

O/0642/23

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003660302

BY PURE CLOUD SOLUTIONS LIMITED

TO REGISTER THE FOLLOWING TRADE MARK:



IN CLASSES 9, 38 AND 42

AND IN THE MATTER OF OPPOSITION THERETO

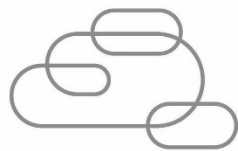
UNDER NO. 430203

BY GENESYS CLOUD SERVICES HOLDINGS II, LLC

BACKGROUND AND PLEADINGS

1. On 24 June 2021, Pure Cloud Solutions Limited (“the applicant”) applied to register the trade mark shown on the cover page of this decision, in the UK. The application was published on 15 October 2021 and registration is sought for the goods and services set out in paragraph **15** below.

2. On 14 January 2022, Genesys Cloud Services Holdings II, LLC (“the opponent”) opposed the application based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opponent relies upon the following trade mark:



PureCloud

UKTM no. 917877315¹

Filing date 19 March 2018; registration date 24 July 2018

Priority date 19 September 2017 (United States of America)

Relying upon all goods and services, namely:

Class 38 Telecommunications services, namely, voice over internet protocol (voip) services and hosted private branch exchange (pbx) services.

Class 42 Providing temporary use of on-line nondownloadable cloud computing software for contact center management; providing temporary use of on-line non-downloadable software and applications for an organization's handling and integration of voice and data communication and computer technologies, namely, directory services, operator services, administrative

¹ On 1 January 2021, the UK left the EU after the expiry of the transition period. Under Article 54 of the Withdrawal Agreement, the Registry created comparable UK trade marks for all rights holders with an existing EUTM. As a result of the opponent having an EUTM being protected as at the end of the Implementation Period, a comparable UK trade mark was automatically created. The comparable trade mark shown here is now recorded on the UK trade mark register, has the same legal status as if it had been applied for and registered under UK law and retains its original filing date.

services, reporting services, answering services, call routing, call distribution, outcalling services, voice response, recording services, speech analytics services, and customized, customerspecific applications.

3. The opponent claims that the marks are similar and that the goods and services are identical or similar, resulting in a likelihood of confusion.

4. The applicant is represented by The Trademark Helpline and the opponent is represented by FR Kelly.

5. Only the applicant filed evidence in chief. The opponent filed written submissions during the evidence rounds. Neither party requested a hearing, and only the opponent filed written submissions in lieu. This decision is taken following a careful perusal of the papers.

EVIDENCE AND SUBMISSIONS

6. The opponent filed written submissions dated 5 September 2022.

7. The applicant filed evidence in chief in the form of the witness statement of Steve Dobson dated 19 December 2022, which is accompanied by 3 exhibits. Mr Dobson is the applicant's representative.

8. The opponent filed written submissions in lieu dated 24 March 2023.

9. I have taken the evidence and submissions into account in reaching this decision, and will refer to them below where necessary.

RELEVANCE OF EU LAW

10. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions

of the Act relied upon in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

DECISION

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

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

(a)...

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

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

“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.”

13. By virtue of 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 before the date of the application in question, it is not subject to proof of use pursuant to section 6A of the Act.

14. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case

C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

(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 be dominated by one or more of its components;

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

(g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings to mind the earlier mark, 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;

(k) if the association between the marks creates a risk that the public will wrongly 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

15. The competing goods and services are as follows:

Opponent's services	Applicant's goods and services
<p><u>Class 38</u> Telecommunications services, namely, voice over internet protocol (voip) services and hosted private branch exchange (pbx) services.</p> <p><u>Class 42</u> Providing temporary use of on-line nondownloadable cloud computing software for contact center management; providing temporary use of on-line non-downloadable software and applications for an organization's</p>	<p><u>Class 9</u> Application software; application processors; Cloud servers; Cloud network monitoring software; Cloud computing software; Telecommunications networks; Communications networks; Computer networks; Utility, security and cryptography software; Personal computer application software for document control systems; Data and file management and database software; Data transmission networks;</p>

<p>handling and integration of voice and data communication and computer technologies, namely, directory services, operator services, administrative services, reporting services, answering services, call routing, call distribution, outcalling services, voice response, recording services, speech analytics services, and customized, customerspecific applications.</p>	<p>Downloadable mobile applications; Mobile application software; Application software for mobile phones; Software and applications for mobile devices; Downloadable applications for use with mobile devices; Software applications for use with mobile devices; Mobile device management software; Unified communications software.</p> <p><u>Class 38</u></p> <p>Electronic network communications; Telecommunication network services; Communication network consultancy; Operation of a network, being telecommunication services; Telecommunications services between computer networks; Information transmission services via digital networks; Digital network telecommunications services; Telecommunications; Telephone services; Data transmission services; Mobile telephony; Mobile communication services; Mobile telephone services; Mobile communications services; Communications by mobile phones; Communications by mobile telephones; Fixed and mobile telephone services; Wireless transfer of data via digital mobile telephony; Voice over Internet Protocol [VoIP] services; Providing voice communication services over the</p>
--	--

	<p>Internet; Voice over Internet Protocol [VoIP] communication services; Telecommunication services provided via Internet platforms and portals.</p> <p><u>Class 42</u></p> <p>Cloud computing; Consulting in the field of cloud computing networks and applications; Cloud-based data protection services; Web hosting services; Hosting services, software as a service, and rental of software; Hosting of Access Control as a Service (ACaaS) servers and software; Computer network services; Development of computer based networks; Integration of computer systems and networks; IT security, protection and restoration; Internet security consultancy; Data security consultancy; Data security services [firewalls]; Rental of operating software for accessing and using a cloud computing network.</p>
--	---

16. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

“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.”

17. Guidance on this issue has also come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

(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.

18. 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 for 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.”

Class 9

19. The opponent submits as follows:

“Software is, in essence, the programs and operating information used by computers and related devices. The Applicant’s goods in class 9 include broad software terms which are similar to the Opponent’s software related services in Class 42. This is because manufacturers of software will also commonly provide software-related services. The relevant public and the usual producers/providers of the goods and services coincide. Further more, these goods and services are complementary.”

Application software; cloud network monitoring software; cloud computing software; downloadable mobile applications; mobile application software; application software for mobile phones; Software and applications for mobile devices; downloadable applications for use with mobile devices; software applications for use with mobile devices.

20. These terms relate to general application software. I accept that these may be in competition with the opponent’s “providing temporary use of on-line downloadable cloud computing software for contact center management”. There may also be an overlap in purpose and user. However, the method of use and nature of the goods and services will clearly differ. They are not complementary. There may be some overlap in trade channels. In my view, the goods and services are similar to a medium degree.

Utility, security and cryptography software.

21. These are software goods with a specific purpose that differs to those of the opponent’s software services. The users may overlap, but I can see no reason for there to be an overlap in trade channels and I have no evidence to support such a finding. The nature, method of use and purpose clearly differ. There is no competition or complementarity. Consequently, I consider the goods and services to be dissimilar. If I am wrong in this finding, they are similar to only a very low degree.

Personal computer application software for document control systems; Data and file management and database software; Mobile device management software.

22. These are software goods with specific purposes that could be used as part of contact centre management. Consequently, they may be in competition with the opponent's "providing temporary use of on-line nondownloadable cloud computing software for contract center management". The users may overlap. The nature and method of use will clearly differ. However, there may be an overlap in trade channels. Consequently, I consider the goods and services to be similar to a medium degree.

Cloud servers; Application processors.

23. These are hardware goods. Clearly, they will differ in nature, method of use and purpose to the opponent's services. I recognise that there may be an overlap in user at a general level. However, I see no reason for there to be an overlap in trade channels and the opponent has not filed any evidence to suggest that there is. There is no competition or complementarity. I consider these goods and services to be dissimilar.

Telecommunications networks; Communications networks; Computer networks; Data transmission networks; Unified communications software.

24. These all either are, or could include, telecommunications networks. Consequently, I consider it likely that there will be an overlap in trade channels with "telecommunications services, namely, voice over internet protocol (voip) services and hosted private branch exchange (pbx) services" in the opponent's specification as telecommunication businesses are likely to offer a range of services and goods relating to telecommunications. The users and purpose could clearly overlap. The method of use and nature will differ. Taking all of this into account, I consider the goods and services to be similar to a medium degree.

Class 38

Electronic network communications; Telecommunication network services; Communication network consultancy; Operation of a network, being telecommunication services; Telecommunications services between computer networks; Information transmission services via digital networks; Digital network telecommunications services; Telecommunications; Telephone services; Data transmission services; Mobile telephony; Mobile communication services; Mobile telephone services; Mobile communications services; Communications by mobile phones; Communications by mobile telephones; Fixed and mobile telephone services; Wireless transfer of data via digital mobile telephony; Voice over Internet Protocol [VoIP] services; Providing voice communication services over the Internet; Voice over Internet Protocol [VoIP] communication services; Telecommunication services provided via Internet platforms and portals.

25. These services are all identical on the principle outlined in *Meric* or similar to a medium degree to the opponent's "telecommunications services, namely, voice over internet protocol (voip) services and hosted private branch exchange (pbx) services". Where they are not identical, they will overlap in user, trade channels, nature, method of use and purpose and, for these reasons, will be similar to a high degree.

Class 42

Cloud computing; Consulting in the field of cloud computing networks and applications.

26. Both of these terms could include "providing temporary use of on-line nondownloadable cloud computing software for contact center management" in the opponent's specification. Consequently, they are identical on the principle outlined in *Meric*.

Cloud-based data protection services; IT security, protection and restoration; Internet security consultancy; Data security consultancy; Data security services [firewalls].

27. These are all essentially IT/data security services (whether they are cloud-based or not) which seems to me likely to be a service offered by specialist companies. The fact that businesses may use the cloud to provide data protection services is not, in

my view, the same as providing non-downloadable software for different purposes. I have no evidence that there would be an overlap in trade channels. The method of use, purpose and nature of the services differ. There may be an overlap in user, but they are neither in competition nor complementary. Consequently, I consider them to be dissimilar. If I am wrong in that finding, they will be similar to a very low degree.

Web hosting services.

28. My understanding is that these are services associated with the hosting of websites. I can see no reason to find an overlap in trade channels with the opponent's services and I have no evidence before me to support such a finding. The nature, method of use and purpose of the services clearly differ. There is no competition or complementarity. Whilst there may be an overlap in user, this is not sufficient for a finding of similarity. Consequently, I consider the services to be dissimilar.

Hosting of Access Control as a Service (ACaaS) servers and software.

29. My understanding is that these are cloud-based services, including the provision of software services, which enable users to manage physical and digital resources. Consequently, I consider these to be services to be identical on the principle outlined in *Meric* with "providing temporary use of on-line nondownloadable cloud computing software for contact center management" in the opponent's specification. If I am wrong in this finding, the services would overlap in trade channels, user, purpose and would be in competition. Consequently, I consider them to be similar to at least a medium degree.

Hosting services, software as a service, and rental of software; Rental of operating software for accessing and using a cloud computing network.

30. These services are identical on the principle outlined in *Meric* to "providing temporary use of on-line nondownloadable cloud computing software for contact center management" in the opponent's specification. If I am wrong in this finding, the services would overlap in trade channels, user, purpose and would be in competition. Consequently, I consider them to be similar to at least a medium degree.

Computer network services; Development of computer based networks; Integration of computer systems and networks.

31. These services would overlap in trade channels and user with the opponent's "telecommunications services, namely, voice over internet protocol (voip) services and hosted private branch exchange (pbx) services". The purpose may also overlap. Consequently, I consider the services to be similar to a medium degree.

The average consumer and the nature of the purchasing act

32. As the above case law indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods and services. I must then determine the manner in which the goods and services are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J (as he then was) described the average consumer in these terms:

"60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words "average" denotes that the person is typical. The term "average" does not denote some form of numerical mean, mode or median."

33. The average consumer for the goods and services will be a member of the general public or a business user. The goods and services will vary in price and frequency of purchase. However, given that various factors will be taken into consideration when making a purchase (such as suitability for particular requirements and functionality), I consider that at least a medium degree of attention during the purchasing process, although I recognise that in some cases between a medium and high degree of attention will be paid where the goods and services are particularly technical in nature.

34. The goods and services will be purchased following perusal of signage on websites, on physical premises and on advertisements. Consequently, visual considerations are likely to dominate the selection process. However, given that advice may be sought from retail assistants and word-of-mouth recommendations may be made, I do not discount an aural component.



Comparison of trade marks

35. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade 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.”

36. It would be wrong, therefore, to artificially dissect the trade marks, 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.

37. The respective trade marks are shown below:

Opponent's trade mark	Applicant's trade mark
	

38. The opponent's mark consists of the conjoined words PURE CLOUD presented in title case, with a geometric device above it. Although the device in isolation may not be recognised as a cloud, when used alongside the word CLOUD, I consider it likely that it will be seen as a cloud device. The word CLOUD is in bolder font than the word PURE, and the whole mark is presented in greyscale. I consider the words PURE CLOUD to play the greater role in the overall impression as the eye is naturally drawn to the element that can be read, with the device playing a lesser role. The applicant's mark consists of the conjoined words PURE CLOUD with the word PURE presented in bold blue font and the word CLOUD presented in thinner grey font. The words are surrounded by a blue line, which appears to form a cloud device. The eye is naturally drawn to the element of the mark that can be read, so the words PURE CLOUD play the greater role, with the device playing a lesser role.

39. Visually, the marks overlap in that they both contain the conjoined words PURE CLOUD. They also both contain devices which resemble clouds, although they are clearly different depictions. The colours used also differ. Taking all of this into account, I consider the marks to be visually similar to between a medium and high degree.

40. Aurally, the words PURE CLOUD will both be given their ordinary English pronunciation and will be pronounced identically in both marks. The device elements will not be articulated. Consequently, the marks are aurally identical.

41. Conceptually, the marks both convey the message of a cloud that is pure. The devices simply reinforce this message. Consequently, I consider the marks to be conceptually identical.

Distinctive character of the earlier trade mark

42. 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 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, 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).”

43. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods and services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctive character of a mark can be enhanced by virtue of the use that has been made of them.

44. The opponent's mark consists of the conjoined words PURE CLOUD presented beneath a geometric device which appears to resemble a cloud device. The opponent submits that the earlier mark is of average distinctiveness. However, in my view, the mark is low in distinctiveness for cloud-related goods and services. Even in relation to other IT-related goods and services, it alludes to some sort of connection or compatibility with cloud computing and, consequently, will be low in distinctiveness.

Likelihood of confusion

45. 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. 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 goods and services may be offset by a greater degree of similarity between the marks and vice versa. As I mentioned above, 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.

46. I have found as follows:

- a) The goods and services vary from being identical to similar to a very low degree (except where I have found them to be dissimilar).
- b) The average consumer is a member of the general public or a business user, who will be paying at least a medium degree of attention (although I recognise

it may be higher for some of the goods/services which are particularly technical in nature).

- c) The purchasing process will be predominantly visual, although I do not discount an aural component.
- d) The marks are visually similar to between a medium and high degree, and aurally and conceptually identical.
- e) The earlier mark is inherently distinctive to a low degree.

47. In my view, taking all of the above factors into account, including the identical word elements, combined with the devices that resemble clouds, is likely to result in the marks being mistakenly recalled or misremembered as each other where they are used on goods and services that are similar to at least a medium degree.

48. Even where the average consumer identifies the differences between the marks, I consider it likely that they will be viewed as alternative marks being used by the same undertaking. The fact that they both contain the identical words PURE CLOUD and a version of a cloud device, means that their use is consistent with an alternative mark being used by the same undertaking. I bear in mind that the earlier mark is low in distinctiveness, but that does not preclude a likelihood of confusion and I consider the other factors in favour of confusion outweigh this. Consequently, I consider there to be a likelihood of indirect confusion where the goods and services are similar to at least a medium degree.

49. Where I have found the goods and services to be dissimilar, there can be no likelihood of confusion. Where they are similar to only a very low degree, the differences between the goods and services are sufficient to offset the similarities of the marks.

50. In reaching this conclusion, I have borne in mind the applicant's submissions regarding the absence of evidence of confusion. However, whilst this is a relevant factor, I have no evidence before me of the opponent's actual activities in the

marketplace. Whilst the applicant has filed evidence of its use, without evidence of the opponent's use, it is impossible for me to say whether the absence of evidence of confusion points towards there being no likelihood of confusion or whether there is some other explanation for it (such as the way in which the opponent actually uses its mark or the goods/services it has used to date being sufficiently dissimilar to those covered by the applicant's specification). Consequently, I do not consider that this assists the applicant.

CONCLUSION

51. The opposition succeeds in relation to the following goods and services, for which the application is refused:

Class 9 Application software; Cloud network monitoring software; Cloud computing software; Telecommunications networks; Communications networks; Computer networks; Personal computer application software for document control systems; Data and file management and database software; Data transmission networks; Downloadable mobile applications; Mobile application software; Application software for mobile phones; Software and applications for mobile devices; Downloadable applications for use with mobile devices; Software applications for use with mobile devices; Mobile device management software; Unified communications software.

Class 38 Electronic network communications; Telecommunication network services; Communication network consultancy; Operation of a network, being telecommunication services; Telecommunications services between computer networks; Information transmission services via digital networks; Digital network telecommunications services; Telecommunications; Telephone services; Data transmission services; Mobile telephony; Mobile communication services; Mobile telephone services; Mobile communications services; Communications by mobile phones; Communications by mobile telephones; Fixed and mobile telephone services; Wireless transfer of data via digital mobile

telephony; Voice over Internet Protocol [VoIP] services; Providing voice communication services over the Internet; Voice over Internet Protocol [VoIP] communication services; Telecommunication services provided via Internet platforms and portals.

Class 42 Cloud computing; Consulting in the field of cloud computing networks and applications; Hosting services, software as a service, and rental of software; Hosting of Access Control as a Service (ACaaS) servers and software; Computer network services; Development of computer based networks; Integration of computer systems and networks; Rental of operating software for accessing and using a cloud computing network.

52. The opposition fails in relation to the following goods and services, for which the application may proceed to registration:

Class 9 Application processors; Cloud servers; Utility, security and cryptography software.

Class 42 Cloud-based data protection services; Web hosting services; IT security, protection and restoration; Internet security consultancy; Data security consultancy; Data security services [firewalls].

COSTS

53. The opponent has enjoyed the greater degree of success and, consequently, it is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 2/2016. I have made a reduction for the only partial success. Bearing this in mind, I award the opponent the sum of **£1,000**, calculated as follows:

Preparing a Notice of opposition and considering the applicant's counterstatement	£200
Considering the applicant's evidence and filing written submissions during the evidence rounds	£500

Written submissions in lieu

£300

Total

£1,000

54. I therefore order Pure Cloud Solutions Limited to pay Genesys Cloud Services Holdings II, LLC the sum of £1,000. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 5 day of July 2023

S WILSON

For the Registrar