

O/0343/26

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 4060823
BY CIVICA SOFTWARE, S.L.
TO REGISTER THE FOLLOWING TRADE MARK:**



IN CLASSES 9, 35, 38, 41 AND 42

AND

**IN THE MATTER OF THE OPPOSITION THERETO
UNDER NO. 449783
BY LENOVO (SINGAPORE) PTE. LTD.**

BACKGROUND AND PLEADINGS

1. On 6 June 2024, CIVICA SOFTWARE, S.L. (“the applicant”) applied to register the trade mark shown on the cover page of this decision (“the contested mark”) in the UK. The application was published for opposition purposes on 21 June 2024, and registration is sought for goods and services in classes 9, 35, 38, 41 and 42.¹

2. On 23 September 2024, the application was opposed in full by Lenovo (Singapore) Pte. Ltd. (“the opponent”), on the basis of section 5(2)(b) of the Trade Marks Act 1994 (“the Act”),² and is reliant upon the following trade mark:

THINKAI

International Registration designating the UK under no. WO0000001792716

International Registration date: 4 January 2024

Date protection conferred in the UK: 22 August 2024

Priority date: 21 December 2023 (US)³

Relying on all goods and services in classes 9 and 42⁴

3. The opponent claims that the marks are visually, phonetically and conceptually highly similar, and that the goods and services at issue are identical, highly similar and/or complementary, resulting in a likelihood of confusion.

4. The applicant filed a counterstatement denying the ground of opposition.

5. The opponent’s mark qualifies as an earlier mark under section 6(1) of the Act. As it had not completed its registration procedure more than five years before the application date for the contested mark, it is not subject to the use provisions contained in section 6A of the Act.

¹ See goods and services comparison at paragraph [19].

² 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. See also Tribunal Practice Notice (“TPN”) 2/2020 End of Transition Period – impact on tribunal proceedings.

³ US 98325800.

⁴ See goods and services comparison at paragraph [19].

6. Neither party filed evidence in these proceedings. No hearing was requested though both parties filed written submissions in lieu of the same. This decision is taken following careful consideration of the papers.

7. The opponent is represented by HGF Limited; the applicant is represented by Laytons LLP.

DECISION

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

“5(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 of association with the earlier trade mark.”

9. 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.”

10. 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 Pairs 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. The average consumer is deemed to be reasonably well informed and reasonably circumspect and observant, but someone who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them they have kept in their mind, and whose attention varies according to the category of goods or services in question;

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

d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

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

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

g) a lesser degree of similarity between the goods or services may be offset by a 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

11. In *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, the Court of Justice of the European Union (“CJEU”) stated that:

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

12. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, the General Court (“GC”) stated that:

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

13. Additionally, the factors for assessing similarity between goods and services identified in *British Sugar Plc v James Robertson & Sons Limited* (“*Treat*”) [1996]

R.P.C. 281 include an assessment of the users and the channels of trade of the respective goods or services.

14. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the GC stated that “complementary” means:

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

15. For the purposes of considering the issue of similarity of goods and services, it is permissible to consider groups of terms collectively where appropriate: *Separode Trade Mark*, BL O-399-10.⁵

16. In the case of goods and services, the terms used should not be interpreted widely but confined to the core of the possible meanings attributable to the terms: *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1) [2024] UKSC 36*, at [365].

17. Pursuant to section 60A of the Act, I am mindful of the fact that the goods and services are not to be automatically regarded as being similar to each other on the ground that they appear in the same class, nor automatically regarded as dissimilar from each other on the ground that they appear in different classes.

18. I also note that in *Unicorn Studio Inc v Veronese* Case CH-2023-000214, Iain Purvis, KC, sitting as deputy High Court judge, stated that any finding of similarity (between goods and services) requires the exercise of common sense.

19. The competing goods and services are as follows:

⁵ Paragraph 5.

Applicant's goods and services

Class 9

Downloadable software; downloadable software applications; downloadable computer applications; software development tools; computers and computer peripherals.

Class 35

Product demonstration services; organization of exhibitions and trade fairs for commercial and promotional purposes; advice regarding the organization and management of commercial businesses; commercial management of product and service licences for third parties; retail services connected with the sale of software and applications.

Class 38

Services for access to databases on computer networks; services for access to telecommunication channels for tele-sales services; services for access to internet platforms; telecommunications access services; telematic communications and internet access; data streaming; audio streaming; streaming of audio and video material on the Internet; streaming of audio, visual and audiovisual material via a global computer network; provision of wireless application protocol services, including those using secure communication channels.

Class 41

Education and training services; organisation of symposia, congresses and training workshops; training provided online from a computer database, via the Internet or extranets; delivery of online training courses and seminars; provision of online learning manuals; organisation of events for cultural, recreational and sporting purposes.

Class 42

Scientific and technological services and related research and design services; computer software development services; advice and consultancy relating to computer network applications; software design services; design and development of computer hardware and software; conversion of data or documents from physical to electronic media; engineering services; mechanical research; remote control of

computer systems; scientific laboratory services; scientific research; software as a service [SaaS]; platform as a service [PaaS]; evaluations, estimates, research and reports in the scientific and technological field.

Opponent's goods and services

Class 9

Computers; laptop computers; notebook computers; portable computers; tablet computers; computer peripherals and accessories, namely, computer monitors, computer keyboards, computer keypads, computer stylus, computer mice, computer dock, and portable hard disk drives; camera; speakers; earphones; computer hardware and recorded computer operating system software sold as a unit.

Class 42

Computer and consumer electronic diagnostic services; computer programming services; providing consulting services and technical support services, namely, troubleshooting support in the nature of diagnosing server problems for computers, computer hardware, computer peripherals, servers, network equipment, computer software and consumer electronic devices, namely, handheld mobile digital electronic devices; computer software design services; computer software updating services; computer software maintenance services; computer platform development services; data conversion services for computer programs and software data; computer software consulting services; providing information about design and development of computer hardware and software; research, design, development, and on-premise implementation services relating to private network hardware solutions and software application services.

20. With regards to the similarity of the goods and services, both parties have provided comments in their submissions in lieu. Whilst I do not intend to discuss these here, I can confirm that I have given them due consideration in making the following comparisons.

Class 9 of the contested application

Computers and computer peripherals

21. The above contested goods are either identical, or are directly equivalent to goods in the opponent's specification, namely *computers; laptop computers; notebook computers; portable computers; tablet computers; computer peripherals and accessories, namely, computer monitors, computer keyboards, computer keypads, computer stylus, computer mice, computer dock, and portable hard disk drives*. Therefore, the competing goods are identical.

Downloadable software; downloadable software applications; downloadable computer applications

22. The above contested software and applications are all used to, inter alia, operate computers and execute specific tasks, as such, they play an important role in the function of computers. Consequently, computers are dependent on software for their operation. Accordingly, I find there to be a significant overlap between the above contested goods and the opponent's *computer hardware and recorded computer operating system software sold as a unit; computers; laptop computers; notebook computers; portable computers; tablet computers*. The goods at issue can be complementary and can coincide in end users and producers. Whilst, I acknowledge that the method of use and nature of the goods at issue are different, and that the places that the respective goods are purchased will sometimes differ on the basis that computers, for example are tangible goods that can be purchased in physical stores, whereas downloadable software and applications, for example, are intangible and will be purchased by downloading them online. Overall, I find that the competing goods are similar to at least a medium degree.

Software development tools

23. Broadly speaking, the above contested goods are specialised applications or platforms that assist developers, for example, in creating, testing and maintaining software efficiency, and therefore play an essential role in software

development/design. Accordingly, I find that the contested goods share a degree of similarity with the opponent's *computer software design services* in class 42. Although the nature of the goods and services is not the same, both the average consumer and the usual producers/providers of the goods and services may coincide. Furthermore, I find that there is a complementarity between the goods and services because they are important to each other and customers will likely believe that the responsibility for those goods/services lies with the same undertaking. Overall, I find that these goods and services are similar to between a low to medium degree.

Class 35 of the contested application

Product demonstration services; organization of exhibitions and trade fairs for commercial and promotional purposes; advice regarding the organization and management of commercial businesses; commercial management of product and service licences for third parties

24. Broadly speaking, the contested services are generally rendered by specialist companies with the aim of, for example, showcasing a product's features and benefits to potential customers; providing business advice regarding the organisation and management of commercial businesses; and the commercial management of product and service licences for third parties. I acknowledge that none of the contested services appear in the opponent's specification. The fact that the provision of the above services may involve an IT component is not enough to consider them similar to the opponent's goods in class 9 or its services in class 42. None of the above contested services have the same nature, intended purpose or methods of use as the opponent's goods or services. Further, the contested services and the opponent's goods and services will likely target different consumers via different commercial channels and will likely be produced or provided by different undertakings. In addition, they are neither in competition nor are they complementary. Accordingly, absent of any submissions from the opponent or a specific indication as to where the similarity lies, I find that the contested services are dissimilar to all of the opponent's goods and services in classes 9 and 42.

Retail services connected with the sale of software and applications

25. In *Oakley, Inc v OHIM*, Case T-116/06, at paragraphs 46-57, the General Court held that although retail services are different in nature, purpose and method of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore are similar to a degree.

26. I note that according to case law, the applicant's retail services and the opponent's goods and services in classes 9 and 42 are different in nature, purpose and methods of use. However, taking account of the guidance outlined above in *Oakley*, I do find a degree of similarity. The applicant's services are those that enable consumers to view and purchase goods, namely *software and applications*. Whilst I note that these standalone goods or the retail of such goods are not present in the opponent's specification, I do find that there exists a degree of similarity between the contested services and the opponent's *computers; laptop computers; notebook computers; portable computers* and *tablet computers*, in class 9, on the basis that the retail services of specific goods such as *software and applications* overlap with the opponent's various computer hardware goods, on the basis that there is a close connection between them on the market from a consumers' perspective and there will likely be a degree of complementarity between them. Furthermore, the goods and services may also be distributed through the same trade channels. Consumers are used to a variety of highly similar or similar goods being brought together and offered for sale in the same specialised shops or in the same sections of department stores, etc. As such, I consider there to be a low degree of similarity between the contested retail services and the opponent's *computers; laptop computers; notebook computers; portable computers* and *tablet computers*.

Class 38 of the contested application

Services for access to databases on computer networks; services for access to telecommunication channels for tele-sales services; services for access to internet platforms; telecommunications access services; telematic communications and internet access

27. The above contested services are types of *communication services* which allow users to access databases, computer networks, telecommunication channels, the internet and internet platforms, etc., in order to, inter alia, communicate with others via remote means. The opponent's *computers* are essential to such services on the basis that consumers will use *computers* in order to access the above contested services, therefore they are complementary. Whilst these goods and services have a different nature, they have a shared purpose and can coincide in distribution channels and users. As such, I find that a link exists. Therefore, I find that the goods and services at issue are similar to a low degree.

Data streaming; audio streaming; streaming of audio and video material on the Internet; streaming of audio, visual and audiovisual material via a global computer network

28. The contested services relate to various streaming services that take place over a computer network. Accordingly, in terms of these services consumers will likely use, amongst other things, computers to transmit and stream data, etc. As such, I find that a link exists between the opponent's *computers* and the contested services based on their complementary character. While their nature is different since goods are tangible and services are intangible, there could be an overlap in their purpose, and can coincide in end users. Therefore, I find the goods and services at issue are similar to a low degree.

Provision of wireless application protocol services, including those using secure communication channels

29. Broadly speaking, the contested wireless application protocol (WAP) services enable hand-held mobile devices to access the internet over wireless networks. WAP services rely on servers (WAP Gateways) to enable communication between mobile devices and web services. Whilst I note that these services are not present in the opponent's specification, I am of the view that they share a degree of similarity with the opponent's *providing consulting services and technical support services, namely, troubleshooting support in the nature of diagnosing server problems for [...] servers [...] and consumer electronic devices, namely, handheld mobile digital electronic*

devices, in class 42. In my view, the provision of the opponent's support services can be linked to the contested *provision of wireless application protocol services, including those using secure communication channels*. Accordingly, I consider that there is likely to be an overlap in users, providers and trade channels. Whilst I acknowledge that there are differences between the nature and method of use of the services, I find that they enjoy a symbiotic relationship. Further, I consider the services to be complementary to the extent that the average consumer could reasonably expect the same or economically linked undertakings to provide both services. Therefore, I consider that the respective services are similar to a low degree.

Class 41 of the contested application

Education and training services; organisation of symposia, congresses and training workshops; training provided online from a computer database, via the Internet or extranets; delivery of online training courses and seminars; provision of online learning manuals; organisation of events for cultural, recreational and sporting purposes

30. The contested class 41 services relate to inter alia, *education* and *training*. These services share no obvious similarity with the opponent's class 9 goods or class 42 services. The fact that the contested services may involve an IT component is not enough to consider these services similar to the opponent's goods and services. These services do not have the same nature, intended purpose or methods of use as the opponent's goods and services, and will target different consumers via different trade channels and will be produced or provided by different undertakings. Furthermore, they are neither in competition, nor are they complementary. Their natures, purposes and methods of use are different. They do not coincide in their producers or providers and do not share the same distribution channels and will target different end users. Accordingly, absent of any submissions from the opponent or an indication as to where the similarity lies, I find that the contested services are dissimilar to all the opponent's goods and services in classes 9 and 42.

Class 42 of the contested application

Scientific and technological services and related research and design services; Scientific research; evaluations, estimates, research and reports in the scientific and technological field

31. The above broad services could feasibly include services relating to information technology. As such, I find that they share a degree of similarity with the opponent's *computer programming services; computer software design services; computer platform development services; providing information about design and development of computer hardware and software; research, design, development, and on-premise implementation services relating to private network hardware solutions and software application services*. The services can coincide in purpose and would be offered to the same users via the same trade channels. Accordingly, I find the services at issue to be similar to between a low to medium degree.

Computer software development services; software design services; design and development of computer [...] software

32. Although worded slightly differently the above contested services have a direct equivalent to services in class 42 of the opponent's specification, namely *computer software design services*. Therefore, the services are identical.

Design and development of computer hardware [...]

33. Whilst I acknowledge that the contested services are not replicated in the opponent's specification, I am of the view that they are similar to the opponent's *providing information about design and development of computer hardware [...]*, on the basis that I consider that there is likely to be an overlap in users and trade channels. Whilst I acknowledge that there are differences between the purpose of the services, I find that they enjoy a symbiotic relationship. Further, I consider the services to be complementary in that there is such a close connection between them to the extent that the average consumer could reasonably expect the same or economically

linked undertakings to provide both services. Therefore, I consider that the respective services are similar to a medium degree.

Software as a service [SaaS]; platform as a service [PaaS]

34. I consider these services to be similar to the opponent's *computer software design services* and *computer platform development services* because the same businesses that offer access to software/platforms as a service may also be involved in the design and development of those technologies. Therefore, users will likely be the same. Furthermore, I consider that there will be some competition between the services at issue, because a user might choose to purchase ready-made software/platform as a service or engage the services of a business to create a bespoke package to meet their specific requirements. Accordingly, I consider the services to be similar to a medium degree.

Engineering services

35. The contested services are very broad and therefore will feasibly include computer software engineering services. Broadly speaking, software engineering services are concerned with inter alia, the design, development and maintenance of software. As such, I am of the view that as a broad term, the contested services encompass the opponent's *computer software design services*; *computer software updating services*; and *computer software maintenance services*. These services are therefore considered identical according to the principle set out in *Meric*. However, if I have been too generous in my analysis, then I find that the respective services are similar to a high degree, on the basis that the services will be aimed at the same users, and will coincide in purpose and channels of trade.

Advice and consultancy relating to computer network applications

36. Broadly speaking, computer network applications are software programs or services that allow computers to, inter alia, communicate over a network, for example via email and web browsing, etc. These services will be provided by specialists, such as IT specialists, who will provide advice regarding a wide range of computer-based

technology, such as providing technical support in regard to software products, networks and troubleshooting, etc. I consider there to be a clear overlap between the contested services and the opponent's broad services *providing consulting services and technical support services, namely, troubleshooting support in the nature of diagnosing server problems for computers, computer hardware, computer peripherals, servers, network equipment, computer software and consumer electronic devices, namely, handheld mobile digital electronic devices*, on the basis that as broad services, they could feasibly cover the contested services. Accordingly, I find that the competing services are identical in line with the principle set out in *Meric*. However, if my analysis is wrong, then I find that the respective services are similar to a high degree, on the basis that the services will likely be aimed at the same users and will coincide in purpose and channels of trade.

Conversion of data or documents from physical to electronic media

37. The above contested services are basically digitisation, i.e. the process of converting information from physical or analog formats into digital formats, in order for computers, for example, to store, process and transmit. I find that these services are closely related to the opponent's *data conversion services for computer programs and software data*, in class 42, on the basis that both services are concerned with turning data into a digital format. Whilst I acknowledge that there are differences between the exact purpose of the services, they may coincide in providers and distribution channels and may target the same end users. Accordingly, I find the services at issue to be similar to a medium degree.

Mechanical research

38. Broadly speaking, the contested services concern the systematic study of materials, structures, machines, and mechanical systems in order to understand their behaviour, improve performance, and innovate new technologies, etc. I find that these services do not have any direct points of contact with the opponent's goods or services. They differ in their nature and purpose, producers/providers, and channels of trade. Further, they are neither in competition nor are they complementary. Accordingly, in the absence of any evidence or submissions to the contrary, I am of

the view that the contested services are dissimilar to all of the opponent's goods and services in classes 9 and 42, on the basis that they share no direct similarities with the above contested services.

Remote control of computer systems

39. In general, the above services allow users to access, operate and manage a computer or network from a distant location using software and network connections, etc. In my opinion, the contested services have a different use to the services relied upon by the opponent, though I acknowledge that the users, for the most part, are likely to be shared, particularly in respect of the opponent's *computer software design services; computer software updating services; computer software maintenance services; and providing consulting services and technical support services, namely, troubleshooting support in the nature of diagnosing server problems for computers, computer hardware, computer peripherals, servers, network equipment, computer software and consumer electronic devices, namely, handheld mobile digital electronic devices*. Furthermore, whilst the nature of the services at issue are unlikely to be similar, they may occupy the same channels of trade and, though not necessarily competitive nor indispensable, the services may originate from a shared entity. Accordingly, I consider there to be a low degree of similarity.

Scientific laboratory services

40. Broadly speaking, the contested services involve professional testing and analysis which is conducted in a laboratory to, inter alia, study materials, substances, or biological samples and provide accurate information for research, healthcare, or quality control purposes, etc. I find that these services do not have any points of contact with the opponent's goods or services. They differ in their nature and purpose, producers/providers, and channels of trade. Further, they are neither in competition nor are they complementary. Accordingly, in the absence of any evidence or submissions from the opponent as to why it is felt that the contested services are similar to their own, I am of the view that the contested services are dissimilar to all of the opponent's goods and services in classes 9 and 42, on the basis that they share no direct similarities with the above contested services.

41. As some degree of similarity between goods and services is necessary to engage the test for likelihood of confusion, my findings above mean that the opposition aimed against those services I have found to be dissimilar will fail.⁶ For ease of reference, the opposition under section 5(2)(b) fails against the following services:

Class 35 Product demonstration services; organization of exhibitions and trade fairs for commercial and promotional purposes; advice regarding the organization and management of commercial businesses; commercial management of product and service licences for third parties.

Class 41 Education and training services; organisation of symposia, congresses and training workshops; training provided online from a computer database, via the Internet or extranets; delivery of online training courses and seminars; provision of online learning manuals; organisation of events for cultural, recreational and sporting purposes.

Class 42 Mechanical research; scientific laboratory services.

The average consumer and the nature of the purchasing act

42. 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 (see *Lloyd Schuhfabrik Meyer*, Case C-342/97).

43. 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:

⁶ *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

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

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

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

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

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

(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.

44. With regards to the average consumer, the opponent submits that:⁷

“The goods and services at issue in these proceedings consist of computer software and computer hardware goods as well as retail, programming, diagnostic and consultancy services relating thereto. Also at issue are business

⁷ Written submissions in lieu, dated 1 September 2025.

and promotional services, telecommunication services and education services. These goods and services are directed at both the public at large and professional users. The goods and services have a variety of price points, and the level of attention held by the average consumer is likely to vary from average to above average.”

45. In its submissions,⁸ the applicant submits:

“Due to the specialized nature of goods and/or services and the associated high degree of attention of the relevant public, likelihood of confusion might be ruled out (26/06/2008, T-79/07, *Polaris*, EU:T:2008:230, § 50-51).

It is respectfully submitted that the goods and services relevant to this opposition overall, namely computer software, computer hardware and the design and development of such products and associated services, due to their technical nature, are addressed to a sophisticated public. Therefore, the relevant consumer has a high degree of attention and is therefore more likely to identify otherwise minor differences between the signs.”

46. The average consumer for the goods and services may be either a member of the general public or a business/professional user. Whilst the goods and services will vary in price, the average consumer is likely to consider various factors. When selecting the goods, the average consumer will consider factors such as functionality, compatibility with existing systems and any particular features, etc. When selecting the services, the average consumer will consider factors such as customer service standards, reputation and technical expertise, etc. Consequently, I consider that at least a medium degree of attention will be paid during the purchasing process. However, I recognise that a higher level of attention may be paid, particularly for the services where, for example, a bespoke product is being developed.

47. The goods and services are likely to be purchased following perusal of signage on packaging, physical premises and in advertisements. Consequently, visual

⁸ Written submissions in lieu, dated 1 September 2025.

considerations will dominate the selection process. However, I do not discount an aural component to the purchase given that advice may be sought from retail assistants and word-of-mouth recommendations may be made.


Comparison of the marks

48. It is clear from *Sabel BV v. Puma AG* 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 them, bearing in mind their distinctive and dominant components. The CJEU stated in *Bimbo SA v OHIM*, that:

“34. [...] 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.”

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

50. The trade marks to be compared are as follows:

The opponent's mark	The applicant's mark
THINKAI	

51. With regards to the similarity of the marks, the opponent submits:⁹

“The Earlier Mark consists of two components, namely, the word “THINK” in combination with the acronym “AI”. The distinctiveness of the Earlier Mark lies in its combination of elements. The Earlier Mark is likely to be perceived as a conceptual unit and perceived as a whole by the average consumer.

The distinctiveness of the Contested Mark similarly lies in its combination of elements. Notably, the Contested Mark merely reorders the components contained in the Earlier Mark. The minimal stylisation of the Contested Mark does not affect the overall impression of the mark, as the average consumer is unlikely to rely on minor graphical differences when recalling or recognising the mark. Rather, the consumer is likely to simply perceive the mark as being a combination of the elements “AI” and “THINK”.”

52. In its submissions,¹⁰ the applicant submits:

“Although the Earlier Sign is composed of one word component, the relevant consumers, when perceiving a verbal sign, will break it down into elements that suggest a concrete meaning, or that resemble words that they already know (13/02/2007, T-256/04, RESPICUR / RESPICORT, EU:T:2007:46, § 57; 13/02/2008, T-146/06, ATURION / URION, EU:T:2008:33, § 58).

Therefore, the average consumer with the high degree of attention dictated by the nature of the relevant goods and services will recognize the Earlier Sign as being the combination of "THINK" and "AI".

"AI", the common abbreviation of "Artificial Intelligence", is a ubiquitous part of the world of computer software and hardware.

⁹ Written submissions in lieu, dated 1 September 2025.

¹⁰ Written submissions in lieu, dated 1 September 2025.

"THINK" is a highly common word in marketing slogans for goods and services deemed innovative or with advanced capabilities, as illustrated in the old Apple, Inc. campaign "Think Different".

[...]

While the Opposed Sign contains the identical THINK and AI word components, their different permutation as "AITHINK" (which clearly differs from normal English language use) and their stylisation both add a level of distinctiveness that the earlier Sign does not have and thus clearly differentiates both signs."

Overall impression

53. The opponent's word only mark comprises the word 'THINKAI', presented in a plain uppercase typeface. I find 'THINK' to be an identifiable word and 'AI' to be an identifiable acronym, and therefore, I am of the view that the opponent's mark will, by a significant proportion of average consumers, be perceived as two elements, namely 'THINK' and 'AI' conjoined. I reach this finding because it is well-established that although consumers normally perceive a mark as a whole and do not proceed to analyse its various details, when perceiving a verbal sign, they will likely break it down into elements which, for them, have a real meaning or which resemble words known to them.¹¹ There are no other elements in the mark to contribute to its overall impression, which resides in the combination of the two elements 'THINK' and 'AI', namely the mark as a whole.

54. The applicant's stylised 'aithink' mark is presented in a blue stylised lowercase font and is placed upon an off-white rectangular shaped background. The letters 'a' and 'i', 't' and 'h' and 'n' and 'k' are joined together in a cursive-like style. Although the space is omitted between 'ai' and 'think', I find 'ai' to be an identifiable acronym and 'think' to be an identifiable word, and therefore as previously found above, I find that the applicant's mark will, by a significant proportion of average consumers, be perceived as two separate elements, namely 'ai' and 'think' conjoined which are clearly

¹¹ See *Mundipharma v OHIM — Altana Pharma (RESPICUR)*, T-256/04 T-256/04, paragraph 57

distinguishable within the mark. It is my view that the most dominant and distinctive element of the mark lies in the combination of the conjoined acronym/word elements, 'aithink'. With regard to the stylisation in the mark and the rectangular shaped background, whilst not negligible, I find that these elements will have little impact on the consumer.

Visual comparison

55. Visually, the marks coincide in the letters 'THINKAI' and 'aithink', albeit the AI/ai element appears prior to the word 'THINK' in the earlier mark, whereas it appears after the word 'think' in the contested mark. I do not consider the distinction in letter case between the earlier mark and the contested mark to be a point of significant difference between them. The rectangle background and stylisation present in the contested mark is not replicated in the earlier mark, however, as previously stated, these elements will have little impact on the consumer. Furthermore, as the earlier mark is a word mark (i.e. it is not stylised), it can be used in any font, letter case or colour.¹² Accordingly, I find the competing marks to be visually similar to a very high degree.

Aural comparison

56. Aurally, the marks identically coincide in the word 'THINK'/'think' and the abbreviation 'AI'/'ai', albeit the AI/ai element appears prior to the word 'THINK' in the earlier mark, whereas it appears after the word 'think' in the contested mark. The background element in the contested mark will not be articulated. I am of the view that the earlier mark will likely be pronounced as 'THINK-A-I' or 'THINK-ARTIFICIAL-INTELLIGENCE', whereas the contested mark will likely be pronounced as 'a-i-think' or 'artificial-intelligence-think'. Therefore, I find the marks to be aurally similar to a very high degree.

¹² *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17 and *La Superquimica v EUIPO*, T-24/17

Conceptual comparison

57. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM* [2006] E.C.R.-I-643; [2006] E.T.M.R 29. The assessment must, therefore, be made from the point of view of the average consumer.

58. In my view, the ordinary English dictionary word 'THINK'/'think' present in both marks, will be an immediately recognisable word for the average consumer, meaning, inter alia, to consider or have in mind something. Accordingly, this element in the marks shares the same concept.

59. With regards to the letters A/a and I/i in the respective marks, whilst these letters will be recognised as the first and ninth letters of the English alphabet, as previously stated, I am of the view that they will likely be considered as a whole, namely as 'AI'/'ai' and as such, will be recognised by the average consumer as the acronym for 'artificial intelligence' being the branch of computer science that simulates human intelligence within machines, etc. Accordingly, bearing in mind the nature of the respective goods and services, I am of the view that this element in the marks will likely convey the same allusive concept.

60. The stylisation and background element in the contested mark do not add any additional conceptual meaning.

61. In my view, the prevailing concept of the elements 'THINK/think and AI/ai result in both marks evoking the same conceptual message, and that the order of the said elements in the respective marks, i.e. 'THINKAI' or 'aithink', does not take away from this shared concept.

Distinctive character of the opponent's mark

62. The distinctive character of a trade mark can be measured only, first, by reference to the goods or services in respect of which registration is sought and, second, by

reference to the way it is perceived by the relevant public. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, 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).”

63. 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 services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

64. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it. In its statement of grounds, the opponent states:

“The likelihood of confusion is heightened by the fact that the Opponent enjoys an enhanced degree of distinctive character in the earlier registration.”

65. However, in this regard it is noted that the opponent has not filed any evidence to support such a finding. Consequently, I have only the inherent position to consider.

66. With regards to the inherent distinctive character of the opponent's mark, the applicant comments that:¹³

“[...] the average consumer with the high degree of attention dictated by the nature of the relevant goods and services will recognize the Earlier Sign as being the combination of "THINK" and "AI". "AI", the common abbreviation of "Artificial Intelligence", is a ubiquitous part of the world of computer software and hardware. "THINK" is a highly common word in marketing slogans for goods and services deemed innovative or with advanced capabilities, as illustrated in the old Apple, Inc. campaign "Think Different". Therefore, it can reasonably be argued that "THINKAI" is very much a slogan applicable for most computing and technological products and thus has low distinctiveness.”

67. The earlier mark comprises the conjoined word and acronym 'THINK' and 'AI', namely 'THINKAI'. As previously discussed in the conceptual comparison, the average consumer will perceive the ordinary English dictionary word 'THINK' as meaning, inter alia, to consider or have in mind something, and 'AI', as being an acronym for artificial intelligence, meaning, inter alia, the branch of computer science that simulates human intelligence within machines, etc. Whilst not directly descriptive, bearing in mind the nature of the goods and services at issue, I find that the mark may play an allusive role in relation to certain characteristics of the goods and services, for example, that they have been produced with AI (artificial intelligence) in mind, etc. I am reminded that invented words usually have the highest degree of distinctive character, whereas words which are descriptive of the goods and services relied upon normally have the lowest. Accordingly, as I am of the view that the mark 'THINKAI' has an allusive nature in relation to the goods and services, overall, I find that the earlier mark has a low to medium degree of inherent distinctive character.

¹³ Written submissions in lieu, dated 1 September 2025.

Likelihood of confusion

68. 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 them and the goods and services being down to the responsible undertaking being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods and services and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier mark, 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 he has retained in his mind.

69. Earlier in the decision I found that:

- The goods and services vary from being identical to similar to a low degree (except where I have found them to be dissimilar).
- The average consumer for the goods and services at issue is a member of the general public or a professional/business user, who will pay at least a medium degree of attention during the purchasing process (although it may be higher in some instances).
- The purchasing process for the goods and services is predominantly visual, although I do not discount an aural component.
- The marks are visually and aurally similar to a very high degree, and conceptually identical.

- The earlier mark is inherently distinctive to between a low to medium degree. On this point, it is acknowledged that a weaker degree of distinctive character in an earlier mark does not preclude a finding of confusion.¹⁴

70. I am of the view that the differences between the marks are likely to be overlooked, and the marks are likely to be mistakenly recalled or misremembered as each other, particularly when factoring in the principle of imperfect recollection. As previously discussed in the conceptual comparison, in my view, the prevailing concept of the elements 'THINK/think and AI/ai result in both marks evoking the same conceptual message, and that the order of the said elements in the respective marks, i.e. 'THINKAI' or 'aithink', does not take away from this shared concept. Further, as has been established by case-law, the reverse order of the same verbal elements in two signs has no decisive impact on their overall visual comparison.¹⁵ Moreover, considering the marks two identical verbal elements, the relevant consumer could potentially have difficulties remembering their exact order.¹⁶ Whilst I bear in mind that some of the goods and services at issue are similar to only a low degree, I consider that the effect of the interdependency principle is such that there will still be confusion for these goods and services. Consequently, I find there to be a likelihood of direct confusion. This is so even bearing in mind the earlier mark's low to medium level of inherent distinctive character. In reaching this conclusion I note that a degree of caution is required before finding a likelihood of confusion on the basis of common elements which are either descriptive or are low in distinctive character,¹⁷ nevertheless, I maintain that there is a likelihood of direct confusion.

CONCLUSION

71. The opposition filed against the application has achieved partial success based on section 5(2)(b) of the Act. Accordingly, the applicant's mark is hereby, subject to any successful appeal of my decision, refused in respect of the following goods and services:

¹⁴ *L'Oréal SA v OHIM*, Case C-235/05 P.

¹⁵ *Kids Vits / VITS4KIDS*, T-484/08 [2009].

¹⁶ *Kids Vits / VITS4KIDS*, T-484/08 [2009].

¹⁷ *Nicoventures Holdings Limited v The London Vape Company Ltd* [2017] EWHC 3393 (Ch) and *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch).

- Class 9 Downloadable software; downloadable software applications; downloadable computer applications; software development tools; computers and computer peripherals.
- Class 35 Retail services connected with the sale of software and applications.
- Class 38 Services for access to databases on computer networks; services for access to telecommunication channels for tele-sales services; services for access to internet platforms; telecommunications access services; telematic communications and internet access; data streaming; audio streaming; streaming of audio and video material on the Internet; streaming of audio, visual and audiovisual material via a global computer network; provision of wireless application protocol services, including those using secure communication channels.
- Class 42 Scientific and technological services and related research and design services; computer software development services; advice and consultancy relating to computer network applications; software design services; design and development of computer hardware and software; engineering services; remote control of computer systems; scientific research; software as a service [SaaS]; platform as a service [PaaS]; evaluations, estimates, research and reports in the scientific and technological field; conversion of data or documents from physical to electronic media.

72. The services for which the opposition has failed are as follows:

- Class 35 Product demonstration services; organization of exhibitions and trade fairs for commercial and promotional purposes; advice regarding the organization and management of commercial businesses; commercial management of product and service licences for third parties.
- Class 41 Education and training services; organisation of symposia, congresses and training workshops; training provided online from a computer

database, via the Internet or extranets; delivery of online training courses and seminars; provision of online learning manuals; organisation of events for cultural, recreational and sporting purposes.

Class 42 Mechanical research; scientific laboratory services.

COSTS

73. The opponent has achieved a greater measure of success and is entitled to a contribution towards its costs, in line with the scale set out in Tribunal Practice Notice (TPN) 1/2023. In the circumstances, I award the opponent the sum of £650 as a contribution towards the costs of the proceedings. The sum is calculated as follows:

Official fee	£100
Preparing a notice of opposition and considering the applicant's counterstatement	£250
Preparing written submissions in lieu of a hearing	£300
Total:	£650

74. I therefore order CIVICA SOFTWARE, S.L. to pay Lenovo (Singapore) Pte. Ltd. the sum of £650. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 23rd day of April 2026

**Sam Congreve
For the Registrar**

