O/0210/24

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK3816362
IN THE NAME OF DIGITAL COMMERCE INC.
TO REGISTER THE FOLLOWING TRADE MARK:

FANZA

IN CLASSES 9, 16, 25, 35, 36, 38, 41 & 42

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 438397
BY DK COMPANY VEJLE A/S

Background and pleadings

1. On 03 August 2022, Digital Commerce Inc. ("the applicant") applied to register the trade mark shown on the cover page of this decision in the UK. It was accepted and published in the Trade Marks Journal on 07 October 2022 in respect of the goods and services in classes 9, 16, 25, 35, 36, 38, 41 and 42 which are outlined in **Annex A** of this decision.

2. On 03 January 2023, DK Company Vejle A/S ("the opponent") filed a notice of opposition on the basis of Section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opposition is directed at the following goods and services in the application.

   Class 25: Masquerade costumes and fancy dress.

   Class 35: Online retail store services relating to clothing; retail store services relating to masquerade costumes and fancy dress.

3. The opponent relies on the following trade mark:

   FRANSA

   UK registration no. UK00916943565[1]

   Date of registration: 07 May 2018

   Relying upon the following goods:

   Class 25: Clothing.

   Class 35: Retailing and sales via the Internet of clothing.

4. The opponent submits that there is a likelihood of confusion because the applicant's mark is aurally and visually similar to a moderate degree to its own

[1] The earlier mark was initially registered at the European Union Intellectual Property Office (EUIPO). The opponent's mark is a comparable mark based on the opponent's pre-existing EUTM, being EUTM 16943565. On 1 January 2021, in accordance with Article 54 of the Withdrawal Agreement between the UK and the European Union, the UK IPO created comparable UK trade marks for all right holders with an existing EUTM.

mark and the respective goods are identical or similar to a high degree. The applicant filed a counterstatement denying the claims made.

5. The applicant is represented by Beck Greener LLP; the opponent is represented by Patrade A/S. Neither party filed evidence in these proceedings. The opponent filed written submissions during the evidence rounds. No hearing was requested, however, the applicant filed written submissions in lieu. These submissions will not be summarised but will be referred to as and where appropriate during this decision. This decision is taken following a careful consideration of the papers.

6. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

Decision

Section 5(2)(b)

7. 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".

8. Section 5A states:

"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."

9. By virtue of its earlier filing date of 07 May 2018, the above registration constitutes an earlier mark within the meaning of section 6 of the Act. As the earlier mark had not completed its registration process more than five years before the filing date of the application in issue, it is not subject to proof of use pursuant to section 6A of the Act. The opponent can, therefore, rely upon all of the goods it has identified without having to demonstrate use.

10. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG,* Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and Bimbo SA v OHIM, Case C-591/12P.

a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

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

g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa; Page 8 of 20

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

11. The goods and services for comparison are as follows:

Applicant's goods and services	Opponent's goods and services
<u>Class 25</u> Masquerade costumes and fancy dress. <u>Class 35</u> Online retail store services relating to clothing; retail store services relating to masquerade costumes and fancy dress.	<u>Class 25</u> Clothing. <u>Class 35</u> Retailing and sales via the Internet of clothing.

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

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

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

    a. The respective uses of the respective goods or services;

    b. The respective users of the respective goods or services;

    c. The physical nature of the goods or acts of service;

d. The respective trade channels through which the goods or services reach the market;

e. In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and, in particular, whether they are or are likely to be found on the same or different shelves;

f. The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance, whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

14. In *Gérard Meric v Office for Harmonisation in the Internal Market* (Trade Marks and Designs) (OHIM) case T-133/05, the General Court ("GC") stated:

> "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 the trade mark application (Case T-388/00 Institut für Lernsysteme v OHIM – Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark".

15. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the General Court (GC) stated that "complementary" means:

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

Class 25:

16. The applicant submits that *"masquerade costumes are not clothing in the sense in which that latter term falls to be construed in a trade mark specification".* They further submit that "*Clothing is for protecting the body and preserving modesty often in an attractive way. A masquerade costume has a different nature and function namely to create a pretence and a false identity".*[2]

17. I note that applicant's comments denying that masquerade costumes are clothing, part of the reasoning for this is that the opponent's goods do not include costumes. Contrary to the applicant's submission, I consider that *"masquerade costumes and fancy dress"* in the applicant's specification are both items of clothing and subsequently, these goods are encompassed by *"clothing"* in the opponent's specification. Therefore, I find the goods to be identical on the principle outlined in *Meric.* However, in the event that the goods are not identical, I consider them to be similar to a high degree. There would be an overlap in users as consumers purchasing masquerade costumes and fancy dress will also purchase clothing in general. I consider there is also an overlap in general purpose, as they are all clothing; however, I do recognise that the applicant's goods are for amusement and fun, and the specific purpose of the goods may differ. In addition, I consider that the goods will overlap in method of use and nature. I consider there to be an overlap in trade channels as the goods could be respectively found in clothing retailers or the same area of supermarkets.

Class 35:

18. Although worded slightly differently, I consider the term *"online retail store services relating to clothing;"* in the applicant's specification is self-evidently identical to "*retailing and sales via the Internet of clothing"* in the opponent's specification.

[2] Paragraph 8 of the Applicant's submissions in lieu.

19. I find that the applicant's term *"retail store services relating to masquerade costumes and fancy dress"* is similar to *'retailing and sales via the Internet of clothing'* in the opponent's specification. This is on the basis that they overlap in use and user with one another and the services concern retail (whether that be on line or in store) of clothing and accessories. The purpose is identical and there will be an overlap in trade channels. The nature differs where one offers in store retail and the other does not. They are not complementary, but there may be some competition between the retail that is online and the retail that is in store- a person might choose between them depending on factors such as stock levels, prices, and delivery. I therefore find these services to be similar to a high degree.

Average consumer and the purchasing act

20. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods and services. I must then decide the manner in which these goods and services are likely to be selected by the average consumer in the course of trade. 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. 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".

Class 25

21. In respect of the goods in class 25, the average consumer is likely to be the public at large. The goods are most likely to be self-selected from traditional

high street retail outlets or their online equivalents. In physical retail premises, the goods at issue will be displayed on shelves or racks, where they will be viewed and self-selected by the customer. A similar process will apply to websites and catalogues, where the consumer will select the goods having viewed an image displayed on a webpage or in a catalogue. This means that the marks will be seen and the marks' visual impact is likely to play the greater role: see *New Look Limited v OHIM*, Joined cases T-117/03 to T-119/03 and T-171/03, paragraph 50. Although I do not discount the opportunity for aural recommendations made by salespeople, for example.

22. The goods may vary in price, but none are likely to be prohibitively expensive and the frequency of purchasing will vary depending on the item. I recognise that masquerade costumes and fancy dress items may be purchased less frequently than other clothing items. When selecting the goods at issue the average consumer may consider current fashion trends, price, quality and suitability. Weighing all factors, I find that the average consumer will apply a medium degree of attention during the purchasing process.

Class 35

23. In respect of the goods in class 35 services, I believe the average consumer will be the public at large. Retail services are likely to have been chosen by viewing promotional material (either hard copy, on television or online) and high street signage. The choice of the services at issue will be visual considerations will pay an important part of the selection process. There is also the possibility of word-of-mouth recommendations. When selecting the services at issue, the average consumer is likely to consider such things as stock, price of goods offered in comparison to other retailers, delivery method (for online retail) and knowledge of the staff. I therefore believe the average consumer will pay a medium degree of attention during the selection process.

Comparison of marks

24. 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 Court of Justice of the European Union stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

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

26. The respective trade marks are shown below:

Earlier trade mark	Contested trade mark
FRANSA	FANZA

Overall impression

27. The competing marks are both presented in word-only formats, each consisting of a single word. The applicant's contested mark consists of the word mark 'FANZA'. The opponent's mark consists of the word mark 'FRANSA'. Consequently, as the respective marks consist of a sole element, there are no other elements that contribute to the overall impression of the mark.

Visual comparison

28. The opponent's mark consists of the word-only mark 'FRANSA' which appears in a standard font presented in the upper case. The applicants' mark consists

of the word-only mark 'FANZA' which appears in a standard font presented with in the upper case.

29. The competing marks are visually similar as they both contain the same first letter 'F', last letter 'A' and the letters 'AN' that are present in the middle of the words. The presence of the 'R' as the second letter of the opponent's mark is a point of difference. In addition, the marks differ in the letters 'S' and 'Z' as the penultimate letter in the parties' marks respectively. Further, the marks also differ in length, with the opponent's mark containing six letters whereas the applicant's mark contains five letters. Taking the above into account, I find that the competing marks are visually similar to a medium degree.

<u>Aural comparison</u>

30. Aurally, I note that the competing marks are both two syllables in length. The opponent's mark will be pronounced 'Fran'-'sa' and the applicant's mark will be pronounced 'Fan'-'za'. Aurally the competing marks have a shared 'AN' element, and they coincide in the initial 'F'. The opponent submits that letters 'z' and 's' in the respective marks are pronounced in the same way.[3] While I do not agree with the opponent's assertions, I find that the final "SA" and "ZA" syllables will be pronounced in a highly similar way. There is a point of aural difference between the marks due to the 'r' sound in the opponent's mark causing a different pronunciation of the first syllable. I therefore consider these marks to be aurally similar to a medium to high degree.

<u>Conceptual similarity</u>

31. 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.*[4] The assessment must be made from the point of view of the average consumer.

[3] Opponent's written submissions page 5.
[4] [2006] e.c.r.-I-643; [2006] E.T.M.R. 29

32. In relation to the conceptual comparison, the applicant states that the marks are significantly different as:

"the Opponent's mark is suggestive of the country France or the forename Frances whereas the Applicant's mark, is indicative of a fan as in an avid supporter or follower". [5]

33. I have given consideration to the possibility that the opponent's mark would be perceived as connected to 'France' or 'Frances' and that the applicant's mark is indicative of a 'Fan'. However, I do not consider that any of these meanings will be grasped immediately by the relevant public. If the average consumer were to recognise the words 'Fan', 'Fran' or 'France' within the competing mark they would not constitute a significant proportion of the relevant public. Instead, I consider that when viewing the marks as a whole, they would still identify 'Fanza' and 'Fransa' as invented words.

34. I consider that a significant proportion of the average consumers would believe the competing marks to be made up terms or invented words that will not convey any obvious conceptual meaning. In this instance, I find the marks to be conceptually neutral.

Distinctive character of the earlier trade mark

35. 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 *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 goods or services for which it has been registered as coming

[5] Paragraph 18 of Applicant's submissions in lieu.

> 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)."

36. 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.

37. The opponent has not filed any evidence to support that its mark's distinctive character has been enhanced through use. Consequently, I have only the inherent position to consider.

38. The opponent's mark consists of the word 'FRANSA'. As discussed in paragraph 33, 'FRANSA' is not an ordinary dictionary word. Invented words are generally held to have the highest degree of inherent distinctive character. I do not consider that the word has any descriptive or allusive qualities in relation to the goods and services at issue. Consequently, the inherent distinctiveness of the earlier mark is considered to be high.

Likelihood of Confusion

39. I must now feed all of my earlier findings into the global assessment of the likelihood of confusion, keeping in mind the following factors: i) the interdependency principle, whereby a lesser degree of similarity between the services may be offset by a greater similarity between the marks, and vice versa (Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc); ii) the principle that the more distinctive the earlier mark is, the greater the likelihood of confusion (*Sabel BV v Puma AG*), and; iii) the factor of imperfect recollection i.e. that consumers rarely have the opportunity to compare marks side by side but must rather rely on the imperfect picture that they have kept in their mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V*).

40. There are two types of confusion that may occur. Direct confusion is where the average consumer mistakes one mark for the other, while indirect confusion is where the average consumer recognises that the marks are different, but for some reason assumes that the later mark also identifies the goods or services of the owner of the earlier mark, or that the two undertakings are related: see *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10, paragraph 16.

41. I am proceeding on the basis that the goods are identical, or at least similar to a high degree. I found the opponent's mark to have a high level of distinctiveness as it is an invented word. The average consumer will be a member of the general public who will pay a medium degree of attention during the purchasing process, however I note the frequency of purchasing the goods may vary. I have found the purchasing process to be predominantly visual, although I do not discount an aural component. I remind myself that I found the marks to be visually similar to a medium degree, aurally similar to a medium to high degree and are conceptually neutral.

42. While I note that the parties' marks differ in the presence/absence of 'R', 'S'/ 'Z' in the marks respectively, I consider that the differences between the marks are insufficient to avoid confusion, even when the principle of imperfect recollection is considered. I am of the view that the average consumer will overlook or misremember the differences between the marks given that the marks share 4

letters out of the 5 or 6 letters from the marks, respectively; the initial letter 'F', the letters 'AN' in the middle of the mark and the final letter 'A'. This is particularly the case bearing in mind the principle of imperfect recollection, and that the average consumer will rarely have the opportunity to compare the marks side-by-side. Further, I have found the marks to be visually similar to a medium degree, aurally similar to a medium to high degree and the opponent's mark to be inherently distinctive to a high degree. Consequently, it is my view that it is likely that the marks will be misremembered or mistakenly recalled as each other. Therefore, I find that there is a likelihood of direct confusion between the marks.

43. That leaves indirect confusion to be considered. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis QC, (as he then was) sitting as the Appointed Person, explained that:

> 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.

44. 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)."

45. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal. I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark: this is mere association not indirect confusion.[6]

46. Furthermore, in *Liverpool Gin*,[7] 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.

[6] *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17
[7] *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207

47. The opponent submits that the average consumer would believe the applicant's mark is *"a new brand line of goods, originating from the same undertaking as the opponent's 'Fransa' mark".*[8]

48. Whilst I note that the examples set out by Mr Purvis are not exhaustive, I do not consider that this particular case falls within any of the categories above. This is on the basis that I do not consider that the competing marks have an element is so strikingly distinctive that the average consumer would not assume another party is using the element I also consider that the points of difference between the marks would not be consistent with a sub-brand or brand extension. Taking all the above into account, I find that there is no likelihood of indirect confusion.

CONCLUSION

49. The opposition under section 5(2)(b) of the Act has been successful. Subject to any successful appeal against my decision, the application will be refused in respect of the opposed goods.

COSTS

50. The opponent has been successful and is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 2/2016. In the circumstances, I award the applicant the sum of £600 as a contribution towards the costs of the proceedings. The sum is calculated as follows:

Fee for opposition form	£100
Preparing a statement and considering the other side's statement	£200
Preparing written submissions	£300
Total	**£600**

[8] Opponent's written submissions, page 6

51. I therefore order Digital Commerce Inc. to pay DK Company Vejle A/S the sum of £600. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 12th day of March 2024

E REES
For the Registrar

<u>Annex A</u>

Goods of UK trade mark application no. UK00003816362

Class 9: Computer game software, downloadable; computer software applications, downloadable; downloadable computer game programs; downloadable virtual reality computer game programs; downloadable electronic publications; recorded computer game software; recorded computer virtual reality game software; compact discs; DVDs; optical discs; downloadable music files; downloadable films; downloadable image files; exposed cinematographic films; exposed slide films; slide film mounts; electronic publications, downloadable; cases for smartphones; covers for smartphones; mobile phone ring holders; cell phone straps; cases for tablet computers; covers for tablet computers.

Class 16: Manuals [handbooks]; pamphlets; catalogues; books; shopping bags of paper or plastic; envelopes [stationery]; pens; ball-point pens; pencil lead holders; pencils; note books; pocket memorandum books; greeting cards; pen cases; rubber erasers; fountain pens; masking tape [stationery]; seals [stationery]; name badges [office requisites]; retractable reels for name badge holders [office requisites]; plastics for modelling; calendars; posters; animation cels; photographs [printed]; portraits; corrugated containers.

Class 25: Masquerade costumes and fancy dress.

Class 35: Advertising and publicity services; publicity material rental; rental of advertising space; sales promotion through the administration of customer loyalty points; online retail store services relating to games; online retail store services relating to animated recordings; online retail store services relating to books; online retail store services relating to electronic publications; online retail store services relating to music, films, image files; online retail store services relating to compact discs; online retail store services relating to DVDs; online retail store services relating to optical discs; online retail store services relating to accessories for smartphones; online retail store services relating to accessories for tablet computers; online retail store services relating to stationery; online retail store services relating to plastics for modelling; online retail store services relating to calendars; online retail store services relating to

posters; online retail store services relating to animation celluloids, namely, transparent sheets on which objects are drawn or painted for use in creating animations; online retail store services relating to photographs; online retail store services relating to portrait; online retail store services relating to software; online retail store services relating to programs; online retail store services connected with the sale of computer hardware; online retail store services relating to clothing; retail store services relating to sporting goods; retail store services relating to masquerade costumes and fancy dress; business administration in the field of transport and delivery; compilation of information into computer databases; updating and maintenance of data in computer databases; updating and maintenance of information in registries; market analysis and research services; providing information on newspaper articles relating to foreign language learning; providing information on interview articles relating to foreign language learning.

Class 36: Issuance of ingame virtual currency or ingame tokens; accounts payable debiting services.

Class 38: Audio teleconferencing; web conferencing services; television broadcasting; radio broadcasting; webcasting services.

Class 41: On-line game services; on-line virtual game services; providing online videos, not downloadable; providing online music, not downloadable; providing online electronic publications, not downloadable; translation; arranging, conducting and organization of seminars and events; providing information in the field of entertainment; providing information in the field of education; publishing of electronic publications; photography services; fan club services; organization of entertainment events; providing information in the field of entertainment; production of radio or television programs; ticket agency services [entertainment]; providing entertainment information relating to on-line computer games, on-line music, on-line films, on-line videos, not downloadable; lottery services; book editing.

Class 42: Software as a service [SAAS] services.