no clear or obvious meaning to consumers beyond the fact that they are letters of the alphabet. The device is a point of difference between the marks; however, the overall impression is dominated by the letters LX for the reasons set out above. Given that the competing marks have no real semantic content, I consider that the conceptual position is neutral.

### **Distinctive character of the earlier trade mark**

69. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

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

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

70. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The opponent has made no submissions regarding the distinctiveness of their mark and therefore I only have the inherent position to consider.

71. In *Kunze Folien GmbH v Kartell UK Limited*<sup>8</sup>, Mr Iain Purvis KC sitting as the Appointed Person, referred with approval to the decision of *Alfa-Beta Vassilopoulos AE v Agro de Bazan*<sup>9</sup>, in which the Board of Appeal stated as follows:

“As to the distinctive character of the letter combination ‘AB’ in the earlier marks and of the contested mark, [...] it should be noted that letters or letter combinations of two or three letters are inherently weak, given the limited number of letters in the alphabet, the great number of meanings that acronyms and abbreviations may have and the fact that consumers frequently encounter abbreviations and letter combinations of all kinds in everyday life and business as generic abbreviations but not as marks.”

72. Whilst the opponent filed evidence in this matter, there was nothing in it to go to enhancing the distinctive character of the marks. A registered trade mark must be

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<sup>8</sup> BL O/085/14, paragraph 29

<sup>9</sup> Case R 82/2011-4 of the Board of Appeal of OHIM (now the EUIPO), paragraph 16

assumed to have at least some distinctive character<sup>10</sup>. That being said, whilst the marks are neither allusive nor descriptive of the opponent's goods/services, the device element of the marks consist of the two-character alphabetical sequence 'LX' which in itself is not particularly distinctive. Whilst the marks include a device, I have found that this merely serves to accentuate the letters, and therefore 'LX' is the dominant element of the marks. I therefore consider the distinctive character of the marks as a whole to be inherently low.

### **Conclusions on Likelihood of Confusion**

73. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods/services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle, i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods/services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's trade mark, the average consumer for the goods/services and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

74. I have found as follows:

- The goods/services at issue are identical or similar to varying degrees;
- I have identified that the average consumer will primarily be business users, and some 'tech-savvy' members of the general public. They will select the

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<sup>10</sup> *Formula One Licensing BV v OHIM*, Case C-196/11P, paragraphs 41 - 44.

goods/services primarily by visual means, although I do not discount an aural component;

- I have concluded that a reasonably high degree of attention (although not the highest degree) will be paid during the purchasing of goods/services.
- The contested mark is visually similar to the earlier marks to a high degree;
- The contested mark is aurally identical to the earlier marks;
- I have found the contested mark and the earlier marks to be conceptually neutral;
- I have found the earlier marks to be inherently distinctive to a low degree;

75. Upon considering the above factors, and bearing in mind the principle of imperfect recollection, I consider the present case represents an example of direct confusion. Notwithstanding that I found the earlier marks to be inherently distinctive to a low degree, this does not preclude a finding of a likelihood of confusion<sup>11</sup>. I consider that the average consumer, upon seeing the contested mark 'LX', albeit in a word-only version, on goods/services that are either identical or similar to varying degrees, would be directly confused as to the trade origin of those goods/services. Whilst the earlier marks are stylised and include a device, the overall impression lies in the letters, which are the dominant element of the mark with the device merely serving to accentuate the letters. I therefore consider that the consumer would pin their recollection of the marks on the letters in each mark, which in this instance are identical.

76. In my view, taking into account the principle of imperfect recollection, the similarities between the marks are such that the average consumer will mistakenly recall one for the other. Consequently, I consider there to be a likelihood of direct confusion. In case I am wrong about that, I will also consider indirect confusion.

77. In *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

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<sup>11</sup> *L'Oréal SA v OHIM*, Case C-235/05 P, paragraphs 42 and 45

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

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (‘26 RED TESCO’ would no doubt be such a case).
- (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as ‘LITE’, ‘EXPRESS’, ‘WORLDWIDE’, ‘MINI’ etc.).
- (c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (‘FAT FACE’ to ‘BRAT FACE’ for example).”

78. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal<sup>12</sup>. I recognise that a finding of indirect confusion should not be made merely because the

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<sup>12</sup> *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207

competing marks share a common element. The Court of Appeal has also emphasised that, where there is no direct confusion, there must be a “proper basis” for finding indirect confusion.

79. When assessing indirect confusion, I have found that the common elements ‘LX’ are identical. When the consumer compares the differences between the marks, namely the additional device in the earlier marks, and the word only contested mark, they are likely to consider that the marks are being used by the same economic undertaking, and the applicant’s word only mark is simply an alternative mark being used. Therefore, when considering the contested mark, and taking account of the common element in the context of the mark as a whole, the consumer is likely to conclude that the applicant’s mark is a variant mark being used by the owner of the earlier mark. As a result of this, I find a likelihood of indirect confusion.

### **Conclusion**

80. The opposition has succeeded under section 5(2)(b) of the Act. Subject to appeal application no. 3823320 shall be refused registration.

### **COSTS**

81. The opponent has been successful and is entitled to a contribution towards its costs. Award of costs in proceedings are based upon the scale as set out in Tribunal Practice Note 1/2023. In the circumstances I award the opponent the sum of £850.00 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Filing a notice of opposition and considering the applicant’s counterstatement:	£250.00
Preparing written submissions and evidence	£500.00
Official fee:	£100.00
<b>Total:</b>	<b>£850.00</b>

82. I therefore order Forsta AS to pay LX Holdings Corp. the sum of £850.00. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

**Dated this 13<sup>th</sup> day of January 2026**

**LA Bailey**

**For the Registrar**

## **Annex**

Class 9 - Downloadable webinars, podcasts and video recordings; downloadable electronic publications; Downloadable webinars in the field of business, academic, market research, analysis, surveys, customer research, demographics, product and brand development, employee engagement, employee management, employee development and employer-employee relationships; video recordings featuring business, academic, market research, analysis, surveys, customer research, demographics, product and brand development, employee engagement, employee management, employee development and employer-employee relationships; downloadable documents and content in the nature of downloadable written articles about business, academic, market research, analysis, surveys, customer research, demographics, employee engagement, employee management, employee development and employer-employee relationships; Downloadable webinars and video recordings in the field of business, academic, market research, analysis, surveys, customer research, demographics, product and brand development, employee engagement, employee management, employee development and employer-employee relationships; downloadable documents and content in the nature of written articles about business, academic, market research, analysis, surveys, customer research, demographics, employee engagement, employee management, employee development and employer-employee relationships; Downloadable computer software applications; Downloadable Computer software for processing and analyzing financial and market data; Downloadable computer software for market analysis, customer surveys and performance measurement of financial markets; Computer software for electronic processing of data; software applications arranging for participants to take part in multimedia or text surveys without an Internet connection; Computer software and downloadable software for electronic data processing (EDP) in the field of market analysis and consumer and employee surveys; computer software and downloadable software for data acquisition and market analysis.

Class 35 - Business analysis, research and information services; Advising and consulting in connection with the design, customization and analysis of business concept testing surveys, employee evaluations, business engagement and feedback

surveys, market surveys, business research surveys, academic business research surveys and customer surveys; providing and creating business analytics to assist in the management, tracking and application of survey data; providing information online in the fields of market research statistics, customer satisfaction, employee engagement, brand development, brand evaluation, statistics for business or commercial purposes, online data collection for business research and surveys, market research, business management, business data analysis, customer research, demographics, brand development, employee engagement, employee management, employee development, and employer-employee relationships; Advising and consulting in connection with the design, customization and analysis of product research and concept testing surveys, employee evaluations, engagement and feedback surveys, market surveys, business research surveys, academic research surveys and customer surveys; providing and creating analytics to assist in the management, tracking and application of survey data; providing information online in the fields of market research statistics, academic research statistics, customer satisfaction, employee engagement and product and brand development and testing; Market research; business marketing consulting services; Market research services, namely, sampling of survey populations for market research, data processing, online reporting of customer survey results, and custom community development for use in market research; market research services, namely, development of online surveys; Market research consultation; Market research, namely, providing focus groups for market research that are accessible by remote audio and video access; data processing services, namely, electronic data processing services; Analysing and compiling data for measuring the performance of financial markets; market analysis services; analysing of unstructured data and social media, namely, business and marketing data analysis; Compilation of data into computer databases; business modelling consulting services, namely, business consulting, management, planning and supervision; information and data compiling and analyzing relating to business management; data processing services, namely, electronic data processing services.

Class 38 - Electronic transmission of data and images by video broadcasting of market research interviews; streaming of audio, visual and audiovisual material via a global computer network and wireless broadcasting in the field of market research; Video transmission of market research interviews over the Internet using webconferencing

and video streaming technology; providing video content management services for focus group research, namely, video teleconferencing and video-streaming.

Class 41 - Provision of online non-downloadable electronic publications; provision of online non-downloadable videos; provision of tutorials, workshops and seminars; provision of educational information; Providing online non-downloadable articles and non-downloadable educational webinars in the field of statistics, popular culture, current events, historic events, online data collection, business, academic, market research, analysis, surveys, customer research, demographics, product and brand development, employee engagement, employee management, employee development and employer-employee relationships; providing information online in the field of popular culture, current events, historic events, academic research study, academic research statistics; conducting seminars, events in the nature of workshops, and classes about business, academic, market research, analysis, surveys, customer research, demographics, product and brand development, employee engagement, employee management, employee development and employer-employee relationships; providing recognition by way of arranging and conducting awards ceremonies to promote excellence in the field of business, academic, market research, analysis, surveys, customer research, demographics, product and brand development, employee engagement, employee management, employee development and employer-employee relationships; education and entertainment services in the form of production of digital and motion picture films, radio and television programs and television shows; providing educational information online about research conducted by educational institutions; Providing online non-downloadable articles and educational webinars in the field of statistics, popular culture, current events, historic events, online data collection, business, academic, market research, analysis, surveys, customer research, demographics, product and brand development, employee engagement, employee management, employee development and employer-employee relationships; providing educational and entertainment information online in the field of statistics, popular culture, current events, historic events, online data collection, business, academic, market research, analysis, surveys, customer research, demographics, product and brand development, employee engagement, employee management, employee development and employer-employee relationships; education and entertainment

services in the form of production of digital and motion picture films, radio and television programs and shows; providing video content management services for focus group research, namely, videotape production services.

Class 42 - Providing software as a service (SAAS) to measure, prioritize, and optimize the customer, product, employee and brand responses, and to display relevant concurrences using statistically driven data sets; Software as a service (SAAS) in the fields of business research, academic research, market research, market development and market growth, consumer research and customer satisfaction surveys, product research, brand research and concept testing surveys, employee evaluations and feedback surveys, all to measure, prioritize, and optimize the customer, product, employee and brand responses, and to display relevant concurrences using statistically driven data sets; Software as a service (SAAS) for designing, conducting and analyzing surveys, survey data and consumer feedback; Software as a service (SAAS) for providing and creating analytics to assist in the management, tracking and application of survey and contact data; providing temporary use of non-downloadable computer software accessed via the Internet in the field of business, academic, market research, analysis, surveys, customer research, demographics, product and brand development, employee engagement, employee management, employee development and employer employee relationships, all to measure, prioritize, and optimize the customer, product, employee and brand responses, and to display relevant concurrences using statistically driven data sets; providing software as a service (SAAS), accessed via the Internet and offline featuring software for contact information, data feedback, data evaluation, and research surveys, data collection, data integration, data management, data analysis, follow-up to survey responses and generating reports for use in consulting with respect thereto; computer services, namely, hosting and maintaining an on-line web site and web facilities for others for conducting consumer surveys, employee surveys and business research and analyzing resulting data; providing information online in the field of product development and product testing; Computer website design, namely, design of education and entertainment blogs; Advising and consulting in connection with the design, customization and analysis of product research; SAAS in the fields of business research, academic research, , market research, market development and market growth, consumer research and customer satisfaction surveys, product research,

brand research and concept testing surveys, employee evaluations and feedback surveys; SAAS for designing, conducting and analyzing surveys, survey data and consumer feedback; SAAS for providing and creating analytics to assist in the management, tracking and application of survey and contact data; providing temporary use of non-downloadable computer software accessed via the Internet in the field of business, academic, market research, analysis, surveys, customer research, demographics, product and brand development, employee engagement, employee management, employee development and employer-employee relationships; providing information online in the field of product development and testing; Computer programming of software for purposes of electronic data processing; consulting services in the design, selection, implementation and use of computer hardware and software for others; rental of computer software; Computer programming for others; computer programming of computer software in the fields of electronic data processing, employment, employer and employee relations, customer feedback management, and market research; computer services, namely, computer programming for software platforms to enable registered users to receive feedback from employees; computer consulting services, namely, design and implementation of software platforms to enable registered users to receive feedback from employees; Providing temporary use of on-line non-downloadable software for use in performing and compiling market research; application service provider featuring software use for the design and development of marketing campaigns, performing and compiling market research, organizing and analyzing market research data in the field of market research; Software as a service (SaaS) services featuring software for the collection, storage, organization, management, searching, manipulation and analysis of data in the fields of marketing, marketing research, qualitative and quantitative research and focus groups; software as a service (SaaS) services featuring software for management of marketing and market research projects; Providing temporary use of online, non-downloadable software for electronic transmission of data and images by video broadcasting of market research interviews; providing temporary use of online, non-downloadable software for streaming of audio, visual and audiovisual material via a global computer network and wireless broadcasting in the field of market research; platform as a service (PAAS) services featuring software for electronic transmission of data and images by video broadcasting of market research interviews; platform as a service (PAAS) services featuring software for streaming of audio, visual and

audiovisual material via a global computer network and wireless broadcasting in the field of market research; application service provider (ASP) featuring software for use in designing surveys for market research use; software as a service (SaaS) services featuring software for management of marketing and market research projects, including creation and tracking of budgets for such projects and management of vendors; Software as a service (SAAS) services featuring software for creating and deploying online dashboard reporting solutions for market research and customer experience management.