

O/0562/26

TRADE MARKS ACT 1994

IN THE MATTER OF UK TRADE MARK APPLICATION NUMBER 4117823

BY

MR CHRISTOPHER WALLER

TO REGISTER THE FOLLOWING SERIES OF TRADE MARKS:

We Power On

WE POWER ON

we power on

IN CLASS 9, 16, 18, 25 AND 41

AND

IN THE MATTER OF FAST TRACK OPPOSITION

THERE TO UNDER NUMBER 600003609

BY MRS BRIDGIT RICHARDS

BACKGROUND & PLEADINGS

1. On 29 October 2024, Mr Christopher Waller (“the applicant”) applied to register the trade marks shown on the cover page of this decision in the UK (“the contested marks”). The contested marks were published for opposition purposes in the Trade Marks Journal on 15 November 2024 in respect of the goods and services listed in Annex 1 of this decision.
2. On 15 February 2025, the application was partially opposed under the fast-track opposition scheme by Mrs Bridgit Richards (“the opponent”). The opposition is brought under Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and, specifically, the opponent sought to challenge the applicant’s registration of the contested marks for the goods and services underlined in Annex 1 of this decision.
3. For the purpose of her opposition, the opponent relies upon the following word mark (“the earlier mark”), and the following goods for which her earlier mark is registered:

POWER ON

Trade mark number: UK00003903483¹

Filing date: 21 April 2023

Registration date: 18 August 2023

Class 16

Training manuals; Printed matter; Printed booklets; Printed stationery; Printed advertisements; Printed manuals; Printed educational materials.

Class 35

¹ As at the date of this decision the earlier mark is owned by Garlo Associates Limited. However, the earlier mark was assigned by Mrs Bridgit Richards on 1 May 2026. Accordingly, as the relevant date is the filing date of the contested mark, Mrs Richards remains the opponent for the purposes of this opposition.

Digital marketing; Digital advertising services; Providing a searchable online advertising guide featuring the goods and services of online vendors.

Class 38

Transmission of digital audio and video broadcasts over a global computer network.

Class 41

Organising of business training; Conducting educational workshops in the field of business; Organisation of educational events; Organisation of entertainment events; Organisation of training; Business mentoring services; Coaching; Education and training; Conducting workshops and seminars in personal awareness.

4. Given its earlier filing date, the trade mark upon which the opponent relies qualifies as an earlier trade mark pursuant to section 6 of the Act. As the earlier mark had not completed its registration process more than 5 years prior to the date of the application for registration of the contested marks, it is not subject to the use provisions in section 6A of the Act. Consequently, the opponent can rely upon the full breadth of the earlier mark's specification.
5. The opponent claims that the goods and services in issue are "the same or significantly similar" and that "there is a significant likelihood of confusion" between the earlier mark and the contested mark".
6. The applicant filed a counterstatement denying the claims made against him. Specifically, the applicant denies that his goods and services are identical or similar to those of the opponent and denies that there is any likelihood of confusion.
7. Rule 6 of the Trade Marks (Fast Track Opposition (Amendment) Rules 2013, S.I. 2013 No. 2235 disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but it 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 effect of the above is to require parties to seek leave to file evidence in fast-track oppositions. Further, 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 cost; otherwise, written arguments will be taken.
9. Neither party is legally represented, and neither party sought leave to file evidence. No hearing was requested, and neither party filed written submissions in lieu of a hearing. This decision is therefore taken following a careful consideration of the papers that have been filed by the parties, which will not be summarised but will be referred to as and where appropriate during this decision.
10. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK’s withdrawal from the EU.

PRELIMINARY ISSUES

11. Firstly, it is noted that the applicant has recently filed an application seeking to invalidate the earlier mark and has made a request for this opposition and the application to invalidate the earlier mark to be considered together. However, it is also noted that this request was received after the Tribunal wrote out to the parties on 17 June 2026 to confirm that this opposition was with a Hearing Officer for consideration and a decision on the opposition would be issued by the end of June or early July. Having given consideration to this point, I am of the view that

issuing a decision in the opposition at this time is the appropriate approach. I reach this finding for the following reasons:

- a. The invalidation has only been issued very recently, and this opposition has been ongoing since February 2025;
- b. While I appreciate that any success of the present opposition means that my decision will only be provisional pending the outcome of the invalidation proceedings, this is not uncommon in Tribunal proceedings; and
- c. To withhold the decision will only create further delays and uncertainty to the parties. Of course, in the event that the oppositions fail, this decision will become final.

- 12. If necessary, I will address this point further at the conclusion of this decision.
- 13. Turning to the opposition itself, it is noted that the applicant submits that the goods and services in issue “differ in subject matter, legal form, branding, and target audience” and, in support of this submission, the applicant has provided a number of quotations from articles referencing/advertising the goods and services actually provided by the opponent. However, it should be noted that I must compare the goods and services in the parties’ specifications based on the ‘notional’ coverage of the goods and services listed in the specifications, not those currently provided. Any differences between the actual goods and services offered by the parties or the parties’ marketing/trading styles will, as a matter of law, have no bearing on the outcome of my assessment of similarity between the goods and services in issue, unless those perceived differences are apparent from the specifications. This is because a trade mark registration is essentially a claim to a piece of legal property (the trade mark). Every registered mark is entitled to legal protection against the use, or registration, of the same or similar trade marks for the same or similar goods/services if there is a likelihood of confusion, and the scope of protection afforded to that mark will be identified in its specifications. As outlined above, it is only once a trade mark has been registered for five years that section 6A of the Act is engaged and the opponent

can be required to provide evidence of use of the earlier mark within the UK. Until that point, however, the earlier mark is entitled to protection in the UK in respect of the full range of goods and services for which it is registered.

14. It is also noted that both parties refer to various website links within their Notice of Opposition and Notice of Defence and Counterstatement. It would, however, be inappropriate for me to consider any of the information contained in the links provided by the parties for two reasons. Firstly, evidence containing references to website links is not acceptable in line with section 4.8.4 of the Manual of Trade Marks Practice. Secondly, these are fast-track proceedings and, as discussed above, parties in fast-track proceedings must seek leave from the Tribunal in order to file evidence, and despite being notified by way of official letter dated 23 September 2025 that any request for leave to file evidence should be submitted by 7 October 2025, neither party sought such leave in these proceedings. Accordingly, for the purpose of this decision, whilst I have fully considered the submissions made by the parties in their respective Notice of Opposition and Notice of Defence and Counterstatement, I have not considered any information that may be contained in the links provided by either party.
15. Further, it is noted that the applicant submits that he has used the contested marks continuously in the public domain since January 2022 and he has never “encountered the Opponent’s existence nor has there been any confusion with the Opponent’s activities.” The applicant further submits that the opponent has provided “no evidence of actual confusion, or detriment” between the marks in issue, and that the opponent has failed to identify “any specific examples of overlap in branding, market, audience, tone, products or services”. It should be noted, however, that the opponent is not required to provide evidence of actual confusion between the marks, though evidence of a lack of confusion by consumers over an extended period of time may point towards there being no likelihood of confusion.² Having said that, in this instance, whilst the applicant has provided submissions referencing a number of articles, website links and

² Paragraphs 34 and 35 of the decision of Dr Brian Whitehead in *Azumi Limited v Nick Robinson*, Case No. O/078/22

social media pages which he submits evidences the distinct way in which the parties market and provide their goods and service, I do not consider this to be sufficient information to allow me to make an accurate determination as to why there is no evidence of confusion between the marks, and whether that is because there is genuinely no likelihood of confusion or whether another factor has resulted in there being no actual confusion to date.

DECISION

Section 5(2)(b)

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

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

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

17. Section 5A of the Act stipulates that where “grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”
18. 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.

Comparison of Goods and Services

19. The competing goods and services are as outlined in Annex 2 of this decision.
20. As a preliminary point, the opponent has submitted in general terms that the goods and services offered by the parties are “the same or significantly similar”. However, the opponent has failed to identify which of the earlier mark’s goods and services she considers to be the closest comparator to each of the applicant’s goods and services. In the circumstances, I do not consider that it would be reasonable or fair for me to undertake a comparison of each potential combination of goods and services which could have been relied upon by the opponent.³ Instead, I consider that a reasonable approach would be for me to identify what I consider to be the closest term in the opponent’s specification, and to carry out a comparison on that basis.⁴
21. It should be noted that section 60A of the Act provides that goods are not to be regarded as being similar to each other on the ground that they appear in the

³ See comments of Iain Purvis KC, in his capacity as Appointed Person, in paragraph 28 of *SmartX - O/0911/24*

⁴ On this point, I also refer to the case of *MontyPay* (BL O/0924/24)

same class under the Nice Classification⁵, or dissimilar on the ground that they appear in different classes under the Nice Classification.”

22. In *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.*,⁶ the Court of Justice of the European Union (“CJEU”) stated (at paragraph 23) that, when making the comparison, “all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary”.
23. In *Kurt Hesse v OHIM*,⁷ the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*,⁸ the General Court (“GC”) stated that “complementary” means:

“...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking.”
24. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case⁹, for assessing similarity were:
 - a. The uses of the respective goods and services;
 - b. The users of the respective goods and services;
 - c. The physical nature of the goods and services;

⁵ “Nice Classification” means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957.

⁶ Case C-39/97

⁷ Case C-50/15 P

⁸ Case T-325/06

⁹ [1996] R.P.C. 281

- d. The respective trade channels through which the goods reach the market;
 - e. In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
 - f. The extent to which the respective goods and services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods in the same or different sectors.
25. As per the case of *Separode*,¹⁰ I also bear in mind that it is permissible to group the goods together, for the purpose of comparison, where they are sufficiently comparable to be assessable in essentially the same way for the same reasons.
26. The GC confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market*,¹¹ that, even if goods are not worded identically, they can still be considered identical if one term falls within the scope of another or (vice versa):
- “29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut 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”.
27. As a preliminary point, all of the applicant’s goods and services are limited to goods and services “connected with mental health and well-being”. However, as

¹⁰ BL O/399/10, Mr Geoffrey Hobbs QC, sitting as the Appointed Person

¹¹ Case T- 133/05

the opponent's terms are not limited in any way, to the extent that the goods and services may overlap, they will cover those covered by the applicant's contested mark. Consequently, the aforementioned limitation has no real impact on my findings below.

Class 9

Electronic publications, downloadable; Publications (Electronic -), downloadable; Electronic publications (downloadable); Downloadable electronic publications; Publications in electronic format [downloadable]; Downloadable publications in electronic form; Downloadable electronic publications in the nature of magazines; Downloadable electronic newspapers; Downloadable publications; Electronic publications; Downloadable electronic books; Downloadable electronic newsletters; Downloadable electronic brochures; Interactive electronic publications; Downloadable electronic reports; Publications in electronic format; Downloadable electronic maps; Publications in electronic form; Weekly publications downloaded in electronic form from the internet; Electronic publications featuring games; Electronic sheet music, downloadable; Electronic magazines; Downloadable electronic game programs; Downloadable instruction manuals in electronic form; Digital books downloadable from the Internet; Electronic publications in the field of interactive technology; Downloadable e-books; Electronic publications recorded on computer media; Memo books [electronic]; Downloadable educational media; Downloadable digital photos; Electronic dictionaries; Training guides in electronic format; Instruction manuals in electronic format; Computer documentation in electronic form; Hand-held electronic dictionaries; Downloadable posters; Training manuals in electronic format

28. All the applicant's above referenced goods are types of electronic publications, and I compare these to the opponent's class 16 "printed matter". These goods differ in nature, with the applicant's goods being electronic, and the opponent's goods being hard copy documents. Consequently, these goods also differ in method of use, as the applicant's above referenced goods will be used electronically via a device (such as a tablet, smart phone or computer) whereas the opponent's "printed matter" will be utilised in hard copy, albeit I appreciate that all of these goods are utilised by reading/viewing/interpreting the content.

29. I do not consider these goods to be important or indispensable from one another. These goods are not therefore complementary. Having said that, these goods overlap in purpose, being the provision of written, visual and informational content. They also overlap in user (being members of the general public) and trade channels (as they will be sold in online stores offering hard copy or electronic copies of this content). Consequently, consumers may purchase the applicant's electronic goods in the place of the opponent's hard copy versions, or vice-versa. These goods are therefore competitive.

30. Noting all the above, I consider these goods to be similar to a medium degree.

Downloadable digital music; Digital music downloadable provided from the internet; Digital music downloadable provided from MP3 internet websites; Digital music downloadable from the Internet; Digital music downloadable provided from a computer database or the internet; Digital music downloadable provided from MP3 internet web sites; Downloadable digital music provided from MP3 Internet web sites; Downloadable music files; Digital music [downloadable] provided from mp3 web sites on the internet; Downloadable podcasts;

31. All the applicant's above referenced goods are types of downloadable digital audio content, and I compare these with the opponent's class 38 "transmission of digital audio and video broadcasts over a global computer network".

32. In comparing goods with services there is, of course, a difference between the nature of a good and the nature of a service, which also affects the method of use comparison. Given this differing nature and method of use, I can see no basis for finding these compared goods and services to be competitive. However, goods and services can be complementary, share channels of trade or be in competition with one another.

33. These compared goods and services overlap in purpose and end user at a superficial level given that they assist with the provision of digital audio content and would be purchased/utilised by the general public. However, they differ in specific purpose, with the specific purpose of the applicant's above referenced

goods being to be downloaded and listened to by users for entertainment, and the specific purpose of the opponent's compared service being to transmit/provide digital, audio and video content.

34. Having said that, I do consider these compared goods and services to overlap in trade channels as, for example, streaming platforms would provide the digital content and provide transmission services for that content. I also acknowledge that the applicant's above referenced goods are important to the provision of the opponent's "transmission of digital audio and video broadcasts over a global computer network", and I do consider that consumers may believe that the responsibility for these compared goods and services derives from the same undertaking.
35. Noting all of the above, I consider the above compared goods to be similar to a medium degree.

Downloadable digital assets:

36. Without evidence being provided to the contrary, I consider the applicant's above referenced term to be broad enough to cover various types of downloadable digital files (including, for example, video files). Consequently, my conclusion in the previous comparison is applicable here. Accordingly, for the same reasons outlined in paragraph 31 to 35 above, I find the applicant's above referenced goods to be similar to a medium degree to the opponent's class 38 "transmission of digital audio and video broadcasts over a global computer network".

Downloadable templates for designing audiovisual presentations:

37. The applicant's above referenced goods are types of downloadable digital files/content, and I, once again, compare these to the opponent's class 38 "transmission of digital audio and video broadcasts over a global computer network".

38. By virtue of this being a comparison of goods against services, they will differ in nature and method of use. The compared goods and services do, however, overlap in general purpose at a very superficial level, as they all assist in the provision of digital product to consumers, though their specific purpose differs, with the specific purpose of the applicant's above referenced goods being to provide the downloadable digital product, and the specific purpose of the opponent's compared services being to actually transmit/deliver the digital product to users. The transmission of the product is also important for the accessing of the downloadable digital content, and I do consider that consumers may believe that the same undertaking was responsible for the provision of the compared goods and services. Consequently, I do consider there to be complementarity between these compared goods and services. There is also an overlap in user, being members of the general public.
39. Having said that, I do not consider there to be an overlap in trade channels, as the applicant's above referenced goods would be purchased from, for example, app stores and software platforms, and the opponent's compared service would actually be provided by telecommunication companies.
40. Noting all of the above, I consider the applicant's goods to be similar to between a low and medium degree to the opponent's class 38 "transmission of digital audio and video broadcasts over a global computer network".

Downloadable electronic game programs; Software related to handheld digital electronic devices; Downloadable software; Downloadable computer software for use as an electronic wallet; Downloadable applications; Electronic game software for handheld electronic devices; Software downloadable from the internet; Downloadable email software;

41. I compare the applicant's above referenced software services with the opponent's class 38 "transmission of digital audio and video broadcasts over a global computer network". Once again, by virtue of this being a comparison of goods against services, these compared goods and services clearly differ in nature and method of use. However, their purpose overlaps given that they all

assist with the delivery and access of digital content. There is an overlap in trade channels given that all of these goods and services may, for example, be provided by tech platforms or online service providers. I also consider these compared goods and services to be complementary as the transmission of the digital content is important for the accessing of the downloadable digital content referenced above, and I do consider that consumers would believe that the same undertaking was responsible for the provision of the compared goods and services. There is also an overlap in users as all of these goods and services may be utilised by the general public. However, without evidence being provided to the contrary, I see no basis for finding these goods and services to be competitive.

42. Overall, I consider the applicant's above referenced goods to be similar to the opponent's "transmission of digital audio and video broadcasts over a global computer network" to a medium degree.

Electronic calculators:

43. I compare the applicant's above reference goods to the opponent's "Education and training" services. Once again, by virtue of this being a comparison of goods against services, they differ in nature and method of use. They also differ in purpose, with the purpose of the applicant's above good being to assist with calculations and numerical tasks, and the purpose of the opponent's service being to educate and train. As a consequence, I see no basis for finding these compared goods and services to be competitive. These compared goods and services also differ in trade channels, with the applicant's above referenced goods being provided by electronic manufacturers, and the opponent's compared service being provided by educational institutions.
44. "Electronic calculators" may also be used in the provision of education and training services. However, without evidence being provided to support such a finding, I do not consider these to be important to/indispensable from one another (rather, I consider "electronic calculators" to be an optional tool that may be used in the provision of education and training services), and even if they were, I also

do not consider that consumers would believe that the responsibility for the compared goods and services derives from the same undertaking. Consequently, I do not consider these compared goods and services to be complementary. Having said that, I do consider there to be a general overlap in user, being members of the general public. However, I do not consider this alone to be a sufficient basis for reaching a finding of similarity, and I am conscious of the judgment of Iain Purvis KC in *Unicorn Studio Inc v Veronese* in which he stipulated that “any finding of similarity in the end requires the exercise of common sense and requires the hearing officer to stand back and consider the overall question” rather than by engaging “in a box-ticking exercise, asking how many of the factors identified in *TREAT* or in *Canon* could be said to have been satisfied”.¹² Consequently, I find the applicant’s “electronic calculators” to be dissimilar to the opponent’s “education and training” services.

Databases (electronic); Electronic databases;

45. I compare the applicant’s above referenced electronic database goods with the opponent’s class 35 “providing a searchable online advertising guide featuring the goods and services of online vendors”. Once again, given that this is a comparison of goods and services, they clearly differ in nature and method of use. Without evidence to the contrary, I have no basis for reaching a finding that the compared goods and services overlap in trade channels. However, I consider there to be an overlap in user, being business users. I also note that a database is a collection of data that is stored in a computer and that can easily be used and added to,¹³ and I consider the opponent’s compared services to be the organisation and collation of advertising information in a searchable format. There is, therefore, an overlap in purpose, being the organisation of digital information/data. I also consider there to be a level of complementarity as the opponent’s compared service will be built on or rely upon electronic databases, and consumers are likely to believe that the same undertaking will be responsible

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

¹³ <https://www.collinsdictionary.com/dictionary/english/database>

for providing the searchable online advertising guide and the underlying electronic database.

46. Noting all of the above, I consider these compared goods and services to be similar to a medium degree.

Class 16

Magazines [periodicals]; Periodical publications; Periodicals; Printed periodical publications; Printed publications; Publications (Printed -); Periodical magazines; Annuals [printed publications]; Educational publications; Monographs; Magazines; Printed periodicals in the field of movies; Manuscript books; Printed periodicals; Printed periodicals in the field of music; Books; Magazine supplements for newspapers; Advertising publications; Printed research reports; Daily newspaper; Printed paper invitations;

47. I consider that all of the applicant's above referenced goods would fall within the opponent's wider term "printed matter" and that these goods are therefore identical in line with the principle established in *Meric*.

Journals; Blank journals; Blank writing journals; Blank journal books; Ledgers [books]; Binding materials for books and papers; Wirebound books; Publication paper; Jackets of paper for books; Ledger books; Folders for papers; Document holders being articles of stationery; Writing books; Jackets for papers; Magazine paper; Notebook paper; Writing paper; Directory paper; Writing paper holders; Paper book markers; Art paper; Note paper; Blank paper notebooks; Letter paper; Paper stationery; Writing paper pads; Scrapbook pages; Binder paper; Paper report covers; Note papers; Book-cover paper; Paper folders; Paper folders [stationery]; Label paper; Paper tags; Newsprint paper; Calligraphy paper; Paper stock [printing paper]; Shelf paper; Postcard paper; Photocopy paper; Stencil paper [mimeograph paper]; Vellum paper; Graph paper; Drawing paper; Paper;

48. I also consider that all of the applicant's above referenced goods would fall within the opponent's wider term "Printed stationery", and that they are all identical in line with the principle established in *Meric*.

Class 41

Publication of journals; Publishing of journals; Publication of books, magazines, almanacs and journals; Publishing of journals, books and handbooks in the field of medicine; Multimedia publishing of magazines, journals and newspapers; Publication of scientific information journals; Publishing of scientific papers; Publishing of medical publications; Publishing of books, magazines; Publication of periodicals; Magazines (Publication of -); Publication of magazines; Publication of books; Books (Publication of -); Publishing services for books and magazines; Publication of books, reviews; Publication of newspapers; Publishing of books; Publishing services for periodical and nonperiodical publications, other than publicity texts; Publication of textbooks; Services for the publication of magazines; Publishing of newspapers; Publishing of books and reviews; Publication of text books; Services for the publication of books; Publication of medical texts; Publication of catalogs; Publishing scientific papers in relation to medical technology; Publishing of scientific papers in relation to medical technology; Publication of consumer magazines; Publication of texts; Publication of catalogues; Publishing of instructional books; Publication and edition of books; Publication of instructional literature; Publication of calendars; Publication of printed matter and printed publications; Publication of year books; Publication of printed directories; Publication of educational texts; Issue of publications; Publication of manuals; Publication of booklets; Publishing of documents; Magazine publishing; Publication of photographs; Publication of books relating to entertainment; Publication of books relating to television programmes; Newspaper publication; Newspaper publishing; Book and review publishing; Book publishing; Publication and editing of printed matter; Publication of posters; Publication of printed matter; Publication of calendars of events; Publication of prospectuses; Publication of newspapers, periodicals, catalogs and brochures; Publication of fact sheets; Publication of brochures; Publication of directories relating to travel; Publication of educational printed matter;

49. I consider all of the applicant's above referenced services to be publishing/publication services for various types of printed matter, and I compare these to the opponent's class 16 "printed matter".
50. Once again, by virtue of this being a comparison of goods and services, these compared goods and services differ in nature and method of use. Having said that, these compared goods and services overlap in general purpose, being to facilitate the provision of content. Though, they differ in specific purpose, with the specific purpose of the opponent's compared good being to inform or entertain, and the specific purpose of the applicant's above referenced services being to make that information, entertainment, or other content available to the public in printed form. Given their differing primary purpose, I see no basis for finding these compared goods and services to be competitive.
51. These compared goods and services do, however, overlap in user (being members of the general public) and trade channel as the publishers/production company will be responsible for producing the printed matter and distributing it. Accordingly, I do also consider these compared goods and services to be complementary, as they are important to/indispensable from one another, and consumers would believe that responsibility for these goods and services derives from the same undertaking.
52. Noting all of the above, I consider the opponent's "printed matter" to be similar to a medium degree to the applicant's above referenced services.

Multimedia publishing of journals; Multimedia publishing of magazines; Multimedia publishing of books; Multimedia publishing of newspapers;

53. I note that the applicant's above referenced services are types of "multimedia" publishing, and I am of the view that these would therefore include the publishing of hard-copy content. Accordingly, for the same reasons outlined in paragraphs 49 to 52 above, I find the applicant's above referenced services to be similar to between a medium degree to the opponent's class 16 "printed matter".

Online publication of electronic books and journals; Publication of electronic books and journals online; Publication of electronic books and journals on-line; On-line publication of electronic books and journals; Publishing of electronic books and journals online; Publishing of electronic books and journals online; On-line publication of electronic books and journals (non downloadable); On-line publication of electronic books and journals [not downloadable]; Electronic online publication of periodicals and books; Publishing of electronic publications; Online electronic publishing of books and periodicals; Publication of periodicals and books in electronic form; Publication of electronic magazines; Publication of electronic books and periodicals on the Internet; Online publications, namely blogs; Publication of educational books; Multimedia publishing of electronic publications; Publication of audio books; Publishing of web magazines; Online publication of electronic newspapers; Non-downloadable electronic publications; Publication of texts in the form of CD-ROMs; Electronic publication; Publication of Music; Publication of online reviews in the field of entertainment;

54. I compare the applicant's above referenced services, which are all services relating to the electronic publication of content, with the opponent's class 38 "transmission of digital audio and video broadcasts over a global computer network". I consider that these compared services overlap in purpose, that being to make electronic/digital content available to users. They also overlap in user (being members of the general public), method of use and trade channels, as I consider that all of the compared services would be accessed online via the same platforms (for example, from streaming services/website), and would be provided by media companies, streaming platforms/digital publishers. Electronic publication is also undoubtedly dependent on transmission services to distribute the published content. These services are clearly, therefore, important to and indispensable from one another. However, without evidence being provided to the contrary, I do not believe that users would believe that responsibility for these compared services derives from the same undertaking. Accordingly, I do not consider these services to be complementary. However, without evidence being provided to the contrary, I see no basis for finding these services to be competitive.

55. Noting all of the above, I consider these services to be similar to between a medium and high degree.

Lending of books and other publications; Lending of books and periodicals; Rental of printed publications; Rental of newspapers and magazines;

56. I compare the applicant's above referenced services with the opponent's "education and training" services. These services differ in nature and method of use. However, I consider there to be an overlap in user, that being students, researchers, or members of the general public seeking knowledge. I also consider there to be an overlap in trade channels, given that all of the compared services may be provided by educational institutions. By way of example, universities often have their own libraries providing the above referenced lending services. These services also overlap in purpose at a superficial level, that being educational. However, I acknowledge that their specific purpose will differ, with the specific purpose of the applicant's above referenced services being to provide access to printed matter, and the specific purpose of the opponent's compared services being to deliver education and training.
57. Given their differing nature, method of use and specific purpose, I do not consider these goods to be competitive. Further, whilst I appreciate that educational institutes may provide education and training services and services relating to the lending/rental of printed matter, without evidence to support such a finding, I do not consider these services to be complementary. This is because I consider these services to be ancillary to one another, rather than important to or indispensable from one another. I also note that I have not been provided with any evidence to support such a finding.
58. Noting all of the above, I consider these services to be similar to a low degree.
59. As some degree of similarity between the goods and services is required for a successful claim under section 5(2)(b) of the Act, the opponent's opposition must fail in respect of those goods that I have found to be dissimilar,¹⁴ namely:

¹⁴ *eSure Insurance v Direct Line Insurance* [2008] ETMR 77 CA

Class 9

Electronic calculators; All of the above relates to or is connected with mental health and well-being.

60. However, I will proceed to consider whether there is a likelihood of confusion or association on the part of the average consumer in respect of the goods and services in issue which I have deemed to be similar, and therefore whether the opposition succeeds in respect of those goods and services under section 5(2)(b) of the Act.

Average consumer and the purchasing act

61. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods and services in question (see *Lloyd Schuhfabrik Meyer*¹⁵).
62. In *Iconix Luxembourg Holdings* (cited above), 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

¹⁵ Case C-342/97

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.
63. The goods and services for which I have found identity or similarity are broad in nature. As a consequence, I consider there to be two types of average consumer (members of the general public and business consumers).
64. Generally, the goods and services in issue will be purchased/engaged visually, with both types of consumers considering visual advertising and websites. The selection process will, therefore, likely be predominantly a visual one. However, I note that there may also be verbal recommendations, and that the aural component of the selection process cannot therefore be ignored.
65. Given their broad nature, the cost and frequency of purchase of the goods and services in issue is likely to vary considerably. I also consider that the level of attention consumers are likely to pay during the purchasing process will also vary fairly significantly. By way of example, a member of the general public selecting an inexpensive journal for entertainment purposes will pay a low degree of attention during the purchasing process, whereas a business user wishing to

publish magazines, journals or newspapers on its behalf will be considerably more expensive (particularly if the publication is on a large scale), and will be a far more considered choice given its potential financial significance to that business user. Overall, in any event, I consider that the level of attention that is likely to be paid by both types of consumers will vary from between a low to high level during the purchasing process.

Comparison of marks

66. 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 *Bimbo SA v OHIM*,¹⁶ that:

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight 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.”

67. 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.

68. The respective trade marks are shown below:

Earlier mark	Contested Marks
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¹⁶ Case C-591/12P

POWER ON	We Power On WE POWER ON we power on
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Overall Impression

69. The earlier mark comprises the two words “POWER ON”. There are no other elements to the mark, so the overall impression lies in the words themselves. I consider that both words hang together to create a unitary meaning. Consequently, it is my view that the overall impression resides in the combination of the two words, with neither word playing a dominant role.
70. All of the contested marks comprise the three words “WE POWER ON”. There are no other elements to these marks, so the overall impression for all of the contested marks lies in the words themselves. I, once again, consider that all of these words hang together to create a unitary meaning. Consequently, it is my view that the overall impression for all of the contested marks also resides in the combination of the three words, with all of the words playing an equally dominant role.

Visual Comparison

71. Visually, all of the marks overlap in their use of the two words “POWER ON”. All of the marks in issue are also filed as word marks which may be used in any ordinary combination of upper and lower-case. Consequently, the use of the different ordinary combinations of these letters do not add to the visual

differences between the marks. However, the contested marks also contain “WE” as their first word, which is not present in the earlier mark.

72. Weighing up all of the above, whilst also noting that the beginnings of marks tend to have more visual impact and that this is where the point of difference between the marks lies,¹⁷ I find the marks to be visually similar to a medium to high degree.

Aural Comparison

73. As discussed above, the marks overlap in their use of the words “POWER ON”. However, the contested marks also have the word “WE” at the beginning, which is not present in the earlier mark. I consider that all of the words within the marks in issue will be pronounced in the ordinary way.
74. Weighing up all of the above, whilst also noting that the beginnings of marks tend to have more aural impact and that this is where the point of difference between the marks lies,¹⁸ I find the marks to be aurally similar to a medium to high degree.

Conceptual Comparison

75. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU, including *Ruiz Picasso v OHIM*.¹⁹ The assessment must, therefore, be made from the point of view of the average consumer.
76. As outlined above, the earlier mark contains the words “Power On”, which are both standard English dictionary words. I consider the combination of these words to have two meanings. The literal meaning of the combination of these words is to switch on or start a device. However, the combination of these words also has a common figurative meaning in the English language, that being to push forward or persist, especially in the face of adversity, and I consider that a

¹⁷ El Corte Inglés, SA v OHIM, Cases T-183/02 and T-184/02

¹⁸ El Corte Inglés, SA v OHIM, Cases T-183/02 and T-184/02

¹⁹ [2006] ECR I-643; [2006] E.T.M.R

significant proportion of average consumers would identify both meanings from the earlier mark.

77. The contested marks contain the words “we power on”. As discussed above, the combination of the words “power on” can have two meanings in the English language, a literal and figurative meaning. However, I consider that consumers will identify the figurative meaning referenced above for all of the contested marks (i.e., to push forward/persist in the face of adversity). This is because the applicant’s goods and services are limited to goods and services relating to or connected with “mental health and well-being”, and consumers do look to the goods and services to inform the meaning of the mark, particularly where there is a link between the conceptual meaning of the mark and the goods and services to which it is affixed,²⁰ and I find this to be the case in this instance.
78. The addition of the word “we” prior to “power on” will simply be understood as a reference to the person/entity that will be “powering on”, that being the undertaking providing the goods and services, and at least one other person (perhaps the user).
79. In respect of the proportion of consumers that I have found will identify the earlier mark as having the literal conceptual meaning outlined above (that being, to switch on or start a device), I consider the compared marks to be conceptually dissimilar.
80. However, for the significant proportion of average consumers that I have found will identify the earlier mark as having the figurative meaning identified in paragraph 76 above, I find the shared concept of “Power On” will be considerable, but the addition of the “We” is a point of conceptual difference, as it has no counterpart in the earlier mark. Overall, in respect of those consumers I have found will identify the figurative meaning referenced above for the earlier mark, I consider the compared marks to be conceptually similar to a high degree.

²⁰ LIGHT VITAMIN, Case BL O/1174/25.

Distinctive character of the earlier trade mark

81. In *Lloyd Schuhfabrik Meyer* the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49)

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

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

83. Whilst the distinctiveness of a mark may be enhanced as a result of it having been used in the market, in this instance the opponent has filed no evidence of use. Consequently, I have only the inherent position to consider.

84. It is noted that neither party provided submissions as to the distinctiveness, or lack thereof, of the earlier mark. In any event, as discussed above, the earlier mark consists of the words “POWER ON”, which are ordinary dictionary words. As noted in paragraph 76 above, I consider the combination of these words to have two meanings; to switch on or start a device (the literal meaning), or to push forward or persist, especially in the face of adversity (the figurative meaning), and I consider that a significant proportion of average consumers would identify both meanings from the earlier mark. Regardless of which meaning is identified by the average consumer, I do not consider the words “power on” to be descriptive of the opponent’s goods and services. However, I do appreciate that the figurative meaning is non-distinctive of some of the opponent’s class 41 services (such as its training and coaching services, and its “conducting workshops and seminars in personal awareness”). Accordingly, in respect of those services, I find the words “power on” to have a low level of distinctive character. However, for the opponent’s other goods and services, I find the words “power on” to have a medium level of distinctive character. Overall, I therefore find the earlier mark to have between a low and medium level of inherent distinctive character.

Likelihood Of Confusion

85. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, whilst 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 down to the responsible undertakings being the same or related.

86. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind (see *Sabel*²¹). The first is the interdependency principle i.e., a lesser degree of similarity between the respective trade marks may be offset by

²¹ C-251/95, para 22

a greater degree of similarity between the respective goods and services and vice versa (see *Canon*²²). It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and services, and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

87. Save for those identified in paragraph 59 above, I have found the parties' goods and services in issue to be identical or similar to between a low and high degree. I have also found the marks to be visually and aurally similar to a medium to high degree, and that a significant proportion of average consumers would find the marks to be conceptually similar to a high degree, and that the earlier mark has a between a low and medium level of inherent distinctive character, depending on the relevant goods and services.
88. I have identified that the average consumer of the goods and services in issue will be members of the general public or business consumers who will pay between a low and high degree of attention during the purchasing process, and that the purchasing process for all of the goods and services in issue would be primarily visual in nature, although I do not discount aural considerations.
89. Weighing up all of the above and bearing in mind the principle of imperfect recollection and that consumers rarely have the opportunity to compare marks side to side, I consider that there are sufficient visual and aural similarities between the marks to result in them being mistakenly recalled as each other. My decision is also fortified by the fact that I consider that a significant proportion of average consumers will also perceive the marks in issue as conceptually highly similar. By way of example, if a consumer was seeking goods under the "POWER ON" branding, and was confronted by "WE POWER ON", bearing in mind the similarities (particularly the high conceptual similarity) they would likely misremember which mark was which and therefore be directly confused into

²² C-39/97, para 17

selecting goods under “WE POWER ON” on the mistaken belief that it is the “POWER ON” brand.

90. For the avoidance of doubt, I consider this to be the case even in respect of the goods and services for which I have found there to be a low level of similarity. This is because I consider that the similarity between the marks will offset the lesser degree of similarity between the goods and services in issue in accordance with the interdependency principle.
91. Further, whilst I note my finding that the earlier mark only has between a low and medium degree of distinctive character, I note that this does not preclude a finding of a likelihood of confusion between the marks.²³

CONCLUSION

92. For the reasons outlined above, the opposition succeeds in respect of all of the goods and services that I have found to be identical or similar. Therefore, the contested marks are, subject to any successful appeal of my decision, refused registration for the following:

Class 9

Electronic publications, downloadable; Publications (Electronic -), downloadable; Electronic publications (downloadable); Downloadable electronic publications; Publications in electronic format [downloadable]; Downloadable publications in electronic form; Downloadable electronic publications in the nature of magazines; Downloadable electronic newspapers; Downloadable publications; Electronic publications; Downloadable electronic books; Downloadable electronic newsletters; Downloadable electronic brochures; Interactive electronic publications; Downloadable electronic reports; Publications in electronic format; Downloadable electronic maps; Publications in electronic form; Weekly publications downloaded in electronic form from the internet; Electronic publications featuring games; Electronic sheet music, downloadable; Electronic magazines; Downloadable electronic game programs;

²³ *L'Oréal SA v OHIM*, Case C-235/05 P

Downloadable instruction manuals in electronic form; Digital books downloadable from the Internet; Downloadable digital music; Electronic publications in the field of interactive technology; Downloadable e-books; Digital music downloadable provided from the internet; Databases (electronic); Electronic databases; Digital music downloadable provided from MP3 internet websites; Digital music downloadable from the Internet; Digital music downloadable provided from a computer database or the internet; Electronic publications recorded on computer media; Memo books [electronic]; Digital music downloadable provided from MP3 internet web sites; Downloadable digital music provided from MP3 Internet web sites; Downloadable educational media; Electronic dictionaries; Downloadable digital assets; Downloadable music files; Downloadable digital photos; Training manuals in electronic format; Software related to handheld digital electronic devices; Downloadable software; Downloadable computer software for use as an electronic wallet; Digital music [downloadable] provided from mp3 web sites on the internet; Downloadable applications; Training guides in electronic format; Downloadable podcasts; Electronic game software for handheld electronic devices; Instruction manuals in electronic format; Computer documentation in electronic form; Hand-held electronic dictionaries; Software downloadable from the internet; Downloadable email software; Downloadable templates for designing audiovisual presentations; Downloadable posters; All of the above relates to or is connected with mental health and well-being.

Class 16:

Journals; Blank journals; Blank writing journals; Blank journal books; Magazines [periodicals]; Periodical publications; Periodicals; Printed periodical publications; Printed publications; Publications (Printed -); Periodical magazines; Annuals [printed publications]; Educational publications; Ledgers [books]; Monographs; Magazines; Printed periodicals in the field of movies; Binding materials for books and papers; Wirebound books; Manuscript books; Printed periodicals; Publication paper; Printed periodicals in the field of music; Jackets of paper for books; Ledger books; Folders for papers; Books; Magazine supplements for newspapers; Document holders being articles of stationery; Writing books; Jackets for papers; Advertising publications;

Magazine paper; Notebook paper; Writing paper; Directory paper; Writing paper holders; Paper book markers; Art paper; Note paper; Blank paper notebooks; Letter paper; Paper stationery; Writing paper pads; Scrapbook pages; Binder paper; Paper report covers; Note papers; Book-cover paper; Printed research reports; Paper folders; Paper folders [stationery]; Label paper; Paper tags; Daily newspaper; Newsprint paper; Calligraphy paper; Printed paper invitations; Paper stock [printing paper]; Shelf paper; Postcard paper; Photocopy paper; Stencil paper [mimeograph paper]; Vellum paper; Graph paper; Drawing paper; Paper; All of the above relates to or is connected with mental health and well-being.

Class 41:

Publication of journals; Publishing of journals; Publication of books, magazines, almanacs and journals; Publishing of journals, books and handbooks in the field of medicine; Multimedia publishing of magazines, journals and newspapers; Online publication of electronic books and journals; Publication of electronic books and journals online; Multimedia publishing of journals; Publication of electronic books and journals on-line; On-line publication of electronic books and journals; Publishing of electronic books and journals online; Publishing of electronic books and journals online; Publication of scientific information journals; On-line publication of electronic books and journals (non downloadable); Publishing of scientific papers; Publishing of medical publications; Publishing of books, magazines; On-line publication of electronic books and journals [not downloadable]; Publication of periodicals; Electronic online publication of periodicals and books; Publishing of electronic publications; Magazines (Publication of -); Publication of magazines; Online electronic publishing of books and periodicals; Publication of books; Books (Publication of -); Lending of books and other publications; Publication of periodicals and books in electronic form; Publishing services for books and magazines; Publication of electronic magazines; Publication of electronic books and periodicals on the Internet; Publication of books, reviews; Publication of newspapers; Online publications, namely blogs; Publishing of books; Publishing services for periodical and nonperiodical publications, other than publicity texts; Publication of textbooks; Publication of educational books; Services for the publication of

magazines; Multimedia publishing of electronic publications; Lending of books and periodicals; Publishing of newspapers; Publishing of books and reviews; Publication of text books; Services for the publication of books; Publication of audio books; Multimedia publishing of magazines; Publication of medical texts; Publishing of web magazines; Online publication of electronic newspapers; Publication of catalogs; Publishing scientific papers in relation to medical technology; Publishing of scientific papers in relation to medical technology; Multimedia publishing of books; Publication of consumer magazines; Publication of texts; Publication of catalogues; Publishing of instructional books; Publication and edition of books; Publication of instructional literature; Publication of calendars; Multimedia publishing of newspapers; Publication of printed matter and printed publications; Publication of year books; Non-downloadable electronic publications; Publication of printed directories; Publication of educational texts; Issue of publications; Publication of manuals; Organisation of conferences and symposia in the field of medical science; Rental of printed publications; Publication of booklets; Rental of newspapers and magazines; Publishing of documents; Magazine publishing; Publication of photographs; Publication of books relating to entertainment; Publication of texts in the form of CD-ROMs; Publication of books relating to television programmes; Newspaper publication; Electronic publication; Newspaper publishing; Book and review publishing; Publication of music; Book publishing; Publication and editing of printed matter; Publication of posters; Publication of printed matter; Publication of calendars of events; Publication of prospectuses; Publication of newspapers, periodicals, catalogs and brochures; Publication of fact sheets; Publication of brochures; Publication of directories relating to travel; Publication of educational printed matter; Publication of online reviews in the field of entertainment; All of the above relates to or is connected with mental health and well-being.

93. That being said, the contested marks may proceed to registration (again, subject to any successful appeal of my decision) for the following goods, which I have found to be dissimilar:

Class 9

Electronic calculators; All of the above relates to or is connected with mental health and well-being.

94. As discussed above, however, this opposition is provisional pending the outcome of the invalidation actions mentioned at paragraph 11 to 12 above. When the outcome of those proceedings is decided, I will issue a supplementary decision confirming the final outcome of the opposition proceedings, which will formally bring them to a close. That supplementary decision will also include a decision on costs, and the appeal period for these proceedings will not begin until the issuance of my supplementary decision.

Dated this 30th day of June 2026

B Hartland

For the Registrar

Annex 1

Class 9

Electronic publications, downloadable; Publications (Electronic -), downloadable;
Electronic publications (downloadable); Downloadable electronic publications;
Publications in electronic format [downloadable]; Downloadable publications in
electronic form; Downloadable electronic publications in the nature of magazines;
Downloadable electronic newspapers; Downloadable publications; Electronic
publications; Downloadable electronic books; Downloadable electronic newsletters;
Downloadable electronic brochures; Interactive electronic publications; Downloadable
electronic reports; Publications in electronic format; Downloadable electronic maps;
Publications in electronic form; Electronic publications, downloadable, relating to
games and gaming; Electronic downloadable publications in the field of video games;
Downloadable electronic games; Downloadable electronic publications in the nature
of magazines in the field of video games; Weekly publications downloaded in
electronic form from the internet; Electronic publications featuring games; Electronic
sheet music, downloadable; Electronic magazines; Downloadable electronic game
programs; Downloadable instruction manuals in electronic form; Digital books
downloadable from the Internet; Downloadable digital music; Electronic publications
in the field of interactive technology; Downloadable electronic books in the field of golf
instruction; Downloadable e-books; Digital music downloadable provided from the
internet; Databases (electronic); Electronic databases; Digital music downloadable
provided from MP3 internet websites; Digital music downloadable from the Internet;
Digital music downloadable provided from a computer database or the internet;
Electronic publications recorded on computer media; Downloadable electronic game
software for wireless devices; Memo books [electronic]; Digital music downloadable
provided from MP3 internet web sites; Downloadable digital music provided from MP3
Internet web sites; Downloadable educational media; Electronic dictionaries;
Downloadable digital assets; Downloadable music files; Downloadable digital photos;
Training manuals in electronic format; Software related to handheld digital electronic
devices; Downloadable software; Downloadable computer software for use as an
electronic wallet; Digital music [downloadable] provided from mp3 web sites on the
internet; Downloadable applications; Training guides in electronic format;
Downloadable podcasts; Electronic game software for handheld electronic devices;

Instruction manuals in electronic format; Electronic calculators; Computer documentation in electronic form; Hand-held electronic dictionaries; Software downloadable from the internet; Downloadable email software; Downloadable templates for designing audiovisual presentations; Downloadable posters; All of the above relates to or is connected with mental health and well-being.

Class 16

Journals; Blank journals; Blank writing journals; Blank journal books; Magazines [periodicals]; Periodical publications; Periodicals; Printed periodical publications; Printed publications; Publications (Printed -); Periodical magazines; Annuals [printed publications]; Educational publications; Ledgers [books]; Monographs; Magazines; Printed periodicals in the field of movies; Binding materials for books and papers; Wirebound books; Manuscript books; Printed periodicals; Publication paper; Printed periodicals in the field of music; Jackets of paper for books; Ledger books; Folders for papers; Printed publications relating to computers; Books; Printed periodicals in the field of tourism; Magazine supplements for newspapers; Document holders being articles of stationery; Writing books; Jackets for papers; Printed periodicals in the field of figurative arts; Advertising publications; Printed periodicals in the field of dance; Printed periodicals in the field of plays; Magazine paper; Notebook paper; Writing paper; Directory paper; Writing paper holders; Paper book markers; Art paper; Note paper; Blank paper notebooks; Letter paper; Paper stationery; Writing paper pads; Scrapbook pages; Binder paper; Paper report covers; Note papers; Book-cover paper; Printed research reports; Paper folders; Paper folders [stationery]; Label paper; Paper tags; Daily newspaper; Newsprint paper; Calligraphy paper; Printed paper invitations; Paper stock [printing paper]; Shelf paper; Postcard paper; Photocopy paper; Stencil paper [mimeograph paper]; Vellum paper; Graph paper; Drawing paper; Paper; All of the above relates to or is connected with mental health and well-being.

Class 18

Luggage, bags, wallets and other carriers; Luggage bags; Bags; Leather bags and wallets; Duffel bags for travel; Duffel bags; Duffle bags; Trunks and travelling bags; Bags for clothes; Trunks and traveling bags; Handbags, purses and wallets; Travel bags; Bags for travel; Backpacks [rucksacks]; Carry-on bags; Tote bags; Bags for umbrellas; Travelling bags [leatherware]; Backpacks; Shoe bags for travel; Carry-all

bags; Straps for suitcases; Carrying bags; Travelling bags; Leather bags; Cross-body bags; Traveling bags; Belt bags and hip bags; Straps for handbags; Garment bags for travel; Bags (Garment -) for travel; Trunks and suitcases; Crossbody bags; Drawstring bags; Canvas bags; Suitcases; Bags for carrying animals; Shoe bags; Hiking bags; Bags for sports clothing; Frames for bags [structural parts of bags]; Bags [envelopes, pouches] of leather, for packaging; Bags [envelopes, pouches] for packaging of leather; Bags [envelopes, pouches] of leather for packaging; Camping bags; Waterproof bags; Souvenir bags; Bags for climbers; Leather suitcases; Wash bags for carrying toiletries; Wheeled bags; Grocery tote bags; Leather shopping bags; Bags for campers; Trunks [luggage]; Luggage trunks; Trunks being luggage; Umbrella bags; Belt bags; Straps for luggage; Luggage straps; Toilet bags; Makeup bags; Suit bags; Flexible bags for garments; Sports bags; Bags for sports; Clutch purses [handbags]; Carry-on suitcases; Airline travel bags; Pocketbooks [handbags]; Canvas shopping bags; Nappy bags; Garment bags; Bucket bags; Purses [leatherware]; Luggage tags [leatherware]; Shoulder bags; Rucksacks; Garment bags for travel made of leather; Cloth bags; Waist bags; Knitted bags; Courier bags; Athletic bags; Towelling bags; All of the above relates to or is connected with mental health and well-being.

Class 25

Men's and women's jackets, coats, trousers, vests; Jackets [clothing]; Jackets (Stuff -) [clothing]; Stuff jackets [clothing]; Dress shirts; Shorts [clothing]; Pullstraps for shoes and boots; Shirts for suits; Jackets; Jackets being sports clothing; Hats (Paper -) [clothing]; Paper hats [clothing]; Bottoms [clothing]; Collars for dresses; Tops [clothing]; Headbands [clothing]; Headbands for clothing; Sleeved jackets; Paper hats for use as clothing items; Party hats [clothing]; Leggings [trousers]; Jerseys [clothing]; Sleeveless jackets; Hats; Quilted jackets [clothing]; Suede jackets; Stuff jackets; Gloves [clothing]; Gloves as clothing; Sports caps and hats; Tongues for shoes and boots; Denim jackets; Capes (clothing); Gabardines [clothing]; Shirts; Protective metal members for shoes and boots; Leather jackets; Beanie hats; Collars [clothing]; Corduroy shirts; Chaps (clothing); Leather belts [clothing]; Insoles [for shoes and boots]; Insoles for shoes and boots; Turtleneck shirts; Jogging bottoms [clothing]; Trousers shorts; Shoes for casual wear; Belts [clothing]; Belts for clothing; Shoes; Aprons [clothing]; Sports shirts with short sleeves; Bandeaux [clothing]; Fleece jackets; Fashion hats; Parts of clothing, footwear and headgear; Camouflage jackets;

Boots; Hoods [clothing]; Visors [clothing]; Muffs [clothing]; Kerchiefs [clothing]; Men's dress socks; Casual jackets; Knit jackets; Baseball caps and hats; Golf clothing, other than gloves; Wristbands [clothing]; Boas [clothing]; Ushankas [fur hats]; Denims [clothing]; Oilskins [clothing]; Foulards [clothing articles]; Leather shoes; Pants; Camouflage shirts; Clothes; Fishermen's jackets; Mitts [clothing]; Fabric belts [clothing]; Gloves for apparel; Ski hats; Long-sleeved shirts; Korean outer jackets worn over basic garment [Magoja]; Sandals and beach shoes; Cowls [clothing]; Collar liners for protecting clothing collars; Fingerless gloves as clothing; All of the above relates to or is connected with mental health and well-being.

Class 41

Publication of journals; Publishing of journals; Publication of books, magazines, almanacs and journals; Publishing of journals, books and handbooks in the field of medicine; Multimedia publishing of magazines, journals and newspapers; Online publication of electronic books and journals; Publication of electronic books and journals online; Multimedia publishing of journals; Publication of electronic books and journals on-line; On-line publication of electronic books and journals; Publishing of electronic books and journals online; Publishing of electronic books and journals on-line; Publication of scientific information journals; On-line publication of electronic books and journals (non-downloadable); Publishing of scientific papers; Publishing of medical publications; Publishing of books, magazines; On-line publication of electronic books and journals [not downloadable]; Publication of periodicals; Electronic online publication of periodicals and books; Publishing of electronic publications; Magazines (Publication of -); Publication of magazines; Online electronic publishing of books and periodicals; Publication of books; Books (Publication of -); Lending of books and other publications; Publication of periodicals and books in electronic form; Publishing services for books and magazines; Publication of electronic magazines; Publication of electronic books and periodicals on the Internet; Publication of books, reviews; Publication of newspapers; Online publications, namely blogs; Publishing of books; Publishing services for periodical and non-periodical publications, other than publicity texts; Publication of textbooks; Publication of educational books; Services for the publication of magazines; Multimedia publishing of electronic publications; Lending of books and periodicals; Publication of music books; Publishing of newspapers; Publishing of books and reviews; Publication of text books; Services for the publication

of books; Publication of audio books; Multimedia publishing of magazines; Publication of medical texts; Publishing of web magazines; Online publication of electronic newspapers; Publication of catalogs; Publishing scientific papers in relation to medical technology; Publishing of scientific papers in relation to medical technology; Multimedia publishing of books; Publication of consumer magazines; Publication of texts; Publication of catalogues; Publishing of instructional books; Publication and edition of books; Publication of instructional literature; Publication of calendars; Multimedia publishing of newspapers; Publication of printed matter and printed publications; Publication of year books; Non-downloadable electronic publications; Publication of printed directories; Publication of educational texts; Issue of publications; Publication of manuals; Publishing and issuing scientific papers in relation to medical technology; Organisation of conferences and symposia in the field of medical science; Rental of printed publications; Publication of booklets; Rental of newspapers and magazines; Publishing of documents; Magazine publishing; Publication of photographs; Publication of books relating to entertainment; Publication of texts in the form of CD-ROMs; Publication of books relating to television programmes; Newspaper publication; Electronic publication; Newspaper publishing; Book and review publishing; Publication of music; Book publishing; Publication and editing of printed matter; Publication of sheet music; Publication of posters; Publication of printed matter; Publication of calendars of events; Publication of prospectuses; Publication of newspapers, periodicals, catalogs and brochures; Publication of fact sheets; Publication of brochures; Publication of directories relating to travel; Publication of educational printed matter; Publication of online reviews in the field of entertainment; All of the above relates to or is connected with mental health and well-being.

Annex 2

The opponent's goods and services	The applicant's goods and services
<u>Class 16</u> Training manuals; Printed matter; Printed booklets; Printed stationery; Printed advertisements; Printed manuals; Printed educational materials. <u>Class 35</u> Digital marketing; Digital advertising services; Providing a searchable online advertising guide featuring the goods and services of online vendors. <u>Class 38</u> Transmission of digital audio and video broadcasts over a global computer network. <u>Class 41</u> Organising of business training; Conducting educational workshops in the field of business; Organisation of educational events; Organisation of entertainment events; Organisation of training; Business mentoring services; Coaching; Education and training; Conducting workshops and seminars in personal awareness.	<u>Class 9</u> Electronic publications, downloadable; Publications (Electronic -), downloadable; Electronic publications (downloadable); Downloadable electronic publications; Publications in electronic format [downloadable]; Downloadable publications in electronic form; Downloadable electronic publications in the nature of magazines; Downloadable electronic newspapers; Downloadable publications; Electronic publications; Downloadable electronic books; Downloadable electronic newsletters; Downloadable electronic brochures; Interactive electronic publications; Downloadable electronic reports; Publications in electronic format; Downloadable electronic maps; Publications in electronic form; Weekly publications downloaded in electronic form from the internet; Electronic publications featuring games; Electronic sheet music, downloadable; Electronic magazines; Downloadable electronic game programs; Downloadable instruction manuals in electronic form; Digital books downloadable from the Internet; Downloadable digital music; Electronic publications in the field of interactive technology; Downloadable e-

	books; Digital music downloadable provided from the internet; Databases (electronic); Electronic databases; Digital music downloadable provided from MP3 internet websites; Digital music downloadable from the Internet; Digital music downloadable provided from a computer database or the internet; Electronic publications recorded on computer media; Memo books [electronic]; Digital music downloadable provided from MP3 internet web sites; Downloadable digital music provided from MP3 Internet web sites; Downloadable educational media; Electronic dictionaries; Downloadable digital assets; Downloadable music files; Downloadable digital photos; Training manuals in electronic format; Software related to handheld digital electronic devices; Downloadable software; Downloadable computer software for use as an electronic wallet; Digital music [downloadable] provided from mp3 web sites on the internet; Downloadable applications; Training guides in electronic format; Downloadable podcasts; Electronic game software for handheld electronic devices; Instruction manuals in electronic format; Electronic calculators; Computer documentation in electronic form; Hand-held electronic dictionaries; Software downloadable
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	from the internet; Downloadable email software; Downloadable templates for designing audiovisual presentations; Downloadable posters; All of the above relates to or is connected with mental health and well-being. <u>Class 16:</u> Journals; Blank journals; Blank writing journals; Blank journal books; Magazines [periodicals]; Periodical publications; Periodicals; Printed periodical publications; Printed publications; Publications (Printed -); Periodical magazines; Annuals [printed publications]; Educational publications; Ledgers [books]; Monographs; Magazines; Printed periodicals in the field of movies; Binding materials for books and papers; Wirebound books; Manuscript books; Printed periodicals; Publication paper; Printed periodicals in the field of music; Jackets of paper for books; Ledger books; Folders for papers; Books; Magazine supplements for newspapers; Document holders being articles of stationery; Writing books; Jackets for papers; Advertising publications; Magazine paper; Notebook paper; Writing paper; Directory paper; Writing paper holders; Paper book markers; Art paper; Note
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	paper; Blank paper notebooks; Letter paper; Paper stationery; Writing paper pads; Scrapbook pages; Binder paper; Paper report covers; Note papers; Book-cover paper; Printed research reports; Paper folders; Paper folders [stationery]; Label paper; Paper tags; Daily newspaper; Newsprint paper; Calligraphy paper; Printed paper invitations; Paper stock [printing paper]; Shelf paper; Postcard paper; Photocopy paper; Stencil paper [mimeograph paper]; Vellum paper; Graph paper; Drawing paper; Paper; All of the above relates to or is connected with mental health and well-being. <u>Class 41:</u> Publication of journals; Publishing of journals; Publication of books, magazines, almanacs and journals; Publishing of journals, books and handbooks in the field of medicine; Multimedia publishing of magazines, journals and newspapers; Online publication of electronic books and journals; Publication of electronic books and journals online; Multimedia publishing of journals; Publication of electronic books and journals on-line; On-line publication of electronic books and journals; Publishing of electronic books and journals online; Publishing of
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	electronic books and journals online; Publication of scientific information journals; On-line publication of electronic books and journals (non downloadable); Publishing of scientific papers; Publishing of medical publications; Publishing of books, magazines; On-line publication of electronic books and journals [not downloadable]; Publication of periodicals; Electronic online publication of periodicals and books; Publishing of electronic publications; Magazines (Publication of -); Publication of magazines; Online electronic publishing of books and periodicals; Publication of books; Books (Publication of -); Lending of books and other publications; Publication of periodicals and books in electronic form; Publishing services for books and magazines; Publication of electronic magazines; Publication of electronic books and periodicals on the Internet; Publication of books, reviews; Publication of newspapers; Online publications, namely blogs; Publishing of books; Publishing services for periodical and nonperiodical publications, other than publicity texts; Publication of textbooks; Publication of educational books; Services for the publication of magazines; Multimedia publishing of electronic publications;
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	Lending of books and periodicals; Publishing of newspapers; Publishing of books and reviews; Publication of text books; Services for the publication of books; Publication of audio books; Multimedia publishing of magazines; Publication of medical texts; Publishing of web magazines; Online publication of electronic newspapers; Publication of catalogs; Publishing scientific papers in relation to medical technology; Publishing of scientific papers in relation to medical technology; Multimedia publishing of books; Publication of consumer magazines; Publication of texts; Publication of catalogues; Publishing of instructional books; Publication and edition of books; Publication of instructional literature; Publication of calendars; Multimedia publishing of newspapers; Publication of printed matter and printed publications; Publication of year books; Non-downloadable electronic publications; Publication of printed directories; Publication of educational texts; Issue of publications; Publication of manuals; Organisation of conferences and symposia in the field of medical science; Rental of printed publications; Publication of booklets; Rental of newspapers and magazines; Publishing of documents; Magazine
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	publishing; Publication of photographs; Publication of books relating to entertainment; Publication of texts in the form of CD-ROMs; Publication of books relating to television programmes; Newspaper publication; Electronic publication; Newspaper publishing; Book and review publishing; Publication of music; Book publishing; Publication and editing of printed matter; Publication of posters; Publication of printed matter; Publication of calendars of events; Publication of prospectuses; Publication of newspapers, periodicals, catalogs and brochures; Publication of fact sheets; Publication of brochures; Publication of directories relating to travel; Publication of educational printed matter; Publication of online reviews in the field of entertainment; All of the above relates to or is connected with mental health and well-being.
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