

BL O/0536/26

TRADE MARKS ACT 1994

**IN THE MATTER OF
TRADE MARK APPLICATION NO. 4214021
IN THE NAME OF TAPAWAY LTD**

TO REGISTER AS A TRADE MARK:

A Tap Away

IN CLASSES 9, 35, 36, 37 AND 42

AND

**IN THE MATTER OF FAST TRACK OPPOSITION THERETO
UNDER NO. 600003765
BY ADEL HOUTEN**

BACKGROUND AND PLEADINGS

1. On 4 June 2025, TapAway Ltd (“the applicant”) filed an application for the trade mark shown on the cover page of this decision (“the contested mark”) in the UK. The trade mark was published for opposition purposes on 4 July 2025, and registration is sought for goods in classes 9, 35, 36, 37 and 42, as set out in the Annex to this decision.

2. On 19 August 2025, under the fast track opposition procedure,¹ Adel Houten (“the opponent”), partially opposed the application, based upon section 5(2)(b) of the Trade Marks Act (“the Act”).² The opposition is directed at goods and services in classes 9 and 42.³

3. The opponent relies upon its earlier UK trade mark no. 4141701, ‘Tapaway’ (“the earlier mark”). The earlier mark was filed on 28 December 2024 and became registered on 21 March 2025. The opponent relies upon some of its goods and services in classes 9, 42, 44 and 45.⁴

4. The above 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.

5. The opponent submits that the marks at issue are highly similar and that the respective goods and services are identical or similar to varying degrees, resulting in a likelihood of confusion and association.

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

¹ Pursuant to The Trade Marks (Fast Track Opposition) (Amendment) Rules 2013.

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 See the goods and services comparison at paragraph 28.

⁴ See the goods and services comparison at paragraph 28.

7. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but provides that rule 20(4) shall continue to apply. Rule 20(4) states that:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”

8. The net effect of the above is to require parties to seek leave in order to file evidence in fast-track oppositions. No leave was sought in respect of these proceedings.

9. Rule 62(5) (as amended) states that arguments in fast-track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the Registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate costs; otherwise, written arguments will be taken. A hearing was neither requested nor considered necessary.

10. Both parties filed written submissions in lieu of a hearing. This decision is taken following a careful review of the papers before me.

11. The opponent is represented by The Trademark Helpline; the applicant is self-represented.

PRELIMINARY ISSUES

12. The applicant raised points in its counterstatement that I intend to address as preliminary issues. Before going any further into the merits of this opposition it is necessary to explain why, as a matter of law, the points raised will have no bearing on the outcome of this opposition.

13. The applicant states that:

“The opponent's mark "Tapaway" (UK00004141701) **relates to mental health and wellness services**, while my mark "A Tap Away" (UK00004214021)

represents a platform for home and lifestyle services, including domestic cleaning, errands, and pet care.

[...]

The goods and services operate in entirely different sectors, targeting different consumers.” (emphasis added)

14. Differences between the goods and services currently provided by the parties are irrelevant, except to the extent that those differences are apparent from each party’s specification. It is the goods and services relied upon by the opponent, and the relevant goods and services applied for by the applicant that I will be comparing later in this decision. The assessment I must make between the goods and services is a notional and objective assessment, rather than a subjective one.

15. Furthermore, marketing strategies, including the targeting of specific sectors or consumers, are temporary and may change over time.⁵ As such, it is not appropriate to take marketing factors into account in my assessment. However, I will make an assessment, later in this decision, as to who the average consumer could be for the goods at issue.

16. Additionally, in its counterstatement the applicant claims that there is no evidence of actual confusion.

17. With regards to an absence of any evidence of actual confusion, in *The European Limited v The Economist Newspaper Ltd* [1998] FSR 283 Millett L.J. stated that:

"Absence of evidence of actual confusion is rarely significant, especially in a trade mark case where it may be due to differences extraneous to the plaintiff’s registered trade mark."

⁵ *Devinlec Développement Innovation Leclerc SA v OHIM*, Case C-171/06P

18. I have no evidence before me of how (or to what extent) the applicant's mark has been used in practice. Consequently, it is impossible to assess whether the absence of evidence of confusion is due to the fact that the marks at issue are not confusingly similar or due to other matters relating to the way in which the marks have been used (or not, as the case may be). Therefore, this line of argument does not assist the applicant.

DECISION

Section 5(2)(b)

19. 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 trademark 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.”

20. 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

21. 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”.

22. 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.”

23. 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.

24. 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-399-10.⁶

25. 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].

26. 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.

27. 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.

28. The competing goods and services are as follows:

The opponent's goods and services	The applicant's goods and services
<u>Class 9</u> Mobile apps; Application software; Downloadable applications; AI software; Artificial intelligence software; Artificial intelligence and machine learning software; Artificial intelligence software for healthcare; Artificial intelligence software for analysis; Interactive software based on artificial intelligence; Health monitoring software.	<u>Class 9</u> Downloadable software application for mobile devices and computers featuring an online marketplace for booking services; software enabling multiple pricing options including fixed pricing, membership pricing, and bidding and price negotiation between customers and independent service providers; Software for enabling booking, scheduling, managing appointments and services; Mobile applications for

⁶ Paragraph 5.

<u>Class 42</u> Software as a service (SaaS) featuring computer software platforms for artificial intelligence. <u>Class 44</u> Health care relating to relaxation therapy; Cognitive behavioural therapy (CBT); Healthcare services; Providing health information. <u>Class 45</u> Provision of emotional support.	providing location-based service and real-time service availability; Software for identity verification and fraud prevention, including Live Photo verification technology; Software for user authentication and access control; Software for providing customer reviews, ratings, and feedback on services; Software for managing membership subscriptions, loyalty programs, and rewards; Downloadable software for data analytics and reporting related to marketplace services; Software for communication and messaging between customers and service providers; Software for managing service provider schedules and availability; Software for tracking and logging service hours and attendance using QR code scanning or similar technologies; Software for facilitating customer support and dispute resolution. <u>Class 42</u> Design and development of mobile applications and computer software; Software as a service in relation to platforms for arranging, managing, and tracking service bookings; Providing temporary use on non-downloadable software for matching users with independent service providers; Hosting of online platforms and mobile applications enabling real-time service
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	bookings, digital identity verification, dynamic pricing including fixed, membership-based, and bidding models; Cloud computing services for secure storage, user management, financial analytics, and appointment tracking; Provision of APIs and platform integration for third-party services; Maintenance, technical support, and continuous improvement of hosted app-based systems; Software as a service (SaaS) services in relation to software for connecting customers with home service providers; Providing a mobile app featuring user profiles, service listings, ratings, and booking management tools.
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29. With regards to the similarity of the goods and services, the applicant submits:⁷

“The Opponent's mark is used in connection with mental health and wellbeing services, including digital wellbeing tools. The Applicant's mark relates to home and lifestyle services, including domestic cleaning, errands, and pet care, facilitated via a platform.

The services differ materially in purpose, nature, expectations, and commercial origin.

Any overlap at a high level (such as the use of software or digital platforms) is commonplace and insufficient to establish similarity for the purposes of section 5 of the Act.”

⁷ Written submission in lieu, filed on 17 January 2026.

30. In its submissions,⁸ with regards to the similarity between the respective goods and services, the opponent submits:

“The application covers, among other things, the following services in class 42:

Design and development of mobile applications and computer software; Software as a service in relation to platforms for arranging, managing and tracking service bookings; Providing temporary use of non-downloadable software for matching users with independent service providers; Hosting of online platforms and mobile applications enabling real-time service bookings; Software as a service services in relation to software for connecting customers with home service providers.

The earlier mark covers, among others, software related goods in class 9 and software as a service platform in class 42, as well as health related services in classes 44 and 45.

The services in class 42 of the application are identical or highly similar to the opponent's services in class 42. Both specifications concern hosted software platforms delivered via the cloud, enabling users to interact digitally, manage services and access functionality in real time.

In particular, software as a service for connecting customers with home service providers necessarily involves the arrangement, management and tracking of service bookings. These activities are functionally inseparable. The services therefore overlap in nature, purpose, method of use and intended users.

The design, development, hosting and maintenance of mobile applications and platforms are complementary to and closely aligned with the opponent's software as a service platforms. Such services would reasonably be provided

⁸ Written submissions in lieu, filed on 19 January 2026.

by the same undertakings and would be perceived by consumers as originating from the same source.

The applicant's services are also closely related to the opponent's software goods in class 9. Downloadable software applications and hosted software services are complementary and are commonly offered together under the same mark. Consumers are accustomed to software providers offering both downloadable applications and software as a service solutions.”

Class 9

Downloadable software applications for mobile devices and computers featuring an online marketplace for booking services; Mobile applications for providing location-based service and real-time service availability;

31. The above contested goods fall within the broad terms *mobile apps*; *application software* and *downloadable applications* contained in the specification of the earlier mark. The goods are therefore identical in line with the principle set out in *Meric*.

Software enabling multiple pricing options including fixed pricing, membership pricing, and bidding and price negotiation between customers and independent service providers; Software for enabling booking, scheduling, managing appointments and services; Software for identity verification and fraud prevention, including Live Photo verification technology; Software for user authentication and access control; Software for providing customer reviews, ratings, and feedback on services; Software for managing membership subscriptions, loyalty programs, and rewards; Downloadable software for data analytics and reporting related to marketplace services; Software for communication and messaging between customers and service providers; Software for managing service provider schedules and availability; Software for tracking and logging service hours and attendance using QR code scanning or similar technologies; Software for facilitating customer support and dispute resolution

32. Broadly speaking, *software* is a collection of instructions, data, or computer programs that enables computers/mobile phones to perform specific tasks. There is a

clear overlap between the above goods (which are all types of software) and the opponent's *mobile apps; application software* and *downloadable applications* which are unlimited and could feasibly cover applications/software performing the same functions as those of the applied-for software goods. Accordingly, I find the goods at issue to be identical in line with the principle set out in *Meric*. However, if I am wrong, the goods are in any event similar to a high degree given that they coincide in nature and purpose and can coincide in producers, users and trade channels.

Class 42

Software as a service in relation to platforms for arranging, managing, and tracking service bookings; Software as a service (SaaS) services in relation to software for connecting customers with home service providers

33. Broadly speaking, software as a service (SaaS) is software that is rented or licensed rather than purchased outright. Accordingly, rather than buying software and paying for periodic upgrades, etc., SaaS is subscription based and upgrades are delivered automatically during the subscription period. It is noted that the above contested SaaS services are limited to a specific use, namely *in relation to platforms for arranging, managing, and tracking service bookings* and *in relation to software for connecting customers with home service providers*. The opponent's specification also contains SaaS services, namely *software as a service (SaaS) featuring computer software platforms for artificial intelligence*. Accordingly, whilst both specifications include software as a service (SaaS), I acknowledge that the respective limitations to those services may restrict the services to different fields and intended purposes. Nevertheless, I bear in mind that the contested SaaS services may be AI (artificial intelligence) enabled and therefore may overlap with the opponent's services. Consequently, I find that the services share the same fundamental nature, namely the provision of software via remote access, and may coincide in producers, end users and trade channels. Accordingly, I find that the services at issue are similar to between a medium and high degree.

Design and development of mobile applications and computer software

34. The above services are concerned with the design and development of mobile applications and software. Whilst services are not the same as goods, I consider the opponent's *mobile apps* and various *software* goods in class 9 to be closely aligned with the design and development of such goods. As such, in respect of the business consumer, I find that there exists a complementary relationship with the above contested services and the opponent's stated goods. Whilst I acknowledge that the precise nature, purpose and method of use of the goods and services at issue is different, they share the same ultimate end goal – functional mobile apps and software – and there may also be an element of competition, with the consumer selecting either bespoke goods from the designer or choosing specific applications/software already on the market. As such, I do not consider it unreasonable for the consumer to believe that the goods and services derive from the same or related undertakings. Overall, I find there to be a low to medium degree of similarity between the above services and the opponent's mobile apps and software goods.

Providing temporary use on non-downloadable software for matching users with independent service providers;

35. Broadly speaking, the contested services are a form of software as a service [SaaS], whereby users are granted remote access to a software application over the internet without requiring them to install the program on their own computer or device. As such, I consider that these services share a degree of similarity with the opponent's *software as a service (SaaS) featuring computer software platforms for artificial intelligence* in class 42, on the basis that the contested services, being a form of SaaS may be AI (artificial intelligence) enabled and therefore may overlap with the opponent's services. Consequently, I find that the services share the same fundamental nature, namely the provision of software via remote access, and may coincide in producers, end users and trade channels. Accordingly, I find that the services at issue are similar to between a medium and high degree.

Hosting of online platforms and mobile applications enabling real-time service bookings, digital identity verification, dynamic pricing including fixed, membership-based, and bidding models

36. In general, hosting of online platforms concerns the renting of servers, data centres, cloud infrastructure, etc, in order to keep a website or application accessible online. The hosting of online mobile applications involves the provision and management of server-side infrastructure enabling the storage, processing, and transmission of application data, including databases, APIs, authentication, and computing resources, so that a mobile application can function, communicate with users, and remain accessible over a network. Those that provide these hosting services are generally also responsible for installing, managing, updating, and maintaining software, software application codes, databases and security, etc. I note that the opponent is of the view that the contested services are identical or highly similar to its *software as a service (SaaS) featuring computer software platforms for artificial intelligence*, in class 42, on the basis that the services at issue both concern hosted digital platforms and software services enabling user interaction, and real-time service management, analytics, and integration with third-party tools.

37. Broadly speaking, software as a service (SaaS) offers complete, ready-to-use software products accessed via the internet, which is hosted, operated, and maintained entirely by the SaaS provider. Users of SaaS simply log in and use the software, the service provider handles all the underlying hosting services, such as upgrades and fixes, etc. Accordingly, SaaS essentially uses platform hosting to deliver its end product to the user. As such, I am of the view that there is a degree of similarity between the services in that the provision of software platforms via SaaS involves the hosting of such platforms. While the former concerns the supply of software functionality and the latter the provision of the underlying infrastructure, these services are complementary and can overlap in provider and can be directed at the same user. Accordingly, I find that the services at issue are similar to between a low and medium degree.

Cloud computing services for secure storage, user management, financial analytics, and appointment tracking

38. Cloud computing services concern the on-demand delivery of IT resources and computing services over the internet generally with a pay-as-you go pricing model. Instead of building and maintaining physical data centres, users can instantly access servers, storage, databases, networking and software managed by third party providers. In this regard, software as a service (SaaS) is a primary type of cloud computing service, whereby ready to use software/applications are delivered via a cloud on a subscription basis. Accordingly, I find that there is a degree of similarity between the above contested services and the opponent's *software as a service (SaaS) featuring computer software platforms for artificial intelligence*, in class 42.

39. The contested *cloud computing services for secure storage, user management, financial analytics, and appointment tracking* encompass the provision of remote computing resources and hosted functionalities enabling users to store data, manage users, and perform analytical and operational tasks via the internet. Accordingly, the opponent's *software as a service (SaaS) featuring computer software platforms for artificial intelligence* constitutes a form of cloud computing in which software applications are delivered online on a subscription basis, with the provider managing the underlying infrastructure. Accordingly, whilst the former services may focus more broadly on the provision of cloud-based infrastructure and functionalities, and the latter on the delivery of complete software platforms (in this case, AI-driven), there is a clear overlap in their nature and method of use, as both are accessed remotely via the cloud. The services also share a similar purpose, namely enabling users to process data and perform digital operations without reliance on local systems. Further, they are likely to coincide in providers, users and channels of trade, as undertakings may offer both cloud computing services and SaaS solutions as part of an integrated suite, for example. In addition, SaaS services are inherently dependent upon cloud computing infrastructure, giving rise to a complementary relationship. Taking all of these factors into account, I find that the services are similar to between a low and medium degree.

Provision of APIs and platform integration for third-party services

40. Broadly speaking, the provision of APIs (Application Programming Interfaces) and platform integration for third parties involves the development of interfaces enabling external systems to communicate with, and exchange data across, software platforms. By contrast, the opponent's *software as a service (SaaS) featuring computer software platforms for artificial intelligence* concerns the provision of ready-to-use software functionality delivered remotely via the cloud. Whilst the services differ in nature, the former forming part of the technical infrastructure enabling connectivity, and the latter constituting the delivery of complete software solutions, I find that there is a degree of overlap. In particular, API and integration services can be used to enable interaction with, and the effective operation of, SaaS platforms, including those incorporating artificial intelligence. Consequently, the services may coincide in user, provider and channels of trade. Overall, I find there to be a low degree of similarity between the services.

Maintenance, technical support, and continuous improvement of hosted app-based systems

41. Broadly speaking, the contested services concern inter alia, the ongoing updating and support of software applications made available via a cloud. By contrast, the opponent's *software as a service (SaaS) featuring computer software platforms for artificial intelligence* relates to the provision of ready-to-use software functionality delivered remotely over the internet. However, whilst the services differ in nature, the former being directed at the ongoing support and enhancement of systems and the latter at the provision of the software itself, I consider that there is a degree of similarity. SaaS offerings inherently involve the maintenance, updating and continuous improvement of the software provided, and such services may be offered by the same providers. The services may also coincide in users, channels of trade and method of delivery, and there is a degree of complementarity between them, as the effective operation of SaaS platforms will likely depend upon maintenance, technical support and ongoing improvement. Accordingly, I find that the services at issue are similar to a low degree.

Providing a mobile app featuring user profiles, service listings, ratings, and booking management tools

42. Broadly speaking, the applicant's services relate to the provision of a mobile application enabling users to create profiles, access service listings, submit ratings and manage bookings. The opponent's *mobile apps* in class 9, in general, comprise downloadable software performing comparable functions. Whilst one concerns a service and the other goods, I consider that the same software may be offered either as a downloadable application or via a hosted or app-based service. As such, the goods and services share a similar nature, purpose and method of use, and may coincide in users, providers and channels of trade. Further, they may also be in competition. Accordingly, I find that they are similar to between a medium and high degree.

The average consumer and the nature of the purchasing act

43. 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).

44. 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:

- (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.

45. The average consumer of the goods and services at issue is likely to include both members of the general public and business or professional users. Given the nature of the goods and services at issue, which may range from everyday consumer applications to more specialised or business-oriented digital platforms, the price and frequency of purchase will vary. When selecting the goods and services the average consumer is likely to consider various factors, such as cost, functionality, compatibility and suitability, etc. Consequently, I consider that at least a medium degree of attention will be paid during the purchasing process, although, in my view, not the highest.

46. The goods and services will likely be primarily accessed via digital channels, such as websites, application stores and online platforms. The selection process is therefore likely to be undertaken by the consumer viewing details of the goods or services on a screen, for example via a webpage, before making a decision to download, subscribe to, or otherwise access the relevant software or service.

Accordingly, in my view, the visual component will dominate the purchasing process, as consumers will typically rely on the appearance of trade marks during the selection process. However, I do not discount an aural component to the purchase given that word-of-mouth recommendations or verbal references, etc., may be made.

Comparison of the marks

47. 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.”

48. 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.

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

The opponent's mark	The applicant's mark
Tapaway	A Tap Away

50. With regards to the similarity of the marks, both parties have provided comments in their submissions.⁹ Whilst I do not intend to discuss these here, I can confirm that I have given them due consideration in making the following comparisons.

Overall impression

51. The opponent's mark consists of the conjoined words 'Tapaway'. The overall impression lies in the combination of these words. The applicant's trade mark consists of the words 'A Tap Away'. I am of the view that the average consumer is likely to perceive the mark as a phrase. Accordingly, the overall impression of the mark lies in the combination of these words.

Visual comparison

52. Visually, the marks overlap to the extent that they both contain the words tapaway / tap away. Whilst I note that there are differences between the marks, namely the words 'tap away' in the opponent's mark are conjoined, whereas they are not in the applicant's mark, and the applicant's mark starts with the indefinite article 'A', which is not present in the opponent's mark, I am of the view that these variations do not create significant visual differences between the marks. Overall, I find that the marks are visually similar to between a medium and high degree.

Aural comparison

53. Aurally, the marks will be articulated as 'tap-away' and 'a-tap-away' respectively. Accordingly, I consider the marks to be aurally similar to a very high degree.

Conceptual comparison

54. 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

⁹ Written submissions in lieu of a hearing.

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.

55. Conceptually, although the verbal element ‘Tapaway’ in the opponent’s mark is presented as one word, I am of the view that the average consumer will likely recognise the ordinary dictionary words ‘tap’ and ‘away’ within the mark. When considered as a whole the expression ‘tap away’ in the opponent’s mark, and ‘a tap away’ in the applicant’s mark, will likely be perceived as an indication that something is easily accessible or close at hand, e.g. something is only a tap away. Accordingly, in the context of some of the goods at issue, such as mobile applications or downloadable software, the expression ‘tap away’ will likely be perceived as allusive, denoting that a simple, low-effort form of user interaction, i.e. a tapping gesture, will for example, enable functions to be accessed or actions to be performed, etc. The indefinite article ‘A’ in the applicant’s mark is a point of conceptual difference, although not a distinctive one. Accordingly, I find that the marks are conceptually identical. However, in the event that the addition of the indefinite article in the applicant’s mark does make a conceptual difference, I find the marks to be conceptually similar to a very high degree.

Distinctive character of the opponent’s mark

56. 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)."

57. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods and services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it. The opponent has not claimed that its mark has acquired enhanced distinctiveness through use, nor has evidence been filed to support such a finding. Consequently, I have only the inherent position to consider.

58. The earlier mark comprises the conjoined words 'Tapaway'. As previously stated, I am of the view that the average consumer will likely recognise the ordinary dictionary words 'tap' and 'away' within the mark. When considered as a whole the expression 'tap away' will likely be perceived as an indication that something is easily accessible or close at hand, e.g. something is only a tap away. Accordingly, in the context of some of the goods/services at issue, such as mobile applications, the expression 'tap away' will likely be perceived as allusive, denoting a simple, low-effort form of user interaction, i.e. a tapping gesture, will for example, enable functions to be accessed or actions to be performed, etc. Accordingly, due to its allusive nature, I find that the mark is inherently distinctive to between a low and medium degree.

Likelihood of confusion

59. 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, 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 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 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.

60. Earlier in the decision I found that:

- The goods and services range from identical to similar to a low degree.
- The average consumer for the goods and services is a member of the general public or a business/professional user, who will pay at least a medium degree of attention during the purchasing process (although not the highest).
- The purchasing process for the goods and services is predominantly visual, although I do not discount an aural component.
- The marks are visually similar to between a medium and high degree, aurally similar to a very high degree and are either conceptually identical, or conceptually similar to a very high degree, depending on how the marks are perceived.

- The earlier mark is inherently distinctive to between a low and 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.¹⁰

61. Whilst the marks are not identical, I have found them to be visually similar to between a medium and high degree, aurally similar to a very high degree and conceptually identical or similar to a very high degree depending on how the marks are perceived. The applicant's mark reproduces the verbal substance of the earlier mark, the only differences being the separation of the words and the addition of the indefinite article 'A'. The fact that the marks share 'Tapaway'/'Tap Away' is an important point of coincidence. Accordingly, given the similarities between the marks, I am of the view that a significant proportion of average consumers is likely to overlook or misremember the minor differences between them. Consequently, taking all the above factors into account, I consider there to be a likelihood of direct confusion. This is so even bearing in mind that some of the services are similar to only a low degree and 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.¹¹ Nevertheless, I maintain that there is a likelihood of direct confusion.

62. I will also assess if there is a likelihood of indirect confusion.

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

"16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the

¹⁰ *L'Oréal SA v OHIM*, Case C-235/05 P.

¹¹ *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).

later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: "The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark."

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

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

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

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

64. It is not sufficient that a mark merely calls to mind another mark: *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17. This is mere association not indirect confusion.

65. Even if the differences between the marks are identified by the average consumer, I consider that the marks will be viewed as coming from the same or economically linked undertakings, notwithstanding the earlier mark's low to medium degree of inherent distinctiveness. This is because, while the marks at issue do not fit neatly into the Purvis criteria above, the criteria are not exhaustive, and the key point is that there are common elements in the marks ('Tapaway'/'Tap Away'). As such, I am of the view

that the additional word/letter 'A' and spacing in the applicant's mark would simply be perceived as a variant of the opponent's brand, or vice versa. Accordingly, I consider there to be a likelihood of indirect confusion.

CONCLUSION

66. The partial opposition filed under section 5(2)(b) of the Act is successful. Accordingly, the applicant's mark is hereby, subject to any successful appeal of my decision, refused in respect of the following goods and services:

Class 9 Downloadable software application for mobile devices and computers featuring an online marketplace for booking services; software enabling multiple pricing options including fixed pricing, membership pricing, and bidding and price negotiation between customers and independent service providers; Software for enabling booking, scheduling, managing appointments and services; Mobile applications for providing location-based service and real-time service availability; Software for identity verification and fraud prevention, including Live Photo verification technology; Software for user authentication and access control; Software for providing customer reviews, ratings, and feedback on services; Software for managing membership subscriptions, loyalty programs, and rewards; Downloadable software for data analytics and reporting related to marketplace services; Software for communication and messaging between customers and service providers; Software for managing service provider schedules and availability; Software for tracking and logging service hours and attendance using QR code scanning or similar technologies; Software for facilitating customer support and dispute resolution.

Class 42 Design and development of mobile applications and computer software; Software as a service in relation to platforms for arranging, managing, and tracking service bookings; providing temporary use on non-downloadable software for matching users with independent service providers; hosting of online platforms and mobile applications enabling

real-time service bookings, digital identity verification, dynamic pricing including fixed, membership-based, and bidding models; cloud computing services for secure storage, user management, financial analytics, and appointment tracking; provision of APIs and platform integration for third-party services; maintenance, technical support, and continuous improvement of hosted app-based systems; Software as a service (SaaS) services in relation to software for connecting customers with home service providers; providing a mobile app featuring user profiles, service listings, ratings, and booking management tools.

67. The applicant's mark may proceed to registration in respect of the following unopposed services:

Class 35 Provision of an online marketplace for buyers and sellers of services; business management and administration of service bookings between customers and independent contractors; facilitating and managing fixed pricing, membership pricing and bidding or price negotiation features; business services enabling customers to compare and book local services in categories including but not limited to home care, pet sitting, home sitting, errands, and lifestyle assistance; advertising and marketing services provided via mobile applications and online platforms; administrative services for appointment scheduling, service provider onboarding, and user reviews; compiling and analysing data and feedback for business performance monitoring; invoicing and billing services.

Class 36 Provision of electronic payment services for service bookings via a mobile application and online platform; processing of financial transactions between customers and independent service providers; payment gateway services; secure processing of payments for fixed pricing, membership-based pricing, and bidding or negotiated pricing models; management of financial transactions and digital wallets for app users; collection of service fees and commission payments on behalf of

third-party providers; financial transaction verification and reporting services.

Class 37 Provision of cleaning, maintenance, home improvement, and handyman services; arranging and provision of domestic and commercial cleaning; repair, renovation and general property maintenance services; indoor and outdoor maintenance services; Provision of housekeeping, house cleaning, exterior and interior cleaning, general household repair and maintenance for interior and exterior, gardening services and maintenance, car cleaning and valet services, all provided by subcontracted independent service providers through an online platform and mobile application.

68. The opponent has been successful 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 £750 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	£400
Total:	£750

69. I therefore order TapAway Ltd to pay Adel Houten the sum of £750. 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 27th day of June 2026

**Sam Congreve
For the Registrar**

Annex

- Class 9** Downloadable software application for mobile devices and computers featuring an online marketplace for booking services; software enabling multiple pricing options including fixed pricing, membership pricing, and bidding and price negotiation between customers and independent service providers; Software for enabling booking, scheduling, managing appointments and services; Mobile applications for providing location-based service and real-time service availability; Software for identity verification and fraud prevention, including Live Photo verification technology; Software for user authentication and access control; Software for providing customer reviews, ratings, and feedback on services; Software for managing membership subscriptions, loyalty programs, and rewards; Downloadable software for data analytics and reporting related to marketplace services; Software for communication and messaging between customers and service providers; Software for managing service provider schedules and availability; Software for tracking and logging service hours and attendance using QR code scanning or similar technologies; Software for facilitating customer support and dispute resolution.
- Class 35** Provision of an online marketplace for buyers and sellers of services; business management and administration of service bookings between customers and independent contractors; facilitating and managing fixed pricing, membership pricing and bidding or price negotiation features; business services enabling customers to compare and book local services in categories including but not limited to home care, pet sitting, home sitting, errands, and lifestyle assistance; advertising and marketing services provided via mobile applications and online platforms; administrative services for appointment scheduling, service provider onboarding, and user reviews; compiling and analysing data and feedback for business performance monitoring; invoicing and billing services.

- Class 36 Provision of electronic payment services for service bookings via a mobile application and online platform; processing of financial transactions between customers and independent service providers; payment gateway services; secure processing of payments for fixed pricing, membership-based pricing, and bidding or negotiated pricing models; management of financial transactions and digital wallets for app users; collection of service fees and commission payments on behalf of third-party providers; financial transaction verification and reporting services.
- Class 37 Provision of cleaning, maintenance, home improvement, and handyman services; arranging and provision of domestic and commercial cleaning; repair, renovation and general property maintenance services; indoor and outdoor maintenance services; Provision of housekeeping, house cleaning, exterior and interior cleaning, general household repair and maintenance for interior and exterior, gardening services and maintenance, car cleaning and valet services, all provided by subcontracted independent service providers through an online platform and mobile application.
- Class 42 Design and development of mobile applications and computer software; Software as a service in relation to platforms for arranging, managing, and tracking service bookings; providing temporary use on non-downloadable software for matching users with independent service providers; hosting of online platforms and mobile applications enabling real-time service bookings, digital identity verification, dynamic pricing including fixed, membership-based, and bidding models; cloud computing services for secure storage, user management, financial analytics, and appointment tracking; provision of APIs and platform integration for third-party services; maintenance, technical support, and continuous improvement of hosted app-based systems; Software as a service (SaaS) services in relation to software for connecting customers with home service providers; providing a mobile app featuring user profiles, service listings, ratings, and booking management tools.