

**BL O/0191/26**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF TRADE MARK APPLICATION No. 3709622  
BY MTN GROUP MANAGEMENT SERVICES (PROPRIETARY) LIMITED  
TO REGISTER THE FOLLOWING TRADE MARK:**

**EVERYWHERE YOU GO**

**IN CLASSES 9, 35 AND 38**

**-AND-**

**THE OPPOSITION THERETO UNDER No. 432430  
BY BUILD A ROCKET BOY GAMES LTD.**

## **Background and pleadings**

1. On 13 October 2021, MTN GROUP MANAGEMENT SERVICES (PROPRIETARY) LIMITED (“**the Applicant**”) applied to register the trade mark ‘EVERYWHERE YOU GO’ in the UK. It was accepted and published in the Trade Marks Journal on 7 January 2022. Registration is sought for a variety of goods and services in Classes 9, 35 and 38 – these are set out in full at Annex 1 of this decision.

2. On 7 April 2022, BUILD A ROCKET BOY GAMES LTD. (“**the Opponent**”) partially opposed the application under section 5(2)(b) of the Trade Marks Act 1994 (“**the Act**”).<sup>1</sup> The opposition is directed at some of the goods and services for which registration is sought (these are detailed in Annex 1 to this decision and are set out at paragraph 19 of this decision); and is reliant upon the Opponent’s following UK trade mark registrations:

### **“Mark 1”**

**EVERYWHERE**

Registration Number: 3195834

Filing date: 9 November 2016

Registration date: 24 March 2017

Relying on a selection of goods and services contained in Classes 9, 35, 38 and 42, as set out in paragraph 19 of this decision.<sup>2</sup>

### **“Mark 2”**

**EVERYWHERE**

Registration Number: 3273346

Filing date: 21 November 2017

Registration date: 9 March 2018

Relying on a selection of goods and services contained in Classes 9, 35, 38, 42 and 45, as set out in paragraph 19 of this decision.<sup>3</sup>

<sup>1</sup> The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK’s withdrawal from the EU.

<sup>2</sup> The trade mark is registered in respect of goods and services in Classes 9, 16, 28, 35, 38, 41 and 42.

<sup>3</sup> The trade mark is registered in respect of goods and services in Classes 9, 16, 28, 35, 38, 41, 42 and 45.

3. By virtue of their filing dates, the registrations upon which the Opponent relies qualify as earlier trade marks pursuant to section 6 of the Act. As the Opponent's marks had not completed their registration process in the UK more than 5 years before the filing date of the application in issue, they are not subject to the use provisions of section 6A of the Act, and accordingly, the Opponent may rely on its marks without having to show any use at all.

4. The Opponent claims that the contested mark is similar to its earlier marks and that the applied-for goods and services are similar or identical to the goods and services on which it relies, giving rise to a likelihood of confusion.

5. The Applicant filed a defence and counterstatement denying the claims. However, it later accepted that a degree of similarity exists between certain competing goods and services; the details of these concessions are set out in the comparison of goods and services section of this decision.

6. Neither party filed evidence nor submissions during the evidence rounds. A hearing was not requested, however both parties elected to file submissions in lieu of a hearing. I therefore make this decision following a careful consideration of the papers before me.

7. The Opponent is represented by Simmons & Simmons LLP and the Applicant is represented by Reddie & Grose LLP.

### **Preliminary Issue**

8. In its submissions in lieu, dated 22 July 2024, at [20], the Applicant submits that the Opponent's earlier marks have a lower degree of distinctive character because:

“They consist solely of a reference to the commonly used/every day term ‘everywhere’. This level of distinctiveness is diluted further by the extensive number of similar marks on the register and use in commerce. As at the present time (22 July 2024), there are 345 trade marks on the UK register which contain the element ‘EVERYWHERE’.”

9. Firstly I note that this submission is not supported by evidence and even if it were, state of the register evidence in itself does not establish that the distinctive character

of an earlier mark has been weakened<sup>4</sup> - as the relevant case-law establishes “*the state of the register does not tell you what is actually happening out in the market and in any event one has no idea what the circumstances were which led the registrar to put the marks concerned on the register.*”<sup>5</sup>

10. Accordingly, the Applicant’s ‘state of the register’ submission will have no bearing on my assessment of the distinctive character of the earlier marks.

## **DECISION**

### **Legislation and Case Law**

11. Section 5(2)(b) of the Act states:

“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”.

12. I am guided by the principles applicable to the assessment of the likelihood of confusion, as cited with approval by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25. These principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v Office for Harmonisation in the Internal Market (“OHIM”)*, Case C-3/03, *Medion AG v Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

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<sup>4</sup> See *Zero Industry Srl v OHIM*, Case T-400/06, paragraph 73.

<sup>5</sup> See *British Sugar Plc v James Robertson & Sons Ltd*, [1996] RPC 281 at 305.

- (a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

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

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

13. In *Gérard Meric v OHIM*,<sup>6</sup> (“*Meric*”), the General Court held to the effect that goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by the trade mark application and vice versa (this principle equally applies to services).

14. When considering whether goods and services are similar, all the relevant factors relating to the goods and services should be taken into account. According to the judgement of the Court of Justice of the European Union (“CJEU”) in *Canon*,<sup>7</sup> and the guidance from Jacob J. (as he then was) in the *Treat* case,<sup>8</sup> those factors include, *inter alia*:

- (1) the physical nature of the goods or acts of service;
  - (2) their intended purpose;
  - (3) their method of use / uses;
  - (4) who the users of the goods and services are;
  - (5) the trade channels through which the goods and services reach the market;
  - (6) in the case of self-serve consumer items, where in practice they are found or likely to be found in shops and in particular whether they are, or are likely to be, found on the same or different shelves; and
  - (7) whether they are in competition with each other (taking into account how those in trade classify goods, for instance whether market research companies put them in the same or different sectors);
- or
- (8) whether they are complementary to each other.

15. Complementary means that “*there is a close connection between [the goods and/or services], in the sense that one is indispensable or important for the use of the*

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<sup>6</sup> Case T- 133/05

<sup>7</sup> Case C-39/97, paragraph 23.

<sup>8</sup> *British Sugar PLC v James Robertson & Sons Ltd.*, [1996] R.P.C. 281 – the “*Treat*” case.

*other in such a way that customers may think that the responsibility for those goods lies with the same undertaking*".<sup>9</sup> Complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity,<sup>10</sup> and it can be clearly distinguished from 'use in combination' – the latter being where goods/services are merely used together, whether by choice or convenience (e.g. wine and wine glasses<sup>11</sup>), this means that they are not essential for each other.

16. Section 60A(1)(a) of the Act provides that goods and services 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, nor dissimilar to each other on the ground that they appear in different classes under the Nice Classification.

17. When interpreting the terms in a specification I bear in mind:

- (a) that it is *"necessary to focus on the core of what is described [... and that] trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise"*, although *"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 [and services] in question"*,<sup>12</sup>
- (b) where *"the words chosen may be vague or could refer to goods or services in numerous classes [of the Nice classification system], the class may be used as an aid to interpret what the words mean with the overall objective of legal certainty of the specification of goods and services"*,<sup>13</sup>
- (c) the following applicable principles of interpretation:

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<sup>9</sup> *Boston Scientific Ltd v OHIM*, Case T-325/06, paragraph 82

<sup>10</sup> *Kurt Hesse v OHIM*, Case C-50/15 P

<sup>11</sup> As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amalia Mary Elliot v LRC Holdings Limited*, BL O/255/13 - *"It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes."*

<sup>12</sup> *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch), paragraphs 11 - 12

<sup>13</sup> *Pathway IP Sarl (formerly Regus No. 2 Sarl) v Easygroup Ltd (formerly Easygroup IP Licensing Limited)*, [2018] EWHC 3608 (Ch), paragraph 94

*“(1) General terms are to be interpreted as covering the goods or services clearly covered by the literal meaning of the terms, and not other goods or services.*

*(2) In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms.*

*(3) An unclear or imprecise term should be narrowly interpreted as extending only to such goods or services as it clearly covers.*

*(4) A term which cannot be interpreted is to be disregarded.”<sup>14</sup>*

18. The goods and services relied upon in Classes 9, 35, 38 and 42 of the two earlier registrations are identical across those registrations. Accordingly, a single comparison will suffice for both earlier marks, with an additional consideration required only for the Class 45 services, which relate solely to Mark 2 (the figurative word mark).

19. The relevant competing goods and services are set out below:

#### Class 9

<b>Opponent's specification</b>
<ul style="list-style-type: none"><li>- Game software;</li><li>- computer and video games software;</li><li>- electronic game software;</li><li>- computer and video game programs;</li><li>- computer and video game discs;</li><li>- video games on disc [computer software];</li><li>- computer and video game cartridges;</li><li>- computer and video game cassettes, disks and DVDs;</li><li>- downloadable electronic game programs;</li><li>- downloadable computer and video game programs and software;</li><li>- interactive computer and video game programs;</li><li>- interactive multimedia software for playing games;</li><li>- recorded computer game software;</li><li>- games software for use for use with video game consoles;</li><li>- computer game entertainment software;</li></ul>

<sup>14</sup> See *Sky v Skykick* [2020] EWHC 990 (Ch), paragraph 56 (wherein Lord Justice Arnold, in the course of his judgment, set out a summary of the correct approach to interpreting broad and/or vague terms)

- interactive multimedia computer game programs;
- computer game software for use with online games;
- memory cards for video game machines;
- electronic game software for mobile phones, handheld electronic devices and wireless devices;
- computer programs for pre-recorded games;
- pre-recorded compact discs featuring games;
- computer hardware for games and gaming;
- video games [computer games] in the form of computer programs recorded on data carriers;
- computer and video game software and programs downloadable from the internet;
- computer game software downloadable from a global computer network and wireless devices;
- downloadable information relating to games and gaming;
- computer application software featuring games and gaming;
- downloadable software in the nature of mobile applications for playing games;
- mobile apps;
- application software for social networking services via the internet;
- downloadable interactive entertainment software for playing computer and video games;
- downloadable electronic publications relating to games and gaming;
- computer software for the administration of online games and gaming;
- computer firmware relating to games and gaming;
- firmware for computer peripherals;
- computers and computer hardware for games and gaming;
- game programs for arcade video game machines;
- computer software to enable virtual reality viewing of environments;
- computer graphics software;
- graphical user interface software;
- interactive video software;
- interactive multimedia computer programs;
- virtual reality software;
- virtual reality headsets;
- virtual reality game software;
- augmented reality software;
- augmented reality software for creating maps;
- augmented reality software for use in mobile devices;

- augmented reality software for use in mobile devices for integrating electronic data with real world environments;
- optical viewing screens;
- computer programs for providing an all-around view of virtual environments;
- video processors for providing an all-around view of virtual environments;
- display monitors for providing an all-around view of virtual environments;
- three dimensional viewers;
- three dimensional picture manipulators;
- audio-visual instruments, apparatus and receivers;
- 3D glasses and spectacles;
- 3D spectacles for television receivers;
- computer software for sending and receiving electronic messages, graphics, images, audio and audio visual content via global communication networks.

#### **Applicant's specification**

- Data processing equipment, including calculating machines and computers;
- computer software;
- computer Chatbot software;
- communication software for providing access to the Internet;
- computer application software for mobile phones;
- computer software for financial management and planning, account aggregation and budgeting;
- electrical and electronic telecommunications and communications apparatus and instruments;
- data communication apparatus and instruments, including portable electronic devices to access the Internet wirelessly;
- apparatus for recording, transmission or reproduction of sound or images;
- apparatus and instruments for the processing, transmission, storage, logging, reception and retrieval of data being in the form of encoded data, text, graphic images or video or a combination of these formats;
- image processing apparatus, instruments and equipment; telecommunications products, including, computer control hardware for use in wireless communications systems;
- routers;
- digital and optical data carriers, recording and storage media (blank and pre-recorded);
- recording discs;
- compact discs;
- DVDs and other digital recording media;
- machine readable media;

- digital video, and data (downloadable) provided from a computer database or the internet;
- personal digital assistants;
- apparatus for downloading audio, video and data from the internet;
- programmed-data-carrying electronic circuits.

### Class 35

#### **Opponent's specification**

- Online retail services in relation to the sale of *video and computer game hardware and software products*.

#### **Applicant's Specification**

- Retail and wholesale services connected with *data processing equipment, computer software, communication software for providing access to the Internet, computer application software for mobile phones, computer software for financial management, planning, account aggregation and budgeting*;
- retail and wholesale services connected with *data communication apparatus and instruments, including portable electronic devices to access the Internet wirelessly*; retail and wholesale services connected with *apparatus for recording, transmission or reproduction of sound or images*;
- retail and wholesale services connected with *apparatus and instruments for the processing, transmission, storage, logging, reception and retrieval of data being in the form of encoded data, text, graphic images or video or a combination of these formats*;
- retail and wholesale services connected with *image processing apparatus, instruments and equipment*; retail and wholesale services connected with *telecommunications products, including, computer control hardware for use in wireless communications systems*;
- retail and wholesale services connected with *magnetic, digital and optical data carriers, recording and storage media (blank and pre-recorded)*;
- retail and wholesale services connected with *recording discs, compact discs, DVDs and other digital recording media, machine readable media, digital video, and data (downloadable) provided from a computer database or the internet*;
- The bringing together, for the benefit of others, of a variety of services namely *an online marketplace for application programming interface (API) tools and resources to enable developers to create software applications, an online marketplace enabling application programming interface (API) providers to register application programming interfaces (API), an online marketplace enabling application developers to search for and download application programming interfaces (APIs), advertising, design and development of*

*computer hardware and software, provision of online platforms for the sale and purchase of goods and services.*

## Class 38

### **Opponent's specification**

- Provision of access to internet platforms and portals for the purpose of online gaming;
- transmission of videos, movies, pictures, images, text, photos, games, user-generated content, audio content, and information via the internet;
- providing online forums and instant messaging services for communication in relation to gaming and online gaming;
- providing access to computer databases in the fields of computer and video games.

### **Applicant's Specification**

- **data transmission;** <sup>15</sup>
- wireless communication services, including, wireless mobile telephone calling, electronic messaging and data transmission service plans;
- messaging services, including, sending, receiving and forwarding messages in the form of text, audio, graphic images or video or a combination of these formats; online messaging services;
- unified messaging services; computer aided transmission of messages and images; video conferencing services;
- video telephone services, teleconferencing services, voice over internet protocol (VOIP) services; paging services; providing telephone communication and internet telephony services;
- transmission, delivery and reception of sound, data and images;
- personal numbering services;
- provision of wireless electronic transmission of credit and debit card transaction data and wireless electronic savings and payment data via a global computer network; providing access to digital audio, video and data websites from a database, the internet, or other electronic network;
- streaming of audio and video material on the internet;
- telecommunication and communication database services, including enabling the consumer to download digital content from a network and server to an individual database;
- providing and leasing access time to computer databases, computer bulletin boards, computer networks and interactive computer communications networks;
- advisory, information and consultancy services relating to all the aforementioned.

<sup>15</sup> See my paragraph 54 with regard to this term.

## Class 42

### **Opponent's specification**

- Development of computer and video game software and programs;
- design of computer and video game software and programs;
- computer programming of computer and video games;
- design and development of computer game software;
- design and development of computer hardware for computer and video games;
- computer and video game software authoring;
- computer and video game software installation;
- computer and video game software maintenance;
- computer and video game software engineering;
- rental of computer and video game software.

## Class 45

### **Opponent's specification**

- Software licensing;
- licensing of computer games.

20. Both sides have made submissions on how the goods and services compare. I have taken all of these into account and will refer to them to the extent that is necessary.

21. Before I proceed, I must firstly address the Opponent's interpretation of its registered term "*computer and video game software*". In its submissions in lieu, the Opponent submits that its marks cover "*computer [...] software*".<sup>16</sup> As this interpretation was introduced for the first time in those submissions, I do not have any submissions from the Applicant in response. Although, based on the Opponent's statement of grounds, the Applicant has conceded some overlap in the parties' goods and services (which I have detailed where relevant), those concessions do not extend to accepting that the Opponent's specification covers "*computer software*" at large – a term broad enough to render many of the Applicant's Class 9 goods identical under *Meric*. It is also apparent that the Opponent has largely built its comparison of the

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<sup>16</sup> Opponent's submissions in lieu, paragraph 12(b).

respective goods and services on this interpretation of its term, and has concluded identity exists as a consequence.

22. However, to interpret the term as including “*computer software*” generally would improperly broaden its scope and extend protection beyond what is registered. The term “*computer and video games software*” should be given its natural and ordinary meaning – properly interpreted, it refers to two sub-categories of “*games software*”, namely “*computer games software*” and “*video games software*”, and I proceed on that basis.

23. I also note that several of the Applicant’s terms use the word “*including*”. That word serves to introduce examples of goods or services within the term; it does not confine the scope of the term to the examples that follow it.

24. I now move on to compare the respective goods and services using class headings for ease of reference.

## **Class 9**

25. In its submissions in lieu, the Applicant submits that:

“A number of the class 9 goods covered by the Opponent’s marks are sector specific and are very much directed towards gaming and or augmented reality, meaning that there is only a moderate degree of similarity of those goods with that of the Application, bearing in mind that the respective end users of those goods will be different. Those class 9 goods of the Opponent for which this applies have been highlighted [they include ‘game software; computers and computer hardware for games and gaming’].<sup>17</sup> The Applicant concedes that there are some class 9 goods in the application which are fairly broad, such as ‘computer application software for mobile phones’ which slightly increases the degree of similarity between the goods of the application and the Opponent’s goods but even in those circumstances, the similarity is still not particularly high.”

26. Additionally, I note the Opponent’s submission that, although some of its goods and services refer specifically to video games, many do not, and even the narrower video-game-related terms still overlap with the broader, unrestricted terms in the

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<sup>17</sup> For the full ‘highlighted’ list, see the table included at [23] of the Applicant’s submissions in lieu.

application.<sup>18</sup> I agree with the general premise of this submission insofar as it aligns with the principle in *Meric* – namely, that goods (and services) are identical where those of the earlier mark fall within a broader category in the later application, and vice versa.

27. The Applicant's terms are underlined below, grouped where the same reasoning applies.<sup>19</sup>

*“Data processing equipment, including calculating machines and computers”*

28. The term “*data processing equipment*” is inherently broad. As I have noted, the word “*including*” introduces examples within that term; accordingly, “*calculating machines*” and “*computers*” are illustrative examples, not limitations on scope.

29. Insofar as “*data processing equipment*” covers computers as a broad category, it is **identical** to the Opponent's “*computers and computer hardware for games and gaming*” in accordance with the principle outlined in *Meric*, as the latter is a sub-category within the broader term.

*“Computer software”*

30. The Applicant's broad term encompasses the Opponent's “*computer software for sending and receiving electronic messages, graphics, images, audio and audio visual content via global communication networks*”. These terms are therefore **identical** under the *Meric* principle.

*“Computer Chatbot software”*

31. Chatbot software is a form of communications software which enables the sending and receiving of electronic messages, generally via the internet. It is therefore **identical** to the Opponent's “*computer software for sending and receiving electronic messages, graphics, images, audio and audio visual content via global communication networks*” under the *Meric* principle.

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<sup>18</sup> Opponent's submissions in lieu, paragraph 13.

<sup>19</sup> See *Separode Trade Mark* BL O/399/10, paragraph 5, with regard to grouping goods and services together.

“Computer application software for mobile phones”

32. Albeit the above term is worded differently, it is self-evidently **identical** to the Opponent’s “mobile apps”.

“Communication software for providing access to the Internet”

33. The Opponent’s term “mobile apps” is inherently broad and encompasses any software application designed for use on mobile devices. To the extent that the above software may be provided in the form of a mobile application (i.e. mobile apps that constitute communication software for providing access to the internet), such goods fall within the Opponent’s broader category “mobile apps”. The competing goods are therefore regarded as **identical** under the *Meric* principle.

“Computer software for financial management and planning, account aggregation and budgeting”

34. To the extent that the above goods may be provided in the form of a mobile application, such goods fall within the Opponent’s broader category “mobile apps”. The competing goods are therefore regarded as **identical** under the *Meric* principle.

“Electrical and electronic telecommunications and communications apparatus and instruments; data communication apparatus and instruments, including portable electronic devices to access the Internet wirelessly; telecommunications products, including, computer control hardware for use in wireless communications systems”

35. To the extent that the above are broad categories of goods that would encompass mobile phones, I consider there to be complementarity with the Opponent’s “mobile apps” – the Applicant’s goods would require software such as the Opponent’s to function and consumers may therefore perceive a common commercial origin. On that basis, the users would also overlap and the respective goods may also share the same trade channels. These goods are **similar to a low degree**.

“Routers”

36. The above are likewise complementary to the Opponent’s “mobile apps” insofar as a mobile application would be important for the use of a router as it may enable a

mobile phone to connect to a router; therefore the average consumer may perceive a common commercial origin. On that basis, the users would overlap and the respective goods may also share the same trade channels. These goods are **similar to a low degree**.

“Personal digital assistants”

37. The above term refers to handheld electronic devices for personal information management (e.g., calendars, notes, messaging and scheduling), typically operating via integrated software. Although these goods are tangible devices and therefore differ in nature from software, a comparison can be drawn with some of the Opponent’s software goods, namely:

*“mobile apps; computer software for sending and receiving electronic messages, graphics, images, audio and audio-visual content via global communication networks.”*

38. The Opponent’s goods encompass software that delivers similar functions, including mobile applications downloadable to smartphones and computer software for use on a PC. In that respect, there is overlap in purpose (personal information management and messaging) and, to a degree, method of use (accessing equivalent functionalities either via a dedicated device or via an installed application). The Applicant’s goods may therefore share users and trade channels with the Opponent’s goods. The respective devices and software are also complementary (the device requires software such as the Opponent’s to function and consumers may perceive a common commercial origin). There may also be a degree of competition, as a consumer may opt to download software onto an existing device, such as a mobile phone or PC, to perform the functions of a digital assistant instead of purchasing a dedicated device. Taking these factors together, I consider the goods to be **similar to a low to medium degree**.

“Apparatus for recording, transmission or reproduction of sound or images; apparatus and instruments for the processing, transmission, storage, logging, reception and retrieval of data being in the form of encoded data, text, graphic images or video or a combination of these formats; Image processing apparatus, instruments and equipment”

39. I compare the above with the earlier term “*audio-visual instruments, apparatus and receivers*”. Although the specific purposes and methods of use of the competing goods differ, they are nonetheless both apparatus, instruments and equipment used within the audio-visual and image processing market, namely goods relating to the recording, transmission, reproduction or processing of images and/or sound. On this basis, the respective goods may share the same users and may also pass through the same trade channels. I have considered whether there may be a degree of complementarity, but without evidence I cannot be certain on this point. Taking account of the likely shared users and trade channels (and their broadly similar nature as apparatus and instruments in the same market), I consider this sufficient for a finding of a **low degree of similarity** between the competing goods.

“Apparatus for downloading audio, video and data from the internet”

40. I compare the above with the earlier term “*audio-visual instruments, apparatus and receivers*”. While the specific purposes and methods of use may differ, there is some proximity where downloading apparatus includes consumer devices used to obtain audio-visual content (e.g. streaming receivers), such that the goods may share users and may also pass through the same trade channels. Taking account of these overlaps, and consistent with my reasoning at paragraph 40, I consider this sufficient for a finding of a **low degree of similarity** between the competing goods.

“Digital and optical data carriers, recording and storage media (blank and pre-recorded); recording discs; compact discs; DVDs and other digital recording media; machine readable media”

41. The above goods are *Merit identical* to the following goods in the Opponent’s specification: “*pre-recorded compact discs featuring games; video games [computer games] in the form of computer programs recorded on data carriers; computer and video game cassettes, disks and DVDs; computer and video game discs; computer and video game cartridges; memory cards for video game machines*” as the Opponent’s goods are sub-categories of the broader terms applied for.

“Programmed-data-carrying electronic circuits”

42. The above goods are **identical** to the Opponent’s “*computer and video game cartridges; memory cards for video game machines*” under the *Meric* principle, as the Opponent’s goods fall within the broader category of programmed-data-carrying electronic circuits. Game cartridges and memory cards containing game data are types of pre-programmed electronic circuits, and are therefore encompassed within the term applied for.

“Digital video, and data (downloadable) provided from a computer database or the internet”

43. I compare the above term with the earlier term “*downloadable information relating to games and gaming*”. Both sets of goods consist of downloadable digital content; further, the contested goods are not limited and could also relate to games and gaming. Consequently, the goods share the same general nature as downloadable files; can relate to the same subject matter (i.e. games and gaming), can be obtained in the same way (e.g. via a computer database or the internet), and would be used on the same devices by overlapping user groups. They would also share the same trade channels. Taking these factors together, I consider the goods to be **similar to a medium degree**.

**Class 35**

44. In its submissions in lieu, the Applicant makes the following concession (my underlining for clarity):

“The Applicant’s Class 35 services are all very specific retail services directed towards gaming. As a consequence, the services are aimed at a different consumer and will be provided through a different trade channel. The class 35 services of the Opponent have at most a low degree of similarity to the class 35 services of the Application.”

45. Taking this concession into account, I proceed on the basis that the contested Class 35 services are **similar** to the Opponent’s Class 35 services **to a low degree**.

**Class 38**

46. As noted previously, the Applicant’s submissions in lieu focus on replying to the comparisons made by the Opponent in the statement of grounds, and it has made certain concessions accordingly. In its submissions in lieu, the Applicant submits the following:

“The Applicant concedes that the services highlighted in red are highly similar. However, the remaining class 38 services of the Opponent have a limited degree of similarity to the services of the Applicant bearing in mind that those services are specifically directed towards gaming.”

47. The services identified by the Applicant through its red highlighting are set out in the table below, which is contained in its submissions in lieu. When the Applicant makes reference to “*the remaining class 38 services of the Opponent*”, it is evident that it is referring to those listed in the table; and the comparison is being made between those services and the entirety of the opposed Class 38 terms.

<p><b>Class 38</b></p> <p>Provision of access to internet platforms and portals for the purpose of online gaming; <b>transmission of videos, movies, pictures, images, text, photos, games, user-generated content, audio content, and information via the internet</b>; providing online forums and instant messaging services for communication in relation to gaming and online gaming; providing access to computer databases in the fields of computer and video games.</p>	<p><b>Class 38</b></p> <p><b>data transmission</b>; wireless communication services, including, wireless mobile telephone calling, electronic messaging and data transmission service plans; messaging services, including, sending, receiving and forwarding messages in the form of text, audio, graphic images or video or a combination of these formats; online messaging services; unified messaging services; computer aided transmission of messages and images; video conferencing services; video telephone services, teleconferencing services, voice over internet protocol (VOIP) services; paging services; providing telephone communication and internet telephony services; transmission, delivery and reception of sound, data and images; personal numbering services; provision of wireless electronic transmission of credit and debit card transaction data and wireless electronic savings and payment data via a global computer network; providing access to digital audio, video and data websites from a database, the internet, or other electronic network; streaming of audio and video material on the internet; telecommunication and</p>	<p>The Applicant concedes that the services highlighted in red are highly similar. However, the remaining class 38 services of the Opponent have a limited degree of similarity to the services of the Applicant bearing in mind that those services are specifically directed towards gaming.</p>
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communication database services, including enabling the consumer to download digital content from a network and server to an individual database; providing and leasing access time to computer databases, computer bulletin boards, computer networks and interactive computer communications networks; advisory, information and consultancy services relating to all the aforementioned.

48. Taking this concession into account, I proceed on the basis that the Applicant's "data transmission" is **highly similar**, and that the remaining opposed Class 38 services are, at the very least, similar to the Opponent's Class 38 services identified in the Applicant's table, albeit to a "**limited degree**".

49. I note that the Applicant has applied for the broader term "*telecommunications services, including mobile telephone services, voicemail, facsimile transmission and data transmission*". However, the Opponent only opposes "data transmission" as a sub-category of "*telecommunications services*". A finding of a high degree of similarity therefore means that, if the opposition succeeds, the following term will nonetheless proceed to registration:

*"telecommunications services, including, mobile telephone services, voicemail and facsimile transmission, but excluding data transmission"*.

50. In conclusion, the competing goods and services are either identical or similar to varying degrees. I therefore proceed to consider the likelihood of confusion in respect of all the opposed goods and services.

### **The average consumer and the nature of the purchasing process**

51. Trade mark questions, including the likelihood of confusion, must be viewed through the eyes of the average consumer of the goods and services in question. It is therefore necessary to determine who the average consumer of the goods and services is, and how the consumer is likely to select them. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect.<sup>20</sup>

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<sup>20</sup> *Lloyd Schuhfabrik Meyer, Case C-342/97.*

The word 'average' merely denotes that the person is typical,<sup>21</sup> which in substance means that they are neither deficient in the requisite characteristics of being well informed, observant and circumspect, nor top performers in the demonstration of those characteristics.<sup>22</sup>

52. 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, at [15]-[20], where he pointed out the following in relation to the average consumer:

- (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;
- (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 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

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<sup>21</sup> *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), paragraph 60

<sup>22</sup> *Schutz (UK) Ltd v Delta Containers Ltd* [2011] EWHC 1712, paragraph 98

(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.

53. The relevant average consumer will predominantly be a member of the general public although I do not rule out that in relation to certain goods and services, they may also be businesses (for example, in regard to the Applicant's teleconferencing services). Given the nature of the goods and services, the average consumer (whether they are members of the public or businesses) is likely to pay a medium degree of attention when selecting them, as they will wish to ensure that the goods and services meet their needs and requirements.

54. The goods and services will typically be selected online and/or from brochures, and in the case of goods, may additionally be selected via retail stores. In all instances, the consumer will be presented with an image of the marks, and the selection process will therefore be predominantly visual. I do not rule out an aural element, although even where the goods and services are selected orally, the consumer is still likely to have viewed the marks first before asking for them.

### **Comparison of marks**

55. I have already set out the principles gleaned from established case law with regard to comparing competing marks. I also note that the Court of Justice of the European Union ("CJEU") stated in *Bimbo SA v OHIM*,<sup>23</sup> 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."

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<sup>23</sup> Case C-591/12P, at paragraph 34.

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

#### Approach

57. As my findings on the respective goods and services are the same for both Mark 1 and Mark 2, and as those findings do not depend on the Opponent's Class 45 services (which are protected only under earlier Mark 2), I will consider the Opponent's case based on earlier Mark 1 first. I will return to the Opponent's case based on earlier Mark 2 only if it becomes necessary to do so.

58. The marks being compared are shown below:

Earlier Mark 1	Contested mark
EVERYWHERE	EVERYWHERE YOU GO

#### Overall impression

59. As the competing marks are both word-only marks, the overall impression of both lies in the words themselves.

60. The Applicant's mark consists of the expression EVERYWHERE YOU GO. In my view, when the words YOU GO combine and are used in conjunction with EVERYWHERE, they are likely to be seen (as explained below<sup>24</sup>) as merely emphasising and reinforcing the meaning of EVERYWHERE. Therefore, within the context of the mark overall, the meaning of YOU GO is qualified by the word EVERYWHERE. However, the reverse is not true; the word EVERYWHERE within the Applicant's composite mark retains an independent distinctive role, such that its meaning remains the same whether the words YOU GO are present or not.

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<sup>24</sup> See the conceptual comparison section of this decision.

61. This approach to the assessment of the contested mark accords with the guidance in *Bimbo and Medion* (Case C-120/04), as further analysed by Arnold J (as he then was) in *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch),<sup>25</sup> which confirms that while the overall impression of a composite mark must be assessed, a component may, in appropriate circumstances, retain an independent distinctive role.

62. Furthermore, the word EVERYWHERE appears at the beginning of the mark, and I bear in mind that the beginnings of marks tend to make a stronger impression on the consumer than their endings, as this is where consumer attention is typically focused.<sup>26</sup> It is also the longest word in the mark, which likewise gives it prominence. Taking the foregoing into account, EVERYWHERE will play the dominant role in the overall impression of the Applicant's mark, with the words YOU GO playing a lesser role.

#### Visual comparison

63. In terms of visual similarity, the word 'EVERYWHERE' is the first of the three words making up the contested mark and it is identical to the entirety of earlier Mark 1.

64. The visual differences lie in the words 'YOU' and 'GO' which are not present in Mark 1. On account of those differences I consider the marks to be visually similar to a medium degree overall.

#### Aural comparison

65. The word 'EVERYWHERE' in the respective marks will be pronounced identically. The words 'YOU' and 'GO' are points of aural difference, as such I consider the marks to be aurally similar to a medium degree overall.

#### Conceptual comparison

66. The concept of Mark 1 derives from the ordinary meaning of the word 'EVERYWHERE'. It is an adverb indicating that something occurs, exists, or can be found in all places or locations, for example: "they are everywhere".

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<sup>25</sup> In particular [18] to [21].

<sup>26</sup> *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02.

67. The concept of the contested mark derives from the adverbial expression 'EVERYWHERE YOU GO'. It expresses that something occurs, exists, or can be found in all places a person goes, for example: "they are everywhere you go". In my opinion, this is a more emphatic way of expressing that something can be found 'everywhere'. Consequently, EVERYWHERE YOU GO conveys, in substance, the same meaning as EVERYWHERE, with YOU GO merely emphasising that meaning. Accordingly, any distinction in concept is extremely nuanced and barely perceptible, such that the marks are conceptually identical or, at the very least, similar to a very high degree.

68. Additionally, within the context of the relevant goods and services, the average consumer may understand the marks as suggesting that the goods or services are universally available or accessible, i.e. that they can be found or accessed everywhere, or everywhere a person goes. A proportion of consumers may also perceive the YOU GO element in the Applicant's mark as introducing a connotation of portability, in the sense that the goods or services can be taken or accessed 'on the go' (for example, software that can be used or accessed everywhere you go). However, this merely builds upon the same underlying idea of universal availability or accessibility, it does not alter it.

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

69. The degree of distinctiveness of the earlier mark is one of the factors that must be taken into account when assessing whether there is a likelihood of confusion. This is because the more distinctive the earlier mark, the greater the likelihood of confusion may be.<sup>27</sup>

70. Registered trade marks possess varying degrees of inherent distinctive character, ranging from low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

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<sup>27</sup> *Sabel v Puma*.

71. The Opponent makes no claim to enhanced distinctiveness through the use made of the earlier word mark, and has filed no evidence of use (for either mark relied on), therefore I only have the inherent distinctiveness of the mark to consider.

72. I have already indicated that EVERYWHERE conveys the meaning of something occurring, existing, or being capable of being found in all places or locations. In the context of the relevant goods and services, this may give the mark an allusive quality, as it could suggest that the goods or services are universally available or accessible across multiple locations. In light of this potential attributable meaning, I consider the mark to possess inherent distinctiveness between a low and medium degree, tending towards medium where that meaning is not perceived.

### **GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion**

73. In assessing the likelihood of confusion, I must adopt the global approach advocated by case law and take into account the fact that marks are rarely recalled perfectly, the consumer relying instead on the imperfect picture of them that they have kept in mind.<sup>28</sup> I must also consider the average consumer of the services, the nature of the purchasing process and bear in mind that a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective services and vice versa.<sup>29</sup>

74. Making an assessment as to the likelihood of confusion is a matter of considering the relevant factors from the viewpoint of the average consumer and determining whether they are likely to be confused. The global assessment is supposed to emulate what happens in the mind of the average consumer on encountering the later mark with an imperfect recollection of the earlier mark in mind. It is not a process of analysis or reasoning, but an impression or instinctive reaction.<sup>30</sup> The relative weight of the factors is not laid down by law but is a matter of judgement for the tribunal on the particular facts of each case.<sup>31</sup>

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<sup>28</sup> *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.*, Case C-342/97, paragraph 27

<sup>29</sup> *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, Case C-39/97, paragraph 17

<sup>30</sup> *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, paragraph 81

<sup>31</sup> See paragraph 33 of the Appointed Person's decision in Case No. O/049/17, (*Rochester Trade Mark*).

75. It is well established that direct confusion arises where the consumer mistakes one mark for the other; whereas indirect confusion arises where the consumer recognises that the marks are different, but because of their similarities, believes that the goods or services bearing the later mark come from the same undertaking, or from an economically linked undertaking.<sup>32</sup> For example, the consumer concludes that the later mark is another brand of the owner of the earlier mark because the marks share a common element.<sup>33</sup> Such instances may arise where, for example, the later mark simply adds a non-distinctive element to the earlier mark of the kind one would expect to find in a sub-brand or brand extension.<sup>34</sup>

76. I have found that the competing goods and services are either identical or similar to varying degrees and that the average consumer will predominantly select the goods and services visually, paying a medium degree of attention during the selection process.

77. I have also found that the word EVERYWHERE in the Applicant's mark has an independent distinctive role and that it is also the dominant element of the mark.

78. From a visual and aural perspective, the marks are identical in respect of EVERYWHERE, although I have found that the presence of YOU GO in the contested mark reduces that similarity to a medium level overall, as those words cannot be disregarded even if they are not the dominant and/or distinctive element. That said, I do not overlook that the point of identity lies in the first element of the contested mark, and in this regard I have noted that the first part of a mark generally carries greater significance, as it is where the average consumer tends to focus their attention.

79. Conceptually I have found that EVERYWHERE YOU GO conveys, in substance, the same meaning as EVERYWHERE, with YOU GO merely emphasising its meaning, such that the marks are conceptually identical or, at the very least, similar to a very high degree. I have additionally found that in the context of the relevant goods and services, the average consumer may understand the marks as suggesting that

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<sup>32</sup> *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, paragraph 10

<sup>33</sup> *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10, paragraphs 16-17 wherein Mr Iain Purvis QC, sitting as the Appointed Person, dealt with the distinction between direct and indirect confusion. In *Liverpool Gin Distillery* Arnold LJ approved Mr Purvis's formulation but added at [12] that it is a helpful explanation of the concept of indirect confusion, which has frequently been cited subsequently, but as Mr Purvis made clear it was not intended to be an exhaustive definition.

<sup>34</sup> *Ibid.*

the goods or services are universally available or accessible; and a proportion may perceive YOU GO as introducing a connotation of portability.

80. The earlier mark has a low to medium level of inherent distinctive character as it has the potential to allude to the goods and services being universally available and/or accessible across multiple locations.

81. Taking all the above factors into consideration, and allowing for imperfect recollection, whilst bearing in mind the principle of interdependency, I find that the average consumer – or at least a significant proportion thereof – will simply mistake one mark for the other on account of the shared identity of the word EVERYWHERE and will be directly confused as to the origin of the relevant goods and services as a result.

82. Where a proportion of the average consumer recognises the differences between the marks owing to the presence of YOU GO, I consider this would nonetheless lead to indirect confusion. This is because the consumer is likely to believe that the goods or services bearing the later mark come from the same or economically linked undertaking, given the similarities between the marks and the goods and services. In particular, they may conclude that the contested mark is another brand (or brand extension) of the owner of the earlier mark, because the marks share the identical common element EVERYWHERE, and the differences introduced by YOU GO would not be perceived as denoting goods and services from a different undertaking. For example, the contested mark may be perceived as identifying a portable or mobile version of the goods and services, i.e. something that can be accessed or used everywhere a person goes, which is consistent with the notion of a sub-brand or brand extension.

### **Final remarks**

83. I have found a likelihood of confusion based on Mark 1. Reliance on Mark 2 would not place the Opponent in a more favourable position, and I therefore do not consider it necessary to assess the Opponent's case based on Mark 2.

## **OUTCOME**

84. The partial opposition under section 5(2)(b) of the Act is successful. Subject to any appeal, contested trade mark application number 3709622 shall be **refused** registration in relation to all the opposed goods and services, which are set out in Annex 2 to this decision.

85. The trade mark application shall therefore be **accepted** for registration only in respect of the unopposed goods and services, which are set out in Annex 3 to this decision.

## **COSTS**

86. The Opponent has been successful and is therefore entitled to an award of costs based on the contributory scale set out in Tribunal Practice Notice 2/2016. In the circumstances I award the Opponent the sum of £650 as a contribution towards the cost of the proceedings. This sum is calculated as follows:

Official fee	£100
Preparing the Statement of Grounds and considering the Counterstatement	£200
Preparation of submissions in lieu of a hearing	£350
<b>TOTAL</b>	<b>£650</b>

87. I therefore order MTN GROUP MANAGEMENT SERVICES (PROPRIETARY) LIMITED to pay BUILD A ROCKET BOY GAMES LTD the sum of **£650**. This 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 6<sup>th</sup> day of March 2026**

**Daniela Ferrari**  
**For the Registrar**

## Annex 1

### Goods and services applied for

The goods and services shown in **bold** are the ones that have been opposed.

Class 9:	<b>Data processing equipment, including calculating machines and computers; computer software; computer Chatbot software; communication software for providing access to the Internet; computer application software for mobile phones; computer software for financial management and planning, account aggregation and budgeting; electrical and electronic telecommunications and communications apparatus and instruments; data communication apparatus and instruments, including portable electronic devices to access the Internet wirelessly; apparatus for recording, transmission or reproduction of sound or images; apparatus and instruments for the processing, transmission, storage, logging, reception and retrieval of data being in the form of encoded data, text, graphic images or video or a combination of these formats; image processing apparatus, instruments and equipment; telecommunications products, including, computer control hardware for use in wireless communications systems; routers; modems; magnetically encoded cards; smart cards; holograms; media for storing information, data, images and sound; blank and pre-recorded magnetic cards; cards containing microprocessors; integrated circuit cards; electronic identification cards; telephone cards; telephone credit cards; credit cards; debit cards; magnetic, digital and optical data carriers, recording and storage media (blank and pre-recorded); recording discs; compact discs; DVDs and other digital recording media; machine readable media; digital video, and data (downloadable) provided from a computer database or the internet; personal digital assistants; satellite receiving and transmission apparatus and instruments; apparatus for downloading audio, video and data from the internet; television apparatus and instruments; radio and television broadcasting transmitters and receivers; apparatus for access to broadcast or transmitted programmes; programmed-data-carrying electronic circuits; electronic and satellite navigational and positional apparatus and instruments, including global positioning systems; telephones; mobile telephones; cordless telephones; telephone accessories, including, telephone cords and batteries; electronic products, including, digital photograph receivers; telecommunication couplers; telecommunication modular plugs; transceivers; wireless transceivers; teleconferencing telephones; telephone answering machines; internet telephones; wireless telephones; earphones and antennae for cordless and wireless telephones; communication apparatus and instruments for wireless internet access and online streamlining; hands-free devices for car telephones and mobile telephones; in-car telephone handset cradles; mobile phone cases; parts and fittings included in class 09 for the aforementioned goods; scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; mechanisms for coin-operated apparatus; fire-extinguishing apparatus.</b>
Class 35:	Advertising and promotion services; loyalty card services; organisation, operation and management of customer loyalty schemes; organisation, operation and supervision of sales and promotional incentive schemes; <b>retail and wholesale services connected with data processing equipment, computer software, communication software for providing access to the Internet, computer</b>

**application software for mobile phones, computer software for financial management, planning, account aggregation and budgeting;** retail and wholesale services connected with electrical and electronic telecommunications and communications apparatus and instruments; **retail and wholesale services connected with data communication apparatus and instruments, including portable electronic devices to access the Internet wirelessly;** retail and wholesale services connected with apparatus for recording, transmission or reproduction of sound or images; retail and wholesale services connected with apparatus and instruments for the processing, transmission, storage, logging, reception and retrieval of data being in the form of encoded data, text, graphic images or video or a combination of these formats; retail and wholesale services connected with image processing apparatus, instruments and equipment; retail and wholesale services connected with telecommunications products, including, computer control hardware for use in wireless communications systems; retail and wholesale services connected with routers, modems, magnetically encoded cards, smart cards, holograms; retail and wholesale services connected with media for storing information, data, images and sound; retail and wholesale services connected with blank and pre-recorded magnetic cards, cards containing microprocessors, integrated circuit cards, electronic identification cards, telephone cards; **retail and wholesale services connected with magnetic, digital and optical data carriers, recording and storage media (blank and pre-recorded);** retail and wholesale services connected with recording discs, compact discs, DVDs and other digital recording media, machine readable media, digital video, and data (downloadable) provided from a computer database or the internet; retail and wholesale services connected with personal digital assistants; retail and wholesale services connected with satellite receiving and transmission apparatus and instruments, apparatus for downloading audio, video and data from the internet, television apparatus and instruments, radio and television broadcasting transmitters and receivers, apparatus for access to broadcast or transmitted programmes, programmed-data-carrying electronic circuits; retail and wholesale services connected with electronic and satellite navigational and positional apparatus and instruments, including global positioning systems; retail and wholesale services connected with telephones, mobile telephones, cordless telephones, telephone accessories, including, telephone cords and batteries; retail and wholesale services connected with electronic products, namely, digital photograph receivers; retail and wholesale services connected with telecommunication couplers, telecommunication modular plugs, transceivers, wireless transceivers, teleconferencing telephones, telephone answering machines, internet telephones, wireless telephones, earphones and antennae for cordless and wireless telephones, communication apparatus and instruments for wireless internet access and online streamlining, hands-free devices for car telephones and mobile telephones, in-car telephone handset cradles; retail and wholesale services connected with mobile phone cases; retail and wholesale services connected with scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), lifesaving and teaching apparatus and instruments; retail and wholesale services connected with apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; retail, and wholesale services connected with mechanisms for coin-operated apparatus; retail and wholesale services connected with fire-extinguishing apparatus, franchising and merchandising services; the bringing together, for the benefit of others, of a variety of goods namely chemical products, unprocessed artificial resins, unprocessed plastics, manures, fire extinguishing compositions, tempering and soldering preparations, tanning substances, adhesives used in industry, paints, varnishes, lacquers, preservatives against rust and against deterioration of wood, colorants, mordants, raw natural resins, metals in foil and powder form for use in painting, decorating, printing and art, bleaching preparations and other

substances for laundry use, cleaning, polishing, scouring and abrasive preparations, non-medicated soaps, perfumery, essential oils, non-medicated cosmetics, non-medicated hair lotions, nonmedicated dentifrices, industrial oils and greases, lubricants, dust absorbing, wetting and binding compositions, fuels (including motor spirit) and illuminants, candles and wicks for lighting, pharmaceutical products and dietetic substances for humans and animals, disinfectants, agricultural chemicals, metal goods namely metal hardware and containers for storage or transport, hand tools and implements, cutlery, side arms, razors, software, mobile telephones, smart phones and related accessories, modems, routers, telephone cards, telecommunication devices and related accessories, surgical, medical and veterinary apparatus and instruments, massage apparatus, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, apparatus for locomotion by land, air or water, firearms, ammunition, explosives and fireworks, jewellery, musical instruments, paper, printed matter, stationery, packaging, unprocessed and semi-processed rubber, gutta-percha, gum, asbestos, mica and substitutes for all these materials, plastics and resins in extruded form for use in manufacture, packing, stopping and insulating materials, flexible pipes, tubes and hoses, not of metal, leather and imitations of leather, luggage, bags, whips, harnesses, saddlery, collars, leashes and clothing for animals, building materials, furniture and home decor, non-metallic containers, household or kitchen utensils and containers, combs and sponges, brushes, articles for cleaning purposes, unworked or semi-worked glass, glassware, porcelain and earthenware, rope, string, nets, tents, tarpaulins, awnings of textile or synthetic materials, sails, sacks for the transport and storage of materials in bulk, padding, cushioning and stuffing materials, yarns, threads, textiles, clothing, footwear, headgear, lace, embroidery, ribbons, braid, buttons, hooks and eyes, pins, needles, artificial flowers, hair decorations, flooring, carpets, wall hangings, false hair, foodstuff, groceries, games, toys, gymnastic articles, sporting articles, decorations for Christmas trees, raw and unprocessed agricultural, aquacultural, horticultural and forestry products, raw and unprocessed grains and seeds, fresh fruits and vegetables, fresh herbs, natural plants and flowers, bulbs, seedlings and seeds for planting, live animals, foodstuffs and beverages for animals, malt, alcoholic beverages, non-alcoholic beverages, smokers' articles, tobacco and matches, enabling customers to conveniently compare and purchase those goods;

**The bringing together, for the benefit of others, of a variety of services namely an online marketplace for application programming interface (API) tools and resources to enable developers to create software applications, an online marketplace enabling application programming interface (API) providers to register application programming interfaces (API), an online marketplace enabling application developers to search for and download application programming interfaces (APIs), advertising, business management, business administration, office functions, insurance, financial services, real estate services, building construction, repair and installation services, telecommunication services, transportation services, packaging services, travel arrangement services, services relating to the treatment of materials, educational services, entertainment services, services relating to sporting and cultural activities, scientific and technological services and research and design relating thereto, industrial analysis and research services, design and development of computer hardware and software, services for providing food and drink, temporary accommodation services, medical services, veterinary services, hygienic and beauty care for human beings or animals, agriculture, horticulture and forestry services, legal services, security services for the physical protection of tangible property and individuals, personal and social services rendered by others to meet the needs of individuals, enabling customers to conveniently compare and purchase those services; provision of online platforms for the sale and purchase of goods and services; arranging and conducting of exhibitions for business; arranging and conducting of exhibitions for**

	business purposes; business management; business administration; business research; business strategy and planning services; information and advisory services; economic forecasting, marketing, market research, market analysis and survey services; publication of information; compilation of statistical information; provision of trade information; provision of directory services.
Class 38:	<p>Telecommunication services; mobile, fixed, satellite, cellular, mobile and radio telecommunication services; telecommunications services, including, mobile telephone services, voicemail, facsimile transmission and <b>data transmission; wireless communication services, including, wireless mobile telephone calling, electronic messaging and data transmission service plans; messaging services, including, sending, receiving and forwarding messages in the form of text, audio, graphic images or video or a combination of these formats; online messaging services; unified messaging services; computer aided transmission of messages and images; video conferencing services; video telephone services, teleconferencing services, voice over internet protocol (VOIP) services; paging services;</b> telephone telecommunications services provided via prepaid telephone calling card; providing prepaid minutes for use on mobile phones; <b>providing telephone communication and internet telephony services;</b> telephone and mobile telephone message collection and transmission, radio-paging, call diversion, answerphone and electronic mail services for others; <b>transmission, delivery and reception of sound, data and images; personal numbering services;</b> hire, leasing and rental of telecommunications, telephonic and communications apparatus and instruments; loan of replacement telecommunications and communications apparatus and instruments; provision of internet access services; telecommunications services for location and tracking of persons and objects; tracking of mobile telephone via satellite signals; provision of information relating to or identifying telecommunications and communications apparatus and instruments; provision of wireless application protocol services, including those utilizing a secure communications channel; provision of information relating to or identifying telecommunications and communications apparatus and instruments; broadcast or transmission of radio or television programmes; providing telecommunications connections to computer databases, the internet or other electronic networks; <b>provision of wireless electronic transmission of credit and debit card transaction data and wireless electronic savings and payment data via a global computer network; providing access to digital audio, video and data websites from a database, the internet, or other electronic network; streaming of audio and video material on the internet; telecommunication and communication database services, including enabling the consumer to download digital content from a network and server to an individual database;</b> providing access to telecommunications infrastructures for other operators; <b>providing and leasing access time to computer databases, computer bulletin boards, computer networks and interactive computer communications networks; advisory, information and consultancy services relating to all the aforementioned.</b></p>

## Annex 2

### Goods and services for which registration is refused

Class 9:	Data processing equipment, including calculating machines and computers; computer software; computer Chatbot software; communication software for providing access to the Internet; computer application software for mobile phones; computer software for financial management and planning, account aggregation and budgeting; electrical and electronic telecommunications and communications apparatus and instruments; data communication apparatus and instruments, including portable electronic devices to access the Internet wirelessly; apparatus for recording, transmission or reproduction of sound or images; apparatus and instruments for the processing, transmission, storage, logging, reception and retrieval of data being in the form of encoded data, text, graphic images or video or a combination of these formats; image processing apparatus, instruments and equipment; telecommunications products, including, computer control hardware for use in wireless communications systems; routers; digital and optical data carriers, recording and storage media (blank and pre-recorded); recording discs; compact discs; DVDs and other digital recording media; machine readable media; digital video, and data (downloadable) provided from a computer database or the internet; personal digital assistants; apparatus for downloading audio, video and data from the internet; programmed-data-carrying electronic circuits.
Class 35:	Retail and wholesale services connected with data processing equipment, computer software, communication software for providing access to the Internet, computer application software for mobile phones, computer software for financial management, planning, account aggregation and budgeting; retail and wholesale services connected with data communication apparatus and instruments, including portable electronic devices to access the Internet wirelessly; retail and wholesale services connected with apparatus for recording, transmission or reproduction of sound or images; retail and wholesale services connected with apparatus and instruments for the processing, transmission, storage, logging, reception and retrieval of data being in the form of encoded data, text, graphic images or video or a combination of these formats; retail and wholesale services connected with image processing apparatus, instruments and equipment; retail and wholesale services connected with telecommunications products, including, computer control hardware for use in wireless communications systems; retail and wholesale services connected with magnetic, digital and optical data carriers, recording and storage media (blank and pre-recorded); retail and wholesale services connected with recording discs, compact discs, DVDs and other digital recording media, machine readable media, digital video, and data (downloadable) provided from a computer database or the internet; The bringing together, for the benefit of others, of a variety of services namely an online marketplace for application programming interface (API) tools and resources to enable developers to create software applications, an online marketplace enabling application programming interface (API) providers to register application programming interfaces (API), an online marketplace enabling application developers to search for and download application programming interfaces (APIs), advertising, design and development of computer hardware and software; provision of online platforms for the sale and purchase of goods and services.
Class 38:	Data transmission; wireless communication services, including, wireless mobile telephone calling, electronic messaging and data transmission service plans; messaging services, including, sending, receiving and forwarding messages in the form of text, audio, graphic images or video or a combination of these formats; online messaging services; unified messaging services; computer aided

	transmission of messages and images; video conferencing services; video telephone services, teleconferencing services, voice over internet protocol (VOIP) services; paging services; providing telephone communication and internet telephony services; transmission, delivery and reception of sound, data and images; personal numbering services; provision of wireless electronic transmission of credit and debit card transaction data and wireless electronic savings and payment data via a global computer network; providing access to digital audio, video and data websites from a database, the internet, or other electronic network; streaming of audio and video material on the internet; telecommunication and communication database services, including enabling the consumer to download digital content from a network and server to an individual database; providing and leasing access time to computer databases, computer bulletin boards, computer networks and interactive computer communications networks; advisory, information and consultancy services relating to all the aforementioned.
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### Annex 3

Goods and services for which registration is accepted

The text in **bold** serves to indicate the telecommunications term which was partially accepted, as per my findings in 49.

Class 9:	Modems; magnetically encoded cards; smart cards; holograms; media for storing information, data, images and sound; blank and pre-recorded magnetic cards; cards containing microprocessors; integrated circuit cards; electronic identification cards; telephone cards; telephone credit cards; credit cards; debit cards; magnetic data carriers; satellite receiving and transmission apparatus and instruments; television apparatus and instruments; radio and television broadcasting transmitters and receivers; apparatus for access to broadcast or transmitted programmes; electronic and satellite navigational and positional apparatus and instruments, including global positioning systems; telephones; mobile telephones; cordless telephones; telephone accessories, including, telephone cords and batteries; electronic products, including, digital photograph receivers; telecommunication couplers; telecommunication modular plugs; transceivers; wireless transceivers; teleconferencing telephones; telephone answering machines; internet telephones; wireless telephones; earphones and antennae for cordless and wireless telephones; communication apparatus and instruments for wireless internet access and online streamlining; hands-free devices for car telephones and mobile telephones; in-car telephone handset cradles; mobile phone cases; parts and fittings included in class 09 for the aforementioned goods; scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; mechanisms for coin-operated apparatus; fire-extinguishing apparatus.
Class 35:	Advertising and promotion services; loyalty card services; organisation, operation and management of customer loyalty schemes; organisation, operation and supervision of sales and promotional incentive schemes; retail and wholesale services connected with electrical and electronic telecommunications and communications apparatus and instruments; retail and wholesale services connected with routers, modems, magnetically encoded cards, smart cards, holograms; retail and wholesale services connected with media for storing information, data, images and sound; retail and wholesale services connected with blank and pre-recorded magnetic cards, cards containing microprocessors, integrated circuit cards, electronic identification cards, telephone cards; retail and wholesale services connected with personal digital assistants; retail and wholesale services connected with satellite receiving and transmission apparatus and instruments, apparatus for downloading audio, video and data from the internet, television apparatus and instruments, radio and television broadcasting transmitters and receivers, apparatus for access to broadcast or transmitted programmes, programmed-data-carrying electronic circuits; retail and wholesale services connected with electronic and satellite navigational and positional apparatus and instruments, including global positioning systems; retail and wholesale services connected with telephones, mobile telephones, cordless telephones, telephone accessories, including, telephone cords and batteries; retail and wholesale services connected with electronic products, namely, digital photograph receivers; retail and wholesale services connected with telecommunication couplers, telecommunication modular plugs, transceivers, wireless transceivers, teleconferencing telephones, telephone answering

machines, internet telephones, wireless telephones, earphones and antennae for cordless and wireless telephones, communication apparatus and instruments for wireless internet access and online streamlining, hands-free devices for car telephones and mobile telephones, in-car telephone handset cradles; retail and wholesale services connected with mobile phone cases; retail and wholesale services connected with scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), lifesaving and teaching apparatus and instruments; retail and wholesale services connected with apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; retail, and wholesale services connected with mechanisms for coin-operated apparatus; retail and wholesale services connected with fire-extinguishing apparatus, franchising and merchandising services; the bringing together, for the benefit of others, of a variety of goods namely chemical products, unprocessed artificial resins, unprocessed plastics, manures, fire extinguishing compositions, tempering and soldering preparations, tanning substances, adhesives used in industry, paints, varnishes, lacquers, preservatives against rust and against deterioration of wood, colorants, mordants, raw natural resins, metals in foil and powder form for use in painting, decorating, printing and art, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, non-medicated soaps, perfumery, essential oils, non-medicated cosmetics, non-medicated hair lotions, nonmedicated dentifrices, industrial oils and greases, lubricants, dust absorbing, wetting and binding compositions, fuels (including motor spirit) and illuminants, candles and wicks for lighting, pharmaceutical products and dietetic substances for humans and animals, disinfectants, agricultural chemicals, metal goods namely metal hardware and containers for storage or transport, hand tools and implements, cutlery, side arms, razors, software, mobile telephones, smart phones and related accessories, modems, routers, telephone cards, telecommunication devices and related accessories, surgical, medical and veterinary apparatus and instruments, massage apparatus, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, apparatus for locomotion by land, air or water, firearms, ammunition, explosives and fireworks, jewellery, musical instruments, paper, printed matter, stationery, packaging, unprocessed and semi-processed rubber, gutta-percha, gum, asbestos, mica and substitutes for all these materials, plastics and resins in extruded form for use in manufacture, packing, stopping and insulating materials, flexible pipes, tubes and hoses, not of metal, leather and imitations of leather, luggage, bags, whips, harnesses, saddlery, collars, leashes and clothing for animals, building materials, furniture and home decor, non-metallic containers, household or kitchen utensils and containers, combs and sponges, brushes, articles for cleaning purposes, unworked or semi-worked glass, glassware, porcelain and earthenware, rope, string, nets, tents, tarpaulins, awnings of textile or synthetic materials, sails, sacks for the transport and storage of materials in bulk, padding, cushioning and stuffing materials, yarns, threads, textiles, clothing, footwear, headgear, lace, embroidery, ribbons, braid, buttons, hooks and eyes, pins, needles, artificial flowers, hair decorations, flooring, carpets, wall hangings, false hair, foodstuff, groceries, games, toys, gymnastic articles, sporting articles, decorations for Christmas trees, raw and unprocessed agricultural, aquacultural, horticultural and forestry products, raw and unprocessed grains and seeds, fresh fruits and vegetables, fresh herbs, natural plants and flowers, bulbs, seedlings and seeds for planting, live animals, foodstuffs and beverages for animals, malt, alcoholic beverages, non-alcoholic beverages, smokers' articles, tobacco and matches, enabling customers to conveniently compare and purchase those goods; The bringing together, for the benefit of others, of a variety of services namely business management, business administration, office functions, insurance, financial services, real estate services, building construction, repair and installation services, telecommunication services, transportation services,

	<p>packaging services, travel arrangement services, services relating to the treatment of materials, educational services, entertainment services, services relating to sporting and cultural activities, scientific and technological services and research and design relating thereto, industrial analysis and research services, services for providing food and drink, temporary accommodation services, medical services, veterinary services, hygienic and beauty care for human beings or animals, agriculture, horticulture and forestry services, legal services, security services for the physical protection of tangible property and individuals, personal and social services rendered by others to meet the needs of individuals, enabling customers to conveniently compare and purchase those services; arranging and conducting of exhibitions for business; arranging and conducting of exhibitions for business purposes; business management; business administration; business research; business strategy and planning services; information and advisory services; economic forecasting, marketing, market research, market analysis and survey services; publication of information; compilation of statistical information; provision of trade information; provision of directory services.</p>
<p>Class 38:</p>	<p>Telecommunication services; mobile, fixed, satellite, cellular, mobile and radio telecommunication services; <b>telecommunications services, including, mobile telephone services, voicemail, facsimile transmission, but excluding data transmission</b>; telephone telecommunications services provided via prepaid telephone calling card; providing prepaid minutes for use on mobile phones; telephone and mobile telephone message collection and transmission, radio-paging, call diversion, answerphone and electronic mail services for others; hire, leasing and rental of telecommunications, telephonic and communications apparatus and instruments; loan of replacement telecommunications and communications apparatus and instruments; provision of internet access services; telecommunications services for location and tracking of persons and objects; tracking of mobile telephone via satellite signals; provision of information relating to or identifying telecommunications and communications apparatus and instruments; provision of wireless application protocol services, including those utilizing a secure communications channel; provision of information relating to or identifying telecommunications and communications apparatus and instruments; broadcast or transmission of radio or television programmes; providing telecommunications connections to computer databases, the internet or other electronic networks; advisory, information and consultancy services relating to all the aforementioned.</p>