O/1159/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003961731
BY GMET TECH LIMITED
TO REGISTER:

AS A TRADE MARK IN CLASSES 9, 35, 36 AND 39

AND

IN THE MATTER OF THE OPPOSITION THERETO
UNDER NO. 445314
BY GT GETTAXI (UK) LIMITED

BACKGROUND AND PLEADINGS

1. On 27 September 2023, GMET TECH LIMITED ("the applicant") applied to register the trade mark shown on the cover page of this decision, in the UK. The application was accepted and published in the Trade Marks Journal on 13 October 2023 in respect of the following goods and services:

> **Class 9:** *Mobile application software; Downloadable mobile applications; Downloadable software in the nature of a mobile application; Downloadable applications for use with mobile devices; Downloadable software applications for mobile phones; Mobile apps; Downloadable software in the nature of a mobile application for food delivery and ordering; Downloadable smart phone application software; Web application software; Downloadable application software for smart phones; Downloadable software in the nature of a mobile application for dark kitchen delivery and ordering; Smartphone software applications, downloadable; Web application and server software; Electric mobile digital communication devices; Software for operating an online shop; E-commerce software; Software for online messaging; Encoded loyalty cards; Encoded reward cards; Encoded cards for use in point of sale transactions; Point Of Sale [POS] systems; Magnetic coded card readers.*
>
> **Class 35:** *Provision of an online marketplace for buyers and sellers of goods and services; Provision of an on-line marketplace for buyers and sellers of goods and services; Providing online marketplaces for sellers of goods and or services; Providing a searchable online advertising guide featuring the goods and services of online vendors; Advertising the goods and services of online vendors via a searchable online guide; Online business networking services; Providing a searchable online advertising guide featuring the goods and services of other on-line vendors on the internet; Advertising of the goods of other vendors, enabling customers to conveniently view and compare the goods of those vendors; Advertising of the services of other vendors, enabling customers to conveniently view and compare the services of those vendors; Loyalty, incentive and bonus program services; Loyalty scheme services; Promoting the goods and services of others by means of a loyalty rewards card*

scheme; Sales promotion through customer loyalty programs; Sales promotion for others provided through the distribution and the administration of privileged user cards; Promoting the goods and services of others through discount card programs; Sales promotion for others through trading stamp schemes; Digital marketing; Advertising, marketing and promotional services; Online ordering services; Classified advertising; Classified advertising services; Banner advertising; Advertising and promotional services; Advertising for others.

Class 36: *Issuing tokens of value as a reward for customer loyalty; Issuing of tokens of value in relation to customer loyalty schemes; Issue and redemption of tokens of value; Issue of tokens, coupons and vouchers of value; Issuing tokens of value as part of a customer membership scheme; Issuing electronic payment cards in connection with bonus and reward schemes; Providing rebates at participating establishments of others through use of a membership card; Issuing of vouchers for use as money.*

Class 39: *Delivery of food; Food delivery services; Delivery of groceries; Food delivery; Parcel delivery services; Courier services for the delivery of parcels; Delivery services; Providing taxi booking services via mobile applications.*

2. On 16 January 2024, the application was opposed by GT GETTAXI (UK) LIMITED ("the opponent") based upon Sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 ("the Act").

3. Under both Sections 5(2)(b) and 5(3), the opponent relies upon the trade mark shown below and all of the goods and services covered by the same:

UK00003697629 GETT Mark Description/Limitation: This case is filed pursuant to Article 59 of the Withdrawal Agreement between the United Kingdom and the European Union and the EU filing date was 25/09/2017.

Filing date: 20 September 2021

Registration date: 28 January 2022

Priority date: 25 September 2017[1]

Priority date: 21 August 2017[2]

Class 9: *Computer software, downloadable computer software and downloadable computer software applications for coordinating and providing transportation services, namely, software for the automated scheduling, booking and dispatch of motorized vehicles; computer software, downloadable computer software and downloadable computer software applications for use by motorized vehicle operators and passengers and potential passengers for ridesharing; computer software, downloadable computer software and downloadable computer software applications for coordinating and obtaining courier and delivery services; the aforesaid goods only for platforms for transportation, courier and delivery services and the coordination of ground transportation.*

Class 38: *Telecommunications services, namely, routing calls, SMS messages, and push-notifications to local third-party motorized vehicle operators in the vicinity of the caller; telecommunications services; the aforesaid services only for platforms for transportation, courier and delivery services and the coordination of ground transportation.*

Class 39: *Taxi transportation services; taxi dispatching services; booking taxis on-line and management of taxi orders on-line; courier and delivery services.*

Class 42: *Providing temporary use of online non-downloadable software for coordinating and providing transportation services, namely, software for the automated scheduling, booking and dispatch of motorized vehicles; providing temporary use of online non-downloadable software for use by motorized vehicle operators and passengers and potential passengers for ridesharing; providing temporary use of online non-downloadable software for coordinating and obtaining*

[1] Priority (whole) claimed from EUTM 1378073

[2] Priority (whole) claimed from Israeli TM 297505

courier and delivery services; the aforesaid services only for platforms for transportation, courier and delivery services and the coordination of ground transportation.

4. By virtue of its earlier priority date, the trade mark relied upon by the opponent is an "earlier mark" in accordance with Section 6 of the Act. As the opponent's earlier mark had not been registered for five years or more at the filing date of the contested mark, it is not subject to the use conditions under Section 6A of the Act.

5. Under Section 5(2)(b), the opponent claims that there is a likelihood of confusion because the goods and services are identical or highly similar (in particular those in classes 9 and 39) and the marks are highly similar due to the common element 'Get' which makes up the first three letters of both marks.

6. Under Section 5(3), the opponent relies upon all the goods and services for which the earlier mark is registered though it claims that its use of the earlier mark is in the field of transportation and delivery services. The opponent claims that its earlier mark enjoys a strong reputation in the UK, having been used extensively throughout the country since at least 2015, and that use of the applicant's mark would, without due cause, take unfair advantage of, and/or be detrimental to, the distinctive character and/or repute of the earlier mark.

7. The applicant filed a defence and counterstatement, denying the opponent's claims and putting it to strict proof. The only exception to this is that the applicant partially conceded the claim that the goods and services are similar by saying as follows:

> *"It is accepted that some of the goods and services are similar but denied that all of the goods and services opposed are identical and/or similar to the goods and services of the Applicant. The Applicant will elaborate in due course."*

8. The opponent is represented by DLA Piper UK LLP, and the applicant is represented by Sonder & Clay.

9. Only the opponent filed evidence. Neither party requested a hearing, but they both filed written submissions in lieu of a hearing. I make this decision having taken full account of all the papers, referring to them as necessary.

RELEVANCE OF EU LAW

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

EVIDENCE

11. The opponent's evidence came in the form of a witness statement from Matteo De Renzi dated 3 July 2024 (subsequently amended on 12 August 2024). Mr De Renzi is the sole director of the opponent's company; his evidence is accompanied by two exhibits being those labelled MDR1-MDR2. Mr De Renzi's evidence is aimed at supporting the opponent's claim based on reputation.

12. I do not intend to summarise the evidence (or submissions) in full here. However, I confirm that I have taken all filed documents into account and will summarise them to the extent that I deem necessary below.

DECISION

Section 5(2)(b)

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

> "5(2) A trade mark shall not be registered if because –
>
> (a) …

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

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

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

(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 greater degree of similarity between the marks, and vice versa;

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

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

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

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

Comparison of goods and services

15. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union ("CJEU") in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

"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."

16. Guidance on this issue has also come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, 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. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the General Court ("GC") stated that "complementary" means:

"[…] there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers

> may think that the responsibility for those goods lies with the same undertaking."

18. In *Sanco SA v OHIM,* Case T-249/11, the GC indicated that goods and services may be regarded as 'complementary' and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different. The purpose of examining whether there is a complementary relationship between goods and services is to assess whether the relevant public are liable to believe that responsibility for the goods and services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander QC noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited* BL O/255/13*:*

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

19. Whilst on the other hand:

> "[…] it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together."

20. In *Gérard Meric v Office for Harmonisation in the Internal Market,* Case T- 133/05, the GC stated that:

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

21. Lastly, it is permissible to group goods and services together for the purpose of the assessment where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons.[3]

22. The competing goods and services are set out at paragraphs 1 and 3 above.

23. In its submissions in lieu, the applicant made the following concessions:

> *"It is accepted that the goods and services of the Opponent in classes 9 and 42 are similar to the majority of the goods of the Applicant in class 9, the exceptions being:*
>
> *Software for operating an online shop*
> *E-commerce software*
> *Encoded cards for use in point of sale transactions*
> *Point Of Sale [POS] systems*
> *Magnetic coded card readers*
>
> *Such goods are used for the purposes of facilitation ecommerce and operating shops both online and in person. Consequently, the user is entirely different. The class 9 and 42 goods and services of the Opponent are limited to 'transportation, courier and delivery services and the coordination of ground transportation' and consequently, the purpose and nature of the goods and services is very different to the operation of retail businesses.*
>
> *The services of the Applicant in classes 35 and 36 are not similar to any of the goods and services relied upon by the Opponent. Such services are all clearly aimed at those wishing to operate online retail outlets and as such the relevant consumer is entirely different. The services serve an entirely different function and are neither in competition with or complementary to the goods and services of the Opponent. The services are provided through entirely different trade channels.*

[3] *Separode Trade Mark* BL O-399-10

It is accepted that the services of the Applicant and the Opponent in class 39 are similar and/or identical."

Class 9

24. The following class 9 goods in the application are identical to the opponent's software goods because the applicant's goods are not restricted in any way and are sufficiently broad to cover the opponent's goods which are specific types of software for use in the field of transportation, courier and delivery services: *Mobile application software; Downloadable mobile applications; Downloadable software in the nature of a mobile application; Downloadable applications for use with mobile devices; Downloadable software applications for mobile phones; Mobile apps; Downloadable smart phone application software; Downloadable application software for smart phones; Smartphone software applications, downloadable.* These goods are identical on the principle outlined in *Meric.* I extend the same conclusion to the contested *Web application software; Web application and server software,* which are essentially software programs that runs on a remote server and are accessed through a web browser over the Internet (and unlike traditional desktop applications, do not require installation on a device and can be used directly from the Internet).

25. The contested *Downloadable software in the nature of a mobile application for food delivery and ordering; Downloadable software in the nature of a mobile application for dark kitchen delivery and ordering* fall within the opponent's term *computer software, downloadable computer software and downloadable computer software applications for coordinating and obtaining courier and delivery services*, *the aforesaid goods only for platforms for transportation, courier and delivery services and the coordination of ground transportation.* I say this because the opponent's software for coordinating and obtaining delivery services are not limited in any way, and therefore could include food delivery. These services are identical on the principle outlined in *Meric.* Alternatively, these goods are highly similar to the opponent's services in class 39 which cover delivery services at large. Although the goods and services have a different nature, they have the same purpose, target the same users and are complementary and in competition insofar as the opponent's deliver services (in class 39) can be accessed through the applicant's mobile app (in class 9), and

consumers can choose between accessing the services through the applicant's mobile app or directly through the opponent.

26. In addition, the following goods do not fall within the listed exceptions that the applicant considers to be dissimilar: *Electric mobile digital communication devices; Software for online messaging; Encoded loyalty cards; Encoded reward cards.* Accordingly, I find that the applicant's concession that the majority of the applied-for goods in class 9 are similar to the opponent's goods in class 9 and services in class 42 applies to these goods. However, since (a) the opponent did not specifically address the similarity between these goods and the earlier goods and services, and (b) I cannot find any obvious overlap between these goods and the opponent's goods and services, I will proceed on the basis that there is only a minimum (low) level of similarity.

27. Turning to the goods which the applicant argues are dissimilar, namely *Encoded cards for use in point of sale transactions; Point Of Sale [POS] systems; Magnetic coded card readers*, I agree with the applicant that there is no obvious overlap between these goods and the opponent's goods and services and the opponent has not provided any specific reason why I should find these goods to be similar. I therefore find them to be dissimilar. However, for the remaining goods that the applicant argues are dissimilar, namely its *Software for operating an online shop; E-commerce software,* I find that these overlap in nature with the opponent's software goods (as they are both types of software). However, the uses, use, purpose and methods of use of the respective software are different, the goods are unlikely to share trade channels and are neither complementary nor in competition. These goods are similar to a very low degree.

Class 35 and 36

28. The applicant denies that these services are similar to the opponent's goods and services. Whilst the opponent says that these services are similar, it mainly identifies similarity between the parties' goods and services in class 9 and 39 and does not make any specific submission in relation to the applied-for services in classes 35 and 36. I agree with the applicant that these services (which relate to the provision of online

marketplaces, advertising and promotional services as well customers loyalty schemes) have nothing in common with the opponent's goods and services which relate to the field of transportation, courier and delivery services. The goods and services have a different nature, purpose, use and method of use. They target different users and are distributed through different trade channels. Finally, they are neither complementary, nor in competition. These services are dissimilar.

Class 39

29. The applicant accepts that these services are identical or similar to the opponent's services in the same class. I find that the contested *Delivery of food; Food delivery services; Delivery of groceries; Food delivery; Parcel delivery services; Courier services for the delivery of parcels; Delivery services* are identical to the opponent's services which cover *courier and delivery services* at large.

30. This leaves *Providing taxi booking services via mobile applications* which are identical to the opponent's *booking taxis on-line and management of taxi orders on-line; Taxi transportation services; taxi dispatching services*.

Conclusions on the goods and services comparison

31. I have concluded that there is no similarity at all between the opponent's earlier goods and services and the following goods and services in the contested application:

> **Class 9:** *Encoded cards for use in point of sale transactions; Point Of Sale [POS] systems; Magnetic coded card readers.*
>
> **Class 35:** *all of the services listed in this class.*
>
> **Class 36:** *all of the services listed in this class.*

32. In *eSure Insurance v Direct Line Insurance,* [2008] ETMR 77 CA, Lady Justice Arden stated that:

> "49..... I do not find any threshold condition in the jurisprudence of the Court of Justice cited to us. Moreover I consider that no useful purpose is served by holding that there is some minimum threshold level of similarity that has to be shown. If there is no similarity at all, there is no likelihood of confusion to be considered. If there is some similarity, then the likelihood of confusion has to be considered but it is unnecessary to interpose a need to find a minimum level of similarity."

33. Accordingly, some similarity of goods and services is essential for a likelihood of confusion to be established. Since I have concluded that the above goods and services are dissimilar, the opposition aimed against them fails at the first hurdle.

Average consumer

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

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

35. The average consumer of the goods and services at issue will be either a member of the general public or a business user such as, for example, a restaurant or a business providing transportation, courier and delivery services. The cost of purchase is likely to vary as will the frequency. Various factors will be considered such as cost,

suitability to meet the user's needs, software compatibility and reputational standing of the provider. Therefore, the level of attention paid during the purchasing process will be medium.

36. The goods are likely to be presented to the consumer via online app stores, websites or physical premises through displays or leaflets. The services may be purchased following sight of physical premises, advertisements or their online equivalents. Therefore, visual considerations are likely to dominate the selection process. However, I do not discount that there may be an aural component to the purchase in the form, for example, of word-of-mouth recommendations or advice sought from sale assistants.

Comparison of marks

37. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

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

The applied-for mark	The opponent's earlier mark
	GETT

Overall impression

39. The applied-for mark consists of word 'Getme' with the letter 'G' presented in a stylised font, in the colour white, against a black square background. I consider that the word 'Getme' plays the greater role in the overall impression of the mark, with the stylisation and background playing a lesser role. I also consider that the words 'Get' and 'me' will be perceived separately but working together in terms of the overall impression.

40. The opponent's mark is a word-only mark consisting of the word 'GETT' presented in capital letters. There are no other elements to contribute to the overall impression which lies in the word itself.

Visual similarity

41. The applicant states that the marks are visually dissimilar because the opponent's mark consists of the single word 'GETT', whereas the applicant's mark consists of two conjoined words 'Get' and 'me.' In addition, the applicant states that whilst it is accepted that the first three letters of each mark are the same, the differences in length and composition of the respective marks create a very significant visual difference and the fact that the opponent's mark is an invented term, or a misspelling of the word 'GET', will be immediately apparent to the consumer from a visual perspective.

42. The opponent states that the marks in question are highly similar due to the common element ‘Get’ which makes up the first three letters of both marks. Further, the opponent observes that the only differences between the marks are that the opponent’s mark contains the second letter ‘T’ at the end, while the end of the applied-for mark comprises the word ‘me’. Another difference is that the applied-for mark incorporates some minimal stylisation. However, the opponent states that these small differences do not detract from the high degree of similarity between the marks.

43. The first thing to note is that whilst the difference in the meanings conveyed by the marks is relevant from a conceptual point of view, it cannot cancel out the effects of the visual similarities between the marks. Visually, the marks share the first three letters ‘GET’, however, they differ in (i) their length and their ending (i.e. four versus five letters, and the ending ‘T’ versus the ending ‘ME’), and (ii) the presence of a stylised letter ‘G’ and a black square background in the application, neither of which has any counterpart in the opponent’s mark. Overall, I consider the marks to be similar to a low to medium degree.

Aural similarity

44. Aurally, the marks will be pronounced as ‘GET’ and ‘GET-ME’. Overall, I consider the marks to be similar to a medium degree.

Conceptual similarity

45.. Aside from saying that the marks are similar because they share the common element ‘GET’, the opponent has been silent on the conceptual position. However, I agree with the applicant that the earlier mark is likely to be perceived as a misspelling of the ordinary dictionary word ‘GET’ or will, at least, evoke that word in the context of the goods and services at issue, which relate to (or are sufficiently broad to encompass) goods and services relating to the provision of taxi services and delivery services, for which the meaning of the word ‘GET’ is relevant when combined with a descriptive word, i.e. get a taxi, get a delivery. I am fortified in this conclusion by the fact that the opponent’s name includes the word ‘GETTAXI’ and that the opponent’s main business is the provision of a platform for booking taxi services. I also agree with

the applicant that the applied-for mark is likely to be perceived as the expression “Get me” with the two dictionary words ‘Get’ and ‘me’ conjoined. Accordingly, both marks revolve around the word ‘GET’ although they do so in a slightly different way. Overall, I find that the marks are conceptually similar to a medium degree.

Distinctive character of the earlier mark

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

> “22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *WindsurfingChiemsee* v *Huber and Attenberger* [1999] ECR I-0000, paragraph 49).
>
> 23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

47. Registered trade marks possess various degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as

invented words, which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use made of it.

48. The earlier mark consists of the word 'GETT' which is likely to be perceived as a misspelling of the common English word 'get' which means "*to obtain, buy, or earn something"* (Cambridge online dictionary). As it will be recalled, I have concluded that the meaning of the word 'get' is relevant for the goods and services at issue, however, it needs to be combined with a descriptive word which is absent in the mark 'GETT' alone (this results in the relevance of the word 'get' being less immediate because the phrase is not complete) plus the word 'GETT' is a misspelling. I also think that the intentional misspelling is an element of distinctiveness, and that it follows from the misspelling that 'GETT' is invented. Overall, I consider the earlier mark to be distinctive to a medium degree.

49. As the opponent has filed evidence of reputation, I will now turn to consider whether the documents produced are capable of establishing that the distinctiveness of the earlier mark has been enhanced through use.

50. Mr De Renzi explains that the opponent was incorporated as a UK company on 13 April 2011 and commenced operations in the UK under the brand name 'Gettaxi' during the same year. At that time, the opponent's principal activity was the provision of taxi booking services through its platform, which connected licensed black cab drivers with customers requiring transportation services. The opponent rebranded to 'Gett' in 2015 in order to diversify the services it offered under the brand, and 'Gett' is now the brand name under which the opponent operates. The earlier trade mark relied upon in the present opposition was assigned from the previous owner (GT Gettaxi Limited, a company based in Cyprus) to the opponent (GT Gettaxi (UK) Limited) on 8 August 2022, together with *"all statutory and common law rights attaching to [the trade mark], including the goodwill relating to the goods or services in respect of which [the trade mark is] registered or used".*[4]

[4] MDR2

51. Mr De Renzi states that the opponent's UK footprint expanded materially in the first half of 2016, following its acquisition of Radio Taxis in London, and exhibits a copy of an online article dated March 2016 which explains that as a result of the acquisition, the opponent raised a fleet of 11,500 London licensed taxicabs, almost 50 percent of the black cabs in the city.[5]

52. In terms of how extensive the use of the earlier mark has been, Mr De Renzi says that there have been over 9.3 million rides booked across the UK since 2022.[6] However, this appears to include rides booked until the date of the witness statement (i.e. July/August 2024) which is nearly one year after the relevant date of 27 September 2023. Mr De Renzi also provides more detailed figures about how the rides are split between England, Wales, Scotland and Northen Ireland, confirming that nearly all of the business was carried out in England, however, these figures suffer from the same deficiency as they all refer to rides booked since 2022. Likewise, evidence about the opponent's app and the fact that it had 10 million downloads is undated (safe for the printing date of 30 May 2024 which is after the relevant date) which means that it is impossible to know how many downloads were achieved in the UK prior to the relevant date.[7]

53. In addition to the above evidence, Mr De Renzi provides a summary of the internet traffic report showing traffic to the website gett.com/uk for the periods from 13 October 2021 to 21 August 2023 (this is relevant because it is prior to the relevant date) and 21 August 2023 to 22 May 2024 (this is not relevant because it is after the relevant date). This evidence shows that there were nearly 280k users visiting the UK version of the opponent's website in the 2 years preceding the relevant date.

54. In terms of marketing and promotion, Mr De Renzi provides the following annual expenditures for the UK. Although it is not 100% clear, the figures appear to be in the region of millions of USD (as shown by the symbol $K), and should be approximately $6million (2018), $2.5million (2019), $1million (2020), $1.5million (2021), $2million (2022) and $1.5million (2023), as follows:

[5] MDR1
[6] MDR2
[7] MDR1

$K	Actual					
	2018	2019	2020	2021	2022	2023
Marketing (B2C only)						
UK	5,727	2,565	1,048	1,479	1,978	1,476

55. In terms of turnover, Mr De Renzi says that it was £57million in 2022, £36million in 2021, £31million in 2020, £37million in 2019, £35million in 2018 and £29million in 2017.[8]

56. Lastly, Mr De Renzi provides copies of press coverage including an online article on travelperk.com titled "The top taxi apps by city: Europe edition", dated 3 June 2021, showing that ‘Gett’ was listed as one of the top taxi apps in London.

57. Despite the evidence suffering from some deficiencies insofar as a number of figures are dated after the relevant date, the overall picture painted by the evidence is that the earlier mark has been used in the UK in relation to an app for booking taxi services to such an extent that it has acquired an enhanced degree of distinctiveness. Although most of the opponent’s business seem to be geographically concentrated in the city of London and in England, that is counterbalanced by scale of the use as demonstrated by the turnover figures (which amount to £225million in the six-year period 2017-2022) and marketing figures (which amount to $14.5 million) which is impressive, and by the fact that London and England are likely to constitute a fair share of the UK market for taxi services, given the importance of London as a capital city. Bearing in mind all of the above, I consider that the earlier mark has a acquired a high degree of distinctive character in relation to the provision of taxi services in class 39, as well as in relation to the provision of software (in classes 9) and temporary use of online non-downloadable software (in class 42) for the coordination and booking of taxi services.

[8] MDR1

Likelihood of confusion

58. 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, including that a lesser degree of similarity between the respective marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. I must keep in mind the distinctive character of the earlier mark, the average consumer for the goods and services and the nature of the purchasing process. I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

59. Confusion can be direct or indirect. In *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, Mr Iain Purvis Q.C., 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'.
>
> 17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:
>
> (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This

may apply even where the other elements of the later mark are quite distinctive in their own right ('26 RED TESCO' would no doubt be such a case).

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

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

60. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ approved Mr Purvis's formulation but added:

"13. As James Mellor QC sitting as the Appointed Person pointed out in *Cheeky Italian Ltd v Sutaria* (O/219/16) at [16] 'a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion'. Mr Mellor went on to say that, if there is no likelihood of direct confusion, 'one needs a reasonably special set of circumstances for a finding of a likelihood of indirect confusion'. I would prefer to say that there must be a proper basis for concluding that there is a likelihood of indirect confusion given that there is no likelihood of direct confusion."

61. It is not sufficient that a mark merely calls to mind another mark: *Duebros Limited v Heirler Cenovis GmbH,* BL O/547/17. This is mere association not indirect confusion.

62. Earlier in this decision I found that:

- The applied-for mark and the earlier mark are visually similar to a low to medium degree and aurally and conceptually similar to a medium degree.

- Some of the parties' goods and services are identical or similar to various degrees.

- The average consumer will select the goods and services mainly visually, with a medium degree of attention of attention.

- The earlier mark 'GETT' is inherently distinctive to a medium degree. However, its distinctiveness has been enhanced to a high degree through use in the UK in relation to the provision of taxi services in class 39, as well as in relation to the provision of software (in classes 9) and temporary use of online non-downloadable software (in class 42) for the coordination and booking of taxi services.

63. Bearing in mind all of the above, in particular the low to medium degree of visual similarity between the marks in the context of goods and services which will be selected primarily by the eyes, I am of the view that it is unlikely that the average consumer paying a medium degree of attention will directly confuse the marks, even factoring in the effects of imperfect recollection. There is no likelihood of direct confusion.

64. Turning to indirect confusion, whilst I bear in mind that the conventional word 'get' is not particularly distinctive in relation to the taxi-related goods and services for which the opponent has used the earlier mark, for the reasons I have set out at paragraph 48, the starting point is that the earlier mark is distinctive to a medium degree. However, most of the earlier mark's distinctiveness derives from it being a misspelling, and it follows from the misspelling that 'GETT' is invented. In addition, the comparison is not between the elements 'GET' and 'GETT' alone, and (a) the presence of the conjoined element 'me' in the applied-for mark introduces a conceptual difference because the combination reads together somehow reducing the risk of the average consumer misreading the element 'Get' as 'GETT', and (b) the fact that most of the earlier mark's distinctiveness derives from 'GETT' being a misspelling means that it is also unlikely that the average consumer will misremember the earlier mark 'GETT' as 'GET'. In my view, even factoring in the high degree of distinctiveness of the earlier

mark ‘GETT’ (and the identity of some of the goods and services involved), bearing in mind the effects of imperfect recollection, the average consumer having noted the difference between ‘GETT’ and ‘Getme’, is unlikely to identify the element ‘Get’ in ‘Getme’ as signifying an economic connection with opponent. Accordingly, I am satisfied that it is more likely than not that the average consumer having noted the differences between ‘Get’ in ‘Getme’ and ‘GETT’ alone will consider the use of the similar (but conventional) word ‘Get’ in ‘Getme’ as being a coincidence, rather than as having independent trade mark significance. There is no likelihood of indirect confusion.

65. The opposition under Section 5(2)(b) fails.

Section 5(3)

66. Section 5(3) states:

> “(3) A trade mark which-
>
> is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark”.

67. In *General Motors,* Case C-375/97, the CJEU held that:

> “25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.
>
> 26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation 'in the Member State'. In the absence of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation 'throughout' the territory of the Member State. It is sufficient for it to exist in a substantial part of it."

Reputation

68. As it will be recalled I have found that it is likely that the distinctiveness of the opponent's earlier mark has been materially increased to a high degree in relation to taxi services in class 39, as well as in relation to the provision of software (in classes 9) and temporary use of online non-downloadable software (in class 42) for the coordination and booking of taxi services.

The Link

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

- The degree of similarity between the conflicting marks. The applied-for mark and the earlier mark are aurally and conceptually similar to a medium degree and visually similar to a low to medium degree.

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

public. The following goods and services are either identical or highly similar to the opponent's goods and services:

Class 9: *Mobile application software; Downloadable mobile applications; Downloadable software in the nature of a mobile application; Downloadable applications for use with mobile devices; Downloadable software applications for mobile phones; Mobile apps; Downloadable smart phone application software; Downloadable application software for smart phones; Smartphone software applications, downloadable; Web application software; Web application and server software; Downloadable software in the nature of a mobile application for food delivery and ordering; Downloadable software in the nature of a mobile application for dark kitchen delivery and ordering.*

Class 39: *Delivery of food; Food delivery services; Delivery of groceries; Food delivery; Parcel delivery services; Courier services for the delivery of parcels; Delivery services; Providing taxi booking services via mobile applications.*

The remaining goods and services are dissimilar, or similar to a low degree.

The relevant public is a member of the general public or a business user.

- The strength of the earlier mark's reputation. The earlier marks' reputation is strong.

- The degree of the earlier mark's distinctive character, whether inherent or acquired through use. The earlier mark is inherently distinctive to a medium degree and its distinctiveness has been enhanced to a high degree.

- Whether there is a likelihood of confusion. I have found that there is no likelihood of confusion.

Conclusions on Link

70. Bearing in mind all of the above, I find that a link will be made between the marks in the context of goods and services which are identical to the taxi-related goods and services in relation to which the earlier mark has acquired a high level of distinctiveness (and in the context of which consumer are familiar with the use of the earlier mark). However, given the distance between the goods and services which I found to be dissimilar or similar to a low degree, or which are far too removed from the sector the opponent's reputation vets in, I consider that even if a link is made, it will be so fleeting not to cause any damage. Accordingly, a link will be made in the context of the following goods and services (which either relate to taxi services or are sufficiently broad to encompass them):

> **Class 9:** *Mobile application software; Downloadable mobile applications; Downloadable software in the nature of a mobile application; Downloadable applications for use with mobile devices; Downloadable software applications for mobile phones; Mobile apps; Downloadable smart phone application software; Web application software; Downloadable application software for smart phones; Smartphone software applications, downloadable; Web application and server software.*
>
> **Class 39:** *Providing taxi booking services via mobile applications.*

71. However, I am satisfied that a link will not be made in relation to the following goods and services for which the opposition under Section 5(3) fails:

> **Class 9:** *Downloadable software in the nature of a mobile application for food delivery and ordering; Downloadable software in the nature of a mobile application for dark kitchen delivery and ordering; Electric mobile digital communication devices; Software for operating an online shop; E-commerce software; Software for online messaging; Encoded loyalty cards; Encoded reward cards; Encoded cards for use in point of sale transactions; Point Of Sale [POS] systems; Magnetic coded card readers.*

Class 35: *Provision of an online marketplace for buyers and sellers of goods and services; Provision of an on-line marketplace for buyers and sellers of goods and services; Providing online marketplaces for sellers of goods and or services; Providing a searchable online advertising guide featuring the goods and services of online vendors; Advertising the goods and services of online vendors via a searchable online guide; Online business networking services; Providing a searchable online advertising guide featuring the goods and services of other on-line vendors on the internet; Advertising of the goods of other vendors, enabling customers to conveniently view and compare the goods of those vendors; Advertising of the services of other vendors, enabling customers to conveniently view and compare the services of those vendors; Loyalty, incentive and bonus program services; Loyalty scheme services; Promoting the goods and services of others by means of a loyalty rewards card scheme; Sales promotion through customer loyalty programs; Sales promotion for others provided through the distribution and the administration of privileged user cards; Promoting the goods and services of others through discount card programs; Sales promotion for others through trading stamp schemes; Digital marketing; Advertising, marketing and promotional services; Online ordering services; Classified advertising; Classified advertising services; Banner advertising; Advertising and promotional services; Advertising for others.*

Class 36: *Issuing tokens of value as a reward for customer loyalty; Issuing of tokens of value in relation to customer loyalty schemes; Issue and redemption of tokens of value; Issue of tokens, coupons and vouchers of value; Issuing tokens of value as part of a customer membership scheme; Issuing electronic payment cards in connection with bonus and reward schemes; Providing rebates at participating establishments of others through use of a membership card; Issuing of vouchers for use as money.*

Class 39: *Delivery of food; Food delivery services; Delivery of groceries; Food delivery; Parcel delivery services; Courier services for the delivery of parcels; Delivery services.*

Damage

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

Unfair Advantage

73. In *Argos Limited v Argos Systems Inc.* [2018] EWCA Civ 2211, the Court of Appeal held that a change in the economic behaviour of the customers for the goods/services offered under the later trade mark was required to establish unfair advantage.

74. This may be inferred where the later trade mark would gain a commercial advantage from the transfer of the image of the earlier trade mark to the later mark: see *Claridges Hotel Limited v Claridge Candles Limited and Anor,* [2019] EWHC 2003 (IPEC).

75. In *Jack Wills Limited v House of Fraser (Stores) Limited* [2014] EWHC 110 (Ch) Arnold J. (as he then was) considered the earlier case law and concluded that:

> "80. The arguments in the present case give rise to two questions with regard to taking unfair advantage. The first concerns the relevance of the defendant's intention. It is clear both from the wording of Article 5(2) of the Directive and Article 9(1)(c) of the Regulation and from the case law of the Court of Justice interpreting these provisions that this aspect of the legislation is directed at a particular form of unfair competition. It is also clear from the case law both of the Court of Justice and of the Court of Appeal that the defendant's conduct is most likely to be regarded as unfair where he intends to benefit from the reputation and goodwill of the trade mark. In my judgment, however, there is nothing in the case law to preclude the court from concluding in an appropriate case that the use of a sign the objective effect of which is to enable the defendant to benefit from the reputation and goodwill of the trade mark amounts to unfair advantage even if it is not proved that the defendant subjectively intended to exploit that reputation and goodwill."

76. In its Form TM7, the opponent states:

"The Opponent contends that the Applicant's Mark free rides on, or exploits, the reputation, prestige and/or image associated with the Opponent's Earlier Mark and the owner of the later mark will thereby unlawfully benefit from this. The similarity between the Opponent's Mark and the Applicant's Mark, combined with the strength of the Opponent's reputation in the Opponent's Earlier Mark, is such that it would be easier for the Applicant to sell its products without incurring the same level of marketing costs as would otherwise be required. As a result, the Applicant would be able to take unfair advantage of the reputation of the Opponent's Earlier Mark."

77. There is evidence that the opponent has invested significant amounts in promotional activities and that the opponent's 'GETT' app is one of the top taxi apps in London. I agree with the opponent that the similarity between the marks combined with the strength of the earlier mark's reputation is such that it would be easier for the applicant to promote its products without incurring the same level of marketing costs as would otherwise be required. This is unfair advantage.

Detriment to the distinctive character

78. In addition to unfair advantage, the opponent claimed detriment to the distinctive character stating as follows:

"Use by the Applicant of the mark applied for in relation to the goods and services covered by the Opposed Application would take unfair advantage of that distinctive character and would reduce the capacity of the Opponent's Earlier Mark to produce an immediate association with the Opponent's goods/services and the Opponent's goods/services alone."

79. In *Environmental Manufacturing LLP v OHIM,* Case C-383/12P, the CJEU stated that:

"34. According to the Court's case-law, proof that the use of the later mark is, or would be, detrimental to the distinctive character of the earlier mark requires

evidence of a change in the economic behaviour of the average consumer of the goods or services for which the earlier mark was registered, consequent on the use of the later mark, or a serious likelihood that such a change will occur in the future (*Intel Corporation*, paragraphs 77 and 81, and also paragraph 6 of the operative part of the judgment).

35. Admittedly, paragraph 77 of the *Intel Corporation* judgment, which begins with the words '[i]t follows that', immediately follows the assessment of the weakening of the ability to identify and the dispersion of the identity of the earlier mark; it could thus be considered to be merely an explanation of the previous paragraph. However, the same wording, reproduced in paragraph 81 and in the operative part of that judgment, is autonomous. The fact that it appears in the operative part of the judgment makes its importance clear.

36. The wording of the above case-law is explicit. It follows that, without adducing evidence that that condition is met, the detriment or the risk of detriment to the distinctive character of the earlier mark provided for in Article 8(5) of Regulation No 207/2009 cannot be established.

37. The concept of 'change in the economic behaviour of the average consumer' lays down an objective condition. That change cannot be deduced solely from subjective elements such as consumers' perceptions. The mere fact that consumers note the presence of a new sign similar to an earlier sign is not sufficient of itself to establish the existence of a detriment or a risk of detriment to the distinctive character of the earlier mark within the meaning of Article 8(5) of Regulation No 207/2009, in as much as that similarity does not cause any confusion in their minds.

38 The General Court, at paragraph 53 of the judgment under appeal, dismissed the assessment of the condition laid down by the *Intel Corporation* judgment, and, consequently, erred in law.

39. The General Court found, at paragraph 62 of the judgment under appeal, that 'the fact that competitors use somewhat similar signs for identical or similar

goods compromises the immediate connection that the relevant public makes between the signs and the goods at issue, which is likely to undermine the earlier mark's ability to identify the goods for which it is registered as coming from the proprietor of that mark'.

40. However, in its judgment in *Intel Corporation*, the Court clearly indicated that it was necessary to demand a higher standard of proof in order to find detriment or the risk of detriment to the distinctive character of the earlier mark, within the meaning of Article 8(5) of Regulation No 207/2009.

41. Accepting the criterion put forward by the General Court could, in addition, lead to a situation in which economic operators improperly appropriate certain signs, which could damage competition.

42. Admittedly, Regulation No 207/2009 and the Court's case-law do not require evidence to be adduced of actual detriment, but also admit the serious risk of such detriment, allowing the use of logical deductions.

43. None the less, such deductions must not be the result of mere suppositions but, as the General Court itself noted at paragraph 52 of the judgment under appeal, in citing an earlier judgment of the General Court, must be founded on 'an analysis of the probabilities and by taking account of the normal practice in the relevant commercial sector as well as all the other circumstances of the case'."

80. In my view, the contested mark 'Getme' is sufficiently close, both aurally and conceptually, to the opponent's 'GETT' mark that its use by the applicant in the same sector in which the opponent operates and enjoys a strong reputation (i.e. the taxi services sector), is likely to compromises the immediate connection that the relevant public makes between the signs and the goods and services at issue, which is likely to undermine the earlier mark's ability to identify the goods and services for which it is registered as coming from the opponent.

81. As I have found both unfair advantage and detriment to distinctive character, I do not need to consider the other pleaded head of damage.

OUTCOME

82. The opposition has been partially successful in relation to the following goods and services which will be refused registration:

> **Class 9:** *Mobile application software; Downloadable mobile applications; Downloadable software in the nature of a mobile application; Downloadable applications for use with mobile devices; Downloadable software applications for mobile phones; Mobile apps; Downloadable smart phone application software; Web application software; Downloadable application software for smart phones; Smartphone software applications, downloadable; Web application and server software.*
>
> **Class 39:** *Providing taxi booking services via mobile applications.*

83. The opposition has failed in relation to the following goods and services which will proceed to registration:

> **Class 9:** *Downloadable software in the nature of a mobile application for food delivery and ordering; Downloadable software in the nature of a mobile application for dark kitchen delivery and ordering; Electric mobile digital communication devices; Software for operating an online shop; E-commerce software; Software for online messaging; Encoded loyalty cards; Encoded reward cards; Encoded cards for use in point of sale transactions; Point Of Sale [POS] systems; Magnetic coded card readers.*
>
> **Class 35:** *Provision of an online marketplace for buyers and sellers of goods and services; Provision of an on-line marketplace for buyers and sellers of goods and services; Providing online marketplaces for sellers of goods and or services; Providing a searchable online advertising guide featuring the goods and services of online vendors; Advertising the goods and services of online*

vendors via a searchable online guide; Online business networking services; Providing a searchable online advertising guide featuring the goods and services of other on-line vendors on the internet; Advertising of the goods of other vendors, enabling customers to conveniently view and compare the goods of those vendors; Advertising of the services of other vendors, enabling customers to conveniently view and compare the services of those vendors; Loyalty, incentive and bonus program services; Loyalty scheme services; Promoting the goods and services of others by means of a loyalty rewards card scheme; Sales promotion through customer loyalty programs; Sales promotion for others provided through the distribution and the administration of privileged user cards; Promoting the goods and services of others through discount card programs; Sales promotion for others through trading stamp schemes; Digital marketing; Advertising, marketing and promotional services; Online ordering services; Classified advertising; Classified advertising services; Banner advertising; Advertising and promotional services; Advertising for others.

Class 36: *Issuing tokens of value as a reward for customer loyalty; Issuing of tokens of value in relation to customer loyalty schemes; Issue and redemption of tokens of value; Issue of tokens, coupons and vouchers of value; Issuing tokens of value as part of a customer membership scheme; Issuing electronic payment cards in connection with bonus and reward schemes; Providing rebates at participating establishments of others through use of a membership card; Issuing of vouchers for use as money.*

Class 39: *Delivery of food; Food delivery services; Delivery of groceries; Food delivery; Parcel delivery services; Courier services for the delivery of parcels; Delivery services.*

COSTS

84. Since both parties have achieved a measure of success, I order that each party bear their own costs.

Dated this 11th day of December 2025

TERESA PINTO

For the Registrar