

O/0271/25

TRADE MARKS ACT 1994

**IN THE MATTER OF UK REGISTRATION NO. 3794329
IN THE NAME OF WARNER BROS. ENTERTAINMENT INC.
FOR THE FOLLOWING TRADE MARK:**

MULTIVERSUS

IN CLASSES 9 AND 41.

**AN APPLICATION FOR A DECLARATION OF INVALIDITY
UNDER NO. 505629
BY GRUPO ORENES SL**

BACKGROUND AND PLEADINGS

1. **Warner Bros. Entertainment Inc.** (“the proprietor”) is the registered proprietor of the UK trade mark displayed on the cover page of this decision, under registration number **3794329** (“the contested mark”). The contested mark was filed on 31 May 2022 and became registered on 25 November 2022. It stands registered in respect of the goods and services annexed to this decision.
2. On 13 December 2022, **GRUPO ORENES SL** (“the applicant”) applied to have the contested mark declared invalid under section 47 of the Trade Marks Act 1994 (“the Act”). The application is brought under section 5(2)(b) of the Act¹ and is targeted at the entirety of the goods and services in the contested mark’s specification.
3. For the purposes of the claim under section 5(2)(b), the applicant relies upon its following comparable UK trade marks:

UK trade mark number: UK00918161940,²

Filing date: 5 December 2019

Registration date: 22 May 2020

Priority date: 26 July 2019.³



(“the applicant’s first mark”)

¹ The applicant initially sought to rely on section 5(3) of the Act for its invalidity claim, however, on 1 June 2023, the applicant wrote to the Tribunal confirming that it would not be filing evidence and therefore it would no longer be relying on this ground.

² On 1 January 2021, the UK left the EU. Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UKIPO created comparable UK trade marks for all right holders with an existing EUTM. As a result of the applicant’s EUTM number 18161940 being registered as at the end of the Implementation Period, a comparable UK trade mark was automatically created. The comparable UK mark now recorded on the UK trade mark register has the same legal status as if it had been applied for and registered under UK law, and the original EUTM filing date remains.

³ Priority is claimed from Spanish trade mark no: M4029386

UK trade mark number: UK00918162233,⁴

Filing date: 5 December 2019

Registration date: 22 May 2020



("the applicant's second mark")

4. The goods and services of the applicant's respective marks are the same and are found in the annex of this decision. For the purpose of this invalidation the applicant originally relied on classes 9, 16, 28, 35, 41 and 42.
5. The applicant argues that the proprietor's mark is similar to the applicant's mark and that the goods and services are either identical or highly similar, resulting in a likelihood of confusion.
6. The proprietor filed a counterstatement denying the grounds for invalidity.
7. The proprietor is represented by Allen Overy Shearman Sterling LLP and the applicant is represented by Trademarkit LLP.
8. Only the proprietor chose to file evidence in these proceedings. A hearing was requested and held before me, by video conference on 19 March 2024. At the hearing the applicant was professionally represented by Mr Sorenti of Trademarkit LLP and the proprietor was professionally represented by Mr Stone of Allen Overy Shearman Sterling LLP.

⁴ Under Article 54 of the Withdrawal Agreement, as set out above, a comparable UK trade mark was created for all right holders of with an existing EUTMs. As a result of the applicant's EUTM 18162233 being registered as at the end of the Implementation Period, a comparable UK trade mark was automatically created.

Relevance of EU law

9. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-assimilated 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 assimilated from EU Law and, therefore, this decision continues to refer to the trade mark case law of the EU courts.

Evidence and submissions

10. The proprietor filed evidence on 27 July 2023. The proprietor's evidence comprises the witness statement of Mr Christopher Jackson, Vice President of Intellectual Property Counsel at Warner Bros. Entertainment Inc., dated 26 July 2023, together with exhibits CJ-1 to CJ-14. The purpose of the evidence is to give an overview of the company and the goods and services marketed under the registered trade mark, amongst other things.
11. Before the hearing both parties filed skeleton arguments in advance of the hearing. Whilst the parties' evidence and/or submissions will not be summarised here, I have taken them all into consideration in reaching my decision and will refer to them below, as and where necessary.

LEGISLATION

12. The application to invalidate the proprietor's mark is based on section 5(2)(b), pursuant to section 47 of the Act. So far as is relevant, section 47 is as follows:

“(1) [...]

(2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground-

(a) that there is an earlier trade mark in relation to which the conditions

set out in section 5(1), (2) or (3) obtain, or

(b) [...]

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

(2ZA) [...]

(2A) The registration of a trade mark may not be declared invalid on the ground that there is an earlier trade mark unless –

(a) the registration procedure for the earlier trade mark was completed within the period of five years ending with the date of the application for the declaration,

(b) the registration procedure for the earlier trade mark was not completed before that date, or

(c) the use conditions are met.”

(2B) The use conditions are met if –

(a) within the period of five years ending with the date of the application for the declaration the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) it has not been so used, but there are proper reasons for non-use.

[...]

(2G) An application for a declaration of invalidity on the basis of an earlier trade mark must be refused if it would have been refused, for any of the reasons set

out in subsection (2H), had the application for the declaration been made on the date of filing of the application for registration of the later trade mark or (where applicable) the date of the priority claimed in respect of that application.

(2H) The reasons referred to in subsection (2G) are –

(a) that on the date in question the earlier trade mark was liable to be declared invalid by virtue of section 3(1)(b), (c) or (d), (and had not yet acquired a distinctive character as mentioned in the words after paragraph (d) in section 3(1));

(b) that the application for a declaration of invalidity is based on section 5(2) and the earlier trade mark had not yet become sufficiently distinctive to support a finding of likelihood of confusion within the meaning of section 5(2);

(c) that the application for a declaration of invalidity is based on section 5(3)(a) and the earlier trade mark had not yet acquired a reputation within the meaning of section 5(3).

“(5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(5A) [...]

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made:

Provided that this shall not affect transactions past and closed.”

13.10. As the earlier marks are comparable marks, paragraph 9 of part 1, Schedule 2A of the Act is relevant. It reads:

1) Section 47 applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the period of five years referred to in sections 47(2A)(a) and 47(2B) (the "five-year period") has expired before IP completion day —

(a) the references in section 47(2B) and (2E) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 47 to the United Kingdom include the European Union.

(3) Where IP completion day falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day —

(a) the references in section 47(2B) and (2E) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 47 to the United Kingdom include the European Union”.

14. Sections 5(2)(b) and 5A of the Act read 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”.

“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.”

15. By virtue of their earlier filing/priority dates, the trade marks relied upon by the applicant qualify as earlier trade marks pursuant to section 6 of the Act. As the earlier marks had not completed their registration process more than five years before the date on which the application for a declaration of invalidity was filed, they are not subject to the use provisions.⁵ The applicant is, therefore, entitled to rely upon them in relation to all of the goods and services for which the marks stand registered without having to prove that genuine use has been made of them.

CASE LAW

16. In considering the application for invalidity under this section, I am guided by the following principles which 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 Office for Harmonisation in the Internal Market (Trade Marks and Designs) (“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

⁵ s.47(2A) and (2B).

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

17. 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.

(2) In subsection (1), the “Nice Classification” means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1975.”

18. For the purposes of considering the issue of similarity of goods or 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.⁶

19. In *Gérard Meric v Office for Harmonisation in the Internal Market ('Merici')*,⁷ the General Court held that goods can be considered as identical when the goods

⁶ 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.

⁷ Case T-133/05, paragraph 29

designated by the earlier mark are included in a more general category, designated by the trade mark application and vice versa.⁸

20. All relevant factors relating to the goods and services should be taken into account, which include, inter alia:⁹

- the physical nature of the goods and/or services;
- their intended purpose;
- their method of use / uses;
- who the users of the goods and/or services are;
- the trade channels through which the goods and/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 signifying that “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 and/or services lies with the same undertaking”.¹⁰ Noting that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity.¹¹

⁸ This case law applies equally to services.

⁹ 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.

¹⁰ *Boston Scientific Ltd v OHIM*, Case T-325/06, paragraph 82, see also *Sandra Amalia Mary Elliot v LRC Holdings Limited*, BL O/255/13

¹¹ *Kurt Hesse v OHIM*, Case C-50/15 P, see also *Sanco SA v OHIM*, Case T-249/11

21. When interpreting the terms in a specification, I bear in mind that it is necessary to focus on the core of what is being described and that trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise. Nevertheless, the principle should not be taken too far and where words or phrases in their ordinary and natural meaning are apt to cover the category of goods and/or services 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 and/or services in question.¹²

22. In *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, Lord Kitchin set out the proper approach to considering terms in specifications:

“365. [...] The correct approach, as a matter of principle, in considering a specification of services which is defined by terms which are not clear or precise, is to confine the terms used to the substance or core of their possible meanings: see, for example, *Reed Executive plc v Reed Business Information Ltd* [2004] EWCA Civ 159; [2004] RPC 40, at para 43. So too, if a specification of goods is defined by terms which are ambiguous, then it should be confined to those goods which are clearly covered. These principles are consistent with first, the requirement that the specifications of goods and services must be clear and precise so that others know what they can and cannot do; and secondly, general fairness because any ambiguity is the responsibility of the owner of the mark. If despite this, the words used are still unclear so that they cannot be interpreted, then it is permissible to disregard them. But, in my opinion, that will rarely be the case.”

23. At the hearing, Mr Sorrenti made a few late concessions regarding the similarity of the goods and services within the proprietor’s registration, conceding that the following terms were no longer contested:

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

Class 9: Telephone and/or radio pagers; compact disc players; radios; mouse pads; eyeglasses, sunglasses and cases therefor; cellular telephone accessories, namely hands-free accessories headsets for cell phones, cellular telephone covers and cellular telephone face covers; magnetically encoded cards, namely, magnetically encoded credit cards, magnetically encoded key cards, magnetically encoded debit cards, magnetically encoded gift cards, magnetically encoded prepaid telephone calling cards; and decorative magnets; stereo headphones; batteries; cordless telephones.

Class 41: Publishing of books, magazines; publication of text and graphic works of others on-line featuring articles, novelizations, scripts, comic books, strategy guides, photographs and visual materials.

24. Equally, Mr Sorenti also confirmed that the applicant no longer relied upon its class 35 services.

25. Furthermore, whilst Mr Sorenti did not expressly state that the applicant was no longer relying on classes 38 and 42 within the applicant's registration, he did not identify any of the terms within those classes as being identical or similar to those within the proprietor's registration at the hearing. Consequently, I do not consider it necessary for me to conduct a full analysis that include those terms, particularly, as I do not believe that those services will provide a better position for the applicant.

26. Set out below are the remaining goods and services that are still subject to the invalidation proceedings alongside the goods and services that the applicant continues to rely on:

The proprietor's goods and services	The applicant's goods and services
Class 9: CD-ROM computer game discs; downloadable software for use in	Class 9: Computer software; Computer software for betting, gaming and gambling

<p>playing online computer games, downloadable computer game software; downloadable computer game software for use on mobile and cellular phones; downloadable video game programs; downloadable software in the nature of a mobile application for playing games; computer and video games which are designed for hardware platforms, namely, game consoles and personal computers; downloadable computer game programs; video game programs; downloadable computer game software; downloadable video game software; downloadable computer game software for gaming machines including slot machines; downloadable computer software and firmware for games of chance on any computerized platform, including dedicated gaming consoles, video based slot machines, reel based slot machines and video lottery terminals; CD-ROM and digital versatile computer game discs and downloadable computer programs, namely, downloadable software for linking digitized video and audio media to a global computer information network; downloadable audio and video recordings in the field of entertainment featuring animated motion pictures, television series, comedies, and</p>	<p>services and database management; Electronic publications, downloadable; Computer games; Electronic and interactive computer games and computer programs for distribution to and for use by gaming users; Computer games programmes downloaded via the internet [software]; Games software; Games software; Computer software downloaded from the internet; Cd's and dvd's; Computer software for use in downloading, transmitting, receiving, editing, extracting, encoding, decoding, playing, storing and organising data including audio and video data.</p>
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dramas; downloadable computer software, namely, downloadable computer software for streaming audio-visual media content via the Internet, downloadable computer software for streaming and storing audio-visual media content; downloadable software for playing audio and video recordings and for playing media content with multimedia and interactive functions; downloadable software for video search and annotation; downloadable software for content protection software; downloadable database management software; downloadable database synchronization software; downloadable computer programs for accessing, browsing and searching online databases; downloadable software that enables users to play and program entertainment-related audio, video, text and multi-media content; downloadable computer application software for streaming and storing audio-visual media content; downloadable computer application software for streaming audio-visual media content via the Internet; downloadable computer software for streaming audio-visual media content via the Internet; downloadable computer software for streaming and storing audio-visual media content;

<p>downloadable virtual goods; downloadable publications in the nature of books featuring characters from animated, action adventure, comedy and/or drama features; downloadable publications in the nature of comic books, children's books, strategy guides, and magazines featuring characters from animated, action adventure, comedy and/or drama features; downloadable publications in the nature of coloring books, children's activity books and magazines in the field of entertainment; Motion picture films featuring comedy, drama, action, adventure and/or animation, and motion picture films for broadcast on television featuring comedy, drama, action, adventure and/or animation; audio video discs, and digital versatile discs featuring music, comedy, drama, action, adventure, and/or animation.</p>	
	<p>Class 16: Printed matter and publications; Magazines (publication); Manuals [handbooks]; Newsletters; Instructional and teaching material (except apparatus); Calendars; Banknotes; Printed cards.</p>
	<p>Class 28: Gaming machines for gambling; Arcade game machines; Slot machines [gaming machines]; Coin-operated amusement</p>

	gaming machines; Games; Toys; Automatic and coin-operated hand-held electronic games (except those designed to be used with television receivers); Games involving gambling; Counters for games; Apparatus for games adapted for use with television receivers; Card games.
<p>Class 41: Providing online non-downloadable publications in the nature of books featuring characters from animated, action adventure, comedy and/or drama features; Providing online non-downloadable publications in the nature of comic books, children's books, strategy guides, and magazines featuring characters from animated, action adventure, comedy and/or drama features; Providing online non-downloadable publications in the nature of coloring books, children's activity books and magazines in the field of entertainment; electronic game services provided via a global computer network; Providing online computer games; providing online electronic games; providing online video games; providing temporary use of non-downloadable interactive games; providing of casino facilities; providing facilities for casino gaming contents and tournaments;</p>	<p>Class 41: Betting services; Online sports betting services; Sports betting services; Gambling; Casino, gaming and gambling services; Operating of lotteries; Organising and conducting lotteries; Gambling; Rental of slot machines [gaming machines]; Providing of casino and gaming facilities; Conducting multiple player games of chance; Poker game services; Bingo services; Bingo hall services; Services for the operation of computerised bingo; Providing amusement arcade services; Games equipment rental; Providing amusement arcade services; Games services provided via computer networks and global communication networks; Entertainment services; Recreation facilities (Providing -); Leisure services; Arranging and conducting competitions; Arranging and conducting athletic competitions.</p>

entertainment services, namely, casino gaming; electronic casino gaming services; entertainment services in the nature of providing multiplex cinema facilities; Entertainment services in the nature of development, creation, and production of theatrical performances; organizing exhibitions in the field of film for entertainment purposes; film distribution; non-downloadable virtual goods; Entertainment services, namely, providing non-downloadable movies and television shows via a video-on-demand service; providing non-downloadable films and television shows via a video-on-demand transmission service; Entertainment services, namely, the provision of continuing movies, shows and segments featuring comedy, drama, action, adventure and/or animation delivered via the internet; Providing non-downloadable videos and film clips, in the field of comedy, drama, action, adventure and/or animation via a website; Providing information, reviews and recommendations regarding television shows, movies and multimedia entertainment content via a website; entertainment services in the nature of development, creation, production, distribution, and post-

<p>production of motion picture films, television shows, and multimedia entertainment content; Arranging and conducting special events for social entertainment purposes; entertainment services in the nature of a live theatrical, musical or comedic performance; amusement park services; presentation of live comedy shows; movie showing; providing entertainment and recreation information; Education and entertainment services, namely, organizing and conducting conventions in the fields of animation, comic books and popular art; Entertainment services, namely, providing virtual environments in which users can interact for recreational, leisure or entertainment purposes; conducting contests online.</p>	
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Class 9

CD-ROM computer game discs; CD-ROM and digital versatile computer game discs [...]; *audio video discs, and digital versatile discs featuring music, comedy, drama, action, adventure, and/or animation.*

27.I understand D.V.D to be an abbreviation for the phrase '*digital versatile discs*' as such, the applicant's term *Cd's and dvd's*, encompasses the above contested terms. Therefore, I find that they are *Meric* identical.

Downloadable software for use in playing online computer games, downloadable computer game software; downloadable computer game software for use on mobile and cellular phones; downloadable video game programs; downloadable software in the nature of a mobile application for playing games; computer and video games which are designed for hardware platforms, namely, game consoles and personal computers; downloadable computer game programs; video game programs; downloadable computer game software; downloadable video game software; downloadable computer game software for gaming machines including slot machines; downloadable computer software and firmware for games of chance on any computerized platform, including dedicated gaming consoles, video based slot machines, reel based slot machines and video lottery terminals; [...] downloadable computer programs, namely, downloadable software for linking digitized video and audio media to a global computer information network; downloadable computer software, namely, downloadable computer software for streaming audio-visual media content via the Internet, downloadable computer software for streaming and storing audio-visual media content; downloadable software for playing audio and video recordings and for playing media content with multimedia and interactive functions; downloadable software for video search and annotation; downloadable software for content protection software; downloadable database management software; downloadable database synchronization software; downloadable computer programs for accessing, browsing and searching online databases; downloadable software that enables users to play and program entertainment-related audio, video, text and multimedia content; downloadable computer application software for streaming and storing audio-visual media content; downloadable computer application software for streaming audio-visual media content via the Internet; downloadable computer software for streaming audio-visual media content via the Internet; downloadable computer software for streaming and storing audio-visual media content.

28. The above terms would all be included under the applicant's broad terms *Computer software; Computer games; Electronic and interactive computer games and computer programs for distribution to and for use by gaming users; Computer games programmes downloaded via the internet [software]; Games software; Computer software downloaded from the internet*, as such I find them Meric identical.

Downloadable virtual goods.

29. I understand this term to include downloadable virtual goods such as downloadable software, software applications and video games as well as other digital goods that are not software such as music, NFT's or downloadable publications. Consequently, the applicant's terms listed above in paragraph 27 will all be included under *downloadable virtual goods*, as such I find these terms Meric identical.

Downloadable audio and video recordings in the field of entertainment featuring animated motion pictures, television series, comedies, and dramas; Motion picture films featuring comedy, drama, action, adventure and/or animation, and motion picture films for broadcast on television featuring comedy, drama, action, adventure and/or animation.

30. The above terms both describe motion picture films. At the hearing Mr Sorenti identified these goods as being similar to the applicant's *entertainment services*. The goods are the physical manifestation of entertainment and the product of entertainment publishing as they are the recorded versions of entertainment, be it films or TV programmes. The undertaking providing the entertainment content will be seen as responsible for the goods that carry it and, as such, I find that there is a low level of similarity between these goods and services.

Class 41

Providing online non-downloadable publications in the nature of books featuring characters from animated, action adventure, comedy and/or drama features; Providing online non-downloadable publications in the nature of comic books, children's books, strategy guides, and magazines featuring characters from animated, action adventure, comedy and/or drama features; Providing online non-downloadable publications in the nature of coloring books, children's activity books and magazines in the field of entertainment.

31. At the hearing Mr Sorenti for the applicant identified the above services in the contested mark as being similar to *printed matter and publications* in class 16 and *electronic publications downloadable* in class 9 of the applicant's specification.
32. In relation to similarity with the class 9 goods, *electronic publications downloadable*, while the method of delivery of the goods is different to the contested provision of online publication services, they are similar in nature to the extent that they both provide electronic publications whether through access via the internet or choosing the equivalent publication to download as a good. There will be an overlap in end users and possibly channels of trade. The respective goods and services may also be in competition with users choosing between the different methods of delivery. Overall, I consider there to be a medium level of similarity between the competing goods and services.
33. For the avoidance of doubt, I have also compared the contested services with the class 16 goods identified above by Mr Sorenti to determine whether such a comparison would offer anything beyond the comparison that I have already conducted with the class 9 goods. However, the very nature of the goods and services are further apart as the printed material is further away in nature from the contested services than electronic publications that are downloadable. The method of use also differs as the services are only accessible via the internet unlike the printed matter or printed publication. Nevertheless, the distribution channels could overlap as the same company that offers printed books and publications could also provide online non downloadable publications of the same. It follows that as a result the goods and services may also be in competition with one another as users could choose to buy the printed version or read the online version. Overall, in my view the competing goods and services are similar to between a low and medium degree, therefore it offers the same if not a lesser degree of similarity when compared with those above.

Electronic game services provided via a global computer network.

34. The applicant's specification contains the class 41 term *Games services provided via computer networks and global communication networks*, as such, I find these

terms to be identical as they are merely an alternate way of describing the same services.

Providing online computer games; providing online electronic games; providing online video games; providing temporary use of non-downloadable interactive games.

35. The above services are all for the provision of online electronic computer games. These services are all identical under the *Meric* principle to the applicant's terms *games services provided via computer networks and global communication networks* and *entertainment services* found within class 41 of its specification.

Providing of casino facilities; providing facilities for casino gaming contents and tournaments.

36. Although the above terms are expressed slightly differently to the applicant's term *providing of casino and gaming facilities*, they describe the same services, therefore I find them identical.

Entertainment services, namely, casino gaming; electronic casino gaming services
Entertainment services in the nature of providing multiplex cinema facilities;
Entertainment services in the nature of development, creation, and production of
theatrical performances; organizing exhibitions in the field of film for entertainment
purposes; film distribution; Entertainment services, namely, providing non-
downloadable movies and television shows via a video-on-demand service; providing
non-downloadable films and television shows via a video-on-demand transmission
service; Entertainment services, namely, the provision of continuing movies, shows
and segments featuring comedy, drama, action, adventure and/or animation delivered
via the internet; Providing non-downloadable videos and film clips, in the field of
comedy, drama, action, adventure and/or animation via a website; Providing
information, reviews and recommendations regarding television shows, movies and
multimedia entertainment content via a website; entertainment services in the nature
of development, creation, production, distribution, and post-production of motion
picture films, television shows, and multimedia entertainment content; Arranging and

conducting special events for social entertainment purposes; entertainment services in the nature of a live theatrical, musical or comedic performance; amusement park services; presentation of live comedy shows; movie showing; providing entertainment and recreation information; [...] entertainment services, namely, organizing and conducting conventions in the fields of animation, comic books and popular art; Entertainment services, namely, providing virtual environments in which users can interact for recreational, leisure or entertainment purposes; conducting contests online.

37. The above services are all either entertainment services themselves, the provision of entertainment services or information regarding them. I consider these to be encompassed under the broad meaning of the applicant's term *Entertainment services*. Further, in relation to the contested terms *Entertainment services, namely, casino gaming and electronic casino gaming services*, these would also be covered by the applicant's term *Casino, gaming and gambling services*. Consequently, these services under the *Meric* principle are identical.

Non-downloadable virtual goods.

38. Mr Sorenti argued that this was similar to software services in class 9, in particular to games software which conceivably could include virtual goods. I consider the contested term to include non-downloadable virtual goods such as non-downloadable electronic publications, therefore, I consider the contested term to be more similar to the applicant's class 9 goods, *electronic publications downloadable*. As such, the same analysis and conclusion will apply as set out above in paragraph 31.

Education [...] services, namely, organizing and conducting conventions in the fields of animation, comic books and popular art.

39. During the hearing, Mr Sorenti accepted that the education services detailed above were not similar to the applicant's earlier specification, therefore, it is not necessary for me to conduct a comparison of this term.

The average consumer and the nature of the purchasing act

40. As indicated in the caselaw cited above, it is necessary to decide who the average consumer is for the parties' goods and services and how they purchase them. "Average consumer" in the context of trade mark law means the "typical consumer."¹³ The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question.¹⁴

41. In light of the goods and services at issue, I note that both parties seemed to agree that the average consumer is predominantly a member of the general public, which will include those aged over the age of 18 for goods and services relating to betting and gambling, and gamers in relation to gaming goods and services. Alternatively, where the goods and services are obviously targeted at children, i.e. "downloadable publications in the nature of children's books", consumers will include parents and children. However, the average consumer may also include business users in the case of services such as film production and distribution in class 41.

42. The frequency in which the goods and services are purchased is likely to vary depending on their nature, this could range from occasionally, where physical gaming discs are obtained as a one-off purchase, to regularly, where entertainment services are streamed as part of a subscription. The price will also vary depending on the nature of goods and services purchased, however, it is unlikely to be at the higher end of the scale. Consumers are likely to consider factors such as compatibility, content and cost. Overall, the average consumer will exercise a medium level of attention during the selection process. The goods and services,

¹³ *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).

¹⁴ *Lloyd Schuhfabrik Meyer*, Case C-342/97.

due to their nature will mainly be available from online providers, notwithstanding physical goods and certain entertainment services which may be purchased at retail stores or physical premises of the service provider. The purchasing process will predominately be visual in nature, although I do not discount there may be an aural element where recommendations are involved either through word-of mouth, or audio advertising such as through radio or podcasts.

Comparison of the marks

43. 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 Court of Justice of the European Union (“CJEU”) stated in *Bimbo SA v OHIM*, Case C-591/12P, 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 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.”

44. It would therefore be wrong 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 they create.

45. During the hearing Mr Sorenti agreed that the applicant’s case stands or falls with its first mark, i.e. registration UK00918161940. I understand this is because its second mark displayed above at paragraph 3, contains the additional word “BET” in smaller font beneath the last two letters of the word “VERSUS”. This presents an added element that would typically point further away from a likelihood of

confusion. However, it is also entirely descriptive of betting services registered under the mark, therefore it does not better the applicant's position as it fails to add to the distinctiveness and overall impression of the mark and is not similar to anything in the contested mark. As such, I will consider the applicant's first mark only, returning to discuss the applicant's second mark only if it becomes necessary to do so.

46. The respective trade marks are shown below:

The contested mark	The applicant's first mark
<p>MULTIVERUS</p>	

Overall impressions

47. The earlier mark is a figurative mark, containing the letters "VS" in a highly stylised font in the colour turquoise. Beside this, to the right-hand side in slightly smaller standard typeface is the word "VERSUS" in white. All of which is positioned on a black rectangular background. In my view, the overall impression lies in the letters 'VS' and the word 'VERSUS' in roughly equal measure, with the word element having slightly more impact. The black rectangular background will play a lesser role.

48. The contested mark is the word-only mark "MULTIVERSUS", in which the overall impression lies.

Visual comparison

49. The beginnings of the competing marks visually differ; the contested mark contains the element "MULTI" at its beginning, in contrast, at the beginning of the applicant's

mark are the highly stylised letters “VS” positioned before the word “VERSUS” on the left-hand side. Whilst the competing marks share the same five letters, this is found at their respective endings.¹⁵ The competing marks also differ as the applicant’s is a figurative mark which incorporates the use of different colours, the word “VERSUS” in white, the highly stylised turquoise letters “VS” positioned prior to the word element, and a black background, whereas the contested mark is a word only mark. Taking into account the overall impressions, I find that the competing marks are visually similar to a degree somewhere between low and medium.

Aural comparison

50. I have taken into consideration the oral submissions made during the hearing from both Mr Stone and Mr Sorenti. Unsurprisingly perhaps, each took an opposing position. Mr Stone suggested that the letters “VS” in the earlier mark would be pronounced, conversely, Mr Sorenti argued that they would not be. In my view, the stylised letters “VS” will be perceived as a shortening for the word “VERSUS”, as such, it is unlikely that a significant proportion of average consumers would pronounce these letters as to do so would simply be repeating the same word in differing formats. This would cause unnecessary repetition in circumstances where consumers tend to find the shortest verbal path. Consequently, the applicant’s mark will be verbalised using two syllables, i.e. “VUHR-SUS”. As for the contested mark, this will be articulated using four syllables, i.e. “MUL-TEE-VUHR-SUS”. Whilst the contested mark overlaps with the applicant’s mark in the two syllables arising from the element “VERSUS”, it also possesses two additional syllables found at the beginning of its mark that create an aural difference. Therefore, I find that the competing marks are aurally similar to a medium degree.

Conceptual comparison

51. At the hearing Mr Sorenti stated that conceptually the only difference between the marks is that the contested mark refers to many versus, while the applicant’s mark

¹⁵ Although I accept that common elements at the end of marks may also be sufficient to create a likelihood of confusion - *Bristol Global Co Ltd v EUIPO*, T-194/14

refers to the singular. He argued that the prefix "multi" simply means many and it is incapable of really distinguishing the marks in question. Mr Sorenti attempted to demonstrate this through the use of the following examples, MULTININTENDO, MULTIPADDY POWER, or MULTIWARNER BROS. He argued that should he try to register these marks (that each possess the prefix 'multi') he would probably be unable to do so. Although Mr Sorenti did admit that an invented word (such as in the above examples) has much greater distinctiveness, perhaps, than an ordinary dictionary word, he nevertheless argued that "multi" was simply insufficient to render the marks in this case conceptually distinguishable. In contrast Mr Stone argued that when an original word is added to, it can cease to have the same conceptual meaning as the original word. The example he provided was the famous brand pepsi, and the word dyspepsia, contending that in such circumstances the word pepsi loses its independent and distinctive character due to the overall meaning of the word dyspepsia. Mr Stone argued that this was the case here. He expressed that MULTIVERSUS will not be perceived as many versus but instead it will be understood by consumers as a pun on the word 'multiverse'. The multiverse being understood as a collection of multiple universes. To support this, Mr Stone relied on the advertisement evidence provided not only of the proprietor's own website but of independent third-party publications.¹⁶ For example, where the proprietor's website states: "*In Multiversus, the Multiverse is at your fingertips as you battle it out in intense 2v2 matches. [...] Defend the Multiverse with your friends anywhere, at any time on all available platforms.*"¹⁷ Or, for example, where third party publications describe the MULTIVERSUS games as follows: "*MultiVersus is a free to play platform fighter that features characters from across the Warner Bros. multiverse, including prolific lps such as, Batman, Bugs Bunny, and more*".¹⁸ Mr Stone further relied on tweets posted by users that all referred to MULTIVERSUS as being a good or clever pun on the word multiverse.¹⁹ None of this evidence was challenged by Mr Sorenti. Mr Stone concluded that the contested mark would have an entirely different meaning to the applicant's mark.

¹⁶ The witness statement of Christopher Jackson and exhibits CJ-4 to CJ-7, and CJ-8.

¹⁷ The witness statement of Christopher Jackson, paragraph 7, and exhibit CJ-4.

¹⁸ The witness statement of Christopher Jackson, paragraph 12, and exhibit CJ-7.

¹⁹ The witness statement of Christopher Jackson, paragraph 16, and exhibit CJ-9.

52. I keep in mind that for a conceptual message to be relevant it must be capable of immediate grasp by the average consumer.²⁰ I have consulted the evidence provided by the proprietor and referred to by Mr Stone which is outlined above. I have also taken into consideration that the word 'Multiverse' is dictionary defined as '*a collection of different universes that are thought by some people to exist at the same time*'. In light of the evidence regarding the nature of the goods and services under the mark "MULTIVERSUS", I agree with Mr Stone that consumers will understand the contested mark to be a pun on the word 'multiverse' rather than referring to many versus that will be perceived as many chances to bet or play. Particularly as this does not fit with the natural meanings of the prefix 'Multi' and the word "versus".

53. As for the applicant's mark, the word "VERSUS" will be understood in line with its ordinary dictionary definition as meaning against, especially in the context of sport, for example, Manchester against Liverpool. Consequently, I find the marks to be conceptually dissimilar.

Distinctive character of the applicant's mark

54. The distinctive character of a trade mark can be measured only, first, by reference to the goods and 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*, Case C-342/97, the CJEU stated that:

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

²⁰ *Ruiz Picasso v OHIM* [2006] E.T.M.R 29.

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).”

55. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods and services to those with high inherent distinctive character, such as invented words which have no allusive qualities. Dictionary words which do not allude to the goods and services will be somewhere in between. The degree of distinctiveness is an important factor as it directly relates to whether there is a likelihood of confusion, since the more distinctive the earlier mark, the greater the likelihood of confusion may be.

56. Although the distinctiveness of a mark can be enhanced by virtue of the use that has been made of it, the applicant chose not to file evidence. Consequently, I have only the inherent position to consider.

57. In relation to the inherent distinctive character of the earlier mark, Mr Sorenti claimed that the word “VERSUS” although a dictionary defined word, has no real direct descriptiveness in relation to the goods and services in question. He argued that consumers viewing “VERSUS” would not be able to form any real conclusion as to the nature of the goods and services and, whilst perhaps it vaguely alluded to products involving some competition it was not in any way descriptive. Further he added that, in any event, the goods and services are not limited to those involving competition, they are far broader. Whilst not expressly mentioned in the hearing I note that in Mr Sorenti’s skeleton argument it is said that the earlier mark

possesses a high level of distinctiveness.²¹ Contrary to this, Mr Stone argued that the earlier mark had no distinctiveness or alternatively very limited distinctiveness. In response to the usual trade mark question, in where does the distinctiveness lie? Mr Stone identified that this was not in the word “VERSUS” or even in the letters “VS” which would be understood as shortening for “VERSUS” but in the colours used, the stylisation and the positioning of the word elements. He challenged Mr Sorenti’s position that the earlier mark was highly distinctive and the word “VERSUS” was not descriptive of the goods and services.

58. Having considered these submissions, I do not agree that the word is entirely descriptive of the goods and services at issue for the obvious reason that these are not how the goods and services would be described. As for whether the word “VERSUS” is allusive of the goods and services such as gaming and gambling, I find that to reach that conclusion would be a step too far removed. Whilst I accept as discussed above that the word “VERSUS” will be recognised by the average consumer as meaning against, particularly in a sports setting, the word remains elliptical without further context. Nevertheless, the word is still not particularly distinctive as a dictionary defined word and I consider the word VERSUS to have only a medium, at best, level of inherent distinctive character. However, I find that the distinctiveness of the earlier mark is enhanced by the combined presences of the highly stylised letters “VS” and the overall figurative presentation of the mark, i.e. the colours used and the size and positioning of these elements within the overall mark, what I will deem to be its overall ‘get up’. Collectively these elements have the effect of raising the overall level of inherent distinctiveness to an above medium level.

Likelihood of confusion

59. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that

²¹ Paragraph 11

exists between the marks and the goods and services down to the responsible undertaking being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The factors are interdependent, and a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and services and the nature of the purchasing act. In doing so, I must be alive to the fact that the average consumer rarely has an opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

60. I have found that the goods and services are identical whilst others are similar to between a medium and low degree. The average consumer will predominantly be the general public, including as identified above, adults over the age of 18 with regards to gambling goods and services, gamers, and parents and children in relation to certain products. These consumers will pay a medium level of attention during the purchasing process. The purchasing process will be primarily visual, although I do not completely discount an aural component. The marks are visually similar to between a low and medium degree, aurally similar to a medium degree and conceptually dissimilar. The common word, "VERSUS" is inherently distinctive to a medium level at best, however, overall the other elements of the earlier mark have the effect of raising the inherently distinctive character to an above medium degree.

61. As discussed above, I acknowledge that the competing marks share the element "VERSUS", nevertheless, the marks differ visually as the proprietor's mark contains the additional element "MULTI" found at the beginning of its mark. In my view, the word "VERSUS" does not retain its independent distinctive character within the contested mark, and the combination of these elements has the overall effect of creating a different word to that found within the applicant's mark. The word "MULTIVERSUS" will be seen as an entirely different word which has its own meaning as discussed above, i.e. a pun on the dictionary defined word

“Multiverse”. Further, the applicant’s earlier mark contains figurative differences which are absent from the proprietor’s word only mark, such as the highly stylised letters “VS” in turquoise that appears before the word “VERSUS”. Overall, this results in a visual, aural and conceptual difference leading consumers paying even a medium degree of attention to distinguish the marks from one another. Consequently, I do not find there to be a likelihood of direct confusion, even for goods and services that are identical.

62. 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:

“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).”

63. 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.²²

64. Furthermore, in *Liverpool Gin*,²³ 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.

65. Having recognised the differences between the marks, I consider it unlikely that the average consumer will conclude that they originate from the same or economically linked undertakings. In my view, the word “VERSUS” is not so strikingly distinctive in relation to the goods and services that consumers will believe that only the applicant will be using them in a trade mark. Instead, the

²² *Duebros Limited v Heirier Cenovis GmbH* O-547-17,

²³ *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207

use of the element “VERSUS” will be seen as merely coincidental, particularly when the marks are viewed as a whole. Equally, I do not consider that the later mark has simply bolted on a non-distinctive element that would be identified as a sub brand or brand extension. This is because, as I have explained above, the element “MULTI” has the effect of changing the overall meaning of the contested mark. It creates the word “MULTIVERSUS”, which will be perceived as a pun on the dictionary defined word “MULTIVERSE”. Further, the idea of multi added to versus does not make logical sense as a sub brand or brand extension, even in relation to betting or gaming services. As I discussed above, it does not fit with the natural meaning of many chances to play or bet. Furthermore, the additional differences in the earlier mark, the highly stylised letters VS, and what I have referred to above as the overall ‘get up’ of the mark will further deter consumers from believing that the marks are a logical brand extension or sub-brand. Consequently, overall, I do not consider there to be a likelihood of indirect confusion, even for identical goods and services.

CONCLUSION

66. The application for invalidation under sections 47 and 5(2)(b) of the Act fails in its entirety and, subject to any successful appeal against this decision, the proprietor’s mark will remain registered for all goods and services.

COSTS

67. As the application has failed, the proprietor is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 2/2016.²⁴ In the circumstances, I award the proprietor the sum of £1,350, calculated as follows:

Considering the application for invalidity and preparing a counterstatement in response:	£300
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²⁴The scale which was applicable at the time the proceedings were brought.

Preparing and filing evidence	£300 ²⁵
Preparing for and attending a hearing:	£750
Total	£1,350

68. I therefore order GRUPO ORENES SL to pay Warner Bros. Entertainment Inc. the sum of £1,350. 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 20th day of March 2025

Sarah Wallace
For the Registrar

²⁵ As only the proprietor filed evidence, I have awarded less than the amount on the scale which also includes considering the other side's evidence.

Annex

The proprietor's registered goods and services under UK registration number

3794329

Class 9: CD-ROM computer game discs; telephone and/or radio pagers; compact disc players; radios; mouse pads; eyeglasses, sunglasses and cases therefor; downloadable software for use in playing online computer games, downloadable computer game software; downloadable computer game software for use on mobile and cellular phones; downloadable video game programs; downloadable software in the nature of a mobile application for playing games; computer and video games which are designed for hardware platforms, namely, game consoles and personal computers; downloadable computer game programs; video game programs; downloadable computer game software; downloadable video game software; downloadable computer game software for gaming machines including slot machines; downloadable computer software and firmware for games of chance on any computerized platform, including dedicated gaming consoles, video based slot machines, reel based slot machines and video lottery terminals; CD-ROM and digital versatile computer game discs and downloadable computer programs, namely, downloadable software for linking digitized video and audio media to a global computer information network; downloadable audio and video recordings in the field of entertainment featuring animated motion pictures, television series, comedies, and dramas; downloadable computer software, namely, downloadable computer software for streaming audio-visual media content via the Internet, downloadable computer software for streaming and storing audio-visual media content; downloadable software for playing audio and video recordings and for playing media content with multimedia and interactive functions; downloadable software for video search and annotation; downloadable software for content protection software; downloadable database management software; downloadable database synchronization software; downloadable computer programs

for accessing, browsing and searching online databases; downloadable software that enables users to play and program entertainment-related audio, video, text and multi-media content; downloadable computer application software for streaming and storing audio-visual media content; downloadable computer application software for streaming audio-visual media content via the Internet; downloadable computer software for streaming audio-visual media content via the Internet; downloadable computer software for streaming and storing audio-visual media content; downloadable virtual goods; downloadable publications in the nature of books featuring characters from animated, action adventure, comedy and/or drama features; downloadable publications in the nature of comic books, children's books, strategy guides, and magazines featuring characters from animated, action adventure, comedy and/or drama features; downloadable publications in the nature of coloring books, children's activity books and magazines in the field of entertainment; cellular telephone accessories, namely, hands-free accessories headsets for cell phones, cellular telephone covers and cellular telephone face covers; magnetically encoded cards, namely, magnetically encoded credit cards, magnetically encoded key cards, magnetically encoded debit cards, magnetically encoded gift cards, magnetically encoded pre-paid telephone calling cards; and decorative magnets; Motion picture films featuring comedy, drama, action, adventure and/or animation, and motion picture films for broadcast on television featuring comedy, drama, action, adventure and/or animation; audio video discs, and digital versatile discs featuring music, comedy, drama, action, adventure, and/or animation; stereo headphones; batteries; cordless telephones.

Class 41: Publishing of books, magazines; publication of text and graphic works of others on-line featuring articles, novelizations, scripts, comic books, strategy guides, photographs and visual materials; Providing online non-downloadable publications in the nature of books featuring characters from animated, action adventure, comedy and/or drama features;

Providing online non-downloadable publications in the nature of comic books, children's books, strategy guides, and magazines featuring characters from animated, action adventure, comedy and/or drama features; Providing online non-downloadable publications in the nature of coloring books, children's activity books and magazines in the field of entertainment; electronic game services provided via a global computer network; Providing online computer games; providing online electronic games; providing online video games; providing temporary use of non-downloadable interactive games; providing of casino facilities; providing facilities for casino gaming contents and tournaments; entertainment services, namely, casino gaming; electronic casino gaming services; entertainment services in the nature of providing multiplex cinema facilities; Entertainment services in the nature of development, creation, and production of theatrical performances; organizing exhibitions in the field of film for entertainment purposes; film distribution; non-downloadable virtual goods; Entertainment services, namely, providing non-downloadable movies and television shows via a video-on-demand service; providing non-downloadable films and television shows via a video-on-demand transmission service; Entertainment services, namely, the provision of continuing movies, shows and segments featuring comedy, drama, action, adventure and/or animation delivered via the internet; Providing non-downloadable videos and film clips, in the field of comedy, drama, action, adventure and/or animation via a website; Providing information, reviews and recommendations regarding television shows, movies and multimedia entertainment content via a website; entertainment services in the nature of development, creation, production, distribution, and post-production of motion picture films, television shows, and multimedia entertainment content; Arranging and conducting special events for social entertainment purposes; entertainment services in the nature of a live theatrical, musical or comedic performance; amusement park services; presentation of live comedy shows; movie showing; providing entertainment and recreation information; Education and entertainment services, namely, organizing and conducting conventions in the fields of animation, comic books and

popular art; Entertainment services, namely, providing virtual environments in which users can interact for recreational, leisure or entertainment purposes; conducting contests online.

The applicant's registered goods and services under UK comparable registration numbers **918161940** and **918162233**.

Class 9: Computer software; Computer software for betting, gaming and gambling services and database management; Electronic publications, downloadable; Computer games; Electronic and interactive computer games and computer programs for distribution to and for use by gaming users; Computer games programmes downloaded via the internet [software]; Games software; Games software; Computer software downloaded from the internet; Cd's and dvd's; Computer software for use in downloading, transmitting, receiving, editing, extracting, encoding, decoding, playing, storing and organising data including audio and video data.

Class 16: Printed matter and publications; Magazines (publication); Manuals [handbooks]; Newsletters; Instructional and teaching material (except apparatus); Calendars; Banknotes; Printed cards.

Class 28: Gaming machines for gambling; Arcade game machines; Slot machines [gaming machines]; Coin-operated amusement gaming machines; Games; Toys; Automatic and coin-operated hand-held electronic games (except those designed to be used with television receivers); Games involving gambling; Counters for games; Apparatus for games adapted for use with television receivers; Card games.

Class 35: Advertising; Business management; Business administration; Office functions; Advertising and office functions in connection with entertainment, recreation, competition, games, gambling, providing

casino facilities, card games, bingo games, virtual slot machines and other games; On-line data processing services.

Class 36: Finance services; Financial services relating to betting, gaming, gambling, lotteries or book making; Financial information relating to gaming, gambling, lotteries or bookmaking; Financial advice and financial assistance relating to gaming, gambling, lotteries or bookmaking; Credit cards and debit cards relating to gaming, gambling, lotteries or bookmaking.

Class 38: Providing access to multiple user network systems allowing access to gaming and betting information and services over the Internet, other global networks or via telephony (including mobile telephones); Telecommunication services; Transmission of radio and/or television programmes; Broadcasting of radio and television programmes; Transmission of information via video communication systems of cultural, entertainment and sporting events; Providing internet chatrooms; Provision of on-line forums; Communications for the electronic transmission of data, images and information; Computer aided transmission of messages and images; Transmission of electronic mail; Telecommunications relating to global computer networks or by telephone including mobile telephones; Telecommunication of information (including web pages); Access to telecommunications links with computer databases and websites or by telephone, including mobile telephones; Information about telecommunication; Information about telecommunication.

Class 41: Betting services; Online sports betting services; Sports betting services; Gambling; Casino, gaming and gambling services; Operating of lotteries; Organising and conducting lotteries; Gambling; Rental of slot machines [gaming machines]; Providing of casino and gaming facilities; Conducting multiple player games of chance; Poker game services; Bingo services; Bingo hall services; Services for the operation of computerised bingo; Providing amusement arcade services; Games

equipment rental; Providing amusement arcade services; Games services provided via computer networks and global communication networks; Entertainment services; Recreation facilities (Providing -); Leisure services; Arranging and conducting competitions; Arranging and conducting athletic competitions.

Class 42: Computer programming; Design, maintenance, development and updating of computer software; Computer consultation; Rental of software.

Class 43: Services for providing food and drink; Bar services; Self-service cafeteria services.