

O/0765/23

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION 3736111

IN THE NAME OF MULTIVERSE LABS PTE. LTD.

FOR THE TRADE MARK:

The trade mark logo consists of the word 'MULTIVERSE' written vertically in a bold, sans-serif font. A horizontal line is drawn across the middle of the word, passing through the 'I' and 'V'. Below this line, the word 'LABS' is also written vertically in the same font style.

IN CLASSES 9 & 36

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 434322

BY MULTIVERSE GROUP LIMITED

## **Background and pleadings**

1. On 23 December 2021, Multiverse Labs Pte. Ltd. (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the UK. The application was published for opposition purposes on 18 March 2022. The applicant seeks registration for the following goods and services.

*Class 9: Computer software applications, downloadable; computer software platforms, recorded or downloadable.*

*Class 36: E-wallet payment services; electronic funds transfer; electronic transfer of virtual currencies; financial consultancy; financial exchange of virtual currency; financial management; online banking; providing financial information; providing financial information via a website.*

2. On 17 June 2022, Multiverse Group Limited (“the opponent”) opposed the application on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). This is on the basis of the following trade marks:

### **MULTIVERSE**

UK trade mark no. 3563336  
Filing date: 12 December 2020  
Registration date: 18 June 2021  
**(“The first earlier mark”)**

# **multiverse**

UK trade mark no. 3634811  
Filing date: 29 April 2021  
Registration date: 29 October 2021  
**(“The second earlier mark”)**

3. The services relied upon for both earlier marks are as set out in the annex of this decision.

4. By virtue of their earlier filing dates, the above registrations constitute earlier marks within the meaning of section 6 of the Act. As the earlier marks had not completed their registration process more than five years before the relevant date (the filing date of the mark in issue), they are not subject to proof of use pursuant to section 6A of the Act. The opponent can, therefore, rely upon all of the services it has identified.

5. The opponent submits that there is a likelihood of confusion because the applicant's mark is similar to the opponent's and the respective goods and services are similar.

6. The applicant filed a counterstatement denying that the goods and services are similar and denying that there will be confusion between the same.

7. The opponent is represented by Laytons LLP and the applicant is represented by Accolade IP Limited. Neither party filed evidence and neither party requested a hearing. Only the opponent filed written submissions in lieu. I make this decision after careful consideration of the papers before me.

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

### **Preliminary Indication**

9. I note that, in accordance with rule 19(2) of the Trade Mark Rules 2008, a Preliminary Indication (PI) was issued to both parties on 29 December 2022.

10. Preliminary indications are issued to give the respective parties an indication on a prima facie basis as to the likely decision in respect of the grounds of opposition, giving either party the opportunity to withdraw either the opposition or the application accordingly, without incurring costs. The preliminary indication is not binding, nor does it replace a full decision by a Hearing Officer. If either party does not accept the PI, it has the right to formally give notice to that effect. In order to proceed, the parties must file form TM53, otherwise the opposition/application is accordingly deemed to be withdrawn for the indicated goods and services. In this instance, I note that a form TM53 was filed on 28 October 2022.

11. I am not bound by the preliminary indication, and consequently, following careful consideration of the papers before me and my own findings, I will now make my own assessment of the likelihood of confusion between the competing marks.

### **Decision**

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

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

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

13. 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.”

14. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-*

*Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.*  
Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98,  
*Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia*  
*Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v*  
*OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

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**

15. When making the comparison, all relevant factors relating to the goods in the specification should be taken into account. In *Canon*, the Court of Justice of the European Union (“CJEU”) stated at paragraph 23 of its judgment:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary”.

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

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

17. The General Court (“GC”) confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, that, even if goods (though it equally applies to services) are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

18. For the purposes of considering the issue of similarity of goods and services, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons (see *Separode Trade Mark* (BL O/399/10) and *BVBA Management, Training en Consultancy v. Benelux-Merkenbureau* [2007] ETMR 35 at paragraphs 30 to 38).

19. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the GC stated that “complementary” means:

“...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking.”

20. In *Sanco SA v OHIM*, Case T-249/11, the GC indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. *chicken* against *transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited* BL-0-255-13:

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes.”

Whilst on the other hand:

“.....it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.

21. The applicant’s goods and services are set out in paragraph 1 of this decision and the opponent’s earlier services are set out in the annex of this decision.

22. In its written submissions in lieu, the opponent has referred to several prior decisions of the Registrar (Cases BL O/472/12, BL O/200/20 and BL O/429/18). Whilst I note the contents and findings of those decisions, I am not bound by them and will proceed to conduct a full comparison, having regard to the case law above and all the relevant factors.

#### Class 9 goods

23. Both the opponent's earlier specifications in class 42 include *hosting webpages of employment positions*. I take this to mean the provision of a website in relation to employment positions. I compare this to the applicant's goods in class 9 being, *Computer software applications, downloadable; computer software platforms, recorded or downloadable*. The goods and services differ in nature however, the applicant's goods are not limited so I accept that the applied for computer software goods could be in relation to employment positions. There may be an overlap in user and trade channels because a business or individual who wishes to host a webpage is likely to use software to create the webpage they want hosted. It is likely that software would be sought from the same undertaking that provides the webpage hosting. I do not consider there to be any competition between the services. Overall, I find these goods and services to hold a low degree of similarity.

#### Class 36 services

24. The opponent invites me to compare the applicant's *E-wallet payment services* to their services in class 41. Both the opponent's earlier specifications include *training courses for apprentices* in class 41. The opponent's services are for the provision of training courses, specifically for apprentices whereas the applicant's services are to facilitate online transactions or to allow users to make purchases via electronic devices such as smart phones. The respective services therefore differ in purpose, nature and method of use. The users may overlap but only broadly speaking in the sense that they are the general public. The respective services would reach the market via different trade channels and there wouldn't be any degree of competition. The opponent submits that their services in class 41 are so broad that the training courses may cover topics such as E-wallet payment services. There is nothing before me to

suggest that an undertaking offering training in respect of such services would be something that is offered to customers. I find it more likely that this would be in-house training given to employees and therefore not the provision of a service. The services are not complementary. Consequently, I consider the services to be dissimilar.

25. I now turn to the applicant's *electronic funds transfer, electronic transfer of virtual currencies and financial exchange of virtual currency and online banking*. I consider these to be processes within ordinary banking services in which transactions are conducted electronically. These services have a different nature, purpose and method of use to the opponent's *training for apprentices*. The users of the respective services would be the general public however, the services would reach the market via different trade channels and there would not be any competitive relationship between the same. There is nothing before me to suggest that the services are complementary. Overall, I do not consider these services to be similar.

26. I consider *financial consultancy* to be the provision of personalised advice to individuals or businesses to help them make informed decisions on financial areas such as investments and to build wealth. The purpose and nature of this service differs from the opponent's *training in business skills*. Whilst there may be an overlap in users insofar as the services would be available to members of the general public, the services would reach the market via different trade channels. There is no competitive relationship between these services. I do not consider the respective services to be important or indispensable to one another to the extent that consumers believe that they are derived from the same undertaking so there is no complementary relationship. As such, there is no similarity between these services.

27. To my mind, the applicant's *financial management* entails the handling of an individual or businesses finances in areas such as investment, expenses and profitability. I compare this term to the opponent's *training in business skills*. These services have a different purpose and nature. The trade channels do not overlap and there is no competitive relationship between the same. Further, I do not consider there to be a complementary relationship. I do not consider these services to be similar.

28. Turning to the applicant's *providing financial information* and *providing financial information via a website*, I consider these terms to be different in nature and purpose to the opponent's *training in business skills*. Broadly speaking, there may be an overlap in users where users are members of the general public. The services would reach the market via different trade channels and there would be no degree of competition between the same. There is nothing before me to suggest that the services would enjoy a complementary relationship. Overall, there is no similarity between these services.

29. In their submissions, I note that the opponent also invites me to compare the applicant's *financial consultancy; financial management; online banking; providing financial information* and *providing financial information via a website* to the opponent's term *support for employees and apprentices with regard to business matters*. They argue that there may be some crossover of uses, users and nature of the services in addition to a degree of complementarity. There may be some overlap in users, however I do not agree that the nature or the uses of the respective are the same. The opponent submits that the business matters covered by the opponent's term may include financial topics. Whilst I accept this, I do not find that this renders the services complementary. There is no evidence before me to suggest that the services are important or indispensable to one another to the extent that consumers would believe that the services originate from the same undertaking. For the avoidance of doubt, this is the case for all services that the opponent argues that this is true for.

30. As some degree of similarity between goods and services is necessary to engage the test for likelihood of confusion, this means that the opposition aimed against those services will fail.<sup>1</sup> However, the opposition against the following goods may proceed:

Class 9: Computer software applications, downloadable; computer software platforms, recorded or downloadable.

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<sup>1</sup> *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

## **The average consumer and the nature of the purchasing act**

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

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

32. The goods and services at issue include everyday products such as computer software and more specialised services such as webpage hosting in relation to employment positions. The average consumer for the goods will be both members of the public and business users whereas the average consumer for the services will be business users.

33. In respect of the general public, the goods would be fairly frequent purchases and generally low in cost items such as software in the form of mobile apps, for example. During the purchasing process, the user will consider factors such as ease of use and compatibility of computer software with hardware devices. Overall, I consider that no more than a medium degree of attention would be paid by the public during the selection process.

34. For business users, I find that the purchase of goods and services would be more frequent for the ongoing operational needs of the business. The cost of the goods and services will vary from everyday computer software which may be lower in

cost compared to web hosting services which may be slightly more expensive. Cost, compatibility of software and a service provider's suitability and previous outcomes will be considered during the selection process. I consider that business users will be mindful of the importance of their selection as well as the potential negative consequences of selecting the wrong goods or service provider and the impact this would have on their business. With this in mind, I find that business users would display at least a medium degree of attention during the selection process.

35. The goods are, in my experience, most likely to be obtained by self-selection from a physical retailer, an online app store or a website. Consequently, visual considerations are likely to dominate the selection process. However, I do not discount that there may be an aural component to the purchase of the goods through word of mouth recommendations. The services are likely to be purchased from specialist outlets or their online equivalent through the perusal of adverts or websites. Visual considerations will therefore like dominate the selection process however, given that word-of-mouth recommendations and advice from sales assistance may also play a part, I do not discount that there will be an aural component to the selection of the services.

### **Comparison of marks**


36. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

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

38. The marks to be compared are as follows:

Opponent's marks	Applicant's mark
<p>(The first earlier mark)</p> <p><b>MULTIVERSE</b></p>	
<p>(The second earlier mark)</p> <p><b>multiverse</b></p> <p><b>multiverse</b></p>	

Overall impression

39. The opponent's first earlier mark is a word only mark that consists solely of "MULTIVERSE". In the absence of any additional components, the mark's overall impression resides solely in the word itself.

40. The second earlier mark consists of a series of two marks, each being a figurative representation of the word "MULTIVERSE" with the letter "M" being presented with an additional stylistic flourish. The first of the marks is black and the second is navy blue. However, nothing turns on this difference so I shall refer to these

marks in the singular. I consider the wording to have a greater impact on the overall impression of the mark. Although the stylistic aspects of the mark will not be ignored, they make a smaller contribution to the overall impression.

41. The applicant's mark is comprised of the words MULTI and VERSE arranged vertically and placed on two parallel lines. Despite the presentation of the wording, I am of the view that they will be viewed together as the word "MULTIVERSE". The wording plays a greater impact on the overall impression with the layout and parallel lines playing a secondary role.

#### Visual comparison

42. The first earlier mark is solely the word "MULTIVERSE". The applicant's mark also contains this word however, it has been split into two parts "MULTI" and "VERSE". The words are arranged vertically and on two separate parallel lines. Bearing in mind the overall impressions of the marks' and the identity of the dominant elements (albeit displayed differently), I consider the marks hold a high degree of similarity.

43. The second earlier mark also contains the word "MULTIVERSE" presented figuratively with a slight flourish to the letter "M". There is some overlap as the applicant's mark also contains this word however, there are points of difference in the layout of the words, the parallel lines and the stylisation of the lettering. Considering the marks share the same dominant elements but displayed and stylised differently, I find them to have a medium to high degree of similarity.

#### Aural comparison

44. The opponent's marks will be pronounced in three syllables; MUL-TEE-VERSE. The applicant's mark will be pronounced in the same way, rendering the marks aurally identical.

## Conceptual comparison

45. The opponent submits that the term MULTIVERSE is a word defined in the dictionary as “a hypothetical realm comprising a number of universes, of which our own universe is but one”.<sup>2</sup> I agree that the average consumer will perceive the word MULTIVERSE in the opponent’s marks with this definition. In relation to the opponent’s second earlier mark, I do not find that the average consumer will attribute any meaning to the stylisation.

46. In their counterstatement, the applicant submits that their mark is arranged vertically on two parallel lines and is therefore composed of two separate words. Whilst I acknowledge that the applicant’s mark is arranged this way, this does not change the way in which this mark will be conceptually perceived. Consumers will also perceive this mark as a hypothetical realm comprising a number of universes. Both the earlier marks and the applicant’s marks are conceptually identical.

### **Distinctive character of the earlier mark**

47. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In determining the distinctive character of a trade mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the trade mark to identify the goods for which it has been registered as coming from a particular undertaking and thus to distinguish those goods from those of other undertakings – *Windsurfing Chiemsee v Huber and Attenberger* Joined Cases C-108/97 and C-109/97 [1999] ETMR 585. In *Lloyd Schuhfabrik*, 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

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<sup>2</sup> <https://www.collinsdictionary.com/dictionary/english/multiverse>

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).”

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

49. The opponent has not filed any evidence to support the earlier marks’ distinctive character have been enhanced through use. Consequently, I have only the inherent position to consider.

#### *The first earlier mark*

50. As outlined in the conceptual comparison above, the term MULTIVERSE is a dictionary-defined term. This word is not descriptive or allusive of the services in question. Bearing that in mind, I consider this mark possesses a medium degree of distinctive character.

### *The second earlier mark*

51. In relation to the second earlier mark, I make the same findings as above in relation to the MULTIVERSE word element. In this case, the stylisation of the wording is minimal and as such, I do not find it elevates the mark's distinctiveness. Again, I find this mark holds a medium degree of distinctive character.

### **Likelihood of confusion**

52. There is no simple formula for determining whether there is a likelihood of confusion. I must make a global assessment of the competing factors (*Sabel* at [22]), keeping in mind the interdependency between them (*Canon* at [17]) and considering the various factors from the perspective of the average consumer. In making my assessment, I must bear in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind (*Lloyd Schuhfabrik* at [26]).

53. 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.

54. Earlier in this decision I concluded that:

- The competing goods and services are similar to a low degree;
- The average consumer will consist of both the general public and professionals, the former demonstrating a medium level of attention and the latter demonstrating at least a medium level of attentiveness during the selection process;
- The purchasing process will be predominantly visual in nature, though aural considerations will not be discounted;
- Both earlier marks hold a medium degree of distinctive character;

- The opponent's first earlier mark is visually similar to the applicant's mark to a high degree;
- The opponent's second earlier mark is visually similar to the applicant's mark to a medium to high degree;
- The competing marks are aurally identical;
- The competing marks are conceptually identical.

55. The respective marks share a dominant and distinctive element and during the purchasing process, visual elements are likely to dominate though I acknowledge that aural considerations also apply, and the marks are aurally identical. I note there are several elements in the applicant's mark which do not have any counterpart in the opponent's marks such as the layout and the parallel vertical lines however, I did not find these elements to play a dominant role in the overall impression. Taking this into consideration along with all of the relevant factors, the marks may be misremembered by way of imperfect recollection, and it is my view that the layout of the applicant's mark may be forgotten or go unnoticed. I therefore find that it is likely that the consumer may mistake one mark for the other and as such I consider there is a likelihood of direct confusion between the applicant's mark and both earlier marks. Keeping in mind the interdependency principle, I find this to be the case even when I have found the goods and services to hold a low degree of similarity as this is offset by the medium to high level of visual similarity between the marks.

56. I now go on to consider indirect confusion.

57. 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.)”

58. These examples are not exhaustive but provide helpful focus.

59. Firstly, I note that this situation is not one that appears to fall into the categories set out in *L.A. Sugar*, however, I remind myself that they were not intended to be exhaustive. It is my view that even if the average consumer were to recognise the differences between the marks, by way of the vertical layout of the applicant’s mark and the parallel lines, I believe they would consider the applicant’s mark to merely be a stylised version of the earlier marks and would therefore consider the goods and services to originate from the same undertaking. In view of this, I find there is also a likelihood of indirect confusion between the marks. As was the case for my finding of direct confusion, I find that this applies where the marks are viewed on goods and

services that are only similar to a low degree and in circumstances where the average consumer pays a higher degree of attention.

## CONCLUSION

60. The opposition has been partly successful. Subject to any successful appeal against my decision, the application will be refused in respect of the following goods:

Class 9: Computer software applications, downloadable; computer software platforms, recorded or downloadable.

61. Subject to any successful appeal against my decision, the application will proceed to registration for the following services:

Class 36: E-wallet payment services; electronic funds transfer; electronic transfer of virtual currencies; financial consultancy; financial exchange of virtual currency; financial management; online banking; providing financial information; providing financial information via a website.

## COSTS

62. Both parties have enjoyed a measure of success though the applicant has been more successful in this case. Awards of costs in proceedings commenced on or after 1 July 2016 and before 1 February 2023 are governed by Annex A of Tribunal Practice Notice ('TPN') 2 of 2016. Using that TPN as a guide, I award costs to the applicant on the following basis including a 20% reduction on costs to account for the opponent's partial success:

Preparing a statement and considering the other side's submissions:	£200
<b>Total (including 20% reduction):</b>	<b>£160</b>

63. I therefore order Multiverse Group Limited to pay the sum of £160 to Multiverse Labs Pte. Ltd. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

**Dated this 10th day of August 2023**

**Catrin Williams**  
**For the Registrar**

## **Annex**

### Services relied upon for UK00003563336

35: Recruitment services; employment agency services; employment recruiting services; employment placement services; services for the temporary placement of employees; employment outplacement services; testing to determine employment skills; personality testing for the selection of personnel; rental of advertising space on the Internet for employment advertising; employment and career information and advisory services; writing of curriculum vitae for others; agency services for arranging business introductions; business networking services for apprentices and prospective employees; career networking services; support for employees and apprentices with regard to business matters; employment counselling services.

41: Training for apprentices; training courses for apprentices; distance learning courses for apprentices; conducting of courses for apprentices; conducting of workshops [training] for apprentices; arranging and organising of courses and workshops [training] for apprentices; coaching and academic mentoring services for apprentices; training in business skills; provision of vocational skills training; provision of facilities for employment skills training; teaching services for communications skills; employment training; career advisory and counselling services [training and education advice]; vocational guidance; provision and organising of meetings, conferences and seminars for apprentices; social club services for entertainment purposes; consultancy services relating to the training of employees and apprentices; publication of reviews, leaflets, pamphlets, newsletters, brochures, magazines, booklets and books relating to apprenticeships and training as an apprentice; organising and providing curricula for courses for apprentices.

42: Creation and design of webpages of personal profiles for employment and marketing purposes; creation and design of digital profiles for employment and marketing purposes; hosting webpages for employment candidates; hosting webpages of employment positions; hosting online web facilities for apprentices and employment candidates for sharing online content.

45: Online social networking services for apprentices and persons who have completed apprenticeships; legal information services relating to apprenticeships and employment; provision of legal information relating to apprenticeships and employment; agency services for arranging personal introductions.

Services relied upon for UK00003634811

35: Recruitment services; employment agency services; employment recruiting services; employment placement services; services for the temporary placement of employees; employment outplacement services; testing to determine employment skills; personality testing for the selection of personnel; rental of advertising space on the Internet for employment advertising; employment and career information and advisory services; writing of curriculum vitae for others; agency services for arranging business introductions; business networking services for apprentices and prospective employees; career networking services; support for employees and apprentices with regard to business matters; employment counselling services.

41: Training for apprentices; training courses for apprentices; distance learning courses for apprentices; conducting of courses for apprentices; conducting of workshops [training] for apprentices; arranging and organising of courses and workshops [training] for apprentices; coaching and academic mentoring services for apprentices; training in business skills; provision of vocational skills training; provision of facilities for employment skills training; teaching services for communications skills; employment training; career advisory and counselling services [training and education advice]; vocational guidance; provision and organising of meetings, conferences and seminars for apprentices; social club services for entertainment purposes; consultancy services relating to the training of employees and apprentices; publication of reviews, leaflets, pamphlets, newsletters, brochures, magazines, booklets and books relating to apprenticeships and training as an apprentice; organising and providing curricula for courses for apprentices.

42: Creation and design of webpages of personal profiles for employment and marketing purposes; creation and design of digital profiles for employment and marketing purposes; hosting webpages for employment candidates; hosting

webpages of employment positions; hosting online web facilities for apprentices and employment candidates for sharing online content.

45: Online social networking services for apprentices and persons who have completed apprenticeships; online social networking services for persons who have completed training courses; legal information services relating to apprenticeships and employment; provision of legal information relating to apprenticeships and employment; agency services for arranging personal introductions.