O/0286/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004032106
BY CONSTRUCT TECHNOLOGY PTE. LTD. TO REGISTER:

Litmatch

AS A TRADE MARK IN CLASSES 9, 38 & 45

AND

IN THE MATTER OF THE OPPOSITION THERETO
UNDER NO. 448613 BY
MATCH GROUP, LLC

BACKGROUND AND PLEADINGS

1. On 28 March 2024, CONSTRUCT TECHNOLOGY PTE. LTD. ("the applicant") applied to register the trade mark shown on the cover page of this decision in the UK ("the applicant's mark"). The applicant's mark was published on 12 April 2024 and registration is sought for the following goods and services:

Class 9: Computer operating programs, recorded; Computer software, recorded; Computer software applications, downloadable; Downloadable applications for use with mobile devices; Computer game software, downloadable; Downloadable music files; Downloadable image files; Computer programs for editing images, sound and video; Computer software for controlling the operation of audio and video devices; Downloadable e-wallets; Electronic publications, downloadable; Downloadable ring tones for mobile phones; Animated cartoons; Cinematographic film, exposed; Video game cartridges; Recording devices for sound and image carriers; Playing devices for sound and image carriers; Audio- and video-receivers; Combination video players and recorders; Electronic book readers; Smartphones; Eyeglasses; Navigational instruments; Camcorders; Portable media players; Projection apparatus; Audiovisual teaching apparatus; Video screens; Remote control apparatus; Anti-theft warning apparatus; Batteries, electric.

Class 38: Providing on-line chat rooms for social networking; Providing internet chatrooms; Providing instant messaging services; Computer aided transmission of messages and images; Message sending; Communications by computer terminals; Providing on-line forums for transmission of messages among computer users; Video-on-demand transmission; Videoconferencing services;

Streaming of data; News agency services for electronic transmission; **Broadcasting programs via a global computer network**; **Teleconferencing services**; **Providing access to databases**; **Transmission of digital files**; **Transmission of podcasts**; Voice mail services; Providing user access to global computer networks; Providing telecommunications connections to a global computer network; Telecommunications routing and junction services; Providing telecommunication channels for teleshopping services; Electronic bulletin board services [telecommunications services]; Providing information in the field of telecommunications; Communications by cellular phones; Radio broadcasting; Television broadcasting; Wireless broadcasting; Rental of message sending apparatus; Rental of modems; Satellite transmission; Rental of smartphones; Rental of telecommunication equipment.

Class 45: On-line social networking services; Dating services; Marriage counseling; Personal growth and motivation consultancy services; Licensing of computer software [legal services]; Legal services relating to the exploitation of broadcasting rights; *Copyright management*; Licensing [legal services] in the framework of software publishing; Alternative dispute resolution services; Licensing of intellectual property; Personal background investigations.

2. On 12 July 2024, the applicant's mark was opposed by Match Group, LLC ("the opponent"). The opposition is based on sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 ("the Act"). Under the section 5(2)(b) ground of opposition, the opponent relies on the following trade marks:

MATCH.COM

UK registration no. 916246639[1]

Filing date 13 January 2017; registration date 13 November 2019

Relying on all goods and services, namely:

Class 9: Downloadable software in the nature of a mobile application for internet-based dating and introduction; downloadable software in the nature of a mobile application in the field of social media, namely, for sending status updates to subscribers of web feeds, uploading and downloading electronic files to share with others.

Class 42: Providing a website featuring technology in the field of social media, namely, a website that enables users to send status updates to subscribers of web feeds, upload and download electronic files to share with others.

Class 45: Dating services; internet based social networking, introduction and dating services; administering personality and physical attractiveness testing and creating personality and physical attractiveness profiles of others.

("the opponent's first mark");

match

UK registration no. 3415177

Filing date 19 July 2019; registration date 11 October 2019

Relying on all goods and services, being identical to those of the first mark.

("the opponent's second mark"); and

[1] The opponent's first mark is a comparable mark based on an earlier EUTM. On 1 January 2021, in accordance with Article 54 of the Withdrawal Agreement between the UK and the European Union, the UK IPO created comparable UK trade marks for all right holders with existing EUTMs. These comparable marks enjoy the same filing and registration dates as their European counterparts.

UK registration no. 3638131

Filing date 7 May 2021; registration date 26 November 2021

Priority date: 4 May 2021 (USA)

Relying on some goods and services, namely:

Class 9: Downloadable software in the nature of a mobile application for internet-based dating and matchmaking; downloadable software in the nature of a mobile application in the field of social media, namely, for sending status updates to subscribers of web feeds, uploading and downloading electronic files to share with others; Downloadable software for enabling instant messaging; downloadable software for enabling social networking; downloadable software for accessing, sending, receiving, posting, and sharing images, audio, video, text, links, data, and information via the internet; downloadable software for use in communications between speakers of different languages by means of language translation and subtitling; Downloadable software for creating, producing, editing, manipulating, transmitting, uploading, downloading, and sharing electronic media, multimedia content, videos, movies, pictures, images, text, photos, user-generated content, audio content, and information via the Internet and other communications networks.

Class 38: Telecommunication services, namely, providing on-line chat rooms for the transmission of messages among users in the fields of current events, elections, public affairs, world affairs, national

affairs, local affairs, television programs, radio programs, movies, entertainment programming, media programming, podcasts, lectures, music and to engage in social networking; Providing on-line forums for transmission of real-time messages among computer users; Transmission of electronic media, multimedia content, videos, movies, pictures, images, text, photos, user-generated content, audio content, and information via the Internet and other communications networks; Providing interactive electronic voice messaging by means of the Internet; providing online voice messaging in the field of dating, friendships and social relationships via computer services; telecommunications services, namely, personal communication services; text messaging services; telecommunication services, namely, anonymous relay of voice and text messages; Instant messaging services; providing on-line chat rooms for social networking; video conferencing services for social networking; telecommunication services, namely, electronic transmission and delivery of images, audio, video, text, links, data, and information via the internet; Transmission of sound, video and information from web cams, video cameras or mobile phones, all featuring live or recorded materials.

Class 41: Provision of non-downloadable publications in the nature of articles in the fields of mobile application dating, internet-based dating, matchmaking, interpersonal relationships, social introduction and social networking; Entertainment services, namely, providing on-line non-downloadable interactive game software; Entertainment services, namely, providing temporary use of non-downloadable interactive game software for use with personal computers and mobile devices for the purpose of accessing online dating services; Provision of an online journal in

the nature of a blog featuring articles in the fields of mobile application dates, internet-based dating, matchmaking, interpersonal relationships, social introduction and social networking; Educational and entertainment services, namely, continuing programs about dating and relationships accessible by means of Internet streaming, video on demand, web-based applications, mobile phone applications, computer networks, and other forms of transmission media, namely, radio, television, satellite, audio and video; Entertainment services, namely, providing an online interactive database of videos and user generated content containing digital images, photos, text, graphics, music, audio, video lips, multimedia content, and visual and audio performances.

Class 42: Providing temporary use of non-downloadable software for use in posting, transmitting, retrieving, accessing, receiving, reviewing, sharing, organizing, searching and managing text, audio, data, visual and multimedia data, information and content; providing temporary use of non-downloadable software for online introduction, dating and social networking services; providing temporary use of non-downloadable software for use in soliciting feedback; providing temporary use of non-downloadable software that enables users to send status updates and to share content and electronic. files with others; providing temporary use of non-downloadable software for calculating, mapping, transmitting and reporting information relating to the location, movement, proximity, departure and arrival of individuals and objects via computers, mobile phones, wired and wireless communication devices and optical and electronic communications networks.

Class 45: Dating services; Computer dating services; Dating services provided via mobile applications; Dating services, namely, providing information in the field of dating via an on-line computer database featuring single people interested in meeting other single people; Internet-based social networking, social introduction, and dating services; Online social networking services.

("the opponent's third mark").

3. The opposition brought under the section 5(2)(b) ground is partial. The opponent relies on all three of its marks in the opposition against those goods and services that are underlined. In respect of the services in bold, the opponent only relies on its first and second marks in respect of the same. As for the italicised term in class 45, the opponent only relies on its third mark in opposition to the same. For the avoidance of doubt, those goods and services not underlined, italicised or in bold are not opposed under this ground.

4. In respect of the section 5(2)(b) claim, the opponent claims that the identical use of the word 'MATCH' across the parties' marks together with the identity and/or similarity of the goods and services at issue will result in a likelihood of confusion or a likelihood of association.

5. Turning to the section 5(3) ground, the opponent relies on its first and second marks only. This ground is aimed at all of the goods and services in the applicant's specification. Under this ground, the opponent claims that both of its marks enjoy a reputation for all of the goods and services for which they are registered. This, together with the similarity of the marks at issue means that the applicant's mark would bring the earlier marks to the minds of the relevant public. Therefore, the opponent's position is that use of the applicant's mark, without due cause, would take unfair advantage of the opponent's marks, or be detrimental to the reputation and/or distinctive character of the same.

6. Lastly, under the section 5(4)(a) ground, the opponent relies on two earlier unregistered rights. The first of which is the word 'match' and the second is identical to the second mark relied upon under the above grounds. It is claimed that both signs have been used throughout the UK since March 2015 in respect of the following services:

> "Provision of dating, social introduction and social networking services; mobile app for dating, social introduction and associated social networking; website for dating, social introduction and associated social networking."

7. As a result of this use, the opponent claims to have gained significant goodwill in the UK. The opponent's position is that use of the applicant's mark in respect of its goods and services would result in a clear misrepresentation that the contested goods and services are those of the opponent, which will inevitably lead to damage to the opponent's goodwill either by way of substandard goods/services or a diversion of revenue.

8. The applicant filed a counterstatement wherein it did make some concessions as to the goods and services at issue (which I will discuss further below) but, generally, it denied the claims against it.

9. The applicant is represented by Sipara Limited and the opponent is represented by Barker Brettell LLP. Only the opponent filed evidence. No hearing was requested and both parties filed written submissions in lieu of the same. This decision is taken after careful consideration of the papers.

10. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying

assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

EVIDENCE

11. The opponent's evidence was provided in the form of the witness statement of Céline Boudière dated 19 December 2024. Ms Boudière is the Chief Marketing Officer of Meetic, a position she has held since 9 September 2019. It is confirmed at the outset of her statement that Meetic is a wholly owned subsidiary of the opponent and, through intercompany agreements, it is exclusively licensed to use the marks relied upon in Europe and the UK. Ms Boudière's statement is accompanied by 12 exhibits, being CB1 to CB12, and was primarily adduced to prove that the opponent enjoys both a reputation and goodwill in the marks/signs relied upon. There is also evidence filed in which Ms Boudière provides previous decisions of this Tribunal (wherein the opponent was a party) and also seeks to prove that there exists some similarity between certain terms in the parties' specifications.

12. I do not intend to summarise the opponent's evidence in full here (or the parties' submissions, for that matter). However, I confirm that I have taken all filed documents into account and will summarise them to the extent that I deem necessary below.

DECISION

Section 5(2)(b): legislation and case law

13. Section 5(2)(b) of the Act reads as follows:

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

(a) […]

(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 or association with the earlier trade mark."

14. Section 5A of the Act states as follows:

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

15. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

"(6)(1) In this Act an "earlier trade mark" means –

[…]

(ab) a comparable trade mark (IR) or a trade mark registered pursuant to an application made under paragraph 28, 29 or 33 of Schedule 2B which has a valid claim to seniority of an earlier registered trade mark or protected international trade mark (UK) even where the earlier trade mark has been surrendered or its registration has expired.

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if

registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered."

16. Given their filing dates, the opponent's marks all qualify as earlier trade marks in accordance with section 6 of the Act. None of these marks completed their registration process more than five years prior to the filing date of the applicant's mark, meaning that the use provisions as set out in section 6A of the Act do not apply. The consequence of this is that the opponent may rely on all of the goods and services identified in its notice of opposition.

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

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

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

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

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

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

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

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

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

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

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

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

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

Comparison of goods and services

18. The applicant's goods and services are set out at paragraph 1 above. I remind myself that under the present ground, only those goods and services underlined, italicised or in bold are opposed. The opponent's goods and services are set out at paragraph 2 above.

19. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union ("CJEU") in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

> "Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary".

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

(a) The respective uses of the respective goods or services;

(b) The respective users of the respective goods or services;

(c) The physical nature of the goods or acts of service;

(d) The respective trade channels through which the goods or services reach the market;

(e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

21. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court stated that:

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

22. As set out above, the applicant has made some concessions as to the goods and services comparison. In its counterstatement, it accepted that certain goods and services in classes 9, 38[2] and 45 were identical. The structure of the counterstatement is that the applicant has discussed a comparison with the terms that sit within each of the opponent's marks separately. There is a significant degree of repetition throughout the counterstatement, but some terms in classes 9 and 38 were only mentioned in respect of a comparison with the opponent's third mark meaning that those comments are not applicable to the remaining marks of the opponent. My understanding of the applicant's position is as follows:

[2] This concession is in respect of a comparison between "video-on-demand transmission", "videoconferencing services", "teleconferencing services", "broadcasting programs via a global computer network", "transmission of podcasts", "radio broadcasting", "television broadcasting" and "wireless broadcasting" and the class 38 terms in the opponent's third mark. The difficulty with this concession is that the terms I have underlined are not subject to the opposition under the present ground insofar as it is reliant upon the opponent's third mark.

23. For the most part, the applicant did not set out which goods and services were accepted as being identical. However, it did discuss the following goods and services as being only similar or dissimilar (thereby implying anything not mentioned was conceded as being identical):

    a. "Computer operating programs, recorded" in class 9 is claimed to be, at best, similar to a low degree. In my view, this does not act as a concession that this term is similar to a low degree but that the applicant's primary view is that the goods are dissimilar but, if not, they are only similar to a low degree;
    b. "Computer programs for editing images, sound and video" and "computer software for controlling the operation of audio and video devices" are lowly similar to the goods in the opponent's third mark's specification;
    c. "Downloadable music files" and "downloadable images files" are dissimilar to the goods in the opponent's third mark's specification;[3] and
    d. "Marriage counselling" and "personal growth and motivation consultancy services" in class 45 are claimed as being dissimilar.

24. It is also noted that the counterstatement goes on to discuss other goods in class 9 but does so in support of a claim that they are dissimilar to the opponent's dating services in class 45 . This does not take away from the concession that such goods are identical to the opponent's class 9 goods.

25. My approach to the above concession is that I will take the lack of any direct denial in relation to the class 9 goods and the class 45 services as a concession that such goods/services are identical to those in the opponent's corresponding classes of goods and services. This means that the following goods and services are identical to those in the opponent's specifications.[4]

[3] In respect of these terms (and those at b. above), they were not mentioned in the discussions surrounding the first and second marks, implying that identity is accepted when compared to the terms in those marks' specifications.
[4] Where goods are italicised, the concession relates to the opponent's first and second marks only. Where services are underlined, the concession relates to the opponent's third mark only.

Class 9: Computer software, recorded; Computer software applications, downloadable; Downloadable applications for use with mobile devices; Computer game software, downloadable; *Downloadable music files; Downloadable image files; Computer programs for editing images, sound and video; Computer software for controlling the operation of audio and video devices*; Electronic publications, downloadable.

Class 38: Video-on-demand transmission; videoconferencing services; radio broadcasting; television broadcasting; wireless broadcasting.

Class 45: Dating services; On-line social networking services; Copyright management.

26. For the avoidance of doubt, I see no merit in conducting further comparisons between the italicised and underlined terms of the applicant and the goods/services in the other specifications of the opponent.[5] This is because the present ground aimed against such goods will proceed in any event. Instead, I will simply proceed to consider the remaining goods and services of the applicant that are not mentioned above.

Class 9

27. As set out above, the applicant states that "computer operating programs, recorded" is, at best, similar to a low degree with the opponent's goods. As above, this does not read as a concession that the goods are similar to a low degree but,

[5] For example, I do not intend to compare the underlined services with the goods/services in the opponent's first and second marks' specifications.

instead, an argument that the goods are actually dissimilar but if that is found not to be correct, then they are only similar to a low degree.

28. The basis for the applicant's position in respect of "computer operating programs, recorded" is that they are programs that support the basic function of an electronic device, such as Windows, macOS or Linux, for example. I agree that they are not identical because the opponent's software goods are all limited to cover social media, dating or messaging/communications so cannot, therefore, be said to cover operating systems. I appreciate that, at their base levels, they will be constructed of lines of code but if this were sufficient to give rise to a meaningful overlap in nature, then it would be a prominent point in favour of all software being similar, despite their purposes, which is not right. In the present assessment, the purposes clear differ, so too do their methods of use. As for trade channels, I have no reason to find that it is common in the trade for a producer of a dating or messaging app to create their own operating program or, for that matter, a provider of an operating software to create a dating app. The goods are not competitive nor are they complementary to the extent described in the case law.[6] Lastly, I accept that the user of the goods will overlap but this is on a somewhat general level given the broad user base for both goods. Taking all of this into account, I am of the view that the goods are dissimilar.

Class 38

Providing on-line chat rooms for social networking; Providing internet chatrooms; Providing instant messaging services; Computer aided transmission of messages and images; Message sending; Providing on-line forums for transmission of messages among computer users; Electronic bulletin board services [telecommunications services].

[6] While all software requires operating software on which to run, I do not consider that this means that consumers will believe that those goods are from the same undertaking. See *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06

29. The opponent's third mark is registered for the following terms:

> "Telecommunication services, namely, providing on-line chat rooms for the transmission of messages among users in the fields of current events, elections, public affairs, world affairs, national affairs, local affairs, television programs, radio programs, movies, entertainment programming, media programming, podcasts, lectures, music and to engage in social networking; Providing on-line forums for transmission of real-time messages among computer users; Transmission of electronic media, multimedia content, videos, movies, pictures, images, text, photos, user-generated content, audio content, and information via the Internet and other communications networks.".

30. These terms of the opponent are all sufficiently broad so as to cover the terms of the applicant in that they all provide on-line chat rooms, forums and cover various forms of online messages. These services are, therefore, identical under the principle outlined in *Meric*.

Providing telecommunications connections to a global computer network.

31. In my view, the provision of a telecommunication connection on a computer network is sufficiently broad as to cover any form of messaging service, be that via a chatroom, an on-line forum or even the transmission of electronic media. All of these forms of communication via telecommunications are a way of *connecting*. Therefore, I find that the above term is identical to the opponent's services I have listed at paragraph 29 above.

Communications by computer terminals; Streaming of data.

32. The above terms are either broad enough to cover the communication of data, or expressly cover it. It is my view that the first term listed above encompasses the opponent's term of "electronic transmission and delivery […] data […] via the internet" in its third mark's specification on the basis that it can cover communication of information other than data. As for the second term, I am of the view that the opponent's term encompasses this one due to the fact that 'electronic transmission' is broad enough to cover the streaming of data. As such, I find that these services are identical under the principle outlined in *Meric*.

Communications by cellular phones.

33. Upon the plain reading of the above term, I consider that it covers phone calls made over traditional cellular networks. The opponent's third mark's specification includes "telecommunications services, namely, personal communication services". In my view, a cellular phone is a form of personal communication and, therefore, I find that the applicant's term falls within the opponent's. Therefore, I consider that these services are identical under the principle outlined in *Meric*.

Providing user access to global computer networks; Providing telecommunications connections to a global computer network.

34. As far as I understand it, providing access to global networks is, essentially, allowing users to access the internet. In my view, the above terms cover "transmission of electronic media, multimedia content, videos, movies, pictures, images, text, photos, user-generated content, audio content, and information via the Internet and other communications networks" in the opponent's third mark's specification. I say this because the access or telecommunication services of the applicant will all likely cover the transmission of a wide variety of different forms of media. As a result, I find that these services are identical under the principle outlined in *Meric*. However, if I am wrong on this point and the services are not the

same, then they are similar to a high degree. I say this because the nature, method of use, purpose, trade channels and users for these services will all overlap.

Teleconferencing services; broadcasting programs via a global computer network; transmission of podcasts; providing access to databases; transmission of digital files.

35. The above services are those that are only targeted by the opponent's first and second marks. The best comparator in these marks' specifications is, in my view, the term of "providing a website featuring technology in the field of social media, namely, a website that enables users to send status updates to subscribers of web feeds, upload and download electronic files to share with others" in class 42. The opponent's term is not a telecommunication service and I see no obvious reason why there would be any material overlaps in nature, method of use or trade channels. In respect of the latter point, there is nothing before me to suggest that it is common in the trade for a social media provider (or dating service provider) to offer any of the above services. I appreciate that the above terms are sufficiently broad to cover social media. For example, a podcast to discuss social media platforms or access to social media databases. However, any overlap in respect of purpose is very limited as their core purposes all differ. In respect of user, there may be some overlap here but due to the broad nature of the userbase for such services, any overlap is fleeting. Taking all of this into account, I do not consider that these services are similar and neither are the above terms similar to any other goods or services in the opponent's first and second marks' specifications.

Class 45

Marriage counseling; Personal growth and motivation consultancy services.

36. It is noted that the opponent's evidence includes a reference to the fact that it offers dating advice, general relationship advice and guidance on a whole range of

subjects.[7] Firstly, I would not categorise such evidence as being 'marriage counselling' or 'consultancy services for personal growth and motivation'. Secondly, even if it did constitute such a service, the single use shown by the opponent itself does not point to such a practice being common in the trade. As such, I do not consider this means that there is an overlap in trade channels or a close association between the applicant's services and the goods/services of the opponent. On the contrary, I am of the view that no such overlap exists because, as far as I am aware, a dating service provider would not commonly offer the above services. In addition, I see no obvious reason why there would exist any overlaps in nature, method of use or purpose between the above services and any of the goods or services covered in the opponent's specifications. The services are not complementary or competitive with any of the opponent's goods or services. Lastly, I accept that the users of the above may also use the goods or services of the opponent in that someone who has previously gone through marriage counselling and is now single, may wish to use dating services. However, this alone is not sufficient to give rise a finding that they are similar to any degree. They are, therefore, dissimilar.

Conclusion of the goods and services comparison.

37. Under the present ground, a likelihood of confusion can only exist where there is at least some similarity between goods and services.[8] This means that as a result of my findings above, the present ground fails against the following services:

Class 9: Computer operating programs, recorded.

Class 38: Teleconferencing services; broadcasting programs via a global computer network; transmission of podcasts; providing access to databases; transmission of digital files.

[7] CB10
[8] *eSure Insurance v Direct Line Insurance,* [2008] ETMR 77 CA

Class 45: Marriage counseling; Personal growth and motivation consultancy services.

The average consumer and the nature of the purchasing act

38. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer,* Case C-342/97.

39. In *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

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

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

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

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

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

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

40. The opponent submits that the average consumer for the goods and services at issue will be members of the general public. I have no submissions on this point from the applicant. I agree that the average consumer consists of members of the general public, although given the nature of the goods and services that relate to dating, the average consumer will be over the age of 18.

41. The average consumer is likely to select the goods and services after viewing them on a website or via advertising on search engines, television or in print. Therefore, the selection process will primarily be visual with the aural component also playing a role via word of mouth recommendations. While I am of the view that the goods and services are likely to be mostly available online, I appreciate that there may also be instances wherein they are selected after visiting physical premises where they will be offered. In this scenario, the goods will likely be selected after seeing them on shelves or racks whereas the services will be shown on signage or leaflets. I am of the view that the visual element will still dominate this method of selection but, again, I do not discount an aural component playing a role by way of in-person consultations.

42. In respect of the level of attention paid, I find that this will vary. Downloadable apps for use on mobile phones, for example, will be selected with a lower degree of care. However, when selecting dating services for example, the average consumer will consider a range of factors such as the size of the userbase already signed up to the service, any potential match-making methods or algorithms used by the service provider, any promotional materials that points to the success rate of the services and testimonials from past users who found partners via that service. On the basis that the user of these services will be seeking them in the hopes that they result in a romantic relationship, I am of the view that the average consumer will pay a medium degree of attention in selecting the goods/services.

Comparison of the marks

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

44. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

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

46. The respective trade marks are shown below:

The opponent's marks	The applicant's mark
MATCH.COM (the opponent's first mark) match (the opponent's second mark) MatchGroup (the opponent's third mark)	Litmatch

47. I have submissions from both parties regarding the similarity of the marks. While these are noted, I do not intend to reproduce them here but, for the avoidance of doubt, can confirm that I have given them due consideration.

Overall impression

48. The applicant's mark is a word only mark consisting solely of 'Litmatch'. This will be understood as a conjoining of the two words 'Lit' and 'match'. There are no other

elements that contribute to the overall impression of the mark, which lies in the conjoined word itself.

49. The opponent's first mark is a word only mark, being 'MATCH.COM'. '.COM' will be seen simply as a reference to the domain name of the undertaking responsible for the mark. As such, I find that the word 'MATCH' will dominate the overall impression of the mark with '.COM' playing a much lesser role. The opponent's second mark is a figurative mark, featuring the word 'match' in a standard blue typeface on a white background. After the letter 'h', there is a small blue heart device. The overall impression of this mark lies in the word 'match,' with the device element playing a lesser role. Given the standard typeface and single colour used, the stylisation plays a negligible role. The opponent's third mark is also a figurative mark that consists of the word 'MatchGroup' presented in a standard purple/grey typeface. 'MatchGroup' will clearly be understood as being the conjoining of the words 'Match' and 'Group'. 'Group' will simply be viewed as an indicator that the undertaking responsible for the mark operates a 'Group' of companies. As such, it will carry very little weight from a trade mark perspective and plays a lesser role than 'Match'. Above the conjoined word is a device element that appears to be a stylised representation of the letters 'MG'. Above the letter 'M' are two dots which are presented in such a way that the 'M' looks as though its two people holding hands. While ordinarily consumers tend to be drawn to parts of marks that can be read, I cannot ignore the size and placement of the device element. Accordingly, the overall impression of this mark lies predominantly across the device and 'Match' equally, with 'Group' playing a lesser role.

Visual comparison

50. Visually, the applicant's mark and the opponent's first mark share the word 'MATCH'. They differ in the presence of 'Lit' at the beginning of the applicant's mark and '.COM' at the end of the opponent's. Despite the much lesser role of the '.COM' element, it will still act as a point of visual difference. While the beginnings of the

marks differ,[9] I cannot ignore the fact that they share use of the word 'MATCH', which is the longer element in each mark. Overall, I find that these marks are similar to a medium degree.

51. Turning to the comparison of the applicant's mark with the opponent's second mark, I note that these too contain the word 'MATCH'. The use of typeface or colour in the opponent's mark is not a point of difference between them because, as a word only mark, the opponent's mark is capable of being used in any standard typeface. The marks differ in the presence of the heart device in the opponent's mark and the word 'Lit' in the applicant's mark. While the heart plays a lesser role, it is still a point of visual difference. As was the case above, the difference between the verbal elements of the marks falling at the beginning of the applicant's mark is noted but I cannot ignore the shared use of 'MATCH'. Overall, I find that these marks are visually similar to between a medium and high degree.

52. In respect of the opponent's third mark, I note that this also shares the word 'MATCH'. It differs with the applicant's mark in the presence of the word 'Group' and the device element that sits prominently within the opponent's mark. Again, these marks differ in the presence of 'Lit' at the start of the applicant's mark. Given the size and role of the device element in the opponent's mark together with the additional points of difference, being 'Group' (despite it playing a lesser role) and 'Lit', I find that these marks are visually similar to between a low and medium degree.

Aural comparison

53. Despite '.COM' being a clear indicator of a domain name, I consider that it will still be pronounced (as DOT-COM). As such, the opponent's first mark consists of three syllables. The applicant's mark is two syllables and will be pronounced in the

[9] Being where consumers tend to focus, as per *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

ordinary way. The second syllable in the applicant's mark is identical to the first syllable in the opponent's mark. All other syllables differ entirely. Despite only one syllable being shared and that syllable sitting at different points within the respective marks, I find that these marks are aurally similar to a medium degree.

54. The opponent's second mark is just one syllable, being the word 'MATCH'. Bearing in mind that I found the above marks similar to a medium degree, the lack of any further point of difference in the opponent's mark means that these marks share a greater degree of similarity. While I do not consider that this extends to an outright high degree, I am of the view that it does render the marks aurally similar to between a medium and high degree.

55. While the device element in the opponent's third mark appears to be the letters 'MG', I do not consider that it will be pronounced. This means that this mark consists of two syllables stemming from 'MatchGroup', which will be pronounced in the ordinary way. While one syllable shorter than the opponent's first mark, I am of the view that the same finding reached in respect of that mark is applicable here. This is because whilst the marks are identical in one syllable, this is placed at different points in each mark and the additional syllable in each of them differs entirely. As such, I find that these marks are aurally similar to a medium degree.

Conceptual comparison

56. The applicant has made comments in its counterstatement that 'Lit' will be viewed in a number of ways. One of these is that it will be understood in colloquial terms to mean "very good, enjoyable or exciting". My initial reading of the word is that 'Lit' is the past participle of 'to light', i.e. set alight. However, in light of the applicant's comments, I accept that a significant proportion of consumers will understand it in the way it has suggested. Both meanings contribute to the overall conceptual impression of the applicant's mark as a whole. I say this because I find that consumers will understand that 'Litmatch' has a double meaning because on one

hand, it will be understood as a reference to a match that has been set aflame[10] but on the other, and in the context of the dating or social goods/services at issue, will allude to a romantic or social match being excellent or exciting.

57. The word 'MATCH' in the opponent's marks will be viewed as allusive to the purpose of the goods and services in that they aim to 'match' users with one another.[11] This will be the prominent concept of all of the opponent's marks. I say this for the following reasons:

a. '.COM' in the opponent's first mark will simply be viewed as a reference to the domain name used;
b. The heart device in the opponent's second mark reinforces the association with dating and relationships; and
c. The device in the opponent's third mark reinforces the meaning of 'MATCH' as it represents two people holding hands. Further, the word 'Group' will be viewed as a reference to the nature of the undertaking, in that it represents a 'Group' of companies.

58. Taking all of the above into account, I find that there is a degree of conceptual similarity between the marks due to the understanding that 'MATCH' in both parties' marks alludes to the idea of matchmaking. This applies even though the concept of 'MATCH' being a reference to dating goods/services only comes into play upon the understanding of the double meaning of the applicant's mark. That being said, the reference to 'Lit' being understood as something excellent or exciting is a point of difference. Further, the double meaning associated with the applicant's mark and *a match being lit* also acts as a point of difference. Overall, I

[10] The opponent's submissions argue that no evidence has been provided to show this. However, I am of the view that this is something that will be readily apparent to consumers and is a conclusion that I consider reasonable to make without evidence.
[11] I appreciate that such a finding would ordinarily weaken the prominence of this word within the marks. However, I am of the view that this is not the case here because the additional elements, namely '.COM' and 'Group' are banal references to a domain name and the nature of a business operation, respectively, and have very little impact from a trade mark perspective. As for the third mark, I confirm that I took this into account in reaching my finding that the device plays an equal role.

consider that the shared concept of 'MATCH' is such that it gives rise to a finding that the marks are conceptually similar to a medium degree.

Distinctive character of the opponent's mark

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

> "22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).
>
> 23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51)."

60. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive

character, such as invented words which have no allusive qualities. The distinctiveness of marks can be enhanced through use, and I note that the opponent has filed evidence of use. I will, therefore, consider whether the opponent's evidence is sufficient to give rise to a finding that the distinctiveness of the opponent's marks has been enhanced through use. Before doing so, I will consider the inherent position.

61. The opponent's first mark consists of the words 'MATCH.COM'. While I do not consider the word 'MATCH' to be directly descriptive of the goods and services at issue, it is heavily allusive. This is on the basis that it will be viewed as a reference to matchmaking goods/services that aim to *match* its users to one another. As for '.COM', this adds nothing material to the mark as it is simply a reference to the opponent's domain name. Overall, I am of the view that the opponent's first mark is low in inherent distinctiveness. I make the same finding in respect of the opponent's second mark as it is simply the word 'MATCH' in a standard typeface and single colour that is followed by a heart device. The heart device does little to alter this in that it reinforces the understanding that the undertaking aims to find the user romance. As for the opponent's third mark, plainly the word 'Match' in the opponent's third mark carries the same meaning as above. 'Group' does not add to this as it is a simple reference to the type of undertaking (a group of companies). However, the device element is rather unique and while it alludes to matchmaking services (in that it represents two people holding hands), I find that it increases the overall distinctiveness of this mark, but only to between a low and medium degree.[12]

62. I must now consider whether the distinctiveness of the marks has been enhanced through use. The relevant market for assessing this is the UK market. Ms Boudière's evidence is extensive and I see no reason to go into it in full detail here. I will, instead, discuss only the most salient points.

[12] While this may be the case, I remind myself that, in accordance with *Kurt Geiger v A-List Corporate Limited*, BL O-075-13, it is the distinctiveness of the common element that is key.

63. The evidence sets out that the opponent's services are available in the UK via uk.match.com and its own downloadable 'Match' app. Between 2016 and 2023, the opponent's UK-based website attracted a total of 2,912,266 visitors. These are confirmed as being monthly active users. In respect of the app, the evidence shows that between 2015 and 2023, it was downloaded in the UK 3,456,582 times.

64. There is an extensive amount of advertising evidence provided. I see no reason to discuss this in any detail, save to say that the opponent's second mark appears throughout. Further, press articles show reference to either the word 'Match', solus, or the 'Match.com' domain.[13] In respect of the opponent's actual UK advertising spend, this is provided and is broken down to cover the spend associated with various types of advertising the opponent undertakes. This includes TV, video on demand, radio, press, out of home and cinema advertising. In total, across all these different types of advertising, between 2016 and 2023, the opponent spent €34,832,000. While the figures are provided in euros, they clearly represent a significant expenditure.

65. In addition to the above, the opponent has provided evidence relating to its broader online advertising expenditure. This is not limited to the UK, but it is alleged that this clearly has an impact on the UK. It is broken down to cover the spend between 2015 and 2023 of the opponent advertising, affiliation, brand name match and sponsored link spend. Given the significant figures already discussed above and the fact that these figures are not specific to the UK, I see no merit in conducting a detailed calculation of the figures. Instead, I simply note that the figures appear to cover a spend in excess of €55 million.

66. In terms of subscription revenue, the evidence includes a breakdown of revenue accrued by Match UK between 2013 and 2023. This is as follows:

[13] CB5

Year	Revenue (£) (million)
2013	30
2014	30
2015	28
2016	29
2017	27
2018	23
2019	21
2020	21
2021	21
2022	19
2023	18

67. The evidence sets out that these figures are to be treated as being in excess of. As such, the above figures represent a total subscription revenue in excess of £267 million.

68. While there is additional evidence provided, I deem it unnecessary to summarise it here. This is because the evidence already discussed, being the download figures for the opponent's app, the website visiting figures, the advertising expenditure and subscription revenue, are all clearly significant and demonstrate a high level of use over a longstanding period of time. Plainly, the opponent operates a significant business operation for its dating services via its downloadable app and website.

69. With the above in mind, I have no doubt that the distinctive character of the first and second marks has been enhanced through use to a higher than medium (but

not outright high)[14] degree in relation to the goods and services that relate to dating. On this point, I do not consider that the evidence shows use in respect of broader social networking goods or services. Further, I do not consider that this finding applies to the opponent's third mark. On this point, I repeat what I have said above in that the opponent's evidence is extensive and if it wished to point me directly to use of the third mark, it should have done so. Therefore, the inherent position applies to the opponent's third mark.

70. In conclusion, I find that the distinctiveness of the opponent's first and second marks has been enhanced in respect of the following:

Class 9: Downloadable software in the nature of a mobile application for internet-based dating and introduction.

Class 45: Dating services; internet based social networking, introduction and dating services; administering personality and physical attractiveness testing and creating personality and physical attractiveness profiles of others.

Likelihood of confusion

71. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the

[14] I say this because the inherent position with respect of these marks is low so whilst the evidence may be significant, the lower inherent degree makes it difficult to warrant a finding that the enhanced level sits at an outright high degree.

interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier marks, the average consumer for the goods and services and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

72. I have found the goods and services at issue to be identical, with some services being similar to a high degree if that conclusion is incorrect. The average consumer base is formed of members of the general public who will select the goods and services via primarily visual means (though not discounting an aural component) whilst paying, for the most part, a medium degree of attention with some goods being selected at a lower degree. In respect of the similarity of the marks, I have found that the applicant's mark is:

a. Visually, aurally and conceptually similar to a medium degree with the opponent's first mark;
b. Visually and aurally similar to between a medium and high degree and conceptually similar to a medium degree with the opponent's second mark; and
c. Visually similar to between a low and medium degree and aurally and conceptually similar to a medium degree with the opponent's third mark.

73. Lastly, I found the opponent's first and second marks to be distinctive to a higher than medium (but not outright high) degree thanks to the use made of them. The opponent's third mark, however, does not benefit from an enhanced degree of distinctive character so it is, inherently, distinctive to between a low and medium degree.[15]

[15] In respect of the opponent's third mark, I remind myself that a weak distinctive character does not preclude a likelihood of confusion. See *L'Oréal SA v OHIM*, Case C-235/05 P

74. Taking all of the above into account, I am of the view that while the shared use of 'MATCH' across all marks will be noticed, none of the marks will be misremembered or inaccurately recalled for one another. I appreciate that '.COM' in the opponent's first mark, the heart and stylisation in its second and the word 'Group' in its third may be misremembered by consumers. However, I do not consider that the word 'Lit' in the applicant's mark will be. I say this because it sits at the beginning of the applicant's mark so is more likely to be noticed and, further, it creates a point of visual, aural and conceptual difference across the marks. For the avoidance of doubt, I find that this applies regardless of the higher than medium degree of distinctiveness that vests in the opponent's first and second marks. Consequently, I find that there exists no likelihood of direct confusion, even when the marks are viewed on identical goods or services.

75. I will now proceed to consider indirect confusion. In doing so, I remind myself of the case of *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, wherein Mr Iain Purvis Q.C., as the Appointed Person, explained that:

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

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

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ('26 RED TESCO' would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI' etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ('FAT FACE' to 'BRAT FACE' for example)".

76. While the above examples in *L.A. Sugar* are noted, they are not intended to be treated as an exhaustive list of the only instances whereby indirect confusion occurs.

77. Further, I note the case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, wherein Arnold LJ referred to the comments of James Mellor Q.C. (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at paragraph 16 that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

78. In considering the issue of indirect confusion, I appreciate that I have found that the opponent's first and second marks enjoy an enhanced degree of distinctiveness. However, I do not consider that this means that the use of 'MATCH' across all of the marks at issue is so strikingly distinctive that consumers would believe that only one undertaking would use it. Further, I do not consider that the addition of 'Lit' in the applicant's mark would be viewed as a logical indicator of a brand extension of the 'Match' brand. I say this because upon the initial reading of the mark, it will be understood as a reference to a match being lit aflame. In this scenario I see no reason why consumers would believe that 'MATCH' extended its brand in such a way. Of course, I accept that the applicant's marks may also be viewed with a double meaning indicating that the match being spoken of (being a romantic match between two people) is 'lit' i.e. excellent or exciting. However, I do not consider that this meaning would necessarily be something consumers would view as an indicator that 'MATCH' had expanded by creating a sub-brand focusing on matches that would be excellent or exciting. Lastly in respect of this point, I accept that '.COM' in the opponent's first mark, the stylisation of its second mark and the word 'Group' and the device in its third mark are all points that may be elements that point to a sub-brand or an alternative mark. However, as above, the addition of 'Lit' will not be. Consequently, I find that there exists no likelihood of indirect confusion, even on goods or services that are identical.

79. The present ground fails in its entirety and I will now proceed to consider the remaining grounds of opposition.

Section 5(3)

80. Section 5(3) of the Act states:

> "5(3) A trade mark which –

is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark."

81. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors,* Case 252/07, *Intel,* Case C-408/01, *Adidas-Salomon,* Case C-487/07, *L'Oreal v Bellure,* Case C-323/09, *Marks and Spencer v Interflora,* Case C383/12P, *Environmental Manufacturing LLP v OHIM.* The law appears to be as follows:

(a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Salomon*, paragraph 29 and Intel, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel*, paragraph 42

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; Intel, paragraph 68; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel*, paragraph 79.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel*, paragraphs 76 and 77 and *Environmental Manufacturing*, paragraph 34.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel*, paragraph 74.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV*, paragraph 40.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the holder of the mark in order to create and maintain the mark's image. This covers, in particular, cases

where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

82. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that the marks at issue are similar. Secondly, the opponent must show that its marks have achieved a level of knowledge/reputation amongst a significant part of the public throughout the relevant territory. Thirdly, it must be established that the level of reputation and the similarities between the parties' marks will cause the public to make a link between them. Finally, assuming the first three conditions have been met, section 5(3) requires that one or more of the pleaded types of damage will occur. It is unnecessary for the purposes of section 5(3) that the goods or services be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

83. I remind myself that the present ground is reliant upon the opponent's first and second marks only and is targeted at all of the goods and services applied for.

Reputation

84. I have conducted a brief summary of the opponent's evidence at paragraphs 63 to 70 above. I do not intend to repeat this evidence in full here but remind myself that it was sufficient to prove that the opponent's first and second mark enjoy an enhanced degree of distinctive character. Put simply, I find that the level of use (being over £267 million in subscription fees between 2013 and 2023 and around €34 million spent on advertising between 2016 and 2023) is sufficient to show that the opponent's first and second marks enjoy a strong reputation in respect of those same goods and services I have listed at paragraph 70 above.

Link

85. As noted above, my assessment of whether the public will make the required mental 'link' between the marks must take account of all relevant factors. The factors identified in *Intel* are:

The degree of similarity between the conflicting marks.

86. The applicant's mark is visually, aurally and conceptually similar to a medium degree with the opponent's first mark. Further, it is visually and aurally similar to between a medium and high degree and conceptually similar to a medium degree with the opponent's second mark.

The nature of the goods or services for which the conflicting marks are registered, or proposed to be registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public.

87. Where the reputed goods and services of the opponent formed the basis of my comparison under the section 5(2)(b) ground, those same findings apply here.[16] Further, I remind myself that there were some goods and services that I found dissimilar to the goods and services of the opponent's first and second marks. Those are as follows:

Class 9:	Computer operating programs, recorded.
Class 38:	Broadcasting programs via a global computer network; Teleconferencing services; Providing access to databases; Transmission of digital files; Transmission of podcasts.

[16] This also applies where the goods and services were treated as identical due to the concessions of the applicant.

Class 45: Marriage counseling; Personal growth and motivation consultancy services.

88. Even though the above services are dissimilar, the opposition against them under the present ground is not bound to fail because, as set out above, goods and services need not be similar for section 5(3) grounds to succeed. As such, I must now consider whether there remains a degree of closeness between them and the reputed goods and services of the opponent. Dealing with the class 9 goods and the class 38 services first, I am of the view that even if they can be said to be selected by members of the general public (the sole term in class 9 and teleconferencing services, for example), the context in which they will be selected is so far removed from the reputed goods and services of the opponent (which relate to online dating) that I just see no reason why there would exist a degree of closeness between them.

89. As for the class 45 services, I am of the view that these will be selected by members of the general public at large. The term “marriage counselling” will be selected in the context of relationships (albeit with a view to fixing them as opposed to starting them) so I do consider that there is a degree of closeness between this service and the reputed goods and services of the opponent. As for the term “personal growth and motivation consultancy services”, I see no reason why the context of such services would delve into relationships to the point that it shares a degree of closeness with the opponent’s reputed goods and services. As far as I am aware, personal motivation counselling is unlikely to cover the motivation to enter into a romantic relationship.

90. There was a range of class 38 services that were found to be identical to the class 38 services in the opponent’s third mark’s specification but were not compared to the goods or services in the opponent’s first and second marks’ specifications. For

reasons that will become obvious below, I will reproduce these in two different categories, being:

Category (i): Providing on-line chat rooms for social networking; Providing internet chatrooms; Providing instant messaging services; Computer aided transmission of messages and images; Message sending; Providing on-line forums for transmission of messages among computer users; Electronic bulletin board services [telecommunications services].

Category (ii): Video-on-demand transmission; Videoconferencing services; Streaming of data; Providing user access to global computer networks; Communications by cellular phones; Radio broadcasting; Television broadcasting; Wireless broadcasting; Providing telecommunications connections to a global computer network; Communications by computer terminals.

91. The services listed at category (i) either expressly relate to social networking (which can include networking for the purposes of dating) or are broad enough to cover the same. While their natures, methods of use and purposes differ from the opponent's reputed goods and services, I consider that there is an overlap in trade channels and user. Further, there is a degree of complementarity between the reputed goods and services and the category (i) services. I say this because I am of the view that the online chat rooms, messaging and forums are likely to be considered important to the provision of dating services, for example. The relationship between such services, in this context, will lead consumers into believing that they originate from the same undertaking. Overall, I consider that these factors are such that the reputed goods/services of the opponent are similar to a medium degree with the services listed in category (i) above.

92. As for the services in category (ii), I see no reason why these would overlap in nature, method of use, purpose or trade channels with the opponent's reputed goods and services. In respect of user, I am of the view that even if they were sought by members of the general public at large, the context of the services does not overlap into relationships or romance to the point that they would share any degree of closeness with the reputed goods or services of the opponent.

93. The remainder of the applicant's specification is as follows:

Class 9: Downloadable e-wallets; Downloadable ring tones for mobile phones; Animated cartoons; Cinematographic film, exposed; Video game cartridges; Recording devices for sound and image carriers; Playing devices for sound and image carriers; Audio- and video-receivers; Combination video players and recorders; Electronic book readers; Smartphones; Eyeglasses; Navigational instruments; Camcorders; Portable media players; Projection apparatus; Audiovisual teaching apparatus; Video screens; Remote control apparatus; Anti-theft warning apparatus; Batteries, electric.

Class 38: News agency services for electronic transmission; Voice mail services; Telecommunications routing and junction services; Providing telecommunication channels for teleshopping services; Satellite transmission; Providing information in the field of telecommunications; Rental of message sending apparatus; Rental of modems; Rental of smartphones; Rental of telecommunication equipment.

Class 45: Personal growth and motivation consultancy services; Licensing of computer software [legal services]; Legal services relating to the exploitation of broadcasting rights; Copyright management;

Licensing [legal services] in the framework of software publishing; Alternative dispute resolution services; Licensing of intellectual property; Personal background investigations.

94. I appreciate that some of the above goods and services will be selected by members of the public at large. However, they cover disparate terms such as electric batteries, eyeglasses, anti-theft warning apparatus, rental of modems or legal licensing services. I see no reason why these could be said to relate to the reputed goods or services of the opponent.[17] As a result, I find that the context of the above goods and services is simply too distant from the reputed goods and services of the opponent. Therefore, I do not consider that there exists a degree of closeness between the above goods and services and the reputed goods and services of the opponent.

The strength of the earlier mark's reputation

95. The opponent's marks enjoy a strong reputation.

The degree of the earlier mark's distinctive character, whether inherent or acquired through use

96. The inherent distinctiveness of the opponent's marks sits at a low level. However, due to the use made of them, I have found that this has been enhanced to a higher than medium (but not outright high) degree.

Whether there is a likelihood of confusion

97. I have found there to be no likelihood of confusion between the marks.

[17] For the avoidance of doubt, this applies to all of the services listed above.

Conclusion on link

98. I am now required to determine whether, in this particular case, the relevant public would bring the opponent's marks to mind when confronted with the applicant's mark, thereby creating the necessary link. Even though I have found there to be no likelihood of confusion, this does not preclude me from finding the necessary link between the marks. I am of the view that, when all of the above is taken into account, particularly the strength of the opponent's reputation and the similarities between the marks (particularly the shared use of the word 'MATCH'), use of the applicant's mark is liable to bring the opponent's marks to mind, thereby creating the necessary link between them. That being said, I only consider that this finding applies to those goods and services that have been found to be identical or similar to,[18] or have been found to share a degree of closeness with the opponent's reputed goods and services. On the basis that these goods and services either expressly cover relationships/dating or are broad enough to relate to the same, I consider that members of the relevant public will, upon selecting the following goods or services under the applicant's mark, be caused to wonder if the undertaking responsible for them is linked to the opponent:

Class 9: Computer software, recorded; Computer software applications, downloadable; Downloadable applications for use with mobile devices; Computer game software, downloadable; Downloadable music files; Downloadable image files; Computer programs for editing images, sound and video; Computer software for controlling the operation of audio and video devices; Electronic publications, downloadable.

Class 38: Providing on-line chat rooms for social networking; Providing internet chatrooms; Providing instant messaging services;

[18] Be that by way of a concession of the applicant or a finding under my section 5(2)(b) goods and services comparison.

Computer aided transmission of messages and images; Message sending; Providing on-line forums for transmission of messages among computer users; Electronic bulletin board services [telecommunications services];

Class 45: On-line social networking services; Dating services; Marriage counselling.

99. The above being said, I do not consider that the same finding applies to the following goods and services:

Class 9: Computer operating programs, recorded; Downloadable e-wallets; Downloadable ring tones for mobile phones; Animated cartoons; Cinematographic film, exposed; Video game cartridges; Recording devices for sound and image carriers; Playing devices for sound and image carriers; Audio- and video-receivers; Combination video players and recorders; Electronic book readers; Smartphones; Eyeglasses; Navigational instruments; Camcorders; Portable media players; Projection apparatus; Audiovisual teaching apparatus; Video screens; Remote control apparatus; Anti-theft warning apparatus; Batteries, electric.

Class 38: Video-on-demand transmission; Videoconferencing services; Streaming of data; Providing user access to global computer networks; Communications by cellular phones; Radio broadcasting; Television broadcasting; Wireless broadcasting; Providing telecommunications connections to a global computer network; Communications by computer terminals; News agency services for electronic transmission; Telecommunications routing and junction services; Providing telecommunication channels for teleshopping services; Satellite transmission; Providing

information in the field of telecommunications; Voice mail services; Rental of message sending apparatus; Rental of modems; Rental of smartphones; Rental of telecommunication equipment; Broadcasting programs via a global computer network; Teleconferencing services; Providing access to databases; Transmission of digital files; Transmission of podcasts.

Class 45: Licensing of computer software [legal services]; Legal services relating to the exploitation of broadcasting rights; Copyright management; Licensing [legal services] in the framework of software publishing; Alternative dispute resolution services; Licensing of intellectual property; Personal background investigations.

100. The above services cannot reasonably be said to cover goods or services related to dating or relationships and, as such, I see no reason why a member of the relevant public would, even if they were aware of the opponent's reputation, believe that the undertaking responsible for the above services is linked to the opponent. Again, the opponent's reputation relates solely to dating and relationship type goods and services so I see no reason why the consumer would believe the reputation in such goods and services would be linked to the applicant in the context of legal services, transmission services, glasses, animated cartoons or even computer operating software, to name just a few.

101. For the avoidance of doubt, I have given further consideration to some of the class 38 services, such as the transmission of podcasts, for example. While the topic of those podcasts could relate to dating or relationships, the actual service is for the transmission of the same, which will be sought by business users who will be selecting the services not with any regard to the topic of the podcast but with a view to the transmission of the same. Therefore, even in such scenarios, I do not

consider that there exists any link between such services. As a result, I find that the present ground fails for the goods and services listed at paragraph 99 above. The present ground, therefore, only proceeds in respect of those goods and services listed at paragraph 98 above.

Damage

102. The opponent has pleaded that use of the applicant's mark would take unfair advantage of the reputation of its marks, that it would, without due cause, prove to be detrimental to the reputation of the opponent and the distinctive character of the opponent's marks. I will deal with each head of damage in turn below.

Unfair Advantage

103. I bear in mind that unfair advantage has no effect on the consumers of the opponent's marks' goods and services. In *Jack Wills Limited v House of Fraser (Stores) Limited* [2014] EWHC 110 (Ch) Arnold J. considered the earlier case law and concluded that:

> "80. The arguments in the present case give rise to two questions with regard to taking unfair advantage. The first concerns the relevance of the defendant's intention. It is clear both from the wording of Article 5(2) of the Directive and Article 9(1)(c) of the Regulation and from the case law of the Court of Justice interpreting these provisions that this aspect of the legislation is directed at a particular form of unfair competition. It is also clear from the case law both of the Court of Justice and of the Court of Appeal that the defendant's conduct is most likely to be regarded as unfair where he intends to benefit from the reputation and goodwill of the trade mark. In my judgment, however, there is nothing in the case law to preclude the court from concluding in an appropriate case that the use of a sign the objective effect of which is to enable the defendant to benefit from the reputation and goodwill of the trade mark amounts

to unfair advantage even if it is not proved that the defendant subjectively intended to exploit that reputation and goodwill."

104. I have found above that the opponent has demonstrated that its marks have obtained a strong reputation for the goods and services listed at paragraph 70 above. This is, in my view, the sort of reputation that would result in the applicant benefiting from an enhanced level of recognition due to the link between the marks in the minds of the relevant public. In my view, the shared use of the word 'MATCH' (which carries a strong reputation) when used on goods or services where there is a degree of closeness with the goods and services in relation to which the opponent's marks enjoy a reputation, is sufficient to result in an unfair advantage being taken of the opponent's marks' reputation. The applicant, by using the word 'MATCH' on its goods and services would achieve instant familiarity in the eyes of average consumers, thereby securing a commercial advantage and benefitting from the opponent's reputation without paying financial compensation. Such commercial advantage would not exist but for the strong reputation of the opponent's marks. Therefore, I find it likely that the applicant's mark would take unfair advantage of the opponent's marks.

105. As damage is made out on the basis of unfair advantage, I do not consider it necessary to go on to consider the opponent's other heads of damage. I will now move to consider the opponent's 5(4)(a) ground.

Section 5(4)(a)

106. Section 5(4)(a) of the Act states as follows:

"5(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented -

a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

aa)…

b) …

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of "an earlier right" in relation to the trade mark".

107. Subsection (4A) of section 5 of the Act states:

"(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application."

108. I can deal with this ground briefly. Here, the opponent relies upon the sign 'match' and a sign identical to the second mark relied upon in the above grounds. The opponent claims that its goodwill has accrued from the use of these signs in respect of:

"Provision of dating, social introduction and social networking services; mobile app for dating, social introduction and associated social networking; website for dating, social introduction and associated social networking."

109. Even though the evidence summarised at paragraph 63 to 70 above concerns marks with different specifications from those relied upon here, it applies equally for the purpose of establishing goodwill. As such, I find that the high level of use discussed above is sufficient to find that there exists a strong level of protectable

goodwill in the opponent's business in respect of the goods and services relied upon.[19] I find that the opponent's signs are distinctive of and/or associated with that goodwill. That being said, despite the evidence being extensive enough to warrant a finding that the opponent's 'MATCH' operation is likely to be a household name,[20] I do not consider that a misrepresentation exists. My reasons follow.

110. Under the 5(2)(b) ground, I found there to be no likelihood of confusion between the parties' marks, even when viewed on identical goods and services. In assessing the present ground, I remind myself of the case of *Comic Enterprises Ltd v Twentieth Century Fox Film Corporation* [2016] EWCA Civ 41, wherein Kitchin LJ set out that it was doubtful whether the difference between the legal tests for likelihood of confusion and misrepresentation will (all other factors being equal) produce different outcomes. Because the opponent's signs are either identical or very highly similar to the marks relied upon under the section 5(2)(b) ground (with the first sign only differing from the first mark in the removal the '.COM' element), I am of the view that this principle applies here. As such, I find that there exists no misrepresentation under the present ground for the same reasons as set out at paragraphs 74 to 78 above. Without a finding of misrepresentation there can be no damage, meaning that this ground of opposition fails in its entirety.

CONCLUSION

111. The opposition succeeds in part under the section 5(3) ground only. The applicant's mark, subject to any successful appeal of my decision, is hereby refused for the goods and services listed at paragraph 98 above. However, it may, again subject to any successful appeal of my decision, proceed to registration for the goods and services listed at paragraph 99 above.

[19] Which I note are similar to the goods and services for which an enhanced degree of distinctiveness exists, being those set out at paragraph 70 above.
[20] Which, as set out by Millet LJ in *Harrods Limited v Harrodian School Limited* [1996] RPC 697 (CA) (himself citing Falconer J. in *Lego*), is a factor in proving misrepresentation in cases where there are no common fields of activity, being the case for some goods and services at issue here.

COSTS

112. I appreciate that the applicant's mark is permitted to proceed to registration for more terms than those for which it is refused. However, the degree of success in proceedings is not based on a mathematical equation that requires a calculation of the number of terms against which the opposition has succeeded/failed. I say this in the present case because I note, for example, that the opposition failed against a range of terms in class 45 of the applicant's specification. Five of those terms are alternately worded terms for legal licensing services that essentially cover the same service. In short, I do not consider it appropriate to simply tally these terms and attribute their survival as five points in favour of the applicant.

113. Instead, I am of the view that, on the balance of what I have said throughout my decision, the actual outcome of these proceedings is that both parties achieved roughly an equal degree of success. As a result, I do not consider it necessary to make a costs award in favour of either party. Therefore, I make no order as to costs.

Dated this 31st day of March 2026

A COOPER
For the Registrar