

**O/0666/24**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF TRADE MARK APPLICATION**

**NO. 3825260 BY**

**BERKMANN WINE CELLARS LIMITED**

**TO REGISTER THE TRADE MARK:**

**CARTEL DESIGN**

**IN CLASSES 9, 16, 32, 33, 35, 41, 42 & 45**

**AND**

**OPPOSITION THERETO**

**UNDER NO. 438084**

**BY**

**DOROTHEE CLAESSENS**

## BACKGROUND AND PLEADINGS

1. On 31 August 2022, BERKMANN WINE CELLARS LIMITED (“the applicant”), applied to register the trade mark shown on the front page of this decision in the United Kingdom. It was accepted and published in the Trade Marks Journal on 16 September 2022 for the goods and services set out in Annex 1 of this decision.
2. On 16 December 2022, the applicant’s mark was partially opposed by Dorothee Claessens (“the opponent”). The opposition is based on section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and is brought against the applicant’s class 35, 41 and 42 services only. The opposition is brought in reliance upon the following mark:

CARTILS

UK TM No. 917849571<sup>1</sup>

Filing date 22 February 2018; date of registration 11 July 2018

Relying on the services set out at Annex 2 of this decision.

(“the opponent’s mark”)

3. The opponent contends that the marks at issue have a high degree of similarity and that the respective services include a number of identical or very similar terms. As such, it claims that there exists a strong likelihood of confusion between the marks, which includes the likelihood of association.
4. The applicant filed a counterstatement denying the claims made.
5. The applicant is represented by Trademark Eagle Limited and the opponent is represented by Stevens Hewlett & Perkins. Neither party filed evidence in these proceedings and neither did they request a hearing. I note that only the applicant has filed written submissions in lieu of a hearing. This decision is taken following a careful perusal of the papers.

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<sup>1</sup> The opponent’s mark is a comparable mark based on an earlier EUTM. 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.

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.

## **PRELIMINARY ISSUE**

7. In its submissions, the applicant set out that both parties' marks start with the letters 'CART', which is a common and recognisable word to English speaking consumers. The applicant goes on to mention a simple search which it claims to show that around 400 marks co-exist in the relevant classes which start with 'CART. The applicant provided examples such as 'CARTEL', 'CART', 'CARTA' and 'CARTOL', amongst others. It appears to me that this issue has been raised on the basis that the applicant seeks to argue that the distinctiveness of the opponent's mark has been weakened as a result of the common use of 'CART' on the trade marks register. While noted, no evidence in support of the existence of these marks is provided. Even if it had been, I will say that a copy of the register showing these marks as registered, would be of no assistance to the applicant. I say this in reliance upon the case of *Zero Industry Srl v OHIM*, Case T-400/06, wherein the General Court ("GC") stated that:

"73. As regards the results of the research submitted by the applicant, according to which 93 Community trade marks are made up of or include the word 'zero', it should be pointed out that the Opposition Division found, in that regard, that '... there are no indications as to how many of such trade marks are effectively used in the market'. The applicant did not dispute that finding before the Board of Appeal but none the less reverted to the issue of that evidence in its application lodged at the Court. It must be found that the mere fact that a number of trade marks relating to the goods at issue contain the word 'zero' is not enough to establish that the distinctive character of that element

has been weakened because of its frequent use in the field concerned (see, by analogy, Case T-135/04 GfK v OHIM – BUS(Online Bus) [2005] ECR II-4865, paragraph 68, and Case T-29/04 Castellblanch v OHIM – Champagne Roederer (CRISTAL CASTELLBLANCH) [2005] ECR II-5309, paragraph 71).”

8. As above, the applicant has provided no evidence in respect of these marks even in existence on the register let alone their presence on the marketplace. As a result, the applicant’s reference to other marks beginning with the letters ‘CART’ is of no assistance here. I will say no more about it.

## **DECISION**

### **Section 5(2)(b): legislation and case law**

9. Section 5(2)(b) of the Act reads as follows:

“A trade mark shall not be registered if because –

a) [...]

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.

10. Section 5A of the Act states 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.””

11. 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 Office for Harmonization 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 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 services**

12. The contested services of the applicant are those in classes 35, 41 and 42 of the specification set out in Annex 1. The opponent's services are set out in Annex 2.

13. When making the comparison, all relevant factors relating to the services in the specifications should be taken into account. In *Canon Kabushiki Kaisha*, the Court of Justice of the European Union ("CJEU") stated that:

"23. In assessing the similarity of the goods or services concerned [...] 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 complementary.”

14. Guidance on this issue was also given by Jacob J (as he then was) in *British Sugar Plc v James Robertson & Sons Limited (“Treat”)* [1996] RPC 281. At [296], he identified the following relevant factors:

(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 *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 für Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or

where the goods designated by the trade mark application are included in a more general category designated by the earlier mark.”

16. In its notice of opposition, the opponent claimed that the applicant’s specification includes a number of identical or very similar terms to the opponent’s services. As well as listing a few terms that it considered identical, the opponent argued that those services that are not identical should be considered similar because they will be obtained through the same trade channels, are aimed at the same consumers and will be used for the same purposes or in close association. As for the applicant, I note that it submits that there is a degree of similarity between some (but not all) of the services at issue. While noted, it has not been specified which services are considered similar and which are not. Further, the applicant offers no insight into what level of similarity exists between the services. Such a concession does not really offer any assistance here as I remain required to conduct a full services comparison, which I will do below.

### Class 35

*Advertising; marketing services; advertising and marketing agency services.*

17. The first two terms above appear in the opponent’s specification. These services are, therefore, self-evidently identical. As for the third term, this also appears in the opponent’s specification but as two terms, being “advertising agencies” and “marketing agency services”. Despite the use of two terms, I am of the view that they are still self-evidently identical.

*Supply chain management.*

18. The above term covers the handling of the production flow of goods from the start to the end of the process. The opponent’s services in class 35 relate to marketing, business management and advertising. As for its class 41 and 42 services, these relate to publishing services and design services, respectively. In my view, none of

the services in the opponent's specification share any degree of similarity with the above term of the applicant. These services are, therefore, dissimilar.

*Brand creation services; brand positioning and evaluation services; brand strategy services; promotions; publicity; public relations services; promotion services relating to franchising businesses.*

19. The above terms are all those that can be said to relate to advertising and marketing for the promotion of customers' businesses/brands. I note that the opponent's specification includes the broad terms "marketing services" and "advertising". I am of the view that the opponent's terms encompass the terms of the applicant meaning that these services are identical under the principle outlined in *Meric*.

*Market research; market surveys; market analyses; consumer research.*

20. The term "market research" appears in the opponent's specification so is, therefore, self-evidently identical to the first term listed above. As for the remaining terms listed above, these are all types of services that can be said to fall within the general "market research" term. I say this on the basis that the last term, being "consumer research" is still a form of market research as it will research the consumer of said market. As a result, I find that these terms are identical with the opponent's term based on the principle outlined in *Meric*.

*Research and consultancy regarding promotional services.*

21. I consider that the above term is covered by two terms in the opponent's specification, namely "market research" and "advertising and marketing consultancy". These services are, therefore, identical under the principle outlined in *Meric*.

*Search engine optimisation; website traffic optimisation.*

22. The above services are those that will be used by business users who will seek them in order to get the most out of search engines and website traffic. The purpose of doing so is to create more flow to the user's website by seeking to promote it on search engines or other means of website traffic. As such, I am of the view that the above terms are marketing services and, therefore, fall within the broad term of "marketing services" in the opponent's specification. They are, therefore, identical under the principle outlined in *Meric*.

*Business management services.*

23. The opponent's specification includes the term "business management". This is plainly self-evidently identical with the above service.

*Business brokerage services; strategic business planning; business risk management services; business administration; business assistance; business introductory services; business and commercial information; office functions; business consulting services; management assistance services; management consulting services; business assistance and advice relating to franchising; provision of business services relating to franchising services; information [...] regarding commercial franchises.*

24. Given the broad nature of the opponent's term of "business management", I find that it encompasses all of the above terms. I say this because all of the above terms, while not expressly stated as such, cover different types of services for the management of businesses. Therefore, I find that these services are identical under the principle outlined in *Meric*.

*Professional consultations relating to franchising; [...] consultancy regarding commercial franchises.*

25. The consultancy regarding commercial franchises is not a business management service but is a consultancy service. Therefore, the above terms are not the same

as the opponent's "business management" service. Having said that, I am of the view that while the nature, method of use and purpose of these services differ, there are overlaps in user and trade channels. I say this because someone looking for business management relating to a commercial franchise will also look for consultancy in relation to the same. Further, such services are likely to be provided by the same undertaking. In addition, I consider that there is a degree of complementary between the services. I say this because the services are likely to be used at the same time by a user looking to expand or acquire a commercial franchise who will require consultancy and business management relating to the same. Therefore, the services are likely to be important and/or indispensable to each other. Further, the consumer seeking such services is likely to believe that they are the responsibility of the same undertaking.<sup>2</sup> As such, I find that these services are similar to a medium degree.

*Economic study and research.*

26. Considering this term broadly, and in light of the fact it is registered as a term in class 35, I consider that it is reasonable to conclude that it is one that either relates to business management or marketing. The former conclusion is based on the fact that a study or research of the economy may be a way to obtain information which allows the user to best manage its business. In respect of the latter, it may relate to study or research of the economy to obtain information that may be used in an upcoming marketing strategy. Given that the opponent's specification includes the terms "analysis relating to marketing" and "market research", I am of the view that the applicant's term, based on what I have said above, can be said to fall within the opponent's. As such, the services are identical under the principle outlined in *Meric*. If I am wrong to find that the above service relates to marketing, I find that the former explanation of the applicant's term means that it is similar to the opponent's "business management". This is because the services will be sought by the same user, offered by the same undertaking and will share a complementary relationship to one another (on the basis that they are important to one another and the

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<sup>2</sup> *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06

consumer will believe them to be the responsibility of the same undertaking). As such, I consider that these services are similar to a medium degree.

*Data management; database management.*

27. The above terms are worded very broadly meaning that the data and database being managed could be for business management purposes.<sup>3</sup> In my view, it is common for the management of a business to also involve the management of data and databases surrounding that business. This can be in the form of a database of client data or management of complex data regarding the outgoings and incomings of a business. Such services are those that will assist the user with the management of its business and, therefore, will be expected to be provided by broad services such as “business management”, being a term in the opponent’s specification. As a result, I find that the above terms fall within the opponent’s broader term. They are, therefore, identical under the principle outlined in *Meric*. If I am wrong to find identity then the services will be similar on the basis that there is an overlap in nature (as both services are management services), trade channels and user. In addition, I am of the view that the above terms can be used to manage the data of a business and, therefore, overlap in purpose somewhat with the opponent’s term. In my view, these factors point to at least a medium level of similarity between the services.

*Retail services and wholesale services connected with the sale of [...] printed matter, printed leaflets and brochures, photographs, printed manuals, printed reports, [...] mobile apps, recorded content, media content, computer software, CD ROMs, DVDs, audio and audio-visual recordings, pre-recorded videos, electronic publications, podcasts, downloadable publications, augmented reality software for use on mobile devices or computers for integrating electronic data with real world environments, parts and fittings for the aforesaid goods.*

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<sup>3</sup> I appreciate that said services may also cover marketing type data and, therefore, there may be a degree of similarity between them. However, I consider that business management offer the best scenario for the opponent so will focus on that for the sake of this comparison.

28. The opponent's specification does not include any retail service and neither does it include any of the terms covered by the above retail services.<sup>4</sup> That being said, it does include "publishing" and "on-line publishing services" in class 41 of its specification. Publishing is such a broad term that it can cover the activity of making not only written publications available to the public but also other content such as software, videos, music and audio-visual products such as podcasts. Therefore, I consider it necessary to consider the above services against the publication services of the opponent. Firstly, I will say that the nature, method of use and purpose of the services plainly all differ. In respect of trade channels, I am of the view that the goods covered by the applicant's retail service will all be subject to publication and, as far as I am aware, the goods covered are commonly sold by the publishers themselves meaning that there is an overlap in trade channels between them. That being said, I do not consider that someone looking for the retail of these goods will also look for the publication services in respect of the same meaning that the user will not overlap. In considering the issue of complementary, I appreciate that the publishing of products is, in my view, important to the retail of the same and vice versa. However, the question as to complementary comes down to whether consumers would consider them to be provided by the same undertaking. While I accept that there are instances of publishers also retailing in the goods published such as publishers of podcast offering the goods to consumers itself via its own website. However, it is my view that this sort of connection is not one that is common in the trade as there are many instances of the retailer and the publisher of products being provided by separate undertakings. As an example, I refer to publishers of printed matter or DVDs, being goods that are commonly sold via separate retailers such as large scale supermarkets or bookshops and entertainment stores.<sup>5</sup> Taking all of this into account, I do not consider that the second step of the test in *Boston* (cited above) is satisfied here. Overall, I am of the view that the overlap in trade channels is not sufficient to give

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<sup>4</sup> If it did, it could give rise to a finding in accordance with the case of *Oakley, Inc v OHIM*, Case T-116/06 which set out that although retail services are different in nature, purpose and method of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree.

<sup>5</sup> On this point, I also refer to the fact that podcasts are commonly available to the public via third party apps such as those provided by Apple and Spotify, for example.

rise to a finding of similarity between these services. These services are, therefore, dissimilar.

*Retail services and wholesale services connected with the sale of food, beverages and preparations for making beverages [...] bags and articles for packaging and wrapping and storage of paper or cardboard or plastics, packaging materials, stationery and office requisites, calendars, cocktail mats of paper, paper cocktail parasols, cocktail sticks, intelligent gateways for communication, [...] databases, [...] parts and fittings for the aforesaid goods.*

29. In the preceding paragraph I found retail services of goods that the opponent's services cover the publication of to be dissimilar. Given that the opponent's specification does not cover any of the above, it follows that I also find that these retail services are dissimilar to the services in the opponent's specification.

*Consultancy, information and advisory services relating to all the aforesaid services.*

30. This term appears at the end of the applicant's list of class 35 services. I am of the view that I can deal with it swiftly. In short, where I have found the services to be identical or similar, I am of the view that, in the context of those comparisons, a finding of medium similarity will exist between those same services of the opponent and the above term of the applicant. I say this because the services will overlap in user and trade channels and will be complementary to one another. As for those services that are dissimilar, plainly the same finding will apply here.

#### Class 41

*Writing of texts; publishing*

31. The term "writing of texts" appears in the opponent's specification. As for "publishing", this is expressed as "publishing services" in the opponent's specification and, therefore, covers the same service. These services are, therefore, self-evidently identical.

*Entertainment; arranging and conducting entertainment, sporting, cultural and educational events; sporting and cultural activities; film, video, audio, audio-visual, documentary, podcast, radio and television production; education; training coaching; arranging and conducting workshops, conferences, seminars, exhibitions, awards and competitions.*

32. The opponent's specification does not include any entertainment, sporting, cultural or educational services and neither does it include any services that relate to events of the same nature or the production of the same. Further, there are no services for the arrangement or conducting of workshops, conferences, seminars, exhibits, awards or competitions. In my view, there are also no services present that could be said to share any degree of similarity with the above. I, therefore, find that the above services are dissimilar.

*Consultancy, information and advisory services relating to all the aforesaid services.*

33. Where the above term relates to services that I have found identical, then plainly there is similarity between the above term and the identical services in the opponent's specification. I say this because the services, while of different natures, methods of use and purpose, they will overlap in user and trade channels. Further, there is a degree of complementary between. In my view, the above services (insofar as they relate to the services assessed at paragraph 31 above) are similar to a medium degree with "writing of texts" and "publication services". As for those services that are dissimilar, it follows that the consultancy, information and advisory services in relation to the same are also dissimilar to the services of the opponent.

#### Class 42

*Design services; product design; design consultancy.*

34. The above terms all appear in the opponent's specification, albeit "design consultancy" (which appears twice in the applicant's specification) is expressed as "design consulting". As a result, these services are self-evidently identical.

*Design of computer databases and computer software.*

35. The opponent's specification includes the broad term of "design services" that can cover the design of all types of goods, including computer databases and computer software. As a result, I find that the above goods fall within the term "design services" meaning that they are identical under the principle outlined in *Meric*.

*Computer consultancy.*

36. I note that the opponent's specification includes "graphic design consultancy" and "web site design consultancy". While these services will be undertaken on a computer, they are not consultancy relating to computers but, instead, the design of graphics and websites. Therefore, they are not the same. That being said, there is some degree of overlap in nature and method of use on the basis that they are all consultancy services that will be sought in the same way. As for purposes, these clearly differ. In respect of user and trade channels, I am of the view that the specialist nature of the opponent's terms is such that I find it unlikely that the users that seek them and the undertakings that provide them will be different. On this point, I have nothing to suggest otherwise. Lastly, the services are not competitive or complementary. Taking into account the overlaps in nature and method of use, I find that these services are, at best, similar to a low degree.

*Computer services.*

37. The opponent's terms in class 42 cover a range of design or consultancy services relating to products or the design of the same. While some of those terms may cover services that relate to computers (such as graphic design and web sites), I do not consider that they are the same as the above term. In my view, the above term covers a range of services that include, amongst others, computer repair, computer configuration, computer maintenance and the installation and monitoring of computer networks.<sup>6</sup> I see no reason why any of these types of services would

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<sup>6</sup> For the avoidance of doubt, I do not consider that this includes computer programming.

share any degree of similarity with the terms in the opponent's specification. This service is, therefore, dissimilar.

*Computer software installation; maintaining databases.*

38. As these are types of computer services, I am of the view that, following the same logic in the preceding assessment, they are dissimilar to the services in the opponent's specification.

*Computer programming.*

39. The above term covers the service of programming computers via their software. I note that the opponent's specification includes "design services" which could reasonably be said to cover the design of computer software. In my view, the design of computer software will inevitably include the programming of said software. As such, I find that these services are identical under the principle outlined in *Meric*. Failing that, the services are plainly similar as they are both used to create software (be that via programming or designing it), meaning that they overlap in purpose. Further, they are likely to be sought by the same user and offered by the same undertakings meaning that there is overlap in user and trade channels also. Lastly, the services are complementary on the basis that the programming of software is important to the design of software and consumers will believe them to originate from the same undertaking. As a result, I find that if the services are not identical, they are similar to a high degree.

*Providing temporary use of non-downloadable and web-based computer software; Software as a service (SAAS); Platform as a service (PAAS).*

40. As far as I understand it, the above terms cover a range of services for the temporary provision of platforms or software as a service. In my view, "computer website design" in the opponent's specification is a term that covers services that offer a range of custom options to users to assist in creating their websites. For example, such a service can be provided via software which the user accesses in

order to customise their website by way of selecting various options such as colour schemes, graphics and drop down menu options, amongst others. The service provider then renders that website and makes it available to the user for further customisation (such as pasting in their own content/text, for example). In this context, I appreciate that the above services share no overlap in nature or method of use with the opponent's term. However, I am of the view that there is some overlap in user and trade channels on the basis that those providing website design services will also offer the above software described in the format of software/platform as a service and that said software will be used by the same user that seeks the website design services. As for purpose, there can also be said to be some overlap here as (again, in this context) both services can be used to create a website. The services are not competitive and neither are they complementary. Taking all of this into account, I am of the view that there exists a medium degree of similarity between these services.

*Infrastructure as a service (IaaS).*

41. Despite what I have said above regarding software and platforms as a services, I do not consider that the same can be said to apply to the above term. As such, I see no obvious reason why the above services of the applicant would share any overlaps in nature, method of use, purpose, user or trade channels with any of the opponent's services. These services are, therefore, dissimilar.

*IT security, protection and restoration services.*

42. The opponent's specification does not feature any term that can be said to cover IT security, protection or restoration services and neither do it consider any terms that I deem to be similar to the same. As such, I find that the above service is dissimilar.

*Website development services; creating websites.*

43. The above are broad terms that can both be said to cover the design of a website. Therefore, I find that they encompass the term of "computer website design" in the

opponent's specification meaning that these services are identical under the principle outlined in *Meric*.

*Hosting of digital content; hosting [...] websites.*

44. It is my understanding that undertakings that offer website design services will also offer to host those websites on their user's behalf. As such, I find that while the nature, method of use and purpose of the website hosting service differs to "computer website design" in the opponent's specification, I do consider that there is an overlap in trade channels. As for user, those looking for assistance with website design are also likely to require the hosting of their website. The services are not competitive and while they may be important to one another, I do not consider them to be complementary because, as far as I am aware, consumers will be aware that the hosting of a website is not always the responsibility of the undertaking that designed it. Taking all of this into account, I am of the view that these services are similar to a low degree. As websites are a form of digital content, I am of the view that this same finding applies to "hosting of digital content" also.

*Electronic storage of digital media.*

45. The above term covers the storage of any type of digital media such as photographs, audio and videos. That being said, a website is a form of digital media and when it is hosted online, it is stored on a server somewhere. As a result, it is a broad enough term that can technically cover the hosting of websites. Therefore, I am of the view that following the same reasoning given in the preceding paragraph, I find that these services are similar to a low degree.

*Scientific and technological services.*

46. I see no obvious reason why the above term would share any degree of similarity with any of the opponent's services, be that in class 42 or those covered by its class 35 and 41 list of services. They are, therefore, dissimilar.

*Research services.*

47. I will compare the above term with “market research” in class 35 of the opponent’s specification. I note that as a class 42 service, the above term covers research into different fields of activity such as science, engineering, computer programming and architecture. It does not, therefore, cover market research meaning that these services are not the same. While both terms are research services, the nature and purpose of the research undertaken is entirely different. The methods of use may overlap on the basis that they will be sought by their users in the same way. In respect of trade channels, I have nothing to suggest that undertakings that offer market research services would also offer research services in class 42, or vice versa. As for the user, I am of the view that given their separate purposes, I see no reason why they would overlap. Lastly, the services are not competitive or complementary to one another. Overall, an overlap in method of use is not sufficient to warrant a finding of similarity. These services are, therefore, dissimilar.

*Information, consultancy and advisory services relating to all the aforesaid services.*

48. Following the same logic used when discussing similar terms in all of the other classes (that there is an overlap in user, trade channels and a degree of complementarity), I find that where I have found services to be identical or similar to at least a medium degree, the information, consultancy and advisory services relating to the same will be similar to a medium degree with the opponent’s services. Again, where the services are dissimilar, the information, consultancy and advisory services relating to the same are also dissimilar.

49. As for those services that are only similar to a low degree, I remind myself that one of these was computer consultancy. Clearly, consultancy in relation to the term “computer consultancy” would cover the same services already assessed above and, as such, I consider the information, consultancy and advisory services relating to the same to also be similar to a low degree following the same logic discussed at paragraph 36 above. Lastly, I remind myself that I have also found a range of website/content hosting and software services to be similar to a low degree. In my

view, the information, consultancy and advisory services relating to the same will be provided by the same undertakings and sought by the same users. Consequently, such overlaps will result in those services being similar to a low degree also.

#### Conclusions on the services comparison.

50. As some degree of similarity between the services is necessary to engage the test for likelihood of confusion, the opposition aimed against the following services that I have found to be dissimilar will fail:<sup>7</sup>

Class 35: Supply chain management; retail services and wholesale services connected with the sale of food, beverages and preparations for making beverages, printed matter, printed leaflets and brochures, photographs, printed manuals, printed reports, bags and articles for packaging and wrapping and storage of paper or cardboard or plastics, packaging materials, stationery and office requisites, calendars, cocktail mats of paper, paper cocktail parasols, cocktail sticks, intelligent gateways for communication, mobile apps, recorded content, media content, computer software, CD ROMs, DVDs, audio and audio-visual recordings, pre-recorded videos, electronic publications, podcasts, downloadable publications, databases, augmented reality software for use on mobile devices or computers for integrating electronic data with real world environments, parts and fittings for the aforesaid goods; consultancy, information and advisory services relating to all the aforesaid services.

Class 41: Entertainment; arranging and conducting entertainment, sporting, cultural and educational events; sporting and cultural activities; education; training coaching; film, video, audio, audio-visual,

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<sup>7</sup> *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

documentary, podcast, radio and television production; arranging and conducting workshops, conferences, seminars, exhibitions, awards and competitions; consultancy, information and advisory services relating to all the aforesaid services.

Class 42: Computer services; computer software installation; maintaining databases; infrastructure as a service (iaas); IT security, protection and restoration services; scientific and technological services; research services; information, consultancy and advisory services relating to all the aforesaid services.

### **Average consumer and the purchasing act**

51. The average consumer is deemed to be reasonably well informed, observant and circumspect. For the purposes 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 and services in question: *Lloyd Schuhfabrik Meyer, Case C-342/97*. In *Hearst Holdings & Anor v A.V.E.L.A. Inc & Ors*, [2014] EWHC 439 (Ch), at paragraph 70, Birss J (as he then was) described the average consumer in these terms:

“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 word ‘average’ denotes that the person is typical. The term ‘average’ does not denote some form of numerical mean, mode or median.”

52. The services at issue are, for the most part, those that will be selected by business users. Having said that, I appreciate that members of the general public may also seek services such as advertising (for selling goods/offering services in local newspapers) and website design (for personal websites, for example). The

services are most likely to be available from the provider directly, be that at physical premises such as offices or online via their own websites. The services will be displayed in lists that are shown on pamphlets, placards or websites. The selection process is, therefore, likely to be mostly visual, however I do not discount an aural component playing a role by way of advice from salespersons or word of mouth recommendations.

53. The frequency of selection for the services will vary, so too will the cost. I say this because a user may only seek the design of a website on a one-off basis but some of the online storage services, for example, are likely to be the subject of frequent renewal. In addition, the term of advertising itself may be subject to differing levels of frequency depending on the nature of the user (be that a large business or a member of the general public). In respect of costs, I acknowledge that some website design services, for example, may be relatively cheap but also that some advertising services, such as those that cover large advertising campaigns, will be much more expensive.

54. Turning to the level of attention paid, it should come as no surprise that given what I have said above, I find that this will vary also. Given the wide ranging nature of the services, I do not intend to go over each consideration that the consumer will make. However, as an example, I am of the view that for services such as website design, the consumer (whether a business user or member of the general public) will consider ease of use, the tools offered and previous designs provided to other customers. The level of attention paid for such services will, in my view, be medium. However, for some of the more involved services that are sought by business users (such as instances where they are seeking to run large-scale advertising campaigns), they will pay a greater degree of attention as the selection will directly impact upon the success of the business. As a result, I am of the view that the selection process for some services will involve a relatively high degree of attention.

## Comparison of the marks

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

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

56. It would be wrong, therefore, to artificially dissect the trade marks, although it is necessary to take into account the distinctive and dominant components of the 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.

57. The marks to be compared are:

<b>The opponent's mark</b>	<b>The applicant's mark</b>
CARTILS	CARTEL DESIGN

### Overall impression

58. The opponent's mark is a word only mark consisting of the word 'CARTILS'. There are no other elements that contribute to the overall impression of the mark which

lies in the word itself. The applicant's mark is also a word only mark that consists of two words, being 'CARTEL DESIGN'. For reasons that I will come to discuss below, I find that the word 'CARTEL' plays the greater role with 'DESIGN' playing a lesser role.

### Visual comparison

59. The applicant submits that there is no visual similarity between the marks, even when considering that both start with the letters 'CART'. The applicant goes on to discuss reasons why this would be the case. I will not reproduce those submissions here but confirm that I have taken them into account.

60. While the submissions of the applicant are noted, I disagree with the position that the marks are visually dissimilar. Clearly, the marks' use of the words 'CARTEL' and 'CARTILS' is a significant point of visual similarity between them. The applicant's word is identical to the opponent's mark in its use of the first four letters, being 'C-A-R-T' and its sixth, being the letter 'L'. As for points of difference, these comes in the marks' fifth letters, the opponent's use of the letter 'S' as its seventh letter and the addition of the word 'DESIGN' in the applicant's mark. While noted, these points of difference, they cannot be said to completely counteract the points of identity discussed above. In respect of the word 'DESIGN', I do wish to point out that while it plays a lesser role in the applicant's mark, it is still a point of visual difference between the marks.

61. While I bear in mind that the first four letters of the marks are identical and that the beginning of marks is where consumers tends to focus,<sup>8</sup> I cannot ignore the visual differences I have identified. Taking all of this into account, I find that the marks are similar to a slightly higher than medium degree.

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<sup>8</sup> *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

### Aural comparison

62. The same argument run by the applicant in respect of the marks being visually dissimilar was also run in respect of the aural comparison. While noted, the argument is dismissed as, clearly, the marks are not aurally dissimilar.
63. Aurally, the opponent's mark consists of two syllables that will be pronounced as 'CAR-TILS' and the applicant's consists of four syllables that will be pronounced as 'CAR-TELL-DIH-ZINE'.<sup>9</sup> The marks share an identical first syllable and a similar second one (on the basis that they share a 'T' and 'L' sound). The third and fourth syllables of the applicant's mark are not present in the opponent's mark and, therefore, will form points of difference. While the first syllables are identical, I note that the opponent's mark is a short mark. On this point, I remind myself that while there is no special test which applies to the comparison of 'short' marks,<sup>10</sup> I am of the view that in the present case, the shortness of the opponent's mark means that the average consumer is more likely to notice the differences. Taking all of this into account, I find that the marks are aurally similar to a medium degree.

### Conceptual comparison

64. Conceptually, the opponent's mark, being the word 'CARTILS', will be viewed by consumers in the UK as a made-up word with no obvious meaning. As for the applicant's mark, I am of the view that 'CARTEL' will be understood as a dictionary word with multiple meanings. I appreciate that one of the meanings associated with this word is in relation to a drug cartel, being a type of criminal organisation. However, while this meaning is noted, I do not consider that consumers will consider such a connection a plausible one for an undertaking to use. Instead, I am of the view that the consumer will understand it as a reference to an *alliance of*

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<sup>9</sup> Despite what I will come to say regarding the word 'DESIGN', it nonetheless cannot be ignored in an aural comparison. I consider that it will be pronounced by the average consumer, and make this finding on the basis of the comments of Mr Phillip Harris (sitting as the Appointed Person) in *Purity Hemp Company Improving Life as Nature Intended* (Case BL O/115/22) wherein he set out that the descriptiveness of an element does not render it aurally invisible.

<sup>10</sup> See paragraph 44 of *BOSCO*, BL O/301/20

*parties or interests to further common aims.*<sup>11</sup> As for the word ‘DESIGN’, this will be understood as an ordinary dictionary word with an obvious meaning. From a trade mark perspective, this will be viewed as being allusive to the fact that the services offered under the mark may relate to design.<sup>12</sup> When the words are viewed together, I do not consider that consumers will view them as having any unitary meaning. As such, the applicant’s mark will be viewed as a combination of two known words with no real meaning outside of the meanings associated with those individual words.

65. In comparing the marks, I appreciate that consumers will not attribute any unitary meaning to the applicant’s mark. That being said, they will still be able to attribute it a concept, i.e. the individual meaning of the words themselves. Comparing this to a mark that has no concept, I hereby find that the marks are conceptually dissimilar.

#### **Distinctive character of the opponent’s mark**

66. 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

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<sup>11</sup> <https://www.collinsdictionary.com/dictionary/english/cartel>

<sup>12</sup> This is the basis for my finding above that ‘DESIGN’ plays a lesser role.

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).”

67. 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 services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The opponent has not filed any evidence of use and, therefore, I have only the inherent position to consider.

68. The opponent’s mark consist of the word ‘CARTILS’ and, as above, this has no meaning to the consumers in the UK. As such, it will be viewed as a made up word which possesses no descriptive or allusive qualities to the services at issue. As a result, I am of the view that its distinctiveness sits at a high level.

### **Likelihood of confusion**

69. 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 exists between the marks and the services down to the responsible undertakings 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 first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective 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 services and the nature

of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he or she have retained in their minds.

70. The services at issue range from being identical to similar to a low degree. The average consumer base is formed of both business users and members of the general public at large who will select them via primarily visual means, although I do not discount an aural component. I have concluded that the degree of attention paid by consumers when selecting the services at issue will range from medium to relatively high. I have found the marks at issue to be visually similar to a slightly above medium degree, aurally similar to a medium degree and conceptually dissimilar. I have found the opponent's mark to enjoy a high degree of inherent distinctive character.

71. Taking all of these factors into account and even bearing in mind the principle of imperfect recollection, I do not consider that consumers will misremember or inaccurately recall the marks at issue for one another. While I appreciate that they are visually and aurally similar and that the distinctiveness of the earlier mark is high, I am of the view that the difference created by the distinct conceptual hook of the word 'CARTEL', when compared to 'CARTILS', is sufficient to alert consumers to the fact that the marks at issue do not feature the same word. In short, I do not consider that the consumer will, regardless of the shared use of the same first four letters, misread 'CARTILS' as 'CARTEL', or vice versa.<sup>13</sup> Therefore, I find that consumers will not be directly confused by the marks. For the avoidance of doubt, I reach this finding also bearing in mind that the selection process for the services at issue will not be below a medium degree. As such, the consumer will not be confronted by the marks at issue when making casual selections, being ones that are more likely to result in them overlooking the differences between the marks.

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<sup>13</sup> I say this in reliance upon the case of *CureVac GmbH v OHIM* in which it was determined that similar beginnings are not necessarily important or decisive. In my view, this is relevant here as the words themselves have different concepts meaning that the shared beginnings would not be viewed as decisive.

Consequently, I do not consider that there exists a likelihood of direct confusion between the marks at issue, even on identical services.

72. I will now proceed to consider indirect confusion. In doing so, I remind myself of the case of *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, wherein Mr Iain Purvis Q.C., as the Appointed Person, explained that:

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

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

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (‘26 RED TESCO’ would no doubt be such a case).
- (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand

extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI' etc.).

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

73. Further, I note the case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, wherein Arnold LJ referred to the comments of James Mellor Q.C. (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at paragraph 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.

74. The only plausible basis for a finding of indirect confusion in the present case is, in my view, reliant upon consumers overlooking the difference between 'CARTEL' and 'CARTILS'.<sup>14</sup> In such a scenario, I appreciate that the addition of 'DESIGN' could be viewed as a non-distinctive element that would be considered a logical indicator of a sub-brand or brand extension (i.e. one that focuses on design services). However, for the same reasons as set out when considering direct confusion above, I am of the view that the differences between the elements 'CARTEL' and 'CARTILS' would not be overlooked. As a result, when the consumer is confronted by 'CARTILS' and 'CARTEL DESIGN', I see no reason why they would consider that the marks originate from the same or economically connected undertakings, even on identical services. The source of origin for the opponent's mark will be viewed as an undertaking called 'CARTILS' and the source of origin of the applicant's mark will be viewed as 'CARTEL' (on the basis that 'DESIGN' would be seen as an indication as to what services are offered). Regardless of the distinctiveness of the opponent's mark, the differences would

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<sup>14</sup> I say this because, in my view, consumers would not view the difference between 'CARTEL' and 'CARTILS' as a logical indicator that points to the marks being connected.

still be noticed and would, in my view, lead the consumer to conclude that the marks are unconnected. Lastly, I wish to briefly consider category (a) of *L.A. Sugar* (cited above). While 'CARTILS' enjoys a high degree of distinctive character, that finding relates to the word as a whole. As a result, I see no reason why category (a) would apply in circumstances where the applicant uses a different, albeit similar, word. Consequently, taking all of this into account and bearing in mind the comments of Arnold LJ and Mr Mellor Q.C. in the preceding paragraph, I find that there exists no likelihood of indirect confusion between the marks, even on identical services.

## CONCLUSION

75. The opposition fails in its entirety and, subject to any successful appeal, the applicant's mark may proceed to registration for all goods and services that it seeks to register.

## COSTS

76. As the applicant has succeeded, it is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 2/2016. In the circumstances, I award the applicant the sum of £600 as a contribution towards its costs. The sum is calculated as follows:

Considering the notice of opposition and preparing the counterstatement:	£300
Written submissions in lieu:	£300
<b>Total:</b>	<b>£600</b>

77. I hereby order Dorothee Claessens to pay BERKMANN WINE CELLARS LIMITED the sum of £600. The above sum should 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 15 day of July 2024**

**A Cooper**

**For the Registrar**

## **Annex 1**

### Class 9

Intelligent gateways for communication; mobile apps; recorded content; media content; computer software; CD ROMs; DVDs; audio and audio-visual recordings; pre-recorded videos; electronic publications; podcasts; downloadable publications; databases; augmented reality software for use on mobile devices or computers for integrating electronic data with real world environments; parts and fittings for the aforesaid goods.

### Class 16

Printed matter; printed leaflets and brochures; photographs; printed manuals; printed reports; bags and articles for packaging, wrapping and storage of paper, cardboard or plastics; packaging materials; stationery and office requisites; calendars; cocktail mats of paper; paper cocktail parasols.

### Class 32

Beers; non-alcoholic beverages; mineral and aerated waters; fruit beverages and fruit juices; syrups and other non-alcoholic preparations for making beverages; non-alcoholic cocktails.

### Class 33

Alcoholic beverages (except beers); alcoholic preparations for making beverages; cocktails.

### Class 35

Supply chain management; brand creation services; brand positioning and evaluation services; brand strategy services; search engine optimisation; website traffic optimisation; advertising; advertising and marketing agency services; marketing services; promotions; publicity; public relations services; business brokerage services; strategic business planning; business management services; business risk management services; business administration; business assistance; business introductory services; business and commercial information; office functions; business

consulting services; management assistance services; management consulting services; business assistance and advice relating to franchising; information and consultancy regarding commercial franchises; economic study and research; market research; market surveys; market analyses; research and consultancy regarding promotional services; promotion services relating to franchising businesses; provision of business services relating to franchising services; professional consultations relating to franchising; consumer research; data management; database management; retail services and wholesale services connected with the sale of food, beverages and preparations for making beverages, printed matter, printed leaflets and brochures, photographs, printed manuals, printed reports, bags and articles for packaging and wrapping and storage of paper or cardboard or plastics, packaging materials, stationery and office requisites, calendars, cocktail mats of paper, paper cocktail parasols, cocktail sticks, intelligent gateways for communication, mobile apps, recorded content, media content, computer software, CD ROMs, DVDs, audio and audio-visual recordings, pre-recorded videos, electronic publications, podcasts, downloadable publications, databases, augmented reality software for use on mobile devices or computers for integrating electronic data with real world environments, parts and fittings for the aforesaid goods; consultancy, information and advisory services relating to all the aforesaid services.

#### Class 41

Writing of texts; entertainment; arranging and conducting entertainment, sporting, cultural and educational events; sporting and cultural activities; education; training coaching; publishing; film, video, audio, audio-visual, documentary, podcast, radio and television production; arranging and conducting workshops, conferences, seminars, exhibitions, awards and competitions; consultancy, information and advisory services relating to all the aforesaid services.

#### Class 42

Design services; product design; design consultancy; computer consultancy; computer services; design of computer databases and computer software; computer programming; computer software installation; maintaining databases; electronic storage of digital media; hosting of digital content; providing temporary use of non-

downloadable and web-based computer software; Software as a service (SAAS); Platform as a service (PAAS); infrastructure as a service (IaaS); IT security, protection and restoration services; design consultancy; website development services; hosting and creating websites; Scientific and technological services; research services; information, consultancy and advisory services relating to all the aforesaid services.

Class 45

Licensing; legal services; licensing authority services; security services for the protection of property and individuals; arbitration services; mediation services; lobbying, except for commercial purposes; consultancy, information and advisory services relating to all the aforesaid services.

## **Annex 2**

### Class 35

Marketing services; Marketing agency services; Analysis relating to marketing; Market research; Advertising and marketing; Product marketing; Preparation of marketing plans; Analysis of marketing trends; Planning of marketing strategies; Marketing advice; Advertising and marketing consultancy; Layout services for advertising purposes; Advertising; Advertising agencies; Advertising; Advertising agencies; Marketing consulting; Consultancy regarding advertising communications strategy; Organisation of promotions using audiovisual media; Producing promotional videotapes, video discs, and audio visual recordings; Preparing audio-visual presentations for use in advertising; Business management.

### Class 41

Layout services, other than for advertising purposes; Writing of texts; Publishing services; On-line publishing services; Electronic desktop publishing; Scriptwriting services.

### Class 42

Design services; Illustration services (design); Graphic art design; Computer website design; Custom design services; Engineering design; Visual design; Graphic art design; Commercial design services; Packaging design; Design of home pages; Design of brand names; Art work design; Design of typefaces; Product design; Design of moulds; Website design; Design of moulds; Designing of packaging and wrapping materials; Business card design; Brochure design; Packaging design; Graphic design consultancy; Product design; Styling [industrial design]; Brand design services; Packaging design; Graphic illustration design; Design of logos for corporate identity; Styling [industrial design]; Industrial design; Product development; Product development for others; Consultancy services relating to product engineering; Rendering of computer graphics (digital imaging services); Design consulting; Web site design consultancy.