O/0384/26

TRADE MARKS ACT 1994

IN THE MATTER OF UK TRADE MARK APPLICATION NUMBER 4098649

BY

UPCREDIT LIMITED

TO REGISTER THE FOLLOWING TRADE MARK:

QMoney

IN CLASS 9, 35, 36 AND 42

AND

IN THE OPPOSITION THERETO

UNDER NUMBER 451342

BY ARQUIA BANK, S.A.

BACKGROUND & PLEADINGS

1. On 11 September 2024, UPCREDIT LIMITED ("the applicant") applied to register the trade mark shown on the cover page of this decision in the UK ("the contested mark"). The contested mark was published for opposition purposes in the Trade Marks Journal on 20 September 2024 in respect of the following goods and services:

Class 9: Downloadable computer software applications for smartphones; computer software, recorded; Data processing apparatus; electronic publications, downloadable; integrated circuit cards [smart cards]; computer software applications, downloadable; computers; computer hardware; Global Positioning System [GPS] apparatus; network communication devices.

Class 35: Advertising; online advertising on a computer network; providing business information via a website; providing business information; sales promotion for others; provision of an online marketplace for buyers and sellers of goods and services; updating and maintenance of data in computer databases; data search in computer files for others; systemization of information into computer databases; sponsorship search.

Class 36: Providing insurance information; Insurance brokerage; online banking; capital investment; loans [financing]; financial management; providing financial information via a website; real estate brokerage; surety services; charitable fund raising.

Class 42: Conducting technical project studies; research in the field of artificial intelligence technology; research and development of new products for others; updating of computer software; consultancy in the design and development of computer hardware; software as a service [SaaS]; development of computer platforms; cloud computing; computer software design; providing search engines for the internet.

2. On 13 December 2024, the contested mark was opposed by ARQUIA BANK, S.A. (“the opponent”). The opposition is brought under Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”).

3. The opponent relies upon the following mark (“the earlier mark”):

Trade mark number: UK00003995163Filing date: 22 December 2023
Date of publication: 12 January 2024

4. The opponent relies upon all of the services for which its earlier mark is protected, namely:

Class 36: Insurance services; banking; real estate affairs; financial management; administration of savings accounts; administration of funds and investments; pension fund administration services; financial analysis, consulting and advice; consultancy services relating to credit; pension consultancy; financial banking; currency trading; financial evaluation; financial research; facilitating and arranging financing; financial information; financial investment; financial sponsorship and patronage; innovation project funding; venture capital funding services to emerging and start-up companies; funding of studies (scholarships, grants) and training courses; providing educational scholarships; funding for training and research projects; arranging of funds for overseas aid projects; investment of funds for charitable purposes; financial grant services; philanthropic services concerning monetary donations; provision of grants for training and research; arranging of financing for humanitarian projects; financial sponsorship of cultural events; arranging of finance for sporting, cultural and entertainment projects; financial planning services; financial, monetary and banking services; financial database services; financial brokerage services; financial rating and credit reports; finance services; financial appraisal services;

financial and investment management of funds; monetary affairs; monetary transfer; savings scheme services; provision of information relating to stock broking; venture capital services; investment services; financial transfers and transactions, and payment services; electronic payment services; electronic management of transactions and payments through global computer networks; on-line bill payment services; financing of building projects; arranging finance for construction projects; financial planning services relating to building projects.

5. 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 –
(a) a registered trade mark or international trade mark (UK) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks.

6. The mark identified in paragraph 3 qualifies as an earlier trade mark under the above provisions. It is noted that the earlier mark had not been protected for more than five years at the date of the application for the contested mark and so, in accordance with section 6A of the Act, the mark is not subject to proof of use. Consequently, the opponent may rely on all of the services highlighted in paragraph 4 of this decision for the purpose of this opposition.

7. The opponent submits that the marks in issue are "highly similar" and that the goods and services are identical or similar. Consequently, the opponent submits that "there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier mark." The opponent therefore requests that the application be rejected in its entirety.

8. The applicant filed a counterstatement denying that the marks in issue are highly similar. Whilst the applicant appears to admit that there is identity or similarity between the parties' Class 36 services, it denies that the contested mark's class 9, 35 or 42 goods and services are similar to the earlier mark's services. In any

event, the applicant denies that there exists a likelihood of confusion or a likelihood of association between the marks in issue. The applicant therefore requests that the opposition should be dismissed in full and that an award of costs should be made in its favour.

9. The opponent is represented by Withers & Rogers LLP, and the applicant is represented by Boult Wade Tennant LLP. In this case, neither party filed evidence. No hearing was requested, and only the opponent filed written submissions in lieu of a hearing. This decision is therefore taken following a careful consideration of the papers that have been filed by the parties, which will not be summarised but will be referred to as and where appropriate during this decision.

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.

DECISION

Section 5(2)(b)

11. This opposition is based upon section 5(2)(b) of the Act which stipulates the following:

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

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

12. Section 5A of the Act stipulates that 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."

13. 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

14. The competing goods and services are as follows:

The opponent's goods	The applicant's goods
Class 36 Insurance services; banking; real estate affairs; financial management; administration of savings accounts; administration of funds and investments; pension fund administration services; financial analysis, consulting and advice; consultancy services relating to credit; pension consultancy; financial banking; currency trading; financial evaluation; financial research; facilitating and arranging financing; financial information; financial investment; financial sponsorship and patronage; innovation project funding; venture capital funding services to emerging and start-up companies; funding of studies (scholarships, grants) and training courses; providing educational scholarships; funding for training and research projects; arranging of funds for overseas aid projects; investment of funds for charitable purposes; financial grant services; philanthropic services concerning monetary donations; provision of grants for training and research; arranging of financing for humanitarian projects; financial	Class 9: Downloadable computer software applications for smartphones; computer software, recorded; Data processing apparatus; electronic publications, downloadable; integrated circuit cards [smart cards]; computer software applications, downloadable; computers; computer hardware; Global Positioning System [GPS] apparatus; network communication devices. Class 35: Advertising; online advertising on a computer network; providing business information via a website; providing business information; sales promotion for others; provision of an online marketplace for buyers and sellers of goods and services; updating and maintenance of data in computer databases; data search in computer files for others; systemization of information into computer databases; sponsorship search. Class 36: Providing insurance information; Insurance brokerage; online banking; capital investment; loans [financing]; financial management; providing financial information via a website; real

sponsorship of cultural events; arranging of finance for sporting, cultural and entertainment projects; financial planning services; financial, monetary and banking services; financial database services; financial brokerage services; financial rating and credit reports; finance services; financial appraisal services; financial and investment management of funds; monetary affairs; monetary transfer; savings scheme services; provision of information relating to stock broking; venture capital services; investment services; financial transfers and transactions, and payment services; electronic payment services; electronic management of transactions and payments through global computer networks; on-line bill payment services; financing of building projects; arranging finance for construction projects; financial planning services relating to building projects.	estate brokerage; surety services; charitable fund raising. <u>Class 42:</u> Conducting technical project studies; research in the field of artificial intelligence technology; research and development of new products for others; updating of computer software; consultancy in the design and development of computer hardware; software as a service [SaaS]; development of computer platforms; cloud computing; computer software design; providing search engines for the internet.

15. As a preliminary point, it should be noted that section 60A of the Act provides that goods and services are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification[1], or

[1] "Nice Classification" means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957.

dissimilar on the ground that they appear in different classes under the Nice Classification."

16. In *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc,*[2] the Court of Justice of the European Union ("CJEU") stated (at paragraph 23) that, when making the comparison, "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".

17. In *Kurt Hesse v OHIM*,[3] 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 Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM),*[4] the General Court stated that "complementary" means:

> "...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."

18. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case[5], for assessing similarity were:

    a. The uses of the respective goods and services;

    b. The users of the respective goods and services;

    c. The physical nature of the goods and services;

[2] Case C-39/97
[3] Case C-50/15 P
[4] Case T-325/06
[5] [1996] R.P.C. 281

d. The respective trade channels through which the goods and 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 and 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 in the same or different sectors.

19. In *Gérard Meric v Office for Harmonisation in the Internal Market*,[6] the General Court ("GC") confirmed that even if goods are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

"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."

20. As per the case of *Separode,*[7] I also bear in mind that it is permissible to group the goods and services together, for the purpose of comparison, where they are sufficiently comparable to be assessable in essentially the same way for the same reasons.

21. The applicant submits that its class 9, 35 and 42 goods and services are dissimilar to the opponent's services. As discussed above, the applicant denies

[6] Case T- 133/05
[7] BL O/399/10, Mr Geoffrey Hobbs QC, sitting as the Appointed Person

that all of the applicant's Class 36 services are identical to the opponent's services, but admits that "where there is not identity, there is similarity in so far as Class 36 of the Application is concerned". Whilst similarity or identity appear to have been admitted in respect of the class 36 services in issue, the applicant does not identify which of those services it considers to be identical, and which it considers to be similar, or the extent to which it considers them to be similar. Consequently, I will proceed to undertake an assessment of the level of similarity between these services in the usual manner.

22. The opponent also submits in general terms that its services are identical or similar to the opponent's goods and services but fails to identify the level of similarity between the compared goods and services. Save in respect of a few limited examples, the opponent also does not identify which of its own services it considers to be the closest comparator, or which of its terms should be compared to a specific term within the applicant's goods and services. In the circumstances, I consider that a reasonable approach would be for me to identify what I consider to be the closest terms and carry out the comparison on that basis.[8]

23. In *SkyKick UK Ltd & Anor v Sky Ltd & Ors*,[9] Lord Kitchin set out the proper approach to considering terms in specifications, and I bear this in mind during my goods and services comparison:

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

[8] On this point, I also refer to the case of MontyPay (BL O/0924/24)
[9] (*Rev1)* [2024] UKSC 36

fairness because any ambiguity is the responsibility of the owner of the mark. If despite this, the words used are still unclear so that they cannot be interpreted, then it is permissible to disregard them. But, in my opinion, that will rarely be the case."

Class 9

Downloadable computer software applications for smartphones; computer software, recorded; Data processing apparatus; integrated circuit cards [smart cards]; computer software applications, downloadable.

24. The opponent submits that all of the applicant's above referenced goods are similar to all of the opponent's class 36 services on the basis that consumers might reasonably expect these goods to come from the same source since the applicant's class 9 goods "are not limited away from the financial and insurance services sector".

25. In comparing goods with services (as we have here) there is, of course, a difference between the nature of a good and the nature of a service, which also affects the method of use comparison. In this instance, the nature of the applicant's aforementioned goods and the services offered by the opponent clearly differ, as does their method of use.

26. Goods and services can also be complementary, share channels of trade or be in competition with one another, and this point was established by the GC in *Oakley, Inc v OHIM*.[10]

27. I note that the opponent's specification contains "financial, monetary and banking services", and that all of the applicant's above referenced goods are goods that are frequently utilised and are important to the provision of financial, monetary and banking services, for example, banks require bespoke banking applications/software, data processing apparatus (such as smart card readers) and smart cards (such as debit or credit cards) to facilitate banking transactions.

[10] Case T-116/06, at paragraphs 46-57

28. In that regard, I also note the comments of Thomas Mitcheson KC, sitting as the Appointed Person, in *MSF Africa*,[11] in which he stated the following:

> "19. […] As I have noted above, it is clearly the case that financial services can and often are provided using computer software, often of a bespoke nature. This seems to me to be a classic example of complementary goods and services whereby the nature of the software plays an integral and important part in the delivery of the financial service […]
>
> 20. […] I can understand why a consumer may expect there to be some sort of similar link between the provider of platforms to enable or support financial services and the provider of the underlying financial services."

29. It is my view that the same reasoning will apply to a comparison of the applicant's above referenced goods and the opponent's financial, monetary and banking services. As discussed above, I consider them to be important/indispensable from one another, and that consumers may, for example, expect responsibility for the banking software/smart cards/card readers to derive from the same undertaking that provides the banking services (i.e., the banks). Without any evidence to the contrary being provided by the parties, I therefore consider the applicant's above referenced goods to be complementary to the opponent's financial, monetary and banking services. Having said that, whilst the applicant's goods are integral to the provision of financial, monetary and banking services, they are not sold independently from those services. The undertakings providing the financial, monetary and banking services are not normally engaged in the provision or development of highly specialised banking applications/software, data processing apparatus and smart cards. Rather, it is probable that the provision of the applicant's goods would be outsourced to a specialised IT company. The goods and services will be provided by different undertakings who have expertise in completely different areas. I do not therefore consider there to be an overlap in trade channels. However, I do consider there to be an overlap

[11] BL/O/531/22

in general purpose (i.e. to facilitate banking transactions) and general user (being members of the general public). Overall, I consider the above goods to be similar to the opponent's financial, monetary and banking services to at least a low degree.

Computers; computer hardware; network communication devices

30. It is my view that the position differs for the applicant's above referenced goods to those discussed at paragraphs 24 to 29 above. Whilst the applicant's above referenced goods may be utilised in the provision of the opponent's class 36 services, I do not consider that consumers would believe that responsibility for these goods derives from the same undertaking as the opponent's services. Consequently, I do not consider these goods to be complementary to the opponent's class 36 services, nor have I been provided with any evidence to support such a finding.

31. Beyond appearing to suggest that they are complementary (which I do not accept), the opponent has failed to advance any specific argument as to why I should find the applicant's above referenced goods to be similar to the opponent's class 36 services.

32. By virtue of this being a comparison of goods and services, they clearly differ in nature and method of use. I am also not satisfied that the respective goods and services can be said to reach the market through the same trade channels (with the applicant's goods being sold by IT retailers, and the opponent's services being provided by financial and insurance institutions). These goods and services also differ in specific purpose, and I can see no basis for finding that the average consumer would purchase the applicant's above referenced goods in the place of the opponent's services. They are, therefore, not competitive. Whilst I do accept that there is a general overlap in user, being members of the general public, I do not consider this to be a sufficient basis for reaching a finding of similarity, and I am conscious of the judgment of Iain Purvis KC in *Unicorn Studio Inc v Veronese* in which he stipulated that "any finding of similarity in the end requires the exercise of common sense and requires the hearing officer to stand

back and consider the overall question" rather than by engaging "in a box-ticking exercise, asking how many of the factors identified in *TREAT* or in *Canon* could be said to have been satisfied".[12] Consequently, I consider the applicant's above referenced goods to be dissimilar to the opponent's class 36 services.

Electronic publications, downloadable; Global Positioning System [GPS] apparatus.

33. For the same reasons outlined in paragraphs 30 to 32 above, I also consider the above referenced goods to be dissimilar. Whilst the applicant's above referenced goods may be utilised in the provision of the opponent's class 36 services, I do not consider these to be important to or indispensable from the opponent's class 36 services. I do not therefore consider these goods to be complementary to the opponent's class 36 services, nor have I been provided with any evidence to support such a finding.

34. By virtue of this being a comparison of goods and services, they clearly differ in nature and method of use. I also consider these goods and services to differ in trade channels and specific purpose, and can see no basis for finding them to be competitive. Whilst I do accept that there is a general overlap in user, being members of the general public, for the same reasons outlined in paragraph 32 above, I do not consider this to be a sufficient basis for reaching a finding of similarity. Consequently, I consider the applicant's above referenced goods to be dissimilar to the opponent's class 36 services.

Class 35

Advertising; online advertising on a computer network; sales promotion for others; provision of an online marketplace for buyers and sellers of goods and services;

35. The applicant's above referenced services are all types of advertising/promotional services. These services differ in nature, method of use and purpose to the opponent's class 36 services. The purpose of the applicant's

[12] [2024] EWHC 1098 (Ch) - paragraph 24

above referenced services is to increase awareness or sales of products/services, whereas the purpose of the opponent's class 36 services is to provide financial solutions, security, credit or risk coverage. Consequently, I can see no basis for finding these goods to be competitive as you would not choose the applicant's above referenced services in place of any of the opponent's class 36 services, nor have I been provided with any evidence or submissions to reach such a finding. I also do not consider these services to be complementary. Whilst financial institutions/insurance companies will advertise their services, the advertising of these services is, in my view, ancillary and optional. I do not therefore consider the applicant's above referenced advertising/promotional services to be important to or indispensable for the provision of the opponent's class 36 financial or insurance services.

36. I also do not consider there to be an overlap in trade channels. Whilst a company may advertise their own services, they are not providing advertising services to third parties. The applicant's above referenced services are typically provided by marketing agencies or advertising professionals, whereas the opponent's class 36 services are provided by banks, insurers, and other financial institutions. Whilst I do accept that there will be a general overlap in user, being business consumers, for the same reasons outlined in paragraph 32 above, I do not consider this alone to be a sufficient basis for reaching a finding of similarity between these services. Accordingly, I find these services to be dissimilar.

Providing business information via a website; providing business information.

37. Whilst the opponent has submitted generally that the applicant's class 35 services are similar or identical to its class 36 services, it has failed to provide any specific basis for this submission.

38. I consider the closest comparator to the applicant's above referenced services in the opponent's specification to be "financial information". I consider there to be an overlap in purpose between these services (i.e., to inform and support commercial decision-making), albeit the opponent's above referenced services have a narrower focus, that being financial. In that regard, whilst I do consider

that business information is likely to include financial information, given the broader scope of business information, I do not consider that you would utilise one in the place of the other. I do not therefore consider these services to be competitive. Having said that, I do consider there to be some overlap in trade channels as there will be undertakings that provide business information, including financial information relating to those businesses. I do also consider there to be a level of complementarity between these services, as financial information will be important to the provision of business information, and consumers would believe that the undertaking providing the business information would be responsible for the financial information contained within.

39. Further, I consider that there will be an overlap in method of use as the manner in which the information would be generated, compiled and delivered is likely to be similar, with both types of services usually being provided by way of reports or databases. There will also be an overlap in users of these services (for example, businesses, professionals or investors). Noting all of the above, I do consider there to be a medium level of similarity between these services.

Updating and maintenance of data in computer databases; data search in computer files for others; systemization of information into computer databases.

40. I compare the applicant's above referenced services with the opponent's "financial database services". I consider there to be some overlap in nature as all of these services are administrative data-handling services. However, the opponent's services are concerned with the administration of financial data specifically. There is also some overlap in general purpose, namely, to organise and manage data systems, albeit the specific purpose of the opponent's financial database services will be to provide access to financial information for financial analysis, monitoring, or decision-making.

41. I do accept that there may be some general overlap in the users of these compared services. However, without evidence to the contrary being provided by the parties, I see no basis for finding there to be an overlap in trade channels (as, in my view, the applicant's above referenced services would be provided by

IT or data processing/business support providers, and the opponent's compared services would be provided by finance companies/institutes). I am also not satisfied that consumers would believe that responsibility for the services originate from the same undertaking. I do not therefore consider these services to be complementary, and I can see no basis for finding these services to be competitive.

42. Noting all of the above, I find these services to be similar to only a low degree.

Sponsorship search.

43. The opponent submits that the applicant's sponsorship search services are identical to the opponent's financial sponsorship and patronage services. However, as a preliminary point, it should be noted that Class 35 expressly excludes "financial services, for example, financial analysis, financial management, financial sponsorship", and class 36 expressly excludes "sponsorship search". Accordingly, I do not consider these services to be identical. By virtue of their classification, it appears to me that the applicant's sponsorship search services are limited to the locating, negotiating and securing of sponsors (namely, the administrative, business and marketing side of locating sponsors), whereas the opponent's financial sponsorship and patronage services are limited to the actual provision of sponsorship funding.

44. Noting the above, I consider these compared services to differ in nature and primary purpose. Consequently, I can see no basis for finding that you would utilise the opponent's financial sponsorship and patronage services in the place of the applicant's sponsorship search services. These compared services also differ in trade channels with the opponent's financial sponsorship and patronage services being provided by financial institutions, corporate sponsors or investment/funding entities, and the applicant's sponsorship search services being provided by, for example, marketing agencies, advertising agencies or business consultants.

45. Whilst I do consider these services to be important to one another, I do not consider that consumers would believe that responsibility for the financial sponsorship and patronage services (i.e., the provision of the sponsorship funding) lies with the same undertaking providing the sponsorship search (i.e., the undertaking matching the sponsors). Accordingly, without evidence to the contrary being submitted by the parties, I do not consider these services to be complementary.

46. Having said that, I do accept that there is an overlap in consumers (namely, business, organisations or individuals seeking sponsorship). However, I do not consider this alone to be sufficient to reach a finding of similarity, and I am, once again, conscious of the comments of Iain Purvis KC in *Unicorn Studio Inc v Veronese* outlined in paragraph 32 above. Consequently, I consider these services to be dissimilar.

CLASS 36

Financial Management

47. The term "financial management" is contained in both parties' specification and is self-evidently identical.

Providing insurance information; Insurance brokerage

48. I note that both of the applicant's above referenced services are identified in their name as types of insurance services. Consequently, I consider that they would both fall within the opponent's broad term "insurance services", and that they are therefore identical in line with the principle established in *Meric.*

Online banking

49. I consider that the applicant's above referenced term would fall within the opponent's broad term "financial banking", and that these services are therefore identical in line with the principle established in *Meric.*

Capital investment

50. I find that the applicant's capital investment services fall within the opponent's broader term "investment services", and that they are therefore identical in line with the principle established in *Meric.*

Providing Financial Information via a website

51. The applicant's above referenced service is limited to the provision of financial information via a website. The opponent's specification contains the term "financial information", which I consider to be a wider term which would encompass the applicant's above referenced service. Accordingly, I find these services to be identical in line with the principle established in *Meric.*

Real Estate Brokerage

52. I compare the applicant's real estate brokerage services with the opponent's term "real estate affairs". I consider real estate affairs to be a broad term which would encompass all aspects of real estate management, including the buying, selling and renting of properties, and the investment and financial aspect of real estate management. Accordingly, I therefore consider that real estate brokerage would fall within the opponent's wider term real estate affairs, and that these terms are therefore identical in line with the principle established in *Meric.*

Surety Services; loans [financing]

53. I note that the opponent's specification contains the broad term "finance services" and I consider that the applicant's above referenced services would fall within this broader term. Accordingly, I find these services to be identical in line with the principle established in *Meric.*

Charitable fund raising

54. I compare the applicant's above referenced service with the opponent's "philanthropic services concerning monetary donations". These services overlap in nature as they both relate to the handling and facilitation of monetary donations for charitable/philanthropic purposes. They also overlap in purpose, namely, to raise funds for charitable or philanthropic causes. There is also an overlap in trade channels (being charities, foundations, non-profit and fundraising organisations) and users. Accordingly, I consider these services to be similar to a high degree.

CLASS 42

Software as a service [SaaS]; Cloud computing.

55. I compare the applicant's above referenced services to the opponent's class 36 "financial, monetary and banking services". I note that both of the services include the delivery of software (such as modern banking applications) over the internet. Consequently, it is my view that a similar reasoning will apply to these services to that outlined in paragraphs 24 to 29 above. I consider that the above referenced services will be important or essential to the opponent's "financial, monetary and banking services" and, in my view, consumers are also likely to consider that responsibility for these services derives from the same entity, namely with the banks/financial institutes. I, therefore, find a level of complementarity between these services, in addition to shared general purpose and general users. Having said that, whilst I note my finding that consumers may believe the undertaking providing the financial, monetary and banking services has responsibility for the above referenced services (for example, they may believe the bank providing the financial, monetary and banking services will also be responsible for providing the banking application services), in practice, the undertakings providing the financial, monetary and banking services are not normally engaged in the provision of software as a service and cloud computing services. Rather, it is probable that the provision of the applicant's above referenced services would be outsourced to a specialised IT company. The

goods and services will clearly be provided by different undertakings who have expertise in completely different areas. I do not therefore consider there to be an overlap in trade channels. Whilst I note the difference in factors such as nature and method of use, I consider these services to be similar to at least a low degree.

Updating of computer software; development of computer platforms; computer software design; providing search engines for the internet.

56. I am of the view that the position outlined in the paragraph above differs in relation to the applicant's above referenced services. I consider these to all be services for the design, development and maintenance of software, rather than the offering of the software as a service itself. In the absence of any evidence to consider on this point, it is my view that a party offering financial or insurance services is unlikely to also offer software design, development and maintenance services to third parties, nor do I consider that consumers would perceive the responsibility for these services to derive from the same undertaking. I do not consider these goods to be complementary or competitive. I also consider the nature, trade channels and specific intended purpose of the services to differ, although I note there may be an overlap in end purpose on the basis that these services are ultimately for the purpose of creating and maintaining a software to help provide the financial services. I also consider users may be shared only at a fairly general level. Overall, however, I do not consider the generalised overlap in user or end purpose to be a sufficient reason for reaching a finding of similarity in this instance, and I am once again conscious of the comments of Iain Purvis KC in *Unicorn Studio Inc v Veronese* outlined in paragraph 32 above. Consequently, I find the applicant's above referenced services to be dissimilar to the opponent's class 36 services.

Conducting technical project studies;

57. The opponent alleges that the applicant's above referenced services are similar to a high degree to its class 36 "financial analysis, consulting and advice", "financial research" and "funding for training and research projects" services as

the applicant's conducting technical project studies are not limited to any particular field or sector and would therefore include services in the financial and insurance sector.

58. These services differ in nature, with the applicant's conducting technical project studies being technical in nature, and the opponent's above referenced services being financial in nature. I can also see no basis for finding that there is an overlap in purpose between the applicant's above referenced service and the opponent's "funding for training and research projects", nor have I been provided with any submissions or evidence that would allow me to make such a determination. The purpose of the applicant's above referenced service is to undertake a technical project study, which may be utilised to assess the technical feasibility or technical performance of a project, whereas the purpose of the opponent's "funding for training and research projects services" is simply to fund training and research projects. Whilst I do accept that there is some overlap in general purpose between the applicant's above referenced service and the opponent's "financial analysis, consulting and advice" and "financial research", given that they could all be utilised to assess the overall performance of a project, the specific purpose of these services differs, with the specific purpose of the applicant's service being as referenced above, and the specific purpose of the opponent's "financial analysis, consulting and advice" and "financial research" services being to research and assess the economic/financial viability of a project.

59. The method of use of these services also differs as technical project studies will rely on the expertise of technological experts, whereas financial analysis will be carried out by financial experts/accountants. Whilst these services could all be utilised in the financial or insurance sector, without evidence being provided to the contrary, I do not consider them to be important or indispensable from one another. I do not therefore consider them to be complementary.

60. Further, given their differing specific purpose, I can see no basis for finding these services to be competitive. I do, however, accept that there is some general overlap in user, being business users. Though, overall, I do not consider this

general overlap in user or general purpose to be sufficient to reach a finding of similarity, and I am, once again, conscious of the comments of Iain Purvis KC in *Unicorn Studio Inc v Veronese* outlined in paragraph 32 above. I therefore find these services to be dissimilar.

Research in the field of artificial intelligence technology; research and development of new products for others; consultancy in the design and development of computer hardware.

61. The opponent submits that the applicant's above referenced services are similar to its class 42 services on the basis that they are complementary. Whilst I appreciate that the applicant's above referenced services may be utilised in the provision of financial and insurance services, I do not consider them to be important or indispensable from one another. Further, without evidence being provided to the contrary, I can see no basis for making a finding that consumers would believe that the responsibility for the applicant's above referenced services lies with the same undertaking that is providing the opponent's class 36 services.

62. These services also differ in nature and purpose, with the purpose of the applicant's above referenced services being to understand, improve and/or create artificial intelligence technology, specific products or computer hardware. I do not consider there to be an overlap in trade channels, as the applicant's above referenced services would be sourced from technology or IT companies, including those specifically specialising in AI, whereas the opponent's services would be sourced from financial institutions/finance companies or insurance companies.

63. Whilst there may be some general overlap in user, being business entities, I do not consider this to be a sufficient basis for reaching a finding of similarity. Consequently, I find these services to be dissimilar.

64. As some degree of similarity between the goods and services is required for a successful claim under section 5(2)(b) of the Act, the opponent's opposition must

fail in respect of those goods and services that I have found to be dissimilar,[13] namely:

Class 9:
Electronic publications, downloadable; computers; computer hardware; Global Positioning System [GPS] apparatus; network communication devices.

Class 35:
Advertising; online advertising on a computer network; sales promotion for others; provision of an online marketplace for buyers and sellers of goods and services; sponsorship search.

Class 42:
Conducting technical project studies; research in the field of artificial intelligence technology; research and development of new products for others; updating of computer software; consultancy in the design and development of computer hardware; development of computer platforms; computer software design; providing search engines for the internet.

Average consumer and the purchasing act

65. 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 and services in question (see *Lloyd Schuhfabrik Meyer*[14]).

66. In *Iconix Luxembourg Holdings SARL v Dream Pairs 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:

[13] *eSure Insurance v Direct Line Insurance* [2008] ETMR 77 CA
[14] Case C-342/97

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.

67. The goods and services in issue are broad in nature. As a consequence, I consider there to be two types of average consumer (members of the general public and business consumers).

68. Generally, the goods and services in issue will be purchased/engaged visually, with both types of consumers considering visual advertising and websites. The

selection process will, therefore, likely be predominantly a visual one. However, I note that there may also be verbal recommendations, and that the aural component of the selection process cannot therefore be ignored.

69. Given their broad nature, the cost and frequency of purchase of the goods and services in issue is likely to vary considerably. I also consider that the level of attention consumers are likely to pay during the purchasing process will vary fairly significantly. For all of the goods and services in issue, I consider that factors such as suitability, cost and reputation of the responsible undertaking will be considered by both types of consumers during the purchasing process. However, there will be a greater number of considerations (such as what security protections the undertaking provides, or the potential financial implications of purchasing the goods or services) for both types of consumers during the purchasing process of the goods and services which relate to financial or insurance matters. Overall, in any event, I consider that the level of attention that is likely to be paid by both types of consumers will vary from between a medium to high level during the purchasing process.

Comparison of marks

70. It is clear from *Sabel BV v Puma AG* (particularly paragraph 23)[15] that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in *Bimbo SA v OHIM*,[16] 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

[15] *Sabel BV v Puma AG* Case C-251/95
[16] Case C-591/12P

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."

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

72. The respective trade marks are shown below:

Earlier mark	Contested mark
	**QMoney**

73. As discussed above, the opponent submits that the marks in issue are visually similar to a very high degree, phonetically similar to a high degree and conceptually similar to a medium degree. This is because the opponent submits that the common element in the mark (the letter "Q") is the dominant and distinctive element because the "Money" element of the contested mark "will be perceived as descriptive of the nature of the goods and services", and the earlier mark is only "slightly stylised", so the stylisation plays a lesser role in the mark's overall impression.

74. By contrast, the applicant submits that the marks differ aurally and visually, and that they are conceptually dissimilar. This is because the applicant submits that the stylisation of the Q in the earlier mark would not be overlooked by the average consumer, and the applicant denies that the "Money" in the contested mark is

directly descriptive of the applicant's services and that it therefore plays an equal level of dominance in the overall impression of the contested mark.

Overall Impression

75. The contested mark is a word mark consisting of the word "QMoney". Whilst the mark is presented as one word, with no spaces within the mark, the "Money" element of the mark is clearly discernible, and I consider the word "Money" to be highly allusive or non-distinctive for most of the services for which I have found similarity or identity. Consequently, in respect of those services, the word "Money" in the contested mark will play a lesser role in the overall impression of the contested mark.

76. Whilst the word "Money" may not be allusive of all of the applicant's goods and services for which I have found similarity, I am also conscious that the GC noted in *El Corte Inglés, SA v OHIM*,[17] that the beginnings of words tend to have more visual and aural impact. Accordingly, regardless of whether the word "Money" is allusive of the applicant's goods and services, I consider the Q element of the contested mark to be the dominant element, with the "Money" element playing a lesser role in the overall impression of the mark.

77. The earlier mark is a figurative mark consisting of the letter "Q" which is minimally stylised in a white, bold typeface with a black outline. Overall, I find the letter Q to be the dominant element of the earlier mark, with the stylisation playing a lesser role in its overall impression.

Visual Comparison

78. Visually, the marks overlap in the presence of the letter Q, which is the only letter in the earlier mark and the first letter in the contested mark. However, the contested mark also has the additional "Money" element at the end, and the earlier mark has additional stylisation, albeit that stylisation is minimal. Weighing

[17] Cases T-183/02 and T-184/02

up the differences in the mark with my findings that the "Q" element of both marks plays the dominant role in their overall impression, I find the marks to be visually similar to a medium degree.

Aural Comparison

79. The marks overlap in the presence of the letter Q as their first letter (and the only letter in the earlier mark). I consider that the "Q" in both marks will be given its ordinary pronunciation (with the stylisation not affecting it). Whilst there is not a space between the "Q" and "Money" in the contested mark, I do consider that the average consumer will pronounce it as "Q Money". The presence of the "Money" element in the contested mark therefore acts as the sole point of aural difference, albeit I appreciate that this element makes up the largest proportion of the contested mark.

80. Weighing up all of the above, I am of the view that the marks are aurally similar to a medium degree.

Conceptual Comparison

81. 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*.[18] The assessment must, therefore, be made from the point of view of the average consumer.

82. I consider that the earlier mark would simply be read as the letter Q, with no additional conceptual meaning (to the extent that letters have a concept), and I do not consider that the stylisation provides any additional conceptual meaning beyond that provided by the presence of the letter Q.

83. In respect of the contested mark, I consider that the word "QMoney" would be read as an amalgamation of the letter Q and the word "Money". The Q element

[18] [2006] ECR I-643; [2006] E.T.M.R

would simply be read as the letter Q, with no additional conceptual meaning, and I consider that the "Money" element of the contested mark would be given its ordinary dictionary meaning (namely, coins or banknotes that are used to purchase things).

84. Despite the shared use of the letter "Q", the contested mark has a conceptual meaning which is absent from the earlier mark as a result of the presence of the word "Money". Given this point of conceptual difference (albeit not a distinctive one for most of the applicant's services for which I have found similarity), I find these marks to be conceptually dissimilar.

Distinctive character of the earlier trade mark

85. In *Lloyd Schuhfabrik Meyer* 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 C108/97 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)."

86. Whilst the distinctiveness of a mark may be enhanced as a result of it being used in the market, in this instance the opponent has admitted that there has been no use of the mark to date. Consequently, I have only the inherent position to consider.

87. The opponent submits that the earlier mark is "highly distinctive" in relation to the opponent's services. However, this is denied by the applicant.

88. Distinctiveness is a scale along which marks of various types sit. A mark which is allusive of the goods/services will have less distinctive character than one that is not; dictionary words will also be less distinctive than words which are entirely fanciful. However, all will turn on the particular facts. For example, there are "invented" words which are really just composites of two allusive words and only distinctive as a result, and dictionary words which are more or less common than others.

89. In this instance, the earlier mark is made up of a stylised letter "Q". Whilst, I do not consider this letter to have any relevance to the opponent's services, I am also conscious that it is just one letter of the English alphabet, albeit it is a less commonly used letter in the alphabet, and single letter marks are typically regarded as being relatively low in inherent distinctiveness.[19]

90. Noting all of the above, I am of the view that the earlier mark, as far as the similar element is concerned (the letter "Q"), enjoys between a low and medium degree of distinctive character. I do not consider that the stylisation, which is minimal, increases the distinctiveness of the mark overall to any material extent.

Likelihood Of Confusion

91. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, whilst indirect confusion is where the

[19] Rather than the marks being seen as a house mark and its sub-brand.

average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods/services down to the responsible undertakings being the same or related.

92. 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 (see *Iconix*[20]). The first is the interdependency principle i.e., a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa (see *Canon*[21]). It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods, 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.

93. Save for those goods and services identified in paragraph 64 of this decision, I have found the applicant's goods and services to be identical or similar to between a low and high degree to the opponent's class 36 services. I have also found that the marks are visually and aurally similar to a medium degree, conceptually dissimilar, and that the earlier mark has between a low and medium degree of inherent distinctive character.

94. I have identified two types of average consumers, being members of the general public and business consumers, who will demonstrate between a medium and high level of attention during the purchasing process. I have also identified that the purchasing process will be primarily visual, though aural considerations have not been excluded.

95. Weighing up all of the above, and whilst noting the principle of imperfect recollection, that consumers rarely have the opportunity to compare marks side

[20] *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25
[21] C-39/97, para 17

by side, and that the beginnings of marks tend to have more visual and aural impact, in respect of the services which I have found to be identical or similar to a medium or high degree, I am satisfied that there are sufficient similarities between the marks in issue to result in them being mistakenly recalled as each other. This is because, I consider that the similarity between these services will offset any visual, aural and conceptual differences between the marks in issue in accordance with the interdependency principle. In that regard, I also note that the differing visual and aural elements are the stylisation in the earlier mark (which is minimal) and the word "Money" in the contested mark, and I consider the word "Money" to be highly allusive or non-distinctive for all of the services I have found to be identical or similar to either a medium or high degree. Accordingly, in the context of those services, I do consider it to be likely that consumers would mistakenly recall these visual and aural differences, and I consider this to be the case despite my finding that consumers will pay between a medium to high level of attention during the purchasing process. I also consider that, for these services, the visual and aural similarities between the marks neutralise the non-distinctive conceptual difference.[22] On this basis, in relation to the services which I have found to be identical or similar to either a medium or high degree only, I do find there to be a likelihood of direct confusion between the marks.

96. Further, whilst I note my finding that the common element of the marks in issue (the letter "Q") only has between a low and medium degree of distinctive character, I note that this does not preclude a finding of a likelihood of confusion between the marks.[23]

97. Having said that, I do not consider this to be the case in respect of the goods and services which I have found to only be similar to a low degree. For those goods and services, I consider that the visual and aural similarities between the mark will be offset by the lesser degree of similarity between the goods and services

[22] *Nokia Oyj v OHIM,* Case T-460/07
[23] *L'Oréal SA v OHIM*, Case C-235/05 P

in accordance with the interdependency principle, and will prevent there from being a likelihood of direct confusion.

98. I now turn to consider whether there is a likelihood of indirect confusion. Indirect confusion was described in the following terms by Iain Purvis KC, sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*:[24]

> "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 recognised 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

[24] BL O/375/10

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).”

99. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach.[25] I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark; this is mere association not indirect confusion.[26] The Court of Appeal has also emphasised that, where there is no direct confusion, there must be a “proper basis” for finding indirect confusion.[27]

100. Noting all of the above, I will, once again, begin by considering the services which I have found to be identical or similar to either a medium or high degree. In respect of those services, I also find there to be a likelihood of indirect confusion between the marks. This is because, in respect of those services, I consider that when confronted with both of the marks in issue, consumers will identify the letter “Q” as the indicator of the origin of the mark, with the only differences coming in the minimal stylisation of the earlier mark and the addition of the non-distinctive “Money” element of the contested mark and, if recalled, these differences will be viewed as an updated version of the same mark, which is indicative of re-branding,[28] and I do not consider it to be uncommon for undertakings to re-brand themselves from time to time to accommodate changes in marketing considerations.

101. Having said that, I do not consider this to be the case in respect of the goods and services which I have found to be similar to only a low degree. Given the distance

[25] *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207
[26] *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17
[27] *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207
[28] Rather than the marks being seen as a house mark and its sub-brand.

between these goods and services in terms of similarity, I am not satisfied that, when confronted with the common "Q" element, the average consumer will make a connection between the marks and assume that these goods or services derive from the same or an economically linked undertaking. I do not therefore consider there to be a likelihood of indirect confusion between the marks in respect of the goods and services which I have found to be similar to only a low degree.

CONCLUSION

102. The opposition succeeds in respect of all the services that I have found to be identical or similar to either a medium and high degree. Therefore, subject to any successful appeal of my decision, the contested mark is refused registration for the following:

Class 35: Providing business information via a website; providing business information.

Class 36: Providing insurance information; Insurance brokerage; online banking; capital investment; loans [financing]; financial management; providing financial information via a website; real estate brokerage; surety services; charitable fund raising.

103. That being said, the contested mark may proceed to registration (again, subject to any successful appeal of my decision) for the following goods and services, which I have found only to be similar to a low degree, or dissimilar, namely:

Class 9: Downloadable computer software applications for smartphones; computer software, recorded; Data processing apparatus; electronic publications, downloadable; integrated circuit cards [smart cards]; computer software applications, downloadable; computers; computer hardware; Global Positioning System [GPS] apparatus; network communication devices.

Class 35: Advertising; online advertising on a computer network; sales promotion for others; provision of an online marketplace for buyers and sellers of

goods and services; updating and maintenance of data in computer databases; data search in computer files for others; systemization of information into computer databases; sponsorship search.

Class 42: Conducting technical project studies; research in the field of artificial intelligence technology; research and development of new products for others; updating of computer software; consultancy in the design and development of computer hardware; software as a service [SaaS]; development of computer platforms; cloud computing; computer software design; providing search engines for the internet.

COSTS

104. Whilst the opposition has succeeded partially, I do consider that the applicant has achieved the greater degree of success overall. Accordingly, the applicant is entitled to a contribution towards their costs, based upon the scale published in Tribunal Practice Note 1/2023. In the circumstances, I award the applicant the sum of £200 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Preparing a counterstatement & considering the other side's statement:	£200[29]
Total:	**£200**

105. I therefore order ARQUIA BANK, S.A. to pay UPCREDIT LIMITED the sum of **£200.** 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 5th day of May 2026

B Hartland
For the Registrar

[29] To reflect that fact that the applicant was only partially successful.