

BL O/0748/23

TRADE MARKS ACT 1994

IN THE MATTER OF

INTERNATIONAL REGISTRATION NO. WO0000001643217

DESIGNATING THE UNITED KINGDOM

BY EUROPEAN SUPER LEAGUE COMPANY, S.L

IN RESPECT OF THE TRADE MARK:



IN CLASSES 25, 28, 35, 38 AND 41

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 435389

BY SUPER LEAGUE GAMING, INC

BACKGROUND AND PLEADINGS

1. International trade mark 1643217 (“the IR”) consists of the sign shown on the cover page of this decision. The Holder is European Super League Company, S.L. The IR is registered with effect from 13 October 2021 but claims priority from an earlier filing of the same mark on 16 April 2021.¹ The request to protect the IR in the UK was published for opposition purposes on 6 May 2022. The Holder seeks protection for the mark in relation to goods and services in Classes 25, 28, 35, 38 and 41.²

2. On 4 August 2022, Super League Gaming, Inc (“the Opponent”) opposed the protection of the IR in the UK based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed at all the goods and services in the IR.

3. For the purposes of its opposition, the Opponent relies upon the following trade mark:



IR No. 1559782 - which designated the UK for protection on 15 January 2021. The mark was protected in the UK on 17 September 2021, in relation to the following services:

Class 41 Providing non-downloadable videos in the field of gaming via a website; organizing, conducting, and operating video game competitions, leagues, and tournaments.

4. The Opponent claims that the trade marks are highly similar and that there is a high degree of overlap, similarity and identity between the goods and services, resulting in a likelihood of confusion. The Holder filed a defence and

¹ European Union Intellectual Property Office (EM) 018455149.

² These will be listed in the goods and services comparison.

counterstatement denying the grounds of opposition and requesting that the Opponent provide proof of use of all the services relied upon.

5. The Opponent is represented by Fox Williams LLP; the Holder is represented by Pure Ideas Limited. Only the Opponent filed evidence and written submissions. Both parties were given the option of an oral hearing but neither requested to be heard on this matter and neither party chose to file written submissions in lieu of a hearing. This decision is taken following a careful review of the papers.

PRELIMINARY ISSUES

6. Before going any further into the merits of this opposition it is necessary to address a request made by the Holder in its counterstatement.

7. The Holder has requested that the Opponent prove use of its earlier mark. However, section 6A of the Act (proof of use) only needs to be considered where the earlier mark had been registered for five years or more on the date on which the opposed IR was filed, being 16 April 2021 (“the relevant date”). Accordingly, as the earlier mark had been registered for less than five years on the relevant date, it is not subject to the use provisions under section 6A of the Act, and as such, the Opponent may rely upon all the services identified in its pleadings without having to prove it has made genuine use of the mark.

8. Furthermore, the following point regarding the state of the register has been raised by the Holder in its counterstatement. It is necessary to explain why, as a matter of law, this point will have no bearing on the outcome of this opposition.

“The phrase [‘SUPER LEAGUE’] is used widely as a descriptor and there are already a number of prior users and registrations for marks with a SUPER LEAGUE element, combined with graphic elements in logos as well as specific fonts and scripts. No one entity has exclusive rights to the words SUPER LEAGUE by registration or use or reputation in the United Kingdom.”

9. In *Zero Industry Srl v OHIM*, Case T-400/06, the General Court (“GC”) stated that:

“73. As regards the results of the research submitted by the applicant [sic], according to which 93 Community trade marks are made up of or include the word ‘zero’, it should be pointed out that the Opposition Division found, in that regard, that ‘... there are no indications as to how many of such trade marks are effectively used in the market’. The Applicant [sic] did not dispute that finding before the Board of Appeal but none the less reverted to the issue of that evidence in its application lodged at the Court. It must be found that the mere fact that a number of trade marks relating to the goods at issue contain the word ‘zero’ is not enough to establish that the distinctive character of that element has been weakened because of its frequent use in the field concerned (see, by analogy, Case T-135/04 GfK v OHIM – BUS(Online Bus) [2005] ECR II-4865, paragraph 68, and Case T-29/04 Castellblanch v OHIM – Champagne Roederer (CRISTAL CASTELLBLANCH) [2005] ECR II-5309, paragraph 71).”

10. Accordingly, the state of the register is not evidence of how many of such trade marks are effectively used in the market, nor does it clarify whether consumers have or have not been confused by the presence of such marks.

11. In its written submissions the Opponent has made reference to other opposition decisions insofar as the comparison of marks is concerned. They are decisions on their specific facts and therefore cannot bind me in any way in evaluating the likelihood of confusion in this case where the marks are different. Furthermore, it is well established that decisions taken in other trade mark jurisdictions, such as the EUIPO, are not binding on the Registrar.

12. Having dealt with the necessary submissions made by the Holder and the Opponent, I go on now to consider the evidence.

EVIDENCE

13. The Opponent filed evidence in the form of the witness statement of Charlotte Mun-Sweet Elizabeth Kong, dated 28 December 2022, and its corresponding two exhibits (CEK 1 – CEK 2). Charlotte Mun-Sweet Elizabeth Kong is an associate

solicitor at Fox Williams, the representative for the Opponent. It is noted that the evidence relates solely to the Holder's request for proof of use and given that this issue has already been addressed above, my decision will make no further reference to the evidence submitted.

DECISION

Relevance of EU law

14. 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. That is why this decision continues to refer to EU trade mark case law.

Section 5(2)(b)

15. Sections 5(2)(b) of the Act states that:

“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.”

16. 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.”

Relevant law

17. The following principles are gleaned from the decisions of the Court of Justice of the European Union (“CJEU”) 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:

The principles

(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 great 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;

(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

18. Section 60A of the Act provides:

“(1) For the purpose of this Act goods and services-

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

19. When considering whether goods and services are similar, all the relevant factors relating to the goods and services should be taken into account. Those factors include, *inter alia*:³

- the physical nature of the goods or acts of service;
- their intended purpose;
- their method of use / uses;
- who the users of the goods and services are;
- the trade channels through which the goods or services reach the market;
- in the case of self-serve consumer items, where in practice they are found or likely to be found in shops and in particular whether they are, or are likely to be, found on the same or different shelves; and
- whether they are in competition with each other (taking into account how those in trade classify goods and services, for instance whether market research companies put them in the same or different sectors)

or

- whether they are complementary to each other. 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*”.⁴ I note that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity.⁵

20. When interpreting the terms in a specification I bear in mind:

- (i) that it is “*necessary to focus on the core of what is described..*” and that “*... trade mark registrations should not be allowed such a liberal*

³ See *Canon*, Case C-39/97, paragraph 23; and *British Sugar PLC v James Robertson & Sons Ltd.*, [1996] R.P.C. 281 – the “*Treat*” case

⁴ *Boston Scientific Ltd v OHIM*, Case T-325/06, paragraph 82

⁵ *Kurt Hesse v OHIM*, Case C-50/15

interpretation that their limits become fuzzy and imprecise”, although “where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question”.⁶

21. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, (“Meric”), the General Court held to the effect that goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by the trade mark application and vice versa.

22. The competing goods and services are as follows:

The Holder’s goods and services

Class 25

Clothing; shoes; headwear; shirts; knitwear [clothing]; sweaters; tee-shirts; vests; sports shirts without sleeves; skirts; underwear; bathing suits; bath robes; shorts; trousers; caps; caps [headwear]; hats; sashes for wear; foulards; shawls; tracksuits; sweatshirts; jackets; blazers; waterproof clothing; coats; uniforms; neckties; cuffs; headbands [clothing]; gloves [clothing]; aprons [clothing]; bibs not of paper; pajamas; stockings; socks; stocking suspenders; belts [clothing]; sportswear; sports shoes; sports footwear; footwear; football boots; caps and sports caps; studs for football boots.

Class 28

Toys, games and playthings; recreational games; arcade video game machines; sports balls; balls for games; board games; foosball tables [games]; dolls; plush toys; toy vehicles; mind games; party balloons; playing cards; confetti; gymnastic and sporting articles; soccer equipment; gloves specifically adapted for sports; gloves for

⁶ *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch), paragraphs 11 - 12

games; knee guards [sports articles]; elbow guards [sports articles]; shoulder pads for sports; football goals; cases adapted to sporting articles; paper party hats [party favors]; toy robots; appliances for gymnastics; kites; roller skates; scooters [toys]; skateboards; video game consoles; video game apparatus; joysticks for video games; controllers for video games; electronic games; starting blocks for sports events; body protection equipment for sports; arm guards for sports; palm guards for sports; hip protectors for sports; abdominal protectors for sports use; hand guards for sports; shin guards [sports articles]; fist guards [sports articles]; masks for sports; chest protectors for sports; neck guards for sports; scratch cards for playing lottery games; trading cards [card games]; padded protectors [parts of sports suits]; apparatus for games; machines for physical exercises; decorations for Christmas trees.

Class 35

Event marketing; advertising; promotion of special events; promotional services relating to e-sports events; promotion of sports competitions and events; organization and conducting of promotional events; advertising services relating to e-sports events; organization of the promotion of charitable fundraising events; organization of events, exhibitions, fairs and shows for commercial, promotional and advertising purposes; organization of exhibitions for commercial or advertising purposes; promotion of the sale of third-party goods and services via promotional events; representation services for sports people; promoting the products and services of others via agreements with sponsors in order to associate their products and services with sports competitions; advertising, including the promotion of the goods and services of others by means of sponsoring arrangements and license agreements; promotional management for sports celebrities; promotion of goods and services through the sponsoring of sports events; retail services in relation to cups and glasses; retail services relating to stationery; retail services relating to clothing; retail sale services for furniture; retail services relating to games; retail services relating to toys; retail services relating to household textiles; retail sale of sports articles; retail services relating to smartphones; retail services relating to smart watches; retail services relating to fashion accessories; retail of third-party pre-paid cards for the purchase of entertainment services; retail of third-party pre-paid cards

for the purchase of multimedia content; retail services relating to downloadable electronic publications; retail services online for clothing; online retail services for downloadable and pre-recorded music and films; online retail services for jewelry; online retail sale services for cosmetic and beauty products; online retail sale services for downloadable digital music; online retail sale services for downloadable ring tones; online retail services for toys; presentation of products on any communication means for retail purposes; promotional marketing services; promotional management of celebrities; dissemination of advertisements; promotion of fairs for commercial purposes; sales promotion for others; promotional, marketing and advertising services; advertising and promotion services; organization of trade fairs; sponsorship search; personnel selection; selection of executive staff; preparation of advertising material; advertising agency services; opinion polling; provision of online marketplaces for buyers and sellers of goods and services; provision of marketing information via websites; promotion, advertising and marketing of websites online; production of advertising films; presentation of companies on the Internet and other media; organization of prize draws for promotional purposes; online advertising; commercial promotion services; marketing; distribution of advertisements and commercial announcements; personnel recruitment consultancy; public relation services; personnel management consultancy; company management; professional networking services; commercial business promotion; business management services for footballers; business management of sports clubs; business management of sports facilities [for others]; commercial consultancy; organization of subscriptions to electronic newspapers; organization of subscriptions to Internet services; organization and conducting of commercial demonstrations; advertising services relating to the sale of products; advertising services provided via the Internet; administration of programs for frequent travelers; administration of consumer loyalty programs; news clipping services; online advertising via a computer network; media relations services.

Class 38

News agency services; radio communications; communication services; electronic communications networks; data communication services; Internet communication services; rental of communication apparatus; information about telecommunications;

communications services for accessing a database; interactive communication and broadcasting services; consultancy services regarding telecommunications; transmission of information by means of electronic communications networks; communication services via the Internet; advisory and consultancy services relating to wireless communications and wireless communications equipment; consultancy services relating to data communications; transmission of short messages [SMS], images, speech, sound, music and text communications between mobile telecommunications devices; transmission of messages, data and content via the Internet and other communication networks; dissemination of audio, video and multimedia content via the Internet and other communication networks; providing access to websites on the Internet or any other communications network; communication services for exchange of data in electronic format; provision of communications facilities for the exchange of digital data; providing access to the Internet and other communication networks; provision of access to databases; electronic mail transmission; transmission of digital files; communications via global computer networks or the Internet; computer communication services for transmitting information; communication services for the electronic transmission of data; assistance in providing cable television communication services for third parties; online communication services; radio broadcasting services; radio broadcasting; broadcasting; cable television broadcasting; radio broadcasting services by means of the Internet; streaming of e-sports events; transmission of streamed data [streaming]; television broadcasting on the Internet; streaming audio and video material on the Internet; mobile telephone communication services; communications by computer terminals; wireless broadcasting services; message sending; provision of Internet chat rooms; provision of online forums; electronic bulletin board services [telecommunication services]; transmission of portable audio files; transmission of video-on-demand; computer-aided transmission of messages and images.

Class 41

Education; training; provision of training courses; entertainment services; organization of competitions [education or entertainment]; sporting and cultural activities; organization of sports events; organization of sports competitions;

provision of recreational events; providing recreation facilities; organization of events for entertainment purposes; implementation of handicaps for sports events; production of sports events; production of sporting events for radio; production of sports events for television; conducting of live e-sports events; organization and conducting of live entertainment events; presentation of live shows; organization and conducting of sporting events; conducting and organization of entertainment shows; reservation of seats for entertainment events; organization and conducting of school athletic events; box office services [entertainment]; ticket procurement services for sporting events; information on tickets for sport events; ticket reservation services for activities and events for education, entertainment and sports; rental of equipment for use in athletic events; rental of equipment for use in sports events; providing information relating to sporting events; providing information relating to e-sports; information about entertainment and recreational events provided via online networks and the Internet; facilities for sports events, sports and athletics competitions and award programs; over-the-counter services for collecting tickets for sporting, cultural and leisure events; organization and management of sports events; organization of sporting and cultural activities for communities; organization of electronic sports activities; entertainment provided during breaks in sports events; football event organization services; management of events for sports clubs; entertainment services in the form of sporting events; advisory services relating to the organization of sporting events; arbitration of electronic sports; coaching relating to electronic sports; radio and television entertainment services; production of television programs; preparation of radio and television programs; production of radio and television programs; provision of television programs and films not downloadable via pay television services; production of e-sports events for television; provision of non-downloadable television programs via video-on-demand services; club services [entertainment or education]; coaching [training]; entertainer services; entertainment activity information; gambling or betting services; game services available online via a computer network; rental of playing equipment for games; news reporters services; providing amusement arcade services; supply of electronic publications online, which are not downloadable; provision of music online (non-downloadable); providing sports facilities; electronic publication of books and periodicals online; recreational activity information; rental of sports grounds; rental of sports equipment, except vehicles; rental of stadium facilities; sports camp

services; timing of sports events; arbitration of sports competitions; preparation of entertainment programs for broadcast; sports park services; sports club services; online game services; providing online computer games; online provision of non-downloadable videos; provision of non-downloadable films, via video-on-demand services; sports information services; online sports betting services; services relating to sports betting; electronic game services; fan clubs; fan club services; organization of fan clubs; entertainment services using portable audio files; providing online newsletters in the field of sports entertainment; audio, video and multimedia production and photography services; amusement park and funfair services; monitoring and arbitration of sports events; sports education; booking of sports facilities; organization of fantasy sports competitions; setting up sports competitions; booking of seats for shows; organization of electronic sports competitions; online entertainment services in the form of fantasy sports leagues; organization and conducting of educational face-to-face forums; organization of lotteries; training services using simulators; provision of user classifications for recreational or cultural purposes.

The Opponent's services

Class 41

Providing non-downloadable videos in the field of gaming via a website; organizing, conducting, and operating video game competitions, leagues, and tournaments.

23. With regard to the similarity of the goods and services, in its written submissions, the Opponent expresses the following:

“It is clear that there is a high degree of overlap, similarity and identity between the goods covered by the Earlier Trade Mark and the applied for goods and services in the Opposed Mark.

We consider that the similarity between the services covered by the Earlier Trade Mark and the goods and services covered by the Opposed Mark in classes 28, 35, 38 and 41 are self evident.

The applied for goods in class 25 can also be considered similar to the services covered in the Earlier Mark because the consumers of video games, gaming and e-sports may be the same consumers as consumers of, for example, sportswear and merchandised clothing.”

In addition, any minor differences between the goods and services registered and applied for can be offset against the high degree of similarity between the Earlier Trade Mark and the Opposed Mark such that confusion remains likely.”

24. With regard to the similarity of the goods and services, in its counterstatement the Holder states the following:

“The Opponent alleges similarity between its mark under class 41 and all the goods and services of the opposed application in classes 25, 28, 35, 38 and 41. The Opponent's services in class 41 are in short specific and can be summarised as 'NON-DOWNLOADABLE videos for gaming' in the highlighted portion whilst the Applicant's [sic] goods in class 41 as outlined at paragraph 20 are downloadable and online. Thus, the means of delivery in a direct class 41 comparison are different so at best even in this class 41 the level of similarity is low whilst other classes similarity is even less.

Furthermore, as outlined in paragraph 22 of the Statement of Grounds “...differences between the goods and services registered and applied for can be offset against the high degree of similarity (denied by the Applicant) [sic]...” The Opponent accepts there are differences in the goods and services and depends upon an allegation the words or phrase SUPER LEAGUE *per se* are the Opponent's exclusively which is patently absurd.”

The application in Class 25

Clothing; shoes; headwear; shirts; knitwear [clothing]; sweaters; tee-shirts; vests; sports shirts without sleeves; skirts; underwear; bathing suits; bath robes; shorts; trousers; caps; caps [headwear]; hats; sashes for wear; foulards; shawls; tracksuits; sweatshirts; jackets; blazers; waterproof clothing; coats; uniforms; neckties; cuffs;

headbands [clothing]; gloves [clothing]; aprons [clothing]; bibs not of paper; pajamas; stockings; socks; stocking suspenders; belts [clothing]; sportswear; sports shoes; sports footwear; footwear; football boots; caps and sports caps; studs for football boots

25. The Opponent's services in Class 41 are *providing non-downloadable videos in the field of gaming via a website; organizing, conducting, and operating video game competitions, leagues, and tournaments*. I can see no area of similarity between these services and the Holder's goods in Class 25. Furthermore, the Holder's goods neither enable the performance of the Opponent's services, nor are they the subject of the services, in a way which may give rise to a complementary relationship. These goods and services are dissimilar in nature, serve entirely different purposes, target different end users, and are purchased through separate commercial channels. While the respective users of the competing goods and services may be the same, as suggested by the Opponent, this is a superficial degree of similarity. Accordingly, I find that the Holder's goods in Class 25 are dissimilar to all the Opponent's services.

The application in Class 28

Toys and playthings; sports balls; balls for games; board games; foosball tables [games]; dolls; plush toys; toy vehicles; mind games; party balloons; playing cards; confetti; gymnastic and sporting articles; soccer equipment; gloves specifically adapted for sports; gloves for games; knee guards [sports articles]; elbow guards [sports articles]; shoulder pads for sports; football goals; cases adapted to sporting articles; paper party hats [party favors]; toy robots; appliances for gymnastics; kites; roller skates; scooters [toys]; skateboards; starting blocks for sports events; body protection equipment for sports; arm guards for sports; palm guards for sports; hip protectors for sports; abdominal protectors for sports use; hand guards for sports; shin guards [sports articles]; fist guards [sports articles]; masks for sports; chest protectors for sports; neck guards for sports; scratch cards for playing lottery games; trading cards [card games]; padded protectors [parts of sports suits]; apparatus for games; machines for physical exercises; decorations for Christmas trees

26. The above goods can broadly be grouped into three categories, that is, (i) toys, board/card games and playthings; (ii) sporting and gymnastic equipment/apparatus; and (iii) festive decorations and party novelties. It is not common in the marketplace for manufacturers of toys, board/card games and playthings, to also provide the Opponent's services in Class 41, which concern the provision of videos in the field of gaming, and organising video game competitions, leagues, and tournaments. The same is true of the Holder's sporting and/or gymnastic equipment/apparatus and festive decorations and party novelties. It follows that none of the above goods in Class 28 are typically produced by undertakings which also provide the Opponent's services in Class 41. Furthermore, the goods and services at issue differ in their nature, purpose, methods of use and distribution channels. Moreover, they are neither complementary to, nor are they in competition with one another. While the respective users of the competing goods and services may be the same, this is a superficial degree of similarity. As a consequence, the Holder's goods in Class 28, listed above, are not, in my view, similar to any of Opponent's services in Class 41. Accordingly, I find the goods and services at issue to be dissimilar.

Games, recreational games; arcade video game machines; video game consoles; video game apparatus; joysticks for video games; controllers for video games; electronic games

27. The Opponent's Class 41 services are related entirely to video games and video gaming. The Holder's Class 28 goods listed above include the broad terms 'games' and 'recreational games', as well as 'video games', 'video game apparatus' and 'electronic games'. Accordingly, I find that the goods and services at issue coincide to the extent that they are likely to target the same users who may in turn, perceive that the goods and services originate from the same commercial undertaking. Although by nature, goods are generally different from services, the goods and services at issue have the same purpose, namely, to provide amusement and entertainment. In addition, they may also share the same distribution channels since it is not unusual for producers to manufacture and sell video games, video game machines and apparatus, as well as provide gaming services via a website and organise gaming competitions, etc. Accordingly, I find the goods and services at issue to be similar to at least a medium degree.

The application in Class 35

Event marketing; advertising; promotion of special events; promotional services relating to e-sports events; promotion of sports competitions and events; organization and conducting of promotional events; advertising services relating to e-sports events; organization of the promotion of charitable fundraising events; organization of events, exhibitions, fairs and shows for commercial, promotional and advertising purposes; organization of exhibitions for commercial or advertising purposes; promotion of the sale of third-party goods and services via promotional events; promoting the products and services of others via agreements with sponsors in order to associate their products and services with sports competitions; advertising, including the promotion of the goods and services of others by means of sponsoring arrangements and license agreements; promotional management for sports celebrities; promotion of goods and services through the sponsoring of sports events; promotional marketing services; promotional management of celebrities; dissemination of advertisements; promotion of fairs for commercial purposes; sales promotion for others; promotional, marketing and advertising services; advertising and promotion services; preparation of advertising material; advertising agency services; provision of marketing information via websites; promotion, advertising and marketing of websites online; production of advertising films; organization of prize draws for promotional purposes; online advertising; commercial promotion services; marketing; distribution of advertisements and commercial announcements; commercial business promotion; advertising services relating to the sale of products; advertising services provided via the Internet; online advertising via a computer network

28. Generally speaking, the above services all relate to advertising and promotional services. Such services are provided by, for example, advertising agencies, who study their client's needs, provide all the necessary information and advice for the marketing of their products and services, and create a personalised strategy regarding the advertising of their goods and services, etc. Accordingly, these services have a different nature and purpose to the Opponent's *providing non-downloadable videos in the field of gaming via a website; organizing, conducting,*

and operating video game competitions, leagues, and tournaments in Class 41. The possibility that some of the Opponent's services may appear in advertisements or promotional material etc. is insufficient for finding similarity between the services at issue, on the basis that advertising and promotional services are dissimilar to the services being advertised. Furthermore, the services at issue do not target the same relevant public or share the same distribution channels, neither are they complementary, nor are they in competition. Moreover, the services at issue are generally not provided by the same undertakings. Therefore, I find that the competing services are dissimilar.

Personnel selection; selection of executive staff; personnel recruitment consultancy; personnel management consultancy; company management; professional networking services; business management services for footballers; business management of sports clubs; business management of sports facilities [for others]; commercial consultancy; organization of subscriptions to electronic newspapers; organization of subscriptions to Internet services; organization and conducting of commercial demonstrations; administration of programs for frequent travellers; administration of consumer loyalty programs; news clipping services; sponsorship search; representation services for sports people; organization of trade fairs; presentation of companies on the Internet and other media; media relations services; opinion polling; public relation services

29. Following on from my previous comment regarding the Holder's advertising and promotional services, contrary to the Opponent's view, I find that its services in Class 41 are even further away from the above services in Class 35. These services do not have the same nature, intended purpose or methods of use as the Opponent's services in Class 41, and will likely target different consumers via different commercial channels and will be provided by different undertakings. Furthermore, they are neither in competition, nor are they complementary. As such, I see no reasonable basis for a finding of similarity between the Holder's services and the Opponent's services, and the Opponent's submissions have not convinced me otherwise. Accordingly, I find the above services to be dissimilar to all the Opponent's services in Class 41.

Retail services relating to games

30. The Holder's services above are those that enable consumers to purchase *games*, which as a broad term would also include *video games*. The Opponent's services include *providing non-downloadable videos in the field of gaming via a website*. While I find that the purpose and method of use of the services at issue differ, the users may overlap, on the basis that, for example, those who wish to purchase video games, may also use a service which offers *non-downloadable videos in the field of gaming via a website*. Moreover, the services at issue may also be in competition with one another, resulting in the consumer seeing a connection between the two and believing that the responsibility for both lies with the same undertaking. Accordingly, I find there to be at least a low degree of similarity between the services at issue.

Retail services in relation to cups and glasses; retail services relating to stationery; retail services relating to clothing; retail sale services for furniture; retail services relating to toys; retail services relating to household textiles; retail sale of sports articles; retail services relating to smartphones; retail services relating to smart watches; retail services relating to fashion accessories; retail services relating to downloadable electronic publications; retail services online for clothing; online retail services for downloadable and prerecorded music and films; online retail services for jewelry; online retail sale services for cosmetic and beauty products; online retail sale services for downloadable digital music; online retail sale services for downloadable ring tones; online retail services for toys; retail of third-party pre-paid cards for the purchase of entertainment services; retail of third-party pre-paid cards for the purchase of multimedia content

31. I have considered the Class 41 services in the Opponent's specification in relation to the above *retail services* and find no similarity. The uses, users and purpose are not the same and whilst there may be some overlap in the channels of trade, this is not sufficient for a finding of similarity. The services at issue are neither in competition, nor are they complementary in the sense that the one would be indispensable for the other. Furthermore, consumers are unlikely to think that the services at issue come from the same or economically linked undertakings.

Accordingly, whilst some of the Holder's services may target the same end users as the Opponent's services, this is not sufficient for a finding of similarity. Therefore, I find the above services dissimilar to the Opponent's services. The same conclusion also applies to the Holder's remaining services in Class 35, namely presentation of products on any communication means for retail purposes; and provision of online marketplaces for buyers and sellers of goods and services, on the basis that they share no direct similarities with the Opponent's services in Class 41.

The application in Class 38

Transmission of messages, data and content via the Internet and other communication networks; dissemination of audio, video and multimedia content via the Internet and other communication networks; transmission of streamed data [streaming]; streaming audio and video material on the Internet; transmission of video-on-demand; computer-aided transmission of messages and images; transmission of digital files; transmission of information by means of electronic communications networks; streaming of e-sports events

32. The Opponent's *providing non-downloadable videos in the field of gaming via a website* effectively relates to the transmission of streamed content, namely videos in the field of gaming, via the Internet. The Holder's services above all relate to the transmission and streaming of content, etc., via the Internet. As such, I find that a link exists between the services at issue on the basis that there could be an overlap in their purpose. Furthermore, their distribution channels and end users can coincide. Accordingly, I find that the services at issue are similar to at least a low degree.

News agency services; radio communications; communication services; electronic communications networks; data communication services; Internet communication services; rental of communication apparatus; information about telecommunications; communications services for accessing a database; interactive communication and broadcasting services; consultancy services regarding telecommunications; communication services via the Internet; advisory and consultancy services relating to wireless communications and wireless communications equipment; consultancy services relating to data communications; transmission of short messages [SMS].

images, speech, sound, music and text communications between mobile telecommunications devices; providing access to websites on the Internet or any other communications network; communication services for exchange of data in electronic format; provision of communications facilities for the exchange of digital data; providing access to the Internet and other communication networks; provision of access to databases; electronic mail transmission; communications via global computer networks or the Internet; computer communication services for transmitting information; communication services for the electronic transmission of data; assistance in providing cable television communication services for third parties; online communication services; radio broadcasting services; radio broadcasting; broadcasting; cable television broadcasting; radio broadcasting services by means of the Internet; television broadcasting on the Internet; mobile telephone communication services; communications by computer terminals; wireless broadcasting services; message sending; provision of Internet chat rooms; provision of online forums; electronic bulletin board services [telecommunication services]; transmission of portable audio files

33. The above services share no obvious similarity with the Opponent's services in Class 41, namely *providing non-downloadable videos in the field of gaming via a website; and organizing, conducting, and operating video game competitions, leagues, and tournaments*. The services at issue do not have the same nature, intended purpose or methods of use, and will target different consumers via different trade channels and will be provided by different undertakings. Furthermore, they are neither in competition, nor are they complementary. Accordingly, absent of any submissions from the Opponent or an indication as to where the similarity lies, I find that the services at issue are dissimilar.

The application in Class 41

Online provision of non-downloadable videos

34. The above service, is a broad term which encompasses the Opponent's *providing non-downloadable videos in the field of gaming via a website*. Accordingly, I find the competing services are identical in line with the principle set out in *Meric*.

Game services available online via a computer network; online game services; providing online computer games; electronic game services

35. The above broad terms encompass the Opponent's *providing non-downloadable videos in the field of gaming via a website*. Accordingly, the competing services are identical in line with the principle set out in *Meric*.

Organization of competitions [entertainment]

36. The above broad term encompasses the Opponent's *organizing video game competitions*. Accordingly, the competing services are identical in line with the principle set out in *Meric*.

Entertainment services

37. The Holder's *entertainment services* is a broad term, which I feel is wide enough to include the Opponent's *providing non-downloadable videos in the field of gaming via a website*. Accordingly, on the principle established in *Meric*, the services at issue are identical. However, if I am wrong in this assessment, I consider the above services to be similar to a high degree on the basis that they have a similar purpose and can share the same end user. Further, the channels of trade can also coincide.

Organization of events for entertainment purposes; organization and conducting of live entertainment events

38. The above services are broad terms which, in my view, would be identical on the principle outlined in *Meric* to 'organizing, conducting, and operating video game competitions, leagues, and tournaments' in the Opponent's specification.

Information about entertainment events provided via online networks and the Internet; entertainment activity information

39. I consider that *information services* relating to terms that I have found identical above, to also be similar, to the same extent as I have set out.

Education; training; provision of training courses; organization and conducting of educational face-to-face forums; training services using simulators; coaching [training]; organization of competitions [education]; ticket reservation services for activities and events for education; club services [education]; sports education

40. The above services are all concerned with education and training, whereas the Opponent's services are all concerned with video gaming and competitions, leagues, and tournaments relating thereto. Therefore, in my view, there is unlikely to be any significant overlap in the nature of the services provided or the trade channels through which they reach the market, given their varying purpose. As such, the services at issue do not have the same intended purpose or methods of use and will likely target different consumers via different commercial channels and will be provided by different undertakings. Furthermore, they are neither in competition, nor are they complementary. As such, I see no reasonable basis for a finding of similarity between the Holder's services and the Opponent's services. Accordingly, I find the above Holder's services to be dissimilar to all the Opponent's services in Class 41.

Conducting of live e-sports events; providing information relating to e-sports; organization of electronic sports activities; arbitration of electronic sports; coaching relating to electronic sports; organization of electronic sports competitions; online entertainment services in the form of fantasy sports leagues

41. The above terms all relate to e-sports (short for electronic sports). E-sports is a form of competition using video games. As such, I find that the Holder's goods above, overlap with the Opponent's *providing non-downloadable videos in the field of gaming via a website and organizing, conducting, and operating video game competitions, leagues, and tournaments*. Therefore, I consider the respective services to be identical in line with the principle set out in *Meric*. However, if I am wrong in this assessment, I consider the above services to be similar to a high

degree on the basis that they have a similar purpose and can share the same end user. Further, the channels of trade can also coincide.

Sporting and cultural activities; organization of sports events; organization of sports competitions; organization and conducting of sporting events; providing information relating to sporting events; organization and management of sports events; entertainment provided during breaks in sports events; organization of sporting and cultural activities for communities; football event organization services; entertainment services in the form of sporting events; arbitration of sports competitions; monitoring and arbitration of sports events; sports information services; provision of user classifications for recreational or cultural purposes; organization of fantasy sports competitions; setting up sports competitions

42. The above services are broad terms relating to various sporting and cultural activities. As such, these terms could feasibly relate to, or include e-sports (short for electronic sports). Likewise, the Opponent's services, namely *providing non-downloadable videos in the field of gaming via a website and organizing, conducting, and operating video game competitions, leagues, and tournaments* can also relate to, or include e-sports. Therefore, I find that the respective services are similar to a degree, on the basis that they share a similar purpose, for example, to entertain and to encourage and promote competitive matches and events, etc. Furthermore, whilst the method of use of the services may not be the same, I am of the opinion that there is likely to be an overlap in end users and the channels of trade can also coincide. Accordingly, I find the services at issue to be similar to at least a medium degree.

Advisory services relating to the organization of sporting events

43. I consider that *advisory services* relating to terms that I have found similar to at least a medium degree above, to also be similar, to the same extent as I have set out.

Production of e-sports events for television; production of sports events; production of sports events for television; production of television programs; preparation of television programs; production of television programs; provision of television

programs not downloadable via pay television services; provision of non-downloadable television programs via video-on-demand services; preparation of entertainment programs for broadcast; audio, video and multimedia production; production of sporting events for radio; preparation of radio programs; production of radio programs; provision of films not downloadable via pay television services; provision of music online (non-downloadable); provision of non-downloadable films, via video-on-demand services; radio and television entertainment services; box office services [entertainment]; club services [entertainment]; entertainer services; entertainment services using portable audio files

44. Generally speaking, the purpose of the above services is to provide entertainment to an audience. Likewise, in general, the purpose of the Opponent's *providing non-downloadable videos in the field of gaming via a website and organizing, conducting, and operating video game competitions, leagues, and tournaments* is also to entertain. Therefore, it follows that the respective services may target the same user and may also overlap in trade channels. There may also be a degree of competition as users may choose between differing forms of entertainment. However, I do not consider there to be any complementary relationship between the services at issue. Therefore, I consider that the respective services are similar to a medium degree.

Photography services

45. The services for which the Opponent's mark is registered purely relate to video gaming, and competitions, leagues, and tournaments, relating thereto. The Holder's services listed above relate to photography services. In my view, although the services at issue may have a similar purpose, namely that of entertainment, I find that they have a different nature. Furthermore, the services at issue do not target the same relevant public or share the same distribution channels; they are not in competition, nor are they complementary. Moreover, these services are not usually provided by the same undertakings. Therefore, they are dissimilar.

Providing recreation facilities; implementation of handicaps for sports events; organization and conducting of school athletic events; rental of equipment for use in

athletic events; rental of equipment for use in sports events; facilities for sports events, sports and athletics competitions and award programs; management of events for sports clubs; providing sports facilities; rental of sports grounds; rental of sports equipment, except vehicles; rental of stadium facilities; sports camp services; timing of sports events; sports park services; sports club services; booking of sports facilities; providing online newsletters in the field of sports entertainment; fan clubs; fan club services; organization of fan clubs

46. The Holder's services above do not have the same nature, intended purpose or methods of use as the Opponent's *providing non-downloadable videos in the field of gaming via a website; organizing, conducting, and operating video game competitions, leagues, and tournaments* and will therefore likely target different consumers via different trade channels and will be produced or provided by different undertakings. Furthermore, the services at issue are neither in competition, nor are they complementary. Accordingly, absent of any submissions from the Opponent or an indication as to where the similarity lies, I find that the Holder's services are dissimilar to all the Opponent's services.

Reservation of seats for entertainment events; ticket procurement services for sporting events; over-the-counter services for collecting tickets for sporting, cultural and leisure events; information on tickets for sport events; ticket reservation services for activities and events for entertainment and sports; booking of seats for shows

47. The above services are predominantly ticket reservation and procurement services and seat reservation services, in relation to sporting and entertainment events. The Opponent's services are *providing non-downloadable videos in the field of gaming via a website; and organizing, conducting, and operating video game competitions, leagues, and tournaments*. In my view there is unlikely to be any significant overlap in the nature of the services provided or the trade channels through which they reach the market, given their varying purpose. Furthermore, the services are not competitive, nor are they complementary. I would not naturally assume, nor would I expect the average consumer to assume, that an entity concerned with the booking of seats and ticket reservation/procurement, etc., is also

responsible for providing non-downloadable videos in the field of gaming via a website and organising, conducting and operating video game competitions, leagues, and tournaments. Consequently, I find that the services at issue are dissimilar.

Provision of recreational events; presentation of live shows; conducting and organization of entertainment shows; information about recreational events provided via online networks and the Internet; recreational activity information

48. Broadly speaking, the above services all relate to entertainment, and recreational services and events with the purpose of entertaining and amusing etc. The Opponent's *providing non-downloadable videos in the field of gaming via a website; and organizing, conducting, and operating video game competitions, leagues, and tournaments* can also, in my opinion, be part of the Holder's above listed services resulting in the services being identical on the principle outlined in *Meric*. However, even if I am wrong on this finding, the services may well be provided by the same undertaking. Furthermore, they could overlap in nature and method of use, and user, although the purpose may differ. Consequently, I consider the services to be similar to at least a medium degree.

Gambling or betting services; online sports betting services; services relating to sports betting; organization of lotteries

49. The Opponent's *providing non-downloadable videos in the field of gaming via a website* concern games and therefore in my view are at least similar to a low degree to the Holder's services listed above on the basis that they share a similar nature purpose and distribution channels. Moreover, they can be in competition and can be offered by the same provider.

News reporters services; supply of electronic publications online, which are not downloadable; electronic publication of books and periodicals online

50. I find that the above services differ to the Opponent's services in nature and purpose and I have no evidence before me to suggest that there would be an overlap in trade channels. I do not consider the services at issue to be in competition, nor are they complementary. Therefore, whilst it may be the case that the users may overlap, this is not sufficient on its own for a finding of similarity. Accordingly, the services at issue are dissimilar.

Providing amusement arcade services

51. The purpose of the above services is to entertain and amuse users. Likewise, the purpose of the Opponent's *providing non-downloadable videos in the field of gaming via a website* is also to entertain and amuse users. However, I bear in mind that the Holder's services are delivered online, whereas the Opponent's services are delivered in a physical place, and as such, the nature of the services are different. However, I am of the view that the services share a purpose and can be in competition with each other. Accordingly, I find that the services at issue are similar to at least a low degree.

Amusement park and funfair services

52. The Opponent's *providing non-downloadable videos in the field of gaming via a website* is a type of entertainment service, with the aim of entertaining and amusing the user. Therefore, these services have a similar nature and purpose to the above services. In both cases, entertainment services are involved, and it cannot be ruled out that games rooms/amusement arcades that are installed in amusement parks or at funfairs, also have online gaming services. As such, I find that the services at issue can target the same public, can have the same purpose, can be distributed through the same channels and can be in competition. Therefore, the services are at least similar to a low degree.

Rental of playing equipment for games

53. The above services and the Opponent's *providing non-downloadable videos in the field of gaming via a website* are both concerned with games, and therefore can target the same users, coincide in distribution channels and provider. Therefore, I consider that the services at issue are similar to a low degree.

54. Similarity of goods and services is essential for a finding of a likelihood of confusion.⁷ Accordingly, as a consequence of the above findings, the opposition fails with respect to the following goods and services:

Class 25 Clothing; shoes; headwear; shirts; knitwear [clothing]; sweaters; tee-shirts; vests; sports shirts without sleeves; skirts; underwear; bathing suits; bath robes; shorts; trousers; caps; caps [headwear]; hats; sashes for wear; foulards; shawls; tracksuits; sweatshirts; jackets; blazers; waterproof clothing; coats; uniforms; neckties; cuffs; headbands [clothing]; gloves [clothing]; aprons [clothing]; bibs not of paper; pajamas; stockings; socks; stocking suspenders; belts [clothing]; sportswear; sports shoes; sports footwear; footwear; football boots; caps and sports caps; studs for football boots.

Class 28 Toys and playthings; sports balls; balls for games; board games; foosball tables [games]; dolls; plush toys; toy vehicles; mind games; party balloons; playing cards; confetti; gymnastic and sporting articles; soccer equipment; gloves specifically adapted for sports; gloves for games; knee guards [sports articles]; elbow guards [sports articles]; shoulder pads for sports; football goals; cases adapted to sporting articles; paper party hats [party favors]; toy robots; appliances for gymnastics; kites; roller skates; scooters [toys]; skateboards; starting blocks for sports events; body protection equipment for sports; arm guards for sports; palm guards for sports; hip protectors for sports; abdominal protectors for sports use; hand guards for sports; shin guards [sports articles]; fist guards [sports articles]; masks for sports; chest protectors for sports; neck guards for sports; scratch cards for playing lottery games; trading cards [card games]; padded protectors [parts of sports suits];

⁷ *Waterford Wedgwood plc v OHIM*, Case C-398/07 P, CJEU

apparatus for games; machines for physical exercises; decorations for Christmas trees.

Class 35 Event marketing; advertising; promotion of special events; promotional services relating to e-sports events; promotion of sports competitions and events; organization and conducting of promotional events; advertising services relating to e-sports events; organization of the promotion of charitable fundraising events; organization of events, exhibitions, fairs and shows for commercial, promotional and advertising purposes; organization of exhibitions for commercial or advertising purposes; promotion of the sale of third-party goods and services via promotional events; promoting the products and services of others via agreements with sponsors in order to associate their products and services with sports competitions; advertising, including the promotion of the goods and services of others by means of sponsoring arrangements and license agreements; promotional management for sports celebrities; promotion of goods and services through the sponsoring of sports events; promotional marketing services; promotional management of celebrities; dissemination of advertisements; promotion of fairs for commercial purposes; sales promotion for others; promotional, marketing and advertising services; advertising and promotion services; preparation of advertising material; advertising agency services; provision of marketing information via websites; promotion, advertising and marketing of websites online; production of advertising films; organization of prize draws for promotional purposes; online advertising; commercial promotion services; marketing; distribution of advertisements and commercial announcements; commercial business promotion; advertising services relating to the sale of products; advertising services provided via the Internet; online advertising via a computer network; personnel selection; selection of executive staff; personnel recruitment consultancy; personnel management consultancy; company management; professional networking services; business management services for footballers; business management of sports clubs; business management of sports facilities [for others]; commercial consultancy; organization of subscriptions to electronic newspapers; organization of subscriptions to Internet services; organization and conducting of commercial demonstrations; administration of programs for frequent travellers; administration of consumer loyalty programs; news clipping services; sponsorship search; representation services for sports people; organization of trade

fairs; presentation of companies on the Internet and other media; media relations services; opinion polling; public relation services; retail services in relation to cups and glasses; retail services relating to stationery; retail services relating to clothing; retail sale services for furniture; retail services relating to toys; retail services relating to household textiles; retail sale of sports articles; retail services relating to smartphones; retail services relating to smart watches; retail services relating to fashion accessories; retail services relating to downloadable electronic publications; retail services online for clothing; online retail services for downloadable and pre-recorded music and films; online retail services for jewelry; online retail sale services for cosmetic and beauty products; online retail sale services for downloadable digital music; online retail sale services for downloadable ring tones; online retail services for toys; retail of third-party pre-paid cards for the purchase of entertainment services; retail of third-party pre-paid cards for the purchase of multimedia content; presentation of products on any communication means for retail purposes; and provision of online marketplaces for buyers and sellers of goods and services.

Class 38 News agency services; radio communications; communication services; electronic communications networks; data communication services; Internet communication services; rental of communication apparatus; information about telecommunications; communications services for accessing a database; interactive communication and broadcasting services; consultancy services regarding telecommunications; communication services via the Internet; advisory and consultancy services relating to wireless communications and wireless communications equipment; consultancy services relating to data communications; transmission of short messages [SMS], images, speech, sound, music and text communications between mobile telecommunications devices; providing access to websites on the Internet or any other communications network; communication services for exchange of data in electronic format; provision of communications facilities for the exchange of digital data; providing access to the Internet and other communication networks; provision of access to databases; electronic mail transmission; communications via global computer networks or the Internet; computer communication services for transmitting information; communication services for the electronic transmission of data; assistance in providing cable television communication services for third parties; online communication services;

radio broadcasting services; radio broadcasting; broadcasting; cable television broadcasting; radio broadcasting services by means of the Internet; television broadcasting on the Internet; mobile telephone communication services; communications by computer terminals; wireless broadcasting services; message sending; provision of Internet chat rooms; provision of online forums; electronic bulletin board services [telecommunication services]; transmission of portable audio files.

Class 41 Education; training; provision of training courses; organization and conducting of educational face-to-face forums; training services using simulators; coaching [training]; organization of competitions [education]; ticket reservation services for activities and events for education; club services [education]; sports education; photography services; providing recreation facilities; implementation of handicaps for sports events; organization and conducting of school athletic events; rental of equipment for use in athletic events; rental of equipment for use in sports events; facilities for sports events, sports and athletics competitions and award programs; management of events for sports clubs; providing sports facilities; rental of sports grounds; rental of sports equipment, except vehicles; rental of stadium facilities; sports camp services; timing of sports events; sports park services; sports club services; booking of sports facilities; providing online newsletters in the field of sports entertainment; fan clubs; fan club services; organization of fan clubs; reservation of seats for entertainment events; ticket procurement services for sporting events; over-the-counter services for collecting tickets for sporting, cultural and leisure events; information on tickets for sport events; ticket reservation services for activities and events for entertainment and sports; booking of seats for shows; news reporters services; supply of electronic publications online, which are not downloadable; electronic publication of books and periodicals online.

The average consumer and the nature of the purchasing act

55. It is necessary to determine who is the average consumer for the respective goods and how the consumer is likely to select them. It must be borne in mind that the average consumer's level of attention is likely to vary according to the category

of goods or services in question.⁸ In *Hearst Holdings Inc*,⁹ Birss J. 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 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 word “average” denotes that the person is typical... [it] does not denote some form of numerical mean, mode or median.”

56. The average consumer of the goods and services at issue is the general public. The average consumer is likely to take into consideration various factors when selecting the goods and services at issue, but I would not expect the degree of attention to be particularly high. Overall, I find that a medium degree of attention is likely to be paid during the purchase of the goods and services. The goods and services are all likely to be sought out primarily by eye, including via websites, for example, and so I would expect the purchase to be mainly visual. However, I bear in mind that the goods and services may sometimes be the subject of word-of-mouth recommendations and therefore aural considerations are also borne in mind.

Comparison of the marks

57. It is clear from *Sabel BV v. Puma AG* that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by them, bearing in mind their distinctive and dominant components. The CJEU stated in *Bimbo SA v OHIM*, that:

“34. [...] it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is

⁸ *Lloyd Schuhfabrik Meyer*, Case C-342/97

⁹ *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)

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.”

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

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

Opponent' mark	Holder's mark
	

60. With regard to the similarity of the marks, in its counterstatement, the Holder states:

“The opposition is based on earlier rights to a highly stylised version of a logo mark with a 'SUPER LEAGUE' element in specific script and with overwhelming graphic elements. The similarity between the opposed application and the earlier right cited is in relation to the common words or phrase SUPER LEAGUE which has no inherent or established distinctive nature in its own right being a superlative and descriptor SUPER with another common descriptor LEAGUE in relation to sports including association football, rugby league and hockey to name but a few, in real or virtual form, as well as other situations with rankings.

The phrase is used widely as a descriptor and there are already a number of prior users and registrations for marks with a SUPER LEAGUE element,

combined with graphic elements in logos as well as specific fonts and scripts. No one entity has exclusive rights to the words SUPER LEAGUE by registration or use or reputation in the United Kingdom.

The SUPER LEAGUE element should be ignored in terms of comparison of the marks so consideration limited to the logo elements in the marks.

There is little if any similarity between the graphic parts of the prior right cited by the Opponent and those parts of the opposed application and certainly with regard to those parts which could act as a badge of origin.

It will be appreciated that the earlier right cited by the Opponent is defined as a figurative mark NOT a word mark and has the description 'The mark consists of two concentric hexagons with SUPER appearing above LEAGUE in the middle.

The present application, as with the earlier rights and those of a number of other actors in trade, merely includes the descriptive phrase SUPER LEAGUE with distinctive script format and logo. The opposed application and the cited earlier rights are not remotely similar other than with the commonly used word combination Super League which should be ignored for that reason in comparison.

The marks of the earlier right and the opposed marks clearly have the element SUPER LEAGUE but in respectively distinct formats, the earlier right contrary to the Opponent's suggestion is not for the plain in capitals common word combination SUPER LEAGUE. Despite this clear fact the Opponent then makes the bold assertion at paragraph 14 that the marks are highly similar without any comment upon the logo or figurative differences.

As indicated the Applicant [sic] submits the word or phrase element SUPER LEAGUE should be ignored as commonplace. With regard to the logo and figurative elements it would seem clear the Opponent agrees they are different based on the lack of comment in the Grounds of Opposition that the logo,

graphic and figurative elements are similar. The opposition should be denied for that reason alone.”

61. With regard to the similarity of the marks, in its written submissions, the Opponent submits:

“The Earlier Trade Mark is not “highly stylised” nor does it have “overwhelming graphic elements” as the Applicant [sic] seeks to argue. In addition the Opposed Mark has minimal graphic and stylistic elements.

We repeat that the average consumer is therefore likely to refer to the Earlier Trade Mark as SUPER LEAGUE and to the Opposed Mark as THE SUPER LEAGUE regardless of whether the signs are figurative or word marks. The marks are verbally, aurally and conceptually highly similar and the overall impression of the Earlier Trade Mark and the Opposed Mark is the same.

It is denied that the words SUPER LEAGUE have no inherent or established distinctive nature in their own right and should therefore be ignored in the comparison exercise, or that the phrase is “used widely as a descriptor and there are already a number of prior users”. We note that the Applicant [sic] has sought to make such arguments but has not provided any evidence to demonstrate that this is the case.”

Overall impression

62. The Opponent’s mark contains the wording SUPER LEAGUE. The words are presented in large, slightly stylised, white upper-case letters and are centrally positioned, one on top of the other, spanning the width of the mark. A small black device, resembling a lightning bolt, lies across the letters ‘U’ and ‘E’ of the word LEAGUE. The words are bordered by a fine white line and sit on a six-sided, black geometric background, resembling a label. The words dominate the overall impression of the mark. Slightly less dominant is the figurative lightning bolt element. However, this element still contributes to the overall impression of the mark. I find

that the fine white borderline and black six-sided background will have little impact on the consumer.

63. The Holder's mark contains the words THE SUPER LEAGUE. The words are presented in large, upper-case letters. SUPER LEAGUE is presented in white and THE is presented in varying colours, ranging from blue through to pink. The letters are positioned one on top of the other on the left of the mark. On the right of the mark is a large circular device which has a line running diagonally through it, from the bottom left of the circle through to the top right of the circle. Both the circle and the line are presented in grey. The words and device elements sit on top of a black rectangular background. I find the words to be the most dominant element of the mark due to their size and colour, as well as their position in the mark. Furthermore, I keep in mind *MigrosGenossenschafts-Bund v EUIPO*, T-68/17, where it was stated that:

“...in the case of a mark consisting of both word and figurative elements, the word elements must generally be regarded as more distinctive than the figurative elements, or even as dominant, since the relevant public will keep in mind the word elements to identify the mark concerned, the figurative elements being perceived more as decorative elements...”

64. Slightly less dominant are the figurative elements. However, these elements still contribute to the overall impression of the mark. I find that the black rectangular background will have little impact on the consumer.

Visual comparison

65. Visually, the marks coincide insofar as they share the same two words, SUPER LEAGUE, being the only word elements contained in the Opponent's mark. The competing marks are visually different in that the Holder's mark contains the additional coloured element THE, positioned at the beginning of the mark, and the figurative elements positioned at the end of the mark, on the right. Additionally, the figurative elements present in the Opponent's mark are not replicated in the Holder's mark. Accordingly, weighing up the similarities with the differences, keeping in mind

that both trade marks contain the words 'SUPER LEAGUE', I find the marks to be visually similar to a medium degree.

Aural comparison

66. The Opponent's mark consist of three syllables, namely 'SU-PER-LEAGUE'. The Holder's mark consists of four syllables, namely 'THE-SU-PER-LEAGUE'. Aurally, the entirety of the Opponent's mark is the same as the Holder's second, third and fourth syllables with the only difference coming in the presence of the first syllable 'THE' in the Holder's mark. The figurative elements in the marks at issue will not be articulated. Taking this into account, whilst bearing in mind the overall impression of the marks, I find that the marks are aurally similar to at least a medium degree.

Conceptual comparison

67. 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* [2006] E.C.R.-I-643; [2006] E.T.M.R 29. The assessment must, therefore, be made from the point of view of the average consumer.

68. The meanings of 'THE', 'SUPER' and 'LEAGUE', are obvious. Therefore, the words 'SUPER LEAGUE' and 'THE SUPER LEAGUE' will likely convey the idea of an exceptional/top level league composed of players or teams. Accordingly, as the competing marks contain the words 'SUPER LEAGUE' they convey the same concept despite the additional word 'THE' present in the Holder's mark, which does not detract from that concept, nor does it add a different concept. With regard to the device and figurative elements present in the marks, these will merely be understood as representing particular designs, etc., but will have no clear relationship with the words 'SUPER LEAGUE' or 'THE SUPER LEAGUE'. Accordingly, I find there to be a very high degree of conceptual similarity between the marks.

Distinctive character of the earlier trade mark

69. The distinctive character of a trade mark can be measured only, first, by reference to the goods or services in respect of which registration is sought and, second, by reference to the way it is perceived by the relevant public. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

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

70. 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 or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The degree of distinctiveness is an important factor as it directly relates to whether there is a likelihood of confusion; the more distinctive the earlier mark, the greater the likelihood of confusion.

71. With regard to the distinctive character of the mark, in its counterstatement, the Holder states:

“The similarity between the opposed application and the earlier right cited is in relation to the common words or phrase SUPER LEAGUE which has no inherent or established distinctive nature in its own right being a superlative and descriptor SUPER with another common descriptor LEAGUE in relation to sports including association football, rugby league and hockey to name but a few, in real or virtual form, as well as other situations with rankings.

The phrase is used widely as a descriptor and there are already a number of prior users and registrations for marks with a SUPER LEAGUE element, combined with graphic elements in logos as well as specific fonts and scripts. No one entity has exclusive rights to the words SUPER LEAGUE by registration or use or reputation in the United Kingdom.

[...]

The present application, as with the earlier rights and those of a number of other actors in trade, merely includes the descriptive phrase SUPER LEAGUE with distinctive script format and logo. The opposed application and the cited earlier rights are not remotely similar other than with the commonly used word combination Super League which should be ignored for that reason in comparison.

[...]

As indicated the Applicant [sic] submits the word or phrase element SUPER LEAGUE should be ignored as commonplace.”

72. With regard to the distinctive character of the mark, in its written submissions, the Holder submits:

“It is denied that the words SUPER LEAGUE have no inherent or established distinctive nature in their own right and should therefore be ignored in the

comparison exercise, or that the phrase is “used widely as a descriptor and there are already a number of prior users”. We note that the Applicant [sic] has sought to make such arguments but has not provided any evidence to demonstrate that this is the case.

The words SUPER LEAGUE have a normal or medium level of distinctiveness. Furthermore, even if the words did have a lower level of distinctiveness (which for the avoidance of doubt is denied), according to the guidance of the European Trade Mark and Design Network Common Communication on the Common Practice of Relative Grounds of Refusal – Likelihood of Confusion (Impact of non-distinctive/weak components) CPS (2 October 2014) which was implemented by the United Kingdom prior to its exit from the European Union, likelihood of confusion between two signs that share a common element with a low degree of distinctiveness is still possible where the other components of the marks:

- a. are of a lower or equally low degree of distinctiveness; or
- b. are of significant visual impact and the overall impression of the marks is similar; or
- c. the overall impression of the marks remains highly similar or identical.”

73. Although the distinctiveness of a mark can be enhanced by virtue of the use that has been made of it, the Opponent has not filed any evidence of use. Consequently, I have only the inherent position to consider.

74. The earlier mark contains the word ‘SUPER LEAGUE’ which, as previously stated, will likely be perceived as a reference to an exceptional/top level league composed of players or teams. Consequently, I find that the phrase ‘SUPER LEAGUE’ has an allusive nature in terms of the services at issue. However, given the added figurative elements and the fact that a registered trade mark is deemed to have a degree of distinctiveness,¹⁰ I find that the Opponent’s mark has a low degree of inherent distinctive character.

¹⁰ *Formula One Licensing BV c OHIM*, Case C-196/11P

Likelihood of confusion

75. 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. One such factor is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods, and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier trade mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be mindful to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

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

77. Earlier in the decision I concluded that the marks are visually similar to a medium degree, aurally similar to at least a medium degree and conceptually similar to a very high degree. I have found that the earlier mark has a low degree of inherent distinctive character for the services at issue. Furthermore, I found the similarity between the goods to range from dissimilar to identical. I have identified the average consumer for the relevant goods and services to be in the main, members of the general public who will pay a medium degree of attention during the purchasing process. I have found that the purchasing process will largely be visual, however, I have not discounted aural considerations.

78. I bear in mind that the Holder's mark contains the entirety of the earlier mark and that this shared element has a low degree of distinctive character. With regard to this shared element, namely 'SUPER LEAGUE' I have found that it will play a greater role in both parties' marks. I have also found that the device and figurative elements and the word 'THE' in the Holder's mark, and the device and figurative

elements in the Opponent's mark, although not negligible, will play a lesser role in their respective marks. Although the average consumer views the mark as a whole, case law also directs me to bear in mind the dominant and distinctive elements of the marks. It is settled case-law that the average consumer is unlikely to see the marks side-by-side and will therefore be reliant on the imperfect picture of them they have kept in their mind. With regard to the additional elements present in the marks, I am of the view that these will likely go unnoticed, be overlooked, or be forgotten. Accordingly, with all things considered, given the similarity of the marks and the similarity or identity between some of the goods and services, I find that the average consumer is unlikely to recall the differences between the marks resulting in the consumer confusing the marks for one another and therefore, there is a likelihood of direct confusion.

79. However, if I am wrong on this, I will now go on to consider indirect confusion.

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

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.”

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

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

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

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

81. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Arnold LJ agreed, pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

82. I acknowledge that a finding of indirect confusion should not be made merely because the two marks share a common element. However, it is not sufficient that a mark merely calls to mind another mark:¹¹ this is mere association not indirect confusion.

83. In the circumstances that the average consumer does notice the minor differences between the marks, I am mindful that the dominant and more distinctive elements of the marks at issue are the words ‘SUPER LEAGUE’ which are the only words contained in the Opponent’s mark. I find that the average consumer would regard this as the same company presenting its mark in two slightly different ways. It would be reasonable for the average consumer to see ‘SUPER LEAGUE’ as an

¹¹ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

abbreviated version of 'THE SUPER LEAGUE' and as previously stated, 'THE' present in the Holder's mark, though not negligible, does not add distinctiveness to the mark and would be seen merely as a determiner. Accordingly, with regard to the parties' goods and services that are identical and/or similar to a degree, the potential for the marks to be seen as alternative marks from the same or economically linked undertakings is greatly magnified. I am satisfied that consumers would assume a commercial association between the parties, or sponsorship by one of the parties, due to the shared element 'SUPER LEAGUE'. Consequently, I consider there to be a likelihood of indirect confusion. This is so even bearing in mind the earlier mark's low level of inherent distinctive character. In reaching this conclusion I note that a degree of caution is required before finding a likelihood of confusion on the basis of common elements which are either descriptive or are low in distinctive character.¹² Nevertheless, I maintain that there is a likelihood of confusion. Furthermore, as 'THE' is weak in distinctive character, its addition to the words 'SUPER LEAGUE' does little to alter the distinctiveness of the mark as a whole to the extent that consumers would see it as an entirely different undertaking.

Conclusion

84. The opposition under section 5(2)(b) is partially successful in respect of the following goods and services, for which the application is refused:

Class 28 Games, recreational games; arcade video game machines; video game consoles; video game apparatus; joysticks for video games; controllers for video games; electronic games.

Class 35 Retail services relating to games.

Class 38 Transmission of messages, data and content via the Internet and other communication networks; dissemination of audio, video and multimedia content via the Internet and other communication networks; transmission of streamed data [streaming]; streaming audio and video material on the Internet; transmission of

¹² *Nicoventures Holdings Limited v The London Vape Company Ltd* [2017] EWHC 3393 (Ch) and *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch)

video-on-demand; computer-aided transmission of messages and images; transmission of digital files; transmission of information by means of electronic communications networks; streaming of e-sports events.

Class 41 Online provision of non-downloadable videos; game services available online via a computer network; online game services; providing online computer games; electronic game services; organization of competitions [entertainment]; entertainment services; organization of events for entertainment purposes; organization and conducting of live entertainment events; information about entertainment events provided via online networks and the Internet; entertainment activity information; conducting of live e-sports events; providing information relating to e-sports; organization of electronic sports activities; arbitration of electronic sports; coaching relating to electronic sports; organization of electronic sports competitions; online entertainment services in the form of fantasy sports leagues; Sporting and cultural activities; organization of sports events; organization of sports competitions; organization and conducting of sporting events; providing information relating to sporting events; organization and management of sports events; entertainment provided during breaks in sports events; organization of sporting and cultural activities for communities; football event organization services; entertainment services in the form of sporting events; arbitration of sports competitions; monitoring and arbitration of sports events; sports information services; provision of user classifications for recreational or cultural purposes; organization of fantasy sports competitions; setting up sports competitions; advisory services relating to the organization of sporting events; production of e-sports events for television; production of sports events; production of sports events for television; production of television programs; preparation of television programs; production of television programs; provision of television programs not downloadable via pay television services; provision of non-downloadable television programs via video-on-demand services; preparation of entertainment programs for broadcast; audio, video and multimedia production; production of sporting events for radio; preparation of radio programs; production of radio programs; provision of films not downloadable via pay television services; provision of music online (non-downloadable); provision of non-downloadable films, via video-on-demand services; radio and television entertainment services; box office services [entertainment]; club services

[entertainment]; entertainer services; entertainment services using portable audio files; provision of recreational events; presentation of live shows; conducting and organization of entertainment shows; information about recreational events provided via online networks and the Internet; recreational activity information; gambling or betting services; online sports betting services; services relating to sports betting; organization of lotteries; providing amusement arcade services; amusement park and funfair services; rental of playing equipment for games.

854. The application can proceed to registration in respect of the following goods and services for which the opposition has been unsuccessful:

Class 25 Clothing; shoes; headwear; shirts; knitwear [clothing]; sweaters; tee-shirts; vests; sports shirts without sleeves; skirts; underwear; bathing suits; bath robes; shorts; trousers; caps; caps [headwear]; hats; sashes for wear; foulards; shawls; tracksuits; sweatshirts; jackets; blazers; waterproof clothing; coats; uniforms; neckties; cuffs; headbands [clothing]; gloves [clothing]; aprons [clothing]; bibs not of paper; pajamas; stockings; socks; stocking suspenders; belts [clothing]; sportswear; sports shoes; sports footwear; footwear; football boots; caps and sports caps; studs for football boots.

Class 28 Toys and playthings; sports balls; balls for games; board games; foosball tables [games]; dolls; plush toys; toy vehicles; mind games; party balloons; playing cards; confetti; gymnastic and sporting articles; soccer equipment; gloves specifically adapted for sports; gloves for games; knee guards [sports articles]; elbow guards [sports articles]; shoulder pads for sports; football goals; cases adapted to sporting articles; paper party hats [party favors]; toy robots; appliances for gymnastics; kites; roller skates; scooters [toys]; skateboards; starting blocks for sports events; body protection equipment for sports; arm guards for sports; palm guards for sports; hip protectors for sports; abdominal protectors for sports use; hand guards for sports; shin guards [sports articles]; fist guards [sports articles]; masks for sports; chest protectors for sports; neck guards for sports; scratch cards for playing lottery games; trading cards [card games]; padded protectors [parts of sports suits]; apparatus for games; machines for physical exercises; decorations for Christmas trees.

Class 35 Event marketing; advertising; promotion of special events; promotional services relating to e-sports events; promotion of sports competitions and events; organization and conducting of promotional events; advertising services relating to e-sports events; organization of the promotion of charitable fundraising events; organization of events, exhibitions, fairs and shows for commercial, promotional and advertising purposes; organization of exhibitions for commercial or advertising purposes; promotion of the sale of third-party goods and services via promotional events; promoting the products and services of others via agreements with sponsors in order to associate their products and services with sports competitions; advertising, including the promotion of the goods and services of others by means of sponsoring arrangements and license agreements; promotional management for sports celebrities; promotion of goods and services through the sponsoring of sports events; promotional marketing services; promotional management of celebrities; dissemination of advertisements; promotion of fairs for commercial purposes; sales promotion for others; promotional, marketing and advertising services; advertising and promotion services; preparation of advertising material; advertising agency services; provision of marketing information via websites; promotion, advertising and marketing of websites online; production of advertising films; organization of prize draws for promotional purposes; online advertising; commercial promotion services; marketing; distribution of advertisements and commercial announcements; commercial business promotion; advertising services relating to the sale of products; advertising services provided via the Internet; online advertising via a computer network; personnel selection; selection of executive staff; personnel recruitment consultancy; personnel management consultancy; company management; professional networking services; business management services for footballers; business management of sports clubs; business management of sports facilities [for others]; commercial consultancy; organization of subscriptions to electronic newspapers; organization of subscriptions to Internet services; organization and conducting of commercial demonstrations; administration of programs for frequent travellers; administration of consumer loyalty programs; news clipping services; sponsorship search; representation services for sports people; organization of trade fairs; presentation of companies on the Internet and other media; media relations services; opinion polling; public relation services; retail services in relation to cups

and glasses; retail services relating to stationery; retail services relating to clothing; retail sale services for furniture; retail services relating to toys; retail services relating to household textiles; retail sale of sports articles; retail services relating to smartphones; retail services relating to smart watches; retail services relating to fashion accessories; retail services relating to downloadable electronic publications; retail services online for clothing; online retail services for downloadable and pre-recorded music and films; online retail services for jewelry; online retail sale services for cosmetic and beauty products; online retail sale services for downloadable digital music; online retail sale services for downloadable ring tones; online retail services for toys; retail of third-party pre-paid cards for the purchase of entertainment services; retail of third-party pre-paid cards for the purchase of multimedia content; presentation of products on any communication means for retail purposes; and provision of online marketplaces for buyers and sellers of goods and services.

Class 38 News agency services; radio communications; communication services; electronic communications networks; data communication services; Internet communication services; rental of communication apparatus; information about telecommunications; communications services for accessing a database; interactive communication and broadcasting services; consultancy services regarding telecommunications; communication services via the Internet; advisory and consultancy services relating to wireless communications and wireless communications equipment; consultancy services relating to data communications; transmission of short messages [SMS], images, speech, sound, music and text communications between mobile telecommunications devices; providing access to websites on the Internet or any other communications network; communication services for exchange of data in electronic format; provision of communications facilities for the exchange of digital data; providing access to the Internet and other communication networks; provision of access to databases; electronic mail transmission; communications via global computer networks or the Internet; computer communication services for transmitting information; communication services for the electronic transmission of data; assistance in providing cable television communication services for third parties; online communication services; radio broadcasting services; radio broadcasting; broadcasting; cable television broadcasting; radio broadcasting services by means of the Internet; television

broadcasting on the Internet; mobile telephone communication services; communications by computer terminals; wireless broadcasting services; message sending; provision of Internet chat rooms; provision of online forums; electronic bulletin board services [telecommunication services]; transmission of portable audio files.

Class 41 Education; training; provision of training courses; organization and conducting of educational face-to-face forums; training services using simulators; coaching [training]; organization of competitions [education]; ticket reservation services for activities and events for education; club services [education]; sports education; photography services; providing recreation facilities; implementation of handicaps for sports events; organization and conducting of school athletic events; rental of equipment for use in athletic events; rental of equipment for use in sports events; facilities for sports events, sports and athletics competitions and award programs; management of events for sports clubs; providing sports facilities; rental of sports grounds; rental of sports equipment, except vehicles; rental of stadium facilities; sports camp services; timing of sports events; sports park services; sports club services; booking of sports facilities; providing online newsletters in the field of sports entertainment; fan clubs; fan club services; organization of fan clubs; reservation of seats for entertainment events; ticket procurement services for sporting events; over-the-counter services for collecting tickets for sporting, cultural and leisure events; information on tickets for sport events; ticket reservation services for activities and events for entertainment and sports; booking of seats for shows; news reporters services; supply of electronic publications online, which are not downloadable; electronic publication of books and periodicals online.

Costs

86. As the parties have both been partially successful, I do not consider that it would be appropriate to make an award of costs in either of their favour.

Dated this 7th day of August 2023

**Sam Congreve
For the Registrar**