

O/0834/26

CONSOLIDATED PROCEEDINGS

TRADE MARKS ACT 1994

**IN THE MATTER OF
TRADE MARK APPLICATIONS NO. UK4138234 & NO. UK4138229
IN THE NAME OF MARBLE VISIONS INC.
TO REGISTER AS TRADE MARKS**



AND

Marble Visions

IN CLASSES 9, 35, 37 & 42

AND

**IN THE MATTER OF OPPOSITIONS THERETO
UNDER NUMBERS 453475 & 453476
BY MARBLE MANAGEMENT**

BACKGROUND AND PLEADINGS

1. On 17 December 2024, Marble Visions Inc.. (“the applicant”) applied to register trade mark numbers UK4138234 (the ‘234 mark) and UK4138229 (the ‘229 mark) for the respective marks shown on the cover page of this decision, in the United Kingdom. The ‘229 mark claims priority from Japanese Trade Mark No. 2024-066279, which has a priority date of 19 June 2024. Both the applications were accepted and were published for opposition purposes on 10 January 2025 for goods and services in classes 9, 35, 37 and 42.

2. The applications are partially opposed by MARBLE MANAGEMENT (“the opponent”). The oppositions were each filed on 9 April 2025, and are both based upon Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The oppositions are directed against all of the services in classes 35 and 42 only of the applications, being identical in both applications, as listed in the table under paragraph 12 of this decision.¹ The opponent relies upon its UK designation of the following International Registration (“IR”) in each of the oppositions, which have been consolidated:²

MARBLE

International Registration No. WO1688516

International Registration date: 26 July 2022

Priority date claimed: 24 February 2022³

UK Date of Designation: 26 July 2022

Date protection conferred in the UK: 7 March 2023

Protected for services in class 35, 36, 41 and 42

Relying on all services in classes 35 and 42 only, as listed in the table under paragraph 12 of this decision.

¹ Form TM21B was filed by the applicant on 8 July 2026 in which a restriction to the class 35 and class 42 specifications of the application was requested. Following the recordal of the amended specifications, the opponent was requested to confirm whether the amendment would allow the opposition to be withdrawn. However, the opponent confirmed in its email sent on 27 July 2026 that the opposition was maintained. As such, proceedings continue against the applicant’s mark in relation to the amended specifications in each class.

² As confirmed in the official letter dated 24 June 2025, issued to the parties by the Tribunal.

³ From French trade mark No. 4847024.

3. The above mark qualifies as an earlier mark under section 6(1) of the Act. As it had not been protected for more than five years at the date the contested applications were filed, it is not subject to the use provisions contained in section 6A of the Act.

4. The opponent submits that the applied for marks are similar to the earlier trade mark on a visual, phonetic and conceptual comparison, and that the opposed services in classes 35 and 42 are identical to, or similar to and associated with, the services relied upon in the opposition in classes 35 and 42. As a consequence, the opponent submits that there exists a likelihood of confusion on the part of the public, which includes the likelihood of association. It requests that the applications each be rejected in classes 35 and 42, and that an award of costs be made in favour of the opponent.

5. The applicant filed counterstatements denying the claims and requests that the oppositions are each dismissed in their entirety, and that an award of costs be made in its favour.

6. Neither party elected to file evidence or written submissions during the evidence rounds. Neither party requested a hearing; only the opponent filed written submissions in lieu of a hearing. This decision is taken following careful consideration of the papers on file.

7. In these proceedings, the opponent is represented by Sonder & Clay and the applicant is represented by Venner Shipley LLP.

DECISION

8. 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.

Section 5(2)(b)

9. Section 5(2)(b) is relied on and read 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”.

10. Section 5A states:

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

11. The following 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 greater 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 to mind the earlier mark, 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 services

12. The services to be compared are:

Opponent's services
<u>Class 35</u> <i>Business management and organization consultancy; assistance in commercial development and creation of companies; advisory and assistance services for business creators, namely, business organization and management advice and assistance services; advisory services for companies relating to financing of growth; advisory services with respect to finding sponsorship; assistance and management of business affairs and administrative services concerning marketing; secretarial services; business assistance services; recruitment services; negotiation and conclusion of commercial transactions for others; advisory and assistance services for advertising and marketing; commercial intermediation services; commercial intermediary services in the framework of bringing prospective private investors in contact with entrepreneurs looking for financing; professional networking services; business networking services, namely, searching for partners; marketing studies and market analysis; writing and publication of advertising texts; advice regarding communication (advertising); public relations; advice regarding communication (public relations).</i>
<u>Class 42</u> <i>Research and development of products; design of new products; graphic design of promotional material; conducting of technical project studies.</i>
Applicant's services (being the same in both applications)
<u>Class 35</u> <i>Business management analysis using satellite data and geospatial data; providing business information derived from satellite data and geospatial data; providing</i>

business information on trend of individual industry derived from satellite data and geospatial data; providing market research statistical information derived from satellite data and geospatial data; providing business information in the field of economics derived from satellite data and geospatial data; all the foregoing services being in the fields of satellite data processing, geospatial data processing, satellite operations and satellite-related systems; providing information concerning commercial sales derived from satellite data, geospatial data, location data and real estate information for route selection, site selection, trade area analysis, analysis of urban vitality, analysis of customer flows and traffic flows, and commercial location intelligence purposes; providing commercial information derived from satellite data, geospatial data, location data and real estate information for route selection, site selection, trade area analysis, analysis of urban vitality, analysis of customer flows and traffic flows, and commercial location intelligence purposes; provision of business statistical information derived from satellite data, geospatial data, location data and real estate information for route selection, site selection, trade area analysis, analysis of urban vitality, analysis of customer flows and traffic flows, and commercial location intelligence purposes; all the foregoing services being in the fields of satellite data processing, geospatial data processing, location intelligence derived from satellite data, geospatial data and location data, and satellite related systems; systemization and compilation of information into computer databases and providing information relating thereto; computerized digital data file management; computerized filing and organization of document and image data; all the foregoing services being for processing satellite data and geospatial data and for use in satellite operations and satellite-related systems; online retail store services or online wholesale store services for downloadable image files or video files featuring geospatial data.

Class 42

Computer software design, computer programming, or maintenance of computer software; consultancy, advisory services and providing information relating to computer software design, computer programming, or maintenance of computer software; computer system design, creating or maintenance of computer systems; consultation, advisory services and providing information relating to computer system design, creating or maintaining of computer systems; technological

consultancy services relating to security on communication network by the Internet, mobile telephone communication or other communication means; providing authentication of personal identification information; inspection, verification and authentication of existence of falsification of contents of electronic information; encryption of data for computers; providing user authentication services online; provision of services for authentication and verification of identity and/or personal data of communication network users; providing search engines by the Internet, mobile telephone communication or other communication means; data conversion of electronic sound, image and text information to sound, image and text signals by computers; data conversion to computer databases; conversion of images from physical to electronic media; information processing by computers; remote monitoring of computer systems; installation, upgrading, maintenance and configuration of computer programs; installation, upgrading, maintenance and configuration of computer programs relating to central processing units, electronic circuits, magnetic discs, magnetic tapes storing computer programs and other peripheral equipment; verification of connection between computers; testing services in relation to computer program behavior; computer software consulting concerning maintenance and installation of computer programs to apparatuses using computer programs or apparatuses used by computer systems; rental of computers and providing information relating thereto; providing computer programs on data network and providing information relating thereto; providing temporary use of on-line nondownloadable software and providing information relating thereto; all the foregoing services being for processing satellite data and geospatial data and for use in satellite operations and satellite-related systems; computer software design, computer programming, and maintenance of computer software in the field of 3D digital maps; consultancy, advisory services and providing information relating to computer software design, computer programming, or maintenance of computer software in the field of 3D digital maps; providing temporary use of on-line non-downloadable software for generating and viewing 3D digital maps, and providing information relating thereto; software as a service (SaaS) featuring computer software for generating and viewing 3D digital maps, and providing information relating thereto; platform as a service (PaaS) featuring computer software platforms for generating and viewing 3D digital maps, and providing

information relating thereto; information technology (IT) consultancy in the field of 3D digital maps, and providing information relating thereto; creating or maintaining home pages for others on the Internet; software as a service (SaaS) and providing information relating thereto; platform as a service (PaaS) and providing information relating thereto; information technology (IT) consultancy and providing information relating thereto; rental of web servers and providing information relating thereto; rental of memory space of servers for communication networks and providing information relating thereto; all the foregoing services relating to satellite data, geospatial data, 3D digital maps, satellite operations and satellite-related systems; technical writing for others, namely, writing of specialized user manuals for computers, computer programs and computer hardware; technical advice relating to operation of computers and computer software; all the foregoing services being for software and systems used for processing satellite data and geospatial data and for use in satellite operations and satellite-related systems; research on building construction or city planning using satellite data, geospatial data, remote sensing and Earth observation technologies for urban planning, infrastructure monitoring and geospatial information purposes, and providing information relating thereto; testing or research on prevention of pollution using satellite data, geospatial data, remote sensing and Earth observation technologies, and providing information relating thereto; testing or research on civil engineering using satellite data, geospatial data, remote sensing and Earth observation technologies for infrastructure monitoring, disaster prevention, urban planning and geospatial information purposes, and providing information relating thereto; quality control of satellite data, geospatial data, satellite imagery, geospatial information systems and satellite-related systems; designing of machines, apparatus, instruments (including their parts) or systems composed of such machines, apparatus and instruments for use in satellite operations, remote sensing, Earth observation, satellite data processing, geospatial data processing and satellite-related systems, and providing information relating thereto; computer graphics design services for visualisations derived from satellite data and geospatial data; design services for maps; providing map information; providing map information using data obtained from satellites; providing online geographic maps, not downloadable, and providing information relating thereto; providing geographic information; cartography services

and providing information relating thereto; architectural services and providing information relating thereto; surveying and providing information relating thereto; all the foregoing services being provided using satellite data and geospatial data for urban planning, digital mapping, Earth observation and geospatial information purposes; design and development of satellites and launch facilities, and providing information relating thereto; land surveying using data from satellites, and providing information relating thereto; scientific and technological research in the field of natural disasters using satellite data, geospatial data, remote sensing and Earth observation technologies; analysis of images and videos obtained from satellites for remote sensing, Earth observation and geospatial information purposes, and providing information relating thereto.

13. Pursuant to section 60A of the Act, the services are not to be automatically regarded as being similar to each other on the ground that they appear in the same class, nor are they automatically regarded as dissimilar from each other on the ground that they appear in different classes.

14. Where the services in the specification of one party are included in a broader term from the other party's specification, those services are considered to be identical: See *Gérard Meric v OHIM*, Case T-133/05 at [29].

15. In *Canon*, Case C-39/97, the Court of Justice of the European Union ("CJEU") stated that:

"23. In assessing the similarity of the goods or services concerned, ... all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary".

16. Additionally, the factors for assessing similarity between goods and services identified in *British Sugar Plc v James Robertson & Sons Limited* ("Treat ") [1996] R.P.C. 281 include an assessment of the users and the channels of trade of the respective goods or services.

17. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the General Court (“GC”) stated that “complementary” means:

“82. ...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”.

18. For the purposes of considering the issue of similarity of the services, it is permissible to consider groups of terms collectively where appropriate: *Separode Trade Mark*, BL O-399-10.⁴

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

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

⁴ Paragraph 5

disregard them. But, in my opinion, that will rarely be the case.” (My emphasis)

20. At Schedule One of its written submissions in lieu of a hearing, the opponent has provided a table comparing the terms of the contested services contained within the applications against those services relied upon under the earlier mark, submitting that those services are either identical with, or similar to a high degree, to each other. However, as mentioned previously, subsequent to the filing of the opponent’s written submissions in lieu, the applicant filed a Form TM21B in which it requested a restriction to the class 35 and class 42 specifications of the applications. I note that in its counterstatements, the applicant has merely made a blanket denial that the contested services are identical to, or similar to and associated with, the earlier services. I will proceed to make my own comparison of the services at issue, as amended. In making my comparison, I will take into account the opponent’s submissions on the services in common to the extent that is relevant. That being said, I note that the opponent has not said to exactly what degree it considers the individual terms or group of services to be similar (or identical). Neither has it provided an assessment of the nature of the services, their intended purpose, their method of use, their users, the channels of trade, or whether they are in competition with each other or are complementary.

21. I note that the applicant’s class 35 specifications include the limitations “***all the foregoing services being in the fields of satellite data processing, geospatial data processing, satellite operations and satellite-related systems***”, “***all the foregoing services being in the fields of satellite data processing, geospatial data processing, location intelligence derived from satellite data, geospatial data and location data, and satellite related systems***” and “***all the foregoing services being for processing satellite data and geospatial data and for use in satellite operations and satellite-related systems***”. Many, but not all, of the terms within the class 42 specification are similarly restricted. To be clear, any limitation that starts with the words “all the foregoing...” will apply to every term that precedes each limitation.

The contested services in class 35

Business management analysis using satellite data and geospatial data; providing business information derived from satellite data and geospatial data; providing business information on trend of individual industry derived from satellite data and geospatial data; providing business information in the field of economics derived from satellite data and geospatial data; all the foregoing services being in the fields of satellite data processing, geospatial data processing, satellite operations and satellite-related systems; provision of business statistical information derived from satellite data, geospatial data, location data and real estate information for route selection, site selection, trade area analysis, analysis of urban vitality, analysis of customer flows and traffic flows, and commercial location intelligence purposes; all the foregoing services being in the fields of satellite data processing, geospatial data processing, location intelligence derived from satellite data, geospatial data and location data, and satellite related systems; all the foregoing services being for processing satellite data and geospatial data and for use in satellite operations and satellite-related systems.

22. I note that the applicant's services, above, are provided using satellite data and geospatial data, and for use in satellite operations and satellite-related systems. Regardless of the limitations, its business management analysis and provision of business information, including the provision of business statistical information, are consistent with the type of services which the average consumer would reasonably expect to be covered by the opponent's broad terms "*Business management and organization consultancy*" and "*business assistance services*". Real estate services per se would fall under class 36 of the Nice Classification. Although the Nice Classification is purely administrative,⁵ I also note that in *Altecnic Ltd's Trade Mark Application*, the Court of Appeal ("COA") decided that "the registrar is entitled to treat the class number in the application as relevant to the interpretation of the scope of the application."⁶ As the applicant's services concerning the same have been included in class 35, I consider its provision of *real estate information*... to be a service

⁵ See *Mould Pro* decision Case T-794/21 at [22-28].

⁶ *Altecnic Ltd's Trade Mark Application* [2002] RPC 34 (COA) at [42].

providing business information which happens to be in relation to real estate, rather than the type of service one could expect to be encompassed by a traditional provider of real estate services as is proper to class 36. As such, I consider all of the applicant's above-listed services to be covered by the opponent's broad terms, rendering them identical as per the principle outlined in *Meric*.

Providing market research statistical information derived from satellite data and geospatial data; all the foregoing services being in the fields of satellite data processing, geospatial data processing, satellite operations and satellite-related systems; all the foregoing services being in the fields of satellite data processing, geospatial data processing, location intelligence derived from satellite data, geospatial data and location data, and satellite related systems; all the foregoing services being for processing satellite data and geospatial data and for use in satellite operations and satellite-related systems.

23. I consider the opponent's "marketing studies and market analysis", could feasibly include the provision of statistical information from market research. As such, the applicant's above-listed services are encompassed by the opponent's broad terms, rendering the services identical as per *Meric*.

Providing information concerning commercial sales derived from satellite data, geospatial data, location data and real estate information for route selection, site selection, trade area analysis, analysis of urban vitality, analysis of customer flows and traffic flows, and commercial location intelligence purposes; providing commercial information derived from satellite data, geospatial data, location data and real estate information for route selection, site selection, trade area analysis, analysis of urban vitality, analysis of customer flows and traffic flows, and commercial location intelligence purposes; all the foregoing services being in the fields of satellite data processing, geospatial data processing, location intelligence derived from satellite data, geospatial data and location data, and satellite related systems; all the foregoing services being for processing satellite data and geospatial data and for use in satellite operations and satellite-related systems.

24. The applicant's above services concern commercial information, including in relation to commercial sales and to real estate information, which as explained earlier, I interpret as being a business service when included in class 35. I consider that all these services would be encompassed by the opponent's "*assistance in commercial development and creation of companies*" as well as falling under the broad term "*business assistance services*". I therefore find the competing services to be identical as per *Meric*.

Systemization and compilation of information into computer databases and providing information relating thereto; computerized digital data file management; computerized filing and organization of document and image data; all the foregoing services being for processing satellite data and geospatial data and for use in satellite operations and satellite-related systems.

25. It could be argued that the broad terms "*secretarial services*" and "*business assistance services*", as included in the Class 35 specification of the opponent's mark encompasses the applicant's "*Systemization and compilation of information into computer databases and providing information relating thereto; computerized digital data file management; computerized filing and organization of document and image data*", and therefore should be considered identical as per *Meric*. However, I note the guidance outlined in *SkyKick* regarding broad specifications. In my view, the nature and specific purposes of the opposing services differ as the applicant's services concern the computerised organisation and management of specialised digital data, whereas the opponent's services concern general clerical or business support. While there is likely to be an overlap in users of the respective services, as well as in channels of trade, I do not consider the applicant's services to be at the core of either "*secretarial services*" or "*business assistance services*" to the extent that the average consumer would automatically expect the respective services to be provided by the same or economically linked undertakings. I therefore find there to be a low degree of similarity between the services.

Online retail store services or online wholesale store services for downloadable image files or video files featuring geospatial data.

26. I find no similarity between any of the opponent's various services, as listed in the table under paragraph 12 of this decision, and the applicant's retail or wholesale services. While there may be an overlap in end users, the essential nature and purpose of the respective services differ. The services are neither in competition nor complementary, and I do not consider that the average consumer would expect the services at issue to be provided by the same or commercially-linked undertakings. I consider any overlap to be superficial and, overall, I find the respective services to be dissimilar.

The contested services in class 42

Designing of machines, apparatus, instruments (including their parts) or systems composed of such machines, apparatus and instruments for use in satellite operations, remote sensing, Earth observation, satellite data processing, geospatial data processing and satellite-related systems, and providing information relating thereto; all the foregoing services being provided using satellite data and geospatial data for urban planning, digital mapping, Earth observation and geospatial information purposes; design and development of satellites and launch facilities, and providing information relating thereto.

27. The above services are encompassed by the opponent's broad term "design of new products", rendering them identical as per *Meric*.

Computer software design; computer system design, creating of computer systems; all the foregoing services being for processing satellite data and geospatial data and for use in satellite operations and satellite-related systems; all the foregoing services being for processing satellite data and geospatial data and for use in satellite operations and satellite-related systems; computer software design in the field of 3D digital maps; all the foregoing services relating to satellite data, geospatial data, 3D digital maps, satellite operations and satellite-related systems; all the foregoing services being for software and systems used for processing satellite data and geospatial data and for use in satellite operations and satellite-related systems; design services for maps; all the foregoing services being provided using satellite

data and geospatial data for urban planning, digital mapping, Earth observation and geospatial information purposes..

28. I consider computer software itself to be a product, as are computer systems and maps. I also consider there to be an element of design in relation to the creation of such products. As such, it is my view that the applicant's above services are encompassed by the opponent's broad term "*design of new products*", rendering the competing services identical as per *Meric*.

Computer graphics design services for visualisations derived from satellite data and geospatial data; all the foregoing services being provided using satellite data and geospatial data for urban planning, digital mapping, Earth observation and geospatial information purposes.

29. I consider the applicant's "*computer graphics design services for visualisations ...*" and the opponent's "*graphic design of promotional material*" to overlap in their general nature. However, in my view, the applicant's services would be sourced from a niche provider with specialist knowledge, and do not follow the same processes as typical graphic design services used for promotional material. The fundamental purpose of the competing services therefore differs. While there may be an overlap in users and in trade channels, I do not consider the services to be complementary in a trade mark sense. Overall, I consider the respective services to be similar to a medium degree.

Consultancy, advisory services and providing information relating to computer software design; consultation, advisory services and providing information relating to computer system design, creating of computer systems; all the foregoing services being for processing satellite data and geospatial data and for use in satellite operations and satellite-related systems; consultancy, advisory services and providing information relating to computer software design in the field of 3D digital maps; all the foregoing services relating to satellite data, geospatial data, 3D digital maps, satellite operations and satellite-related systems; all the foregoing services being for software and systems used for processing satellite data and geospatial data and for use in satellite operations and satellite-related systems; all the foregoing

services being provided using satellite data and geospatial data for urban planning, digital mapping, Earth observation and geospatial information purposes.

30. Consultancy and advisory services are not the same as the design services themselves, and differ in nature and fundamental purpose. However, I consider that the opponent's "*design of new products*" is likely to include an element of consultancy and advice, both prior and subsequent to the design services being undertaken, with an overlap in users of the respective services and in channels of trade. There is a degree of complementarity between the services and it would not be unreasonable for the average consumer to expect the same undertaking to provide both services. As such, I consider there to be a medium degree of similarity between the respective services.

Research on building construction or city planning using satellite data, geospatial data, remote sensing and Earth observation technologies for urban planning, infrastructure monitoring and geospatial information purposes, and providing information relating thereto; testing or research on prevention of pollution using satellite data, geospatial data, remote sensing and Earth observation technologies, and providing information relating thereto; testing or research on civil engineering using satellite data, geospatial data, remote sensing and Earth observation technologies for infrastructure monitoring, disaster prevention, urban planning and geospatial information purposes, and providing information relating thereto; all the foregoing services being provided using satellite data and geospatial data for urban planning, digital mapping, Earth observation and geospatial information purposes.

31. I am reminded, as per *SkyKick*, to confine broad terms used to the substance or core of their possible meanings. Although the exact nature and purpose of the services are not the same, I consider it feasible that the provision of the applicant's above services could include some form of technical study, resulting in an overlap with the opponent's broad term "*conducting of technical project studies*". As such, there is an overlap in users and channels of trade. I further consider there to be a degree of complementarity between the respective services such that it would not be unreasonable for the average consumer to expect the services to be provided by the

same or economically linked undertakings. Overall, I consider them to be similar to a low to medium degree.

Computer programming, or maintenance of computer software; consultancy, advisory services and providing information relating to computer programming, or maintenance of computer software; maintenance of computer systems; consultation, advisory services and providing information relating to maintaining of computer systems; remote monitoring of computer systems; installation, upgrading, maintenance and configuration of computer programs; installation, upgrading, maintenance and configuration of computer programs relating to central processing units, electronic circuits, magnetic discs, magnetic tapes storing computer programs and other peripheral equipment; verification of connection between computers; testing services in relation to computer program behavior; computer software consulting concerning maintenance and installation of computer programs to apparatuses using computer programs or apparatuses used by computer systems; providing computer programs on data network and providing information relating thereto; providing temporary use of on-line nondownloadable software and providing information relating thereto; all the foregoing services being for processing satellite data and geospatial data and for use in satellite operations and satellite-related systems; computer programming, and maintenance of computer software in the field of 3D digital maps; consultancy, advisory services and providing information relating to computer programming, or maintenance of computer software in the field of 3D digital maps; all the foregoing services relating to satellite data, geospatial data, 3D digital maps, satellite operations and satellite-related systems; all the foregoing services being for software and systems used for processing satellite data and geospatial data and for use in satellite operations and satellite-related systems; all the foregoing services being provided using satellite data and geospatial data for urban planning, digital mapping, Earth observation and geospatial information purposes.

32. The above services involve a variety of computing-related services, from computer programming to maintenance and installation of software and systems, and the provision of information, advice and consultancy services of the same. I am reminded of the guidance in *SkyKick* on the correct approach in considering the

specification is to confine terms used to the substance or core of their possible meanings. While the opponent is relying on the broad terms “*Research and development of products; design of new products; graphic design of promotional material; conducting of technical project studies*”, none of these are qualified as being in relation to computing. I do not consider that any of the opponent’s terms can be said to encompass the applicant’s more specific services listed above. While I note that in the table provided at Schedule One of the opponent’s submissions, it has likened the majority of the applicant’s computer-related services to its own “*Research and development of products; design of new products*”, it does not stipulate how they are similar or to what degree. In *RALEIGH INTERNATIONAL Trade Mark* [2001] RPC 11, Mr Geoffrey Hobbs QC (as he then was), sitting as the Appointed Person, observed that when goods or services are not identical or self-evidently similar, the opposition should be supported by evidence as to their similarity.⁷ In the absence of evidence to the contrary, I consider that any overlap, such as between end users or channels of trade, to be superficial. I therefore consider the respective services to be, at best, similar to a very low degree.

Technological consultancy services relating to security on communication network by the Internet, mobile telephone communication or other communication means; providing authentication of personal identification information; inspection, verification and authentication of existence of falsification of contents of electronic information; encryption of data for computers; providing user authentication services online; provision of services for authentication and verification of identity and/or personal data of communication network users; all the foregoing services being for processing satellite data and geospatial data and for use in satellite operations and satellite-related systems; all the foregoing services relating to satellite data, geospatial data, 3D digital maps, satellite operations and satellite-related systems; all the foregoing services being for software and systems used for processing satellite data and geospatial data and for use in satellite operations and satellite-related systems; all the foregoing services being provided using satellite data and geospatial data for urban planning, digital mapping, Earth observation and geospatial information purposes.

⁷ Paragraph 20

33. The applicant's above services seem to be specific to security in relation to computing and communication systems. Taking into account the guidance from SkyKick, I see nothing that leads me to find anything more than a superficial overlap with the opponent's class 42 services, being "*Research and development of products; design of new products; graphic design of promotional material; conducting of technical project studies*". I therefore find the opposing services to be dissimilar.

Providing search engines by the Internet, mobile telephone communication or other communication means; data conversion of electronic sound, image and text information to sound, image and text signals by computers; data conversion to computer databases; conversion of images from physical to electronic media; information processing by computers; rental of computers and providing information relating thereto; all the foregoing services being for processing satellite data and geospatial data and for use in satellite operations and satellite-related systems; software as a service (SaaS) featuring computer software for generating and viewing 3D digital maps, and providing information relating thereto; platform as a service (PaaS) featuring computer software platforms for generating and viewing 3D digital maps, and providing information relating thereto; information technology (IT) consultancy in the field of 3D digital maps, and providing information relating thereto; creating or maintaining home pages for others on the Internet; software as a service (SaaS) and providing information relating thereto; platform as a service (PaaS) and providing information relating thereto; information technology (IT) consultancy and providing information relating thereto; rental of web servers and providing information relating thereto; rental of memory space of servers for communication networks and providing information relating thereto; all the foregoing services relating to satellite data, geospatial data, 3D digital maps, satellite operations and satellite-related systems; all the foregoing services being for software and systems used for processing satellite data and geospatial data and for use in satellite operations and satellite-related systems; all the foregoing services being provided using satellite data and geospatial data for urban planning, digital mapping, Earth observation and geospatial information purposes.

34. The applicant's above-listed terms are based on various IT-related services, including, inter alia, the provision of search engines, computer rental and Software as a Service (SaaS). Once again, without evidence to the contrary, I see nothing that leads me to find anything more than a superficial overlap with the opponent's *"Research and development of products; design of new products; graphic design of promotional material; conducting of technical project studies"*. In *Unicorn Studio Inc v Veronese* Case CH-2023-000214, Iain Purvis, KC, sitting as deputy High Court judge, stated that any finding of similarity requires the exercise of common sense.⁸ Accordingly, taking a realistic approach to the comparison of these particular services, I find them to be dissimilar. If I am wrong in this, then I find them to be, at best, similar to only a very low degree.

Technical writing for others, namely, writing of specialized user manuals for computers, computer programs and computer hardware; technical advice relating to operation of computers and computer software; all the foregoing services being for software and systems used for processing satellite data and geospatial data and for use in satellite operations and satellite-related systems; quality control of satellite data, geospatial data, satellite imagery, geospatial information systems and satellite-related systems; providing map information; providing map information using data obtained from satellites; providing online geographic maps, not downloadable, and providing information relating thereto; providing geographic information; cartography services and providing information relating thereto; architectural services and providing information relating thereto; surveying and providing information relating thereto; all the foregoing services being provided using satellite data and geospatial data for urban planning, digital mapping, Earth observation and geospatial information purposes; land surveying using data from satellites, and providing information relating thereto; scientific and technological research in the field of natural disasters using satellite data, geospatial data, remote sensing and Earth observation technologies; analysis of images and videos obtained from satellites for remote sensing, Earth observation and geospatial information purposes, and providing information relating thereto.

⁸ At [24].

35. In the table at Schedule One, the opponent has likened a large proportion of the applicant's class 42 services, including some of those listed above, to its own "*conducting of technical project studies*". In the absence of any evidence to the contrary, while there may be an overlap in end users of the corresponding services, I consider the applicant's services to differ from the opponent's "*conducting of technical project studies*" in their respective fundamental natures, purposes, and methods of use. The channels of trade will be different, with each of the services likely to be sourced from specialist providers. I do not consider the services at issue to be either complementary or in competition. Pragmatically, I consider that any overlap is unlikely to lead the consumer of the respective services to mistakenly believe that they are being provided by the same or economically linked undertakings. As such, I consider them to be dissimilar. If I am wrong in this, then I find them to be, at best, similar to only a very low degree.

36. Under section 5(2)(b), a degree of similarity between the services is essential for there to be a finding of likelihood of confusion: see paragraph 49 of *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA.

37. In relation to the services which I have found to be dissimilar, as there can be no likelihood of confusion under section 5(2)(b), I will take no further account of such services, with the opposition failing to that extent.

The average consumer and the nature of the purchasing act

38. The average consumer is a legal construct, deemed to be reasonably well informed and reasonably circumspect. In *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, [2025] UKSC 25, 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, inter alia, the average consumer's level of attention is likely to vary according to the category of goods or services in question.

39. The opponent submits that the average consumer of the services will be adult members of the general public, and may include professionals within the given industries, who will pay a medium level of attention during the selection process.⁹

40. In my view, the average consumer for the overlapping services in class 35 will most likely be professionals, such as businesses seeking commercial information, market research and business analysis and assistance in order to run their businesses, and who may require bespoke services tailored to their specific business needs. While the average consumer of products resulting from the design services in common in class 42 will include the general public, I consider that the average consumer of the services at issue are most likely to be professionals, such as businesses.

41. The procurement of each of the services at issue is likely to be infrequent, and the services are unlikely to be purchased casually or as a matter of routine. They may be selected through a range of channels, including bricks and mortar premises, via the internet or through telesales, any of which may be specialist providers. The purchasing process would be a combination of visual and aural; some consumers would seek information from brochures or the internet, whereas others would receive verbal advice from sales representatives, particularly in the case of telesales. The cost of the services will vary according to the exact nature, specification and the level of service selected, however, the initial outlay could be substantial. In my view, as the business customer will want to ensure that the services are appropriate to their own specific business needs, the level of attention paid will be at least medium, ranging to a high degree, depending on the exact nature of the service solicited.

Comparison of marks

42. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions

⁹ At points 22 and 24 of the written submissions in lieu of a hearing.

created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated in *Bimbo SA v OHIM* Case C-591/12P, that:

“34. it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

43. It would be wrong, therefore, to artificially dissect the trade marks, although, it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

44. The respective trade marks are as follows:

Opponent's trade mark	Applicant's trade marks
MARBLE	<u>The '234 mark</u> 
	<u>The '229 mark</u> 

Overall impression

45. The opponent's mark consists of the single, dictionary-defined word "MARBLE", presented in a standard typeface in capital letters, without any other elements to contribute to the overall impression. The overall impression conveyed by the mark therefore rests in the word itself.

46. The applicant's '234 mark is a composite mark which comprises two words alongside a device element. The word "MARBLE" is presented in a bold black typeface in capital letters and is positioned centrally above the word "VISIONS", which is also presented in black capital letters in what appears to be the same, light, typeface. The stylisation of each of the words is minimal and does not contribute greatly to the trade mark message conveyed by the words themselves. To the left of the words is a black and white spherical device element which, due to the first of the two words alongside it, is likely to be perceived by a significant proportion of the average consumer as representing a marble. The device element is clearly visible and will not go unnoticed, serving to reinforce the message conveyed by the word element "MARBLE". However, to my mind, it is the combined words which dominate and play the greater role in the overall impression of the mark, while the device element will make a lesser, but still significant, contribution overall.¹⁰

47. The applicant's '219 mark consists of two words, "Marble Visions", presented side by side in a slightly stylised black typeface, with the first letter of each word only being capitalised. I consider the stylisation of the words to be marginal and does not add to the trade mark message conveyed by the words. As such, the presentation does little to contribute to the overall impression of the mark, which lies in the words themselves.

48. In making my comparison, I note that in *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, the GC noted that the beginning of words tend to have more visual and aural impact than the ends, however, I accept that this is not always the case.

¹⁰ See *Wassen International Ltd v OHIM (SELENIUM-ACE)*, Case T-312/03, at [37].

Visual comparison

49. All three marks share visual similarity by way of the word “MARBLE”, which makes up the entirety of the earlier mark and is wholly incorporated in each of the applicant’s marks.

50. In relation to the ‘234 mark, the word “MARBLE” is followed by the word “VISIONS” and is preceded by the device element as previously described, which will not go unnoticed by the average consumer. As neither the device element nor the word “VISIONS” is present in the earlier mark, this creates a visual disparity. Considering the marks as a whole, I find there to be a low to medium degree of visual similarity between them.

51. The ‘229 mark contains two words, compared to the single word “MARBLE” which makes up the earlier mark. In the contested mark, the word in common “Marble” is followed by the word “Visions”, which is absent from the earlier mark and thus creates a point of visual difference. I do not consider the difference in capitalisation/title case is relevant to the visual impact, as the registration of a word mark gives protection irrespective of capitalisation: see *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17. Considering the marks as a whole, I find there to be a medium degree of visual similarity between them.

Aural comparison

52. The common element “MARBLE” will be pronounced identically in both the earlier mark and in each of the contested marks, as two syllables. However, the word “VISIONS”, present in each of the contested marks, will also be voiced, meaning that they will both be pronounced in their entirety as four syllables. I would not expect the device element within the contested ‘234 mark to be articulated. As such, I consider there to be a medium degree of aural similarity between the earlier mark and each of the contested marks.

Conceptual comparison

53. With regard to conceptual comparison, in *Luciano Sandrone v European Union Intellectual Property Office (EUIPO)*, Case T-268/18, the GC held:

“8. ... In that regard, it must be borne in mind that the purpose of the conceptual comparison is to compare the ‘concepts’ that the signs at issue convey. The term ‘concept’ means, according to the definition given, for example, by the Larousse dictionary, a ‘general and abstract idea used to denote a specific or abstract thought which enables a person to associate with that thought the various perceptions which that person has of it and to organise knowledge about it.”

54. The opponent’s mark is made up of a single, dictionary-defined word, being identical to the first word of the contested marks. I consider that the average consumer would recognise the word “MARBLE” as referring to either a type of hard rock which is often used to make sculptures, or may be featured in grand buildings, or alternatively as referring to the main component of the children’s game of marbles, which is played with small balls of coloured glass. I note that in its written submissions in lieu of a hearing, the opponent has only referred to the latter interpretation of the word marble as meaning “a small, glass object commonly used in games”.¹¹

55. While I acknowledge that to some consumers, each of the dictionary-defined words contained within the applicant’s contested marks will play an independent distinctive role within the respective marks, with neither word dominating, I consider the proportion of consumers who would view it in this way to be insignificant. Rather, I consider that a significant proportion will view the words “MARBLE VISIONS” as a unit, with the word “MARBLE” qualifying the word “VISIONS”. The second word “VISIONS” is likely to be recognised as referring to how someone might imagine or visualize something to be.

¹¹ At point 33.

56. As mentioned earlier, I consider that the device element contained within the applicant's '234 mark serves to reinforce the concept of a marble, being the first of the two word elements contained within the mark. In this case, the representation of the marble is therefore suggestive of the children's game. Consequently, I consider that the two words and device element which make up the '234 mark is likely to be perceived as a whole as referring to a mental picture of a marble as used in the children's game of the same name. To those consumers who also see the earlier mark as referring to a component of the children's game, the marks are conceptually similar to a medium degree. To those consumers who only see the earlier mark as referring to the rock or building material, the marks are conceptually dissimilar.

57. In relation to the '229 mark, the message conveyed by the mark as a whole will either be of images of the small glass balls used in the children's game of marbles, or of images of marble as a rock or building material. In whichever way it is perceived, there is an overlap in concept with the opponent's mark "MARBLE". Overall, I consider the marks to share a medium degree of conceptual similarity.

Distinctive character of the earlier mark

58. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. The factors I must take into account in assessing the level of distinctive character were set out by the CJEU in *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97:

"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).”

59. Registered trade marks possess varying degrees of inherent distinctive character, being lower where they are allusive or suggestive of a characteristic of the goods and services, ranging up 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 made of it. The opponent has not claimed that its mark has enhanced distinctiveness and no evidence of use has been filed. Therefore, I only have the inherent characteristics of the mark to consider.

60. The opponent submits that the earlier mark contains no element of description of the services for which it is registered, and that it enjoys a high level of distinctive character.¹² I agree that the mark is neither descriptive nor allusive of the services to which it is applied. However, the word “MARBLE” is an ordinary, dictionary-defined word which cannot be said to possess the higher degree of distinctiveness that an invented word with no allusive qualities would enjoy. Therefore, I find the earlier mark to be inherently distinctive to a medium degree.

Likelihood of confusion

61. There is no simple formula for determining whether there is a likelihood of confusion. It is clear that I must make a global assessment of the competing factors (*Sabel* at [22]), keeping in mind the interdependency between them i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective services and vice versa (*Canon* at [17]). I must consider the various factors from the perspective of the average consumer, bearing in mind 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 he has retained in his mind (*Lloyd Schuhfabrik* at [26]).

¹² At point 35 of the written submissions in lieu.

62. There are two types of possible confusion: direct, where the average consumer mistakes one mark for the other, or indirect, where the average consumer recognises that the marks are different, but assumes that the services are the responsibility of the same or connected undertakings. The distinction between these was explained by Mr Iain Purvis Q.C. (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v Back Beat Inc*, Case BL-O/375/10. He said:

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

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

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (“26 RED TESCO” would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as “LITE”, “EXPRESS”, “WORLDWIDE”, “MINI” etc.).

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

63. The above are examples only which are intended to be illustrative of the general approach. These examples are not exhaustive but provide helpful focus.

64. Earlier in this decision, I found:

- The contested services in classes 35 and 42 to range between identical as per the principle outlined in *Meric*, to dissimilar;
- The level of attention of the business customer as the average consumer of the overlapping services in classes 35 and 42 would be at least medium, ranging to a high degree, dependent on the exact nature of the chosen services at issue, which would be selected by both aural and visual means;
- The opponent’s mark and the contested ‘234 mark to be visually similar to between a low to medium degree, and the contested ‘229 mark to be visually similar to the earlier mark to a medium degree;
- Aurally, I found there to be a medium degree of aural similarity between the earlier mark and each of the contested marks;
- Conceptually, in relation to the ‘234 mark in which the additional device element serves to reinforce the concept of a marble as a component of the children’s game, to those consumers who also see the earlier mark as alluding to the same, the marks overall are conceptually similar to a medium degree; to those consumers who see the earlier mark as referring only to the rock or building material, the marks are conceptually dissimilar. In relation to the ‘229 mark, there is an overlap in concept with the opponent’s mark “MARBLE” which I considered overall to share a medium degree of conceptual similarity;
- The earlier mark to be inherently distinctive to a medium degree.

65. I have weighed up each of the competing factors in my decision, including the differences as well as the similarities between the competing marks. The average consumer is unlikely to see the marks side-by-side and will therefore be reliant on the

imperfect picture of them they have kept in their mind. In spite of the higher degree of attention paid by the consumer during the selection of some of the services, I bear in mind that in relation to the assessment of the likelihood of confusion, it is the section of the public with the lowest level of attention which must be taken into consideration.¹³

66. In relation to each of the contested marks, as I have found that a significant proportion of the average consumer will view the words “MARBLE VISIONS” as a unit, I consider that the overall differences between them and the earlier mark are such that they are unlikely to be mistakenly recalled as each other by the general public paying at least a medium level of attention. I therefore find that there is no likelihood of direct confusion.

67. Taking into account the previously outlined guidance of Mr Iain Purvis Q.C. (as he then was) in *L.A. Sugar*, I will now consider whether there might be a likelihood of indirect confusion. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, Mr James Mellor Q.C. (as he then was), as the Appointed Person, stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark. This is mere association not indirect confusion.

68. In *Liverpool Gin Distillery Ltd and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207, Lord Justice Arnold 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”. Lord Justice Arnold added that there must be “a proper basis” for concluding that there is a likelihood of indirect confusion when there is no likelihood of direct confusion.

69. I acknowledge that the categories listed by Mr Iain Purvis Q.C. (as he then was), are not exhaustive. I keep in mind the global assessment of the competing factors in my decision for each of the contested applications. In relation to each of the contested

¹³ Case T-247/12, *Argo Group International Holdings Ltd. v OHIM*.

marks, given that both marks have in common with the earlier mark the identical word “Marble”, it is my view that a significant proportion of consumers will conclude that the addition of the word “Visions” in the later marks, as well as the additional marble device element in the contested ‘234 mark, represents alternative marks being used by the same or an economically linked undertaking. Consequently, I consider there to be a likelihood of indirect confusion for all services for which I found at least a low to medium degree of similarity or above. For the avoidance of doubt, I do not consider this likelihood of indirect confusion extends to those services for which only a low or a very low degree of similarity, at best, was found.

CONCLUSION

70. The opposition under section 5(2)(b) has been successful in part in respect of both oppositions in these consolidated proceedings. Subject to any successful appeal, trade mark application numbers **UK00004138234** and **UK00004138229** by Marble Visions Inc.. are refused registration for the following services:

Class 35

Business management analysis using satellite data and geospatial data; providing business information derived from satellite data and geospatial data; providing business information on trend of individual industry derived from satellite data and geospatial data; providing market research statistical information derived from satellite data and geospatial data; providing business information in the field of economics derived from satellite data and geospatial data; all the foregoing services being in the fields of satellite data processing, geospatial data processing, satellite operations and satellite-related systems; providing information concerning commercial sales derived from satellite data, geospatial data, location data and real estate information for route selection, site selection, trade area analysis, analysis of urban vitality, analysis of customer flows and traffic flows, and commercial location intelligence purposes; providing commercial information derived from satellite data, geospatial data, location data and real estate information for route selection, site selection, trade area analysis, analysis of urban vitality, analysis of customer flows and traffic flows, and commercial location intelligence purposes; provision of business statistical information derived from satellite data, geospatial data, location data and real estate information for route

selection, site selection, trade area analysis, analysis of urban vitality, analysis of customer flows and traffic flows, and commercial location intelligence purposes; all the foregoing services being in the fields of satellite data processing, geospatial data processing, location intelligence derived from satellite data, geospatial data and location data, and satellite related systems; systemization and compilation of information into computer databases and providing information relating thereto.

Class 42

Computer software design; consultancy, advisory services and providing information relating to computer software design; computer system design, creating of computer systems; consultation, advisory services and providing information relating to computer system design, creating of computer systems; all the foregoing services being for processing satellite data and geospatial data and for use in satellite operations and satellite-related systems; computer software design in the field of 3D digital maps; consultancy, advisory services and providing information relating to computer software design in the field of 3D digital maps; all the foregoing services relating to satellite data, geospatial data, 3D digital maps, satellite operations and satellite-related systems; all the foregoing services being for software and systems used for processing satellite data and geospatial data and for use in satellite operations and satellite-related systems; research on building construction or city planning using satellite data, geospatial data, remote sensing and Earth observation technologies for urban planning, infrastructure monitoring and geospatial information purposes, and providing information relating thereto; testing or research on prevention of pollution using satellite data, geospatial data, remote sensing and Earth observation technologies, and providing information relating thereto; testing or research on civil engineering using satellite data, geospatial data, remote sensing and Earth observation technologies for infrastructure monitoring, disaster prevention, urban planning and geospatial information purposes, and providing information relating thereto; designing of machines, apparatus, instruments (including their parts) or systems composed of such machines, apparatus and instruments for use in satellite operations, remote sensing, Earth observation, satellite data processing, geospatial data processing and satellite-related systems, and providing information relating thereto; computer graphics design services for visualisations derived from satellite data and geospatial data; design services for maps; all the foregoing services

being provided using satellite data and geospatial data for urban planning, digital mapping, Earth observation and geospatial information purposes; design and development of satellites and launch facilities, and providing information relating thereto.

71. The applications may proceed to registration for the remaining goods and services:

Class 9 and 37 in their entirety (unopposed)

And

Class 35

Systemization and compilation of information into computer databases and providing information relating thereto; computerized digital data file management; computerized filing and organization of document and image data; all the foregoing services being for processing satellite data and geospatial data and for use in satellite operations and satellite-related systems; online retail store services or online wholesale store services for downloadable image files or video files featuring geospatial data.

Class 42

Computer programming, or maintenance of computer software; consultancy, advisory services and providing information relating to computer programming, or maintenance of computer software; maintenance of computer systems; consultation, advisory services and providing information relating to maintaining of computer systems; technological consultancy services relating to security on communication network by the Internet, mobile telephone communication or other communication means; providing authentication of personal identification information; inspection, verification and authentication of existence of falsification of contents of electronic information; encryption of data for computers; providing user authentication services online; provision of services for authentication and verification of identity and/or personal data of communication network users; providing search engines by the Internet, mobile telephone communication or other communication means; data conversion of electronic sound, image and text information to sound, image and text signals by computers; data conversion to computer databases; conversion of images from

physical to electronic media; information processing by computers; remote monitoring of computer systems; installation, upgrading, maintenance and configuration of computer programs; installation, upgrading, maintenance and configuration of computer programs relating to central processing units, electronic circuits, magnetic discs, magnetic tapes storing computer programs and other peripheral equipment; verification of connection between computers; testing services in relation to computer program behavior; computer software consulting concerning maintenance and installation of computer programs to apparatuses using computer programs or apparatuses used by computer systems; rental of computers and providing information relating thereto; providing computer programs on data network and providing information relating thereto; providing temporary use of on-line nondownloadable software and providing information relating thereto; all the foregoing services being for processing satellite data and geospatial data and for use in satellite operations and satellite-related systems; computer programming, and maintenance of computer software in the field of 3D digital maps; consultancy, advisory services and providing information relating to computer programming, or maintenance of computer software in the field of 3D digital maps; providing temporary use of on-line non-downloadable software for generating and viewing 3D digital maps, and providing information relating thereto; software as a service (SaaS) featuring computer software for generating and viewing 3D digital maps, and providing information relating thereto; platform as a service (PaaS) featuring computer software platforms for generating and viewing 3D digital maps, and providing information relating thereto; information technology (IT) consultancy in the field of 3D digital maps, and providing information relating thereto; creating or maintaining home pages for others on the Internet; software as a service (SaaS) and providing information relating thereto; platform as a service (PaaS) and providing information relating thereto; information technology (IT) consultancy and providing information relating thereto; rental of web servers and providing information relating thereto; rental of memory space of servers for communication networks and providing information relating thereto; all the foregoing services relating to satellite data, geospatial data, 3D digital maps, satellite operations and satellite-related systems; technical writing for others, namely, writing of specialized user manuals for computers, computer programs and computer hardware; technical advice relating to operation of computers and computer software; all the foregoing services being for software and systems used for

processing satellite data and geospatial data and for use in satellite operations and satellite-related systems; quality control of satellite data, geospatial data, satellite imagery, geospatial information systems and satellite-related systems; providing map information; providing map information using data obtained from satellites; providing online geographic maps, not downloadable, and providing information relating thereto; providing geographic information; cartography services and providing information relating thereto; architectural services and providing information relating thereto; surveying and providing information relating thereto; all the foregoing services being provided using satellite data and geospatial data for urban planning, digital mapping, Earth observation and geospatial information purposes; land surveying using data from satellites, and providing information relating thereto; scientific and technological research in the field of natural disasters using satellite data, geospatial data, remote sensing and Earth observation technologies; analysis of images and videos obtained from satellites for remote sensing, Earth observation and geospatial information purposes, and providing information relating thereto.

COSTS

72. In these proceedings, both parties have enjoyed a share of success. Considering the balance of success is roughly equal, adopting a “rough and ready” approach to the matter, I have concluded that both parties should bear their own costs.

Dated this 15th day of September 2026

**Suzanne Hitchings
For the Registrar,
the Comptroller-General**