

O/0690/26

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. UK00003983937
BY BEIJING KNOWLEDGE ATLAS TECHNOLOGY
JOINT STOCK COMPANY LIMITED
TO REGISTER THE TRADEMARK:**

ChatGLM

IN CLASSES 9 & 42

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. OP000447410 BY
OPENAI OPCO, LLC**

BACKGROUND AND PLEADINGS

1. On 24 November 2023, Beijing Knowledge Atlas Technology Joint Stock Company Limited (“the applicant”) applied to register in the UK the trade mark shown on the cover page of this decision (“the applicant’s mark”). The application was accepted and published for opposition purposes on 9 February 2024 and registration is sought for the goods and services set out in Annex 1 to this decision.
2. On 9 May 2024, OpenAI OpCo, LLC (“the opponent”) opposed the application in full under sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). Under sections 5(2)(b) and 5(3) of the Act, the opponent relies upon the following International Registration:

CHATGPT

(“the opponent’s mark”)

International registration no. WO0000001719941

International registration date: 10 February 2023

Date designated for protection in the UK: 10 February 2023

Date protection granted in the UK: 08 June 2023

Priority date: 27 December 2022 (USA)

Relying on all goods and services, being:

Class 9: Downloadable computer programs and downloadable computer software for the artificial production of human speech and text; downloadable computer programs and downloadable computer software for natural language processing, generation, understanding and analysis; downloadable computer programs and downloadable computer software for machine-learning based language and speech processing software; downloadable computer chatbot software for simulating conversations; downloadable computer programs and downloadable computer software for creating and generating text.

Class 42: Providing online non-downloadable software for the artificial production of human speech and text; providing online non-downloadable software for natural language processing, generation, understanding and analysis; providing online non-downloadable software for machine-learning based language and speech processing software; providing online non-downloadable chatbot software for simulating conversations; providing online non-downloadable software for creating and generating text; research and development services in the field of artificial intelligence; research, design and development of computer programs and software.

3. By virtue of relying on section 5(2)(b) of the Act, the opponent's case is that the marks at issue are similar and that the goods and services of the parties are identical and/or similar, resulting in a likelihood of confusion, including a likelihood of association.
4. Under section 5(3) of the Act, the opponent claims a reputation in respect of all of the goods and services registered for the opponent's mark. The opponent claims that use of the applicant's mark would, without due cause, take unfair advantage of, or be detrimental to, the distinctive character and/or the repute of the opponent's mark.
5. Under section 5(4)(a) of the Act, the opponent relies upon the sign "CHATGPT" which it claims to have been using throughout the UK since 30 November 2022 in relation to the following goods:

"Machine-based language learning models, computer software in the field of Artificial Intelligence (AI), computer software relating to the artificial production of human speech and text, computer software relating to natural language processing, machine-learning based language and speech processing software, chatbot software, software as a services (SaaS) in relation to Artificial Intelligence (AI), SaaS in relation to the artificial production of human speech and text, SaaS relating to natural language processing, SaaS relating to machine-learning based language and speech, SaaS relating to chatbot software and research and

development services in the field of artificial intelligence, research, design and development of computer programs and software.”

The opponent claims that the application should not be registered because its use in the UK is liable to be prevented by the law of passing off.

6. The applicant filed a counterstatement denying the grounds of opposition, although I note that it admitted that some of the parties’ goods and services are identical or similar. I will return to this below.
7. Neither party requested a hearing and only the opponent filed written submissions. This decision is taken following careful consideration of the papers on file.

REPRESENTATION

8. The applicant is represented by Handsome I.P. Limited.
9. The opponent is represented by Morgan, Lewis & Bockius UK LLP, although was originally represented by STOBBS.

EVIDENCE AND SUBMISSIONS

10. The opponent filed evidence in chief in the form of the witness statement of Gideon Myles dated 24 April 2025, which is accompanied by 20 exhibits (Exhibits GM1 – GM20). Mr Myles is Associate General Counsel, Patents and Trademark for the opponent, a position he has held since October 2023.
11. The opponent also filed evidence in chief in the form of the witness statement of Alberto Gruber Behal dated 23 April 2025, which is accompanied by 2 exhibits (Exhibits AGB1 – AGB2). Mr Behal has been contracted by TransPerfect Translations International Inc. to provide a translation of the document titled Resolución De Denegación (Chat GPTree) from Spanish to English. Mr Behal has provided professional translation services since 2001.
12. The opponent filed written submissions dated 25 April 2025.

13. The applicant did not file evidence or submissions.

RELEVANCE OF EU LAW

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

DECISION

15. Given its earlier priority date, the opponent's mark qualifies as an earlier trade mark pursuant to section 6 of the Act. As the opponent's mark had not completed its registration process more than 5 years prior to the filing date of the application in issue, it is not subject to the use provisions in section 6A of the Act. Consequently, the opponent can rely upon all of the goods and services identified.

Section 5(2)(b)

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

“5(2) 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”.

17. Section 5A of the Act states as follows:

“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.”

18. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, [2025] UKSC 25:

- (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, in certain circumstances, be dominated by one or more of its components;

- (f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite 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; and
- (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 marks

19. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23)¹ 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.

¹ C-251/95

20. The Court of Justice of the European Union (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.”

21. 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.

22. The respective trade marks are shown below:

The opponent's mark	The applicant's mark
CHATGPT	ChatGLM

23. The opponent submits that the applicant's mark is visually, phonetically and conceptually similar to the opponent's mark. The applicant denies that the respective marks are visually, aurally or conceptually similar.

Overall Impression

24. The applicant's mark consists of the word “Chat”, conjoined with the letters “GLM”. In my view, the overall impression of the mark lies in the combination of these elements.

25. The opponent's mark consists of the word "CHAT", conjoined with the letters "GPT". In my view, the overall impression of the mark lies in the combination of these elements.

Visual comparison

26. At the outset of this comparison, I consider it necessary to set out that as both marks are word only marks, they are protected for use in any case. As such, the use of different cases is not a point of consideration for the present assessment. The opponent's mark and the applicant's mark coincide in the first five letters "CHATG", in the same positions. Whilst these are visual similarities, there are visual differences created by the differing sixth and seventh letters being "P-T" in the opponent's mark and "L-M" in the applicant's mark. Overall, the marks share five out of seven letters, with the differing letters located towards the end of the mark. I bear in mind that consumers tend to focus on the beginning of the marks.² I find that the marks are visually similar to between a medium and high degree.

Aural comparison

27. The opponent's mark consists of four syllables and will be pronounced as "CHAT-JEE-PEE-TEE". As for the applicant's mark, this also consists of four syllables and will be pronounced as "CHAT-JEE-EL-EM". While consumers tend to pay more attention to the beginning of the words in marks, as stated above, which in the present case is where the first two syllables are identical, the third and fourth syllables of the marks will act as points of aural difference between the marks. As a result, I find that the marks are aurally similar to between a medium and high degree.

Conceptual comparison

28. I note that in its counterstatement the applicant submits that *"in the Cambridge dictionary, the term "GPT" is defined as an "abbreviation for Generative Pretrained Transformer; a complex mathematical representation of text or other types of*

² *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

media that allows a computer to perform some tasks, such as interpreting and producing language, recognizing or creating images, and solving problems, in a way that seems similar to the way a human brain works". However, absent any evidence to suggest otherwise, I do not consider that a significant proportion of average consumers would be aware of this definition. The letters GPT in the opponent's mark and the letters GLM in the applicant's mark are unlikely to be attributed any meaning by the average consumer. Consequently, they are conceptually neutral. The word "CHAT" in each mark is a dictionary word that will be given its ordinary meaning of *to talk to someone in a friendly informal way*.³ Consequently, to the extent that any message is conveyed by the marks, I find the marks to be conceptually identical.

Distinctive character of the opponent's mark

29. 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

³ Cambridge dictionary definition of "Chat".

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).”

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

Inherent Distinctiveness

31. The opponent’s mark consists of the word “CHAT” conjoined with the letters “GPT”. In my view, the word “CHAT” is somewhat allusive of natural language processing goods/services (which, for reasons that will become clear below are the goods/services upon which I will focus). The letters “GPT” have no meaning, but letter combinations/acronyms are not particularly distinctive. In my view, the mark overall is inherently distinctive to between a low and medium degree.

Enhanced Distinctiveness

32. I turn now to consider the opponent’s evidence of use. In particular, I note the following:

- a. The opponent launched CHATGPT on 30 November 2022. It was accessed by more than one million users within the first five days of its launch, and was used by upwards of tens of millions of users within the first month. By 25 December 2022, more than 1,350,000 accounts were created in the UK.⁴

⁴ Exhibit GM13

- b. Between 26 December 2022 – 28 February 2023, more than 3,334,000 CHATGPT accounts were created in the UK.
- c. In the month December 2022, more than 2,220,000 UK visitors accessed the opponent's website, openai.com. These visitors could then access and use OpenAI's CHATGPT advanced AI software.
- d. In addition to being accessible online, the opponent launched a CHATGPT mobile application in May 2023. As of the date of Mr Myles' statement, this had over 204,800 user reviews from UK-based customers alone.
- e. On 21 July 2023, the opponent released the CHATGPT mobile application on the UK Google Play Store and received over 50 million downloads in less than three months.

33. It seems overwhelmingly clear that the distinctiveness of the opponent's mark had been enhanced through use in relation to (at least) "downloadable computer programs and downloadable computer software for natural language processing, generation, understanding and analysis" in class 9 and "providing online non-downloadable software for natural language processing, generation, understanding and analysis" in class 42 to at least between a medium and high degree by the relevant date.

Comparison of goods and services

34. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account, as per *Canon*, Case C-39/97, where the CJEU stated at paragraph 23 of its judgement:

"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."

35. 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.

36. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court (“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.”

37. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), paragraph 12, Floyd J (as he then was) gave the following guidance on construing the words used in specifications:

“[...] 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.”

38. In *Kurt v Hesse v Office for Harmonization in the Internal Market (Trade Marks and Designs) (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 OHIM*, Case T-325/06, the GC stated that “complementary” means:

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

39. In *Sanco SA v OHIM*, Case T-249/11, the GC indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. *chicken against transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public is liable to believe that the

responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited*, BL O/255/13:

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

40. Whilst on the other hand:

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

41. I bear in mind that it is permissible to group goods together for the purposes of assessment: *Separode Trade Mark*.⁵

42. In making the following comparison, I remind myself of Section 60A(1)(b) of the Act which sets out that goods or services are not to be regarded as dissimilar from each other solely on the ground that they appear in different classes under the Nice Classification.

43. The opponent submits that the applicant's mark covers goods and services in classes 9 and 42 which are identical and/or highly similar to the goods and services covered by the opponent's mark by virtue of the nature and purpose of the respective goods and services. In the event that the opponent's goods and services are not considered identical or closely similar to the applicant's goods and services, the opponent submits, in the alternative, that the applicant's goods and services and the opponent's goods and services are at least similar.

44. In its counterstatement, the applicant has made admissions regarding identity/similarity between the parties' goods and services. However, this is done

⁵ BL O/399/10

on the basis of terms other than those in respect of which I have found the distinctiveness of the opponent's mark to be enhanced. Consequently, I will undertake my assessment considering only those goods and services that I have found the opponent has enhanced distinctiveness for, for reasons that will become clear below.

45. The full specifications relied upon by the applicant can be found at Annex 1 of this decision. The full specifications relied upon by the opponent can be found at paragraph 2 of this decision. However, I will focus upon those terms for which the opponent has the benefit of enhanced distinctive character for the purposes of my comparison. For the avoidance of doubt, whilst I note the applicant has made submissions around the similarity (or dissimilarity as the case may be) of the goods/services actually offered by the parties, when considering the likelihood of confusion under section 5(2)(b) the assessment must be based, in fact, on the concept of 'notional and fair use' which involves carrying out the comparison of the goods and services based on the specifications before me, not the goods and services effectively provided by the parties.⁶

46. In respect of the applicant's specifications in class 9 and class 42, I note that they both include the limitation "none of the aforementioned goods for controlling, calibrating or managing audio equipment, for controlling or improving audio equipment sound quality, for controlling the operation of audio equipment, or for processing, calibrating or editing audio equipment sound". Whilst I bear the applicant's limitation in mind, I do not consider that it will have any material impact on the outcome of the comparison.

Class 9

Downloadable computer programs and downloadable computer software for the artificial production of human speech and text; Downloadable computer programs and downloadable computer software for machine-learning based language and speech processing software; Downloadable computer programs and

⁶ *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited*, Case C-533/06 at [66] and *Compass Publishing BV v Compass Logistics Ltd* [2004] RPC 41 at [22]

downloadable computer software for creating and generating text; Computer software platforms, recorded or downloadable; Computer software applications, downloadable; Downloadable software applications for mobile phones; Computer programs [downloadable software]; Computer programs for searching remotely for content on computers and computer networks; Downloadable computer programs and downloadable computer software for using language models; Downloadable computer programs and downloadable computer software for the translation of text or speech from one language to another; Downloadable computer programs and downloadable computer software for sharing datasets for the purpose of machine learning, predictive analytics, and building language models; Downloadable computer programs and downloadable computer software for conversion of audio data files into text; Downloadable computer programs and downloadable computer software for voice and speech recognition; Downloadable computer programs and downloadable computer software for developing, running and analyzing algorithms that are able to learn to analyze, classify, and take actions in response to exposure to data; Downloadable computer programs and downloadable computer software for developing and implementing artificial neural networks.

47. As the above applicant's goods are all types of downloadable computer programs and/or downloadable computer software which could include downloadable computer programs and/or software for the purposes of natural language processing, generation, understanding or analysis, I find them to be identical on the principle outlined in *Meric* to the opponent's "downloadable computer programs and downloadable computer software for natural language processing, generation, understanding and analysis".

Downloadable computer programs and downloadable computer software for natural language processing, generation, understanding and analysis.

48. The above applicant's goods are self-evidently identical to the opponent's "downloadable computer programs and downloadable computer software for natural language processing, generation, understanding and analysis".

Electronic publications, downloadable.

49. These goods differ in nature slightly to the opponent's "downloadable computer programs and downloadable computer software for natural language processing, generation, understanding and analysis" as the applicant's goods are primarily informative content whereas the opponent's goods perform computational roles. The method of use overlaps as both goods are delivered electronically and the purpose overlaps to an extent as both can provide information to users. The users also overlap. However, the trade channels differ. The goods are not in competition. Taking all factors into consideration, I find there is a low degree of similarity between the goods.

Smartwatches.

50. These goods differ in nature to the opponent's "downloadable computer programs and downloadable computer software for natural language processing, generation, understanding and analysis" as these goods are tangible products worn by the consumer whereas the opponent's goods are intangible computer programs or software goods. The purposes differ as *smartwatches* are worn to provide the consumer with the time, communication, fitness and computing functions whereas the opponent's goods are used to generate, process and analyse language. This software could be used on a smartwatch. The users may overlap. The trade channels differ with smartwatches being sold through retail premises (or their online equivalents) with software and computer programs often being downloaded through app stores and (different) digital marketplaces. There is no competition or complementarity. Overall, I find goods to be dissimilar.

Sound recording carriers.

51. These goods differ in nature to the opponent's "downloadable computer programs and downloadable computer software for natural language processing, generation, understanding and analysis" as these goods are media containing recorded sounds whereas the opponents goods are intangible computer programs or

software goods. The purpose differs as the above applicants goods store and play recorded sounds whereas the opponent's goods generate, understand and analyse language data. The trade channels differ as it is unlikely that a retailer (particularly a physical retailer) sells both goods and it is likely that they would probably be in different sections of a website. The users may overlap but at a general level. The goods are not complementary or in competition. Overall, I find the goods to be dissimilar.

Video screens.

52. These goods differ in nature to the opponent's goods with video screens being hardware and the opponent's goods being software. The purpose of the applicant's goods is to display information whereas the purpose of the opponent's goods is to process, generate, understand and analyse natural language data. The users overlap with the goods being purchased by businesses and members of the public who use computer devices. However, trade channels differ. The opponent's software requires display hardware to present the information to the user. This display hardware may be a monitor or a video screen. Some consumers may think these goods are important and indispensable to each other, however, I do not consider that consumers would think the goods would originate from the same undertaking, resulting in there not being any complementarity. Overall, I find the goods to be dissimilar.

Class 42

Providing online non downloadable software for the artificial production of human speech and text; Providing online non-downloadable software for machine-learning based language and speech processing software; Providing online non downloadable software for creating and generating text.

53. As the above applicant's services all involve the provision of online non downloadable software which could include the provision of online non-downloadable software for natural language processing, generation,

understanding and analysis, I find the services to be identical on the principle outlined in *Meric* to the opponent's services.

Providing online non downloadable software for natural language processing, generation, understanding and analysis.

54. The above applicant's services are self-evidently identical to the opponent's term "providing online non-downloadable software for natural language processing, generation, understanding and analysis".

Research and development services in the field of artificial intelligence; Research, design and development of computer programs and software; Technical research; scientific research and development.

55. These services overlap in user and trade channels with the opponent's services being "providing online non-downloadable software for natural language processing, generation, understanding and analysis". The purposes overlap as they both result in the provision of online non-downloadable software for natural language processing, generation, understanding and analysis, albeit the specific purposes differ. I accept that the nature and method of use of the services differs slightly with the applicant's services being research and development services and the opponent's services being the provision of online non-downloadable software for natural language processing, generation, understanding and analysis, they overlap in that all services result in the provision of online non-downloadable software for natural language processing, generation, understanding and analysis. Taking all of these factors into account, I find the services are similar to a medium degree.

Providing online non-downloadable software for the translation of text or speech from one language to another; Providing online non-downloadable software for sharing datasets for the purpose of machine learning, predictive analytics, and building language models; Providing online non-downloadable software for conversion of audio data files into text; Providing online non-downloadable software for voice and speech recognition; Providing online non-downloadable

software for developing, running and analyzing algorithms that are able to learn to analyze, classify, and take actions in response to exposure to data; Providing online non-downloadable software for developing and implementing artificial neural networks.

56. These services are identical under the principle outlined in *Meric* with the opponent's "providing online non-downloadable software for natural language processing, generation, understanding and analysis".

Software as a service (SaaS) services, namely, providing online non-downloadable software for using language models.

57. These services are broad enough to encompass the opponent's services. Consequently, they are identical on the principle outlined in *Meric*.

Application service provider featuring application programming interface (API) software.

58. I understand these services to refer to the hosting of software for the use of others, which features software that enables different applications/systems to communicate and exchange data with each other. These services overlap in nature (both being software), user, trade channels and method of use with the opponent's services. The specific purposes differ. In my view, the services are complementary as the applicant's *application service provider featuring API software* may be the means by which users access the opponent's software. The services are so important for the other that the consumer may believe that they originate from the same undertaking. There is no competition between the services. Taking all of these factors into account, the services are similar to a medium degree.

Design and development of software in the field of mobile applications.

59. These services differ in nature to the opponent's services as they are a software development service whereas the opponent's services are the provision of a software service. Notwithstanding this, the services overlap in purpose at a high

level with both services providing software solutions to consumers. Additionally, the services overlap in users. There may be an overlap in trade channels, as the same businesses that provide online software may also provide bespoke software solutions for customers. The services are in competition as a consumer could choose a bespoke software developer or access a finished version of the requisite software service. The services are not complementary. Overall, I find the services to be similar to a medium degree.

Design and development of multimedia products.

60. As “multimedia products” is broad enough to encompass “multimedia software” the same reasoning applies as per the preceding paragraph. Consequently, I find the services to be similar to a medium degree.

Creating, designing and maintaining web sites; Computer website design.

61. These services differ in nature to the opponent’s services as they relate to the creation, design and maintenance of web sites whereas the opponent’s service is the provision of online non-downloadable software for natural language processing, generation, understanding and analysis. The nature and method of use only overlap to the extent that the services are all accessible via the internet. The purposes differ with the applicant’s services providing a website whereas the opponent’s service provides the user with access to software. The users overlap as both are likely to include businesses or individuals operating websites and companies. The trade channels differ as the applicant’s services are typically accessed through website design/hosting platforms (in the case of website design) and the opponent’s services are typically accessed through specialist apps/programs. The applicant’s services are likely to be provided through specialist businesses, which are unlikely to also provide AI software. Whilst I appreciate that they may incorporate AI into their customer’s website for the most part I do not consider that the trade channels will coincide. Overall, I find these services to be similar to a dissimilar.

Providing search engines for the internet.

62. These services involve the provision of search engines for the internet. They differ in nature to the opponent's services which provides online non-downloadable software for natural language processing, generation, understanding and analysis. The purposes of these services overlap with the opponent's services as both services can answer questions and provide information to the user. The users also overlap. The trade channels differ as applicant's services are typically accessed through browser apps/programs and the opponent's services are typically accessed through specialist apps/programs. There is competition between the services as a user can choose to access a search engine to obtain an answer to their question or a specialist app/program. Taking all factors into consideration, I find these services to be similar to a medium degree.

Consultancy services in the field of technological development; Product testing.

63. These services are all types of advisory, investigative and evaluative services. They differ in nature to the opponent's services which provides online non-downloadable software for natural language processing, generation, understanding and analysis. They also differ in purpose and trade channels. The users overlap being technology or research companies. The services are not complementary or in competition. Overall, I find the services to be dissimilar.

Copying of computer software.

64. These services involve the reproduction of software. These services are not limited in any way so the computer software could include online non-downloadable software for natural language processing, generation, understanding and analysis as per the opponent's services. The nature will overlap to the extent that both are services likely to be provided via the internet/computers. The purpose of the applicant's services is to copy software whereas the purpose of the opponent's services is to provide online non-downloadable software for natural language processing, generation, understanding and analysis. Plainly, these are different. The users of the services will overlap with businesses and individuals likely to

access the services. Absent any evidence, I have no reason to think that the services will be provided by the same undertakings. There is no competition or complementarity. Overall, I find the services to be dissimilar.

Conclusion of goods and services comparison

65. Where there is no similarity of goods or services, there can be no likelihood of confusion in respect of oppositions brought under s5(2)(b) grounds.⁷ As a result, my findings above mean that the opposition fails under s5(2)(b) in respect of the following goods being those that I have found dissimilar:

Class 9: Smartwatches; Sound recording carriers; Video screens.

Class 42: Creating, designing and maintaining web sites; Computer website design; Consultancy services in the field of technological development; Product testing; Copying of computer software.

The average consumer and the nature of the purchasing act

66. 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.

67. In *Iconix*, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

- (a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;

⁷ *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

- (b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;
- (c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;
- (d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence;
- (e) The average consumer's level of attention varies according to the category of goods or services in question; and
- (f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

68. The opponent submits that the goods and services claimed in the application are, in broad terms, computer software and the relevant goods and services are directed at the general and professional public. Additionally, they submit that the relevant consumer should therefore be deemed at minimum to be reasonably well informed and reasonably observant and circumspect, but will also include the professional or specialised public with a greater level of understanding.

69. The applicant submits that the average consumer of the goods and services of the opponent's mark is most likely to be a member of the general public and the average consumer of the goods and services of the applicant's mark (stated at Table C of the applicant's counterstatement) being the goods and services of the applicant's mark the applicant considers dissimilar, is likely to be a member of the general public, a business owner or a product developer. The applicant admits that the average consumer of the goods and services of the opponent's mark is similar to the average consumer of the goods of the applicant's mark in Table C of the applicant's counterstatement that they consider to be dissimilar.

70. The average consumer for the goods and services will include members of the general public and business users. The goods and services are likely to vary in price and frequency of purchase. However, factors such as functionality, ease of use and reliability will be taken into account for the goods and factors such as functionality, reputation of service provider and reliability will be considered for the services. In my view, the average consumer is likely to pay a medium degree of attention when purchasing the goods and services, although there may be a slightly higher level of attention where purchases are being made for the user's business or there is a particularly high cost involved.

71. The goods and services are likely to be selected following perusal of signage at physical premises, on websites and on advertisements. Consequently, I consider that visual considerations will dominate the purchasing process. However, I do not discount an aural component to the purchase given that advice may be sought from retail assistants/representatives and word-of-mouth recommendations may play a part.

Likelihood of confusion

72. 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 goods and 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 goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's mark, the average consumer for the goods and 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 they have retained in their mind.

73. Whilst conducting a global assessment of the likelihood of confusion I must be aware of the fact that not all aspects of the respective marks will necessarily have the same impact. For example, the importance of the respective visual, aural and conceptual aspects will be dependent on factors such as the way the goods and services at issue are marketed, and in which type of store/platform they are made available.

74. Throughout the course of this decision, I have found that the respective goods and services range from being identical to similar to a low degree (except where I have found them to be dissimilar). The average consumer includes members of the general public and business users who will pay a medium (or slightly higher than medium) degree of attention during the purchasing process. The purchasing process is predominantly visual, although I do not discount an aural component. I have found the marks to be visually and aurally similar to a medium to high degree, and conceptually identical (insofar as they convey any meaning). I have found that the opponent's mark is inherently distinctive to between a low and medium degree, which has been enhanced through use to (at least) between a medium and high degree in relation to the relevant goods/services.

75. Taking all of the above factors into account and bearing in mind the principle of imperfect recollection, I consider the present case represents an example of direct confusion. Bearing in mind the similarities between the marks and the distinctiveness of the opponent's mark, I consider it likely that the marks will be

mistakenly recalled or misremembered for each other, even where a higher degree of attention is being paid. This is particularly the case given that the average consumer tends to see what they expect to see.⁸ Consequently, when confronted with a similar mark for goods/services that are identical or similar to those for which the distinctiveness of the opponent's mark has been enhanced, the average consumer is likely to misremember one mark for the other. I find there to be a likelihood of direct confusion for all the goods and services for which the applicant seeks protection, even where the similarity is at only a low degree.

76. The opposition based on section 5(2)(b) of the Act succeeds in respect of all the goods and services that I have found to be identical or similar being:

Class 9: Downloadable computer programs and downloadable computer software for the artificial production of human speech and text; Downloadable computer programs and downloadable computer software for machine-learning based language and speech processing software; Downloadable computer programs and downloadable computer software for creating and generating text; Downloadable computer programs and downloadable computer software for natural language processing, generation, understanding and analysis; Computer software platforms, recorded or downloadable; Computer software applications, downloadable; Downloadable software applications for mobile phones; Computer programs [downloadable software]; Computer programs for searching remotely for content on computers and computer networks; Downloadable computer programs and downloadable computer software for using language models; Downloadable computer programs and downloadable computer software for the translation of text or speech from one language to another; Downloadable computer programs and downloadable computer software for sharing datasets for the purpose of machine learning, predictive analytics, and building language models; Downloadable computer programs and downloadable computer software for conversion of audio data files into text; Downloadable computer programs and downloadable computer software for voice and speech recognition; Downloadable computer programs and downloadable computer software for developing, running and analyzing algorithms

⁸ *Kennedy Fried Chicken*, Case BL O/227/04

that are able to learn to analyze, classify, and take actions in response to exposure to data; Downloadable computer programs and downloadable computer software for developing and implementing artificial neural networks; Electronic publications, downloadable.

Class 42: Providing online non downloadable software for the artificial production of human speech and text; Providing online non-downloadable software for machine-learning based language and speech processing software; Providing online non downloadable software for creating and generating text; Providing online non downloadable software for natural language processing, generation, understanding and analysis; Research and development services in the field of artificial intelligence; Research, design and development of computer programs and software; Providing online non-downloadable software for the translation of text or speech from one language to another; Providing online non-downloadable software for sharing datasets for the purpose of machine learning, predictive analytics, and building language models; Providing online non-downloadable software for conversion of audio data files into text; Providing online non-downloadable software for voice and speech recognition; Providing online non-downloadable software for developing, running and analyzing algorithms that are able to learn to analyze, classify, and take actions in response to exposure to data; Providing online non-downloadable software for developing and implementing artificial neural networks; Software as a service (SaaS) services, namely, providing online non-downloadable software for using language models; Application service provider featuring application programming interface (API) software; Design and development of software in the field of mobile applications; Design and development of multimedia products; Providing search engines for the internet; Technical research; scientific research and development;

77. That being said, the opposition based on section 5(2)(b) of the Act fails of respect of the goods I have found to be dissimilar being:

Class 9: Smartwatches; Sound recording carriers; Video screens.

Class 42: Creating, designing and maintaining web sites; Computer website design; Consultancy services in the field of technological development; Product testing; Copying of computer software.

Section 5(3)

78. Section 5(3) of the Act states:

“5(3) A trade mark which –

- (a) is identical with or similar to an earlier trade mark, [...] shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark.”

79. Section 5(3A) of the Act states:

“Subsection (3) applies irrespective of whether the goods and services for which the trade mark is to be registered are identical with, similar to or not similar to those for which the earlier trade mark is protected.”

80. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, Case 252/07, *Intel*, Case C-408/01, *Adidas-Salomon*, Case C-487/07, *L’Oreal v Bellure* and Case C-323/09, *Marks and Spencer v Interflora* and Case C383/12P, *Environmental Manufacturing LLP v OHIM*. The law appears to be as follows.

- (a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.
- (b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.

- (c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Saloman*, paragraph 29 and *Intel*, paragraph 63.
- (d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel*, paragraph 42
- (e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel*, paragraph 68; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel*, paragraph 79.
- (f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel*, paragraphs 76 and 77 and *Environmental Manufacturing*, paragraph 34.
- (g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel*, paragraph 74.
- (h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV*, paragraph 40.

- (i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

81. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that the opponent's mark and the applicant's mark are similar. Secondly, the opponent must show that the opponent's mark has achieved a level of knowledge/reputation amongst a significant part of the public. Thirdly, it must be established that the level of reputation and the similarities between the marks will cause the public to make a link between them in the sense of the opponent's mark being brought to mind by the later mark. Finally, assuming the first three conditions have been met, section 5(3) requires that one or more of the types of damage will occur. It is unnecessary for the purposes of section 5(3) that the goods/services be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

Similarity of the marks

82. I have already found the marks to be similar for the reasons given above.

Reputation

83. I bear in mind the guidance of the CJEU in *General Motors*, Case C-375/97. I have summarised what I consider to be the key factors from the opponent's evidence above. In addition to this, I note that the opponent's ChatGPT software has been

covered in the UK press prior to the relevant date including articles in The Times and The Telegraph, which are national newspapers.⁹ Whilst enhanced distinctiveness and reputation are different, the factors relevant to both assessments are the same. For the same reasons given above, I consider that the opponent had a strong reputation in the UK for goods/services listed at paragraph 33 at the relevant date.

Link

84. As I noted above, my assessment of whether the public will make the required mental 'link' between the marks must take account of all relevant factors. The factors identified in *Intel* are:

The degree of similarity between the conflicting marks

The marks are visually and aurally similar to between a medium and high degree and conceptually identical (insofar as they convey any meaning).

The nature of the goods or services for which the conflicting marks are registered or proposed to be registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public

Whilst I have carried out a comparison of the goods and services above and found them to vary from being dissimilar to identical, I must decide the issue anew here for those goods I have found to be dissimilar:

Class 9

Smartwatches

This applicant's good is a mobile touchscreen device that is intended to be worn on a consumer's wrist. Whilst I do not find the goods to be similar as such for

⁹ Exhibit GM20

the reasons given above, I accept that there may be a degree of connection between them as tech companies can, in some circumstances, expand into the wearable technology sector or apps may be sold for use on smartwatches that incorporate the opponent's software.

Sound recording carriers

This applicant's good is a physical or digital device that stores and reproduces audio recordings. Whilst I do not find the goods to be similar as such for the reasons given above, I accept that there may be a degree of connection between them as tech companies can, in some circumstances, expand into the electronics and technology sector.

Video screens

A video screen is a monitor or terminal which displays information. Whilst I do not find the goods to be similar as such for the reasons given above, I accept that there may be a degree of connection between them as the goods will be used to access the software.

Class 42

Creating, designing and maintaining web sites; Computer website design.

These applicant's services relate to the creation, design and maintenance of web sites. Whilst I do not find the services to be similar as such for the reasons given above, I accept that there may be a degree of connection between them as the relevant public might think there is a connection with the opponent's goods/services by virtue of them being incorporated in the websites.

Consultancy services in the field of technological development; Product testing.

These services are all types of advisory, investigative and evaluative services. Whilst I do not find the services to be similar as such for the reasons given

above, I accept that there may be a degree of connection between them as the consultancy and product testing services could be in relation to the software, connecting the services in that way.

Copying of computer software.

These services involve the reproduction of software. Whilst I do not find the services to be similar as such for the reasons given above, I accept that there may be a degree of connection between them given the services are related to the software, the relevant public would assume a connection with the opponent.

I apply the same findings in relation to the relevant public and purchasing process as set out above.

The strength of the opponent's mark's reputation

The opponent's mark had a strong reputation in the UK at the relevant date.

The degree of the opponent's marks distinctive character, whether inherent or acquired through use

The opponent's mark is inherently distinctive to between a low and medium degree, which has been enhanced through use to (at least) between a medium and high degree for the relevant goods/services.

Whether there is a likelihood of confusion

I have found there to be a likelihood of direct confusion.

Conclusions on link

Taking all of the relevant factors into account, I find that a link will be made in the mind of the relevant public. This is particularly the case given the similarity of the marks, the strength of the opponent's reputation and the distinctiveness

of the opponent's mark. I consider that a link will be made in the mind of the relevant public in relation to all goods/services in the specification of the applicant's mark, even where I have found them to be dissimilar. This is because, even where the goods and services are dissimilar, there is enough proximity between them that a link would still be made bearing in mind the strength of the opponent's reputation.

Damage

85. I must now consider whether any type of damage pleaded will arise.

Unfair advantage

86. The opponent's case is pleaded as follows:

"Use of the Contested Mark by the Applicant would take unfair advantage of the reputation that the Opponent has built in its brands, by obtaining an advantage in the eyes of the consumer based on the positive reputation of the Opponent's brands and its significant investment in building this reputation. Given that the Opponent has built a reputation in its brands which the Applicant would then gain a commercial benefit from, and because consumers may purchase goods and/or services from the Applicant on the basis that the Opponent's Earlier Mark is brought to mind, this advantage is unfair. It is therefore submitted that when customers view the Contested Mark, the Earlier Mark would be brought to mind in view of the nature and extent of the Opponent's reputation identified above, and this is the basis of the Opponent's claim for unfair advantage."

87. To the extent that the relevant public believe that the goods and services of the applicant are the goods and services of the opponent, there will plainly be unfair advantage. Further, the evidence shows that press coverage of the opponent's mark does so in the context of advancements in AI. Clearly, this reputation for being at the forefront of technological developments could transfer to the applicant and would be an image which the applicant would unfairly benefit from. In my view, unfair advantage is made out.

88. As I have found there to be unfair advantage, I do not need to consider the other pleaded heads of damage.

89. The opposition based upon section 5(3) of the Act succeeds in its entirety.

Section 5(4)(a)

90. Given that the opponent has, in my view, partially succeeded under section 5(2)(b) of the Act and clearly succeeded under section 5(3) of the Act, I do not consider it necessary to assess the section 5(4)(a) ground in any detail. However, for the avoidance of doubt, I find this section, section 5(4)(a) to succeed / fail to the same extent as the section 5(2)(b) ground because whilst the test for misrepresentation is different from that for likelihood of confusion in that it entails “deception of a substantial number of members of the public” rather than “confusion of the average consumer”, it has been acknowledged that they are unlikely to produce different outcomes in practice.¹⁰ I find that to be the case here, there is plainly misrepresentation and damage.

CONCLUSION

91. The opposition succeeds in full and, subject to any successful appeal, the applicant’s mark is refused registration for all goods and services for which protection was sought.

COSTS

92. As the opponent has been successful in opposing the applicant’s mark, it is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances, I award the opponent the sum of £1600 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Official fee:

£200

¹⁰ *Marks and Spencer PLC v Interflora* [2012] EWCA (Civ) 1501)

Preparing a notice of opposition and considering the other side's statement:	£400
Preparing evidence and written submissions:	£1000
Total:	£1600

93.I therefore order Beijing Knowledge Atlas Technology Joint Stock Company Limited to pay OpenAI OpCo, LLC the sum of £1600. 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 31st day of July 2026

**N Barratt
For the Registrar**

Annex 1 – Applicant's goods and services

Class 9: Computer programs [downloadable software]; Computer software platforms, recorded or downloadable; Computer programs for searching remotely for content on computers and computer networks; Electronic publications, downloadable; Computer software applications, downloadable; Downloadable software applications for mobile phones; Smartwatches; Sound recording carriers; Video screens; Downloadable computer programs and downloadable computer software for using language models; Downloadable computer programs and downloadable computer software for the artificial production of human speech and text; Downloadable computer programs and downloadable computer software for natural language processing, generation, understanding and analysis; Downloadable computer programs and downloadable computer software for machine-learning based language and speech processing software; Downloadable computer programs and downloadable computer software for the translation of text or speech from one language to another; Downloadable computer programs and downloadable computer software for sharing datasets for the purpose of machine learning, predictive analytics, and building language models; Downloadable computer programs and downloadable computer software for conversion of audio data files into text; Downloadable computer programs and downloadable computer software for voice and speech recognition; Downloadable computer programs and downloadable computer software for creating and generating text; Downloadable computer programs and downloadable computer software for developing, running and analyzing algorithms that are able to learn to analyze, classify, and take actions in response to exposure to data; Downloadable computer programs and downloadable computer software for developing and implementing artificial neural networks; None of the aforementioned goods for controlling, calibrating or managing audio equipment, for controlling or improving audio equipment sound quality, for controlling the operation of audio equipment, or for processing, calibrating or editing audio equipment sound.

Class 42: Consultancy services in the field of technological development; Technical research; scientific research and development; Design and development of multimedia products; Product testing; Design and development of software in the

field of mobile applications; Creating, designing and maintaining web sites; Providing search engines for the internet; Copying of computer software; Computer website design; Software as a service (SaaS) services, namely, providing online non-downloadable software for using language models; Providing online non-downloadable software for the artificial production of human speech and text; Providing online non-downloadable software for natural language processing, generation, understanding and analysis; Providing online non-downloadable software for machine-learning based language and speech processing software; Providing online non-downloadable software for the translation of text or speech from one language to another; Providing online non-downloadable software for sharing datasets for the purpose of machine learning, predictive analytics, and building language models; Providing online non-downloadable software for conversion of audio data files into text; Providing online non-downloadable software for voice and speech recognition; Providing online non-downloadable software for creating and generating text; Providing online non-downloadable software for developing, running and analyzing algorithms that are able to learn to analyze, classify, and take actions in response to exposure to data; Providing online non-downloadable software for developing and implementing artificial neural networks; Application service provider featuring application programming interface (API) software; Research and development services in the field of artificial intelligence; Research, design and development of computer programs and software; None of the aforementioned services for controlling, calibrating or managing audio equipment, for controlling or improving audio equipment sound quality, for controlling the operation of audio equipment, or for processing, calibrating or editing audio equipment sound.