

O/0178/26

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION
NO. 3993033
BY CROSSFIRE HURRICANE HOLDINGS, L.P.
TO REGISTER AS A TRADE MARK:**

CROSSFIRE HURRICANE

IN CLASSES 9, 21, 25, 30, 32, 35, 41 AND 43

AND

**OPPOSITION THERETO
UNDER NO. 448845 BY
SMILEGATE ENTERTAINMENT, INC.**

BACKGROUND & PLEADINGS

1. Crossfire Hurricane Holdings, L.P. (“the applicant”) applied to register the trade mark shown on the front page of this decision in the United Kingdom on 18 December 2023. It was accepted and published in the Trade Marks Journal on 26 April 2024 for various goods and services outlined in Annex 1 at the end of this decision. However, this partial opposition is directed against the goods and services set out in paragraph 22 of this decision.
2. On 26 July 2024, SmileGate Entertainment, Inc. (“the opponent”) partially opposed the application on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”)¹. The opponent is relying only on the following word mark:

Trade Mark no.	UK00003797832
Trade Mark	CROSSFIRE
Goods and services for which the mark is registered	Classes 9 and 41
Filing date	10 June 2022
Date of entry in register	11 November 2022

3. For the purposes of this partial opposition, the opponent relies on all of its goods and services in Classes 9 and 41, respectively, as covered by its earlier mark set out in paragraph 22 of this decision.
4. Under Section 6(1) of the Act, the opponent’s trade mark clearly qualifies as an earlier trade mark. Further, as protection of the opponent’s earlier mark was completed less than five years before the filing date of the

¹ Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

contested mark, proof of use is not relevant in these proceedings as per Section 6A of the Act.

5. The opponent claims that the contested mark is visually, aurally, and conceptually similar to the opponent's mark, for identical and similar goods and services, and there exists a likelihood of confusion.
6. The applicant filed a defence and counterstatement denying the opponent's claims.

Papers filed and Representation

7. The opponent filed written submissions on 2 December 2025, which I will deal with in further detail below at paragraph 22 of this decision.
8. The opponent's evidence consists of a witness statement dated 9 December 2024 from Alexandra Nott, who is a Chartered Trade Mark Attorney and Associate of the opponent in these proceedings, a position which she has held since January 2022. Ms Nott's evidence is accompanied by 8 exhibits (Exhibits AN1-AN7). Ms Nott's evidence is directed to support the identity and/or similarity between competing goods and services. However, I note that various exhibits, including Exhibits AN1-AN4, are dated with a print date or copyright date which falls after the relevant date, i.e. 18 December 2023, and it is not possible for me to infer whether the evidence casts light on the position at the relevant date. Therefore, I have discounted those exhibits in my assessment. Whilst I have read the evidence in full, I do not propose to reproduce or summarise it here but will refer to the salient points below, to the extent that it is considered appropriate.
9. The matter came to be heard by me via video conference on 9 December 2025. The applicant was represented by Mr Philip Harris of Abion UK Limited. A skeleton argument was filed in advance of the hearing. The opponent, who is represented by Dehns, did not attend the hearing but filed written submissions in lieu of attendance at a hearing ("final

submissions”) on 5 December 2025. I shall not summarise these here but will refer to them where appropriate during the course of my decision.

DECISION

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”.

11. Section 5A states:

“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.”

12. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25:

(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, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite 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 greater 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; and

(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 & Services

13. Section 60A of the Act provides:

“(1) For the purpose of this Act goods and services-

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

(2) In subsection (1), the “Nice Classification” means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1975.”

14. When making the comparison, all relevant factors relating to the goods or services in the specifications should be taken into account. In *Canon Kabushiki Kaisha*, the Court of Justice of the European Union (“CJEU”) stated that:

“23. In assessing the similarity of the goods or services concerned [...], 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 complementary.”

15. Guidance on this issue was also given by Jacob J (as he then was) in *British Sugar Plc v James Robertson & Sons Limited (“Treat”)* [1996] RPC 281. At [296], he identified the following relevant factors:

“(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.”

16. In *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, Lord Kitchin set out the proper approach to considering terms in specifications:

“365. [...] The correct approach, as a matter of principle, in considering a specification of services which is defined by terms which are not clear or precise, is to confine the terms used to the substance or core of their possible meanings: see, for example, *Reed Executive plc v Reed Business Information Ltd* [2004] EWCA Civ 159; [2004] RPC 40, at para 43. So too, if a specification of goods is defined by terms which are ambiguous, then it should be confined to those goods which are clearly covered. These principles are consistent with first, the requirement that the specifications of goods

and services must be clear and precise so that others know what they can and cannot do; and secondly, general fairness because any ambiguity is the responsibility of the owner of the mark. If despite this, the words used are still unclear so that they cannot be interpreted, then it is permissible to disregard them. But, in my opinion, that will rarely be the case.”

17. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), paragraph 12, Floyd J (as he then was) gave the following guidance on construing the words used in specifications:

“[...] 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. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU held that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods or services. The GC clarified the meaning of “complementary” goods or services in *Boston Scientific Ltd v OHIM*, Case T-325/06, at paragraph 82:

“[...] there is a 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.”

19. The General Court (GC) confirmed in *Gérard Meric v OHIM*, Case T-133/05, paragraph 29, that, even if goods or services are not worded identically, they can still be considered identical if one term falls within the scope of another, or vice versa:

“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.”

20. In *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. (as he then was) stated that:

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.”

21. In *FIL Limited & Anor v Fidelis Underwriting Limited & Ors* [2018] EWHC 1097 (Pat), Arnold J (as he then was) considered how this principle should be applied in the case of services:

“85. [...] terms in specifications of goods and services should be given their ordinary and natural meaning, but this is subject to two overlapping qualifications: first, specifications of services are inherently less precise than specifications of goods, and therefore should be interpreted in a manner which confines them to the core of

the ordinary and natural meaning rather than more broadly; and secondly, terms should not be interpreted so liberally that they become unclear and imprecise.”

22. The competing goods and services to be compared are shown in the following table:

Earlier goods & services
<p>Class 9: Virtual reality games software; interactive entertainment computer software for virtual reality, augmented reality and mixed reality games; virtual reality software for playing virtual reality games; interactive multimedia software for playing virtual reality games; software for creating, managing and accessing groups within virtual communities; headsets for virtual reality games, virtual reality goggles, virtual reality glasses, and virtual reality hardware; virtual reality headsets adapted for use in playing video games; head-mounted video displays for use in playing virtual reality games; handheld electronic controllers for use in connection with virtual reality games software; computer hardware, computer programs, and computer software for virtual reality, augmented reality and mixed reality games; motion detecting sensors and motion tracking sensors for virtual reality technology; software for detecting objects, user gestures and commands in virtual reality, augmented reality and mixed reality video games; none being driver software or programs for operating semiconductors, circuit boards or peripheral graphic boards used for enhancing the visual experience of those using applications with high-end visual graphics and video such as gaming, animation, or playback.</p> <p>Class 41: Virtual reality game services provided online via a computer network; providing online virtual reality, augmented reality and mixed reality games; online entertainment services in the nature of virtual reality, augmented reality and mixed reality computer games; virtual reality, augmented reality, and mixed reality games services provided</p>

via computer networks and global communication networks; interactive entertainment services in the nature of virtual reality computer games; providing interactive multi-player virtual reality computer games via the internet and electronic communication networks; virtual reality arcade services for recreational use.

Contested goods & services

Class 9: Pre-recorded audio tapes, discs and cassettes, video tapes, discs and cassettes, digital audio and audio video tapes and discs, CDs, DVDs, laser discs, and phonograph records all featuring music and entertainment; theatrical and musical sound and video recordings; downloadable and recorded virtual reality game software; virtual reality game software recorded on tapes, cartridges and cassettes; downloadable music, files, and videos in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages, all for wireless communication devices; downloadable music, files, and videos in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; downloadable computer graphics and images; downloadable graphics, ring tones, and images for mobile phones and wireless devices; downloadable and recorded computer game software; computer game software recorded on tapes, cartridges and cassettes; downloadable and recorded video game software; video game software recorded on tapes, cartridges and cassettes; downloadable electronic publications in the nature of books, booklets, sheet music, journals, manuals, brochures, leaflets, pamphlets and newsletters, all in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; downloadable general feature magazines; downloadable mobile applications for accessing, displaying, distributing, downloading, playing, receiving, streaming, and transmitting music and entertainment; holders, stands, mounts, and protective cases and covers adapted for handheld electronic devices, namely, cellphones, smartphones, tablet computers, cameras, and portable sound and

video players; downloadable virtual and digital goods, namely, multimedia, image, video, music, text, and audio files in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages authenticated by non-fungible tokens (NFTs); downloadable virtual and digital goods, namely, multimedia, image, video, music, text, and audio files in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; downloadable virtual and digital goods associated with musical artists, groups, celebrities, tastemakers, influencers, record labels, entertainment shows, and alcoholic and nonalcoholic beverages authenticated by non-fungible tokens (NFTs); downloadable virtual and digital goods associated with musical artists, groups, celebrities, tastemakers, influencers, record labels, entertainment shows, and alcoholic and nonalcoholic beverages; downloadable software for engaging in social networking and interacting with online communities, for accessing and streaming multimedia entertainment content, and for providing access to environments consisting of virtual reality, augmented reality, mixed reality, extended reality, or a combination thereof; downloadable software for users to browse and perform electronic transactions of retail consumer goods; downloadable computer software for the creation, production and modification of digital animated and non-animated designs and characters, avatars, digital overlays, and skins for access and use in environments consisting of virtual reality, augmented reality, mixed reality, extended reality, or a combination thereof; downloadable software for ordering nonalcoholic and alcoholic beverages; downloadable software for providing access to digital electronic content and experiences pertaining to musical artists, groups, celebrities, tastemakers, influencers, record labels, entertainment shows, and nonalcoholic and alcoholic beverages in environments consisting of virtual reality, augmented reality, mixed reality, extended reality, or a combination thereof via an internet portal or other communication network; downloadable electronic data files

featuring recipes.

Class 35: Retail and online store services in the fields of entertainment; retail and online store services in the fields of general consumer merchandise, namely pre-recorded audio tapes, discs and cassettes, video tapes, discs and cassettes, digital audio and audio video tapes and discs, CDs, DVDs, laser discs and phonograph records, theatrical and musical sound and video recordings, downloadable and recorded virtual reality game software, virtual reality game software recorded on tapes, cartridges and cassettes, downloadable ring tones, music and MP3 files, downloadable graphics and images, video recordings, downloadable and recorded computer game software, computer game software recorded on tapes, cartridges and cassettes, downloadable electronic publications in the nature of books, booklets, sheet music, magazines, journals, manuals, brochures, leaflets, pamphlets and newsletters, downloadable mobile applications for accessing, displaying, distributing, downloading, playing, receiving, streaming, and transmitting content; retail store services relating to tickets for entertainment events; accounting services and providing office functions in connection with the reservation, issuing and sales of admission tickets; advertising and promotional services for entertainment events; arranging and conducting trade show exhibitions in the fields of entertainment; computerized online ordering services in the fields of music, entertainment, lifestyle, arts, culture, sports, food, alcoholic and nonalcoholic beverages, and general consumer merchandise; conducting an online tradeshow exhibition, in the fields of entertainment; distributorship services in the fields of entertainment; entertainment business services, namely, business consulting, business management and providing information in the fields of entertainment; promoting and conducting trade shows in the fields of entertainment; retail store services and online store services relating to digital and virtual goods, namely, nonalcoholic and alcoholic

beverages, clothing, headwear, footwear, fashion accessories, phonograph records, jewelry, artwork, pets, furniture, eyewear, posters, toys, sporting goods, dinnerware, drinkware, trading cards, musical instruments, avatars, and general consumer merchandise.

Class 41: Entertainment; sporting and cultural activities; education; providing of training; production of sound and image recordings on sound and image carriers; editing and recording of sounds and images; ticket agency services for entertainment events; entertainment services, namely, organizing and conducting entertainment events; providing online entertainment, namely, providing nondownloadable sound and video recordings in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; entertainment services, namely, providing online non-downloadable prerecorded musical sound and video recordings via a global computer network; development and dissemination of printed, downloadable, and non-downloadable educational materials of others in the fields of entertainment, excluding development of software; Entertainment services, namely, providing non downloadable entertainment performances, videos, related film clips, photographs, and other multimedia materials featuring entertainment via a website; entertainment services, namely, providing prerecorded non-downloadable entertainment, information in the field of entertainment, and commentary and articles about entertainment, all online via a global computer network; entertainment services, namely, organizing and conducting exhibitions in the field of entertainment; organizing exhibitions for entertainment purposes featuring entertainment; entertainment services, namely provision of nondownloadable virtual and digital goods, namely, multimedia, image, video, music, text, and audio files in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages authenticated by non-fungible tokens (NFTs) in virtual environments; entertainment services, namely provision of nondownloadable virtual and digital

goods, namely, multimedia, image, video, music, text, and audio files in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages in virtual environments; entertainment services, namely provision of nondownloadable virtual and digital goods associated with musical artists, groups, celebrities, tastemakers, influencers, record labels, entertainment shows, and alcoholic and nonalcoholic beverages authenticated by non-fungible tokens (NFTs) in virtual environments; entertainment services, namely provision of nondownloadable virtual and digital goods associated with musical artists, groups, celebrities, tastemakers, influencers, record labels, entertainment shows, and alcoholic and nonalcoholic beverages in virtual environments; Providing entertainment in the field of music and entertainment via an internet website portal; production of video and computer game software; entertainment services, namely, providing online video and computer games; entertainment services, namely, providing temporary use of non-downloadable video and computer games; providing entertainment information in the field of video and computer games via a website; entertainment in the nature of e-sports competitions; providing educational programs and workshops in the fields of entertainment.

23. Following the request of the Tribunal on 4 November 2025, the opponent filed particularised submissions on 2 December 2025 with which it provided a comparison table alongside arguments as to the identity and/or similarity between the competing goods and services. While I have considered the opponent's submissions together with the table, I do not propose to reproduce these here.
24. I also note that the opponent with its final submissions referred me to decisions of this Tribunal to further support its claims of identity or similarity between the competing specifications. Whilst I have considered the previous decisions, I am not bound by them. Importantly, I am required to

undertake a notional assessment based on the specifications before me and all possible uses that fall within those specifications.²

25. At the hearing, Mr Harris submitted that most of the terms in the contested specification are qualified, but accepted that there are terms referring to games which he left for me to determine whether there is identity or otherwise, while highlighting that this was not an admission. Mr Harris explained that the earlier terms are games-focused, whereas the contested terms are qualified by phrases such as music and entertainment, music, entertainment, lifestyle, arts, culture, sports, food, alcoholic beverages, and non-alcoholic beverages. In this regard, he drew my attention to the principles laid out in *Avnet*. By way of example, Mr Harris referred me to the comparison table of the opponent, providing his comments on the comparison of the following terms:

- a. *“downloadable software for providing access to digital electronic content and experiences pertaining to musical artists, groups, celebrities, tastemakers, influencers, record labels, entertainment shows, and nonalcoholic and alcoholic beverages in environments consisting of virtual reality, augmented reality, mixed reality, extended reality, or a combination thereof via an internet portal or other communication network”* which the opponent claims that they are identical to the earlier term *“virtual reality games software”*. Mr Harris stated that *“if you take that sort of line of argument you might as well say that spark plugs are identical to a car. It goes too far, on any normal and natural reading of the specification, as undertaken per the guidance in Avnet.”*³

² *O2 Holdings Limited & Anor v Hutchison 3G UK Limited*, Case C-533/06, paragraph 66.

³ See page 7 of the transcript.

- b. “*education*” and “*providing of training*” for which the opponent claims that they are identical to virtual reality games. Mr Harris submitted that this is “*too high a level of generalisation*”⁴.
 - c. “*accounting services and providing office functions in connection with the reservation, issuing and sales of admission tickets*” which the opponent claims that they are similar to games software. Similarly, in this case, Mr Harris stated that this is “*a stretch way too far*”⁵.
26. At the hearing, I asked Mr Harris to provide me with his comments for the comparison between the contested term “*providing educational programs and workshops in the fields of entertainment*” and the opponent’s “*interactive entertainment, computer software for virtual reality, augmented reality and mixed reality games*” and “*online entertainment services in the nature of virtual reality, augmented reality and mixed reality computer games; interactive entertainment*”. In this context, I drew Mr Harris’s attention to Exhibit AN7, page 10, which contains a printout of an online article titled “*the National Gallery creates famous artworks in Roblox*”. This article demonstrates how the National Gallery developed a free ‘metaverse’ experience called “The Keeper of Paintings and the Palette of Perception”, which includes augmented reality (AR) games that “*encourage children to explore the gallery and learn about its paintings*”. In this regard, Mr Harris responded that the competing terms are dissimilar. In relation to the given exhibit, he posited that this is merely exhibition or gallery services not educational programs or workshops, while stressing that “*there is a separation between the provision of an exhibition and a gallery and the content of individual exhibitions*”⁶.

⁴ See page 8 of the transcript

⁵ Ibid.

⁶ See page 9 of the transcript.

27. The contested specification contains the word “*namely*” in more than one instance. Guidance on how to treat this word is contained in the addendum to the Trade Mark Registry’s Classification Guide, which reads as follows:

“Note that specifications including “*namely*” should be interpreted as only covering the named Goods, that is, the specification is limited to those goods. Thus, in the above “dairy products *namely* cheese and butter” would only be interpreted as meaning “cheese and butter” and not “dairy products” at large. This is consistent with the definitions provided in Collins English Dictionary which states “*namely*” to mean “that is to say” and the Cambridge International Dictionary of English which states “which is or are”.” (emphasis added)

28. I also note that the limitation “*none being driver software or programs for operating semiconductors, circuit boards or peripheral graphic boards used for enhancing the visual experience of those using applications with high-end visual graphics and video such as gaming, animation, or playback*” in Class 9 of the earlier specification does not prevent a finding of similarity between the respective goods/services, especially where broad terms are present in the contested specification.
29. For the purpose of considering the issue of similarity of goods, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way for the same reasons.⁷

Class 9

Video game software recorded on tapes, cartridges and cassettes; downloadable and recorded video game software; computer game software recorded on tapes, cartridges and cassettes; downloadable and recorded computer game software; downloadable and recorded virtual

⁷ *Separode Trade Mark* BL O-399-10 and *BVBA Management, Training en Consultancy v BeneluxMerkenbureau* [2007] ETMR 35 at paragraphs 30 to 38.

reality game software; virtual reality game software recorded on tapes, cartridges and cassettes; downloadable computer software for the creation, production and modification of digital animated and non-animated designs and characters, avatars, digital overlays, and skins for access and use in environments consisting of virtual reality, augmented reality, mixed reality, extended reality, or a combination thereof

30. The contested goods are largely computer software in relation to video games, including virtual reality (“VR”), augmented reality (“AR”), and mixed reality (“MR”) versions of it. The earlier terms “*virtual reality games software; interactive entertainment computer software for virtual reality, augmented reality and mixed reality games; virtual reality software for playing virtual reality games*” are broad terms that will readily cover the contested terms, or vice versa. I do not consider that the limitation to the specification of the earlier mark prevents this from being the case. Thus, the competing terms are identical as per *Meric*.

Downloadable software for engaging in social networking and interacting with online communities [...]

31. The contested goods are broad enough to cover the earlier goods “*software for creating, managing and accessing groups within virtual communities*”. I consider the goods to be *Meric* identical.

Downloadable software for [...] accessing and streaming multimedia entertainment content, and for providing access to environments consisting of virtual reality, augmented reality, mixed reality, extended reality, or a combination thereof

32. The contested goods enable users to access and stream multimedia content. I have considered the opponent’s submissions and evidence that these goods are identical to the earlier terms “*Virtual reality games software; interactive entertainment computer software for virtual reality, augmented reality and mixed reality games; virtual reality software for*

playing virtual reality games; interactive multimedia software for playing virtual reality games". I note that the term "*multimedia entertainment content*" in the contested term is broad that would encompass goods in the form of interactive games as shown in the earlier specification. Therefore, I consider the competing goods to be highly similar due to the overlap in nature, purpose, users, trade channels, and method of use. The contested goods will be complementary to the earlier goods such as "*virtual reality games software*". It is my view that the contested goods could be software, such as game launchers, which could be indispensable for using the earlier goods, leading consumers to believe that they both originate from the same undertaking. However, I do not consider that there is a degree of competition between them. Consequently, they are similar to a high degree.

Downloadable mobile applications for accessing, displaying, distributing, downloading, playing, receiving, streaming, and transmitting [...] entertainment

33. The contested goods are mobile applications (which are software used on mobile devices) enabling users to access, display, distribute, download, play, receive, stream and transmit entertainment content. To the extent that this covers software which enables users to play games, I consider that the contested term is identical to the earlier "*virtual reality games software; interactive entertainment computer software for virtual reality, augmented reality and mixed reality games; virtual reality software for playing virtual reality games*", on the basis that the contested goods can readily encompass the earlier goods under the principle outlined in *Meric*. Even where it does not, I consider that the goods are similar to a high degree. This is because they overlap in nature, purpose, users, method of use, and trade channels, and are also likely to be complementary.

Downloadable mobile applications for accessing, displaying, distributing, downloading, playing, receiving, streaming, and transmitting music [...]

34. The opponent considers that the closest comparators from the earlier specification are the terms “*Virtual reality games software; interactive entertainment computer software for virtual reality, augmented reality and mixed reality games; virtual reality software for playing virtual reality games; interactive multimedia software for playing virtual reality games; software for creating, managing and accessing groups within virtual communities*”. It also submits that the competing goods are identical as per *Meric*. However, I note that in *Unicorn Studio Inc v Veronese*, Case CH-2023-000214, Iain Purvis, KC, sitting as a deputy High Court judge, stated that any finding of similarity (between goods and services) is not a box-ticking exercise, requiring the exercise of common sense and for the hearing officer to stand back and consider the overall question of similarity. In this regard, taking a step back and considering the actual terms before me, it does not make sense to find these goods to be similar as to do so would offer far too broad a level of protection for any and all types of virtual reality games software, and it would also not give proper effect to the contested term which concerns, for example, mobile music apps. In light of the principles set out *Unicorn Studio*, the fact that the competing goods in question to be compared are software-related goods is at too high a level of generality for a finding of similarity. I also note that the opponent draws my attention to Exhibit AN5 that shows music concerts taking place in third-party platforms, namely Meta’s AmazeVR or Tube VR, which are described as immersive musical experiences/events in high-quality VR concerts. Based on the evidence before me, I fail to see how these musical VR experiences/events are similar to the earlier terms relied upon, namely VR/AR/MR games software. Further, I consider that the overlap in trade channels, such as software retailers or app stores, and respective users is of a high level and will not be sufficient in this case to find similarity. For these reasons, I find the competing goods to be dissimilar. If I am wrong in my finding, there is only a very low degree of similarity.

Downloadable virtual and digital goods, namely, multimedia, image, video, music, text, and audio files in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages authenticated by non-fungible tokens (NFTs); downloadable virtual and digital goods associated with musical artists, groups, celebrities, tastemakers, influencers, record labels, entertainment shows, and alcoholic and nonalcoholic beverages authenticated by non-fungible tokens (NFTs)

35. First, I note that the Practice Amendment Notice 2/23 provides the following:

“3. NFTs

NFTs were born out of the cryptocurrency networks. They serve as unique and unalterable digital authenticity certificates of ownership for virtual or physical assets such as art, collectibles and gaming. The Cambridge Dictionary defines an NFT as:

“a unique unit of data (the only one existing of its type) that links to a particular piece of digital art, music, video etc. and that can be bought and sold.”

As a token of data, the NFT consists of an entry on a blockchain. However, it is inextricably linked to the asset (normally a digital asset) to which it relates. The NFT is used, primarily, to represent the ownership of that asset, albeit not necessarily the ownership of any underlying IP such as copyright. For example, a unique piece of digital artwork or an audio file may be “minted” as an NFT, enabling the ownership of that digital asset to be proven and managed via the relevant entry on the blockchain.

4. Virtual goods

Unlike their physical counterparts, virtual goods are classified in class 9 of the Nice Classification system. This is because the goods to

which they relate consist, essentially, of data, such as digital images. However, in the same way that the term “goods”, or “goods made from x” would not be acceptable for physical goods due to such terms not meeting the requirement for clarity and conciseness, virtual goods will be treated in the same way. Consequently, virtual goods will only be accepted if they are clearly defined.” (Emphasis added)

36. In light of the above guidance, I consider that the contested terms are all downloadable digital media assets/content (e.g. multimedia, image, video, music, text and audio files) in the form of data authenticated by NFTs. The opponent claims that the contested goods are *Meric* identical to its “*Virtual reality games software; interactive entertainment computer software for virtual reality, augmented reality and mixed reality games; virtual reality software for playing virtual reality games; interactive multimedia software for playing virtual reality games; software for creating, managing and accessing groups within virtual communities*” as they “*include all manner of virtual and digital goods (these being necessary to create a realistic virtual environment)*”. The earlier goods, such as VR/AR/MR games software, are all executable programs/applications, enabling gaming in VR/AR/MR environments. The opponent refers me to Exhibit AN3, comprising printouts of online articles discussing the role of NFTs in games, allowing users to acquire and own in-game assets. However, I note that this exhibit is dated with a print date 12 May 2024, which post-dates the relevant date. While there is no reason to think that the position had changed significantly during that period, I still find that, even without this exhibit, there is some overlap in the trade channels. This is due to the fact that the competing goods could be sold through the same online or app stores. Also, there is a limited overlap in general nature, as they are all digital goods.⁸ The competing goods also share the same users (general public). However, the purposes are distinct, as the earlier goods enable the users to play games (or to manage/access groups), whereas the

⁸ I note that the contested goods are data files, whereas the earlier goods are all software used to render data into executable programs.

contested goods are used for consumption (e.g. viewing/listening) or collection as authenticated digital assets.

37. On complementarity, although such goods can be used together, I am not satisfied that there is sufficient evidence showing that the competing goods are considered important or indispensable to one another, not least to an extent that the consumer would believe them to originate from a single undertaking. The opponent's evidence, including Exhibit AN3, sets out the potential benefits of NFTs in facilitating in-game asset ownership and how they may revolutionise the future of gaming, but it does not address complementarity between the respective goods. The opponent's witness statement also mentions "Decentraland"⁹ as a marketplace and ecosystem for gaming in which VR gaming software is a medium for the provision of virtual and digital goods. Although this evidence shows that NFTs are available for purchase on the given a platform; it does not, however, establish how interconnected these ecosystems are and whether such convergence exists as a matter of market practice. Accordingly, I consider that the opponent's evidence is not persuasive in this case, and it is inconclusive from the evidence that the competing goods will be rendered as being important to each other and that consumers would expect a common undertaking providing them. If I am wrong on this finding, I note that the degree of complementarity would not be sufficiently pronounced in this case.¹⁰ In addition, I do not consider that there is competition between the competing goods. Consequently, taking all of the above factors into account, they are similar to between a low and medium degree.

⁹ I note that Exhibit AN3 includes a screenshot of the results from a Google search. The top entry features a brief description from the website *decentraland.org*, stating that "*Explore the first decentralized metaverse that is built, governed, and owned by its users. Discover different districts, meet people, party at events...*"

¹⁰ Mr Hobbs KC, sitting as the Appointed Person, in *Energy Beverages LLC v Gogu Marin*, BL O/074/19 ruled that: "*A finding of no similarity may legitimately be made, despite the existence of a degree of complementarity, if that complementarity is not sufficiently pronounced for it to be accepted that from the consumer's point of view the goods are similar within the terms of section 5(2)(b).*"

38. For completeness, I note that the opponent also provides a comparison between the contested goods and its services. However, I consider that such a comparison would not benefit the opponent to a greater extent, as they will be further apart due to the differences in nature, trade channels, and purposes.

Downloadable virtual and digital goods, namely, multimedia, image, video, music, text, and audio files in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; downloadable virtual and digital goods associated with musical artists, groups, celebrities, tastemakers, influencers, record labels, entertainment shows, and alcoholic and nonalcoholic beverages

39. Following the same approach in the preceding paragraph, and despite the fact that the contested virtual and digital goods in this cases are not authenticated by NFTs, I consider that they will be similar to between a low and medium degree to the opponent's VR/AR/MR games software for the same reasons advanced above.

Downloadable music, files, and videos in the fields of [...], entertainment [...], all for wireless communication devices; downloadable music, files, and videos in the fields of [...], entertainment, [...]; downloadable computer graphics and images; downloadable graphics, [...], and images for mobile phones and wireless devices

40. The contested goods are all downloadable digital files/media in the field of entertainment, including for wireless devices or mobile phones. The opponent claims that the contested goods are identical to the earlier “*Virtual reality games software; interactive entertainment computer software for virtual reality, augmented reality and mixed reality games; virtual reality software for playing virtual reality games; interactive multimedia software for playing virtual reality games; software for creating, managing and accessing groups within virtual communities*” as they “*include all manner of virtual and digital goods (these being necessary to*

create a realistic virtual environment” which consists of a range of multimedia forms. The specific purpose of the earlier goods differs from that of individual, for example, music or image files, because while the goods are intended for entertainment in a very broad sense the user’s experience is very different. VR/AR/MR games software will undoubtedly incorporate, for example, images and music, but the overall nature of the goods is not the same (data files v executable software). They do not share the same method of use, as users download or stream the contested goods, while the earlier goods execute interactive VR/AR/MR gaming. However, there is a degree of complementarity in the sense that the contested goods, such as game soundtracks, game video/cinematic clips and artwork, will be indispensable to the creation of the earlier goods, leading the consumer to believe that they originate from the same undertaking. Also, such goods are frequently bundled and offered to the same users through the same trade channels. However, there is no direct competitive relationship. Therefore, there is a between low and medium degree of similarity.

Downloadable music, files, and videos in the fields of music, [...], lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages, all for wireless communication devices; downloadable music, files, and videos in the fields of music, [...], lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages

41. I consider that the competing goods are further apart from those in the previous paragraph as they are in distinct fields from the earlier goods. The opponent compares the contested goods with its earlier goods, namely *“Virtual reality games software; interactive entertainment computer software for virtual reality, augmented reality and mixed reality games; virtual reality software for playing virtual reality games; interactive multimedia software for playing virtual reality games; software for creating, managing and accessing groups within virtual communities”* as they *“include all manner of virtual and digital goods (these being necessary to create a realistic virtual environment”* which are all in relation to VR/AR/MR

games software. I consider that the competing terms differ in overall nature, purpose, and they are not complementary or in competition. Even if they may overlap in users and trade channels, I do not consider any such overlap to be sufficient to find similarity. Thus, I find that the competing goods are dissimilar. If I am wrong, they are similar to a very low degree.

Downloadable electronic publications in the nature of books, booklets, [...], manuals, brochures, leaflets, pamphlets and newsletters, all in the fields of [...] entertainment [...]; Downloadable general feature magazines

42. I note that these goods are limited to, or could include, the broad field of entertainment (which may encompass gaming). I consider that these goods are similar to the earlier goods “*interactive entertainment computer software for virtual reality, augmented reality and mixed reality games*”. The goods may coincide in the producers and distribution channels, as they are likely to be sold by the same businesses, and may target the same public. For example, it is typical for game software to be bundled with, for example, booklets, manuals, and newsletters. There may also be a level of complementarity between the goods. However, they differ in nature, purposes, and methods of use, and they are not in competition. Taking all of the above into consideration, I find the goods to be similar to between a low and medium degree.

Downloadable electronic publications in the nature of books, booklets, sheet music, journals, manuals, brochures, leaflets, pamphlets and newsletters, all in the fields of music, [...], lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; Downloadable electronic publications in the nature of sheet music, journals, [...] all in the fields of [...] entertainment [...]; downloadable electronic data files featuring recipes; downloadable [...], ring tones, [...] for mobile phones and wireless devices

43. The opponent claims that the contested terms are *Meric* identical to its “*Virtual reality games software; interactive entertainment computer*

software for virtual reality, augmented reality and mixed reality games; virtual reality software for playing virtual reality games; interactive multimedia software for playing virtual reality games; software for creating, managing and accessing groups within virtual communities; computer software for virtual reality, augmented reality and mixed reality games” because “virtual reality games are expansive, complex environments in which users can carry out a variety of tasks including shopping, food/drink ordering, and downloading/accessing publications.”

44. I consider that the contested terms are largely electronic goods confined to specific fields or files, including recipes and ringtones. Even though I note the opponent’s claims about the expansive nature of the VR/AR/MR environments, the earlier goods all concern games software and not software at large or operating systems or platforms where the users could utilise and consume downloadable content or files in general. In this context, I also note that the contested goods are not ‘virtual goods’ within the meaning of PAN 2/23 but ordinary downloadable digital files or publications suggesting that the competing goods are further apart. Against this background, and in the absence of evidence (dated prior to the relevant date), I do not see any obvious similarity between the competing goods. Thus, the competing goods will differ in purpose, method of use, and they are not complementary or in competition. Although they share the same users, namely general public, and general trade channels (online stores) I do not consider this factor to be sufficient to find a degree of similarity. Consequently, the competing goods are dissimilar.

Downloadable software for users to browse and perform electronic transactions of retail consumer goods; downloadable software for ordering nonalcoholic and alcoholic beverages

45. The contested goods are software that enables users to browse retail products and complete electronic purchases or other retail transactions. The opponent claims that they are identical to the earlier terms “*Virtual*

reality games software; interactive entertainment computer software for virtual reality, augmented reality and mixed reality games; virtual reality software for playing virtual reality games; interactive multimedia software for playing virtual reality games; software for creating, managing and accessing groups within virtual communities”, submitting that:

“Identical per *Meric*, insofar as the Opponent's virtual reality games are expansive, complex environments in which users can carry out a variety of tasks including shopping, food/drink ordering, and downloading/accessing publications. It was submitted at Paragraph 10 of the AN Statement, read in conjunction with Exhibit AN4, that virtual reality games have marketplaces where users/players can buy and sell virtual goods (including, but not limited to, clothing, food and drink, furniture and vehicles). Further, page 19 of Exhibit AN3 (being a copy of the UK IPO's Practice Amendment Notice ('PAN') 2/23 entitled "*The Classification of non-fungible tokens (NFTs), virtual goods, and services provided in the metaverse*") acknowledges the possibility for users to "order food and drink inside the metaverse for delivery or consumption in the physical world" (the metaverse being a virtual world).”

46. The opponent appears to frame the contested terms as virtual or NFT goods, which is not the case here, as the wording of the contested terms does not support that interpretation. I note that the contested goods are downloadable software in relation to the respective uses mentioned above. Following the same approach outlined in the previous paragraph, I do not consider there to be any similarity between the goods.

Downloadable software for providing access to digital electronic content and experiences pertaining to musical artists, groups, celebrities, tastemakers, influencers, record labels, entertainment shows, and nonalcoholic and alcoholic beverages in environments consisting of virtual reality, augmented reality, mixed reality, extended reality, or a combination thereof via an internet portal or other communication network

47. The contested goods are software that operates, for example, as a client or portal for providing access to digital electronic content and artist-related experiences and shows delivered in VR/AR/MR environments. The opponent argues that the contested goods are *Merix* identical to the earlier goods “*Virtual reality games software; interactive entertainment computer software for virtual reality, augmented reality and mixed reality games; virtual reality software for playing virtual reality games; interactive multimedia software for playing virtual reality games; software for creating, managing and accessing groups within virtual communities*”. The opponent submits that:

“Specifically, the Contested Goods comprise software for accessing content and experiences featured in virtual reality, augmented reality and mixed reality environments; by extension, such VR content/experiences are accessed via virtual reality games software. To further support this point we refer to page 7 of Exhibit AN3, which notes that players of virtual reality games can “participate in virtual events and experiences, creating a more immersive and lifelike gaming world”.”

48. The competing goods share the same nature, namely being VR software, and purpose enabling users to access and experience immersive content. There is an overlap in method of use, users, and trade channels. I note that the opponent draws my attention to Exhibit AN3 in its submissions, but as I mentioned earlier, this exhibit falls after the relevant date, and even if I had to consider it, it would not be relevant to the assessment in question, as the contested goods are not classified as NFTs. Also, I do not consider that the goods will be complementary. Even though the earlier goods often run on or alongside a platform/client that provides access to the VR environment, the consumers will not assume a common commercial origin for a content-access portal and game software. I do not consider that the goods will be in competition. Consequently, I find them to be similar to a medium degree.

Pre-recorded audio tapes, discs and cassettes, video tapes, discs and cassettes, digital audio and audio video tapes and discs, CDs, DVDs, laser discs, and phonograph records all featuring [...] entertainment

49. The contested goods are pre-recorded media on physical carriers containing entertainment content. For example, CDs and DVDs may be recorded with any kind of encoded data, such as VR games. The opponent claims that the contested terms are *Meric* identical to its earlier terms “*Virtual reality games software; interactive entertainment computer software for virtual reality, augmented reality and mixed reality games; virtual reality software for playing virtual reality games; interactive multimedia software for playing virtual reality games; software for creating, managing and accessing groups within virtual communities; computer software for virtual reality, augmented reality and mixed reality games*”. I note that the earlier terms are not limited, for example, to downloadable goods. In this regard, I consider that the earlier terms are broad enough to cover the contested terms. Thus, I find them to be identical as per *Meric*.

Pre-recorded audio tapes, discs and cassettes, video tapes, discs and cassettes, digital audio and audio video tapes and discs, CDs, DVDs, laser discs, and phonograph records all featuring music [...]; theatrical and musical sound and video recordings

50. In contrast to the above finding, the contested goods are all pre-recorded media music content and theatrical and musical audiovisual recordings. I do not consider that there is any overlap between the contested goods and the earlier goods. The competing goods differ in nature, purpose, method of use, trade channels (such as music disc retailers v app stores). They are not complementary or in competition. However, even if the goods overlap in users, this is not sufficient to find similarity. Thus, I find them to be dissimilar.

HOLDERS, STANDS, MOUNTS, AND PROTECTIVE CASES AND COVERS ADAPTED FOR HANDHELD ELECTRONIC DEVICES, NAMELY, CELLPHONES, SMARTPHONES, TABLET COMPUTERS, CAMERAS, AND PORTABLE SOUND AND VIDEO PLAYERS

51. The opponent claims that the contested goods are similar to the earlier terms “Headsets for virtual reality games, virtual reality goggles, virtual reality glasses, and virtual reality hardware; virtual reality headsets adapted for use in playing video games; headmounted video displays for use in playing virtual reality games; handheld electronic controllers for use in connection with virtual reality games software; computer hardware for virtual reality, augmented reality and mixed reality games” as they share same producers, distribution channels, and target the same users. I consider that the contested goods are accessories for cell phones, smartphones, tablet computers, cameras, and portable sound and video players. However, the earlier goods are all VR/AR/MR gaming apparatus, hardware, and controllers enabling immersive display and interactive gameplay. The competing goods may share the same general nature to some extent as they could be made from the same materials. However, they differ in purpose as the contested goods hold, support, and protect such devices, whereas the earlier goods enable immersive gameplay. The method of use will differ as well (fitting or attaching to a phone/tablet/camera v operating VR systems). I consider that there is an overlap in users and trade channels as the competing goods could be sold in the same electronics retail stores and their online equivalent. I find that the competing goods are similar to a low degree.

Class 35

RETAIL AND ONLINE STORE SERVICES IN THE FIELDS OF ENTERTAINMENT; RETAIL AND ONLINE STORE SERVICES IN THE FIELDS OF GENERAL CONSUMER MERCHANDISE, NAMELY [...] DOWNLOADABLE AND RECORDED VIRTUAL REALITY GAME SOFTWARE, VIRTUAL REALITY GAME SOFTWARE RECORDED ON TAPES, CARTRIDGES AND CASSETTES, [...] DOWNLOADABLE AND RECORDED COMPUTER GAME SOFTWARE, COMPUTER GAME SOFTWARE RECORDED ON TAPES, CARTRIDGES AND CASSETTES [...], DOWNLOADABLE

mobile applications for accessing, displaying, distributing, downloading, playing, receiving, streaming, and transmitting content

52. Before I consider the contested services, I will delineate the relevant case law and principles, applicable in the case at hand. In *Oakley, Inc v OHIM*, Case T-116/06, the GC held that although retail services are different in nature, purpose and method of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree. Further, I remind myself of the case of *Tony Van Gulck v Wasabi Frog Ltd*, Case BL O/391/14 wherein Mr Geoffrey Hobbs Q.C. (as he then was), sitting as the Appointed Person, set out that the findings in *Oakley* did not mean that goods could only be regarded as similar to retail services where the retail services related to exactly the same goods as those for which the other party's trade mark was registered (or proposed to be registered). However, on the basis of the European Courts' judgments in *Sanco SA v OHIM*, Case C-411/13P and *Assembled Investments (Proprietary) Ltd v OHIM*, Case T-105/05, at paragraphs 30 to 35 of the judgment, upheld on appeal in *Waterford Wedgewood Plc v Assembled Investments (Proprietary) Ltd*, Case C-398/07P, Mr Hobbs QC (as he then was) concluded that:

"i) Goods and services are not similar on the basis that they are complementary if the complementarity between them is insufficiently pronounced that, from the consumer's point of view, they are unlikely to be offered by one and the same undertaking;

ii) In making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it is necessary to envisage the retail services normally associated with the opponent's goods and then to compare the opponent's goods with the retail services covered by the applicant's trade mark;

iii) It is not permissible to treat a mark registered for 'retail services for goods X' as though the mark was registered for goods X;

iv) The General Court's findings in *Oakley* did not mean that goods could only be regarded as similar to retail services where the retail services related to exactly the same goods as those for which the other party's trade mark was registered (or proposed to be registered)."

53. The opponent claims similarity between the contested services and its Class 9 goods "*Virtual reality games software; interactive entertainment computer software for virtual reality, augmented reality and mixed reality games; virtual reality software for playing virtual reality games; interactive multimedia software for playing virtual reality games; software for creating, managing and accessing groups within virtual communities; computer software for virtual reality, augmented reality and mixed reality games.*" The contested services in Class 35 are provided with the aim of selling various goods as listed in the specification or within the broad field of entertainment. The nature of the services differs from the earlier goods. The former services are offered by an online/physical retail operator for the sale and purchase of goods by the end users, whereas the latter goods are the products as such. Moreover, the method of use and purpose differentiates between the goods and the services in question. The goods are intended to be used for immersive gameplay or consumption and collection, whereas the respective services are intended to enable the end users to purchase such entertainment goods by interacting with them either online or at physical premises. In addition, there will be an overlap in trade channels. At an overarching level, the ordinary method of retailing such goods to the public creates a link where consumers are likely to believe that the same commercial undertaking could offer both the goods and the retail services. Therefore, I find that the complementarity in this case is sufficiently pronounced. Taking all these factors into consideration, there is a medium degree of similarity between the respective goods and services.

Retail and online store services in the fields of general consumer merchandise, namely pre-recorded audio tapes, discs and cassettes, video tapes, discs and cassettes, digital audio and audio video tapes and discs, CDs, DVDs, laser discs and, [...], music and MP3 files, downloadable graphics and images, video recordings, [...], downloadable electronic publications in the nature of books, booklets, [...], magazines, [...], manuals, brochures, leaflets, pamphlets and newsletters, [...]; retail store services and online store services relating to digital and virtual goods, namely, nonalcoholic and alcoholic beverages, clothing, headwear, footwear, fashion accessories, phonograph records, jewelry, artwork, pets, furniture, eyewear, posters, toys, sporting goods, dinnerware, drinkware, trading cards, musical instruments, avatars, and general consumer merchandise

54. Much of the above analysis applies here. While the nature and the purpose of the goods and services will differ, there will be overlap in the trade channels and users. There is no competition. I have no evidence before me to show whether the goods and services are complementary. Thus, any complementarity is in my view at a fairly low level. The goods and services are similar to between a low and medium degree.

Retail and online store services in the fields of general consumer merchandise, namely [...], phonograph records, [...] sheet music, [...], journals, [...], theatrical and musical sound and video recordings, [...], downloadable ring tones [...]

55. Bearing in mind the principles set out in *Tony Van Gulck v Wasabi Frog Ltd*, in the case where the goods retailed do not correspond exactly to the goods of the kind of the other mark, it is necessary to consider whether there is the likelihood the same undertaking would provide both goods in question. In the present case, the relationship between the retailing of the said goods and Class 9 goods, is not sufficiently pronounced that the average consumer would consider them to be offered by the same

undertaking. Therefore, I consider that the competing goods and services are dissimilar.

Retail store services relating to tickets for entertainment events

56. The opponent submits that the contested services are similar to the earlier terms “*Virtual reality game services provided online via a computer network; providing online virtual reality, augmented reality and mixed reality games; online entertainment services in the nature of virtual reality, augmented reality and mixed reality computer games; virtual reality, augmented reality, and mixed reality games services provided via computer networks and global communication networks; interactive entertainment services in the nature of virtual reality computer games; providing interactive multi-player virtual reality computer games via the internet and electronic communication networks*”. I have taken into consideration the opponent’s submissions and the respective evidence. I consider that the competing services differ in nature and purpose, namely enabling users to attend events v delivering interactive gameplay experience. The opponent asserts that there is a complementarity between the competing services, pointing out that VR game software providers often sell tickets for in-game music concerts and e-sports competitions. Although I agree that there might be some overlap in trade channels as the providers of the earlier services could also sell tickets online via websites and apps, for example, for e-sport events targeting the same users, the evidence provided does not clearly demonstrate how the services could be considered to be indispensable or important to one another or that consumers would expect them to originate from the same undertaking. Thus, I do not consider that there is a pronounced complementarity between the competing terms. In addition, the competing services differ in methods of use, and they are not in competition. Despite the overlap in trade channels and users, these factors are not sufficient as such to find similarity. Thus, I find that the competing terms are dissimilar.

Accounting services and providing office functions in connection with the reservation, issuing and sales of admission tickets

57. The contested services are accounting and office function services that would be provided to business users. In the absence of evidence, I do not see any obvious similarity between the contested services and the earlier services. These differ in nature, purpose, method of use, trade channels, users (business users v the general public), and they are not complementary or in competition. Thus, they are dissimilar.

Computerized online ordering services in the fields of music, entertainment, lifestyle, arts, culture, sports, food, alcoholic and nonalcoholic beverages, and general consumer merchandise

58. The contested services are computerised online ordering services across broad subject areas. The opponent argues that the contested services are identical to its VR games software in Class 9, while submitting that “*virtual reality games have marketplaces where users/players can buy and sell virtual goods (including, but not limited to, clothing, food and drink, furniture and vehicles)*” and that the PAN 2/23 “*acknowledges the possibility for users to “order food and drink inside the metaverse for delivery or consumption in the physical world”*”. Before I proceed to the comparison of the competing terms, I reproduce the relevant part from the PAN 2/23 in full to which the opponent refers me to, which is as follows:

“5. Virtual services, including those provided in the metaverse

During the pandemic, there was a proliferation of services which, whilst traditionally provided in person, have moved to being provided virtually, via the use of Internet based applications such as video-conferencing, instant messaging, and the like. If a service is capable of being delivered via virtual means, IPO will continue to accept such services, with examples of acceptable terminology being:

- education and training services delivered by virtual means [class 41]
- conducting interactive virtual auctions [class 35]

The metaverse is a form of digital reality, where people can access virtual worlds and interact with others. There is no reason, in principle, why a service capable of being delivered by virtual means, such as video-conferencing, cannot be delivered inside the metaverse. For example, a training service could be provided through, attended, and delivered inside the metaverse. As such, IPO will accept services provided through the metaverse in the same class as more traditional forms of delivery, with examples of acceptable terms being:

- education and training services provided via the metaverse [class 41]
- conducting interactive auctions via the metaverse [class 35]

It may not be possible to take the same approach for all “metaverse” services. This is because the manifestation of that service in the metaverse may not fall in the same class as the traditional form of delivery. For example, whilst it may be possible to order food and drink inside the metaverse for delivery or consumption in the physical world, a metaverse avatar “consuming” food and drink within the metaverse would not constitute a class 43 service. Where provision via the metaverse is specifically mentioned, but where it is not immediately apparent that the service sought can be provided inside the metaverse, clarification will be sought by the examiner.

Services that fall foul of the above paragraph may in fact be covered by a more general category of services, in that what is actually being provided is the access to a virtual world or the metaverse for the purpose of entertainment. As such, the following type of terminology may be appropriate:

- entertainment services, namely, provision of a virtual reality or metaverse based simulation gaming service”

59. In light of the above, firstly, I do not consider that the contested services will be interpreted as virtual services. The PAN makes clear that for services to be treated as delivered by virtual means they must be expressly qualified by terms such as “metaverse”, “delivered by virtual means”, or “augmented reality”. Thus, it is evident from the terminology of the contested services that they should be viewed as conventional Class 35 services and not virtual ones. With that in mind, secondly, it is my view that, on an ordinary and commonsense construction of the term, and bearing in mind the information within the Nice Classification system for Class 35 and the established case law,¹¹ the core of the service is the facilitation of online ordering of goods, and it would be inappropriate for me to treat the type of goods offered as part of the contested services as if they necessarily include virtual or digitised goods. I also note that the earlier terms are software goods and not virtual goods as such. Against this background, there is an intrinsic difference between the nature, purpose and method of use of the contested services and the earlier goods, as with any goods and services. There may be some overlap in trade channels as they would be offered online (e.g. via websites or apps) as well as users because those interested in using the contested services may also be interested in obtaining the earlier goods, but this is not sufficient to find that the respective goods and services share any similarity. Lastly, I do not consider that there is a degree of complementary or competition. Therefore, the competing terms are dissimilar.

60. For completeness, I would have arrived at the same finding even when considering the earlier services in Class 41, such as “*providing online virtual reality, augmented reality and mixed reality games*”. I consider that the nature and purpose of the parties’ respective services will differ, as well

¹¹ See *Avnet; Reed Executive Plc v Reed Business Information Ltd* [2004] EWCA Civ 159, [2004] RPC 40; and *Skyclub*, BL O/044/21.

as the respective trade channels and method of use. In addition, it seems to me that the contested services would be merely incidental to the contested services rather than being complementary, in the sense described in the case law, and there is nothing in the evidence before me to satisfy me otherwise. Thus, they are not complementary or in competition.

Advertising and promotional services for entertainment events

61. The opponent submits that the contested services will be similar to its earlier services “*online entertainment services in the nature of virtual reality, augmented reality and mixed reality computer games; interactive entertainment services in the nature of virtual reality computer games; virtual reality arcade services for recreational use*” in Class 41. Although the provision of the earlier services would often likely be advertised and promoted, the delivery of such services would be invariably provided by a separate undertaking. It is clear that the earlier specification is not registered for advertising or promotion. Advertising and promotional services have a distinct and different intended purpose, method of use, users, and trade channels from online entertainment software games type services in the earlier specification. In addition, such services are not in competition and they are not complementary. As stated above, although it is common for service providers to advertise, market and promote their own services, the delivery of one is not necessarily indispensable or important for the use of the other. The competing services are therefore dissimilar.

Arranging and conducting trade show exhibitions in the fields of entertainment; conducting an online tradeshow exhibition, in the fields of entertainment; promoting and conducting trade shows in the fields of entertainment

62. The contested services concern the arranging, conducting and promoting of trade show exhibitions in the field of entertainment. The opponent

submits that the contested terms are similar to its “*Online entertainment services in the nature of virtual reality, augmented reality and mixed reality computer games; interactive entertainment services in the nature of virtual reality computer games*” due to the overlapping nature of entertainment and complementarity between the competing terms. In the absence of evidence or any detailed argument or submission on this point, I do not see any obvious similarity between the competing services. Although the opponent submits that there is an overlap in nature by virtue of the “*entertainment*” element in the competing specifications, I note that the earlier services are not registered for arranging, conducting, or promoting of trade shows. In other words, as per *Avnet*, the contested services at their core are business promotion services and not entertainment-based services as per the opponent’s claims. Therefore, their nature, purpose, method of use, users, and trade channels are different. Also, there is no degree of competition or complementarity between them. Thus, I find them to be dissimilar.

Entertainment business services, namely, business consulting, business management and providing information in the fields of entertainment; distributorship services in the fields of entertainment

63. The opponent provides that the contested services are similar to its Class 9 goods “*Interactive entertainment computer software for virtual reality, augmented reality and mixed reality games*” and Class 41 services “*Online entertainment services in the nature of virtual reality, augmented reality and mixed reality computer games; interactive entertainment services in the nature of virtual reality computer games*” on the basis that “*the Contested Services include entertainment in the nature of virtual reality, augmented reality and mixed reality computer games. They are therefore complementary to the Opponent’s Goods/Services, and could be provided by the same undertakings*”. Again, in this case, I do not consider that there is any similarity between the competing terms. Following the same approach as above, the contested terms are limited, and their core and literal meaning relates to business-advisory and management, and

intermediary services aimed at business users/professionals operating in the entertainment sector. Thus, I do not consider that there is any overlap in nature, purpose, method of use, users, and trade channels between the competing terms. Further, they are not complementary or in competition. Therefore, I find them to be dissimilar.

Class 41

Entertainment; entertainment in the nature of e-sports competitions; entertainment services, namely, providing online video and computer games; entertainment services, namely, providing temporary use of non-downloadable video and computer games; entertainment services, namely, providing prerecorded non-downloadable entertainment [...] all online via a global computer network

64. The contested terms are broad enough to encompass the earlier terms “*Providing online virtual reality, augmented reality and mixed reality games; Virtual reality game services provided online via a computer network*”. Thus, I find them to be identical as per *Meric*.

Providing entertainment in the field of [...] entertainment via an internet website portal

65. The contested terms are entertainment services, although one of them is limited to the provision of multimedia content, which, in my view, is a broad term that would also include games. I agree with the opponent that the contested services are broad and could cover the earlier services, such as “*Virtual reality game services provided online via a computer network; interactive entertainment services in the nature of virtual reality computer games*”. Therefore, I find them to be identical as per *Meric*. If I am wrong, I consider that they are still highly similar as the competing services overlap in natures, intended purposes, method of use, and users. I also consider that the same businesses could provide the competing services, and there is a degree of competition between the services.

Production of video and computer game software

66. The opponent relies on its earlier VR games software goods in Class 9 and services in Class 41 submitting that they are similar to the contested services due to complementarity. I consider that the terms “*virtual reality games software; interactive entertainment computer software for virtual reality, augmented reality and mixed reality games; virtual reality software for playing virtual reality games*” are the closest comparators in this instance. I consider that the nature, purpose, and method of use all differ. The earlier goods are finished products (VR games software) intended for gameplay by end users, whereas the contested services concern the production of such products, typically provided to businesses. Thus, there is no overlap in users as I see no reason to find why someone buying VR games software would also seek the contested services. In the absence of evidence, I do not consider that complementarity will be sufficiently pronounced in this case. Further, there is no overlap in trade channels, and there is no competition. Taking all of this into account, I consider that the competing goods and services are dissimilar. For completeness, I note that I would have arrived at the same finding when compared to the earlier services for the same reasons.

Production of sound and image recordings on sound and image carriers

67. For the same reasons advanced above, I consider that the contested services are dissimilar to the earlier services in Class 41. Nature, purpose, users, method of use, and trade channels will be different, and the competing services are not in competition. In the absence of evidence, it does not seem to me that the average consumer would assume that the respective services are the responsibility of the same undertaking.

Entertainment services, namely provision of nondownloadable virtual and digital goods, namely, multimedia, image, video, music, text, and audio files in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages authenticated by non-fungible tokens (NFTs) in virtual environments; entertainment services, namely provision of nondownloadable virtual and digital goods, namely, multimedia, image, video, music, text, and audio files in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages in virtual environments; entertainment services, namely provision of nondownloadable virtual and digital goods associated with musical artists, groups, celebrities, tastemakers, influencers, record labels, entertainment shows, and alcoholic and nonalcoholic beverages authenticated by non-fungible tokens (NFTs) in virtual environments; entertainment services, namely provision of nondownloadable virtual and digital goods associated with musical artists, groups, celebrities, tastemakers, influencers, record labels, entertainment shows, and alcoholic and nonalcoholic beverages in virtual environments

68. The contested entertainment services are in relation to the provision of various virtual and digital goods/content files (also authenticated by NFTs) in virtual environments. The opponent relies upon its services, including “*Providing online virtual reality, augmented reality and mixed reality games; Virtual reality game services provided online via a computer network*”, claiming that they are *Meric* identical to the contested goods. Although there might be an overlap in the general purpose, namely that of entertainment, the nature differs as the contested services relate to the provision of virtual and digital goods, as opposed to the earlier terms which relate to the provision of interactive gameplay. I also consider that there is an overlap in producers as the same businesses that provide VR game services are also likely to provide virtual and digital goods via online app stores. Thus, the trade channels will be the same and the users. However, I do not consider that there is a degree of complementarity or competition between the services. Consequently, I find them to be similar to between a low and medium degree.

Ticket agency services for entertainment events

69. The contested services are ticketing services concerning the arrangement or sale of tickets for entertainment events. The opponent claims that the contested services are similar to the earlier services due to complementarity, and the overlap in users and providers. In support to its submissions the opponent refers me to Exhibit AN5. I note that this exhibit contains printouts from events, including “METAVERSE COMEDY FESTIVAL - Two full days of comedy in Decentraland - The Hub of Comedy in Web 3”; “MIC DROP - THE METAVERSE COMEDY FESTIVAL Skankfest Edition!”; and AmazeVR Concerts, which all appear to be VR musical events per se rather than in-game experiences or e-sports. Even though there could be some overlap in trade channels and users, the evidence does not show how these services could be considered to be indispensable or important to one another, leading the consumers to believe that they come from the same undertaking. Thus, I do not consider that there is a sufficiently pronounced complementarity between the competing terms. In addition, the competing services differ in nature, purpose, methods of use, and they are not in competition. Despite the overlap in trade channels and users, these factors are not sufficient as such to find similarity. I find them to be dissimilar.

Entertainment services, namely, organizing and conducting entertainment events; entertainment services, namely, organizing and conducting exhibitions in the field of entertainment; organizing exhibitions for entertainment purposes featuring entertainment

70. The contested services are entertainment services in relation to the organisation and conduct of events and exhibitions. The opponent claims that these are identical to its earlier services. I consider that there is an overlap in providers as to the organisation and conduct of gaming events. There may be an overlap in purpose, trade channels, and users. However, I find the nature and method of use to be different. I do not consider that there is a degree of complementarity as the contested services do not

strike me as important to the provision of the earlier services. Considering all of the factors, I find that they are similar to between a low and medium degree.

Providing entertainment information in the field of video and computer games via a website; entertainment services, namely, providing [...] information in the field of entertainment, and commentary and articles about entertainment, all online via a global computer network

71. The contested services are entertainment services in relation to the online provision of information. The opponent submits that these are identical to its earlier services. I consider that there is a degree of complementarity between the competing services, as the provision of information at large will also include information about gaming, which will likely be important to the gaming services themselves, and vice versa. In addition, it is likely to be assumed that an entity who provides entertainment information as a service in this context would be the same as that providing the gaming services themselves. Although the users, trade channels, and method of use will be the same, the natures and purposes will differ. Considering all of the factors, I find that they are similar to a medium degree.

Providing online entertainment, namely, providing nondownloadable sound and video recordings in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; entertainment services, namely, providing online non-downloadable prerecorded musical sound and video recordings via a global computer network; Entertainment services, namely, providing non downloadable entertainment performances, videos, related film clips, photographs, and other multimedia materials featuring entertainment via a website; Providing entertainment in the field of music [...] via an internet website portal

72. The contested entertainment services are expressly limited to the provision of audiovisual content across various subject areas. The opponent claims that the contested services are identical to its earlier services because the

VR games are expansive and complex environments, where users can engage with the contested subject areas. Whilst the competing services can have a similar intended purpose (i.e. entertainment), they have different natures (different types of entertainment). I also consider that different businesses would provide the contested services, as opposed to the earlier services which are typically provided by game studios. To my knowledge, there is not normally an overlap in trade channels, and I have no evidence to suggest otherwise. In addition, neither service is indispensable or important for the use of the other in a way that would lead consumers to expect common commercial origin. Although they may share the same users and methods of use as the respective services could be provided online, I do not consider these factors to be sufficient to find similarity. Overall, as per *Unicorn Studio*, taking a step back I consider that a finding of similarity based solely on the broad overlap in purpose, users, and methods of use would not give proper effect to the contested terms, and, as result, I find them to be dissimilar. If I am wrong in this finding, they will be similar to a very low degree.

Education; providing of training

73. The contested services are all educational services at their core. In addition, I keep in mind that the contested services are not rendered as virtual services per se for the same reasons detailed earlier in this decision. The opponent submits that these services are identical since the earlier services in Class 41 can be used for educational/training purposes. With Exhibits AN6 and AN7, the opponent claims that these are examples of third party games, such as PianoVision on Meta Quest and the National Gallery's "Keeper Council" in Roblox, with an educational character. In my view, the evidence shows that VR platforms can be used for educational purposes by utilising immersive environments, mechanics and aspects, providing in some cases (e.g. the National Gallery's "Keeper Council") a game-like learning experience. However, for instance, I note that PianoVision itself is presented as a mixed-reality learning 'app'. This is also evident from the user reviews where it is described as an app rather than

a game.¹² Similarly, the “Supernatural workout” in Exhibit AN7 is described as a “*VR fitness app on Meta Quest*”.¹³ In addition to that, I also note that the rest of the examples in Exhibit AN6 are presented as educational programs that “*meet occupational standards and legislative requirements*”. Based on this evidence, I do not consider that it is safe for me to conclude that there is such a market convergence between the competing services where the provision of VR games at large would be also perceived as educational or training services. Instead, I consider that these are distinct services at their core. Bearing in mind the purposes, users, trade channels, and natures of the respective services, together with the matters of competition and complementarity, I do not find the contested services to have any similarity to the earlier services.

Providing educational programs and workshops in the fields of entertainment

74. Following the same approach above, I find the competing services to be dissimilar. I note that the limitation to the field of entertainment does not alter my finding as the services would still be educational at their core. Whilst the opponent also relies upon its earlier goods without making any particularised submissions, I note that these are further apart due to the differences in natures, purposes, method of use, users, and trade channels. There is no degree of complementarity or competition, and thus I find them to be dissimilar.

Sporting and cultural activities

75. The contested services are sporting and cultural services. The opponent claims that they are identical to its earlier services as VR games “*can be used to provide sporting and cultural activities, such as e-sports*”

¹² See Exhibit AN6 at page 25.

¹³ In any event, I note that this printout is dated with a print date 12 September 2024, post-dating the relevant date.

competitions, concerts, and art galleries.” The opponent also refers me to its evidence submitting that “*games/software feature virtual sporting activities, as well as cultural activities and exhibitions, such as a virtual football team on Decentraland and an art gallery on Roblox*”. However, I highlight that the contested services are not termed as virtual services, and thus it would be wrong to construe the contested term based on the opponent’s submissions. Thus, based on the literal meaning of the terms, it is not common that the contested services be offered by the same providers as those offering VR interactive games. Furthermore, the natures, purposes and methods of use of the contested services are different from those of the earlier services. They do not coincide in their producers/providers and do not share the same distribution channels. Furthermore, these are neither complementary nor in competition. Even if they target the general public, this is not sufficient by itself to find similarity. Consequently, they are dissimilar.

Editing and recording of sounds and images; development and dissemination of printed, downloadable, and non-downloadable educational materials of others in the fields of entertainment, excluding development of software

76. The contested terms are all specialised services that the opponent considers to be similar to its earlier services due to complementarity and the overlap in users. In the absence of particularised submissions or evidence, I do not see any obvious overlap between the services. In addition, I do not consider that the competing services will be important or indispensable to each other leading the consumer to believe that they originate from the same undertaking. The competing services target different users (general public v business users), and they are typically provided by different businesses. Consequently, I find the competing terms to be dissimilar.

77. The likelihood of confusion does not arise in relation to the contested goods and services which are dissimilar to the earlier mark's goods and services.¹⁴

Average Consumer and the Purchasing Act

78. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97. In *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

(a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;

(b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;

(c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;

¹⁴ Case C-398/07, *Waterford Wedgwood plc v OHIM*; and *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, para 49.

(d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by and enabling courts and tribunals to determine such issues so far as possible without the need for evidence;

(e) The average consumer's level of attention varies according to the category of goods or services in question; and

(f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind."

79. Although the parties agree that the average consumer for the goods and services is likely to be the general public, this does not, in itself, entirely rule out the possibility of business users, particularly in the context of the services discussed earlier in this decision. I also note that the parties disagree on the degree of attention paid, and thus I will undertake my assessment below.

80. The purchase of the goods will be primarily visual, such as in retail or online stores, such as websites or app stores, where they will be viewed and self-selected by the consumers. However, I do not discount an aural element where word of mouth plays a part, such as verbal recommendation and or advice from sales staff. The cost of the goods may vary, but in any case, and irrespective of the cost, the average consumer may examine the products to ensure software/hardware compatibility with other components or systems or that the goods possess the required features. Thus, the average consumer will pay a medium degree of attention when selecting the goods at issue, with the business users paying a slightly higher than a medium degree of attention.

81. For the services at issue, the consumers will be members of the general public without excluding entirely business users. The average consumer

will select such services by looking through brochures, websites, or signs on a physical property so the visual element will be important. However, I do not discount the aural element, as word-of-mouth recommendations may influence consumers' decisions. The cost of some services will be relatively significant, such as organising and conducting exhibitions, contributing to the selection process of the service provider. I consider that the members of the general public will pay a medium degree of attention in choosing the service provider, and business users will pay a slightly higher than a medium degree of attention.

Comparison of Trade Marks

82. 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 CJEU 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.”

83. It would be wrong, therefore, to artificially dissect the trade marks, 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.

84. The marks to be compared are:

Earlier Mark	Contested Mark
CROSSFIRE	CROSSFIRE HURRICANE

Overall Impression

85. Although the parties agree that the overall impression of the earlier mark lies in the word itself, they disagree on the overall impression of the contested mark.

86. On the one hand, the opponent submits that:

“23. [...] In the Applicant’s Trade Mark, it is submitted that the combination of words “CROSSFIRE” and “HURRICANE” do not form a unit that has a clear and different meaning as compared with the meaning of these components taken separately. As a result, the element “CROSSFIRE” retains an independent distinctive role within the overall impression of the Applicant’s Trade Mark.

Accordingly, because the respective signs coincide visually, phonetically and conceptually in respect of an independent and distinctive element, “CROSSFIRE”, they are similar to at least a medium degree.

Further or in the alternative, the word “HURRICANE” can be used metaphorically to refer to a turbulent or violent situation. To that extent, “HURRICANE” in the Applicant’s Trade Mark could be interpreted as qualifying or describing the nature of the “CROSSFIRE”, which would serve to increase the degree of conceptual similarity between the signs to high. [...]”

87. On the other hand, Mr Harris submitted that the overall impression of the contested mark, “CROSSFIRE HURRICANE”, is focused more on the “HURRICANE” element. I also note that, in his skeleton argument, he states that “[a]t the very least the two words contribute equally to the

Application's overall impression". At the hearing, Mr Harris elaborated on the role of the words in the contested mark, making detailed submissions on their meaning and the concept they convey. For convenience, I will now summarise his arguments as follows: from the outset, Mr Harris quoted the opening line "*I was born in a crossfire hurricane*" from the Rolling Stones song 'Jumping Jack Flash', which he claimed to be part of the popular culture together with the distinctive phrase 'crossfire hurricane' as an inventive neologism. In this regard, Mr Harris invited me to take on judicial notice the well-known association of this phrase with the song. Further, Mr Harris submitted that each of the word elements will not be seen independently and "*that the whole of the phrase is greater than the sum of the parts*",¹⁵ while adding that this is a "HURRICANE" mark, with the word "CROSSFIRE" being descriptive of the type of hurricane. On this point, I also take into account the definition that Mr Harris provided with his skeleton argument, stating that the phrase "CROSSFIRE HURRICANE" "*is redolent of a meteorological event of unprecedented ferocity and unpredictability – literally a storm coming from different directions. The meaning of CROSSFIRE alone is subsumed within the entirety of CROSSFIRE HURRICANE such that it behaves metaphorically to convey the violence of the event.*"¹⁶ Further, Mr Harris provided a thorough account of how consumers are likely to perceive the phrase, positing that the word "CROSSFIRE" will qualify the word "HURRICANE", thus creating a unitary whole conveying "*the new idea of a significant meteorological or societal event*"¹⁷. He also emphasised that I am not bound by the previous decisions of other Hearing Officers, and he commented that this present case is the reverse of the *ZEUS LIGHTNING* case cited by the opponent. Mr Harris also drew my attention to the recent cases of the Tribunal in *SAVAGE SHARK* (BL O/0865/25) and *INNOCENT CRIMINAL* (BL O/1013/23). Although I do not intend to summarise these cases here, I

¹⁵ See pages 2 and 3 of the transcript.

¹⁶ See page 4 of skeleton argument.

¹⁷ See page 3 of the transcript.

have read them all and note that it was decided that the respective marks created a new unitary meaning with the respective elements in each case contributing equally to the overall impression.

88. Before I proceed to my assessment as to the overall impression of the contested mark, I note that I have considered the decisions of the Tribunal referenced by both parties, which are, of course, determined on their own facts, and are, anyway, not binding or strong precedent for other cases before the Tribunal. Thus, the assessment I will undertake shall be based on the merits of this case before me, from the view of the average consumer and having regard to the relevant caselaw.¹⁸
89. Mr Harris has invited me to take judicial notice of the fact that “CROSSFIRE HURRICANE” will be widely known to the public due to its association with the Rolling Stones song from 1968. However, I am not prepared to accept, on judicial notice, the fame and association of the phrase with the said song. This is not the type of notorious fact that can be accepted without evidence of it.¹⁹
90. The contested mark consists of the word elements “CROSSFIRE HURRICANE”. In the absence of evidence, I do not consider that this will make up a significant proportion of average consumers that would perceive the words “CROSSFIRE HURRICANE” as forming a complete unit with its own independent meaning as suggested by the applicant. This is because the average consumers will not immediately grasp²⁰ the meaning of the metaphor from the mark, instead, they will recognise each word separately. As I will come to discuss in the conceptual comparison, the word “CROSSFIRE”, at the beginning of the mark, is an ordinary word which will be understood in the way described later in this decision. I also consider that it is likely for a significant proportion of average consumers

¹⁸ See *Interflora Inc v. Marks & Spencer PLC* [2014] EWCA Civ 1403.

¹⁹ *Chorkee Ltd v Cherokee Inc.*, BL O/048/08.

²⁰ See *Ruiz Picasso v OHIM* [2006] ECR I-643; [2006] E.T.M.R 29.

to see the word “HURRICANE” in the context of the goods and services as alluding to the setting of the game. On this basis, I am of the view that the word “CROSSFIRE” plays the greater role in the overall impression than the word “HURRICANE”, which plays a lesser role.

Visual Comparison

91. The competing marks vary in length, with the earlier mark being a single word of 9 letters, as opposed to the contested mark, which has two words totalling 18 letters. Bearing in mind, as a rule of thumb, that the beginnings of marks tend to have more impact than the ends,²¹ the competing marks share the common word “CROSSFIRE”, appearing at the beginning of the contested mark. However, the competing marks differ in the presence/absence of the word element “HURRICANE”. Considering all the factors, I find them to be visually similar to slightly higher than a medium degree.

Aural Comparison

92. The marks will be pronounced in the ordinary way. There are differences in the length and syllables of the marks. The earlier mark is two syllables long, “CROSS-FIRE”, whereas the contested mark is five, “CROSS-FIRE-HUR-RI-CANE”. The competing marks only share the first two syllables from the common verbal element “CROSS-FIRE” but differ in the others. Taking into account the above factors and the overall impressions, I consider that the marks are aurally similar to slightly higher than a medium degree.

Conceptual Comparison

93. The parties disagree on the conceptual meaning of the marks. The opponent claims that the marks are conceptually similar to a medium

²¹ See *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, where the General Court observed that the attention of the consumer is usually directed to the beginning of a mark.

degree, whereas the applicant contends (for reasons outlined above) that they are conceptually different or, alternatively, similar to a low degree.

94. The common word element “CROSSFIRE” in the marks is a dictionary and well-known word, and the consumers will perceive it to mean ‘fire from two or more points so that the lines of fire cross’. As delineated earlier in this decision, the average consumer would not recognise the contested mark “CROSSFIRE HURRICANE” as a cohesive unit by combining the two words to convey a new unitary meaning. As a result, the average consumer will interpret the word elements “CROSSFIRE” and “HURRICANE” within the contested mark separately rather than as a single unit and understand them as being independent of each other. Therefore, the common word element “CROSSFIRE” will be conceptualised in the same way in both marks. However, the presence/absence of the word “HURRICANE” in the marks, which is an ordinary dictionary word that conveys the idea of a severe tropical cyclone, will introduce a conceptual difference. Whilst this element is allusive of the goods and services, when assessing the conceptual similarity of two marks, this is usually done without reference to the goods and services in question.²² Taking into account all of the above, including the overall impressions, I find that the degree of conceptual similarity is between a low and medium based on the use of the shared element “CROSSFIRE”.

DISTINCTIVE CHARACTER OF THE EARLIER TRADE MARK

95. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97, paragraph 22 and 23, the CJEU stated that:

“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

²² Mr Philip Johnson, sitting as the AP in *Viñedos Emiliana SA v Consorzio Tutela Vini Emilia*, (2) *Chiarli1860 – Pr.I.V.I Srl* And (3) *Medici Ermete E Figli Srl* O/054/22.

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).

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).”

96. Registered trade marks possess varying degrees of inherent distinctive character from the very low, because they are suggestive of, or allude to, a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use made of it.
97. The parties agree that the earlier mark is distinctive to a medium degree, and I will proceed on that basis. Although the opponent has filed evidence, this does not go to the use of the earlier mark and, thus, it cannot benefit from any degree of enhanced distinctiveness.

LIKELIHOOD OF CONFUSION

98. In assessing the likelihood of confusion, I must adopt the global approach set out in the case law to which I have already referred above in this decision. Such a global assessment is not a mechanical exercise. I must

also have regard to the interdependency principle, that a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa.²³ It is essential to keep in mind the distinctive character of the opponent's trade mark since the more distinctive the trade mark, the greater may be the likelihood of confusion. I must also keep in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon imperfect recollection.²⁴

99. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other. Indirect confusion is where the consumer notices the differences between the marks but concludes that the later mark is another brand of the owner of the earlier mark or a related undertaking.

100. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), Arnold J. (as he then was) considered the impact of the CJEU's judgment in *Bimbo*, on the court's earlier judgment in *Medion v Thomson*. He stated:

"18 The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.

19 The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and

²³ See *Canon Kabushiki Kaisha*, paragraph 17.

²⁴ See *Lloyd Schuhfabrik Meyer*, paragraph 27.

subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

20 The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).”

21 The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors.”

Arnold J. (as he then was) found that there was no likelihood of confusion between the marks ‘ORIGIN’ and ‘JURA ORIGIN’ (both of which were for alcoholic beverages). Despite the similarity in the use of the word ORIGIN, it was found that that word was inherently descriptive and had low distinctiveness for wine and whisky. Consequently, the case law set out in *Medion v Thomson* did not apply.

101. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Iain Purvis QC (as he then was), sitting as the Appointed Person, explained that:

“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).”

These examples are not exhaustive. Rather, they were intended to be illustrative of the general approach.²⁵

102. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, James Mellor QC, sitting as the Appointed Person, stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark. This is mere association not indirect confusion. There should be a proper basis for finding indirect confusion.²⁶

103. Earlier in this decision I have concluded that:

- the goods and services at issue are identical and similar to various degrees (except where I have found them to be dissimilar);
- the average consumer for the relevant goods and services will be a member of the general public without excluding entirely business users. The selection process is predominantly visual without discounting aural considerations. The level of attention for the goods and services selected by the members of the general public will be medium, and slightly higher than medium for business users when selecting the respective services;
- the competing marks are visually and aurally similar to slightly higher than a medium degree, and conceptually similar to between a low and medium degree;
- the earlier mark is inherently distinctive to a medium degree.

104. The opponent claims that there is a likelihood of direct confusion. Alternatively, it claims that there is a likelihood of indirect confusion because the applicant's mark will be viewed as the next title or edition of

²⁵ See *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207.

²⁶ *Ibid.*

the opponent's CROSSFIRE game. Mr Harris, in his submissions, disagreed.

105. Taking into account my findings earlier in this decision, I find that there is no likelihood of direct confusion for identical goods and services. Despite imperfect recollection, it is my view that the average consumer will remember that the earlier mark, "CROSSFIRE", is a single word mark compared to the applicant's two-worded mark, "CROSSFIRE HURRICANE". Although the marks share identical beginnings, the average consumer will not misremember the marks as each other, especially in light of the additional and divergent word "HURRICANE". There is no likelihood of direct confusion.
106. I must now consider whether the average consumer would believe that there is an economic connection between the marks, or that they are variant marks from the same undertaking, as a result of their shared common element "CROSSFIRE". In reaching my decision, I bear in mind that the distinctiveness of the common element is an important factor both in applying the ordinary principles of indirect confusion and in the rather specific circumstances of *Medion*-type confusion.²⁷ The lower the distinctive character of the common element, the less likely it is that there will be confusion.
107. In my view, taking into account of the decision in *Whyte and Mackay*, the shared element, which is also the word element that plays a greater role in the overall impression of the contested mark, has retained an independent distinctive role within the contested mark as a whole. As detailed earlier in this decision, I do not consider that the shared word element "CROSSFIRE" will be seen as a unit with a different meaning in combination to the second word element "HURRICANE". Moreover, it is my view that the non-coinciding element "HURRICANE" (which is a clear point of difference between the marks) will be allusive to the goods and

²⁷ *Kurt Geiger v A-List Corporate Limited*, BL O/075/13

services. Bearing in mind that the average consumer does not conduct a side-by-side comparison of the trade marks, the shared imagery of 'crossfire' created by both marks will be retained. Consequently, I consider that the significant proportion of consumers is likely to assume a commercial association between the parties, believing that the identical goods and services come from the same or economically linked undertakings. For example, "CROSSFIRE" could be seen as the house mark while "CROSSFIRE HURRICANE" as a brand extension, because of the independent distinctive significance of the common element. I consider that it is not particularly unusual practice for the respective goods and services to add another dictionary-defined word to an existing house mark. For example, in this present case, the contested mark could be identified as denoting another product within the opponent's range, such as a different version/edition or an expansion pack of VR games that takes place in a hurricane setting or a hurricane themed game. I note Mr Harris' comments that for a brand variation numerical numbers, such as "CROSSFIRE 2", could be used to indicate a sequel. Although that is one potential way of indicating a sequel, I have no reason to believe that it is the only way. In this regard, it is my view that the contested mark will fall into category (c) of Mr Purvis' scenarios, namely, that a change of one element appears entirely logical and consistent with a brand extension. Consequently, there is indirect confusion, even where an increased level of attention of the average consumer is paid during the selection process, as the significant proportion of consumers will believe that the marks are used by the same or economically connected undertakings.

108. Lastly, due to the interdependence principle, the above findings extend to those goods and services that I found a degree of similarity ranging from medium to high. Thus, confusion will not extend to those goods and services where I found any degree of similarity below medium (including similarity to between a low and medium degree).

OUTCOME

109. **Part of the partial opposition has been successful.** Therefore, subject to any successful appeal, the application will be refused for the following terms:

Class 9: Video game software recorded on tapes, cartridges and cassettes; downloadable and recorded video game software; computer game software recorded on tapes, cartridges and cassettes; downloadable and recorded computer game software; downloadable and recorded virtual reality game software; virtual reality game software recorded on tapes, cartridges and cassettes; downloadable computer software for the creation, production and modification of digital animated and non-animated designs and characters, avatars, digital overlays, and skins for access and use in environments consisting of virtual reality, augmented reality, mixed reality, extended reality, or a combination thereof; downloadable software for engaging in social networking and interacting with online communities, for accessing and streaming multimedia entertainment content, and for providing access to environments consisting of virtual reality, augmented reality, mixed reality, extended reality, or a combination thereof; downloadable mobile applications for accessing, displaying, distributing, downloading, playing, receiving, streaming, and transmitting [...] entertainment; downloadable software for providing access to digital electronic content and experiences pertaining to musical artists, groups, celebrities, tastemakers, influencers, record labels, entertainment shows, and nonalcoholic and alcoholic beverages in environments consisting of virtual reality, augmented reality, mixed reality, extended reality, or a combination thereof via an internet portal or other communication network; pre-recorded audio tapes, discs and cassettes, video tapes, discs and cassettes, digital audio and audio video tapes and discs, CDs, DVDs, laser discs, and phonograph records all featuring [...] entertainment.

Class 35: Retail and online store services in the fields of [...] entertainment [...]; retail and online store services in the fields of general consumer merchandise, namely [...] downloadable and recorded virtual reality game software, virtual reality game software recorded on tapes, cartridges and cassettes, [...] downloadable and recorded computer game software, computer game software recorded on tapes, cartridges and cassettes [...], downloadable mobile applications for accessing, displaying, distributing, downloading, playing, receiving, streaming, and transmitting content.

Class 41: Entertainment; entertainment in the nature of e-sports competitions; entertainment services, namely, providing online video and computer games; entertainment services, namely, providing temporary use of non-downloadable video and computer games; entertainment services, namely, providing prerecorded non-downloadable entertainment [...] all online via a global computer network; providing entertainment in the field of [...] entertainment via an internet website portal; providing entertainment information in the field of video and computer games via a website; entertainment services, namely, providing [...] information in the field of entertainment, and commentary and articles about entertainment, all online via a global computer network.

110. **Part of the partial opposition has failed.** Therefore, subject to any successful appeal, the application will proceed to registration for the following terms:

Class 9: Pre-recorded audio tapes, discs and cassettes, video tapes, discs and cassettes, digital audio and audio video tapes and discs, CDs, DVDs, laser discs, and phonograph records all featuring music [...]; theatrical and musical sound and video recordings; downloadable music, files, and videos in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages, all for wireless communication devices;

downloadable music, files, and videos in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; downloadable computer graphics and images; downloadable graphics, ring tones, and images for mobile phones and wireless devices; turntable slipmats; mouse pads; downloadable electronic publications in the nature of books, booklets, sheet music, journals, manuals, brochures, leaflets, pamphlets and newsletters, all in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; downloadable general feature magazines; downloadable mobile applications for accessing, displaying, distributing, downloading, playing, receiving, streaming, and transmitting music [...]; plastic and cardboard cases for storing phonograph records, cassettes, CDs, DVDs, and other physical media; plastic and cardboard phonograph record sleeves; holders, stands, mounts, and protective cases and covers adapted for handheld electronic devices, namely, cellphones, smartphones, tablet computers, cameras, and portable sound and video players; downloadable virtual and digital goods, namely, multimedia, image, video, music, text, and audio files in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages authenticated by non-fungible tokens (NFTs); downloadable virtual and digital goods, namely, multimedia, image, video, music, text, and audio files in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; downloadable virtual and digital goods associated with musical artists, groups, celebrities, tastemakers, influencers, record labels, entertainment shows, and alcoholic and nonalcoholic beverages authenticated by non-fungible tokens (NFTs); downloadable virtual and digital goods associated with musical artists, groups, celebrities, tastemakers, influencers, record labels, entertainment shows, and alcoholic and nonalcoholic beverages; magnets; sunglasses; downloadable software for users to browse and perform electronic transactions of retail consumer goods;

downloadable software for ordering nonalcoholic and alcoholic beverages; downloadable electronic data files featuring recipes.

Class 21: Champagne buckets; cocktail shakers; shot glasses; cocktail picks; beverage stirrers; cork screws; cork holders; bottle openers; tumblers; wine goblets; carafes; decanters; coolers for wine, non-electric; drinking steins; drinking glasses; insulating sleeve holders for beverage cans; foam drink holders; thermal insulated containers for food and beverages; thermal insulated tote bags for food and beverages; coasters, not of paper or textile; mugs; beverage ware; beverage glassware; bakeware; dinnerware; canteens; figurines made of china, crystal, earthenware, glass, porcelain or terra cotta; ornaments made of china, crystal, earthenware, glass, porcelain or terra cotta; cookery molds; combs; cosmetic brushes; commemorative plates; cookie jars; decorative glass, not for building; decorative plates; dishes; flasks; vases; bowls; perfume atomizers and sprayers, sold empty; non-electric portable coolers and beverage coolers; portable beverage dispensers; piggy banks; shoe horns; empty sports bottles; toothbrushes; toothbrush cases; soap dishes and dispensers; clothes-pins; portable coolers and cool boxes, non-electric; flower pots; PET bottles; plant pots; cups of paper or plastic; sprayer wands for garden hoses; sprayer nozzles for garden hoses; watering cans; spray bottles; sprinklers; sprinklers for watering flowers and plants; lunch boxes and pails; trivets; incense burners; zesters; nutcrackers; lobster crackers; crab crackers; hand-operated cherry pitters; non-electric ice crushers; non-electric pasta makers for domestic use; sugar scoops for household purposes; rice scoops for household purposes; fertilizer scoops for household purposes; money boxes; cork place mats; place mats, not of paper or textile; dishcloths; potholders; barbecue mitts; oven mitts; dishcloths.

Class 25: Apparel; footwear; headwear; clothing, namely, bathrobes, blouses, body suits, coats, coveralls, dresses, gowns, Halloween costumes, hosiery, jackets, leggings, mittens, gloves, night gowns,

overalls, pajamas, pants, robes, scarves, shawls, shirts, shorts, skirts, socks, suspenders, sweat jackets, sweat pants, sweat shirts, sweaters, swimwear, tank tops, ties, tights, tops, t-shirts, bottoms, undergarments, underwear, vests, and wrist bands; footwear; headwear; caps being headwear; visors being headwear; bandannas; ear muffs; hats; belts; bustiers; lingerie; aprons; booties; cloth bibs; creepers; infantwear; and rompers.

Class 30: Rum cakes; candy containing alcoholic beverage content and flavor; coffee; tea; iced tea; cocoa; artificial coffee; rice; tapioca and sago; flour and preparations made from cereals; bread, pastry, confectionery and baked goods; ices; sugar; honey; treacle; yeast; baking-powder; salt; mustard; vinegar; sauces (condiments); spices; ice; prepared meals and snack foods; mixes for baked goods, namely, mixes for cakes, brownies, cupcakes, cookies and muffins; pancake mixes; ready-to-eat cereals, breakfast cereals, cereal bars, pasta, salad dressings and condiments; cakes; cereal bars; cereal-based snack food; rice-based snack food; muesli-based snack food; multigrain-based snack food; cookies; brownies; muffins; cupcakes; chocolate; chocolates; chocolate confectionery; sugar confectionery; candies; sweets; biscuits; ice cream; ice cream desserts; flavored ices; fruit ices; frozen yogurt; chewing gum; sugarfree chewing gum; breath-freshening chewing gum; gummy candies; sugarless candies; candies; fudge; caramels; frozen pizza; frozen pizza crusts; prepared pizza meals; pre-baked pizza crusts; prepared meals, namely, pasta dishes, sandwiches and sandwich wraps, filled bread rolls, and toasted cheese sandwiches.

Class 32: Beers; beer-based beverages; non-alcoholic beers; soft drinks; sports drinks; energy drinks; mineral and aerated waters and other non-alcoholic beverages; fruit beverages and fruit juices; syrups, powders, concentrates, and other preparations for making beverages.

Class 35: Retail and online store services in the fields of music, [...], lifestyle, arts, culture, sports, food, alcoholic and nonalcoholic beverages; retail and online store services in the fields of general consumer merchandise, namely pre-recorded audio tapes, discs and cassettes, video tapes, discs and cassettes, digital audio and audio video tapes and discs, CDs, DVDs, laser discs and phonograph records, theatrical and musical sound and video recordings, [...], downloadable ring tones, music and MP3 files, downloadable graphics and images, video recordings, [...], turntable slipmats, mouse pads, downloadable electronic publications in the nature of books, booklets, sheet music, magazines, journals, manuals, brochures, leaflets, pamphlets and newsletters, [...], plastic and cardboard cases for storing phonograph records, cassettes, CDs, DVDs, and other recorded, magnetic, and electronic media, plastic and cardboard phonograph record sleeves, printed books, booklets, magazines, journals, manuals, brochures, leaflets, pamphlets and newsletters, printed sheet music, address books, appointment books, calendars, greeting cards, post cards, pen and pencil cases, pencil sharpeners, pens, pencils, date books, bumper stickers, decals, note pads, stickers, rubber stamps, temporary tattoo transfers, posters, collectable trading cards, money clips, stationery, photographs, purses, tote bags, briefcases, credit card cases, carrying cases, luggage, coin purses, garment bags for travel, gym bags, back packs, book bags, fanny packs, briefcase-type portfolios and wallets, umbrellas, collars and clothing for pets, unfitted vanity cases, vanity cases sold empty, clothing, footwear and headgear; retail store services relating to tickets for concerts, festivals, and other entertainment, sporting, cultural, educational, artistic, live, and special events; accounting services and providing office functions in connection with the reservation, issuing and sales of admission tickets; advertising and promotional services; publicity services and related consulting services; advertising and promotional services for artists, celebrities, influencers and tastemakers, as well as for concerts, festivals, and other entertainment, sporting, cultural,

educational, artistic, live, and special events; arranging and conducting fairs and exhibitions for business and advertising purposes; arranging and conducting trade show exhibitions in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; brand imagery consulting services; business consulting and information services; business management and business consulting services in the field of procuring contracts for the purchase and sale of entertainment intellectual property content; user experience marketing research; marketing and promotion of business opportunities for artists, celebrities, and other influencers and tastemakers; business management consulting with relation to strategy, marketing, production, personnel and retail sale matters; business marketing consulting services; computerized online ordering services in the fields of music, entertainment, lifestyle, arts, culture, sports, food, alcoholic and nonalcoholic beverages, and general consumer merchandise; conducting an online tradeshow exhibition, in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; consulting services in the field of commercial administration of the licensing of the goods and services of others; development of advertising concepts; preparation and realization of media and advertising plans and concepts; distributorship services in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; marketing consulting; marketing services in the nature of business networking services for artists, celebrities, and other influencers and tastemakers with brand owners; music and entertainment business services, namely, business consulting, business management and providing information in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; organization of promotions using audio-visual media; preparing audio-visual displays for music advertising; preparing audio-visual presentations for use in advertising; promoting and conducting trade shows in the fields of music, entertainment, lifestyle, arts, culture,

sports, food, and alcoholic and nonalcoholic beverages; promoting the goods and services of others by arranging for sponsors to affiliate their goods and services with concerts, events, artists, celebrities, and other influencers and tastemakers; promoting the goods and services of others by preparing and placing advertisements in an electronic magazine accessed through a global computer network; promotional advertising of products and services of third parties through sponsorship arrangements and license agreements relating to concerts, events, artists, celebrities, and other influencers and tastemakers; providing advertising, marketing and promotional services, namely, development of advertising campaigns for television, film, print, radio, outdoor billboards, mobile telephone advertising and online advertising; providing consulting services in the field of facilitating the planning, buying, and selling of media; providing consumer product information about the goods and services of others via a global computer network; providing marketing consulting in the fields of social media and digital influencers; providing online reviews of products and services offered in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages for commercial purposes; publishing administration and publishing management, namely, business management of intellectual property rights through performance rights organizations; social media strategy and marketing consulting focusing on helping clients create and extend their product and brand strategies by building engaging marketing solutions; talent agency services in the nature of management of artists, celebrities, and other influencers and tastemakers; tour management, namely, management of tours for artists, celebrities, and other tastemakers and influencers; commercial administration of the licensing of the goods and services of others; retail store services and online store services relating to digital and virtual goods, namely, nonalcoholic and alcoholic beverages, clothing, headwear, footwear, fashion accessories, phonograph records, jewelry, artwork, pets, furniture, eyewear, posters, toys, sporting goods, dinnerware, drinkware, trading cards,

musical instruments, avatars, and general consumer merchandise; customer loyalty services and customer club services, for commercial, promotional and/or advertising purposes; business administration of consumer loyalty programs.

Class 41: sporting and cultural activities; education; providing of training; entertainment and record label services in the nature of recording, production, and post-production services in the field of music; recording studio services; record production; record mastering; sound mixing; music publishing services; production of sound and image recordings on sound and image carriers; editing and recording of sounds and images; ticket agency services for concerts, festivals, and other entertainment, sporting, cultural, educational, artistic, live, and special events; entertainment services, namely, organizing and conducting concerts, festivals, and other entertainment, sporting, cultural, educational, artistic, live, and special events; production of television, radio, webcast, podcast, and Internet-based programs; distribution of television, radio, webcast, podcast, and Internet-based programs for others; providing online entertainment, namely, providing nondownloadable sound and video recordings in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; entertainment services, namely, providing online non-downloadable prerecorded musical sound and video recordings via a global computer network; fan clubs; development and dissemination of printed, downloadable, and non-downloadable educational materials of others in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages, excluding development of software; radio entertainment production and distribution; film and video production; production of motion picture films; distribution of motion picture films; television program syndication; entertainment in the nature of ongoing television, radio, webcast, podcast, and Internet-based programs in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and

nonalcoholic beverages; entertainment services, namely, continuing audio, video, and audiovisual programs featuring music and entertainment distributed via various platforms across multiple forms of transmission media; entertainment, namely, a continuing music and entertainment show distributed over television, satellite, audio, and video media; publication of books and magazines; entertainment in the nature of live concerts and performances by artists, celebrities, and other influencers and tastemakers; entertainment services, namely, personal appearances by artists, celebrities, and other influencers and tastemakers; entertainment services in the nature of live performances rendered by artists, celebrities, and other influencers and tastemakers through the medium of television, radio, and audio and video recordings; entertainment services, namely, performances by artists, celebrities, and other influencers and tastemakers rendered live and recorded for future distribution; educational and entertainment services, namely, production and presentation of television shows, sports events, fashion shows, game shows, music shows, award shows and comedy shows before live audiences which are all broadcast live or taped for later broadcast; Entertainment services, namely, providing non downloadable musical and entertainment performances, videos, related film clips, photographs, and other multimedia materials featuring music and entertainment via a website; entertainment services, namely, providing prerecorded non-downloadable music and [...], information in the field of music [...], and commentary and articles about music [...], all online via a global computer network; entertainment services, namely, live, televised and movie appearances by artists, celebrities, and other influencers and tastemakers; entertainment services, namely, organizing and conducting exhibitions in the field of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; organizing exhibitions for entertainment purposes featuring music and entertainment; publishing of web magazines; entertainment services, namely provision of nondownloadable virtual and digital goods, namely, multimedia,

image, video, music, text, and audio files in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages authenticated by non-fungible tokens (NFTs) in virtual environments; entertainment services, namely provision of nondownloadable virtual and digital goods, namely, multimedia, image, video, music, text, and audio files in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages in virtual environments; entertainment services, namely provision of nondownloadable virtual and digital goods associated with musical artists, groups, celebrities, tastemakers, influencers, record labels, entertainment shows, and alcoholic and nonalcoholic beverages authenticated by non-fungible tokens (NFTs) in virtual environments; entertainment services, namely provision of nondownloadable virtual and digital goods associated with musical artists, groups, celebrities, tastemakers, influencers, record labels, entertainment shows, and alcoholic and nonalcoholic beverages in virtual environments; Providing entertainment in the field of music [...] via an internet website portal; production of video and computer game software; entertainment services, namely, providing online video and computer games; entertainment services, namely, providing temporary use of non-downloadable video and computer games; entertainment in the nature of e-sports competitions; arranging and conducting nightclub parties and events; discotheque services; providing educational programs and workshops in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; entertainment services, namely, food and beverage tastings; Entertainment services, namely, distillery tasting experiences.

Class 43: Hotel, motel, resort hotel, resort lodging, bar, cocktail lounge, cafe, restaurant, and catering services; providing banquet and social meeting facilities and rooms; bar services, namely, providing a tasting room for alcoholic beverages; tasting room

services, namely, providing a tasting room where alcoholic beverages are served; providing general use facilities, including general use rooms, for conventions, conferences, exhibitions, seminars, and meetings; arranging of temporary accommodations, namely, serviced apartments, apartments, and condominiums; vacation residence club services, namely, providing club members temporary accommodations in vacation residences; providing rental and reservation services for others for all of the foregoing services; providing information, and a website featuring information, on all of the foregoing services; providing information in the field of recipes for alcoholic and nonalcoholic beverages and cocktails via a website; providing information in the nature of recipes for drinks; providing information in the field of recipes and cooking; providing information in the field of recipes and cooking via a website.

COSTS

111. Both parties have achieved a measure of success. However, the applicant has enjoyed the greater degree of success, and it is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. However, I consider it appropriate to reduce the costs award to reflect the partial success of the opponent. I award costs to the opponent on the following basis:

Considering the other side's statement and preparing a counterstatement	£150
Preparing for and attending the hearing	£600
Total	£750

112. I, therefore, order SmileGate Entertainment, Inc. to pay to Crossfire Hurricane Holdings, L.P. the sum of £750. 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 3rd day of March 2026

Dr Stylianos Alexandridis

For the Registrar,

The Comptroller General

ANNEX 1

Class 9: Pre-recorded audio tapes, discs and cassettes, video tapes, discs and cassettes, digital audio and audio video tapes and discs, CDs, DVDs, laser discs, and phonograph records all featuring music and entertainment; theatrical and musical sound and video recordings; downloadable and recorded virtual reality game software; virtual reality game software recorded on tapes, cartridges and cassettes; downloadable music, files, and videos in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages, all for wireless communication devices; downloadable music, files, and videos in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; downloadable computer graphics and images; downloadable graphics, ring tones, and images for mobile phones and wireless devices; downloadable and recorded computer game software; computer game software recorded on tapes, cartridges and cassettes; downloadable and recorded video game software; video game software recorded on tapes, cartridges and cassettes; turntable slipmats; mouse pads; downloadable electronic publications in the nature of books, booklets, sheet music, journals, manuals, brochures, leaflets, pamphlets and newsletters, all in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; downloadable general feature magazines; downloadable mobile applications for accessing, displaying, distributing, downloading, playing, receiving, streaming, and transmitting music and entertainment; plastic and cardboard cases for storing phonograph records, cassettes, CDs, DVDs, and other physical media; plastic and cardboard phonograph record sleeves; holders, stands, mounts, and protective cases and covers adapted for handheld electronic devices, namely, cellphones, smartphones, tablet computers, cameras, and portable sound and video players; downloadable virtual and digital goods, namely, multimedia, image, video, music, text, and audio files in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages authenticated by non-fungible tokens (NFTs); downloadable virtual and digital goods, namely, multimedia, image, video, music, text, and audio files in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; downloadable virtual and digital goods associated with musical artists, groups, celebrities, tastemakers,

influencers, record labels, entertainment shows, and alcoholic and nonalcoholic beverages authenticated by non-fungible tokens (NFTs); downloadable virtual and digital goods associated with musical artists, groups, celebrities, tastemakers, influencers, record labels, entertainment shows, and alcoholic and nonalcoholic beverages; magnets; sunglasses; downloadable software for engaging in social networking and interacting with online communities, for accessing and streaming multimedia entertainment content, and for providing access to environments consisting of virtual reality, augmented reality, mixed reality, extended reality, or a combination thereof; downloadable software for users to browse and perform electronic transactions of retail consumer goods; downloadable computer software for the creation, production and modification of digital animated and non-animated designs and characters, avatars, digital overlays, and skins for access and use in environments consisting of virtual reality, augmented reality, mixed reality, extended reality, or a combination thereof; downloadable software for ordering nonalcoholic and alcoholic beverages; downloadable software for providing access to digital electronic content and experiences pertaining to musical artists, groups, celebrities, tastemakers, influencers, record labels, entertainment shows, and nonalcoholic and alcoholic beverages in environments consisting of virtual reality, augmented reality, mixed reality, extended reality, or a combination thereof via an internet portal or other communication network; downloadable electronic data files featuring recipes.

Class 21: Champagne buckets; cocktail shakers; shot glasses; cocktail picks; beverage stirrers; cork screws; cork holders; bottle openers; tumblers; wine goblets; carafes; decanters; coolers for wine, non-electric; drinking steins; drinking glasses; insulating sleeve holders for beverage cans; foam drink holders; thermal insulated containers for food and beverages; thermal insulated tote bags for food and beverages; coasters, not of paper or textile; mugs; beverage ware; beverage glassware; bakeware; dinnerware; canteens; figurines made of china, crystal, earthenware, glass, porcelain or terra cotta; ornaments made of china, crystal, earthenware, glass, porcelain or terra cotta; cookery molds; combs; cosmetic brushes; commemorative plates; cookie jars; decorative glass, not for building; decorative plates; dishes; flasks; vases; bowls; perfume atomizers and sprayers, sold empty; non-electric portable coolers and beverage coolers; portable beverage dispensers; piggy banks; shoe horns; empty sports bottles; toothbrushes; toothbrush cases; soap dishes

and dispensers; clothes-pins; portable coolers and cool boxes, non-electric; flower pots; PET bottles; plant pots; cups of paper or plastic; sprayer wands for garden hoses; sprayer nozzles for garden hoses; watering cans; spray bottles; sprinklers; sprinklers for watering flowers and plants; lunch boxes and pails; trivets; incense burners; zesters; nutcrackers; lobster crackers; crab crackers; hand-operated cherry pitters; non-electric ice crushers; non-electric pasta makers for domestic use; sugar scoops for household purposes; rice scoops for household purposes; fertilizer scoops for household purposes; money boxes; cork place mats; place mats, not of paper or textile; dishcloths; potholders; barbecue mitts; oven mitts; dishcloths.

Class 25: Apparel; footwear; headwear; clothing, namely, bathrobes, blouses, body suits, coats, coveralls, dresses, gowns, Halloween costumes, hosiery, jackets, leggings, mittens, gloves, night gowns, overalls, pajamas, pants, robes, scarves, shawls, shirts, shorts, skirts, socks, suspenders, sweat jackets, sweat pants, sweat shirts, sweaters, swimwear, tank tops, ties, tights, tops, t-shirts, bottoms, undergarments, underwear, vests, and wrist bands; footwear; headwear; caps being headwear; visors being headwear; bandannas; ear muffs; hats; belts; bustiers; lingerie; aprons; booties; cloth bibs; creepers; infantwear; and rompers.

Class 30: Rum cakes; candy containing alcoholic beverage content and flavor; coffee; tea; iced tea; cocoa; artificial coffee; rice; tapioca and sago; flour and preparations made from cereals; bread, pastry, confectionery and baked goods; ices; sugar; honey; treacle; yeast; baking-powder; salt; mustard; vinegar; sauces (condiments); spices; ice; prepared meals and snack foods; mixes for baked goods, namely, mixes for cakes, brownies, cupcakes, cookies and muffins; pancake mixes; ready-to-eat cereals, breakfast cereals, cereal bars, pasta, salad dressings and condiments; cakes; cereal bars; cereal-based snack food; rice-based snack food; muesli-based snack food; multigrain-based snack food; cookies; brownies; muffins; cupcakes; chocolate; chocolates; chocolate confectionery; sugar confectionery; candies; sweets; biscuits; ice cream; ice cream desserts; flavored ices; fruit ices; frozen yogurt; chewing gum; sugarfree chewing gum; breath-freshening chewing gum; gummy candies; sugarless candies; candies; fudge; caramels; frozen pizza; frozen pizza crusts; prepared pizza meals; pre-baked pizza crusts; prepared meals, namely, pasta dishes, sandwiches and sandwich wraps, filled bread rolls, and toasted cheese sandwiches.

Class 32: Beers; beer-based beverages; non-alcoholic beers; soft drinks; sports drinks; energy drinks; mineral and aerated waters and other non-alcoholic beverages; fruit beverages and fruit juices; syrups, powders, concentrates, and other preparations for making beverages.

Class 35: Retail and online store services in the fields of music, entertainment, lifestyle, arts, culture, sports, food, alcoholic and nonalcoholic beverages; retail and online store services in the fields of general consumer merchandise, namely pre-recorded audio tapes, discs and cassettes, video tapes, discs and cassettes, digital audio and audio video tapes and discs, CDs, DVDs, laser discs and phonograph records, theatrical and musical sound and video recordings, downloadable and recorded virtual reality game software, virtual reality game software recorded on tapes, cartridges and cassettes, downloadable ring tones, music and MP3 files, downloadable graphics and images, video recordings, downloadable and recorded computer game software, computer game software recorded on tapes, cartridges and cassettes, turntable slipmats, mouse pads, downloadable electronic publications in the nature of books, booklets, sheet music, magazines, journals, manuals, brochures, leaflets, pamphlets and newsletters, , downloadable mobile applications for accessing, displaying, distributing, downloading, playing, receiving, streaming, and transmitting content, plastic and cardboard cases for storing phonograph records, cassettes, CDs, DVDs, and other recorded, magnetic, and electronic media, plastic and cardboard phonograph record sleeves, printed books, booklets, magazines, journals, manuals, brochures, leaflets, pamphlets and newsletters, printed sheet music, address books, appointment books, calendars, greeting cards, post cards, pen and pencil cases, pencil sharpeners, pens, pencils, date books, bumper stickers, decals, note pads, stickers, rubber stamps, temporary tattoo transfers, posters, collectable trading cards, money clips, stationery, photographs, purses, tote bags, briefcases, credit card cases, carrying cases, luggage, coin purses, garment bags for travel, gym bags, back packs, book bags, fanny packs, briefcase-type portfolios and wallets, umbrellas, collars and clothing for pets, unfitted vanity cases, vanity cases sold empty, clothing, footwear and headgear; retail store services relating to tickets for concerts, festivals, and other entertainment, sporting, cultural, educational, artistic, live, and special events; accounting services and providing office functions in connection with the reservation, issuing and sales of admission tickets; advertising and promotional services; publicity

services and related consulting services; advertising and promotional services for artists, celebrities, influencers and tastemakers, as well as for concerts, festivals, and other entertainment, sporting, cultural, educational, artistic, live, and special events; arranging and conducting fairs and exhibitions for business and advertising purposes; arranging and conducting trade show exhibitions in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; brand imagery consulting services; business consulting and information services; business management and business consulting services in the field of procuring contracts for the purchase and sale of entertainment intellectual property content; user experience marketing research; marketing and promotion of business opportunities for artists, celebrities, and other influencers and tastemakers; business management consulting with relation to strategy, marketing, production, personnel and retail sale matters; business marketing consulting services; computerized online ordering services in the fields of music, entertainment, lifestyle, arts, culture, sports, food, alcoholic and nonalcoholic beverages, and general consumer merchandise; conducting an online tradeshow exhibition, in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; consulting services in the field of commercial administration of the licensing of the goods and services of others; development of advertising concepts; preparation and realization of media and advertising plans and concepts; distributorship services in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; marketing consulting; marketing services in the nature of business networking services for artists, celebrities, and other influencers and tastemakers with brand owners; music and entertainment business services, namely, business consulting, business management and providing information in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; organization of promotions using audio-visual media; preparing audio-visual displays for music advertising; preparing audio-visual presentations for use in advertising; promoting and conducting trade shows in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; promoting the goods and services of others by arranging for sponsors to affiliate their goods and services with concerts, events, artists, celebrities, and other influencers and tastemakers; promoting the goods and services of others by preparing and placing advertisements in an electronic magazine accessed through a global

computer network; promotional advertising of products and services of third parties through sponsorship arrangements and license agreements relating to concerts, events, artists, celebrities, and other influencers and tastemakers; providing advertising, marketing and promotional services, namely, development of advertising campaigns for television, film, print, radio, outdoor billboards, mobile telephone advertising and online advertising; providing consulting services in the field of facilitating the planning, buying, and selling of media; providing consumer product information about the goods and services of others via a global computer network; providing marketing consulting in the fields of social media and digital influencers; providing online reviews of products and services offered in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages for commercial purposes; publishing administration and publishing management, namely, business management of intellectual property rights through performance rights organizations; social media strategy and marketing consulting focusing on helping clients create and extend their product and brand strategies by building engaging marketing solutions; talent agency services in the nature of management of artists, celebrities, and other influencers and tastemakers; tour management, namely, management of tours for artists, celebrities, and other tastemakers and influencers; commercial administration of the licensing of the goods and services of others; retail store services and online store services relating to digital and virtual goods, namely, nonalcoholic and alcoholic beverages, clothing, headwear, footwear, fashion accessories, phonograph records, jewelry, artwork, pets, furniture, eyewear, posters, toys, sporting goods, dinnerware, drinkware, trading cards, musical instruments, avatars, and general consumer merchandise; customer loyalty services and customer club services, for commercial, promotional and/or advertising purposes; business administration of consumer loyalty programs.

Class 41: Entertainment; sporting and cultural activities; education; providing of training; entertainment and record label services in the nature of recording, production, and post-production services in the field of music; recording studio services; record production; record mastering; sound mixing; music publishing services; production of sound and image recordings on sound and image carriers; editing and recording of sounds and images; ticket agency services for concerts, festivals, and other

entertainment, sporting, cultural, educational, artistic, live, and special events; entertainment services, namely, organizing and conducting concerts, festivals, and other entertainment, sporting, cultural, educational, artistic, live, and special events; production of television, radio, webcast, podcast, and Internet-based programs; distribution of television, radio, webcast, podcast, and Internet-based programs for others; providing online entertainment, namely, providing nondownloadable sound and video recordings in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; entertainment services, namely, providing online non-downloadable prerecorded musical sound and video recordings via a global computer network; fan clubs; development and dissemination of printed, downloadable, and non-downloadable educational materials of others in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages, excluding development of software; radio entertainment production and distribution; film and video production; production of motion picture films; distribution of motion picture films; television program syndication; entertainment in the nature of ongoing television, radio, webcast, podcast, and Internet-based programs in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; entertainment services, namely, continuing audio, video, and audiovisual programs featuring music and entertainment distributed via various platforms across multiple forms of transmission media; entertainment, namely, a continuing music and entertainment show distributed over television, satellite, audio, and video media; publication of books and magazines; entertainment in the nature of live concerts and performances by artists, celebrities, and other influencers and tastemakers; entertainment services, namely, personal appearances by artists, celebrities, and other influencers and tastemakers; entertainment services in the nature of live performances rendered by artists, celebrities, and other influencers and tastemakers through the medium of television, radio, and audio and video recordings; entertainment services, namely, performances by artists, celebrities, and other influencers and tastemakers rendered live and recorded for future distribution; educational and entertainment services, namely, production and presentation of television shows, sports events, fashion shows, game shows, music shows, award shows and comedy shows before live audiences which are all broadcast live or taped for later broadcast; Entertainment services, namely, providing non downloadable musical and entertainment performances, videos, related film clips, photographs, and

other multimedia materials featuring music and entertainment via a website; entertainment services, namely, providing prerecorded non-downloadable music and entertainment, information in the field of music and entertainment, and commentary and articles about music and entertainment, all online via a global computer network; entertainment services, namely, live, televised and movie appearances by artists, celebrities, and other influencers and tastemakers; entertainment services, namely, organizing and conducting exhibitions in the field of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; organizing exhibitions for entertainment purposes featuring music and entertainment; publishing of web magazines; entertainment services, namely provision of nondownloadable virtual and digital goods, namely, multimedia, image, video, music, text, and audio files in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages authenticated by non-fungible tokens (NFTs) in virtual environments; entertainment services, namely provision of nondownloadable virtual and digital goods, namely, multimedia, image, video, music, text, and audio files in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages in virtual environments; entertainment services, namely provision of nondownloadable virtual and digital goods associated with musical artists, groups, celebrities, tastemakers, influencers, record labels, entertainment shows, and alcoholic and nonalcoholic beverages authenticated by non-fungible tokens (NFTs) in virtual environments; entertainment services, namely provision of nondownloadable virtual and digital goods associated with musical artists, groups, celebrities, tastemakers, influencers, record labels, entertainment shows, and alcoholic and nonalcoholic beverages in virtual environments; Providing entertainment in the field of music and entertainment via an internet website portal; production of video and computer game software; entertainment services, namely, providing online video and computer games; entertainment services, namely, providing temporary use of non-downloadable video and computer games; providing entertainment information in the field of video and computer games via a website; entertainment in the nature of e-sports competitions; arranging and conducting nightclub parties and events; discotheque services; providing educational programs and workshops in the fields of music, entertainment, lifestyle, arts, culture, sports, food, and alcoholic and nonalcoholic beverages; entertainment services, namely, food and beverage tastings; Entertainment services, namely, distillery tasting experiences.

Class 43: Hotel, motel, resort hotel, resort lodging, bar, cocktail lounge, cafe, restaurant, and catering services; providing banquet and social meeting facilities and rooms; bar services, namely, providing a tasting room for alcoholic beverages; tasting room services, namely, providing a tasting room where alcoholic beverages are served; providing general use facilities, including general use rooms, for conventions, conferences, exhibitions, seminars, and meetings; arranging of temporary accommodations, namely, serviced apartments, apartments, and condominiums; vacation residence club services, namely, providing club members temporary accommodations in vacation residences; providing rental and reservation services for others for all of the foregoing services; providing information, and a website featuring information, on all of the foregoing services; providing information in the field of recipes for alcoholic and nonalcoholic beverages and cocktails via a website; providing information in the nature of recipes for drinks; providing information in the field of recipes and cooking; providing information in the field of recipes and cooking via a website.