

O/0489/24

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3767533
IN THE NAME OF WORLD COUTURE GLOBAL LIMITED
IN RESPECT OF THE TRADE MARK**

MVFW

IN CLASSES 9, 25, 41 & 45

AND

**THE OPPOSITION THERETO UNDER NO. 434875
BY NOWADAYS**

Background and pleadings

1. World Couture Global Limited ('the applicant') applied to register the trade mark application no. 3767533 for the mark MVFW in the UK on 18 March 2022. It was accepted and published in the Trade Marks Journal on 8 April 2022 in respect of goods and services in classes 9, 25, 41 & 45 as set out at paragraph 18 below.

2. On 8 July 2022, NOWADAYS GmbH ('the opponent') opposed the trade mark on the basis of Section 5(2)(b) of the Trade Marks Act 1994 ('the Act').¹ This is on the basis of its earlier UK comparable Trade Mark no. 917690331² for the mark MBFW. This mark was registered on 3 July 2018 and holds a filing date of 15 January 2018, meaning it is an earlier mark in accordance with section 6 of the Act. All services, namely those in classes 35, 41 and 42 are relied upon, and are set out at paragraph 18 within this decision.

3. The opponent argues that the respective goods and services are identical or similar and that the marks are visually and aurally highly similar. The applicant filed a counterstatement denying the claims made. Within its counterstatement, the applicant claims the marks differ, and the goods and services are dissimilar, asserting that the nature and end users are different and they are not in competition.

4. Only the applicant filed evidence in these proceedings and only the applicant filed written submissions in lieu of a hearing. Both the submissions and the evidence have been fully considered. Neither will be fully summarised, but both will be referred to as and where appropriate during this decision. No hearing was requested and so this decision is taken following a careful perusal of the papers.

5. Both parties are professionally represented in these proceedings. The applicant in these proceedings is represented by Dynham Limited. The opponent is represented by Womble Bond Dickinson (UK) LLP.

¹ The opponent originally included section 5(3) as a basis of opposition against this application. However, in accordance with rule 20(3) of the Trade Marks Rules 2008, this ground was deemed withdrawn when no evidence was filed to support this.

² The opponent's mark is a comparable mark based on an earlier EUTM or International Registration designating the EU. 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 existing EUTMs and IRs designating the EU.

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.

Evidence

7. The applicant filed its evidence by way of a witness statement in the name of its director Anita Lawson. The witness statement introduces 8 exhibits labelled as Exhibit 1 – Exhibit 8. The witness statement provides details of the applicant's business to date. The exhibits include its company registration details, details of domain names owned and a certificate of incorporation for the further company MVFW METAVERSE FASHION WEEK LTD, amongst other documents including invoices providing additional details of the applicant's business.

8. Whilst the evidence provided has been carefully considered, it appears to be of little relevance to these proceedings. The opponent in these proceedings is the owner of a valid earlier right that pre-dates the application. There is no challenge to the opponent's earlier right, and it is not yet subject to proof of use (see below), meaning the opponent may rely on this earlier right under section 5(2)(b) of the Act to prevent confusingly similar marks from being registered in the UK. The comparison I must make is therefore a notional one, between the mark as registered and the services as relied upon by the opponent under that registration, and the mark and goods and services as applied for by the applicant. The extent or breadth of the use made of the applied for mark to date is not relevant, rather it is the extent and breadth of the protection that will be gained at registration that is pertinent.

Proof of use

9. The opponent's mark was registered on 3 July 2018. This is less than five years prior to the application date of the earlier mark, that being 18 March 2022. It is therefore not subject to proof of use provisions in accordance with section 6A of the Act. The

opponent may therefore rely upon all of the services registered under its mark within this opposition.

Decision

10. 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”.

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

“5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

The Principles

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

The principles

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

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

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

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

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

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

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

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

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

13. 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 of its judgment 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”.

14. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

(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.

15. In *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that:

"... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

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

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

17. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the GC stated that:

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

18. With the above in mind, the goods and services for comparison are as follows:

Earlier services	Contested goods and services
Class 35: Advertising, marketing and promotional services; Fashion show exhibitions for commercial purposes; Organisation of fashion shows for commercial purposes; Fashion shows for promotional purposes (Organization of -); Promoting the sale of fashion goods through promotional articles in magazines; Planning, arranging and conducting of events, exhibitions, trade fairs and shows for commercial, promotional and advertising purposes; Event marketing; Trade show and exhibition services; Updating of advertising material; Advertising, marketing and promotional consultancy, advisory and assistance services; Digital advertising services; Market campaigns; Developing promotional campaigns for	Class 9: Downloadable computer game programs; Computer programs for video and computer games; Downloadable video game programs; Downloadable computer programs; Downloadable computer software; Downloadable computer game software; Downloadable computer software for blockchain technology; Downloadable game software; Downloadable video game software; Downloadable interactive entertainment software for playing computer games; Downloadable software, namely virtual bags ;Downloadable software, namely virtual currency; Downloadable software, namely virtual clothing ;Downloadable computer software for managing cryptocurrency transactions using blockchain technology; Downloadable software, namely virtual clothing for use in computer games; Downloadable software,

<p>business; Brand creation services; Preparing and placing advertisements for others; Trade show and commercial exhibition services; Public relations services; Market prospecting; Press advertising services; Production of advertising films; Product demonstrations and product display services; Publicity and sales promotion services; Publication of printed matter for advertising purposes; Electronic publication of printed matter for advertising purposes; Arranging advertising contracts for others; Distribution of advertising, marketing and promotional material; Advertising in the popular and professional press; Provision of advertising space, time and media; Merchandising.</p> <p>Class 41: Organisation of shows; Reservation services for show tickets; Booking of seats for shows; Publication of calendars of events; Providing entertainment information; Performances (Presentation of live -); Organisation of competitions and awards; Arranging of demonstrations for entertainment purposes; Conference services; Arranging of conventions for business purposes; Arranging and conducting of beauty</p>	<p>namely non-fungible tokens ;Computer software for entertainment; Virtual reality glasses; Virtual reality headsets; Virtual reality software; Virtual reality software for playing virtual reality games; Virtual reality models; Virtual reality game software; Headsets for virtual reality games; Apparatus for generating virtual images; Virtual and augmented reality software; Software for generating virtual images; Virtual reality headsets adapted for use in playing video games; Downloadable multimedia files; Downloadable image files; Downloadable video files; Downloadable music files; Interactive multimedia computer programs; Downloadable media; Downloadable videocasts; Downloadable posters; Downloadable software; Downloadable publications; Downloadable podcasts; Virtual reality games software; Virtual reality software for education; Virtual reality hardware; Virtual reality goggles.</p> <p>Class 25: Bandanas; Blouses; Hats; Pajamas; Pants; Pantsuits; Shirts; Shoes; Shorts; Skirts; Slippers; Socks; Suits; T-shirts; Toques [hats]; Underwear; Vests; Athletic shoes; Sweaters; Athletic clothing; Bath robes; Bathing suits; Bottoms [clothing]; Padded pants for athletic use; Padded shorts for athletic use; Padded shirts for athletic use; Crop tops; Evening dresses; Dresses; Formalwear; Gowns;</p>
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<p>contests; Arranging and conducting of conferences; Arranging and conducting of congresses; Ticketing and event booking services; Arranging professional workshop and training courses; Arranging of conferences relating to trade; Organization of exhibitions for cultural or educational purposes; Arranging and conducting of commercial, trade and business conferences; Special event planning consultation; Organization of fashion shows for entertainment purposes; Audio, video and multimedia production, and photography; Production of video and/or sound recordings; Shows and films production; Photo editing; Photography; Film production services; Production of audio-visual recordings; Entertainment in the nature of fashion shows; Organizing and presenting displays of entertainment relating to style and fashion; Education services relating to fashion.</p> <p>Class 42: Design of exhibition stands; Design services; IT services; Architectural design services relating to exhibitions; Architectural design for exterior decoration; Architectural design for interior decoration; Creating</p>	<p>Tuxedos; Dinner jackets; Dinner suits; Golf caps; Golf shirts; Golf shorts; Hockey shoes; Hooded sweatshirts; Jackets; Knit tops; Leisure shoes; Long jackets; Night gowns; Short-sleeved T-shirts; Long-sleeved shirts; Sleep masks; Sports shirts; Sweat pants; Sweat shirts; Swim wear for children; Swim wear for gentlemen and ladies; Swim caps; Swim suits; Swim trunks; Tops [clothing]; Training shoes; Training suits; Winter coats; Gloves; Leggings [leg warmers]; Leggings [trousers]; Mittens; Scarves; Suspenders; Athletics footwear; Belts [clothing].</p> <p>Class 41: Virtual reality arcade services; Virtual reality game services provided on-line from a computer network; Entertainment services; Online entertainment services; Interactive entertainment services; Live entertainment services; Musical entertainment services; Organisation of entertainment services; Animated musical entertainment services; Entertainment services sharing computer games; Interactive entertainment; Online interactive entertainment; Entertainment services in the nature of video games; Entertainment services, namely, providing on-line computer games; Gaming services; Online gaming services; Electronic games services; Video game services; Interactive computer game services; Video game entertainment services; Gaming services for entertainment</p>
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<p>and maintaining web sites for others; Consultancy relating to the design of packaging; Consultancy with regard to webpage design; Providing information about fashion design services; Fashion design consulting services; Dress designing; Computer aided graphic design; Design of clothing, footwear and headgear; Design of homepages and websites; Design of shops; Packaging design; Development and design of digital sound and image carriers; Shop interior design; Brand design services; Designing of packaging and wrapping materials; Designing websites for advertising purposes; Design services for exhibitions; Illustration services (design); Commercial design services; Custom design services; Commercial art design.</p>	<p>purposes; Providing on-line non-downloadable general feature magazines.</p> <p>Class 45: On-line social networking services; Online social networking services.</p>
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Class 9

Downloadable computer programs; Downloadable computer software; Downloadable software; Interactive multimedia computer programs.

19. The applicant's goods in class 9 as above include the very broad categories of downloadable software and multimedia computer programs. Due to the broad nature of the applicant's services above, these will include a wide range of goods such as downloadable computer programs for graphic design, designing websites or assisting with IT issues. The opponent holds protection for services including *IT services, computer aided graphic design and designing websites for advertising purposes*, for example. Whilst the nature and method of use the goods and services will differ, it is

very possible there may be an overlap in trade channels, with companies offering web design or IT help services also offering various software items that may assist consumers with the maintaining or updating of their IT systems and websites. Users may also overlap on this basis. There may be a degree of complementarity, in the sense that the software may be essential or important to the services offered, and the consumer will consider that they are provided by the same undertaking. In addition, due to the possibility for the intended purpose to be shared, there may to an extent be a level of competition between the goods and services, where a company may choose between either purchasing software to assist them in designing their own website for example, or engaging the services of a company to design it for them. Overall, considering all the factors and the broad nature of the contested goods, it is my view they are similar to at least a low to medium degree.

Computer software for entertainment.

20. The opponent's services include *Providing entertainment information*. I note both the opponent's services and the applicant's goods relate broadly to 'entertainment'. However, the nature of computer software for entertainment differs to the service of providing information about entertainment to third parties, as does the intended purpose and method of use. I do not consider that the same parties offering computer software will also commonly offer entertainment information as a service to third parties or vice versa, and the goods do not therefore appear to be complementary or in competition. I also find it unlikely trade channels will be shared. Whilst users may be shared to the extent that both the goods and services may be offered to the general public, I do not consider this sufficient to find similarity between the goods and services. Without any detailed submission from the opponent to consider on this point, it is my view that the above goods are dissimilar to the opponent's services.

Downloadable computer game programs; Computer programs for video and computer games; Downloadable video game programs; Downloadable computer game software; Downloadable computer software for blockchain technology; Downloadable game software; Downloadable video game software; Downloadable interactive entertainment software for playing computer games;

21. The above goods are all computer software for video games. I see no reason to find these goods similar to the opponent's earlier services. They are not similar in nature to the earlier services, they do not appear to be complementary or in competition, or to share a method of use. I note that at a very broad level the intended purpose of providing goods or services to entertain users during their free time will be shared, but this could be said for a huge number of goods and services and the specific purpose will differ. It does not seem likely that trade channels would be shared or that the consumer would believe them to be. Whilst users may overlap to the extent that both the goods and services are used by the general public, this is not enough to find any meaningful similarity between the goods. Without any further detailed submission from the opponent to consider, it is my view that the above goods are dissimilar to the opponent's services.

Downloadable software, namely virtual bags; Downloadable software, namely virtual currency; Downloadable software, namely virtual clothing; Downloadable computer software for managing cryptocurrency transactions using blockchain technology; Downloadable software, namely virtual clothing for use in computer games; Downloadable software, namely non-fungible tokens

22. Again, the above goods are all very specific types of software. For the same reasons as set out above, namely that they do not share a nature, intended purpose, method of use or trade channels with the opponent's services, nor do they appear to be complementary or in competition, and in the absence of any convincing argument from the opponent to consider, I find these goods to be dissimilar. Again, the possibility for a very general overlap in users, those including members of the general public, is not sufficient to find any meaningful similarity between the goods and services.

Virtual reality software for playing virtual reality games; Virtual reality game software; Virtual reality games software;

23. The above goods are all virtual reality software for playing games. I see no reason to find these goods similar to the opponent's earlier services. They are not similar in nature to the earlier services, they do not appear to be complementary or in competition, they will not share a method of use or intended purpose, nor does it seem likely that trade channels would be shared. Whilst users may overlap to the extent that

both the goods and services are used by the general public, again this is not enough to find any meaningful similarity between the goods and services. Without any further detailed submission from the opponent to consider, it is my view that the above goods are dissimilar to the opponent's services.

Virtual reality software for education

24. I note the opponent holds the earlier services *Education services relating to fashion*. The nature and method of use of these goods and services will differ. However, there will be a shared intended purpose for education, and whilst I do not consider that educational services are strictly important or essential to the offering of educational virtual reality software, I consider that it is quite possible that a party offering educational services may provide education software alongside those services, for example as an additional offering on a website offering webinars and seminars. There is therefore a potential for trade channels to be shared, as well as users of the educational services and software. Further, there may be a degree of competition between the goods with customers possibly choosing between purchasing educational virtual reality software (in this case relating to fashion) or engaging educational services relating to fashion. Overall, I find these goods and services to be similar to a low to medium degree.

Virtual reality software; Virtual and augmented reality software; Software for generating virtual images.

25. The above categories of goods will all include the applicant's virtual reality software for education, or in the case of software for generating virtual images, this will include software for generating virtual images for education. Therefore, for the reasons set out in the paragraph above, I find these similar to the applicant's goods to a low to medium degree.

Virtual reality glasses; Virtual reality headsets; Apparatus for generating virtual images; Virtual reality headsets adapted for use in playing video games; Headsets for virtual reality games; Virtual reality hardware; Virtual reality goggles; Virtual reality models.

26. The above goods are all types of virtual reality apparatus. I do not consider these goods to share a nature, intended purpose, method of use or trade channels with the opponent's earlier services. They do not appear to be complementary or in competition. Even in cases such as that above where I have considered that educational virtual reality software might be provided alongside education services, it is my view that it is very unlikely that virtual reality headsets or glasses for example would be offered by these same entities, or that it would be considered by consumers that this would generally be the case. In the absence of any detailed argument or submission on this point, it is my view that these goods are dissimilar to the opponent's earlier services.

Downloadable multimedia files; Downloadable image files; Downloadable video files; Downloadable media.

27. The opponent's services include *Audio, video and multimedia production, and photography*. These are services for the purpose of the creation and/or production of images and videos for others. It is my view that entities offering these services are also likely to offer the downloadable files as goods. For example, a wedding photographer or videographer will offer photography as a service, but also the downloadable image files as goods, which may be purchased along with the service, or as an extra. Overall, there will be an overlap in purpose, in this example for ultimately creating and providing user with photographs. There may be a level of complementarity, in the sense that the services are important or essential for the creation of the goods, and that the consumer may well believe that the goods and services would be offered by the same entities such as in the example just explained. The user, one example being a bride and/or groom, may be shared. Overall, I find the goods and services to be similar to a medium degree.

Downloadable posters

28. The opponent's services include *Design services*. This will include design services for posters. I consider that an entity providing customers with these design services may also provide them with the downloadable posters once they have been created, and there will be an overlap in purpose and users in this scenario. For example, a business may engage a poster design company to design a poster for them, and then

purchase the downloadable file so that they may print these goods themselves as and when they require additional copies, rather than simply receiving a set number of printed items for example. In addition, there will be a level of complementarity between the goods and services, in that the design services for the goods will be important for the provision of the goods themselves, and the consumer is likely to believe they are provided by the same economic undertaking. In addition, there may be a level of competition with customers choosing between engaging design services to create a poster for a business, or simply downloading a customisable template poster. Overall, I find these goods to be similar to these services to a medium degree.

Downloadable videocasts; Downloadable podcasts; Downloadable music files; Downloadable publications

29. The opponent holds protection for services including *Production of video and/or sound recordings; Audio, video and multimedia production, and photography and Production of audio-visual recordings*. These services will include the production of podcasts, videocasts, music and publications. Naturally, the nature of the goods and services will differ, however, I find it likely that a company offering production services for videocasts, podcasts, music and publications may well also be responsible for providing the actual downloadable files to end users. Further, the intended end purpose, of providing this content to consumers will be shared. Whilst the actual production services may be engaged by individuals such as journalists and content creators, whereas the goods themselves will likely be purchased by either the general public or business users, the end user of the goods and services, namely members of the general public consuming the podcasts, videocasts, publications or music will be shared. I consider the goods and services to be complementary on the basis that the production services are important to or essential for the creation of the goods and the user would likely believe they derive from the same economic entities. Overall, I consider the goods and services to be similar to a medium degree.

Class 25

Bandanas; Blouses; Hats; Pajamas; Pants; Pantsuits; Shirts; Shoes; Shorts; Skirts; Slippers; Socks; Suits; T-shirts; Toques [hats]; Underwear; Vests; Athletic shoes; Sweaters; Athletic clothing; Bath robes; Bathing suits; Bottoms [clothing]; Padded

pants for athletic use; Padded shorts for athletic use; Padded shirts for athletic use; Crop tops; Evening dresses; Dresses; Formalwear; Gowns; Tuxedos; Dinner jackets; Dinner suits; Golf caps; Golf shirts; Golf shorts; Hockey shoes; Hooded sweatshirts; Jackets; Knit tops; Leisure shoes; Long jackets; Night gowns; Short-sleeved T-shirts; Long-sleeved shirts; Sleep masks; Sports shirts; Sweat pants; Sweat shirts; Swim wear for children; Swim wear for gentlemen and ladies; Swim caps; Swim suits; Swim trunks; Tops [clothing]; Training shoes; Training suits; Winter coats; Gloves; Leggings [leg warmers]; Leggings [trousers]; Mittens; Scarves; Suspenders; Athletics footwear; Belts [clothing].

30. The applicant's goods above are all clothing, footwear or headgear items or accessories. The opponent holds no comparable goods under the earlier mark. However, that the opponent holds protection for services including *Design of clothing, footwear and headgear*. As with all services, those listed will protect services offered to third parties, rather than referring to the designing of clothing, footwear and headgear to be offered by the same entity. The nature of the goods and services differs, as does the method of use. However, there will be an overlap in the end purpose, for the ultimate provision of clothing. I find that the design of the goods is important and arguably essential to the provision of the goods themselves. There will be shared users, for example those running clothing boutiques who wish to engage the services to assist in offering their own line of clothing, as well as stock other clothing brands in store. Further, occasionally users may overlap in terms of the general public, for example where the general public engages design services, for example in the case of special occasion wear or one-off items, but also buys off the rack items to wear alongside the same. These users may well believe that the goods and services will be offered by the same entities. As such, there is a level of complementarity, and trade channels may sometimes be shared. To an extent there may also be a level of competition between the goods and services, for example in the case of a store owner or member of the general public choosing between purchasing pre-designed off the rack clothes, or engaging design services to design these for them. Overall, I find the opponent's services to be similar to the applicant's goods to a medium degree.

Class 41

Entertainment services; Online entertainment services; Interactive entertainment services; Live entertainment services; Musical entertainment services; Organisation of entertainment services; Animated musical entertainment services; Interactive entertainment; Online interactive entertainment; Gaming services; Online gaming services; Electronic games services; Video game services; Interactive computer game services; Video game entertainment services; Gaming services for entertainment purposes.

31. The opponent argues in its specification that the above services are all identical to its earlier services. It is submitted if they are not found to be identical, then they should at least be considered highly similar. The opponent holds the services including *Performances (Presentation of live -)*. It is my view that the applicant's services *Entertainment services; Interactive entertainment services; Live entertainment services; Musical entertainment services; Animated musical entertainment services; Interactive entertainment;* will all cover the opponent's performance services. I therefore find these services to be identical in accordance with the principles set out in *Meric*.

32. The opponent also covers services including *Arranging of demonstrations for entertainment purposes;* and *Organization of fashion shows for entertainment purposes*. It is my view these will include both online and in person events. I therefore consider these services to fall within the categories of the applicant's *Online entertainment services; Organisation of entertainment services; Online interactive entertainment* and that they are therefore identical in accordance with the principles set out in *Meric*.

33. That leaves the various gaming services listed above. There is no obvious identity between these services and those held by the opponent. Within its statement of grounds, the applicant submits:

"10. Turning to **Class 41**, the services applied can be categorised in two sub-groups, namely entertainment services including virtual reality services and

gaming services, and the other being providing on-line non-downloadable general feature magazines. The Opponent has entertainment related services such as 'providing entertainment information, but that could be a very specific subset of service in terms of simply providing informative advice. Compared to the gaming focused specification of the Applicant's mark, the similarity here is only to a low degree."

34. I note the applicant's concession that its gaming services are similar to the opponent's class 41 'entertainment related services' to a low degree. I consider that the opponent's services could include providing information about entertainment services relating to gaming events. However, I find the nature and method of use of the services to differ. There may be an overlap in users of the two services, namely gamers, and the provision of information about the gaming services will likely be important to the gaming services themselves and vice versa. However, it will not necessarily be assumed that an entity who deals with providing entertainment information as a service in this context (that being over and above the promotion of its own event) is the same as that providing the gaming services themselves. Considering all of the factors, I do not consider that the similarity between the services can be any higher than the conceded level of low, and I therefore accept the applicant's concession in that respect.

Entertainment services sharing computer games; Entertainment services in the nature of video games; Entertainment services, namely, providing on-line computer games; Virtual reality game services provided on-line from a computer network; Virtual reality arcade services.

35. The opponent has made no particular comment services within its statement of grounds. However, I find these services to be similar to the opponent's earlier *Providing entertainment information* to a low degree the same reasons as set out above.

Providing on-line non-downloadable general feature magazines.

36. As previously outlined, the opponent holds protection for the services *Providing entertainment information*. I find that this may include the provision of entertainment

information in the form of a general feature magazine, and that these services are therefore identical in accordance with the principles set out in *Meric*. However, if I am wrong, I find the nature and intended purpose of these services to be very similar, in that they will both include the service of providing written information to consumers, that they may be provided by the same entities via the same trade channels, and that the users, namely those looking for information about entertainment, may be shared. They will share a method of use, and there may be a level of competition between them, in that the users may gather entertainment information from either a non-downloadable magazine or a website providing this information. If not identical, I consider these services to be similar to at least a medium degree.

Class 45

On-line social networking services; Online social networking services.

37. I note that the phrase ‘social network’ is often used in respect of social media services. Therefore, during my initial reading of the applicant’s services above, I considered that they may be concerned with the running and management of a business’ social media. However after consideration, it is my view that if this were the correct reading, these services would likely fall under promotional services proper to class 35.³ At the very least, they would not fall within class 45, as the explanatory note provided by the World Intellectual Property Office (‘WIPO’) states:⁴

This Class does not include, in particular:

- *professional services giving direct aid in the operations or functions of a commercial undertaking (Cl. 35);*

38. The same explanatory note explains:

³ See *Altecnic Ltd’s Trade Mark Application* [2002] RPC 34 (COA) in which the Court of Appeal decided that “*the Registrar is entitled to treat the Class number in the application as relevant to the interpretation of the scope of the application, for example, in the case of an ambiguity in the list of the specification of goods.*”

⁴ See https://nclpub.wipo.int/enfr/?basic_numbers=show&class_number=45&explanatory_notes=show&lang=en&menulang=en&mode=flat¬ion=&pagination=no&version=20190101 [accessed 16 May 2022]

This Class includes, in particular:

[...]

- *services provided to individuals in relation with social events, such as social escort services, matrimonial agencies, funeral services.*

39. In light of the above, it is my view that these services therefore relate to 'online social networking' in a more traditional sense, that being for connecting with an appropriate or desired 'social network' online. I therefore take these to be services for the purpose of introducing individuals with other individuals in order to make connections, for the benefit of one or both parties, via the internet. I do not consider these services to cover the management of social media on behalf of a commercial undertaking for promotional purposes.

40. The opponent has offered no reasoning as to why I should find these online social networking services similar to those for which it holds protection, and considering all of the relevant factors, it is my view that they are not.

Comparison of marks

41. 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.”

42. 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.

43. The respective trade marks are shown below:

Earlier trade mark	Contested trade mark
MVFW	MBFW

44. The earlier mark comprises 4 letters, namely MVFW. The overall impression resides in the combination of these letters and the mark as a whole.

45. The later mark also comprises 4 letters, namely MBFW. Again, the overall impression of the mark resides in the combination of these letters and the mark as a whole.

Visual comparison

46. Visually both marks comprise of four letters only. They begin with the same letter ‘M’ and end with the identical letters ‘FW’. The letters M, F and W all feature in the same position in both marks. The marks differ visually by way of the second letter in each mark, that being ‘V’ in the earlier mark and ‘B’ in the later mark. The letters ‘V’ and ‘B’ bear no similarity to each other visually. I note both marks are relatively short, and so the substitution of one letter has more impact that in would in a longer mark. However, I also consider that the letter that has been changed lies in the middle of the short mark where it makes less visual impact. The overall effect created by the marks sharing three of four letters in the same order at the beginning and end of the marks is that they appear visually similar to a relatively high degree.

Aural comparison

47. It is my view that neither mark appears to be a pronounceable word (made up or otherwise). Instead, it is my view that they will be considered as initialisms, and they will therefore each be verbalised as four letters. In both marks, the first, third and fourth letters will be pronounced identically. The second letter in each mark will also share a similar sound, that being 'vee' in the earlier mark and 'bee' in the later mark. Overall, I consider the marks to be similar aurally to a high degree.

Conceptual comparison

48. Although both marks appear to be initialisms, beyond this they do not appear to convey any concept to the consumer. I find the marks to be conceptually neutral.

Average consumer and the purchasing act

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

50. 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.”

51. In this instance, the average consumer of the goods and services and the degree of attention paid will vary depending on the type of goods or services offered. For

example, in respect of the class 9 goods such as software generally, the price point of the goods will vary greatly across the broad spectrum, as will the type of consumer which will include both the general public and business consumers. However, I note that functionality, price point and ease of use will be considered, and the general public will generally pay a medium level of attention to the goods, whilst a slightly higher level may be paid by business consumers due to the increased volume of goods purchased and the impact the goods may have on the running of their business.

52. In respect of the goods in class 9 including, for example, those such as podcasts, videocasts and publications, I note that again the average consumer will be either a member of the general public or a business user, depending on the content of those goods. I also find this to be true in respect of the provision of non-downloadable general feature magazines in class 41. I consider that factors such as the subject, ratings, and length will be considered prior to purchase, and the consumer is likely to pay at least a medium level of attention in respect of the same. I note that the general public or ordinary business user of podcasts, videocasts or publications will be unlikely to also engage the comparable third-party production services themselves, however, they will be the end user of these services when listening to the podcast, videocast or viewing a publication. In my experience the production company involved in producing a podcast, videocast or viewing a publication is often made clear to this user, and it is therefore likely the purchase of future goods may be influenced by the knowledge of the company offering those services.

53. Goods such as downloadable posters and files may be purchased by both business consumers or members of the general public. Factors such as the content and quality may be considered prior to purchase, although they may be relatively low cost and easily replaceable and therefore on occasion the general public may pay only a low degree of attention to these goods, although this is likely to be higher and at least medium when it comes to goods and services such as wedding photography and the related files, on the basis that these are generally one off expensive purchases. Business users may also engage the comparable design services for posters and files prior to purchasing the downloadable goods for their own distribution, and I consider at least a medium to high level of attention will be paid in this respect, on the basis

that these will be higher cost and more considered purchases that may directly impact the future of their business.

54. In respect of the class 25 goods and the opponent's design services to which they have been found similar, I note there will be multiple groups of consumers. First, there will be the general public, looking to purchase the goods in class 25. They will consider the practicality, aesthetics and quality of the goods and will therefore generally pay a medium level of attention in respect of the same. These consumers may not engage the design services directly, although I note they will ultimately be end users of the design services when buying the clothing, and the purchase of class 25 goods may on occasion be influenced by their belief that the goods were designed by a particular undertaking, for example if they have enjoyed goods designed by that undertaking previously. There will also be members of the general public looking to get a bespoke item designed for a special occasion, and these consumers are likely to pay a higher level of attention on the basis that these will likely be one off, more expensive purchases to be worn on an important day. There will also be professional consumers, such as those running retail stores. These consumers will likely pay a slightly higher level of attention when purchasing the goods, that being above medium, and at least between a medium and high level of attention when engaging the comparative design services, as both purchases of goods to stock their retail stores, and the design services relating to their own range of clothes will have a direct impact on the success of their business.

55. In respect of the entertainment and gaming services in class 41, it is my view that the relevant consumer will generally be a member of the general public. I consider that the content, price point and reviews of any gaming or entertainment services will be considered prior to a purchase, to ensure it fits with the consumers tastes and budget. It is my view that generally, a medium level of attention will be paid in this respect.

56. The goods themselves will be sold in online or physical retail stores or via websites, whilst the services are likely to be marketed on websites or promoted using visual advertising campaigns. In both cases, visual considerations will be key. However, I note that verbal recommendations of the goods and services may be made, and there may also be verbal advertisements for example in respect of podcasts. I therefore cannot completely discount the aural comparison.

Distinctive character of the earlier trade mark

57. 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).

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).”

58. I have not been provided with any evidence of use of the earlier mark, and as such I only have the inherent position to consider.

59. The earlier mark is a relatively short and apparently random combination of four letters. It will likely be understood to be an initialism, although it is not apparent what it stands for in its registered form. It therefore appears neither descriptive nor allusive of the services. However, I do not consider that the short four-letter combination holds the highest level of inherent distinctiveness that may often be attributed to a made-up word with no apparent meaning. In my experience, the use of initialisms as trade marks is fairly commonplace, particularly those shorter in length. Considering these factors,

is my view that the earlier mark as a whole holds a medium degree of inherent distinctive character in respect of all of the services covered. I note, for completeness, that I have reached the same conclusion as the applicant in this respect, as set out within its written submissions.

GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion

60. Prior to reaching a decision under Section 5(2)(b), I must first consider all relevant factors, including those as set out within the principles A-K at paragraph 12 of this decision. I must view the likelihood of confusion through the eyes of the average consumer, 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 they have kept in their mind. I must consider the level of attention paid by the average consumer, and consider the impact of the visual, aural and conceptual similarities of the marks by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. I must consider that the level of distinctive character held by the earlier mark will have an impact on the likelihood of confusion. I must remember that the distinctiveness of the common elements is key.⁵ I must keep in mind that a lesser degree of similarity between the goods and services may be offset by a greater degree of similarity between the marks, and vice versa. I must also consider that both the degree of attention paid by the average consumer and how the goods are obtained will have a bearing on how likely the consumer is to be confused.

61. There are two types of confusion that I may find. The first type of confusion is direct confusion. This occurs where the average consumer mistakenly confuses one trade mark for another. The second is indirect confusion. This occurs where the average consumer notices the differences between the marks, but due to the similarities between the common elements, they believe that both products derive from the same or economically linked undertakings.⁶

⁵ See *Kurt Geiger v A-List Corporate Limited*, BL O-075-13, in which Mr Iain Purvis Q.C. as the Appointed Person pointed out that the level of 'distinctive character' is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar.

⁶ *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10

62. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, Mr James Mellor Q.C. (as he then was), as the Appointed Person, stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark. This is mere association not indirect confusion.

63. Where I found no similarity between the goods and services, the opposition under section 5(2)(b) must fail.⁷ The following goods and services may therefore proceed to registration:

Class 9: game programs; Downloadable computer game software; Downloadable computer software for blockchain technology; Downloadable game software; Downloadable video game software; Downloadable interactive entertainment software for playing computer games; Computer software for entertainment; Downloadable software, namely virtual bags; Downloadable software, namely virtual currency; Downloadable software, namely virtual clothing; Downloadable computer software for managing cryptocurrency transactions using blockchain technology; Downloadable software, namely virtual clothing for use in computer games; Downloadable software, namely non-fungible tokens Virtual reality software for playing virtual reality games; Virtual reality game software; Virtual reality games software; Virtual reality glasses; Virtual reality headsets; Apparatus for generating virtual images; Virtual reality headsets adapted for use in playing video games; Headsets for virtual reality games; Virtual reality hardware; Virtual reality goggles; Virtual reality models.

Class 45: On-line social networking services; Online social networking services.

64. I will now consider the 5(2)(b) claim in respect of the remaining goods and services. I note at this point the applicant's statement within its final written submissions that

“As [...] the average consumer doesn't overlap, and [...] the competing marks lack similarity, it is denied that a likelihood of confusion arises”.

⁷ *esure Insurance Ltd v Direct Line Insurance Plc*, [2008] EWCA Civ 842

65. I have established previously that it is my view that the marks share a relatively high level of similarity. However, I consider at this stage the applicant's additional point, that the 'average consumer' does not overlap. I agree with the principle that I believe has been set out (although in very little detail) by the applicant, that where the users of two sets of goods or services are entirely distinct and never overlap, there can be no confusion. In that scenario it cannot be the case that the consumer of one set of goods or services may go to purchase another set of goods or services and instead wrongly purchases those of the other undertaking, either due to the belief that they are the same, or that they derive from the same or an economically linked undertaking based on the similar trade marks used. However, it is my view that this is not the case here.

66. I consider, as an initial example, the applicant's goods in class 25. It is of course, undoubtedly the case that those engaging the services for clothing design will also wear clothes, and they may well engage design services from an entity they believed to be responsible for designing the clothing they frequently purchase and wear. However, if it is considered that this is stretching the idea of 'shared users' and the conflict between the relevant consumer in relation to clothing and the relevant consumer in respect of clothing design, I have also noted that in class 25, both retailers and some members of the general public may both engage the design services and also purchase the clothing goods. In that case, it is relatively straight forward that whilst not all relevant consumers of clothing, those including both the general public and retailers, will engage clothing design services, there is a subset of shared users which may both purchase the goods and engage the services.

67. In the case of some of the class 9 goods and class 42 services, I consider podcasts and their production (or audio production) as a general example. I note that the average member of the general public or business user of podcasts will be unlikely to also engage third party services to produce their own. Those services will generally be engaged, as previously discussed, by content creators or journalists for example. It is my view that those content creators or journalists will also be very likely also listen to downloadable podcasts, and their choice of production company to approach may well be influenced by the downloadable podcasts they enjoy and a perceived

economic link between those goods and their producers. However, in case this is not considered sufficient to create a group of shared relevant consumers, I note that it is also the case that the general public will essentially be end users of the services used to produce the podcasts. Even if they do not directly engage and pay for the services for the podcasts to be produced, it is my experience that when listening to a downloadable podcast, they will likely be informed of the production company responsible for this. Whilst this is unlikely to lead them to engage the services of that production company to create their own podcast, it is highly possible that future downloadable podcasts may well be purchased by those consumers on the basis that they believe (correctly or mistakenly) they were produced by or are a product of the entity responsible for a previous podcast enjoyed by that member of the general public. I therefore see a very real possibility that these shared end users could engage a likelihood of confusion between these types of goods and services, should the conditions for such be met.

68. Whilst I have offered only two examples above, it is my view that a similar logic may be applied across the goods and services I have found to be similar.

69. I will therefore go on to consider if I find there is a likelihood of confusion in this instance. I found the marks to be visually similar to a relatively high degree, aurally similar to a high degree, and conceptually neutral. I found that goods and services will predominantly be purchased visually and therefore the visual comparison is key, however, I found I could not completely disregard the aural comparison. I found the earlier mark to hold a medium degree of inherent distinctive character but that there is no evidence this has been enhanced beyond its inherent level through its use. I found the similarity of the goods and services to range from low to identical. I found the relevant consumer may be both a professional or a member of the general public and the level of attention paid to the goods will range from a low to medium to a medium to high degree.

70. Considering the consumers' imperfect recollection and keeping in mind there is no clear concept held by either mark that may assist in the consumers recall of the differences between them, it is my view it that it is likely a significant portion of consumers may misremember or fail to notice the single letter difference which is subsumed within the body of the mark as a whole. Considering all of the factors, it is

my view that even where the level of similarity between the goods is lower, the similarity between the marks is likely to result in a likelihood of direct confusion between the same. Further, I note in this instance that when verbalised, even where the marks are not misremembered, they may well be misheard and confused on that basis. I therefore find a likelihood of direct confusion in respect of all of the goods and services found to be similar to the opponent's earlier services.

71. For completeness, I will now consider if there is a likelihood of indirect confusion between the marks. In *L.A. Sugar* (cited above) Mr Iain Purvis Q.C. (as he then was), as the Appointed Person set out three examples of when indirect confusion may occur as below:

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)."

72. I note that the examples above were intended to be illustrative and are not exhaustive. However, I also note *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, in which 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.

73. Considering again all of the factors set out above, it is my view that there is no likelihood of indirect confusion in this instance. If the consumer were to notice the differences between the marks, I see no logical reason or ‘proper basis’ for concluding that the marks derive from the same economic undertaking. Instead, I believe that the consumer would put the high level of similarity down to coincidence. I therefore find no likelihood of indirect confusion between the marks.

Final Remarks

74. The opponent has been partially successful and the application is refused in respect of the following goods:

Class 9: Downloadable computer programs; Downloadable computer software; Downloadable software; Interactive multimedia computer programs; Virtual reality software for education; Virtual reality software; Virtual and augmented reality software; Software for generating virtual images; Downloadable multimedia files; Downloadable image files; Downloadable video files; Downloadable media; Downloadable posters; Downloadable videocasts; Downloadable podcasts; Downloadable music files; Downloadable publications

Class 25: Bandanas; Blouses; Hats; Pajamas; Pants; Pantsuits; Shirts; Shoes; Shorts; Skirts; Slippers; Socks; Suits; T-shirts; Toques [hats]; Underwear; Vests; Athletic shoes; Sweaters; Athletic clothing; Bath robes; Bathing suits; Bottoms [clothing]; Padded pants for athletic use; Padded shorts for athletic use; Padded shirts for athletic use; Crop tops; Evening dresses; Dresses; Formalwear; Gowns; Tuxedos; Dinner jackets; Dinner suits; Golf caps; Golf shirts; Golf shorts; Hockey shoes; Hooded sweatshirts; Jackets; Knit tops; Leisure shoes; Long jackets; Night gowns; Short-sleeved T-shirts; Long-sleeved shirts; Sleep masks; Sports shirts; Sweat pants; Sweat shirts; Swim wear for children; Swim wear for gentlemen and ladies; Swim caps; Swim suits;

Swim trunks; Tops [clothing]; Training shoes; Training suits; Winter coats; Gloves; Leggings [leg warmers]; Leggings [trousers]; Mittens; Scarves; Suspenders; Athletics footwear; Belts [clothing].

Class 41: Entertainment services; Online entertainment services; Interactive entertainment services; Live entertainment services; Musical entertainment services; Organisation of entertainment services; Animated musical entertainment services;; Interactive entertainment; Online interactive entertainment; Gaming services; Online gaming services; Electronic games services; Video game services; Interactive computer game services; Video game entertainment services; Gaming services for entertainment purposes; Entertainment services sharing computer games; Entertainment services in the nature of video games; Entertainment services, namely, providing on-line computer games; Virtual reality game services provided on-line from a computer network; Virtual reality arcade services; Providing on-line non-downloadable general feature magazines.

75. The applicant has also achieved partial success and the application will proceed to registration in respect of the goods listed below:

Class 9: Game programs; Downloadable computer game software; Downloadable computer software for blockchain technology; Downloadable game software; Downloadable video game software; Downloadable interactive entertainment software for playing computer games; Computer software for entertainment; Downloadable software, namely virtual bags; Downloadable software, namely virtual currency; Downloadable software, namely virtual clothing; Downloadable computer software for managing cryptocurrency transactions using blockchain technology; Downloadable software, namely virtual clothing for use in computer games; Downloadable software, namely non-fungible tokens Virtual reality software for playing virtual reality games; Virtual reality game software; Virtual reality games software; Virtual reality glasses; Virtual reality headsets; Apparatus for generating virtual images; Virtual reality headsets adapted for use in playing video games; Headsets for virtual reality games; Virtual reality hardware; Virtual reality goggles; Virtual reality models.

Class 45: On-line social networking services; Online social networking services.

COSTS

76. The opponent has been more successful than the applicant in this opposition and is entitled to a contribution towards its costs. However, I consider it appropriate to reduce the cost award in recognition of the applicant's partial success. In the circumstances I award the opponent the sum of £330 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Official fee: ⁸	£100
Preparing and filing a TM7 and statement of grounds:	£250
Considering the applicant's evidence:	£200
Reduction for the applicant's partial success:	-£220
Total:	£330

77. I therefore order World Couture Global Limited to pay NOWADAYS the sum of £330. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 29th day of May 2024

Rosie Le Breton

For the Registrar

⁸ As the opposition on the basis of section 5(3) was deemed withdrawn, the official fee reflects the 5(2)(b) ground only.