O/0985/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NUMBER 4040642
BY ANALYTICS ENGINES LIMITED

TO REGISTER THE FOLLOWING TRADE MARK:

Panoramic AI

IN CLASSES 9, 35 AND 42

AND

AN OPPOSITION THERETO UNDER NUMBER 448410
BY CODRA INGENIERIE INFORMATIQUE

BACKGROUND AND PLEADINGS

1. On 18 April 2024, Analytics Engines Limited ("the applicant") applied to register in the UK the trade mark shown on the cover page of this decision ("the contested mark"). The application was accepted and published for opposition purposes on 3 May 2024 and registration is sought for the following goods and services in classes 9, 35 and 42:

Class 9 - Artificial intelligence software; Artificial intelligence software for analysis; Software for the integration of artificial intelligence and machine learning in the field of Big Data; Artificial intelligence and machine learning software; Interactive software based on artificial intelligence; Data processing software; Business intelligence software; Computer software to automate data warehousing; Data management software; Software for the analysis of business data; Data mining software; Computer software to enable retrieval of data; Data processing software for graphic representations; Intelligent gateways for real-time data analysis; Big data management software; Computers for use in data management; Computer software to enable searching and retrieval of data; Computer software to enable the searching of data; Computer software to enable searching of data; Computer software for creating searchable databases of information and data; Computer software for analysing market information; Data and file management and database software; Data processing systems; Computer software for application and database integration; Information retrieval software; Computer software for database management; Computer software development tools; Computer programmes for data processing; Machine learning software for analysis.

Class 35 - Computer data processing; Systematization of data in computer databases; Data processing for the collection of data for business purposes; Compilation of data in computer databases; Electronic data processing; Automated data processing; Computerised data processing.

Class 42 - Platforms for artificial intelligence as software as a service [SaaS]; Software as a service [SaaS] featuring computer software platforms for artificial

intelligence; Providing artificial intelligence computer programs on data networks; Artificial intelligence consultancy; Research in the field of artificial intelligence technology; Technology consultation in the field of artificial intelligence; Research in the field of artificial intelligence; Maintenance of data processing software; Software engineering services for data processing; Services for the design of electronic data processing software; Design and development of data processing software; Programming of computer software for evaluation and calculation of data; Design and development of data retrieval software; Computer services for the analysis of data; Rental of software for data processing; Updating of software for data processing; Design and development of computer software for evaluation and calculation of data; Software engineering services for data processing programs; Computer programming for data processing and communication systems; Development of systems for the processing of data; Computer programming for data processing; Updating of software data bases; Computer programming services for data processing; Computer programming services for data warehousing; Development of computer database software; Design of computer machine and computer software for commercial analysis and reporting; Programming of software for importing and managing data; Development and testing of computing methods, algorithms and software; Design and development of data processing systems; Software as a service [SaaS] featuring software for deep neural networks; Computer software integration; Creation of computer programmes for data processing; Development of systems for the storage of data; Design services for data processing systems; Design services relating to data processing test tools; Development and creation of computer programmes for data processing; Design and development of software for importing and managing data; Engineering services relating to data processing technology; Technical data analysis; Design and development of computer database software; Design and development of computer software for reading, transmitting and organising data; Designing of data processing systems; Research in the field of data processing technology; Technical data analysis services; Development and maintenance of computer database software; Engineering services relating to automatic data processing; Providing temporary use of non-downloadable software for analyzing financial data and generating reports; Design and

development of electronic database software; Providing information about the design and development of computer software, systems and networks; Design of computer database software; Design services relating to data processing tools.

2. On 03 July 2024, CODRA INGENIERIE INFORMATIQUE ("the opponent") opposed the application in full under section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The Opponent relies upon the following trade mark:

   International registration no. 1605009

   PANORAMA

   International registration date 22 March 2021;
   UK Designation date 22 March 2021;
   Dare of protection in the UK 8 March 2022;
   Priority date 29 October 2020
   Relying on all goods and services in classes 9 and 42, as set out in Annex 1 of this decision.

3. By virtue of its earlier filing date, the opponent's mark constitutes an earlier trade mark within the meaning of section 6 of the Act. As the mark had not completed its registration process more than five years before the relevant date (the filing date of the contested mark), it is not subject to proof of use pursuant to section 6A of the Act. The opponent can, therefore, rely upon all of the goods/services it has identified.

4. Under section 5(2)(b), the opponent claims that there is a likelihood of confusion on the basis that the marks are similar and the goods/services are identical or similar.

5. The applicant filed a defence and counterstatement denying the ground of the opposition. This will be referenced further as and where appropriate.

Representation

6. The opponent is represented by Wilson Gunn; the applicant is represented by FRKelly. No evidence was filed in these proceedings, but the applicant filed submissions dated 3 December 2024 during the evidence rounds. Neither party requested a hearing, but both parties filed submissions in lieu of a hearing dated 21 January 2025 respectively. These submissions will not be summarised but will be referred to as and where appropriate during this decision. This decision is taken following a careful perusal of the papers.

Relevance of EU LAW

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

DECISION

Section 5(2)(b)

8. Sections 5(2)(b) and 5A of the Act state:

> "5(2) A trade mark shall not be registered if because –
>
> (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,
>
> there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.

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

Relevant Law

9. The following principles are gleaned 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 C-120/04, *Shaker di L. Laudato & C. Sas v OHIM,* Case C-334/05P and *Bimbo SA v OHIM,* Case C-591/12P.

<u>The principles</u>

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

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

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

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other

components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

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

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

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

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

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

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

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

Comparison of goods and services

10. The goods and services in issue have been set out in full in the Annex to this decision. I undertake my comparison below.

11. In comparing the respective specifications, all relevant factors should be considered, as per *Canon*, where the CJEU stated at paragraph 23 of its judgment:

"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."

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

(a) The respective uses of the respective goods or services;

(b) The respective users of the respective goods or services;

(c) The physical nature of the goods or acts of service;

(d) The respective trade channels through which the goods or services reach the market;

(e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

13. In *Gérard Meric v OHIM*, Case T- 133/05, the General Court ("GC") stated that:

"29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 Institut für Lernsysteme

v OHIM – Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark."

14. Further, in *Kurt Hesse v OHIM*,[1] 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*,[2] the GC stated that "complementary" means:

> "…there is 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."

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

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

[1] Case C-50/15 P
[2] Case T-325/06

16. 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 disregard them. But, in my opinion, that will rarely be the case".

17. In *Avnet Incorporated v Isoact Limited* [1998] FSR 16, Jacob J (as he then was) said at [19]:

> "[…] definitions of services … are inherently less precise than specifications of goods. […] In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase."

18. I bear in mind that it is permissible to group goods and services together for the purposes of the assessment[3]. The opponent has made no specific submissions regarding the identity/similarity of any of the goods and services, other than to say that they are all either identical or highly similar without going through any of the factors or giving explanations/reasons as to why. The applicant's representatives have provided detailed submissions that the terms are dissimilar, giving examples

[3] *Separode Trade Mark* O/399/10

of the subcategories and purpose of the goods and services at issue, however, they have not provided an explanation of any of their terms. I don't necessarily agree with those submissions in their entirety. In going through the assessment, I note the comments of Mr Ian Purvis sitting as the Appointed Person in *SmartX* O/0911/24 "it is for the Opponent to put forward the combinations of goods on which it relies for similarity (or identicality). If it fails to identify a particular combination, it cannot expect the Hearing Officer to do the job for it". I must consider the terms therefore from the perspective of the ordinary meaning attributed to them by the average consumer, confining the terms used to the substance or core of their possible meanings[4].

Class 9

19. In respect of the goods in class 9, the opponent submits "the class 9 goods of the Application contain identical and highly similar terms with the class 9 goods of the Registration being in relation to software".

20. The applicant submits as follows:

"Given the distinct functionalities, target markets, and technological focuses of the respective software products, it is clear that the respective Class 9 goods are not interchangeable and would not be confused by consumers. The software covered by the Applicant's mark is aimed at AI, machine learning, and data analytics, while the Opponent's goods are focused on industrial monitoring, control, and automation. Thus, the goods are sufficiently distinguishable, and any overlap or confusion in the marketplace is highly unlikely."

Artificial intelligence software; Artificial intelligence software for analysis; Software for the integration of artificial intelligence and machine learning in the field of Big Data; Artificial intelligence and machine learning software; Interactive software based on artificial intelligence; Data processing software; Business intelligence software; Computer software to automate data warehousing; Data management software;

[4] *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36

Software for the analysis of business data; Data mining software; Computer software to enable retrieval of data; Data processing software for graphic representations; Big data management software; Computer software to enable searching and retrieval of data; Computer software to enable the searching of data; Computer software to enable searching of data; Computer software for creating searchable databases of information and data; Computer software for analysing market information; Data and file management and database software; Data processing systems; Computer software for application and database integration; Information retrieval software; Computer software for database management; Computer software development tools; Computer programmes for data processing; Machine learning software for analysis.

21. The applicant submits that their goods in class 9 "cover artificial intelligence (AI) and machine learning (ML) software" whereas "the opponent's mark covers software for industrial automation and control systems…the software is geared toward real-time monitoring, supervision and network security within technical and industrial settings with no specific focus on AI or ML-based data analysis…these differences in functionality highlight that the core purpose and application of the respective software are distinct". The applicant's goods all include software for different purposes. I note however that the opponent's class 9 specification includes the broad terms *software and software packages*, which is a general category which encompasses the applicant's specification in full. I, therefore, consider the applicant's aforementioned goods to be identical on the principles outlined in *Meric*.

Intelligent gateways for real-time data analysis;

22. I have no submissions in regard to the applicant's above term, however, I consider that the same could be a type of software. The opponent has not set out specifically which terms are similar to their own specification; however, I note that the opponent's specification includes *software, software packages for data analysis and processing* in class 9. This is a broad term and would encompass the applicant's term in this instance. Therefore, the applicant's aforementioned goods are identical on the principles outlined in *Meric*. If I am wrong about that, there is likely to be some similarity in use, and the goods are likely to be accessed by the

same or similar users and may utilise the same trade channels. There will be some degree of overlap in the nature of the goods, as the end purpose for both is data analysis. The goods may be competitive, for example they may be cloud based platforms and physical applications and would be chosen based on the consumers requirements and preference; however, I do not find any obvious complementarity between them. I find a high degree of similarity between the parties' goods.

Computers for use in data management;

23. In the absence of submissions, I consider that the applicant's goods, taking the ordinary meaning of the term, refer to computer hardware, being computers themselves which are used for data management. The opponent's specification includes the term s*oftware and software packages* in class 9 which would be required for use in data management. Computer software is integral to computers in general and would be required for use in the applicant's specification, as will the end users and trade channels. The goods are not in competition, but they are complementary. Therefore, I find the goods to be similar to a medium degree.

Class 35

Computer data processing; Systematization of data in computer databases; Data processing for the collection of data for business purposes; Compilation of data in computer databases; Electronic data processing; Automated data processing; Computerised data processing.

24. The opponent submits that "the class 35 services of the Application contain highly similar terms to the class 9 goods and class 42 services of the Registration being in relation to data analysis and processing".

25. The applicant submits that "the Applicant's Class 35 services are dissimilar to the Opponent's Class 9 and 42…The respective services / goods are distinct in terms of functionalities, target markets, technological focuses, and service delivery methods. The Applicant's Class 35 services focus on data processing and data management for business intelligence, while the Opponent's Class 9 & 42 goods and services focus on industrial automation, process control, and real-time monitoring. Due to these differences, there is no likelihood of confusion between the services / goods provided under the respective trade marks".

26. The applicant's aforementioned terms all relate to the provision of services relating to different methods of data processing. In the absence of submissions, I anticipate that data processing services involve cleaning, transforming, and organising data. The opponent's specification includes *software, software packages for data analysis and processing* in class 9. In respect of the goods in class 9, I consider that there will be an overlap between the parties' goods/services, as I understand that data analysis software is used to process datasets to uncover patterns, generate insights, and support decision-making. Therefore, whilst the goods have a different purpose and different uses, there may be an overlap in end user. I also consider that there may be complementarity as a consumer may assume that an economic undertaking which provides software packages for data analysis may also process datasets. As a result, trade channels may also overlap. I do not consider that there will be competition between the goods/services. Therefore, I find between a low to medium degree of similarity.

Class 42

27. The opponent submits "the class 42 services of the Application contain identical and highly similar services with the class 42 services of the Registration being in relation to the research, design and development of software".

28. The applicant submits "The respective Class 42 services are clearly distinguishable based on their functionalities, target markets, technological focuses, and service delivery methods. The Applicant's services are focused on AI, machine learning, and data analytics, while the Opponent's services center [sic] around industrial process automation and system monitoring. Given the different industries, customer bases, and objectives of the services, there is no likelihood of confusion between the services."

Platforms for artificial intelligence as software as a service [SaaS]; Software as a service [SaaS] featuring computer software platforms for artificial intelligence; Software as a service [SaaS] featuring software for deep neural networks; Providing artificial intelligence computer programs on data networks;

29. The opponent's class 42 specification includes the term *software as a service [saas] services featuring software and software packages for industrial information systems, supervision, namely, monitoring, controlling and automating technical installations or industrial processes, software, SCADA-type software packages for monitoring and controlling technical installations or industrial processes, software, software packages for industrial communication, data historization, data analysis and processing, information retrieval, software, software packages for communicating with equipment participating in the monitoring or control of technical installations or industrial processes, software, software packages for data historization or information from technical installations, industrial processes or management applications associated with these installations or processes, software, data analysis and processing software packages, software, software packages for creating reports, viewing data on any type of terminal via all communication media, software, application software packages for the web and servers, software, software packages for the security of networks and computer systems, cybersecurity, designing, manufacturing and installing monitoring and control systems, software, hypervision software packages for supervision applications*. Both the applicant and the opponent's terms include *software as a service [saas],* albeit in different fields (the opponent's being for industrial information systems, whereas the applicants are for artificial intelligence). I note that two of the applicant's terms and the opponent's term both include the word "featuring", which is ambiguous, but I would consider this to be indicative of an example, rather than strictly limiting the services to those terms listed thereafter. Therefore, the comparison of the goods/services at issue should not be limited merely to *artificial intelligence* and *SCADA-type software packages for monitoring and controlling technical installations or industrial processes*. Consequently, I consider that the term software as a service [SaaS] is a general term it encompasses the other party's terms and as such these are identical on the principles outlined in *Meric.* If I am wrong about that, there is likely to be some similarity in use, and the services are likely to be accessed by the same or similar users and may utilise the same trade channels. There will be an overlap in the nature of the services, which may also be competitive; however, I do not find any obvious complementarity between them. I find a high degree of similarity between the parties' services.

Artificial intelligence consultancy;

30. In the absence of submissions, I consider that artificial intelligence consultancy is likely to involve helping businesses implement the use of AI to assist in the delivery of business goals and outcomes. I note that the opponent's specification includes the terms *consultancy services with respect to data security* and *consultancy services with respect to computer security*. I find there is a distinction in the use(s) of the above services and those relied upon by the opponent. Any overlap in the respective users is likely to be fairly artificial and I see little likelihood of similarity in the nature of the services nor the respective trade channels. As the services will be accessed for different purposes there is unlikely to be a competitive element, and I do not consider there to be any complementarity. I therefore find them to be similar to a low degree.

Research in the field of artificial intelligence technology; Technology consultation in the field of artificial intelligence; Research in the field of artificial intelligence;

31. In the absence of any particular submissions to the contrary, my understanding is that the applicant's services will be used specifically in relation to artificial intelligence. The opponent's specification includes the broad term *software and software packages* in class 9. The applicant's above terms are related to research / consultation in the field of artificial intelligence; however, artificial intelligence comprises of a combination of things, one of which being software, and therefore there may be some degree of overlap. Given that the opponent's term is broad, there may be some similarity in use, or users and the goods/services may utilise the same trade channels. I also note that the opponent's specification has *software development and research* in class 42, which is a broad term. As I have stated above, artificial intelligence contains a software component, and all of the applicant's above terms relate to research/consultation. Therefore, users may overlap, and the services may share a purpose. I consider that there will be an overlap in both uses and users, and there will also be a level of competition between them. I therefore find them similar to a medium degree.

Development of systems for the storage of data; Design and development of computer database software; Design and development of computer software for reading, transmitting and organising data; Designing of data processing systems; Design

services for data processing systems; Design services relating to data processing test tools; Development and creation of computer programmes for data processing; Design and development of software for importing and managing data; Development and maintenance of computer database software; Design and development of electronic database software; Providing information about the design and development of computer software, systems and networks; Design of computer database software; Design services relating to data processing tools; Services for the design of electronic data processing software; Design and development of data processing software; Design and development of data retrieval software; Design and development of computer software for evaluation and calculation of data; Development of systems for the processing of data; Development of computer database software; Design of computer machine and computer software for commercial analysis and reporting; Development and testing of computing methods, algorithms and software; Design and development of data processing systems; Creation of computer programmes for data processing; Development and testing of computing methods, algorithms and software;

32. All of the applicant's above terms relate to the design and development of computer software, some of which is in relation to data processing. The opponent's class 42 specification includes the terms *development of computer platforms* and *software development and research*, as well as *designing and developing mobile applications* and *designing and developing software enabling access to computer resources in cloud computing*. The applicant submits that "the Applicant's services (AI and data processing) are likely to be delivered primarily via cloud computing platforms". I consider that the opponent's terms are broad and would encompass the applicant's terms, and as such these are identical on the principles outlined in *Meric*. If I am wrong about that, I find that the nature and purpose of the terms will be the same as those in the opponent's specification identified above. I consider that there will be an overlap in both uses and users, and there will also be a level of competition between them. I therefore find them similar to a high degree

Computer services for the analysis of data; Computer programming for data processing; Computer programming services for data processing; Computer programming services for data warehousing; Creation of computer programmes for data processing; Computer programming for data processing and communication systems; Programming of computer software for evaluation and calculation of data;

Programming of software for importing and managing data; Technical data analysis; Research in the field of data processing technology; Technical data analysis services;

33. The opponent's specification includes *software development and research* and *development of computer platforms* in class 42. Given the nature of the applicant's terms, these services will encompass computer software. Therefore, there is likely to be some similarity in use, though there is a likely distinction between the 'development' and 'programming' process. However, the services are likely to be accessed by the same users and may utilise the same trade channels. There may be some degree of overlap in the nature of the services though this is likely to be fairly limited, given the difference in the respective processes. The services are unlikely to be competitive, though there may be a complementary relationship between them, as there may be circumstances in which the services are important to one another and the average consumer would expect that they would be offered by a related undertaking. As a result, I find at least a medium degree of similarity between the parties' services.

Maintenance of data processing software; Software engineering services for data processing; Updating of software for data processing; Software engineering services for data processing programs; Updating of software data bases; Engineering services relating to data processing technology; Engineering services relating to automatic data processing;

34. In the absence of submissions, I consider software engineering to encompass design, development, testing and maintenance of software applications. The opponent's class 42 specification includes the term *installation, maintenance, updating and repair of software, software packages and computer platforms*. I consider that the opponent's term is broad and would encompass the applicant's terms, and as such these are identical on the principles outlined in *Meric*.

Computer software integration;

35. In the absence of submissions or evidence, I understand the applicant's term to relate to the process of connecting different software systems together. I would anticipate that this would include an element of design and development. The opponent's class 42 specification includes *software development and research* as

well as *installation and customization of application software for computers*, which will encompass the applicant's term. The services are likely to be accessed by the same users and may utilise the same trade channels. There may be some degree of overlap in the nature of the services, although I appreciate that the process may differ. The services are unlikely to be competitive, although there may be complementarity between them, as there may be circumstances in which the services are important to one another and it would not seem unreasonable for the average consumer to expect that they would be offered by a shared or related undertaking. I find at least a medium degree of similarity between the parties' services.

Rental of software for data processing; Providing temporary use of non-downloadable software for analyzing financial data and generating reports;

36. The services above consist of rental or provision of software for business-related activities. The opponent's specification features the term *rental of software and software packages for industrial information systems, supervision, namely monitoring, controlling and automating technical installations or industrial processes, software, SCADA-type software packages for monitoring and controlling technical installations or industrial processes, software, software packages for industrial communication, data historization, data analysis and processing, information retrieval, software, software packages for communicating with equipment participating in the monitoring or control of technical installations or industrial processes, software, software packages for data historization or information from technical installations, industrial processes or management applications associated with these installations or processes, software, data analysis and processing software packages, software, software packages for creating reports, viewing data on any type of terminal via all communication media, software, application software packages for the web and servers, software, software packages for the security of networks and computer systems, cybersecurity, designing, manufacturing and installing monitoring and control systems, software, hypervision software packages for supervision applications*. The opponent's specification is extremely lengthy; however, I find that the applicant's terms are broad and relate to data processing and analysing of financial data. The opponent's term includes *data analysis and processing, information*

retrieval albeit for industrial information systems and therefore this will be encompassed within the applicant's wider terms and as such these are identical on the principles outlined in *Meric*. If I am wrong about that, the respective services have the same nature, namely provision of the rental of software, and method of use. It is my view that the users of the services may overlap as they will be seeking to access software for data management / processing. I find that as a result of this, trade channels may overlap. I do not find competition or complementarity between the services. Overall, I find these services to be similar to a medium degree.

The average consumer and the purchasing act

37. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods/services. I must then determine the manner in which the goods/services are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited,* [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

> "60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The word "average" denotes that the person is typical. The term "average" does not denote some form of numerical mean, mode or median."

38. The opponent submits that "the degree of attention paid by the average consumer is likely to be at least average". The applicant has not made submissions regarding the average consumer, and I will therefore draw my own conclusions. The average consumer of the goods and services at issue is likely to comprise of both members of the general public and professional consumers (services aimed at businesses, for example). The costs of the various goods and services at issue is likely to vary fairly significantly, as will the frequency of the associated purchase.

39. The purchasing process itself is likely to be primarily visual for both goods and services, involving inspection of websites and brochures. However, I also consider that aural considerations will play a role, for example in discussions with sales representatives. The level of attention will vary across the category of goods services but given the potentially large sums at issue, coupled with the need to ensure, for example, compatibility with existing systems, speed and security, I consider that the level of attention will be reasonably high, though not at the very highest level.

Comparison of trade marks

40. It is clear form *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."

41. 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.

42. The marks to be compared are as follows:

The earlier mark	The contested mark
PANORAMA	**Panoramic AI**

43. The opponent submits:

> "19. The average consumer would not consider the term AI, present in the Later Mark being an acronym for Artificial Intelligence, to have any distinctive characteristics in relation to the goods and services in question being software, the design of software or data analytics. Therefore, the standalone dominant and distinctive element of the Later Mark is the term PANORAMIC.
>
> 20. The standalone dominant and distinctive element of the Later Mark shares the same first 7 letters as the Earlier Mark, PANORAM, differing only in the last 2 characters, IC as opposed to A. As both marks share the identical first 7 characters and are of similar length, the marks are visually highly similar.
>
> 21. The standalone dominant and distinctive element of the Later Mark would be phonetically pronounced as PAN-OR-A-MIC with the Earlier Mark being PAN-OR-A-MA. Both terms are four-syllable words and, as the first three syllables are identical in both, the marks are phonetically highly similar.
>
> 22. The term PANORAMA is a commonly used noun in the English language meaning an *unbroken view of the whole region surrounding an observer* or *a picture/photograph containing a wide view.* The term PANORAMIC is the adjective or panorama and means a *view or picture with a wide view surrounding the* observer. The marks are therefore conceptually identical or at the very least highly similar.
>
> 23. Overall, the Later Mark is highly similar to the Earlier Mark as the visual, phonetic and conceptual similarities between the marks are high".

44. The applicant submits:

“76. Visually, the Applicant does not consider its ‘Panoramic AI’ to be confusingly similar to the Opponent’s ‘PANORAMA’ mark. The Opponent’s mark is made up of 8 letters whereas the Applicant’s mark is made up of 11 letters. The marks are therefore of a different length and construct. The terms ‘PANORAMA’ and ‘Panoramic’ are visually distinguishable by the respective suffixes ‘A’ and ‘ic’. Furthermore, the incorporation of the term ‘AI’ in the Applicant’s mark helps to further distinguish the signs from a visual perspective.

77. Aurally, the marks are distinguishable. The different suffixes ‘A’ and ‘ic’ in the words ‘PANORAMA’ and ‘Panoramic’ helps to aurally differentiate the marks. The inclusion of the letters ‘ic’ in the ‘Panoramic’ element of the Applicant’s mark introduces a hard clipped sound not present in the Opponent’s ‘PANORAMA’ mark. In addition, the letters ‘AI’ which are pronounced separately, i.e. ‘A-I’, introduce aural elements to the Applicant’s mark which are not present in the Opponent’s mark. It follows that a different overall aural impression is created for each mark. The marks are therefore aurally different and distinguishable.

78. Conceptually, the marks are also distinguishable. The Applicant’s mark includes the term "AI" (Artificial Intelligence), shifting the focus of the mark to artificial intelligence technology. The term "AI" implies the use of artificial intelligence to process or interpret expansive data or provide broad insights within a digital, analytical, or machine-learning context. The absence of this term from the Opponent’s mark helps to conceptually distinguish the marks.”

Overall impression

45. I note that both marks are word only marks and are presented in a plain typeface. The earlier mark consists of the word PANORAMA. There are no other elements contributing to the mark and so the overall impression lies in the entirety of the word. The contested mark comprises of ‘Panoramic AI’. In my view, the Panoramic element plays the greater role in the overall impression of the contested mark, particularly in instances where the goods/services are AI related, where the use of ‘AI’ will be descriptive. In respect of the other goods/services which are not AI

related, this element will contribute to the overall impression of the mark but will play a lesser role.

Visual Comparison

46. A word trade mark protects the notional use of the word itself irrespective of font capitalisation or otherwise and therefore the difference in casing will have little impact on the assessment. The competing marks are similar to the extent that the first 7 letters of the marks are identical, being PANORAM. The differences in the marks come from the endings of the words, which are A and IC respectively. In the contested mark, the word PANORAMIC is followed by the letters AI. Visually, the 'AI' element of the contested mark has less impact, with the first word being the dominant feature. As a general rule the beginning of a mark tends to have more impact[5], and this element of the marks will be the consumer's focus when considering the marks. Weighing up the differences as against the similarities, I consider there to be a medium degree of visual similarity between the marks.

Aural Comparison

47. The earlier mark and the first word of the contested mark are ordinary English words and will be pronounced as such. The first 7 letters of the marks are identical and will be pronounced in the same way. The different suffixes A and IC are a point of difference between the marks. The letters 'AI' at the end of the contested mark will likely be given their ordinary English pronunciations and will also act as a point of aural difference. I believe that consumers are likely to pronounce 'AI' letter by letter and as such the mark will be pronounced as 'Panoramic A-I'. 'AI' is a common abbreviation for 'artificial intelligence', and I am of the view that the majority of consumers will know this and will pronounce the contested mark in this way. I do not discount that some consumers may be unaware of this abbreviation and therefore they may pronounce 'AI' as 'ay' or 'eye', but I believe this will only be a small proportion of relevant consumers, with the greater proportion being aware of the abbreviation. I find the respective marks to be aurally similar to a medium degree.

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

Conceptual Comparison

48. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU[6].

49. The opponent submits:

> "The term PANORAMA is a commonly used noun in the English language meaning *an unbroken view of the whole region surrounding an observer* or a *picture/photograph containing a wide view.* The term PANORAMIC is the adjective of panorama and means *a view or picture with a wide view surrounding the observer*. The marks are therefore conceptually identical or at the very least highly similar".

50. The applicant submits:

> "Conceptually, the marks are also distinguishable. The Applicant's mark includes the term "AI" (Artificial Intelligence), shifting the focus of the mark to artificial intelligence technology. The term "AI" implies the use of artificial intelligence to process or interpret expansive data or provide broad insights within a digital, analytical, or machine-learning context. The absence of this term from the Opponent's mark helps to conceptually distinguish the marks."

51. I agree that the meaning of PANORAMA / PANORAMIC is as set out by the opponent, above. Whilst one is a noun and the other is an adjective, both relate to taking in a wide view, and this concept is shared between both marks. The use of 'AI' in the contested mark is a common abbreviation for 'artificial intelligence', and as stated above, I am of the view that the majority of consumers will know this. Whilst 'AI' will act as a conceptual point of difference between the marks, this plays a lesser role, and in instances where the goods/services are AI related it has no trade mark significance. Therefore, PANORAMIC is the dominant element of the mark. I consider that conceptually the marks overall are similar to a high degree.

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[6] *Ruiz Picasso v OHIM* [2006] e.c.r.-I-643; [2006] E.T.M.R 29

Distinctive character of the earlier mark

52. In *Lloyd Schuhfabrik Meyer* 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 *WindsurfingChiemsee 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)."

53. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods/services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it. Although the distinctiveness of a mark can be enhanced by virtue of the use that has been made of it, the opponent has not filed any evidence of use in relation to its mark. Consequently, I have only the inherent position to consider.

54. The opponent's word only mark consists of the word PANORAMA. The word is a widely used dictionary word to the average consumer in the UK. Being a dictionary word which is not descriptive or directly allusive of the goods/services I consider the earlier mark to be inherently distinctive to a medium degree.

Likelihood of confusion

55. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the services down to the responsible undertakings being the same or related.

56. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle, i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's trade mark, the average consumer for the goods/services and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

57. I have found as follows:

- That the goods/services at issue range from being identical to similar to a low degree;

- I have identified that the average consumer will be members of the general public and professionals. They will select the goods/services primarily by visual means, although I do not discount an aural component;

- I have concluded that a between a medium and high degree of attention will be paid;

- The contested mark is visually similar to the earlier mark to a medium degree;
- The contested mark is aurally similar to the earlier mark to a medium degree;
- I have found the contested mark and the earlier mark to be conceptually similar to a high degree;
- I have found the earlier mark overall to be inherently distinctive to a medium degree;

58. I begin by considering a likelihood of direct confusion. The applicant's mark is Panoramic AI in comparison with the opponent's mark, PANORAMA. In this instance, I find PANORAMIC to be the dominant element of the applicant's mark, and as stated above, in instances where the goods/services are AI related, the use of 'AI' will be descriptive, meaning that it is likely to be overlooked. The different suffixes A and IC are a point of difference between the marks, however, as per *El Corte Inglés, SA* the beginning of a mark tends to have more impact, and therefore this difference may be overlooked by the average consumer. Taking the above into account and given that the average consumer will not compare the marks side by side, the similarities between the marks are such that the average consumer will mistakenly recall one for the other. Consequently, I consider there to be a likelihood of direct confusion for all goods/services in the application.

59. In case I am wrong about that, I will also consider indirect confusion. Indirect confusion was described in the following terms by Iain Purvis QC (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*:[7]

> "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 recognised 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

[7] BL O/375/10

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)."

60. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal[8]. I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. The Court of Appeal has also emphasised that, where there is no direct confusion, there must be a "proper basis" for finding indirect confusion.

[8] *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207

61. When assessing indirect confusion, I consider that the different suffixes following PANORAM, namely A and IC, may be mistakenly recalled by the average consumer, particularly due to the words being conceptually similar to a high degree. The 'AI' element of the mark will either be considered as descriptive in instances where the goods/services are AI related, or in respect of the other goods/services which are not AI related, this element will contribute to the overall impression of the mark but will play a lesser role. Consequently, when seeing the AI element in combination with the first element, PANORAMIC, it is likely to be considered a sub-brand or brand extension of the earlier mark, or a related undertaking as it adds a non-distinctive element, and the earlier mark may be mistakenly recalled. Therefore, I do consider that the average consumer would be confused between the two marks and consequently, I find that there exists a likelihood of indirect confusion.

CONCLUSION

62. The opposition is successful. Therefore, subject to any successful appeal, the application will be refused.

COSTS

63. The opponent has been successful and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023. I award the applicant the sum of £550, calculated as follows:

Filing a notice of opposition and considering the Applicant's counterstatement:	£250
Preparing written submissions	£200
Official fee:	£100
Total	**£550**

64. I therefore order Analytics Engines Limited to pay CODRA INGENIERIE INFORMATIQUE the sum of £550. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the final determination of the appeal proceedings.

Dated this 22nd day of October 2025

LA Bailey

For the Registrar

Annex 1

Class 9

Software and software packages; software and software packages for industrial information systems; software packages for supervision, namely, for monitoring, controlling and automating technical installations or industrial processes; SCADA-type software, software packages for monitoring and controlling technical installations or industrial processes; software, software packages for industrial communication, data historization, data analysis and processing, information retrieval; software, software packages for communicating with equipment participating in monitoring or controlling technical installations or industrial processes; software, software packages for data historization or information from technical installations, industrial processes or management applications associated with such installations or processes; software, software packages for data analysis and processing; software, software packages for creating reports, viewing data on all types of terminals via all communication media; software, application software packages for the web and servers; software, software packages for the security of networks and computer systems, cybersecurity, designing, manufacturing and installing monitoring and control systems; software, hypervision software packages for supervision applications.

Class 42

Software development and research; technical project studies; audits with respect to software needs for supervision, industrial communication and historization; creation, design, development and maintenance of software and software packages for industrial information systems, supervision, namely, monitoring, controlling and automating technical installations or industrial processes, software, SCADA-type software packages for monitoring and controlling technical installations or industrial processes, software, software packages for industrial communication, data historization, data analysis and processing, information retrieval, software, software packages for communicating with equipment participating in the monitoring or control of technical installations or industrial processes, software, software packages for data historization or information from technical installations, industrial processes or

management applications associated with these installations or processes, software, data analysis and processing software packages, software, software packages for creating reports, viewing data on any type of terminal via all communication media, software, application software packages for the web and servers, software, software packages for the security of networks and computer systems, cybersecurity, designing, manufacturing and installing monitoring and control systems, software, hypervision software packages for supervision applications; configuring, setting up software; technical advisory services with respect to computer architecture and computer data systems; designing and developing mobile applications; designing and developing software enabling access to computer resources in cloud computing; software as a service [saas] services featuring software and software packages for industrial information systems, supervision, namely, monitoring, controlling and automating technical installations or industrial processes, software, SCADA-type software packages for monitoring and controlling technical installations or industrial processes, software, software packages for industrial communication, data historization, data analysis and processing, information retrieval, software, software packages for communicating with equipment participating in the monitoring or control of technical installations or industrial processes, software, software packages for data historization or information from technical installations, industrial processes or management applications associated with these installations or processes, software, data analysis and processing software packages, software, software packages for creating reports, viewing data on any type of terminal via all communication media, software, application software packages for the web and servers, software, software packages for the security of networks and computer systems, cybersecurity, designing, manufacturing and installing monitoring and control systems, software, hypervision software packages for supervision applications; rental of software and software packages for industrial information systems, supervision, namely, monitoring, controlling and automating technical installations or industrial processes, software, SCADA-type software packages for monitoring and controlling technical installations or industrial processes, software, software packages for industrial communication, data historization, data analysis and processing, information retrieval, software, software packages for communicating with equipment participating in the monitoring or control of technical installations or industrial processes, software, software packages for data historization or information from technical installations, industrial

processes or management applications associated with these installations or processes, software, data analysis and processing software packages, software, software packages for creating reports, viewing data on any type of terminal via all communication media, software, application software packages for the web and servers, software, software packages for the security of networks and computer systems, cybersecurity, designing, manufacturing and installing monitoring and control systems, software, hypervision software packages for supervision applications; installation, maintenance, updating and repair of software, software packages and computer platforms; hosting of servers; consulting services with respect to computer security; designing and developing computer security software; threat analysis regarding computer security for data protection; consultancy services with respect to data security; designing and developing data security systems from technical installations or industrial processes; software update services related to security and computer risk prevention; development of computer platforms; installation and customization of application software for computers; studies of the performance of computer systems; electronic data storage.