

O/0540/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 4154461

IN THE NAME OF MONSTER INFLATABLES FRANCHISING GROUP LIMITED

TO REGISTER THE FOLLOWING TRADE MARK:



IN CLASSES 28, 35 AND 41

AND

THE OPPOSITION THERETO UNDER NUMBER 454162

BY MONSTER ENERGY COMPANY

Background and pleadings

1. On 30 January 2025, Monster Inflatables Franchising Group Limited (“the applicant”) applied to register the trade mark shown on the previous page in the UK. The mark was accepted and published in the Trade Marks Journal on 12 February 2025. The following goods and services were filed under the mark:

Class 28: Games, toys and playthings; video game apparatus; gymnastic and sporting articles; decorations for Christmas trees; inflatable beach balls; trampolines; inflatable balls for sports; inflatable toys; inflatable toys in the form of boats; inflatable pool toys; waterslides; inflatable swimming pools [play articles]; inflatable games for swimming pools; artificial climbing walls; playhouses for children; climbing slides being play apparatus for children; bouncy castles; fairground and playground apparatus; amusement park rides; amusement game machines; playground slides; playground sandboxes; soft toys; board games; dart boards; puzzle board games; ring toss games; disc toss toys; toy blocks; air hockey tables; foosball tables; rocking toys; rocking horses; toy guns; parts and fittings for the aforesaid.

Class 35: Advertising; business management, organization and administration; office functions; marketing; online marketing; franchising (business advice relating to -); business advice relating to franchising; business assistance relating to franchising; franchising services providing business assistance; franchising services providing marketing assistance; provision of assistance [business] in the establishment of franchises; assistance in franchised commercial business management; advice in the running of establishments as franchises; providing assistance in the management of franchised businesses; business marketing services; business services relating to the establishment of businesses; administration of sales promotion incentive programs; sales promotion through customer loyalty programs; management of customer loyalty, incentive or promotional schemes; retail and online retail services in relation to games, toys and playthings; information, advisory and consultancy services relating to the aforesaid.

Class 41: Rental services relating to equipment and facilities for education, entertainment, sports and culture; rental of sports equipment and facilities; hire of equipment for games; game equipment rental; rental of entertainment halls; rental of recreation facilities; entertainment services for children; entertainment party planning; party planning consultation; special event planning; party planning services; children's adventure playground services; providing recreational areas in the nature of play areas for children; information, advisory and consultancy services relating to the aforesaid.

2. On 13 May 2025, Monster Energy Company ("the opponent") opposed the trade mark based upon Section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). This is on the basis of its earlier UK trade marks:

1. Monster

UK registration number: UK00003818928

Filing date: 11 August 2022

Registration date: 30 May 2025

"The opponent's earlier '928 registration"

2. Monster Energy

UK registration number: UK00003758365

Filing date: 23 February 2022

Registration date: 12 August 2022

"The opponent's earlier '365 registration"



UK registration number: UK00004037377

Filing date: 10 April 2024

Registration date: 5 July 2024

"The opponent's earlier '377 registration"

MØNSTER

4. ENERGY

UK registration number: UK00004037378

Filing date: 10 April 2024

Registration date: 5 July 2024

"The opponent's earlier '378 registration"

3. The goods and services relied on by the opponent are listed in Annex 1.

4. By virtue of its earlier filing date, the above registrations constitute earlier marks in accordance with section 6 of the Act. In accordance with section 6A of the Act, the earlier marks are not subject to proof of use and, as such, the opponent may rely upon all the goods and services for which its marks are registered.

5. In its submissions in lieu, the opponent submits that the marks are similar and the goods and services are highly similar or identical. As such, the opponent submits there will be a likelihood of confusion between the marks.

6. The applicant filed a counterstatement in which it denies any similarity between the marks or the goods and services. As such, the applicant denies any likelihood of confusion between the marks.

7. Neither party filed evidence. No hearing was requested. Only the opponent filed submissions in lieu of a hearing. This decision is taken following a careful perusal of the papers.

8. The opponent is represented by Bird and Bird LLP. The applicant is represented by Stobbs.

9. 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. Hence this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

Decision

Section 5(2)(b)

10. Section 5(2)(b) of the Act is as follows:

(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”. Section 5A of the Act is as follows:

Section 5A

11. Section 5A of the Act is as follows:

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

“5A 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.”

The principles

12. 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, 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.

My approach

13. As noted above, the opponent relies on four earlier marks. However, the opponent's earlier '928 and '377 registrations are clearly more similar to the applicant's mark than its earlier '365 and '378 registrations, as these marks contain the additional word 'energy' which is not present in the other marks. Moreover, the goods and services of these other marks do not appear to relate any more closely to the applicant's goods and services. Accordingly, I will assess the opponent's claim on the basis of its earlier '928 and '377 registrations, returning to consider the opponent's reliance on its other marks only if it becomes necessary to do so.

Comparison of the goods and services

14. In comparing the respective specifications, all relevant factors should be considered, as per *Canon*, where the CJEU stated at paragraph 23 of its judgment:

"In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, 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."

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

- a. The respective uses of the respective goods or services;
- b. The respective users of the respective goods or services;
- c. The physical nature of the goods or acts of service;

- d. The respective trade channels through which the goods or services reach the market;
- e. In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- f. The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

16. 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.”

17. Further, in *Kurt Hesse v OHIM*,¹ the Court of Justice of the European Union (“CJEU”) stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*,² the GC stated that “complementary” means:

“...there is 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.”

¹ Case C-50/15 P

² Case T-325/06

18. Finally, the judgement of Jacob J (as he then was) in *Avnet Incorporated v Isoact Limited* is also relevant:³

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributed to the rather general phrase.”

19. The opponent's goods and services can be found at Annex 1 and the applicant's goods and services can be found at paragraph 1.

Class 28

Games, toys and playthings; inflatable toys; inflatable toys in the form of boats; inflatable pool toys; soft toys; board games; puzzle board games; inflatable swimming pools [play articles]; inflatable games for swimming pools; playhouses for children; climbing slides being play apparatus for children; dart boards; ring toss games; disc toss toys; toy blocks; rocking toys; rocking horses; toy guns; Playground slides; waterslides; [...] playground apparatus; Bouncy castles; Playground sandboxes; Air hockey tables; foosball tables; inflatable beach balls

20. The above goods are identical to, or fall within the scope of, the opponent's 'games, toys and playthings'. The goods are therefore identical according to the principles of *Meric*.

Video game apparatus; gymnastic and sporting articles; decorations for Christmas trees

21. The above goods are self-evidently identical to the opponent's 'video game apparatus; gymnastic and sporting articles; decorations for Christmas trees'.

Inflatable balls for sport; trampolines; artificial climbing walls

22. The above goods fall under the scope of the opponent's 'gymnastic and sporting articles'. As such, the goods are identical according to the principles of *Meric*.

³ [1998] F.S.R. 16.

Fairground [...] apparatus

23. I consider the above goods to include the opponent's 'games, toys and playthings' and 'video game apparatus'. I say this because I consider the term fairground apparatus to include devices, structures or rides designed to entertain the public at a fairground, which would include arcade games which are video game apparatus, as well as fairground games, which fall within the scope of the opponent's 'games, toys and playthings'. As such, I consider the goods identical according to the principles of *Meric*.

Amusement park rides

24. The above goods are most similar to the opponent's 'arcade video game machines'. Both goods can be found in amusement parks and therefore there may be an overlap in users as both will be purchased by procurement staff for amusement parks. Their purpose very broadly overlaps in that both have the purpose of amusement, but their purposes differ more specifically. The nature of the goods also differs. Trade channels are unlikely to overlap and there is no competition or complementarity. Overall, despite an overlap in trade channels and a very broad overlap in purpose, I find these goods to be dissimilar.

Amusement game machines

25. I consider the above goods encompass the opponent's 'arcade video game machines'. This is on the basis that the above term is not limited to just video games. The goods are therefore identical according to the principles of *Meric*.

Parts and fittings for the aforesaid

26. Some of the "aforesaid" goods have been found identical to the opponent's goods. I consider that parts and fittings for goods overlap in user and trade channels with the goods themselves. Their purpose and nature differ. There is no competition but there is complementarity. Overall, I find the above goods to have a medium similarity to the opponent's goods.

27. Where the goods are dissimilar, it follows that the parts and fittings for the same will also be dissimilar.

Class 35

Retail and online retail services in relation to games, toys and playthings

28. The opponent's 'retail store and online retail store services featuring [...] toys, toy cars, [...] games' is self-evidently identical to or falls within the scope of the above services. The services are therefore identical according to the principles of *Meric*.

Advertising; marketing; online marketing; business marketing services

29. The opponent's 'advertising, marketing and promotional services' is self-evidently identical to the above services.

Administration of sales promotion incentive programs; sales promotion through customer loyalty programs; management of customer loyalty, incentive or promotional schemes

30. The above services fall within the scope of the opponent's 'advertising, marketing and promotional services'. The services are therefore identical according to the principles of *Meric*.

Business management, organization and administration; office functions

31. The above services are self-evidently identical to the opponent's 'business management, organization and administration; office functions'.

Franchising (business advice relating to -); business advice relating to franchising; business assistance relating to franchising; franchising services providing business assistance; franchising services providing marketing assistance; provision of assistance [business] in the establishment of franchises; assistance in franchised commercial business management; advice in the running of establishments as franchises; providing assistance in the management of franchised businesses; business services relating to the establishment of businesses

32. The above services fall under the scope of the opponent's 'business management, organisation and administration; information, advisory and consultancy services relating to all the aforesaid services'. The services are therefore identical according to the principles of *Meric*.

Information, advisory and consultancy services relating to the aforesaid

33. As the aforesaid services are identical, the above services are self-evidently identical to the opponent's 'information, advisory and consultancy services relating to all the aforesaid services'.

Class 41

Entertainment services for children; entertainment party planning; party planning consultation; special event planning; party planning services; providing recreational areas in the nature of play areas for children; children's adventure playground services

34. The above services fall within the scope of the opponent's 'entertainment services'. The services are therefore identical according to the principles of *Meric*.

Rental services relating to equipment and facilities for education, entertainment, sports and culture; rental of sports equipment and facilities; hire of equipment for games; game equipment rental; rental of entertainment halls; rental of recreation facilities;

35. The above services are most similar to the opponent's 'entertainment services, namely, arranging, organising and conducting an array of activities, events, competitions and tournaments'. The purpose of the services may overlap slightly where they are intended to facilitate sports and games, however, they differ in their specific purposes. The nature of the services clearly differs as the above services. The users of the services overlap as both will be used by the general public. It is possible that trade channels could overlap as a single entity may offer the organisation of events as well as the rental of equipment for said events. There is no competition or complementarity. Overall, I find the above services to have a medium similarity to the opponent's 'entertainment services, namely, arranging, organising and conducting an array of activities, events, competitions and tournaments'.

Information, advisory and consultancy services relating to the aforesaid

36. As the aforesaid services are identical or similar, the above services are self-evidently also identical or similar to the opponent's 'information, advisory and consultancy services relating to all the aforesaid services'.

Conclusion of goods and services comparison

37. There can be no likelihood of confusion in respect of section 5(2)(b) of the Act regarding the applicant's services which were found to be dissimilar to the opponent's goods.⁴ In light of my findings above, the present opposition fails against the following goods:

Class 28: Amusement park rides; parts and fittings for the aforesaid.

38. I will proceed with the opposition based on the goods and services that I have found to be similar.

Comparison of marks

39. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) 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 Case C-591/12P, *Bimbo SA v OHIM*, that:

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

40. 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.

⁴ *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

41. The respective trade marks are shown below:

The opponent's earlier marks	The applicant's contested mark
1. Monster <i>"The opponent's earlier '928 registration"</i>  2. <i>"The opponent's earlier '377 registration"</i>	

42. In its submissions in lieu, the opponent submits that the marks are highly visually, aurally and conceptually similar. It further submits that the word 'MONSTER' is the dominant element in the contested mark, with 'INFLATABLES' being less dominant, and being non-distinctive in the context of some of the goods.

43. In its counterstatement, the applicant denies any similarity between the marks.

Overall impression

44. The opponent's earlier '928 registration is a word-only mark consisting of the word 'Monster'. As the only element, the word dominates the mark.

45. The opponent's earlier '377 registration is a figurative mark consisting of the word 'MONSTER' in a distinctive font, with a vertical line through the letter O. The word dominates the mark, with the stylisation of the word playing a smaller but not insignificant role.

46. The contested mark consists of the words 'MONSTER' in green above the word 'INFLATABLES' in blue, with a yellow outline surrounding both words. A green cartoon monster appears out of the word 'MONSTER' and a blue circle sits behind all elements, acting as a background. The word 'MONSTER' is larger than the word 'INFLATABLES'. As a result, the word 'MONSTER' dominates the mark, with the word 'INFLATABLES' playing a slightly smaller role when being viewed on goods and services that relate to toys. When viewed on other goods and services, although

'INFLATABLES' is smaller, it will be equal in impact to 'MONSTER'. The cartoon monster element qualifies the word 'MONSTER' and therefore plays a small role. The blue circle acts as a background and has very little significance in the mark.

Visual comparison

The opponent's earlier '928 registration

47. The marks visually overlap where they both contain the word 'MONSTER'. As noted above, the word 'MONSTER' is visually dominant in the contested mark, although the mark also contains many other elements, which act as points of visual difference. It is the sole element of the '928 registration.

48. Overall, I consider the marks to have a medium visual similarity.

The opponent's earlier '377 registration

49. The marks visually overlap where they both contain the word 'MONSTER'. As noted above, the word 'MONSTER' is visually dominant in the contested mark, although the mark also contains other elements which act as points of visual difference.

50. Also as noted above, the word 'MONSTER' dominates in the earlier mark, with the other elements playing a smaller role.

51. The visual differences between the marks result in the marks having a low to medium degree of visual similarity.

Aural comparison

52. The figurative elements of the contested mark have no aural nature. The contested mark will be pronounced as 'MONSTER INFLATABLES'.

53. The opponent's earlier '928 and '377 registrations consist only of the word 'MONSTER', which will be pronounced in the usual way. The aural nature of these marks overlap with the contested mark with respect to the word 'MONSTER' and differ

where the contested mark has the additional word ‘INFLATABLES’. Overall, the marks have a medium aural similarity.

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 judgements of the GC and the CJEU including *Ruiz Picasso v OHIM*.⁵ The assessment must be made from the point of view of the average consumer.

55. The earlier marks only comprise the word ‘MONSTER’. As noted in the opponent’s submissions in lieu, the word ‘MONSTER’ has various meanings. The two meanings I consider the most relevant are: a creature; and an adjective meaning very large. The font used in the opponent’s earlier ‘377 registration does not influence the conceptual nature of the mark.

56. The contested mark contains the words ‘MONSTER INFLATABLES’. The word ‘MONSTER’ will be understood as defined above. The word ‘INFLATABLES’ will be understood to relate to objects that can be inflated by the addition of air. The figurative element qualifies the word ‘MONSTER’. As a whole, this mark will be understood to relate either to inflatable toys shaped like monsters or to very large inflatables.

57. I also note that the word ‘INFLATABLES’ will be directly descriptive or at least allusive for some of the goods and services at issue, but not for all. For the goods and services that relate to toys and inflatable articles, where the word inflatables is descriptive or allusive, this word plays a smaller role in the mark. Overall, I consider that, for these goods and services, the marks are conceptually highly similar.

58. For the remaining goods and services, the word ‘INFLATABLES’ acts as a significant point of conceptual difference. Overall, I consider that, for these goods and services, the marks have a medium conceptual similarity.

⁵ [2006] e.c.r.-I-643; [2006] E.T.M.R. 29

Average consumer and the purchasing act

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

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

- (a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;
- (b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;
- (c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;
- (d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by 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.

61. The goods and services at issue will be purchased by two groups of consumers. Firstly, members of the general public purchasing the goods and the entertainment services. These consumers will take factors such as price and quality into account. I consider that these consumers will pay a medium degree of attention during the purchasing process. Secondly, professionals purchasing the business services. These consumers will take factors such as price, quality and compatibility into account. I consider that these consumers will pay a slightly higher than medium degree of attention during the purchasing process.

62. The goods and services at issue will be purchased through catalogues, online or in-person in stores. Although I do not discount aural considerations as advice may be sought from a sales advisor, I consider that visual considerations will play a larger role as the consumer will see the products in the catalogue, in the store or on the website.

Distinctive character of the earlier trade marks

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

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *WindsurfingChiemsee 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)."

64. 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, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it. As no evidence has been filed, I cannot assess whether the distinctiveness of the earlier marks has been enhanced. Consequently, I have only inherent distinctiveness to determine.

65. The earlier '928 registration is a word-only mark consisting of the word 'MONSTER'. Despite having no obvious connection to the goods and services relied upon, it is an ordinary dictionary word so is unremarkable from a trade mark perspective. As a result, I find that this mark possesses a medium inherent distinctiveness.

66. The earlier '377 registration is a figurative mark consisting of the word 'MONSTER' in a distinct font, with a vertical line through the letter O. I consider that this stylisation would only increase the distinctive character of the mark to a very slight degree. I consider that this mark has a slightly higher than medium inherent distinctiveness.

GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion

67. 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 respective trade marks may be offset by a greater degree of similarity between the respective goods (or services) and vice versa (*Canon* at [17]).

It is necessary to keep in mind the distinctive character of the opponent's trade mark, the average consumer of the goods and services and the nature of the purchasing act. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind (*Lloyd Schuhfabrik* at [26]).

68. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related.

69. Earlier in this decision, I found the majority of the goods and services to be identical with others to be similar to a medium degree. I found the earlier '928 registration to have a medium visual similarity to the contested mark and the earlier '377 registration to have a low to medium visual similarity. I found both earlier registrations to have a medium aural similarity to the contested mark. I found both earlier registrations to either have a medium or high conceptual similarity to the contested mark, depending on the goods and services at issue. I identified the average consumer to be either members of the general public paying a medium degree of attention, or professionals paying a slightly higher than medium degree of attention. I found that the goods would be selected primarily by visual means, although I did not discount aural considerations.

70. As noted above, the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind (*Lloyd Schuhfabrik* at [26]).

71. Where the goods and services relate to toys and inflatable goods, I found the marks conceptually highly similar. I note the differences, being the addition of a figure of a monster above the letters, which acts as a visual support to the word 'MONSTER', and the additional word 'INFLATABLES', which is descriptive or allusive of the goods and services in question, and the font used in the earlier '377 registration. However, bearing in mind the consumer's imperfect recollection, I consider it likely that consumers would forget which marks include these elements and which do not. For

these goods and services, I am satisfied that the average consumer will pin their recollection of the marks at issue on the word 'MONSTER'. I therefore find direct confusion between the contested marks and both earlier marks in respect of the following goods and services:

Class 28: games, toys and playthings; gymnastic and sporting articles; inflatable beach balls; inflatable balls for sports; inflatable toys; inflatable toys in the form of boats; inflatable pool toys; inflatable swimming pools [play articles]; inflatable games for swimming pools; bouncy castles; parts and fittings for the aforesaid.

Class 35: retail and online services in relation to games, toys and playthings.

Class 41: rental services relating to equipment and facilities for education, entertainment, sports and culture; rental of sports equipment and facilities; hire of equipment for games; game equipment rental; rental of recreation facilities; rental of entertainment halls; entertainment services for children.

72. For the remaining goods and services, the word 'INFLATABLES' is not descriptive or allusive and, as such, the marks have a medium conceptual identity. This additional word is not likely to be overlooked by consumers. As such, I cannot find direct confusion between the marks for the remaining goods.

73. I will therefore proceed to consider whether there is a likelihood of indirect confusion for the remaining goods and services, whilst reminding myself that, as James Mellor QC sitting as the Appointed Person pointed out in *Cheeky Italian Ltd v Sutaria* (O/219/16) at [16], "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion".

74. In *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

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

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

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

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ('26 RED TESCO' would no doubt be such a case).
- (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI' etc.).
- (c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ('FAT FACE' to 'BRAT FACE' for example)."

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

76. If my finding of direct confusion above is incorrect, I will consider indirect confusion for the above listed goods and services. Given that the word 'INFLATABLES' is descriptive or allusive of these goods and services, I consider it likely that a consumer would note the addition of this word to the word 'MONSTER' and conclude that this is a sub-brand of the MONSTER brand, which sells inflatable goods and services related

to them. The figurative elements of the contested mark will also be seen as part of this sub-brand as they qualify the 'MONSTER' element. As such, I consider there to be a likelihood of indirect confusion between the contested mark and both of the opponent's marks for the above listed goods and services.

77. I will move on to consider indirect confusion in relation to the remaining goods and services. The common element between the marks is the word 'MONSTER'. The average consumer would not see this common element as being so strikingly distinctive that no other entity would be using it. I consider that a consumer would note the addition of the word 'INFLATABLES', the figurative monster element, as well as the stylisation of the contested mark. I do not see any logical reason for the consumer to conclude that the contested mark is another brand of the owner of either of the earlier marks. On goods and services unconnected to inflatables, I consider it highly unlikely that the term 'INFLATABLES' would be seen as a sub-brand or brand extension. I do not even consider it likely that the earlier marks would be brought to mind by the use of the later mark, but even if this were the case, this would be mere association and does not equate to a likelihood of indirect confusion.

78. Taking all of this into account, I do not consider there to be a likelihood of indirect confusion between the contested mark and either of the opponent's earlier marks.

79. In this decision I have only considered two of the relied upon marks. For completeness, even if I had considered the other two marks relied upon, this would not have been any more advantageous to the opponent as the outcome would have been the same as that reached above.

Final Remarks

80. The opposition under section 5(2)(b) succeeds in respect of the following goods and services:

Class 28: games, toys and playthings; gymnastic and sporting articles; inflatable beach balls; inflatable balls for sports; inflatable toys; inflatable toys in the form of boats; inflatable pool toys; inflatable swimming pools [play articles]; inflatable games for swimming pools; bouncy castles; parts and fittings for the aforesaid.

Class 35: retail and online services in relation to games, toys and playthings.

Class 41: rental services relating to equipment and facilities for education, entertainment, sports and culture; rental of sports equipment and facilities; hire of equipment for games; game equipment rental; rental of recreation facilities; rental of entertainment halls; entertainment services for children'.

81. The opposition fails in respect of the remaining goods and services. Subject to any successful appeal, the application will proceed to registration in respect of these remaining goods and services, being:

Class 28: Video game apparatus; decorations for Christmas trees; trampolines; artificial climbing walls; playhouses for children; climbing slides being play apparatus for children; fairground and playground apparatus; amusement park rides; amusement game machines; playground slides; playground sandboxes; soft toys; board games; dart boards; puzzle board games; ring toss games; disc toss toys; toy blocks; air hockey tables; foosball tables; rocking toys; rocking horses; toy guns; parts and fittings for the aforesaid.

Class 35: Advertising; business management, organization and administration; office functions; marketing; online marketing; franchising (business advice relating to -); business advice relating to franchising; business assistance relating to franchising; franchising services providing business assistance; franchising services providing marketing assistance; provision of assistance [business] in the establishment of franchises; assistance in franchised commercial business management; advice in the running of establishments as franchises; providing assistance in the management of franchised businesses; business marketing services; business services relating to the establishment of businesses; administration of sales promotion incentive programs; sales promotion through customer loyalty programs; management of customer loyalty, incentive or promotional schemes; information, advisory and consultancy services relating to the aforesaid.

Class 41: Entertainment party planning; party planning consultation; special event planning; party planning services; children's adventure playground

services; providing recreational areas in the nature of play areas for children; information, advisory and consultancy services relating to the aforesaid.

COSTS

82. Both parties have achieved success in these proceedings. However, the applicant has achieved more success and is therefore entitled to a contribution towards its costs. In the circumstances, I award the applicant the sum of **£190** as a contribution towards the cost of the proceedings, in accordance with Tribunal Practice Notice 1/2023. The sum is calculated as follows:

Considering the TM7 and statement of grounds, and preparing and filing the TM8 and counterstatement:	£250
Reduction for the opponent's partial success:	-£60
Total:	£190

83. I therefore order Monster Energy Company to pay Monster Inflatables Franchising Group Limited the sum of **£190**. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 27th day of June 2026

K HAZLEBACH

For the Registrar

Annex 1

Goods and services relied upon under each of the opponent's earlier marks:

UK00004037377 and UK00004037378 (identical goods and services relied upon)

Class 28

Protective covers and cases for other electronic devices, namely hand-held video game systems; games, toys and playthings; video game apparatus; console gaming devices; portable gaming devices; gaming chips; gaming apparatus, tables, mice, keypads; hand held units for playing electronic games; electronic games; arcade games; arcade video game machines; video game interactive remote control units; video game controller joystick, thumbstick and control-pad extensions; gymnastic and sporting articles; decorations for Christmas trees; action figures; play tents; toy musical instruments; resistance bands for exercise; jump ropes; toy cars; remote control toys, namely, cars; cornhole game sets; cornhole game boards; cornhole bags; ski bags; surfboard bags; surf boards; skate boards; skis; snowboards; boxing gloves; mixed martial arts gloves; golf bags; punching bags; sports gloves.

Class 35

Retail store and online retail store services featuring beverages, supplements, bags, luggage, beverage ware, coolers, refrigeration equipment, beverage storage equipment, personal care products, clothing, headwear, footwear, gloves, tool kits, helmets, umbrellas, blankets, tents, towels, sporting equipment, musical instruments and accessories, timepieces, jewelry, toys, toy cars, location tracking devices, video game equipment and accessories, games, furniture, notebooks, coasters, posters, and point-of-sale accessories; Retail store and online retail store services featuring virtual goods, blockchain tokens, digital tokens, non-fungible tokens, digital media, digital files, and digital assets; retail store and online retail store services featuring Virtual goods, blockchain tokens, digital tokens, non-fungible tokens, digital media, digital files, and digital assets in the field of beverages, food, supplements, sports, gaming, music, and apparel; retail store and online retail store services featuring virtual goods, blockchain tokens, digital tokens, non-fungible tokens, digital media, digital files, and digital assets as part of a computer program; retail store and online retail

store services featuring virtual goods, namely, beverages, food, supplements, bags, beverageware, coolers, clothing, headwear, footwear, gloves, tool kits, helmets, umbrellas, blankets, tents, towels, sporting equipment, musical instruments and accessories, sound and audio equipment and accessories, timepieces, jewelry, toys, toy cars, video game equipment and accessories, games, notebooks, coasters, posters, accessories, and other retail items; provision of an online marketplace for buyers and sellers of artwork, text, audio, and Video relating to beverages, food, supplements, bags, beverageware, coolers, clothing, headwear, footwear, gloves, tool kits, helmets, umbrellas, blankets, tents, towels, sporting equipment, musical instruments and accessories, sound and audio equipment and accessories, timepieces, jewelry, toys, toy cars, video game equipment and accessories, games, notebooks, coasters, posters, accessories, and other retail items authenticated by non-fungible tokens (NETS); provision of an online marketplace for buyers and sellers of virtual goods, blockchain tokens, digital tokens, non-fungible tokens, digital media, digital files, and digital assets; provision of an online marketplace for trading virtual goods, digital assets and non-fungible tokens for entertainment and educational purposes; advertising, marketing, and promotional services; promoting goods and services in the sports, motorsports, electronic sports, and music industries through the distribution of printed, audio and visual promotional materials; promoting sports and music events and competitions for others; advertising; business management, organization and administration; office functions; promotion of goods and services through sponsorship; promotion of goods and services through sponsorship of events; promotion, advertising and marketing of on-line websites; loyalty and bonus scheme services; operation and administration of consumer loyalty and bonus programs; arranging and conducting incentive rewards programs to promote the sale of goods and services; modelling for advertising or sales promotion; organising, arranging, conducting and promoting exhibitions and fashion shows for commercial, promotional or advertising purposes; business management, organisation and administration; information, advisory and consultancy services relating to all the aforesaid services.

Class 41

Entertainment services; entertainment services, namely, providing virtual goods, blockchain tokens, digital tokens, non-fungible tokens, digital media, digital files, and

digital assets; entertainment services, namely, providing on-line, non-downloadable virtual beverages, food, supplements, bags, beverageware, coolers, clothing, headwear, footwear, gloves, tool kits, helmets, umbrellas, blankets, tents, towels, sporting equipment, musical instruments and accessories, sound and audio equipment and accessories, timepieces, jewelry, toys, toy cars, video game equipment and accessories, games, notebooks, coasters, posters, accessories, and Other retail items; entertainment services, namely, providing an on-line virtual environment for using, trading, and purchasing virtual goods, blockchain tokens, digital tokens, non-fungible tokens, digital media, digital files, and digital assets; providing online non-downloadable software for entertainment purposes; providing online non-downloadable software for entertainment purposes, namely, for shopping; sporting and cultural activities; entertainment services, namely, providing podcasts in the fields of lifestyle, sports, music, art, culture, and current events; production of podcasts; entertainment services in the nature of sporting events, performances and competitions, electronic sporting events and competitions, and music performances and events; virtual reality arcade services; video game services; personal training provided in connection with weight loss and exercise programs; physical fitness instruction; physical fitness studio services, namely, providing group exercise instruction, equipment, and facilities; physical fitness training services; providing information on physical exercise; sports training services; conducting fitness classes; personal fitness training services; providing fitness and exercise facilities; entertainment services, namely, arranging, organising and conducting an array of activities, events, competitions and tournaments; education services relating to nutrition; creation of podcasts; provision of entertainment via podcasts and online video blogs; preparation, production, performance and presentation of podcasts, radio and television programmes, video blogs and online media content; sports, esports and gaming activities; arranging, conducting and organising computer game and video game conventions, live sports, esports, music and gaming events, sports, esports, music and gaming festivals, sports, esports, music and gaming contests, sports, esports, music and gaming sweepstakes, sports, esports, music and gaming competitions, sports, esports, and gaming tournaments, sports, esports, music and gaming award ceremonies, courses and tutorials relating to sports, esports, music and gaming; publishing of game and esports software; providing virtual environments in which users can interact through social games and esports; providing virtual

environments in which users can interact for recreational, leisure, or entertainment purposes by playing or watching esports; esports coaching; esports officiating; providing esports facilities; fan club organisation; workshops, seminars, retreats, training courses and camps in the field of sports, esports and gaming; information on sports, esports, music and gaming provided via a website; providing a website containing information relating to esports, motor sports, mountain biking, skiing, snowboarding, surfing, motor cross, athletics, bull riding and music, including team information, player statistics and news; information, advisory and consultancy services relating to all the aforesaid services.

UK00003758365

Class 9

Downloadable software namely virtual goods; downloadable software namely virtual goods in the field of beverages, food, supplements, sports, gaming, music, and apparel; Downloadable software namely virtual goods in the field of beverages, food, supplements, sports, gaming, music, and apparel for use in virtual environments and worlds; downloadable software namely virtual goods in the nature of beverages, food, supplements, bags, beverageware, coolers, clothing, headwear, footwear, gloves, tool kits, helmets, umbrellas, blankets, tents, towels, sporting equipment, musical instruments and accessories, sound and audio equipment and accessories, timepieces, jewelry, toys, toy cars, video game equipment and accessories, games, notebooks, coasters, posters, accessories, and other retail items; downloadable computer programs in relation to virtual goods, namely, beverages, food, supplements, bags, beverageware, coolers, clothing, headwear, footwear, gloves, tool kits, helmets, umbrellas, blankets, tents, towels, sporting equipment, musical instruments and accessories, sound and audio equipment and accessories, timepieces, jewelry, toys, toy cars, video game equipment and accessories, games, notebooks, coasters, posters, accessories, and other retail items; downloadable multimedia file containing artwork, text, audio, and video; downloadable multimedia file containing artwork, text, audio, and video relating to beverages, food, supplements, sports, gaming, music, and apparel authenticated by non-fungible tokens; non-fungible tokens; blockchain tokens; downloadable computer software for managing, displaying, monetizing, buying, selling, trading, transferring, clearing, confirming, and

authenticating virtual goods, blockchain tokens, digital tokens, non-fungible tokens, digital media, digital files, and digital assets; downloadable computer software for use as a digital token wallet; cryptocurrency hardware wallets; downloadable software for enabling users to electronically create, store, send, receive, accept, exchange, and transmit digital assets; downloadable computer programs for data storage; downloadable computer programs for blockchain data storage; downloadable computer software for facilitating transactions with others; downloadable computer software for facilitating blockchain-based financial transactions; downloadable computer programs for data authentication; downloadable computer programs for data authentication via blockchain; downloadable computer software featuring the purchase and sale of rights to digital goods; downloadable computer software for managing digital collectibles; downloadable digital files: software; downloadable digital file sharing software; downloadable computer software and downloadable mobile application software for viewing images, videos, and content relating to beverages, food, supplements, sports, gaming, music, and apparel.

Class 35

Retail store and online retail store services featuring virtual goods, blockchain tokens, digital tokens, non-fungible tokens, digital media, digital files, and digital assets; retail store and online retail store services featuring virtual goods, blockchain tokens, digital tokens, non-fungible tokens, digital media, digital files, and digital assets in the field of beverages, food, supplements, sports, gaming, music, and apparel; retail store and online retail store services featuring virtual goods, blockchain tokens, digital tokens, non-fungible tokens, digital media, digital files, and digital assets as part of a computer program; retail store and online retail store services featuring virtual goods, namely, beverages, food, supplements, bags, beverageware, coolers, clothing, headwear, footwear, gloves, tool kits, helmets, umbrellas, blankets, tents, towels, sporting equipment, musical instruments and accessories, sound and audio equipment and accessories, timepieces, jewelry, toys, toy cars, video game equipment and accessories, games, notebooks, coasters, posters, accessories, and other retail items; provision of an online marketplace for buyers and sellers of artwork, text, audio, and video relating to beverages, food, supplements, bags, beverageware, coolers, clothing, headwear, footwear, gloves, tool kits, helmets, umbrellas, blankets, tents,

towels, sporting equipment, musical instruments and accessories, sound and audio equipment and accessories, timepieces, jewelry, toys, toy cars, video game equipment and accessories, games, notebooks, coasters, posters, accessories, and other retail items authenticated by non-fungible tokens (NETS); provision of an online marketplace for buyers and sellers of virtual goods, blockchain tokens, digital tokens, non-fungible tokens, digital media, digital files, and digital assets; advertising, marketing, and promotional services.

Class 41

Entertainment services; entertainment services, namely, providing virtual goods, blockchain tokens, digital tokens, non-fungible tokens, digital media, digital files, and digital assets; entertainment services, namely, providing on-line, non-downloadable virtual beverages, food, supplements, bags, beverageware, coolers, clothing, headwear, footwear, gloves, tool kits, helmets, umbrellas, blankets, tents, towels, sporting equipment, musical instruments and accessories, sound and audio equipment and accessories, timepieces, jewelry, toys, toy cars, video game equipment and accessories, games, notebooks, coasters, posters, accessories, and other retail items; ; entertainment services, namely, providing an on-line virtual environment for using, trading, and purchasing virtual goods, blockchain tokens, digital tokens, non-fungible tokens, digital media, digital files, and digital assets; providing online non-downloadable software for entertainment purposes; providing online non-downloadable software for entertainment purposes, namely, for shopping.

UK00003818928

Class 9

Downloadable virtual goods in the field of beverages, food, supplements, sports, and apparel; downloadable virtual goods in the field of beverages, food, supplements, sports, and apparel for use in virtual environments and worlds; downloadable virtual goods, namely, beverages, food, supplements, bags, beverageware, coolers, clothing, headwear, footwear, gloves, tool kits, helmets, umbrellas, blankets, tents, towels, sporting equipment, timepieces, jewelry, toys, toy cars, games, notebooks, coasters, and posters; downloadable virtual goods, namely, accessories in the field of beverages, supplements, and food; downloadable virtual goods, namely, computer

programs featuring beverages, food, supplements, bags, beverageware, coolers, clothing, headwear, footwear, gloves, tool kits, helmets, umbrellas, blankets, tents, towels, sporting equipment, timepieces, jewelry, toys, toy cars, games, notebooks, coasters, and posters; downloadable virtual goods, namely, computer programs featuring accessories in the field of beverages, supplements, and food; downloadable multimedia file containing artwork, text, audio, and video; downloadable multimedia file containing artwork, text, audio, and video relating to beverages, food, supplements, sports, and apparel authenticated by non-fungible tokens; blockchain tokens; downloadable computer software for managing, displaying, monetizing, buying, selling, trading, transferring, clearing, confirming, and authenticating virtual goods, blockchain tokens, digital tokens, non-fungible tokens, digital media, digital files, and digital assets; downloadable computer software for use as a digital token wallet; cryptocurrency hardware wallets; downloadable software for enabling users to electronically create, store, send, receive, accept, exchange, and transmit digital assets; downloadable computer programs for data storage; downloadable computer programs for blockchain data storage; downloadable computer software for facilitating transactions with others; downloadable computer software for facilitating blockchain-based financial transactions; downloadable computer programs for data authentication; downloadable computer programs for data authentication via blockchain; downloadable computer software featuring the purchase and sale of rights to digital goods; downloadable computer software for managing digital collectibles; downloadable digital files; software; downloadable digital file sharing software; downloadable computer software and downloadable mobile application software for viewing images, videos, and content relating to beverages, food, supplements, sports, and apparel.

Class 35

Retail store and online retail store services connected with the sale of virtual goods, blockchain tokens, digital tokens, non-fungible tokens, digital media, digital files, and digital assets; retail store and online retail store services connected with the sale of virtual goods, blockchain tokens, digital tokens, non-fungible tokens, digital media, digital files, and digital assets in the field of beverages, food, supplements, sports, gaming, music, and apparel; retail store and online retail store services connected with

the sale of virtual goods, namely, beverages, food, supplements, bags, beverageware, coolers, clothing, headwear, footwear, gloves, tool kits, helmets, umbrellas, blankets, tents, towels, sporting equipment, musical instruments and accessories, sound and audio equipment and accessories, timepieces, jewelry, toys, toy cars, video game equipment and accessories, games, notebooks, coasters, posters, accessories; provision of an online marketplace for buyers and sellers of artwork, text, audio, and video relating to beverages, food, supplements, bags, beverageware, coolers, clothing, headwear, footwear, gloves, tool kits, helmets, umbrellas, blankets, tents, towels, sporting equipment, musical instruments and accessories, sound and audio equipment and accessories, timepieces, jewelry, toys, toy cars, video game equipment and accessories, games, notebooks, coasters, posters, accessories authenticated by non-fungible tokens (NETS); provision of an online marketplace for buyers and sellers of virtual goods, blockchain tokens, digital tokens, non-fungible tokens, digital media, digital files, and digital assets; advertising, marketing, and promotional services.

Class 41

Entertainment services; entertainment services, namely, providing virtual goods, blockchain tokens, digital tokens, non-fungible tokens, digital media, digital files, and digital assets all for use in a virtual world; entertainment services, namely, providing on-line, non-downloadable virtual beverages, food, supplements, bags, beverageware, coolers, clothing, headwear, footwear, gloves, tool kits, helmets, umbrellas, blankets, tents, towels, sporting equipment, musical instruments and accessories, sound and audio equipment and accessories, timepieces, jewelry, toys, toy cars, video game equipment and accessories, games, notebooks, coasters, posters, accessories; entertainment services, namely, production, distribution, display, and storage of digital collectibles; entertainment services, namely, providing an on-line virtual environment for using, trading, and purchasing virtual goods, blockchain tokens, digital tokens, non-fungible tokens, digital media, digital files, and digital assets; providing online non-downloadable software for entertainment purposes; providing online non-downloadable software for entertainment purposes, namely, for shopping.