O-1058-25

TRADE MARKS ACT 1994

IN THE MATTER OF

TRADE MARK APPLICATION NO. 3874217

BY CRISIL LIMITED

TO REGISTER

AS A TRADE MARK

IN CLASSES 9, 35, 36 & 42

AND OPPOSITION THERETO (UNDER NO. 441911)

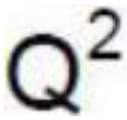
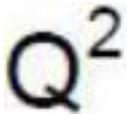
BY

Q SQUARED SOLUTIONS HOLDINGS LIMITED

Background & pleadings

1. CRISIL Limited ("the applicant") applied for the trade mark set out on the title page of this decision on 3 February 2023. The application was published for opposition purposes on 12 May 2023 in classes 9, 35 36 and 42. The goods and services are set out in Annex 1 of this decision.

2. Q Squared Solutions Holdings Limited ("the opponent") opposed the application in full on 12 July 2023. The opponent brought opposition grounds under sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 ("the Act") and relies on the following UK and comparable earlier marks.[1] The goods and services relied on are set out in Annexes 2-5 of this decision.

Earlier registrations	**Goods & services relied on**
UK TM No. 914323109 ("the '109 registration")  Filing date: 1 July 2015 Registration date: 29 October 2015 Expiry date: 1 July 2025	Classes 9, 35, 41, 42, 44 & 45 – see annex 2.
UK TM No. 3115926 ("the '926 registration")  Filing date: 1 July 2015 Registration date: 8 January 2016	Classes 9, 35, 41, 42, 44 & 45 – see annex 3.

[1] Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all rights holders with an existing registered EUTM or International Registration designating the EU. As a result, the opponent's mark was converted into a comparable UK trade mark. Comparable UK marks are now recorded in the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and the original filing dates remain the same.

UK TM No. 914323117 ("the '117 registration")  Filing date: 1 July 2015 Registration date: 29 October 2015 Expiry date: 1 July 2025	Classes 9, 35, 41, 42, 44 & 45 – see annex 4.
UK TM No. 3115927 ("the '927 registration")  Filing date: 1 July 2015 Registration date: 15 January 2016	Classes 9, 35, 41, 42, 44 & 45 – see annex 5.

3. Under section 5(2)(b) the opponent relies on all four of its earlier registrations and claims that the respective goods and services are either identical or highly similar and that the respective marks are similar. As such there exists a likelihood of confusion, including a likelihood of association.

4. Under section 5(3) the opponent relies on its '109 and '926 registrations only. It claims that the application would take unfair advantage of and be detrimental to the distinctive character of opponent's marks. In addition the opponent claims that the application would free ride on the opponent's reputation which would lead to tarnishment and dilution of the distinctive character of the opponent's earlier registrations.

5. Under section 5(4)(a) the opponent relies on the sign Q^2 for which it claims use throughout the UK since 2015 on the following goods and services, namely:

> *Software; downloadable computer software; mobile applications; software for assessing risk; computer software for accessing and manipulating data in a*

database; consultancy services; risk assessment services; data analysis services; services in the field of information technology; analysis services; research services; software as a service (SaaS); providing a website featuring non-downloadable software; providing a website featuring resources, namely, non-downloadable software for research and analysis; computer programming; database management services; data processing services; educational and training services; research and testing services for others; providing online research and analysis portals.

6. The opponent's registrations have filing dates that are earlier than the filing date of the contested application and are therefore considered earlier marks, by virtue of section 6 of the Act. As the registration procedure for all four earlier registrations was completed more than 5 years prior to the filing date of the contested application, they are subject to the use conditions, as per section 6A of the Act. The opponent made a statement of use in respect of all the goods and services it relies on.

7. The applicant filed a counterstatement in which it denied all grounds of the opposition and put the opponent to proof of use.

8. Both sides have been professionally represented during these proceedings. The applicant has been represented by Stevens, Hewlett & Perkins and the opponent by Marks & Clerk LLP.

9. Only the opponent filed evidence during the proceedings and a hearing was requested. I heard the matter on 26 March 2025, via video conference. The opponent was represented by Ms Victoria Jones of Counsel, instructed by Marks & Clerk LLP. The applicant did not appear at the hearing, nor did it submit any written submission in lieu.

10. I make this decision based on a reading of all the material before me and the submissions made at the hearing.

11. 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 that predate the UK's withdrawal from the EU.

EVIDENCE

Opponent's evidence in chief

12. The opponent filed a witness statement, dated 4 January 2024, in the name of Tony Brown, who is the Vice President & General Manager, Vaccines and Central Laboratories for Q² Solutions. Mr Brown attached 18 exhibits. In terms of the opponent's company structure, Mr Brown states that the opponent is a holding company for its subsidiary, namely Q Squared Solutions Limited and the evidence is taken from both entities.

13. Mr Brown states that the opponent's business was formed in 2015 and that its principal commercial activity is "the provision of advanced analytics, technology & analytics solutions, and research & development services to the life sciences industry".[2]

14. With regard to turnover, Mr Brown states that between 2018 and 2022, the opponent had UK sales of around $50M, which he approximates as $10.4M per annum. Mr Brown also gives additional UK turnover figures, taken from the opponent's annual reports, for 2022 as £270,676,000 and for 2023 as £207,605,000

15. In terms of the marks, Mr Brown states that the opponent uses the marks **Q²** and **Q² Solutions** on its goods and services and its written variants namely Q Squared and Q Squared Solutions in text where it is not possible to use the ² superscript. Mr Brown exhibits documentation for Companies House purposes to illustrate this point.[3]

16. Mr Brown exhibits a corporate brochure dated 2021[4] outlining the opponent's goods and services provision, under the headings "Central Laboratory Services",

[2] Tony Brown witness statement, paragraph 5.
[3] Exhibits 1 & 4.
[4] Exhibit 5.

"Precision Medicine", Biomarker Testing", "Speciality Laboratory Testing", Therapeutic Expertise" and "Innovation". The marks **Q² Solutions** and Q² Solutions appear within the brochure. Mr Brown also exhibits several fact sheets dated 2021 and 2022[5] about its laboratory services which indicate that the opponent has international laboratory partners as well as in the UK. In addition to the clinical research and laboratory services, the 2022 brochure also outlines the software and software services that the opponent offers under the marks LABMATRIX and BIOFORTIS.[6] The mark Q² Solutions appears in the header of the brochure on page 65 and on page 66 BIOFORTIS is titled as "a Q² Solutions Company". Mr Brown states that the opponent also offers further software functionality such as data analytics under the **Q², Q² Solutions** and Q² Solutions marks.[7]

17. Mr Brown exhibits a number of invoices for customers in the UK dated between 2018-2022.[8] The invoices are headed with the Q² Solutions mark and contain the opponent's name as Q Squared Solutions Limited within the text. The invoices contain a mix of amounts in US$ and GBP.

18. Mr Brown also exhibits a number of online articles[9] which he states highlight the opponent's reputation. In particular the opponent was named as one of the top ten Genomic Solutions providers in 2019 by Pharma Tech Outlook, a US based publication focussing on the pharmaceutical technology industry. The opponent was also named in the top ten of Clinical Trial Service Management companies in 2022 by Life Science Review online magazine. Mr Brown also exhibits a further edition of Pharma Tech outlook from 2021 which highlights the Top Laboratory Management System Solution Provider in 2021 awarded to BioFortis. The marks Labmatrix and Q² Solutions are mentioned in the article of the text. In terms of UK specific material, Mr Brown exhibits an article from the online Scottish Daily Record newspaper, dated 2019, which sets out the visit of the then First Minister of Scotland, Nicola Sturgeon,

[5] Exhibits 6-10.
[6] Exhibit 12.
[7] Exhibit 13.
[8] Exhibit 17.
[9] Exhibit 18.

to the Q² Solutions Laboratory in Livingston, West Lothian. Several other articles from Scottish media dated 2021 and 2022 are exhibited, highlighting the opponent's joint investment with Scottish Enterprise in establishing a scientific Centre of Excellence in Livingston, under the brand Q² Solutions for laboratory and scientific research services.

Relevant period

19. My first task is to establish whether, or to what extent, the opponent has shown genuine use of its earlier registrations within the 'relevant period'. The relevant period is defined as being a period of five years ending with the filing date of the contested application. In this case the relevant period is 4 February 2018 to 3 February 2023.

Relevant statutory provision: Section 6A:

20. "(1) This section applies where,

> (a) an application for registration of a trade mark has been published,
>
> (b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and
>
> (c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section "the relevant period" means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

> (a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes -

(a) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.”

21. As the opponent’s ‘109 and ‘117 registrations are comparable marks, paragraph 7 of Part 1, Schedule 2A of the Act is also relevant. It reads:

“7.— (1) Section 6A applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the relevant period referred to in section 6A(3)(a) (the "five-year period") has expired before IP completion day—

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A(3) and (4) to the United Kingdom include the European Union.

(3) Where [IP completion day] falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day —

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM ; and

(b) the references in section 6A to the United Kingdom include the European Union".

22. Section 100 of the Act states that:

"100. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it."

23. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

"105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider Corp* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'*[2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C–720/18 and C–721/18 *Ferrari SpA v DU* [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at[36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark,

including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32]."

24. I also find the following case law to be helpful where in *Awareness Limited v Plymouth City Council*[10], Mr Daniel Alexander Q.C. (as he was then) as the Appointed Person stated that:

"22. The burden lies on the registered proprietor to prove use..... However, it is not strictly necessary to exhibit any particular kind of documentation, but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known

[10] Case BL O/236/13.

to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public."

and further at paragraph 28:

"28. ..... I can understand the rationale for the evidence being as it was but suggest that, for the future, if a broad class, such as "tuition services", is sought to be defended on the basis of narrow use within the category (such as for classes of a particular kind) the evidence should not state that the mark has been used in relation to "tuition services" even by compendious reference to the trade mark specification. The evidence should make it clear, with precision, what specific use there has been and explain why, if the use has only been narrow, why a broader category is nonetheless appropriate for the specification. Broad statements purporting to verify use over a wide range by reference to the wording of a trade mark specification when supportable only in respect of a much narrower range should be critically considered in any draft evidence proposed to be submitted."

25. In *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*[11], Mr Geoffrey Hobbs Q.C. (as he was then) also sitting as the Appointed Person stated that:

"21. The assessment of a witness statement for probative value necessarily focuses upon its sufficiency for the purpose of satisfying the decision taker with regard to whatever it is that falls to be determined, on the balance of probabilities, in the particular context of the case at hand. As Mann J. observed

[11] Case BL O/404/13.

in *Matsushita Electric Industrial Co. v. Comptroller- General of Patents* [2008] EWHC 2071 (Pat); [2008] R.P.C. 35:

> [24] As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is required depends on the nature of the inquiry and the nature and purpose of the decision which is to be made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or her age is, or what their date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no universal rule as to what level of evidence has to be provided in order to satisfy a decision-making body about that of which that body has to be satisfied.

22. When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can legitimately be maintained, the decision taker must form a view as to what the evidence does and just as importantly what it does not *'show'* (per Section 100 of the Act) with regard to the actuality of use in relation to goods or services covered by the registration. The evidence in question can properly be assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use."

Variant use of the earlier registrations

26. The opponent's earlier registrations are Q² and Q² Solutions. Within the evidence there is use of another mark, namely 

. The question I must consider is whether use in this form constitutes an acceptable variant use of the earlier registered marks. Clearly the device  is a distinctive element in its own right, although it is a rule of thumb that where marks consist of a device and word element,

the word element will likely dominate. Moreover, the opponent, in its skeleton argument,[12] referred me to *Colloseum Holdings AG v Levi Strauss & Co*[13] which states at [35] that:

> "a registered trade mark that is used only as part of a composite mark or in conjunction with another mark must continue to be perceived as indicative of the origin of the product at issue for that use to be covered by the term 'genuine use' within the meaning of Article 15(1)."

27. On the basis of the guidance given above, I find Q² Solutions to be an acceptable variant of the earlier registered marks.

Sufficiency of use

28. The evidence demonstrates that the opponent has used its earlier registrations for the **Q² Solutions** mark for its scientific and laboratory services classes. The opponent has demonstrated strong turnover figures and evidenced customer invoices in the UK during the relevant period. The invoices, although for UK customers, did contain a mix of US$ and GBP in the remittance totals. During the hearing, Ms Jones sought to clarify that the choice of currency is often down to the preference of the customer, and US$ can be preferable for customers who have multinational companies or collaborations. I note that the UK invoices charged for laboratory services undertaken in the UK and at various other global locations and I also note that the opponent advertises its services on a global basis. Some of the fact sheets (exhibits 6-10) appear to be targeted at an American audience as they make references to "FDA approval", which I understand to be the US Food & Drug Administration. I also note that the contact details given in the brochures and fact sheets refer to toll free US contact telephone numbers although they also reference a UK telephone number. The publications referenced in the evidence, namely Pharma Tech Outlook and Life Sciences Review also appear to be US facing publications. However it is probable that there may be a global scientific audience who access these publications online.

[12] Opponent's skeleton argument, paragraph 13f.
[13] Case C-12/12.

29. Notwithstanding my assessment above, I find there are some deficiencies within evidence. In particular there is little to no use of the earlier **Q²** solus mark. I found two occurrences where the solus mark is used in exhibit 13. The remainder of the evidence demonstrates use of **Q² Solutions** and Q² Solutions only. In conclusion the use of **Q²** solus is insufficient and I do not find that the opponent can rely on the **Q²** solus registrations.

30. With regard to the class 9 software goods and the class 42 software (provided as a service), I find there is very limited use of the **Q² Solutions** registrations inasmuch as the opponent's software product bears the trade mark LABMATRIX. This is provided by a company called BioFortis which itself is one of the opponent's companies. The 2021 brochure at Exhibit 5[14] has a self-contained illustration of this point, set out below.


Clinical Trial Sample Tracking (CTST)

Patient samples are the lifeblood of your clinical trials. Labmatrix® from BioFortis (a Q² Solutions company) is a web-accessible clinical & translational research management sample and consent tracking software system.

31. The **Q² Solutions** registration appears to be two steps removed from LABMATRIX which is the mark shown in evidence used on the software goods and software related services themselves. I acknowledge that the opponent was demonstrating that a software solution is offered as part of its wider research, laboratory and clinical services. However to my mind the software goods and services are branded as LABMATRIX which is the mark seen by the customer and therefore the opponent cannot rely on the **Q² Solutions** registrations for these goods and services.

32. In relation to data management, storage, searching and analytics services, there is some usage of the **Q² Solutions** registrations applied to these services although I note that there are additional trade marks used as well for these services, namely IQVIA Infosario and AWS Cloud.

[14] Exhibit 5, page 24.

32. Taking all of the above into account I find that the opponent has demonstrated use of its registrations, namely **Q² Solutions** and an acceptable variant being 

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Framing a fair specification

33. The next stage is to decide whether the opponent's use entitles it to rely on all of the goods and services for which its earlier marks are registered based on my assessments given above. In framing a fair specification, I rely on guidance given in the following judgments. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*[15], Mr Geoffrey Hobbs Q.C. as the Appointed Person summed up the law as being:

> "In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned."

34. Moreover in *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors*[16], Mr Justice Carr summed up the law relating to partial revocation as follows (at [47]):

> "iii) Where the trade mark proprietor has made genuine use of the mark in respect of some goods or services covered by the general wording of the specification, and not others, it is necessary for the court to arrive at a fair specification in the circumstance, which may require amendment; *Thomas Pink Ltd v Victoria's Secret UK Ltd* [2014] EWHC 2631 (Ch) ("Thomas Pink") at [52].
>
> iv) In cases of partial revocation, pursuant to section 46(5) of the Trade Marks Act 1994, the question is how would the average consumer fairly describe the

[15] BL O/345/10.
[16] [2016] EWHC 3103 (Ch).

services in relation to which the trade mark has been used; *Thomas Pink* at [53].

v) It is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do. For example, in *Pan World Brands v Tripp Ltd* (Extreme Trade Mark) [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally; *Thomas Pink* at [53].

vi) A trade mark proprietor should not be allowed to monopolise the use of a trade mark in relation to a general category of goods or services simply because he has used it in relation to a few. Conversely, a proprietor cannot reasonably be expected to use a mark in relation to all possible variations of the particular goods or services covered by the registration. *Maier v Asos Pl*c [2015] EWCA Civ 220 ("Asos") at [56] and [60].

vii) In some cases, it may be possible to identify subcategories of goods or services within a general term which are capable of being viewed independently. In such cases, use in relation to only one subcategory will not constitute use in relation to all other subcategories. On the other hand, protection must not be cut down to those precise goods or services in relation to which the mark has been used. This would be to strip the proprietor of protection for all goods or services which the average consumer would consider to belong to the same group or category as those for which the mark has been used and which are not in substance different from them; *Mundipharma AG v OHIM* (Case T-256/04) ECR II-449; EU:T:2007:46."

Class 9

35. As stated above, I find there was insufficient evidence of use of the opponent's **Q² Solutions** registrations on the class 9 goods.

Class 35

36. I find the opponent's evidence has demonstrated genuine use for the services as registered in class 35.

Class 41

37. I find the opponent's evidence has demonstrated genuine use for the services as registered in class 41.

Class 42

38. I find the opponent's evidence has demonstrated genuine use only for the services set out below, namely:

> *Clinical research and testing services, in the fields of clinical trials, health care, pharmaceuticals, pharmacogenomics, biomarker, biopharmaceutical, medical device and diagnostics; product development consultation in the fields of health care, medical products and devices; health care research and development services; medical and laboratory testing services; laboratory testing services in the fields of health care, clinical trials, pharmaceutical, pharmacogenomics, biomarker, biopharmaceutical, medical device and diagnostics; consultancy pertaining to clinical trials, health care, medical diagnostics, medical devices, pharmacology, pharmacogenomics, biomarkers and biopharmaceutical research; managing, monitoring and coordinating clinical studies on human subjects for others; medical and scientific research in the fields of healthcare and medical diagnostics; providing an online searchable database via the internet in the fields of clinical trials, companion diagnostics, pharmaceutical research, pharmacogenomic and biomarker consultation, biopharmaceutical consultation, medical devices and diagnostics, life sciences research, and medical research.*

Class 44

39. I find the opponent's evidence has demonstrated genuine use for the services as registered in class 44.

Class 45

40. I find the opponent's evidence has demonstrated genuine use for the services as registered in class 45.

Section 5(2)(b)

41. As no sufficient use of Q² solus was produced in evidence, I will proceed to consider only the Q² Solutions registrations under the section 5(2)(b) ground.

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

> "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".

43. Section 5A is also relevant and reads:

> "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".

44. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, EU:C:1997:528, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, EU:C:1998:442, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, EU:C:1999:323, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, EU:C:2000:339, *Matratzen Concord GmbH v OHIM*, Case C-3/03, EU:C:2004:233, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, EU:C:2005:594, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P, EU:C:2007:333, and *Bimbo SA v OHIM*, Case C-591/12P, EU:C:2016:591:

> (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 will wrongly 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

45. In *Canon*[17], the Court of Justice of the European Union ("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."

46. Guidance on this issue has also come from Jacob J. (as he then was) in *British Sugar Plc v James Robertson & Sons Ltd* (the *Treat* case)[18], where he identified the factors for assessing similarity as:

(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.

[17] *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, C-39/97.
[18] [1996] R.P.C. 281.

47. In addition I find the following case law to be helpful when in *Gérard Meric v Office for Harmonisation in the Internal Market,*[19] the General Court 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 fur 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."

48. The goods and services to be compared are set out below:

Services relied on by opponent	**Applicant's goods and services**
	9: Software for general analytical purposes and for carrying out economic, industrial, and corporate research and risk assessment for financial institutions; downloadable computer software and mobile applications software for accessing online business and financial information, financial indices, financial and credit ratings, market research, market reports, data analytics, stock prices, equity research, investment funds, risk solutions, investment, directories featuring commodities market information, market data and pricing data; Computer software for accessing and manipulating data in a financial database, and creating customized financial models, charts, analyses, and reports based on a financial database;

[19] Case T- 133/05.

	computer software that performs risk portfolio analytics and quantitative risk analyses.
35: Computerized database management and data processing services in the pharmaceutical, pharmacogenomic, biomarker, biopharmaceutical, medical device and diagnostics fields; providing business information, namely, information related to regulatory approval and marketing of drugs, devices, health care or medical products and services, and biologics; business research in the field of health care; business consultation in the field of healthcare; business technology consulting and services in the healthcare, medical, health management and disease management fields.	*35: Business management consultancy services; business data analysis; providing data benchmarking information and business intelligence services; business research and data analysis services in the field of data management; business consulting, advising businesses in strategic management and development of overall corporate strategy and business initiatives; corporate management consulting services to assist executives in business decision making; advising businesses through the use of business consulting tools and techniques that enable strategic business decision making; providing business project management consulting services, in particular, predicting project outcomes and modifying project implementation to increase likelihood of success in business transformation projects; providing information in the field of business management; providing business information in the field of strategic management and development of overall corporate strategy and business initiatives; Business consultancy in the field of information*

	technology and electronic business transactions; management consultancy services.
	36: Financial Consultancy services; Providing financial information services, in particular market data, pricing data, market reports, benchmarking, and analytics; financial risk assessment services; financial analysis and consultation, including compiling and analyzing statistics, data, and other sources of information for financial purposes; providing financial assessment services to banks, hedge funds, private equity firms, and asset management firms.
41: Educational and training services, namely, conducting training programs, seminars, classes, conferences and workshops in the fields of health care, health policy, health management, and disease management, patient management, and pharmaceutical, pharmacogenomic, biomarker, medical device and diagnostics, and health products, and distributing course materials in connection therewith; teaching and training in information technology for the healthcare industry; educational services, namely, conducting healthcare conferences on	

issues surrounding safety and effectiveness after drugs and devices are approved by regulatory agencies.	
42: Clinical research and testing services, in the fields of clinical trials, health care, pharmaceuticals, pharmacogenomics, biomarker, biopharmaceutical, medical device and diagnostics; product development consultation in the fields of health care, medical products and devices; health care research and development services; medical and laboratory testing services; laboratory testing services in the fields of health care, clinical trials, pharmaceutical, pharmacogenomics, biomarker, biopharmaceutical, medical device and diagnostics; consultancy pertaining to clinical trials, health care, medical diagnostics, medical devices, pharmacology, pharmacogenomics, biomarkers and biopharmaceutical research; managing, monitoring and coordinating clinical studies on human subjects for others; medical and scientific research in the fields of healthcare and medical diagnostics; providing an online searchable database via the internet in the fields of clinical trials, companion diagnostics, pharmaceutical research, pharmacogenomic and biomarker consultation, biopharmaceutical	*42: Services in the field of information technology and electronic business transactions; Industrial analysis and research service; Computer programming, in particular for Internet-based information technology systems; Software as a service featuring software in the field of commodities markets, including market data, pricing data, market reports, analytics; database services; providing a website featuring non-downloadable software for business management in the fields of finance, equity, fixed-income, risk and corporate policy, regulatory compliance, and financial crimes; providing a website featuring resources, namely, non-downloadable software for research and analysis in the fields of finance, equity, fixed-income, risk and corporate policy, regulatory compliance, and financial crimes.*

consultation, medical devices and diagnostics, life sciences research, and medical research.	
44: Providing health, medical, pharmaceutical, pharmacogenomic, biomarker, health management and disease management information to others; medical evaluation services; consulting services in the fields of health care, medicine, life sciences, and pharmaceuticals, biopharmaceuticals, biomarkers, pharmacogenomics, medical device and diagnostics; providing an online interactive computer database in the field of healthcare; providing an Internet website portal in the fields of medical services, health care, health management and disease management; providing an online searchable database via the Internet in the fields of medical services, medical devices and diagnostics, health care, health management and disease management.	
45: Regulatory compliance research and consulting services in the fields of health care, clinical trials, development and testing of drugs, devices, biologics and methodologies used in the pharmaceutical industry, biotechnology industry and the medical device and diagnostics industry; conducting	

regulatory compliance audits for others in the fields of health care, clinical trials, pharmaceutical, pharmacogenomic, biomarker, biopharmaceutical, and medical device and diagnostics; consulting services in the fields of regulatory affairs, manufacturing compliance and validation procedures, namely, reviewing standards and practices to assure compliance with clinical trial regulations, medical and laboratory testing services; providing regulatory information, namely, providing information regarding the examination and approval process of pharmaceutical, biotechnical, medical and diagnostic products and methodologies by governmental regulatory bodies; providing regulatory implementation services relating to the development and validation of drugs, devices and biologics, namely, assisting others in implementing procedures that comply with regulatory requirements.	

Class 9

49. The applicant's class 9 specification broadly covers software goods used in the financial services sector. I have already found that the opponent cannot rely on its software goods or related services under its marks **Q² Solutions.** I cannot find any similarity between the applicant's class 9 goods and the opponent's remaining services.

Class 35

50. The applicant's class 35 services broadly cover business management consultancy services at large so are not limited to any particular sectors. The opponent's class 35 services cover business management consultancy services relating to the life sciences sector. Therefore I find that the nature and purpose of the services is broadly the same, namely to provide businesses with advice and guidance which enables success, growth and improvement. There may be a crossover of users and trade channels. As such I find there is a medium degree of similarity.

Class 36

51. The applicant's class 36 specification broadly covers financial consultancy and information services provided to financial services providers such as banks and other such institutions. I cannot find any similarity between the applicant's class 36 services and the opponent's services.

Class 42

52. The applicant's class 42 specification contains the term *Industrial analysis and research service* at large. I find these terms are sufficiently broad enough to cover the opponent's services namely *Clinical research and testing services, in the fields of clinical trials, health care, pharmaceuticals, pharmacogenomics, biomarker, biopharmaceutical, medical device and diagnostics; product development consultation in the fields of health care, medical products and devices; health care research and development services; medical and laboratory testing services; laboratory testing services in the fields of health care, clinical trials, pharmaceutical, pharmacogenomics, biomarker, biopharmaceutical, medical device and diagnostics; consultancy pertaining to clinical trials, health care, medical diagnostics, medical devices, pharmacology,*

pharmacogenomics, biomarkers and biopharmaceutical research; managing, monitoring and coordinating clinical studies on human subjects for others; medical and scientific research in the fields of healthcare and medical diagnostics. Therefore I find this to be considered identical under the *Meric* principle.

53. The applicant also has the term *database services* at large in its specification. I find this term is broad enough to cover the opponent's services namely *providing an online searchable database via the internet in the fields of clinical trials, companion diagnostics, pharmaceutical research, pharmacogenomic and biomarker consultation, biopharmaceutical consultation, medical devices and diagnostics, life sciences research, and medical research.* Therefore it is considered identical under the *Meric* principle.

54. The remaining services in the applicant's 42 specification are limited to use in the financial sector and are there dissimilar to the opponent's services.

55. Drawing together all my assessments on the goods and services comparison, I have found the following to be dissimilar, namely:

> *9: Software for general analytical purposes and for carrying out economic, industrial, and corporate research and risk assessment for financial institutions; downloadable computer software and mobile applications software for accessing online business and financial information, financial indices, financial and credit ratings, market research, market reports, data analytics, stock prices, equity research, investment funds, risk solutions, investment, directories featuring commodities market information, market data and pricing data; Computer software for accessing and manipulating data in a financial database, and creating customized financial models, charts, analyses, and reports based on a financial database; computer software that performs risk portfolio analytics and quantitative risk analyses.*
>
> *36: Financial Consultancy services; Providing financial information services, in particular market data, pricing data, market reports, benchmarking, and analytics; financial risk assessment services; financial analysis and*

consultation, including compiling and analyzing statistics, data, and other sources of information for financial purposes; providing financial assessment services to banks, hedge funds, private equity firms, and asset management firms.

42: Services in the field of information technology and electronic business transactions; Computer programming, in particular for Internet-based information technology systems; Software as a service featuring software in the field of commodities markets, including market data, pricing data, market reports, analytics; providing a website featuring non-downloadable software for business management in the fields of finance, equity, fixed-income, risk and corporate policy, regulatory compliance, and financial crimes; providing a website featuring resources, namely, non-downloadable software for research and analysis in the fields of finance, equity, fixed-income, risk and corporate policy, regulatory compliance, and financial crimes.

56. Where there is dissimilarity between the terms in the respective specifications I have assessed, it follows that there is no likelihood of confusion to be considered for these services under the present ground.[20]

Average consumer and the purchasing process

57. I next consider who the average consumer is for the goods and services at issue and how they are purchased. It is settled case law that the average consumer is deemed to be reasonably well informed and reasonably observant and circumspect.[21] For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question.[22]

58. The average consumer for the contested goods and services will be businesses and professional users. There are a variety of contested goods and services relating

[20] *eSure Insurance v Direct Line Insurance,* [2008] ETMR 77 CA.
[21] *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).
[22] *Lloyd Schuhfabrik Meyer,* Case C-342/97.

to managing businesses in the financial sector so are likely be expensive and less frequent purchases. The attentiveness shown during the purchasing process is likely to vary but a customer would have in mind the kind and suitability of the goods and services to be purchased, such as software functionality, levels of data analysis required and suitability for financial and security regulatory compliance. In my view then the average consumer is likely to pay somewhere between a medium to high degree of attention during the purchasing process.

59. The goods and services are likely to be selected from websites, and advertising material (both printed and online equivalents). Consequently, there will be a predominantly visual consideration in the purchasing process. However, I do not discount an aural component, such as receiving technical advice, to the purchase.

Mark comparisons

60. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) 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 stated at paragraph 34 of its judgment in *Bimbo SA v OHIM*[23], that:

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

61. 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

[23] Case C-591/12P.

and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

62. The respective trade marks to be compared are:

Opponent's earlier registrations	**Applicant's mark**
Q² Solutions	Q² Client Intelligence

63. The opponent's earlier registrations comprise the letter and number combination namely a capital letter Q and the number 2 in superscript and contain the additional word, namely **Solutions.** There is no other aspect to the marks. I find that the word **Solutions** is not negligible within the mark, but it is less distinctive than the **Q²** element which contributes more to the overall impression.

64. The applicant mark also contains a letter and number combination, namely a capital letter Q and the number 2 in superscript, rendered in red. This is followed by the word **Client.** Both elements are positioned above the word **Intelligence**. The letters 'I' in the middle of both the words **Client** and **Intelligence** have a red square above them. To my mind, the words **Client Intelligence** are non distinctive for informational type services and the **Q²** element will be the dominant and distinctive element in the overall impression.

65. In a visual comparison, all marks share the letter and number combination **Q²** at the beginning of the respective marks. Although the applicant's **Q²** element is rendered in red, it is not limited to colour and therefore will have protection in black and white. Moreover, it is settled case law[24] that the beginnings of words tend to have greater visual and aural impact on consumers and I find that to be the case here. The points of difference arise from the second and less distinctive elements of the respective marks, namely the word **Solutions** in the opponent's '117 and '927 registrations and

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

Client Intelligence in the applicant's mark. Taking all this into account, I find there is a medium degree of visual similarity between the opponent's '117 and '927 registrations and the applicant's mark.

66. In an aural comparison the element in common to all marks is **Q²,** which can be pronounced as Q Squared if consumers are familiar with the mathematical construction or in the alternative as Q TWO. Either way it will be the same for both marks. The additional word elements, **Solutions** and **Client Intelligence**, will be given their usual pronunciation. Overall, I find there is a medium degree of aural similarity between the opponent's '117 and '927 registrations and the applicant's mark.

67. In a conceptual comparison, the superscript element, namely ², may be seen as relating to the mathematical concept of a squared number. When placed with the letter Q, the concept could be seen as Q Squared. If the ² element is not seen as squared, but as the number 2, then the concept brought to mind will simply be that of letter and number combination. Either way it is the same for both parties. The other word elements of the respective marks, namely **Solutions** and **Client Intelligence** are known dictionary words so will bring to mind their usual meanings. I find that as these words are either weakly distinctive or simply non distinctive, they are likely to be seen as being qualified by the letter and number **Q²,** that is to say would be seen as the provider of **Solutions** or **Client Intelligence**.

68. The **Q²** element gives the respective marks a medium degree of conceptually similarity with the other word elements, whilst playing a lesser role, acting as points of difference overall.

Distinctive character of the earlier registered trade mark

69. 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, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it.

70. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*,[25] the CJEU stated that:

> "22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR 1-2779, 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)."

71. I will first consider the inherent distinctiveness of the earlier registrations. As previously stated, the earlier marks both consist of the same letter, number and word combination namely **Q² Solutions.** The letter and number **Q²** are distinctive in relation to the registered goods and services**.** The word **Solutions** has much less distinctiveness and tends to be the type of word which businesses might use to for goods and services which have multiple applications. Overall I find the earlier marks to be inherently distinctive to a medium degree.

72. I turn now to consider whether the opponent can claim enhanced distinctiveness of its earlier registrations, because of the use made of them. The relevant market I

[25] Case C-342/97.

must consider is the UK and I remind myself of the *Windsurfing Chiemsee* factors set out above as to what I should consider. I previously assessed the evidence at paragraphs 12-18. The opponent has provided sufficient turnover figures and a spread of UK based customer invoices. It is clear from the evidence that the opponent has a global reach but there was sufficient evidence to show that its UK base in Scotland has attracted attention as its centre of excellence for scientific and laboratory services in the life science sector. Overall I find that the opponent is able to claim enhanced distinctiveness to a high degree for those services I have identified at paragraphs 36-40.

Likelihood of confusion

73. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The factors are interdependent and include the principle that 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 registrations, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alert to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

74. So far in this decision, I have found that:

- Some of the services are identical and similar to varying degrees although some goods and services were dissimilar.
- There is a medium degree of visual and aural between the respective marks.
- The is a medium degree of conceptual similarity for the shared Q^2 element.

- The average consumers for the contested goods and services are businesses and professional users paying a medium to high degree of attention in a predominately visual purchasing process.
- The earlier registrations are inherently distinctive to a medium degree but for the services identified at paragraph 36-40, the distinctiveness has been enhanced to a high degree.

75. Given that the most distinctive element of the respective marks is the letter and word combination **Q²** and accounting for the principle of imperfect recollection, I consider that there is a likelihood that average consumers will only recall this element. In these circumstances, the marks are likely to be mistakenly recalled or misremembered as each other, when used on services that are similar to a medium degree or identical. Consequently, I find there to be a likelihood of direct confusion.

76. In case I am wrong in the above finding, I will consider whether there is a likelihood of indirect confusion. In *L.A. Sugar Limited v By Back Beat Inc*,[26] Mr Iain Purvis Q.C., sitting as the Appointed Person, explained that:

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

[26] Case BL O/375/10.

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)".

77. I bear in mind that the categories listed above in *L.A. Sugar* are not an exhaustive list of all the ways in which indirect confusion can occur. They are merely examples of the way in which it could or tends to occur.

78. If the additional word elements, namely **Solutions** and **Client Intelligence**, are recalled, then to my mind they would be seen as consistent with a brand extension or sub-brand. These word elements are non-distinctive and fall in to the category envisioned in the (b) sub- category set out above. The average consumer will perceive **Q²** as the distinctive element of the respective marks and see the **Client Intelligence** brand sitting alongside the **Solutions** brand, both coming from the opponent's stable of services. Consequently, I find there is a likelihood of indirect confusion for those services I have identified as identical and similar.

79. The opposition under section 5(2)(b) is partially successful for the following services:

> *35: Business management consultancy services; business data analysis; providing data benchmarking information and business intelligence services; business research and data analysis services in the field of data management; business consulting, advising businesses in strategic management and development of overall corporate strategy and business initiatives; corporate management consulting services to assist executives in business decision making; advising businesses through the use of business consulting tools and techniques that enable strategic business decision making; providing business project management consulting services, in particular, predicting project outcomes and modifying project implementation to increase likelihood of success in business transformation projects; providing information in the field of business management; providing business information in the field of strategic management and development of overall corporate strategy and business initiatives; Business consultancy in the field of information technology and electronic business transactions; management consultancy services.*
>
> *42: Industrial analysis and research service; database services.*

80. For those goods and services set out below, which have survived the attack under section 5(2)(b), I will go on and consider the opposition under section 5(3).

> *9: Software for general analytical purposes and for carrying out economic, industrial, and corporate research and risk assessment for financial institutions; downloadable computer software and mobile applications software for accessing online business and financial information, financial indices, financial and credit ratings, market research, market reports, data analytics, stock prices, equity research, investment funds, risk solutions, investment, directories featuring commodities market information, market data and pricing data; Computer software for accessing and manipulating data in a financial database, and creating customized financial models, charts, analyses, and reports based*

on a financial database; computer software that performs risk portfolio analytics and quantitative risk analyses.

36: Financial Consultancy services; Providing financial information services, in particular market data, pricing data, market reports, benchmarking, and analytics; financial risk assessment services; financial analysis and consultation, including compiling and analyzing statistics, data, and other sources of information for financial purposes; providing financial assessment services to banks, hedge funds, private equity firms, and asset management firms.

42: Services in the field of information technology and electronic business transactions; Computer programming, in particular for Internet-based information technology systems; Software as a service featuring software in the field of commodities markets, including market data, pricing data, market reports, analytics; providing a website featuring non-downloadable software for business management in the fields of finance, equity, fixed-income, risk and corporate policy, regulatory compliance, and financial crimes; providing a website featuring resources, namely, non-downloadable software for research and analysis in the fields of finance, equity, fixed-income, risk and corporate policy, regulatory compliance, and financial crimes.

Section 5(3)

81. The opponent opposed the application under section 5(3), based on its earlier '109 and '926 registrations for **Q²** and for which it claims a reputation. It claims that the application would take unfair advantage of and be detrimental to the distinctive character of opponent's marks. In addition the opponent claims that the application would free ride on the opponent's reputation which would lead to tarnishment and dilution of the distinctive character of the opponent's earlier registrations.

82. I believe I can deal with this ground very briefly. In my assessment of the opponent's evidence I did not find any extensive use of the **Q²** mark solus. The marks most used in evidence were **Q² Solutions** and its stylised variant. Therefore in my view any reputation would reside in the **Q² Solutions** marks as wholes. Even if I were

to consider that **Q²** has some reputation as the dominant and most distinctive element of the **Q² Solutions** marks, it would be for the services for which I have already found confusion under section 5(2)(b). To my mind, the opponent's reputation would not be sufficient enough to overcome the distance between the goods and services for which the section 5(2)(b) ground failed. Therefore the section 5(3) ground does not offer the opponent any greater prospect of success.

Section 5(4)(a)

83. Under this ground the opponent relies on Q², the sign for which it claims use throughout the UK since 2015 on the following goods and services, namely: *Software; downloadable computer software; mobile applications; software for assessing risk; computer software for accessing and manipulating data in a database; consultancy services; risk assessment services; data analysis services; services in the field of information technology; analysis services; research services; software as a service (SaaS); providing a website featuring non-downloadable software; providing a website featuring resources, namely, non-downloadable software for research and analysis; computer programming; database management services; data processing services; educational and training services; research and testing services for others; providing online research and analysis portals.*

84. I believe I can also deal with this ground briefly. In my evidence assessment, I found very little use of the **Q²** solus sign. Where there was use of **Q²** solus, in particular in exhibit 13, the sign was used in relation to a lab management system in conjunction with another mark, namely IQVIA Infosario, which appears to be the brand for the data analytics platform, which would likely cover *data analysis services; database management services; data processing services; providing online research and analysis portals.* I do not find that the opponent's use in relation to **Q²** is sufficient to support a finding of goodwill in relation to these services.

85. In relation to software goods and software as a service, namely *Software; downloadable computer software; mobile applications; software for assessing risk; computer software for accessing and manipulating data in a database; consultancy services; software as a service (SaaS); providing a website featuring non-downloadable software; providing a website featuring resources, namely, non-*

downloadable software for research and analysis; *computer programming,* I found that the mark used in evidence was LABMATRIX which was said to be provided by BIOFORTIS, a company owned by Q² Solutions. Goodwill will accrue to the undertaking the consumers believe to be responsible for providing the goods and services. For these goods and services, that undertaking seems likely to be regarded as BIOFORTIS and not Q² Solutions Limited who are a further step away.

86. In relation to the remaining services, namely *consultancy services; risk assessment services; services in the field of information technology; analysis services; research services; educational and training services; research and testing services for others,* the evidence provided points to use of the mark **Q² Solutions** and not **Q²** solus. Moreover the evidence also points to these services being used in the life sciences sector, whereas the applicant's goods and services are directed towards the financial sector. Whilst it is settled caselaw[27] that parties do not have to operate in a common field of activity, in *Stringfellow v. McCain Foods (G.B.) Ltd.*[28] Slade L.J. said (at page 535) that the further removed from one another the respective fields of activities, the less likely was it that any member of the public could reasonably be confused into thinking that the one business was connected with the other. I find that to be the case here. Even if I were to find some goodwill in **Q²** solus, the respective services are too far away from each other for misrepresentation to occur.

87. The section 5(4)(a) ground fails.

Conclusion

88. The opposition was partially successful under section 5(2)(b), and subject to any appeal against this decision, the application should be refused for the services set out in paragraph 79, but it can proceed to registration for the goods and services set out in paragraph 80.

[27] *Harrods Limited v Harrodian School Limited* [1996] RPC 697 (CA).

[28] [1984] R.P.C. 501.

Costs

89. As both parties can be considered to have had a measure of success in these proceedings, then I do not consider it appropriate to make an award of costs.

Dated this 13th day of November 2025

June Ralph
For the Registrar
The Comptroller-General

Annex 1

Applicant's goods and services:

9: Software for general analytical purposes and for carrying out economic, industrial, and corporate research and risk assessment for financial institutions; downloadable computer software and mobile applications software for accessing online business and financial information, financial indices, financial and credit ratings, market research, market reports, data analytics, stock prices, equity research, investment funds, risk solutions, investment, directories featuring commodities market information, market data and pricing data; Computer software for accessing and manipulating data in a financial database, and creating customized financial models, charts, analyses, and reports based on a financial database; computer software that performs risk portfolio analytics and quantitative risk analyses.

35: Business management consultancy services; business data analysis; providing data benchmarking information and business intelligence services; business research and data analysis services in the field of data management; business consulting, advising businesses in strategic management and development of overall corporate strategy and business initiatives; corporate management consulting services to assist executives in business decision making; advising businesses through the use of business consulting tools and techniques that enable strategic business decision making; providing business project management consulting services, in particular, predicting project outcomes and modifying project implementation to increase likelihood of success in business transformation projects; providing information in the field of business management; providing business information in the field of strategic management and development of overall corporate strategy and business initiatives; Business consultancy in the field of information technology and electronic business transactions; management consultancy services.

36: Financial Consultancy services; Providing financial information services, in particular market data, pricing data, market reports, benchmarking, and analytics; financial risk assessment services; financial analysis and consultation, including compiling and analyzing statistics, data, and other sources of information for financial

purposes; providing financial assessment services to banks, hedge funds, private equity firms, and asset management firms.

42: Services in the field of information technology and electronic business transactions; Industrial analysis and research service; Computer programming, in particular for Internet-based information technology systems; Software as a service featuring software in the field of commodities markets, including market data, pricing data, market reports, analytics; database services; providing a website featuring non-downloadable software for business management in the fields of finance, equity, fixed-income, risk and corporate policy, regulatory compliance, and financial crimes; providing a website featuring resources, namely, non-downloadable software for research and analysis in the fields of finance, equity, fixed-income, risk and corporate policy, regulatory compliance, and financial crimes.

Annex 2

Earlier registration UK TM No. 914323109

9: Computer software for providing, managing and analyzing laboratory clinical trial data and information in the fields of pharmaceutical, pharmacogenomic, biomarker, biopharmaceutical, medical device and diagnostics, life sciences, medical, health care, health management and disease management fields; computer software that allows remote access to clinical trial laboratory data and information; computer software for use in collecting and reporting medical data relating to patient medical conditions for clinical trials, research, peri- and post-approval studies, quality improvement, and patient support programs.

35: Computerized database management and data processing services in the pharmaceutical, pharmacogenomic, biomarker, biopharmaceutical, medical device and diagnostics fields; providing business information, namely, information related to regulatory approval and marketing of drugs, devices, health care or medical products and services, and biologics; business research in the field of health care; business consultation in the field of healthcare; business technology consulting and services in the healthcare, medical, health management and disease management fields.

41: Educational and training services, namely, conducting training programs, seminars, classes, conferences and workshops in the fields of health care, health policy, health management, and disease management, patient management, and pharmaceutical, pharmacogenomic, biomarker, medical device and diagnostics, and health products, and distributing course materials in connection therewith; teaching and training in information technology for the healthcare industry; educational services, namely, conducting healthcare conferences on issues surrounding safety and effectiveness after drugs and devices are approved by regulatory agencies.

42: Clinical research and testing services, in the fields of clinical trials, health care, pharmaceuticals, pharmacogenomics, biomarker, biopharmaceutical, medical device and diagnostics; product development consultation in the fields of health care, medical products and devices; health care research and development services; medical and laboratory testing services; laboratory testing services in the fields of health care, clinical trials, pharmaceutical, pharmacogenomics, biomarker, biopharmaceutical,

medical device and diagnostics; consultancy pertaining to clinical trials, health care, medical diagnostics, medical devices, pharmacology, pharmacogenomics, biomarkers and biopharmaceutical research; managing, monitoring and coordinating clinical studies on human subjects for others; medical and scientific research in the fields of healthcare and medical diagnostics; providing temporary use of web-based software application for providing access to information and data in the clinical trials, pharmaceutical, pharmacogenomic, biomarker, biopharmaceutical, medical device and diagnostics, life sciences, medical, health care, health management and disease management fields and for organizing and analyzing said data and information and preparing reports therefrom; providing temporary use of non-downloadable software for providing, managing and analyzing laboratory clinical trial data and information in the fields of pharmaceutical, pharmacogenomic, biomarker, biopharmaceutical, medical device and diagnostics, life sciences, medical, health care, health management and disease management fields; providing temporary use of non-downloadable software that allows remote access to clinical trial peri- and post-approval laboratory data and information; providing temporary use of non-downloadable software for use in collecting and reporting medical data relating to patient medical conditions for research; providing information relating to the development and validation of drugs, pharmaceutical products, medical products, medical devices and biologics; providing an internet website portal in the fields of clinical trials, pharmaceutical research, pharmacogenomic and biomarker consultation, biopharmaceutical consultation, medical devices and diagnostics, life sciences research, and medical research; providing an online searchable database via the internet in the fields of clinical trials, companion diagnostics, pharmaceutical research, pharmacogenomic and biomarker consultation, biopharmaceutical consultation, medical devices and diagnostics, life sciences research, and medical research.

44: Providing health, medical, pharmaceutical, pharmacogenomic, biomarker, health management and disease management information to others; medical evaluation services; consulting services in the fields of health care, medicine, life sciences, and pharmaceuticals, biopharmaceuticals, biomarkers, pharmacogenomics, medical device and diagnostics; providing an online interactive computer database in the field of healthcare; providing an Internet website portal in the fields of medical services,

health care, health management and disease management; providing an online searchable database via the Internet in the fields of medical services, medical devices and diagnostics, health care, health management and disease management.

45: Regulatory compliance research and consulting services in the fields of health care, clinical trials, development and testing of drugs, devices, biologics and methodologies used in the pharmaceutical industry, biotechnology industry and the medical device and diagnostics industry; conducting regulatory compliance audits for others in the fields of health care, clinical trials, pharmaceutical, pharmacogenomic, biomarker, biopharmaceutical, and medical device and diagnostics; consulting services in the fields of regulatory affairs, manufacturing compliance and validation procedures, namely, reviewing standards and practices to assure compliance with clinical trial regulations, medical and laboratory testing services; providing regulatory information, namely, providing information regarding the examination and approval process of pharmaceutical, biotechnical, medical and diagnostic products and methodologies by governmental regulatory bodies; providing regulatory implementation services relating to the development and validation of drugs, devices and biologics, namely, assisting others in implementing procedures that comply with regulatory requirements.

Annex 3

Earlier registration UK TM No. 3115926

9: Computer software for providing, managing and analyzing laboratory clinical trial data and information in the fields of pharmaceutical, pharmacogenomic, biomarker, biopharmaceutical, medical device and diagnostics, life sciences, medical, health care, health management and disease management fields; computer software that allows remote access to clinical trial laboratory data and information; computer software for use in collecting and reporting medical data relating to patient medical conditions for clinical trials, research, peri- and post-approval studies, quality improvement, and patient support programs.

35: Computerized database management and data processing services in the pharmaceutical, pharmacogenomic, biomarker, biopharmaceutical, medical device and diagnostics fields; providing business information, namely, information related to regulatory approval and marketing of drugs, devices, health care or medical products and services, and biologics; business research in the field of health care; business consultation in the field of healthcare; business technology consulting and services in the healthcare, medical, health management and disease management fields.

41: Educational and training services, namely, conducting training programs, seminars, classes, conferences and workshops in the fields of health care, health policy, health management, and disease management, patient management, and pharmaceutical, pharmacogenomic, biomarker, medical device and diagnostics, and health products, and distributing course materials in connection therewith; teaching and training in information technology for the healthcare industry; educational services, namely, conducting healthcare conferences on issues surrounding safety and effectiveness after drugs and devices are approved by regulatory agencies.

42: Clinical research and testing services, in the fields of clinical trials, health care, pharmaceuticals, pharmacogenomics, biomarker, biopharmaceutical, medical device and diagnostics; product development consultation in the fields of health care, medical products and devices; health care research and development services; laboratory testing services; laboratory testing services in the fields of health care, clinical trials, pharmaceutical, pharmacogenomics, biomarker, biopharmaceutical, medical device

and diagnostics; consultancy pertaining to clinical trials, health care, medical diagnostics, medical devices, pharmacology, pharmacogenomics, biomarkers and biopharmaceutical research; managing, monitoring and coordinating clinical studies on human subjects for others; medical and scientific research in the fields of healthcare and medical diagnostics; providing temporary use of web-based software application for providing access to information and data in the clinical trials, pharmaceutical, pharmacogenomic, biomarker, biopharmaceutical, medical device and diagnostics, life sciences, medical, health care, health management and disease management fields and for organizing and analyzing said data and information and preparing reports therefrom; providing temporary use of non-downloadable software for providing, managing and analyzing laboratory clinical trial data and information in the fields of pharmaceutical, pharmacogenomic, biomarker, biopharmaceutical, medical device and diagnostics, life sciences, medical, health care, health management and disease management fields; providing temporary use of non-downloadable software that allows remote access to clinical trial peri- and post-approval laboratory data and information; providing temporary use of non-downloadable software for use in collecting and reporting medical data relating to patient medical conditions for research; providing information relating to the development and validation of drugs, pharmaceutical products, medical products, medical devices and biologics; providing an internet website portal in the fields of clinical trials, pharmaceutical research, pharmacogenomic and biomarker consultation, biopharmaceutical consultation, medical devices and diagnostics, life sciences research, and medical research; providing an online searchable database via the internet in the fields of clinical trials, companion diagnostics, pharmaceutical research, pharmacogenomic and biomarker consultation, biopharmaceutical consultation, medical devices and diagnostics, life sciences research, and medical research;

44: Providing health, medical, pharmaceutical, pharmacogenomic, biomarker, health management and disease management information to others; medical evaluation services; consulting services in the fields of health care, medicine, life sciences, and pharmaceuticals, biopharmaceuticals, biomarkers, pharmacogenomics, medical device and diagnostics, medical testing services.

45: Regulatory compliance research and consulting services in the fields of health care, clinical trials, development and testing of drugs, devices, biologics and methodologies used in the pharmaceutical industry, biotechnology industry and the medical device and diagnostics industry; conducting regulatory compliance audits for others in the fields of health care, clinical trials, pharmaceutical, pharmacogenomic, biomarker, biopharmaceutical, and medical device and diagnostics; consulting services in the fields of regulatory affairs, manufacturing compliance and validation procedures, namely, reviewing standards and practices to assure compliance with clinical trial regulations, medical and laboratory testing services; providing regulatory information, namely, providing information regarding the examination and approval process of pharmaceutical, biotechnical, medical and diagnostic products and methodologies by governmental regulatory bodies; providing regulatory implementation services relating to the development and validation of drugs, devices and biologics, namely, assisting others in implementing procedures that comply with regulatory requirements.

Annex 4

Earlier registration UK TM No. 914323117

9: Computer software for providing, managing and analyzing laboratory clinical trial data and information in the fields of pharmaceutical, pharmacogenomic, biomarker, biopharmaceutical, medical device and diagnostics, life sciences, medical, health care, health management and disease management fields; computer software that allows remote access to clinical trial laboratory data and information; computer software for use in collecting and reporting medical data relating to patient medical conditions for clinical trials, research, peri- and post-approval studies, quality improvement, and patient support programs.

35: Computerized database management and data processing services in the pharmaceutical, pharmacogenomic, biomarker, biopharmaceutical, medical device and diagnostics fields; providing business information, namely, information related to regulatory approval and marketing of drugs, devices, health care or medical products and services, and biologics; business research in the field of health care; business consultation in the field of healthcare; business technology consulting and services in the healthcare, medical, health management and disease management fields.

36: Educational and training services, namely, conducting training programs, seminars, classes, conferences and workshops in the fields of health care, health policy, health management, and disease management, patient management, and pharmaceutical, pharmacogenomic, biomarker, medical device and diagnostics, and health products, and distributing course materials in connection therewith; teaching and training in information technology for the healthcare industry; educational services, namely, conducting healthcare conferences on issues surrounding safety and effectiveness after drugs and devices are approved by regulatory agencies.

42: Clinical research and testing services, in the fields of clinical trials, health care, pharmaceuticals, pharmacogenomics, biomarker, biopharmaceutical, medical device and diagnostics; product development consultation in the fields of health care, medical products and devices; health care research and development services; medical and laboratory testing services; laboratory testing services in the fields of health care, clinical trials, pharmaceutical, pharmacogenomics, biomarker, biopharmaceutical,

medical device and diagnostics; consultancy pertaining to clinical trials, health care, medical diagnostics, medical devices, pharmacology, pharmacogenomics, biomarkers and biopharmaceutical research; managing, monitoring and coordinating clinical studies on human subjects for others; medical and scientific research in the fields of healthcare and medical diagnostics; providing temporary use of web-based software application for providing access to information and data in the clinical trials, pharmaceutical, pharmacogenomic, biomarker, biopharmaceutical, medical device and diagnostics, life sciences, medical, health care, health management and disease management fields and for organizing and analyzing said data and information and preparing reports therefrom; providing temporary use of non-downloadable software for providing, managing and analyzing laboratory clinical trial data and information in the fields of pharmaceutical, pharmacogenomic, biomarker, biopharmaceutical, medical device and diagnostics, life sciences, medical, health care, health management and disease management fields; providing temporary use of non-downloadable software that allows remote access to clinical trial peri- and post-approval laboratory data and information; providing temporary use of non-downloadable software for use in collecting and reporting medical data relating to patient medical conditions for research; providing information relating to the development and validation of drugs, pharmaceutical products, medical products, medical devices and biologics; providing an internet website portal in the fields of clinical trials, pharmaceutical research, pharmacogenomic and biomarker consultation, biopharmaceutical consultation, medical devices and diagnostics, life sciences research, and medical research; providing an online searchable database via the internet in the fields of clinical trials, companion diagnostics, pharmaceutical research, pharmacogenomic and biomarker consultation, biopharmaceutical consultation, medical devices and diagnostics, life sciences research, and medical research.

44: Providing health, medical, pharmaceutical, pharmacogenomic, biomarker, health management and disease management information to others; medical evaluation services; consulting services in the fields of health care, medicine, life sciences, and pharmaceuticals, biopharmaceuticals, biomarkers, pharmacogenomics, medical device and diagnostics; providing an online interactive computer database in the field of healthcare; providing an Internet website portal in the fields of medical services,

health care, health management and disease management; providing an online searchable database via the Internet in the fields of medical services, medical devices and diagnostics, health care, health management and disease management.

45: Regulatory compliance research and consulting services in the fields of health care, clinical trials, development and testing of drugs, devices, biologics and methodologies used in the pharmaceutical industry, biotechnology industry and the medical device and diagnostics industry; conducting regulatory compliance audits for others in the fields of health care, clinical trials, pharmaceutical, pharmacogenomic, biomarker, biopharmaceutical, and medical device and diagnostics; consulting services in the fields of regulatory affairs, manufacturing compliance and validation procedures, namely, reviewing standards and practices to assure compliance with clinical trial regulations, medical and laboratory testing services; providing regulatory information, namely, providing information regarding the examination and approval process of pharmaceutical, biotechnical, medical and diagnostic products and methodologies by governmental regulatory bodies; providing regulatory implementation services relating to the development and validation of drugs, devices and biologics, namely, assisting others in implementing procedures that comply with regulatory requirements.

Annex 5

Earlier registration UK TM No. 3115926

9: Computer software for providing, managing and analyzing laboratory clinical trial data and information in the fields of pharmaceutical, pharmacogenomic, biomarker, biopharmaceutical, medical device and diagnostics, life sciences, medical, health care, health management and disease management fields; computer software that allows remote access to clinical trial laboratory data and information; computer software for use in collecting and reporting medical data relating to patient medical conditions for clinical trials, research, peri- and post-approval studies, quality improvement, and patient support programs.

35: Computerized database management and data processing services in the pharmaceutical, pharmacogenomic, biomarker, biopharmaceutical, medical device and diagnostics fields; providing business information, namely, information related to regulatory approval and marketing of drugs, devices, health care or medical products and services, and biologics; business research in the field of health care; business consultation in the field of healthcare; business technology consulting and services in the healthcare, medical, health management and disease management fields.

41: Educational and training services, namely, conducting training programs, seminars, classes, conferences and workshops in the fields of health care, health policy, health management, and disease management, patient management, and pharmaceutical, pharmacogenomic, biomarker, medical device and diagnostics, and health products, and distributing course materials in connection therewith; teaching and training in information technology for the healthcare industry; educational services, namely, conducting healthcare conferences on issues surrounding safety and effectiveness after drugs and devices are approved by regulatory agencies.

42: Clinical research and testing services, in the fields of clinical trials, health care, pharmaceuticals, pharmacogenomics, biomarker, biopharmaceutical, medical device and diagnostics; product development consultation in the fields of health care, medical products and devices; health care research and development services; laboratory testing services; laboratory testing services in the fields of health care, clinical trials, pharmaceutical, pharmacogenomics, biomarker, biopharmaceutical, medical device

and diagnostics; consultancy pertaining to clinical trials, health care, medical diagnostics, medical devices, pharmacology, pharmacogenomics, biomarkers and biopharmaceutical research; managing, monitoring and coordinating clinical studies on human subjects for others; medical and scientific research in the fields of healthcare and medical diagnostics; providing temporary use of web-based software application for providing access to information and data in the clinical trials, pharmaceutical, pharmacogenomic, biomarker, biopharmaceutical, medical device and diagnostics, life sciences, medical, health care, health management and disease management fields and for organizing and analyzing said data and information and preparing reports therefrom; providing temporary use of non-downloadable software for providing, managing and analyzing laboratory clinical trial data and information in the fields of pharmaceutical, pharmacogenomic, biomarker, biopharmaceutical, medical device and diagnostics, life sciences, medical, health care, health management and disease management fields; providing temporary use of non-downloadable software that allows remote access to clinical trial peri- and post-approval laboratory data and information; providing temporary use of non-downloadable software for use in collecting and reporting medical data relating to patient medical conditions for research; providing information relating to the development and validation of drugs, pharmaceutical products, medical products, medical devices and biologics; providing an internet website portal in the fields of clinical trials, pharmaceutical research, pharmacogenomic and biomarker consultation, biopharmaceutical consultation, medical devices and diagnostics, life sciences research, and medical research; providing an online searchable database via the internet in the fields of clinical trials, companion diagnostics, pharmaceutical research, pharmacogenomic and biomarker consultation, biopharmaceutical consultation, medical devices and diagnostics, life sciences research, and medical research; providing an online interactive computer database in the field of healthcare; providing an Internet website portal in the fields of medical services, health care, health management and disease management; providing an online searchable database via the Internet in the fields of medical services, medical devices and diagnostics, health care, health management and disease management.

44: Providing health, medical, pharmaceutical, pharmacogenomic, biomarker, health management and disease management information to others; medical evaluation

services; consulting services in the fields of health care, medicine, life sciences, and pharmaceuticals, biopharmaceuticals, biomarkers, pharmacogenomics, medical device and diagnostics, medical testing services.

45: Regulatory compliance research and consulting services in the fields of health care, clinical trials, development and testing of drugs, devices, biologics and methodologies used in the pharmaceutical industry, biotechnology industry and the medical device and diagnostics industry; conducting regulatory compliance audits for others in the fields of health care, clinical trials, pharmaceutical, pharmacogenomic, biomarker, biopharmaceutical, and medical device and diagnostics; consulting services in the fields of regulatory affairs, manufacturing compliance and validation procedures, namely, reviewing standards and practices to assure compliance with clinical trial regulations, medical and laboratory testing services; providing regulatory information, namely, providing information regarding the examination and approval process of pharmaceutical, biotechnical, medical and diagnostic products and methodologies by governmental regulatory bodies; providing regulatory implementation services relating to the development and validation of drugs, devices and biologics, namely, assisting others in implementing procedures that comply with regulatory requirements.