

O/0810/25

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF THE REQUESTS FOR PROTECTION IN THE UK BY  
TOVARYSTVO Z OBMEZHENOIU VIDPOVIDALNISTIU "METINVEST HOLDING"  
OF THE INTERNATIONAL REGISTRATIONS  
WO0000001762891 AND WO0000001758455



HEART OF  
AZOVSTAL



СЕРЦЕ  
АЗОВСТАЛІ

IN CLASSES 16, 25, 35, 36, 43, 44 AND 45

AND THE OPPOSITIONS THERETO UNDER NUMBERS 446439 AND 446447,  
RESPECTIVELY, BY CVS PHARMACY, INC

## BACKGROUND AND PLEADINGS

1. Tovarystvo z obmezheniou vidpovidalnistiu "METINVEST HOLDING" ("the Holder") is the Holder of the international registrations ("the IRs") shown on the cover page of this decision ("the Contested Marks"): No. WO0000001762891 ("the '891 mark") and No. WO0000001758455 ("the '455 mark").

2. I set out the details of the Contested Marks as follows:

(i) The '891 mark:



**HEART OF  
AZOVSTAL**

Colours claimed: the mark contains the colours red, white and grey.

International Registration date: 05 October 2023

Designation date: 05 October 2023

Priority date: 07 July 2023<sup>1</sup>

(ii) The '455 mark:



**СЕРЦЕ  
АЗОВСТАЛІ**

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<sup>1</sup> UKRAINE Trade mark number M 202311952

Colours claimed: the mark contains the colours red, white and grey.

International Registration date: 1 August 2023

Designation date: 1 August 2023

Priority date: 7 July 2023<sup>2</sup>

3. Both requests for UK protection were published for opposition purposes on 15 December 2023. For each mark, UK protection is sought for the same goods and services, in classes 16, 25, 35, 36, 43, 44 and 45, which are set out in full at Annexe 1 to this decision.
  
4. On 15 March 2024, CVS Pharmacy, Inc (“the Opponent”) opposed the Holder’s requests under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The actions are partial oppositions, with only the following services being opposed:

Class 35:

*Administrative services for medical referral; computerized management of medical records and files.*

Class 36:

*Administration of financial affairs; provision of insurance information; providing financial information via a website; insurance and consulting; insurance underwriting; financial evaluation [insurance, banking, real estate].*

Class 44:

*Midwife services; acupuncture; diagnosis of visual processing disorders; occupational therapy; health counselling; massage; medical assistance; health care; medical advice for individuals with disabilities; nursing, medical; medical screening; remote monitoring of medical data for medical diagnosis and treatment; music therapy; medical examination for quarantine clearance purposes; health spa services; palliative care; rental of surgical robots; alternative medicine services; human tissue bank services; blood bank services; nursing home services; medical analysis services for diagnostic and treatment purposes provided by medical laboratories; aromatherapy*

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<sup>2</sup> UKRAINE Trade mark number M202311959.

*services; vaccination services; health assessment services; postnatal care services; home-visit nursing care; aesthetician services; hospital services; orthodontic services; medical clinic services; health centre services; convalescent home services; opticians' services; rest home services; services of a psychologist; regenerative medicine services; sanatorium services; speech therapy; medical equipment rental; rental of sanitary installations; dietary and nutritional advice; rehabilitation for substance abuse patients; dentistry services; therapy services; cupping therapy; dance therapy; pharmacy advice; physiotherapy.*

5. For each of the two oppositions, the Opponent relies upon the following two earlier registrations, in their entirety, and to the same extent (i.e. *all* terms are relied upon to attack *all* of the Holder's *opposed* services):

(i): UK00003419014



Filing Date: 05 August 2019

Registration Date: 01 November 2019

Priority Date: 06 February 2019<sup>3</sup>

Registered for the following goods and services:

Class 9:  
*Computer software providing health, wellness, healthcare and medical information, health plan and health insurance information, health and fitness monitor and sensor data, and health predictive analytics, and providing access to healthcare and health coaching services; personal health assistant computer software.*

<sup>3</sup> USA Trade mark number 88291145

Class 35:

*Health care cost review and cost containment services; health care utilization management and review services; medical cost management.*

Class 36:

*Administration and underwriting of medical, dental, pharmacy, vision and behavioral health insurance services; administration of Medicare benefit plans.*

Class 42:

*Providing a website featuring technology that enables the provision of personalized information to health plan participants about health care services; providing an interactive multimedia computer database in the field of health care services, health care information, and health care products, including, providing an interactive website featuring technology that enables users to obtain information regarding health care, health care coverage and benefits, health claims status, health fund transactions, health care providers and facilities, preferred drug list, estimated health care costs and print member ID cards.*

Class 44:

*Providing wellness and disease management programs; behavioral health counseling services; including, programs in the field of behavioral change to promote wellness; mental health care counseling services; personal health assessments, including, personal assessments of health risk, fitness, nutrition and lifestyle; providing smoking cessation and weight loss program services; and providing medical information, including, information regarding medications and medication management counseling services; managed health care services, including, health and wellness counseling services; disease care management services; providing health care information in the field of health and wellness, behavioral health, and disease management; medical care services; nursing services; medical care services, including, providing personalized and customized health and wellness assessment, health care, disease management, medical treatment and wellness plans and programs; medical care services, including, providing personalized and customized advice and recommendations on home health treatment and care*

*programs, providing assistance in transitioning patients from hospital to home, and evaluating and monitoring a patient's condition; providing medical information, including, providing information on healthcare, health and wellness programs, medications, and medical symptoms, conditions, procedures, and services; providing online health care and health coaching services.*

(ii): UK00801492854



Filing Date: 08 July 2019

Registration Date: 19 March 2020

Registered for the following goods and services:

Class 9:

*Computer software providing health, wellness, healthcare and medical information, health plan and health insurance information, health and fitness monitor and sensor data, and health predictive analytics, and providing access to healthcare and health coaching services; personal health assistant computer software.*

Class 35:

*Health care cost review and cost containment services; health care utilization management and review services; medical cost management; administration of medical, dental, pharmacy, vision and behavioral health insurance services; administration of Medicare benefit plans.*

Class 36:

*Underwriting of medical, dental, pharmacy, vision and behavioral health insurance services.*

**Class 42:**

*Hosting a website featuring software that enables the provision of personalized information to health plan participants about health care services; hosting an interactive multimedia computer database in the field of health care services, health care information, and health care products, including, hosting an interactive website featuring software that enables users to obtain information regarding health care, health care coverage and benefits, health claims status, health fund transactions, health care providers and facilities, preferred drug list, estimated health care costs and print member ID cards.*

**Class 44:**

*Providing wellness and disease management programs; behavioral health counseling services, including, programs in the field of behavioral change to promote wellness; mental health care counseling services; personal health assessments, including, personal assessments of health risk, fitness, nutrition and lifestyle; providing smoking cessation and weight loss program services; providing medical information, including, information regarding medications and medication management counseling services; managed health care services, including, health and wellness counseling services; disease care management services; providing health care information in the field of health and wellness, behavioral health, and disease management; medical care services; nursing services; medical care services, including, providing personalized and customized health and wellness assessment, health care, disease management, medical treatment and wellness plans and programs; medical care services, including, providing personalized and customized advice and recommendations on home health treatment and care programs, providing assistance in transitioning patients from hospital to home, and evaluating and monitoring a patient's condition; providing medical information, including, providing information on healthcare, health and wellness programs, medications, and medical symptoms, conditions,*

*procedures, and services; providing online health care and health coaching services.*

6. The Opponent's pleading is the same for each action: that the parties' marks are highly similar, for identical/similar goods and services, leading to a likelihood of confusion.
7. The Holder filed Defences and Counterstatements for the respective oppositions, denying the claims against them in their entirety.
8. The Opponent is represented by Marks & Clerk LLP. The Holder is represented by Alona Andrieieva.
9. Neither party filed evidence. The Holder filed written submissions during the evidence round. A hearing was neither requested, nor considered necessary. Only the Opponent filed written submission in lieu of a hearing.

## **RELEVANCE OF EU LAW**

10. 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.
11. The following decision has been made after careful consideration of the papers before me.

## **DECISION**

### **Earlier marks**

12. In accordance with section 6 of the Act, the Opponent's marks are earlier marks by virtue of their respective filing/priority dates, both of which precede the designation dates<sup>4</sup> of the Contested Marks.

A note on the matter of proof of use

13. Section 6A of the Act provides that, in opposition proceedings, where the date on which the registration procedure of the earlier mark was completed more than 5 years prior to the filing/designation date (or priority date) of the Contested Mark, the Opponent may be required to prove use of the earlier mark. In the instant case, section 6A is not engaged because neither of the Opponent's marks had been protected in the UK for more than 5 years at the priority dates for the Contested Marks. The Opponent is, therefore, entitled to rely upon all of the goods/services that it seeks to rely upon.

**Section 5(2)(b) opposition**

Relevant legislation

14. 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

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<sup>4</sup> As noted, the designation dates for the Contested Marks are, respectively, 5 October 2023 and 1 August 2023.

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.'

### Relevant case law

15. The following principles are derived from the decisions of the Court of Justice of the European Union ('CJEU') in *Sabel BV v Puma AG*, Case C-251/95; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97; *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97; *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98; *Matratzen Concord GmbH v OHIM*, Case C-3/03; *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C120/04; *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 they have kept in their 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.

#### A note on fair and notional use

16. The Holder has submitted the following:<sup>5</sup>

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<sup>5</sup> Holder's written submissions in lieu of a hearing, [92] – [93].

[92] Let me switch now to **an average consumer of the Applicant's services of classes 35, 36 and 44**. The Applicant is renowned for its business of metal production not alone but charitable services as well.

[93] The Heart of Azovstal is one of such projects. Information about the project is distributed through a website created by the Applicant for such purpose. All advertising materials contain information that the project assistance is available exclusively to **the defenders of Mariupol who defended the city from 24 February 2022 to May 2022 and to the family members.**'

[Original emphasis]

17. Whilst the Holder might intend that its services are only engaged by a particular group of average consumers, (in this case, 'defenders of Mariupol [...]'), I am required to make the assessment of the likelihood of confusion notionally and objectively based on the Opponent's goods/services, as registered, and the Holder's goods/services, in respect of which UK protection is sought, in accordance with the relevant case law. That assessment requires that I must not take into account the actual way that either party has used their marks in the marketplace or the kinds of goods/services in respect of which those marks have been used thus far. Further, I must consider all of the circumstances in which the mark for which UK protection is sought might be used should it be granted such UK protection<sup>6</sup>. In this connection, in *Devinlec Développement Innovation Leclerc SA v OHIM*, Case C-171/06P, the CJEU stated:

'59. As regards the fact that the particular circumstances in which the goods in question were marketed were not taken into account, the Court of First Instance was fully entitled to hold that, since these may vary in time and depending on the wishes of the proprietors of the opposing marks, it is inappropriate to take those circumstances into account in the prospective analysis of the likelihood of confusion between those marks.'

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<sup>6</sup> As per *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited*, Case C- 533/06, [66].

18. The way in which the Holder might be presently using, or intending to use, its mark, in the UK marketplace, is, therefore, not relevant to my assessment.

### **Comparison of goods and services**

22. Section 60A of the Act provides:

(1) 'For the purpose of this Act goods and services-

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

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

23. In making an assessment between the competing goods and services, I bear in mind the decision of the General Court ('GC') in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05:

'29. ... 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'.

24. The CJEU in *Canon*, Case C-39/97, stipulates that all relevant factors relating to the parties' goods and services must be taken into account:

[23] 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’.

25. The goods and services to be compared are set out at Annexe 2 to this decision.

26. I find that a number of the Holder’s terms are identical with those of the Opponent. For example: the Holder’s broad term *insurance underwriting*, in class 36, will encompass the Opponent’s term *Underwriting of medical, dental, pharmacy, vision and behavioral health insurance services* (present under both earlier registrations). The parties’ services are, therefore, identical according to the principle in *Meric*.

27. For reasons of procedural economy, I will not undertake a full comparison of the terms at stake. I will proceed to determine the consolidated oppositions on the basis of the point of identity set out above at [26]. Should the opposition fail on the basis of identical services, it follows that the opposition will also fail in respect of goods and services which are less similar.

### **The average consumer and the purchasing act**

28. The average consumer is deemed to be reasonably well-informed and reasonably observant and circumspect. The word “average” denotes that the person is typical. 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*.

29. The services at stake are, broadly speaking, underwriting of health insurance. It is my understanding that the *underwriting* for insurance policies, in general, is an exercise whereby an evaluation is made of i) the eligibility of the prospective insured and ii) the risk of insuring them. Whilst the average consumer of health insurance will be members of the general public, the consumer of the *underwriting* aspect of the insurance will, in many cases, be a business. Although some insurers will have an 'in house' team of underwriters to do this task, in which case, it would be part and parcel of the insurance service received by the end-user, the instant case involves the underwriting service in isolation. I find that this service would unlikely be engaged by an ordinary member of the public. Where the underwriting of health insurance is offered as a standalone service, it would most likely be provided by financial institutions to insurance companies. The average consumer will, therefore, be providers of health insurance. I consider the purchasing process to be primarily visual, in many cases, with the prospective purchaser first encountering the service by way of advertising in printed matter, or online. I do not discount an aural aspect in some cases; for example, by way of recommendation by word-of-mouth. My view is that the selection of an underwriting service for health insurance will likely be made with some measure of care, often after consultation with the provider of the services. The prospective purchaser would likely consider, inter alia, the capacity of the service provider to meet its demands. Professional purchasers of services (in this case, underwriting) which enable the purchaser to deliver its own services (in this case, insurance services) efficiently will typically pay a level of attention between medium and high.



### **Comparison of the marks**

30. It is clear from *Sabel* that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU states at paragraph 34 of its judgment in *Bimbo*, 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 relevant 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.’

31. 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 trade 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.

32. The marks to be compared are as follows:

Opponent's marks (they are identical)	Holder's Marks
	<p data-bbox="1091 1227 1150 1256">'891</p> 



### Overall impression of the marks

The earlier marks:

33. The opponent's marks (which are identical) comprise a single device element, in the form of a solid black heart-like shape. The overall impression necessarily resides in the mark as a whole.

The Contested Marks:

34. The Holder has submitted that its marks 'have a significant number of unique graphic elements (shield, industrial building with pipes, additional figurative geographic elements)'<sup>7</sup> accompanied by the wording 'HEART OF AZOVSTAL' ('891) or 'СЕРЦЕ АЗОВСТАЛІ' ('455).<sup>8</sup>

35. The Holder's '891 mark comprises a device beneath which are the words 'HEART OF AZOVSTAL'. The device comprises a red shield-like shape featuring an arrangement of solid white forms. It is not entirely clear what the

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<sup>7</sup> Holder's written submissions, [57].

<sup>8</sup> As above.

arrangement of shapes denotes. The shape in the centre of the arrangement is, in fact, the same heart-like form which constitutes the Opponent's marks. However, it does not, in my view, form the focal point of the mark due to being somewhat 'lost' in the overall arrangement of white shapes within the shield-like device. It is possible that some average consumers might see the white shapes as a ship or building of some sort (the Holder has suggested an industrial building). Whilst this is noted, I consider that a significant proportion of average consumers would perceive the device simply as a red shield featuring an arrangement of white shapes. I consider that both the word and device elements will contribute to the overall impression of the mark, owing to their relative size and positioning. However, I consider that the eye will be drawn to the wording first, with the 'shield' device playing a secondary role. I have borne in mind that, generally speaking, words 'speak louder' than devices,<sup>9</sup> because an articulable element is often an easier reference point than a device. This is particularly so in the instant case, given the uncertainty as to what the white shapes within the shield device would be seen to depict.

36. The Holder's '455 mark is identical to the '891 mark save that the wording element reads 'СЕРЦЕ АЗОВСТАЛІ', rather than 'HEART OF AZOVSTAL'. The Holder has submitted that the wording is 'HEART OF AZOVSTAL' in Ukrainian. I find that a significant proportion of average consumers will perceive the wording as non-English words, which, in some cases, might be recognised as Cyrillic, without understanding their meaning. I find that the overall impression resides in the mark as a whole, with both the device and wording playing a role. However, in contrast to '891, I consider that the *device* will play a more prominent role, with the wording playing a lesser role. To my mind, the eye of a UK consumer will more readily attend to the shield-like device than the non-English wording containing characters which, for a majority of UK consumers, would be inarticulable.

### Visual comparison

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<sup>9</sup> Case T-312/03 Wassen International v OHIM - Stroschein Gesundkost (Selenium-ACE), [37].

37. The heart shaped form, constituting each of the earlier marks, is wholly subsumed within each of the Holder's marks. However, it is important to note the following distinctions between the parties' marks:

- The heart shaped form present in each of the Holder's marks is one element of a more complex device, whereas the heart shape forms the totality of each of the Opponent's marks;

and

- The Holder's marks contain a text element (HEART OF AZOVSTAL/ СЕРЦЕ АЗОВСТАЛІ), which are absent from the Opponent's marks.

38. Whilst the parties' marks do share the heart shaped element, I find that, within the Holder's marks, the shape is not greatly prominent. My view is that the presence of the other shapes with which the heart shape is grouped, and the placement of that grouping within the shield-shaped device, result in the heart shape being somewhat 'lost' within the overall mark. I find this to be the case even for the mark featuring the word 'HEART [...]'. The positioning and placement of the heart shape within the grouping of shapes is such that, even the presence of the word 'heart' by way of a possible 'prompt' does not succeed in according the heart shape any appreciable measure of prominence within the overall mark. I bear in mind that the earlier marks are registered in black and white and may, therefore, be used in any colour. In the light of the foregoing, I find that there is a very low level of visual similarity between the Opponent's marks and each of the Holder's marks.

#### Aural comparison

39. The opponent's marks are devoid of text elements. I bear in mind that, whilst it is generally the case that devices are not articulated, some devices are capable of articulation in the sense of being referred to verbally. I have considered the

possibility that the marks might be referred to as, for example, 'the heart brand'. However, given the banality of the mark, I find this to be unlikely.

40. I now consider the Holder's '891 mark. I find that the words 'Heart of Azovstal' will be articulated. The first two words will be spoken in the ordinary way. The final word will likely be articulated 'AZZ-OV-STAL'. The parties' marks are aurally dissimilar.

41. As to the Holder's '455 mark, whilst I recognise that a number of the UK population will be able to understand and articulate Cyrillic, I find that a significant proportion of average consumers will be unfamiliar with Cyrillic and will unlikely attempt to articulate the wording *CEPLQE A3OBCTAJI*. In any event, given my observations above at [39], whether or not the wording is articulated is of little consequence, because: i. where *CEPLQE A3OBCTAJI* is articulated, the parties' marks will be aurally dissimilar; and ii. where *CEPLQE A3OBCTAJI* is not articulated, the marks will be aurally neutral (i.e. there can be no aural similarity where neither mark has an aural aspect).

#### Conceptual comparison

42. The Opponent has submitted that the earlier marks would be understood as a reference to the 'muscular organ that pumps blood through the circulatory system, and/or the central or innermost part of something (for example, the heart of the city'.<sup>10</sup> It argues that:

i. the Holder's '891 mark would be perceived as 'referring to the concept of the central or innermost part (the heart) of the location of Azovstal';

and

ii. that the Holder's '455 mark would, despite the Cyrillic text not being understood by the average consumer, be understood as a reference to the central or innermost part (the heart) of an industrial area or city'.

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<sup>10</sup> Opponent's written submissions in lieu of a hearing, [30] – [31].

43. The Holder has submitted the following:<sup>11</sup>

'77. [...] the general concept of the Contested signs is that the Azovstal industrial plant was the heart of the resistance of Ukrainian defenders during the battles that raged in Mariupol from 24 February 2022 to 20 May 2022 and the symbol of indomitability of the entire Ukrainian nation.

78. It is visible to the naked eye that the heart shaped figure is not separate but is part of the industrial building premises. The "Azovstal" industrial plant was the central organ of the circulatory system, whose stability and steadfastness were giving life to Mariupol, just like heartbeats, in the first months of the full-scale war. [...]

44. It is not in dispute that the earlier marks are in the form of heart shapes. However, I do not consider the Opponent's conceptual analysis, according to which the mark denotes the heart as an organ of the body, to be the most obvious one. My view is that the concept most often evoked by heart shapes is the idea of love. That said, I accept that a number of average consumers may construe the heart as referencing the biological organ. I consider the mark unlikely to immediately evoke the idea of the heart as the innermost part of something, although it is not possible. To my mind, the vast majority of average consumers will likely perceive the mark as evoking the concept of love.

45. I now consider the Holder's marks. Whilst the Holder's conceptual analysis, noted above at [43], might be what it intends to convey to its target market, I respectfully disagree that the average consumer would immediately perceive such a richly detailed message. Addressing the '891 mark first, my view is that some average consumers might perceive the mark as conveying the idea of the central part of a place by the name of Azovstal. I find that the device element will probably be seen as akin to an emblem or coat-of-arms relating to the place Azovstal. I find that the average consumer will unlikely analyse the shapes within the shield device in close detail. Whilst it is possible that some average

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<sup>11</sup> Holder's written submissions, [77] – 78].

consumers might see the heart shape within the group of shapes contained in the shield device, this relatively small element will unlikely be seen immediately, for the reasons set out above at [35]. All things considered, I find the Holder's '891 mark to be conceptually different to the Opponent's marks.

46. As to the Holder's '455 mark, my view is that the shield-like device will likely be perceived by a significant proportion of average consumers as some sort of coat of arms or emblem, perhaps relating to a geographical place. The Cyrillic text will be perceived by most simply as non-English words. For the average consumer unfamiliar with the meaning of the wording, the parties' marks will be conceptually different. I accept that some average consumers in the UK might recognise the characters as Cyrillic but very few average consumers will understand what the words mean (and certainly not a significant proportion). However, even if the wording is understood, the '455 mark will remain conceptually distinct from the Opponent's marks, for the same reasons set out above at [45].

### **Distinctive character of the earlier marks**

47. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97, the CJEU stated that:

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

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been

registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).’

48. Registered trade marks possess varying degrees of inherent distinctive character. Where a mark is suggestive or allusive of a characteristic of the goods or services, it tends to be low. Inherent distinctive character may range up to a high level for marks which consist of invented words with no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

49. I note that the Holder has initially suggested that the earlier marks are non-distinctive due to heart shapes being simple in form and ubiquitous in trade.<sup>12</sup> I remind myself that a registered trade mark must be presumed to have at least sufficient distinctive character for registrability.<sup>13</sup> It is, therefore, not open to me to find that the marks are devoid of distinctive character.

50. The Holder has subsequently submitted that the earlier marks have ‘an extremely low degree of distinctiveness because a huge number of different enterprises use it as part of their signs or trade marks’, and has highlighted the presence of 24 marks on the UK Register which feature a heart shape.<sup>14</sup> Whilst this is noted, I bear in mind that the mere presence of a large number of trade marks featuring a heart shape on the UK Register does not necessarily establish that the distinctive character of the earlier marks has been weakened because of frequent use in the marketplace.<sup>15</sup> From the examples provided, it

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<sup>12</sup> Holder’s written submissions, [10].

<sup>13</sup> *Formula One Licensing BV v OHIM*, Case C-196/11P, [41] – [44].

<sup>14</sup> Holder’s written submissions, [12] – [13].

<sup>15</sup> *Zero Industry Srl v OHIM*, Case T-400/06, [73].

is not possible to discern how many of such trade marks are effectively used in the market.<sup>16</sup>

51. The Opponent has not adduced any evidence in these proceedings. I am, therefore, unable to make an assessment as to whether the earlier mark enjoys an enhanced level of distinctive character and have only the inherent position to consider.

52. The distinctiveness of the marks must be assessed by reference to the relevant services in respect of which they are registered, and the average consumer of those services. The relevant services are, broadly speaking, underwriting for health insurance. The totality of each mark is a very simple heart shape. My view is that, whilst the mark cannot be said to be descriptive of the services concerned, it might be seen as somewhat allusive to health matters, i.e. the area of risk to which the insurance policies being underwritten relate. All things considered, I find that the earlier marks have a low level of distinctive character, perhaps even 'very low'.

### **Likelihood of confusion**

53. Confusion can be direct or indirect. Mr Iain Purvis Q. C., (as he then was) as the Appointed Person, explained the difference in the decision of *L.A. Sugar Limited v By Back Beat Inc*<sup>17</sup>. Direct confusion occurs when one mark is mistaken for another. In *Lloyd Schuhfabrik*<sup>18</sup>, the CJEU recognised that the average consumer rarely encounters the two marks side by side but must rely on the imperfect picture of them that they have kept in mind. Direct confusion can therefore occur by imperfect recollection when the average consumer sees the later mark but mistakenly matches it to the imperfect image of the earlier mark in their 'mind's eye'. Indirect confusion occurs when the average consumer recognises that the competing marks are not the same in some

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<sup>16</sup> As above.

<sup>17</sup> Case BL O/375/10 at [16].

<sup>18</sup> *Lloyd Schuhfabrik Meyer and Co GmbH v Klijsen Handel BV* (C-34297) at [26].

respect, but the similarities between them, combined with the similarity of the goods/services at issue, leads them to conclude that the goods/services are the responsibility of the same or an economically linked undertaking.

54. I must keep in mind that a global assessment is required taking into account all of the relevant factors, including the principles a) – k) set out above at [15]. When considering all relevant factors ‘in the round’, I must bear in mind that a greater degree of similarity between goods/services *may* be offset by a lesser degree of similarity between the marks, and vice versa.

55. I am conducting my assessment on the basis of the parties’ services being identical. I have found each of the Contested Marks to have only a very low level of visual similarity to the earlier marks. I have not found any points of similarity along the aural or conceptual planes of comparison. Whilst I bear in mind the possibility that a higher degree of similarity between goods/services may be offset by lesser degrees of similarity between the marks, I do consider the principle to apply here. I find that the net effect of the differences that I have identified between the competing marks is sufficient to prevent the parties’ marks being mistaken for each other. Although the entirety of the Opponent’s figurative marks has been incorporated into each of the Holder’s composite marks, I have found that the impact of the heart shape within the more complex device, is greatly diminished in terms of its visual impact. In the Holder’s ‘891 mark, it is the wording ‘Heart of Azovstal’ that plays the greater visual role within the overall impression of the mark. In the Holder’s ‘455 mark, for the average consumer unfamiliar with the meaning of the Cyrillic wording, it is the shield-like device in its totality that plays the greater role within the mark. Where the average consumer *does* understand the wording, by analogy with the ‘891 mark, the wording will be play the greater role. I find that there is no likelihood of direct confusion between the parties’ respective marks.

56. I now consider whether there is a likelihood of indirect confusion. I note that in the case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v*

*Sutaria* (O/219/16), where he said at [16] that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Arnold LJ agreed, pointing out that there must be a ‘proper basis’ for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

57. In *L.A. Sugar Limited v Back Beat Inc*<sup>19</sup> Mr Iain Purvis Q. C. (as he then was), as the Appointed Person, explained that [my words in parentheses]:

(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)’.

58. I bear in mind that the above-mentioned categories are not intended to be exhaustive. I do not consider the instant cases to fall within any of the above categories identified by Mr Purvis. The sole point of overlap between the parties’ marks is not particularly conspicuous within the Holder’s marks. The overall stylisation of the Holder’s marks is vastly different from those of the

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<sup>19</sup> Case BL O/375/10

Opponent. I can conceive of no commercially sensible rationale, or other mental process according to which either party's respective marks would be seen as deriving from the same undertaking or being otherwise economically linked. I can find no proper basis for a finding of indirect confusion.

59. Given that I have conducted my assessment on the basis of a finding of identical services in respect of which the oppositions have been unsuccessful, it follows that the entire oppositions must fail. For the particular identical services upon which I have based my assessment, the level of attention paid has been found to be fairly high. However, given that the majority of the contested terms are health-related, they would likely be engaged with a similar, fairly high, level of attention. I, therefore, do not consider that comparison with any another of the Opponent's terms would improve the Opponent's case.

## CONCLUSION

60. Both partial oppositions, OP446447 and OP446439, have failed in their entirety. Both International Registrations, WO0000001762891 and WO0000001758455, may proceed to grant of protection within the UK, for their entire specifications (subject to appeal).

## COSTS

61. The Holder has been successful and is entitled, therefore, to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023, calculated as follows:

Considering notices of opposition and preparing defences and counterstatements x2	£400
Preparation of written submissions	£350
<b>Total:</b>	<b>£750</b>

62. I have declined to award the full minimum sum of £250 for each of the two defences and oppositions given the extent of the overlap in material within them.

63. I therefore order CVS Pharmacy, Inc to pay the sum of £750.00 to Tovarystvo z obmezheniou vidpovidalnistiu "METINVEST HOLDING". The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings

**Dated this 2<sup>nd</sup> day of September 2025**

**N. Rhea Morris**

**For the Registrar**

## Annexe 1.

**For each of the Contested Marks, the Holder seeks UK protection for the following goods and services:**

Class 16:

*Fountain pens; address stamps; watercolors [paintings]; albums; scrapbooks; papers for painting and calligraphy; atlases; souvenir banknotes; paper bows, other than haberdashery or hair decorations; name badges [office requisites]; baggage claim check tags of paper; table linen of paper; forms, printed; pads [stationery]; drawing pads; pamphlets; booklets; house painters' rollers; signboards of paper or cardboard; sewing patterns; greeting cards; drawer liners of paper, perfumed or not; charcoal pencils; newspapers; shields [paper seals]; toilet paper; bunting of paper; modelling clay; polymer modelling clay; terrestrial globes; engraving plates; engravings; graphic representations; graphic reproductions; graining combs; rubber erasers; elastic bands for offices; adhesive tape dispensers [office requisites]; bibs, sleeved, of paper; bibs of paper; punches [office requisites]; advertisement boards of paper or cardboard; magnetic boards being office requisites; galley racks [printing]; printing type; printed matter; printed publications; graphic prints; prints [engravings]; labels of paper or cardboard; magazines [periodicals]; bookmarks; note books; money clips; paper clasps; pen clips; clips for name badge holders [office requisites]; moisteners [office requisites]; erasing products; writing board erasers; transfers [decalcomanias]; writing or drawing books; newsletters; calendars; tracing patterns; tracing paper; tracing cloth; printed geographical maps; paintings [pictures], framed or unframed; announcement cards [stationery]; trading cards, other than for games; cards; wood pulp board [stationery]; cardboard; cardboard tubes; files [office requisites]; catalogues; flower-pot covers of paper; tickets; glue for stationery or household purposes; adhesive tapes for stationery or household purposes; gluten [glue] for stationery or household purposes; adhesives [glues] for stationery or household purposes; books; bookends; comic books; colouring books; drawing pins; envelopes [stationery]; carbon paper; copying paper [stationery]; hat boxes of cardboard; boxes of paper or cardboard; squares for drawing; spools for inking ribbons; chalk for lithography; spray chalk; drawing boards; drawing instruments; French curves; drawing materials; drawing pens; absorbent sheets of paper or plastic for foodstuff packaging; inking sheets for*

*document reproducing machines; musical greeting cards; flyers; drawing rulers; steel letters; lithographs; lithographic works of art; paint trays; bookmarkers; pictures; plastics for modelling; sealing compounds for stationery purposes; bookbinding material; modelling materials; teaching materials [except apparatus]; pencil sharpening machines, electric or non-electric; painters' easels; printing sets, portable [office requisites]; stickers [stationery]; floor decals; writing cases [stationery]; writing cases [sets]; paper knives [letter openers]; handkerchiefs of paper; covers [stationery]; protective covers for books; passport holders; sealing wafers; index cards [stationery]; indexes; arithmetical tables; pencils; pencil lead holders; slate pencils; bottle envelopes of paper or cardboard; carrier bags of paper or plastic; conical paper bags; palettes for painters; pantographs [drawing instruments]; papier mâché; paper sheets [stationery]; origami folding paper; wrapping paper; paper; document files [stationery]; folders for papers; ring binders; loose-leaf binders; pastels [crayons]; modelling paste; pen cases; paintbrushes; painters' brushes; nibs; nibs of gold; steel pens; parchment paper; periodicals; seals [stamps]; writing chalk; writing materials; writing paper; writing slates; writing instruments; writing brushes; letter trays; manuals; hand-rests for painters; stands for pens and pencils; photograph stands; coasters of paper; stamp stands; desk mats; tablemats of paper; posters; stamp pads; banners of paper; canvas for painting; cloth for bookbinding; portraits; handbooks; postcards; postage stamps; obliterating stamps; flags of paper; paperweights; apparatus for mounting photographs; blotters; prospectuses; ledgers [books]; printed timetables; colouring pictures; pens [office requisites]; marking pens [stationery]; penholders; self-adhesive tapes for stationery or household purposes; blueprints; clips for offices; scrapers [erasers] for offices; paper-clips; silver paper; statuettes of papier mâché; stapling presses [office requisites]; composing frames [printing]; balls for ball-point pens; paper ribbons, other than haberdashery or hair decorations; bags [envelopes, pouches] of paper or plastics, for packaging; sealing wax; embroidery designs [patterns]; placards of paper or cardboard; stationery; pencil sharpeners, electric or non-electric; transparencies [stationery]; stencils [stationery]; stencil plates; document holders [stationery]; chalk holders; pencil holders; holders for stamps [seals]; name badge holders [office requisites]; page holders; Indian inks; paint boxes for use in schools; figurines of papier mâché; flip charts; moulds for modelling*

*clays [artists' materials]; photo-engravings; photographs [printed]; cases for stamps [seals]; compasses for drawing; artists' watercolour saucers; ink; inkwells; inking pads; inkstands; ink sticks; inking ribbons; square rulers for drawing; stencil cases; erasing shields; school supplies [stationery]; blackboards; type [numerals and letters]; stamps [seals]; sealing stamps.*

Class 25:

*Bandanas [neckerchiefs]; waistcoats; berets; underwear; sweat-absorbent underwear; teddies [underclothing]; ankle boots; breeches for wear; valenki [felted boots]; sports shoes; beach shoes; footwear; leg warmers; knitwear [clothing]; embroidered clothing; stuff jackets [clothing]; veils [clothing]; leggings [leg warmers]; gaiters; fittings of metal for footwear; sweaters; bibs, sleeved, not of paper; espadrilles; galoshes; hats; paper hats [clothing]; hoods [clothing]; visors being headwear; tights; slips [underclothing]; combinations [clothing]; bodices [lingerie]; suits; bathing suits; neckties; spats; swimsuits; leotards; jackets [clothing]; leggings [trousers]; face coverings [clothing], not for medical or sanitary purposes; sleep masks; mitres [hats]; mittens; muffs [clothing]; ear muffs [clothing]; headwear; fur stoles; outerclothing; ready-made clothing; motorists' clothing; cyclists' clothing; clothing for gymnastics; clothing of leather; clothing incorporating LEDs; gabardines [clothing]; jerseys [clothing]; clothing of imitations of leather; underclothing; waterproof clothing; paper clothing; beach clothes; work clothes; sportswear incorporating digital sensors; clothing; overcoats; knickers; hosiery; stockings; sweat-absorbent stockings; parkas; fingerless gloves; half-boots; braces [suspenders] for clothing; pyjamas; bathing trunks; ascots; coats; headbands [clothing]; belts [clothing]; girdles; money belts [clothing]; pullovers; rash guards; cycling gloves; driving gloves; ski gloves; gloves [clothing]; sandals; bath sandals; jumper dresses; jumpers; shirts; short-sleeve shirts; skirts; petticoats; skorts; sports jerseys; sports singlets; dresses; slippers; bath slippers; thermal gloves for touchscreen devices; underpants; shoes; turbans; inner soles; aprons [clothing]; uniforms; tee-shirts; dressing gowns; pocket squares; headscarves; scarves; top hats; boots for sports; ski boots; boots; lace boots; shawls; caps being headwear; bathing caps; neck tube scarves; socks; trousers.*

Class 35:

*Administrative processing of purchase orders; administrative services for medical referrals; administrative services for the relocation of businesses; cost price analysis; auctioneering; outsourced administrative management for companies; book-keeping; negotiation of business contracts for others; market studies; opinion polling; arranging and conducting of commercial events; demonstration of goods; business inquiries; administrative assistance in responding to requests for proposals [RFPs]; administrative assistance in responding to calls for tenders; business management assistance; commercial or industrial management assistance; advisory services for business management; business research; economic forecasting; providing user reviews for commercial or advertising purposes; providing business information via a website; providing business information; providing commercial and business contact information; providing commercial information and advice for consumers in the choice of products and services; providing user rankings for commercial or advertising purposes; compilation of information into computer databases; compilation of statistics; web indexing for commercial or advertising purposes; business management for freelance service providers; business management of hotels; business management of reimbursement programmes for others; interim business management; computerized management of medical records and files; computerized file management; personnel management consulting; business management consultancy; consultancy regarding advertising communication strategies; consultancy regarding public relations communication strategies; business organization consultancy; marketing; influencer marketing; targeted marketing; marketing research; provision of an online marketplace for buyers and sellers of goods and services; writing of curriculum vitae for others; writing of résumés for others; writing of publicity texts; scriptwriting for advertising purposes; bookkeeping; word processing; updating of advertising material; updating and maintenance of data in computer databases; updating and maintenance of information in registries; search engine optimization for sales promotion; organization of exhibitions for commercial or advertising purposes; organization of fashion shows for promotional purposes; organization of trade fairs; rental of advertising space; shop window dressing; business appraisals; personnel recruitment; business management and organization consultancy; business intermediary services relating to the matching of*

*potential private investors with entrepreneurs needing funding; commercial information agency services; employment agency services; business efficiency expert services; outsourcing services [business assistance]; business project management services for construction projects; business consultancy services for digital transformation; corporate communications services; layout services for advertising purposes; data processing services [office functions]; sales prospecting for others; preparation of business profitability studies; market intelligence services; procurement services for others [purchasing goods and services for other businesses]; media relations services; lead generation services; business intermediary services relating to the matching of various professionals with clients; secretarial services; public relations; commercial intermediation services; data search in computer files for others; sponsorship search; presentation of goods on communication media, for retail purposes; rental of billboards [advertising boards]; office machines and equipment rental; rental of advertising materials; rental of advertising time on communication media; rental of vending machines; rental of sales stands; psychological testing for the selection of personnel; publication of publicity texts; radio advertising; registration of written communications and data; advertising; pay per click advertising; outdoor advertising; advertising by mail order; direct mail advertising; online advertising on a computer network; bill-posting; distribution of samples; dissemination of advertising matter; development of marketing concepts; development of advertising concepts; business investigations; systemization of information into computer databases; drawing up of statements of accounts; compiling indexes of information for commercial or advertising purposes; consumer profiling for commercial or marketing purposes; reception services for visitors [office functions]; sales promotion for others; promotion of goods and services through sponsorship of sports events; promotion of goods through influencers; production of advertising films; production of teleshopping programmes; transcription of communications [office functions]; television advertising; telemarketing services; negotiation and conclusion of commercial transactions for third parties; professional business consultancy.*

Class 36:

*Administration of financial affairs; actuarial services; financial analysis; repair costs evaluation [financial appraisal]; issuance of gift certificates; issuance of tokens of*

*value; investment of funds; arranging finance for construction projects; preparation of quotes for cost estimation purposes; trusteeship; debt advisory services; electronic funds transfer; provision of insurance information; providing financial information; providing financial information via a website; deposits of valuables; charitable fund raising; capital investment; mortgage banking; real estate management; clearing, financial; financial advice relating to tax; insurance consulting; crowdfunding; pawnbrokerage; marine insurance underwriting; loans [financing]; instalment loans; bail-bonding; processing of debit card payments; credit card payment processing; financial exchange of crypto assets; organization of monetary collections; rental of apartments; rental of real estate; rental of offices [real estate]; rental of offices for co-working; rental of farms; real estate appraisal; art appraisal; fiscal valuation; financial appraisals in responding to requests for proposals [RFPs]; financial appraisals in responding to calls for tenders; electronic funds transfer provided via blockchain technology; lending against security; accommodation bureau services [apartments]; real estate agency services; mutual funds; surety services; real estate services; financing services; e-wallet payment services; provident fund services; hire-purchase financing; lease-purchase financing; insurance underwriting; factoring; financial management; financial management of reimbursement payments for others; financial consultancy; financial valuation of intellectual property assets; financial evaluation [insurance, banking, real estate]; financial sponsorship; financial research; business liquidation services, financial; retirement payment services.*

Class 43:

*Temporary accommodation provided by halfway houses; providing campground facilities; boarding house bookings; food and drink catering; rental of holiday accommodation; rental of meeting rooms; rental of temporary accommodation; boarding for animals; accommodation bureau services [hotels, boarding houses]; retirement home services; day-nursery [crèche] services; hotel accommodation services; café services; cafeteria services; motel services; boarding house services; animal pound services; restaurant services; self-service restaurant services; take-away restaurant services; holiday camp services [lodging]; tourist home services; rental of furniture; rental of tents; rental of office furniture; rental of transportable buildings; hotel reservations; temporary accommodation reservations; reception*

*services for temporary accommodation [conferment of keys]; reception services for temporary accommodation [management of arrivals and departures].*

**Class 44:**

*Midwife services; art therapy; veterinary assistance; acupuncture; diagnosis of visual processing disorders; occupational therapy; providing service animals to individuals with disabilities; animal-assisted therapy; health counselling; massage; medical assistance; health care; medical advice for individuals with disabilities; nursing, medical; medical screening; remote monitoring of medical data for medical diagnosis and treatment; music therapy; medical examination for quarantine clearance purposes; health spa services; palliative care; rental of surgical robots; alternative medicine services; human tissue bank services; blood bank services; nursing home services; medical analysis services for diagnostic and treatment purposes provided by medical laboratories; aromatherapy services; vaccination services; health assessment services; postnatal care services; home-visit nursing care; aesthetician services; hospital services; orthodontic services; medical clinic services; health centre services; convalescent home services; opticians' services; rest home services; services of a psychologist; regenerative medicine services; sanatorium services; speech therapy; medical equipment rental; rental of sanitary installations; rental of agricultural equipment; dietary and nutritional advice; rehabilitation of drug-addicted patients; dentistry services; therapy services; cupping therapy; dance therapy; pharmacy advice; physiotherapy.*

**Class 45:**

*Arbitration services; locating and tracking of lost property; locating and tracking of lost people; tracking of stolen property; legal consultancy relating to patent mapping; intellectual property consultancy; physical security consultancy; leasing of internet domain names; licensing [legal services] in the framework of software publishing; licensing of intellectual property; licensing of computer software [legal services]; mediation; monitoring intellectual property rights for legal advisory purposes; babysitting; pet sitting; house sitting; providing non-medical in-home care services for individuals; inspection of factories for safety purposes; organization of political meetings; bereavement counselling; lost property return; regulatory compliance auditing; legal compliance auditing; legal watching services; legal document preparation services; litigation services; animal adoption services; personal*

*bodyguarding; alternative dispute resolution services; legal conveyancing; legal process serving; legal services relating to licences; legal advocacy services; missing person investigations; legal research; copyright management; legal advice in responding to requests for proposals [RFPs]; legal advice in responding to calls for tenders; legal services in relation to the negotiation of contracts for others.*

## Annexe 2

The goods and services to be compared are set out in the following table:

Opponent's terms:		Holder's terms:
Earlier mark (i): UK00003419014	Earlier mark (ii): UK0801492854	
Class 9 Computer software providing health, wellness, healthcare and medical information, health plan and health insurance information, health and fitness monitor and sensor data, and health predictive analytics, and providing access to healthcare and health coaching services; personal health assistant computer software.		
Class 35 Health care cost review and cost containment services; health care utilization management and review services; medical cost management.	Class 35 Health care cost review and cost containment services; health care utilization management and review services; medical cost management; administration of medical, dental, pharmacy, vision and behavioral health insurance services; administration of Medicare benefit plans.	Class 35 Administrative services for medical referral; computerized management of medical records and files.
Class 36 Administration and underwriting of medical, dental, pharmacy, vision and behavioral health	Class 36 Underwriting of medical, dental, pharmacy, vision and behavioral health insurance services.	Class 36 Administration of financial affairs; provision of insurance information; providing financial

<p>insurance services; administration of Medicare benefit plans.</p>		<p>information via a website; insurance and consulting; insurance underwriting; financial evaluation [insurance, banking, real estate].</p>
<p>Class 42 Providing a website featuring technology that enables the provision of personalized information to health plan participants about health care services; providing an interactive multimedia computer database in the field of health care services, health care information, and health care products, including, providing an interactive website featuring technology that enables users to obtain information regarding health care, health care coverage and benefits, health claims status, health fund transactions, health care providers and facilities, preferred drug list, estimated health care</p>	<p>Class 42 Hosting a website featuring software that enables the provision of personalized information to health plan participants about health care services; hosting an interactive multimedia computer database in the field of health care services, health care information, and health care products, including, hosting an interactive website featuring software that enables users to obtain information regarding health care, health care coverage and benefits, health claims status, health fund transactions, health care providers and facilities, preferred drug list, estimated health care</p>	

costs and print member ID cards.	costs and print member ID cards.	
	<p>Class 44</p> <p>Providing wellness and disease management programs; behavioral health counseling services, including, programs in the field of behavioral change to promote wellness; mental health care counseling services; personal health assessments, including, personal assessments of health risk, fitness, nutrition and lifestyle; providing smoking cessation and weight loss program services; providing medical information, including, information regarding medications and medication management counseling services; managed health care services, including, health and wellness counseling services; disease care management services; providing health care information in the field of</p>	<p>Class 44</p> <p>Midwife services; acupuncture; diagnosis of visual processing disorders; occupational therapy; health counselling; massage; medical assistance; health care; medical advice for individuals with disabilities; nursing, medical; medical screening; remote monitoring of medical data for medical diagnosis and treatment; music therapy; medical examination for quarantine clearance purposes; health spa services; palliative care; rental of surgical robots; alternative medicine services; human tissue bank services; blood bank services; nursing home services; medical analysis services for diagnostic and treatment purposes provided by medical laboratories; aromatherapy services;</p>

	<p>health and wellness, behavioral health, and disease management; medical care services; nursing services; medical care services, including, providing personalized and customized health and wellness assessment, health care, disease management, medical treatment and wellness plans and programs; medical care services, including, providing personalized and customized advice and recommendations on home health treatment and care programs, providing assistance in transitioning patients from hospital to home, and evaluating and monitoring a patient's condition; providing medical information, including, providing information on healthcare, health and wellness programs, medications, and medical symptoms, conditions, procedures, and services;</p>	<p>vaccination services; health assessment services; postnatal care services; home-visit nursing care; aesthetician services; hospital services; orthodontic services; medical clinic services; health centre services; convalescent home services; opticians' services; rest home services; services of a psychologist; regenerative medicine services; sanatorium services; speech therapy; medical equipment rental; rental of sanitary installations; rental of agricultural equipment; dietary and nutritional advice; rehabilitation of drug-addicted patients; dentistry services; therapy services; cupping therapy; dance therapy; pharmacy advice; physiotherapy.</p>
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	providing online health care and health coaching services.	
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