

O/1185/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NUMBER 4012787

IN THE NAME OF LUMENAI LTD.

TO REGISTER THE FOLLOWING TRADE MARK:

lumenai

IN CLASSES 9, 41 & 42

AND

THE OPPOSITION THERETO UNDER NUMBER 447810

BY CENTURLINK COMMUNICATIONS, LLC

Background and pleadings

1. On 9 February 2024, Lumenai Ltd. (“the applicant”) applied to register the figurative trade mark, shown on the cover page, in the UK. It was accepted and published in the Trade Marks Journal on 1 March 2024. The following goods are opposed in these proceedings:

Class 9: Computer and Software Products and Scientific Products; Software applications; Software converters of natural language into machine executable commands; Software development programmes; Software development tools; Software downloadable from the internet; Software drivers; Software for Automated Business Process Discovery (ABPD); Software for computers; Software for converting natural language into machine executable commands; Software for mobile phones; Artificial intelligence and machine learning software; Artificial intelligence software for analysis; Software; Machine learning software for analysis; Training software; Software (Computer), recorded; Software and applications for mobile devices; Software applications for mobile devices; Software applications for use with mobile devices; Software compiler; Software compiling tools; Software for monitoring, analysing, controlling and running physical world operations; Software for product development; Software for smartphones; Software for tablet computers; Software for televisions; Software for the analysis of business data; AI software; Artificial intelligence software; Education software; Educational computer applications; Educational computer software; Educational mobile applications; Educational tablet applications; Machine learning software.

Class 41: Education; Training and education services; Training consultancy; Training in the operation of software systems; Training of teachers; Training relating to employment skills; Training services; Business training consultancy services; Education and instruction; Education and training; Education and training consultancy; Education and training in the field of business management; Education and training in the field of electronic data processing; Education and training services in relation to business management; Education examination; Education in the field of data processing; Education information; Education services; Education services for imparting data processing teaching

methods; Education services in the nature of courses at the university level; Education services related to the arts; Education services relating to business training; Education services relating to communication skills; Education services relating to computer software; Education services relating to data processing; Education services relating to design; Education services relating to languages; Education services relating to the application of computer software; Education services relating to the application of computer systems; Education services relating to vocational training; Education, teaching and training; Educational advisory services; Educational and teaching services; Educational assessment services; Educational consultancy; Educational consultancy services; Educational courses (Provision of -); Educational courses relating to design; Educational demonstrations; Educational examination; Educational examination services; Educational examination services (Information relating to -); Educational information; Educational information provided on-line from a computer database or the internet; Educational instruction; Educational materials or apparatus (Rental of -); Educational research; Educational seminars; Educational services; Educational services for providing courses of education; Educational services for providing courses of instruction; Educational services for the teaching of languages; Educational services provided by a school; Educational services provided by academies; Educational services provided by colleges; Educational services provided by institutes of further education; Educational services provided by institutes of higher education; Educational services provided by schools; Educational services provided by senior high schools; Educational services provided by universities; Educational services provided for children; Educational services provided for teachers of children; Educational services provided to industry; Educational services relating to business; Educational services relating to data processing; Educational services relating to information technology; Educational services relating to management; Educational services relating to sales training; Educational testing; Adult education services; Analysing educational test scores and data for others; Training and instruction; Training courses; Training courses (Provision of -); Training courses relating to computer software; Training courses relating to system analysis; Training in administration; Training in business management; Training in business skills;

Training in communication techniques; Training in data processing techniques; Training in the design of computer programs; Training in the design of software systems; Training in the development of software systems; Training in the operation of computer programs; Training in the operation of computerised systems; Training in the use and operation of data processors; Training in the use of data processing programs; Training of teacher; Training or education services in the field of life coaching; Training relating to computer programmes; Training relating to computer software; Training relating to data processing; Training relating to data processing techniques; Training relating to employment opportunities; Training services concerned with the use of computer software; Training services in the field of computer software development; Training services relating to computer software; Training; Training services relating to; Training services relating to management consultancy; Adult training; Advanced training; Advisory services relating to training; Arrangement of training courses in teaching institutes; Arranging of conferences relating to training; Arranging professional workshop and training courses; Business training; Business training provided through a game; Business training services; Coaching [training]; Consultancy relating to vocational skills training; Courses for the development of consulting skills; Vocational skills training; Vocational skills training (Provision of -); Instructional and training services; Instructional services relating to data processing; Conducting of instructional, educational and training courses for young people and adults; Production and rental of educational and instructional materials; Publication of instructional literature; Publishing of instructional books; Rental of instructional material.

Class 42: Computer and Software Services and Scientific Services; Software as a service [SaaS] featuring computer software platforms for artificial intelligence; Software as a service [SaaS] featuring software for machine learning; Software authoring; Software creation; Software design; Software design and development; Software as a service [SaaS] services featuring software for machine learning, deep learning and deep neural networks; Software (Updating of computer -); Software as a service; Software as a service [SaaS] featuring software for deep learning; Software consultancy services;

Software creation; Software development, programming and implementation; Software engineering; Software engineering services; Software installation; Software maintenance services; Software research; Advisory services relating to computer software; Advisory services relating to computer software design; Advisory services relating to the use of computer software; Software as a service [SaaS] services featuring software for machine learning, deep learning and deep neural networks.

2. On 4 June 2024, CenturyLink Communications, LLC (“the opponent”) opposed the trade mark based upon Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). This is on the basis of its two earlier trade marks:

1. LUMEN

International Registration designating the UK under no.: 1562438

Priority date: 15 January 2020

International registration date: 13 July 2020

Date of protection in the UK: 10 June 2021

(“the opponent’s earlier ‘438 registration”)

The following goods are relied on for this opposition:

Class 9: Computer hardware and recorded software for setting up and configuring local area networks; downloadable software for internet access, streaming media and content delivery; downloadable software for use in teleconferencing and video conferencing; downloadable software which allows users to participate in web-based meetings and classes, with access to data, documents, images and software applications through a web browser; computer hardware, namely, wireless access point (WAP) devices and Wi-Fi devices; downloadable software for delivering content, including websites, software files, video, audio, data and streaming media over the internet and per-to-peer networks; downloadable software for use as an application programming interface (API) to allow access to information related to the provision, maintenance, and configuration to telecommunications services;

downloadable software for managing, configuring and troubleshooting telecommunications services.

Class 42: Installation of computer software; installation and maintenance of internet access software; computer security consultancy; computer security threat analysis for protecting data; technical consulting services in the fields of datacenter architecture, public and private cloud computing solutions, and evaluation and implementation of internet technology and services; updating and maintaining computer software through patches; computer network configuration services; consulting in the field of configuration management for computer hardware and software; computer systems integration services; integration of computer systems and networks; integration and testing of wireless network systems; automation services, namely, design and development of computer hardware and software architecture, namely, automation through wireless telephonic, electric or web monitoring technologies that allow for remote or automated control of environmental control systems for homes, buildings or structures; automation services for security purposes in the nature of information technology [IT] engineering, namely, automation through wireless telephonic, electric or web monitoring technologies that allow for remote or automated control of building access and security systems; computer network management, namely, monitoring of network systems for technical purposes; computer services, namely, cloud hosting provider services; computer services, namely, monitoring, testing, analyzing, and reporting on the internet traffic control and content control of the web sites of others; computer services, namely, optimizing cloud computing networks in the nature of remote and on-site infrastructure management and monitoring of cloud computing IT and application systems; design of telecommunication systems for others; design of computer networks for others; electronic storage services for archiving databases, images and other electronic data; electronic storage of electronic media, namely, images, text and audio data; managing and optimizing the WAN, VPN and VPLS of others; providing virtual computer systems and virtual computer environments through cloud computing; remote computer backup services.

2. LUMEN

UK registration number: UK00003545603

Filing date: 7 January 2019

Registration date: 31 May 2019

(“the opponent’s earlier ‘603 registration”)

The following goods are relied on for this opposition:

Class 41: Hosting seminars, presentations and discussion groups and providing training in the fields of personal development, career development, relationship building, training, recruiting, business consulting, business development, and networking and providing information thereof; hosting of exhibitions, conferences and seminars and networking events for business and cultural purposes; organising and conducting online training events including virtual meetings and seminars; publication of editorial content of sites accessible via a global computer network; organising and conducting entertainment and cultural events; organising of meetings and conferences.

3. By virtue of their earlier filing dates, the opponent’s above registrations constitute earlier marks in accordance with section 6 of the Act. I note that, in the Form TM8, the applicant requested proof of use of the earlier marks. However, in accordance with section 6A of the Act, the earlier marks are not subject to proof of use as they hadn’t been registered for over five years at the relevant date (i.e. date the contested mark was filed). The opponent may therefore rely upon all the goods for which the marks are registered.

4. Under section 5(2)(b), the opponent claims that the respective goods and services are identical or highly similar and that the marks are highly similar. As such, the opponent submits there will be a likelihood of confusion between the marks, including a likelihood of association.

5. The applicant filed a counterstatement in which it denies all of the claims made in the opposition.

6. The applicant filed evidence, the opponent did not. Both parties filed submissions in lieu of a hearing. No hearing was requested and so this decision is taken following a careful perusal of the papers.

7. The opponent is represented by Taylor Wessing LLP. The applicant is a litigant in person.

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

Evidence

9. The applicant's evidence was filed in the form of a witness statement, dated 4 September 2024. This was filed by Antonia Manoochehri, the Director of Lumenai Ltd, the applicant. The witness statement includes four exhibits labelled JS1 to JS4, which show the use of the contested mark on websites, marketing material and various social media websites, some of which are dated between January and July 2024. I acknowledge these exhibits and this witness statement and confirm that I have taken all filed documents into account.

10. The evidence shows the use of the applicant's mark and a range of the goods and services offered under its mark. The witness statement also provides turnover figures for the company. The evidence provided is not sufficient to influence my findings on a likelihood of confusion in this instance. The evidence does not show coexistence of the marks in the marketplace without confusion, considering there is no evidence shown of the opponent's marks, although I note that, even if this were provided, an absence of evidence of confusion need not lead to a finding of no likelihood of confusion.¹ I will proceed to conduct a notional assessment of the marks and their goods and services as registered. I will therefore not address this evidence any further.

¹ *Roger Maier and Another v ASOS*, [2015] EWCA Civ 220

Decision

Section 5(2)(b)

11. Section 5(2)(b) of the Act is 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”.

Section 5A

12. Section 5A of the Act is as follows:

“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.”

The principles

13. The following principles are gleaned from the decisions of the Court of Justice of the European Union (“CJEU”) in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

The principles

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

- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

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

Comparison of goods and services

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

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary.”

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

- a. The respective uses of the respective goods or services;
- b. The respective users of the respective goods or services;
- c. The physical nature of the goods or acts of service;
- d. The respective trade channels through which the goods or services reach the market;
- e. In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- f. The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

16. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court (“GC”) stated that:

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

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

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

18. Further, in *Kurt Hesse v OHIM*,² 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*,³ the GC stated that “complementary” means:

“...there is close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers

² Case C-50/15 P

³ Case T-325/06

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

19. With this in mind, the goods for comparison are as follows:

Opponent’s goods and services:	Contested goods and services:
<p>For the opponent’s earlier ‘438 registration:</p> <p><i>Class 9: Computer hardware and recorded software for setting up and configuring local area networks; downloadable software for internet access, streaming media and content delivery; downloadable software for use in teleconferencing and video conferencing; downloadable software which allows users to participate in web-based meetings and classes, with access to data, documents, images and software applications through a web browser; computer hardware, namely, wireless access point (WAP) devices and Wi-Fi devices; downloadable software for delivering content, including websites, software files, video, audio, data and streaming media over the internet and per-to-peer networks; downloadable software for use as an application programming interface (API) to allow access to information related to the provision, maintenance, and configuration to telecommunications services; downloadable software for</i></p>	<p><i>Class 9: Computer and Software Products and Scientific Products; Software applications; Software converters of natural language into machine executable commands; Software development programmes; Software development tools; Software downloadable from the internet; Software drivers; Software for Automated Business Process Discovery (ABPD); Software for computers; Software for converting natural language into machine executable commands; Software for mobile phones; Artificial intelligence and machine learning software; Artificial intelligence software for analysis; Software; Machine learning software for analysis; Training software; Software (Computer), recorded; Software and applications for mobile devices; Software applications for mobile devices; Software applications for use with mobile devices; Software compiler; Software compiling tools; Software for monitoring, analysing, controlling and running physical world operations; Software for product development;</i></p>

<p>managing, configuring and troubleshooting telecommunications services.</p> <p><i>Class 42: Installation of computer software; installation and maintenance of internet access software; computer security consultancy; computer security threat analysis for protecting data; technical consulting services in the fields of datacenter architecture, public and private cloud computing solutions, and evaluation and implementation of internet technology and services; updating and maintaining computer software through patches; computer network configuration services; consulting in the field of configuration management for computer hardware and software; computer systems integration services; integration of computer systems and networks; integration and testing of wireless network systems; automation services, namely, design and development of computer hardware and software architecture, namely, automation through wireless telephonic, electric or web monitoring technologies that allow for remote or automated control of environmental control systems for homes, buildings or structures; automation services for security purposes in the nature of information technology [IT] engineering, namely,</i></p>	<p><i>Software for smartphones; Software for tablet computers; Software for televisions; Software for the analysis of business data; AI software; Artificial intelligence software; Education software; Educational computer applications; Educational computer software; Educational mobile applications; Educational tablet applications; Machine learning software.</i></p> <p><i>Class 41: Education; Training and education services; Training consultancy; Training in the operation of software systems; Training of teachers; Training relating to employment skills; Training services; Business training consultancy services; Education and instruction; Education and training; Education and training consultancy; Education and training in the field of business management; Education and training in the field of electronic data processing; Education and training services in relation to business management; Education examination; Education in the field of data processing; Education information; Education services; Education services for imparting data processing teaching methods; Education services in the nature of courses at the university level; Education services related to the arts;</i></p>
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<p>automation through wireless telephonic, electric or web monitoring technologies that allow for remote or automated control of building access and security systems; computer network management, namely, monitoring of network systems for technical purposes; computer services, namely, cloud hosting provider services; computer services, namely, monitoring, testing, analyzing, and reporting on the internet traffic control and content control of the web sites of others; computer services, namely, optimizing cloud computing networks in the nature of remote and on-site infrastructure management and monitoring of cloud computing IT and application systems; design of telecommunication systems for others; design of computer networks for others; electronic storage services for archiving databases, images and other electronic data; electronic storage of electronic media, namely, images, text and audio data; managing and optimizing the WAN, VPN and VPLS of others; providing virtual computer systems and virtual computer environments through cloud computing; remote computer backup services.</p>	<p>Education services relating to business training; Education services relating to communication skills; Education services relating to computer software; Education services relating to data processing; Education services relating to design; Education services relating to languages; Education services relating to the application of computer software; Education services relating to the application of computer systems; Education services relating to vocational training; Education, teaching and training; Educational advisory services; Educational and teaching services; Educational assessment services; Educational consultancy; Educational consultancy services; Educational courses (Provision of -); Educational courses relating to design; Educational demonstrations; Educational examination; Educational examination services; Educational examination services (Information relating to -); Educational information; Educational information provided on-line from a computer database or the internet; Educational instruction; Educational materials or apparatus (Rental of -); Educational research; Educational seminars; Educational services;</p>
<p>For the opponent's earlier '603 registration:</p>	<p>Educational services for providing courses of education; Educational</p>

Class 41: Hosting seminars, presentations and discussion groups and providing training in the fields of personal development, career development, relationship building, training, recruiting, business consulting, business development, and networking and providing information thereof; hosting of exhibitions, conferences and seminars and networking events for business and cultural purposes; organising and conducting online training events including virtual meetings and seminars; publication of editorial content of sites accessible via a global computer network; organising and conducting entertainment and cultural events; organising of meetings and conferences.

services for providing courses of instruction; Educational services for the teaching of languages; Educational services provided by a school; Educational services provided by academies; Educational services provided by colleges; Educational services provided by institutes of further education; Educational services provided by institutes of higher education; Educational services provided by schools; Educational services provided by senior high schools; Educational services provided by universities; Educational services provided for children; Educational services provided for teachers of children; Educational services provided to industry; Educational services relating to business; Educational services relating to data processing; Educational services relating to information technology; Educational services relating to management; Educational services relating to sales training; Educational testing; Adult education services; Analysing educational test scores and data for others; Training and instruction; Training courses; Training courses (Provision of -); Training courses relating to computer software; Training courses relating to system analysis; Training in administration; Training in

	<p><i>business management; Training in business skills; Training in communication techniques; Training in data processing techniques; Training in the design of computer programs; Training in the design of software systems; Training in the development of software systems; Training in the operation of computer programs; Training in the operation of computerised systems; Training in the use and operation of data processors; Training in the use of data processing programs; Training of teacher; Training or education services in the field of life coaching; Training relating to computer programmes; Training relating to computer software; Training relating to data processing; Training relating to data processing techniques; Training relating to employment opportunities; Training services concerned with the use of computer software; Training services in the field of computer software development; Training services relating to computer software; Training; Training services relating to; Training services relating to management consultancy; Adult training; Advanced training; Advisory services relating to training; Arrangement of training courses in teaching institutes; Arranging of conferences relating to training;</i></p>
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	<p><i>Arranging professional workshop and training courses; Business training; Business training provided through a game; Business training services; Coaching [training]; Consultancy relating to vocational skills training; Courses for the development of consulting skills; Vocational skills training; Vocational skills training (Provision of -); Instructional and training services; Instructional services relating to data processing; Conducting of instructional, educational and training courses for young people and adults; Production and rental of educational and instructional materials; Publication of instructional literature; Publishing of instructional books; Rental of instructional material.</i></p> <p><i>Class 42: Computer and Software Services and Scientific Services; Software as a service [SaaS] featuring computer software platforms for artificial intelligence; Software as a service [SaaS] featuring software for machine learning; Software authoring; Software creation; Software design; Software design and development; Software as a service [SaaS] services featuring software for machine learning, deep learning and deep neural networks; Software (Updating of computer -); Software as a service; Software as a</i></p>
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	<i>service [SaaS] featuring software for deep learning; Software consultancy services; Software creation; Software development, programming and implementation; Software engineering; Software engineering services; Software installation; Software maintenance services; Software research; Advisory services relating to computer software; Advisory services relating to computer software design; Advisory services relating to the use of computer software; Software as a service [SaaS] services featuring software for machine learning, deep learning and deep neural networks.</i>
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20. I note that the contested mark is registered for “training services relating to”. This service is nonsensical and it is not clear what these services are intended to relate to. However, as the mark is also registered for training services at large, I will consider this service covered.

21. The opponent pleads that the goods and services are identical, or at least highly similar. In its submissions in lieu, the opponent submits that the goods and services are complementary.

22. In its submissions in lieu, the applicant submits that the goods and services are not identical or highly similar. It also submits that “the commercial realities of different types of goods and services” and the “circumstances of the market” should be taken into account. The applicant’s submissions have been noted and I will be conducting a notional assessment of the goods and services, taking into account the relevant factors as set out in the case law.

Class 9 goods

Computer and software products [...]; software applications; software; software for computers; software for smartphones; software for televisions; software for tablet computers; educational software; educational computer software; software for computers; software for mobile phones; software downloadable from the internet; software applications for mobile devices; software and applications for mobile devices; software applications for use with mobile devices; educational computer applications; educational mobile applications; educational tablet applications; training software; software (computer), recorded

23. The opponent's 'downloadable software for internet access, streaming media and content delivery' falls under the scope of the above goods. These goods are therefore considered identical according to the principles set out in *Meric*.⁴

[...] Scientific products

24. The above goods include apparatus and instruments for scientific purposes. I do not consider that the ordinary and natural meaning of *scientific products* would include software. I acknowledge that software may be used in the field of science, but that does not lead to a similarity of software to scientific products per se. I do not consider that these goods have any similarity to any of the opponent's goods or services. The above goods are therefore dissimilar to all of the opponent's goods and services.

Software development programmes; software development tools; artificial intelligence and machine learning software; artificial intelligence software for analysis; machine learning software; machine learning software for analysis; AI software; artificial intelligence software; software for the analysis of business data; Software for monitoring, analysing, controlling and running physical world operations; Software for product development; Software for Automated Business Process Discovery (ABPD); software for converting natural language into machine executable commands; software compiler; software compiling tools; software converters of natural language into machine executable commands

⁴ Case T-133/05

25. I compare the above goods with the opponent's class 42 services 'installation of computer software' and 'updating and maintaining computer software through patches'. The nature of the goods and services clearly differs, as does the purpose and method of use. However, I consider that software itself is essential to services for the installation and updating and maintaining of that type of software, and I consider that users are likely to believe that these services may be offered by the providers of the software itself. I therefore consider there to be an element of complementarity between the goods and services; however, I do not consider there will be competition between the same. Users will overlap as consumers using the software goods are also likely to engage services for the installation, updating and/or maintaining of that software. Overall, I find a low to medium level of similarity between the above goods and the opponent's 'installation of computer software' and 'updating and maintaining computer software through patches' in class 42.

Software drivers

26. The above goods are a type of software that allows a computer to communicate with hardware devices. These goods may be downloadable and may be designed to allow a computer to communicate with hardware devices such as those used in teleconferencing and video conferencing. I therefore consider that the above goods overlap in scope with the opponent's 'downloadable software for use in teleconferencing and video conferencing'. These goods are therefore considered identical according to the principles set out in *Meric*.⁵

Class 41 services

Education; training and education services; education and training; training of teachers; training relating to employment skills; training services; training in the operation of software systems; education and instruction; education and training in the field of business management; education and training in the field of electronic data processing; education and training services in relation to business management; education in the field of data processing; Education services; Education services for imparting data processing teaching methods; Education services in the nature of

⁵ Case T-133/05

courses at the university level; Education services related to the arts; Education services relating to business training; Education services relating to communication skills; Education services relating to computer software; Education services relating to data processing; Education services relating to design; Education services relating to languages; Education services relating to the application of computer software; Education services relating to the application of computer systems; Education services relating to vocational training; Education, teaching and training; Educational and teaching services; Educational courses (Provision of -); Educational courses relating to design; Educational demonstrations; Educational instruction; Educational seminars; Educational services; Educational services for providing courses of education; Educational services for providing courses of instruction; Educational services for the teaching of languages; Educational services provided by a school; Educational services provided by academies; Educational services provided by colleges; Educational services provided by institutes of further education; Educational services provided by institutes of higher education; Educational services provided by schools; Educational services provided by senior high schools; Educational services provided by universities; Educational services provided for children; Educational services provided for teachers of children; Educational services provided to industry; Educational services relating to business; Educational services relating to data processing; Educational services relating to information technology; Educational services relating to management; Educational services relating to sales training; Adult education services; Training and instruction; Training courses; Training courses (Provision of -); Training courses relating to computer software; Training courses relating to system analysis; Training in administration; Training in business management; Training in business skills; Training in communication techniques; Training in data processing techniques; Training in the design of computer programs; Training in the design of software systems; Training in the development of software systems; Training in the operation of computer programs; Training in the operation of computerised systems; Training in the use and operation of data processors; Training in the use of data processing programs; Training of teacher; Training or education services in the field of life coaching; Training relating to computer programmes; Training relating to computer software; Training relating to data processing; Training relating to data processing techniques; Training relating to employment opportunities; Training services concerned with the use of computer software; Training services in

the field of computer software development; Training services relating to computer software; Training; Training services relating to management consultancy; Adult training; Advanced training; Business training; Business training provided through a game; Business training services; Coaching [training]; Courses for the development of consulting skills; Vocational skills training; Vocational skills training (Provision of -); Instructional and training services; Instructional services relating to data processing; Conducting of instructional, educational and training courses for young people and adults

27. The opponent's 'organising and conducting online training events including virtual meetings and seminars' falls within the scope of the above services. These services are therefore considered identical according to the principles set out in *Meric*.⁶

28. If I am wrong in this finding, I nevertheless find the services similar. I do not consider the word "including" to limit the services, such that the opponent's services cover organising and conducting training events in general. It may be considered that there is a difference between training and education, or a difference between courses and events. In either case, the similarities between them are significant. Purposes and nature overlap. Users and trade channels also likely overlap. There is no competition or complementarity. Overall, I find the above services highly similar to the opponent's 'organising and conducting online training events including virtual meetings and seminars'.

Training consultancy; business training consultancy; education and training consultancy; education advisory services; educational consultancy; educational consultancy services; advisory services relating to training; consultancy relating to vocational skills training

29. The above services are most similar to the opponent's 'hosting seminars, presentations and discussion groups and providing training in the fields of [...] training, [...] and providing information thereof'. Both the opponent's training and the above consultancy relate to the field of training, so the purposes and nature broadly overlap. Users may also overlap as both services will be used by educational professionals.

⁶ Case T-133/05

Trade channels may overlap as entities offering training consultancy are likely to offer training services as part of the consultancy. There may be competition between the services. Consultancy in the field of training and education requires the training and education itself and it is possible that consumers would assume that both services will be provided by the same entity. There is therefore complementarity. Overall, I find the above services to have a high similarity to the opponent's 'hosting seminars, presentations and discussion groups and providing training in the fields of personal development, career development, relationship building, training, recruiting, business consulting, business development, and networking and providing information thereof'.

Arrangement of training courses in teaching institutes; Arranging of conferences relating to training; Arranging professional workshop and training courses

30. The above services are most similar to the opponent's 'organising and conducting online training events including virtual meetings and seminars'. I consider that the above services are overlapping in scope with the opponent's services as the above training courses, conferences and workshops may include those conducted online. These services are therefore considered identical according to the principles set out in *Meric*.⁷

31. If I am wrong in this finding, I nevertheless find the services similar. As noted above, it may be considered that training courses and events are not identical. However, the similarities between them are significant. Purpose and nature overlap. Users and trade channels also likely overlap. There may be competition as training courses and events may be offered on the same topics. There is no complementarity. Overall, I find the above services highly similar to the opponent's 'organising and conducting online training events including virtual meetings and seminars'.

Education examination; educational assessment services; educational examination; educational examination services; educational examination services (information relating to -); educational testing

32. The opponent's '[...] providing training in the fields of personal development, career development, relationship building, training, recruiting, business consulting,

⁷ Case T-133/05

business development, and networking and providing information thereof' would include providing examinations, testing and assessments within the scope of the training. The above services therefore overlap with the opponent's services and are considered identical according to the principles set out in *Meric*.⁸

33. If I am wrong in this finding, I nevertheless find the services similar. It may be considered that there is a difference between training and education. However, the similarities between them are significant. Purposes and nature overlap. Users and trade channels also likely overlap. There is no competition or complementarity. Overall, I find the above services highly similar to the opponent's '[...] providing training in the fields of personal development, career development, relationship building, training, recruiting, business consulting, business development, and networking and providing information thereof'.

Analysing educational test scores and data for others

34. The above services are most similar to the opponent's 'organising and conducting online training events including virtual meetings and seminars'. The opponent's services may include online training events which involve tests. The nature and purpose of the services clearly differs. The users also differ, as the opponent's services will be used by individuals seeking training, while the above services will be used by professionals delivering training. Trade channels will also differ, as entities offering the analysis of test scores are unlikely to also offer the testing itself. There is no competition between the services. The analysis of test scores requires the testing itself; however, it is unlikely that consumers will assume that entities offering training will arrange their own training. There is therefore no complementarity. Overall, I find the above services dissimilar to the opponent's 'organising and conducting online training events including virtual meetings and seminars'.

35. I will also consider the similarity of the above services to the opponent's '[...] providing training in the fields of [...] training'. The opponent's services may include training events which involve tests. The nature and purpose of the services clearly differs. Users may overlap as both services may be used by professionals conducting

⁸ Case T-133/05

training. Trade channels will likely differ, as entities offering the analysis of test scores are unlikely to also offer the testing itself. There is no competition between the services. The analysis of test scores requires the testing itself; however, it is unlikely that consumers will assume that entities offering training will arrange their own training. There is therefore no complementarity. Overall, I find the above services dissimilar to the opponent's '[...] providing training in the fields of [...] training'.

Education information; educational information; educational information provided on-line from a computer database or the internet

36. The above services fall within the scope of the opponent's 'publication of editorial content of sites accessible via a global computer network'. These services are therefore considered identical according to the principles set out in *Meric*.⁹

Educational research

37. I consider that educational research is likely to include the hosting of discussion groups relating to the research, which would include training topics. As a result, I consider that the opponent's 'hosting seminars, presentations and discussion groups and providing training in the fields of personal development, career development, relationship building, training, recruiting, business consulting, business development, and networking and providing information thereof' would overlap in scope with the above services. These services are therefore considered identical according to the principles set out in *Meric*.¹⁰

38. If discussion groups are not considered to fall under educational research, I nevertheless find the services similar. The above services relate to research in the field of education. They are most similar to the opponent's 'hosting seminars, presentations and discussion groups and providing training in the fields of personal development, career development, relationship building, training, recruiting, business consulting, business development, and networking and providing information thereof'. The nature and purpose of the services clearly differ, as do the users. Trade channels may overlap where entities offering educational research may also offer training based

⁹ Case T-133/05

¹⁰ Case T-133/05

on said research. There is no competition or complementarity between the services. Overall, I find the above services to have a low similarity to the opponent's 'hosting seminars, presentations and discussion groups and providing training in the fields of personal development, career development, relationship building, training, recruiting, business consulting, business development, and networking and providing information thereof'.

Educational materials or apparatus (rental of -); production and rental of educational and instructional materials; publication of instructional literature; publishing of instructional books; rental of instructional material

39. The above services are most similar to the opponent's 'hosting seminars, presentations and discussion groups and providing training in the fields of personal development, career development, relationship building, training, recruiting, business consulting, business development, and networking and providing information thereof', which may involve the use of educational materials and literature. The nature of the services clearly differs. The purpose broadly overlaps as all the services are intended to provide education but differ in their specific purposes. The users overlap as individuals using services for hosting educational groups may rent materials for said groups. Trade channels may overlap as entities offering education may offer the rental of materials to supplement this or produce and publish their own materials. There is no competition or complementarity between the services. Overall, I find the above services to have a low similarity to the opponent's 'hosting seminars, presentations and discussion groups and providing training in the fields of personal development, career development, relationship building, training, recruiting, business consulting, business development, and networking and providing information thereof'.

Class 42 services

Software installation

40. The above services are identical to the opponent's 'installation of computer software'. These services are therefore considered identical according to the principles set out in *Meric*.¹¹

Software maintenance services; computer and software services [...]; software (updating of computer -)

41. The opponent's 'updating and maintaining computer software through patches' falls within the scope of the above services. These services are therefore considered identical according to the principles set out in *Meric*.¹²

[...] Scientific services

42. The above services include, for example, the analysis of various specimens using scientific apparatus. I do not consider that these services have any similarity to any of the opponent's goods or services. In the absence of any submissions, I consider the above services to be dissimilar to all of the opponent's goods and services.

Software as a service; Software as a service [SaaS] featuring computer software platforms for artificial intelligence; Software as a service [SaaS] featuring software for machine learning; Software as a service [SaaS] services featuring software for machine learning, deep learning and deep neural networks; Software as a service [SaaS] services featuring software for machine learning, deep learning and deep neural networks; Software as a service [SaaS] featuring software for deep learning

43. The above services are most similar to the opponent's 'downloadable software for use in teleconferencing and video conferencing'. The above services could include software as a service for use in teleconferencing and video conferencing. The purpose broadly overlaps as both provide software but differs as the above services provide software over the internet, while the opponent's goods provide software that is

¹¹ Case T-133/05

¹² Case T-133/05

downloaded on the user's computer. The nature overlaps broadly as both are software but differ in their specifics. Users will likely overlap. Trade channels may also overlap as entities offering downloadable software may also offer software as a service. There may be competition between the goods and services, as a consumer may decide to either download software for tele- and video-conferencing, or to use software as a service for tele- and video-conferencing. There is no complementarity. Overall, I find a medium level of similarity between the above services and the opponent's 'downloadable software for use in teleconferencing and video conferencing'.

Software creation; Software design; Software design and development; Software creation; Software development, programming and implementation

44. The opponent's 'automation services, namely, design and development of computer hardware and software architecture, namely, automation through wireless telephonic, electric or web monitoring technologies that allow for remote or automated control of environmental control systems for homes, buildings or structures' falls under the scope of the above services. These services are therefore considered identical according to the principles set out in *Meric*.¹³

Software authoring; Software engineering; Software engineering services

45. The above services are most similar to the opponent's 'updating and maintaining computer software through patches'. The purpose of the services clearly differs. The nature of the services also differs as the above services relate to the authoring and engineering of software, while the opponent's services consist of installing a patch that has been pre-created. It is likely that consumers using software authoring and engineering services will also use software patches services to update and maintain the software after its creation. Trade channels may overlap, as entities offering software authoring and engineering services may also offer maintenance and updating services. There is no competition between the goods. The updating and maintenance of computer software through patches requires the initial creation of the software, and it is likely that a consumer would assume that the same entity would create and maintain the software. There is therefore complementarity between the goods. Overall,

¹³ Case T-133/05

I find a medium level of similarity between the above services and the opponent's 'updating and maintaining computer software through patches'.

Advisory services relating to computer software; Advisory services relating to computer software design; Advisory services relating to the use of computer software; software consultancy services

46. The opponent's 'consulting in the field of configuration management for computer hardware and software' falls within the scope of the above services. These services are therefore considered identical according to the principles set out in *Meric*.¹⁴

Software research

47. The above services are most similar to the opponent's 'consulting in the field of configuration management for computer hardware and software'. The above services would include the research of configuration management for software. The nature and purpose of the services clearly differ. Users may overlap as entities seeking consulting may also seek research in order to facilitate the consulting process. Likewise, trade channels may overlap as entities offering consulting services may also offer research to facilitate the services. There is no competition or complementarity. Overall, I find a low level of similarity between the above services and the opponent's 'consulting in the field of configuration management for computer hardware and software'.

Conclusion of goods and services comparison

48. There can be no likelihood of confusion in respect of section 5(2)(b) of the Act regarding the applicant's goods and services which were found to be dissimilar to the opponent's goods and services.¹⁵ In light of my findings above, the present opposition fails against the following goods and services:

Class 9: 'Scientific products'.

Class 41: 'Analysing educational test scores and data for others'

¹⁴ Case T-133/05

¹⁵ *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

Class 42: 'Scientific services'.

49. I will proceed against the goods and services that I have found to be identical or similar.


Comparison of the marks

50. 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.”

51. It would be wrong, therefore, to dissect the trade marks artificially, although it is necessary to take into account the distinctive and dominant components of the 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.

52. The respective trade marks are shown below:

The opponent's earlier marks: ¹⁶	The Applicant's contested mark:
LUMEN	

53. In its statement of grounds, the opponent submits that the marks are visually, aurally and conceptually highly similar. It further submits that the contested mark will be easily perceived as a conjoined word containing the elements “LUMEN” and “AI”.

54. In its submissions in lieu, the applicant states that the marks are not highly similar visually, aurally and conceptually. It submits that the contested mark has one sole element and cannot be separated into two elements.

Overall impression

55. The opponent's earlier marks are both word-only marks consisting of the word “LUMEN”. There are no other elements in the mark, therefore the word plays a dominant role.

56. The contested mark is a figurative mark comprising the letters “lume” and “ai”, separated by a shape formed of two curved portions that don't intersect. The letters are in a purple gradient, with a darker purple at the beginning of the mark fading to a lighter purple at the end. The word elements of this mark are dominant.

Visual comparison

57. The marks are visually similar in the first four letters “LUME” in both marks, with the earlier mark containing the final letter N, and the contested mark containing the shape and the final two letters “AI”. I do note however, that the shape has some visual resemblance to the letter ‘N’ in terms of its structure.

¹⁶ The opponent's two earlier marks are identical, so I have only included one mark here to avoid repetition.

58. Since the similarities between the marks are at the beginning, they have a larger visual impact than if they were at the end.¹⁷ However, the use of the shape in the place of the letter “N” from the earlier marks, and the additional two letters in the contested mark, will not go unnoticed. Overall, I consider that the marks are visually similar to medium degree.

Aural comparison

59. The opponent’s earlier marks consist of the word ‘LUMEN’. This will be pronounced as two syllables: “loo-men”.

60. The aural nature of the contested mark depends on the consumer’s interpretation of the shape in the middle of the letters. Both parties’ submissions refer to the shape as the letter N, with no acknowledgement that it could be viewed in any other way. I accept these submissions, and find a significant portion of consumers may consider this as the letter N. As this presents the best case for the opponent, I will continue on this basis.

61. Consumers will pronounce the contested mark in different ways depending on whether they view the mark as one word or two. The opponent submits that the contested mark will be viewed as two words: Lumen and AI, while the applicant submits that the mark will be viewed as one word: Lumenai. I consider that a significant proportion of consumers will view the mark in each of these ways. Where the mark is seen as one word, it will be pronounced as three syllables: “loo-men-eye”. Where the mark is viewed as two words, it will be pronounced as four syllables: “loo-men-ay-eye”.

62. The pronunciation of the marks overlaps in the first two syllables, “lu-men”, but differs where the contested mark consists of either the third syllable “eye” or the third and fourth syllables “ay” and “eye”.

63. As it is the first two syllables that are identical between the marks, and the beginnings of marks tend to have more aural impact¹⁸, I consider that the marks are similar to a medium degree.

¹⁷ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

¹⁸ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

Conceptual comparison

64. The earlier marks consist of the word “LUMEN”. In its pleadings, the opponent defines this word as a unit for measuring the rate of flow of light. Although I appreciate this meaning, I am not convinced that the average consumer would understand the word to mean this specifically, but I do consider that they would understand the word to mean a measure of light.¹⁹ I also consider that consumers may understand the word ‘lumen’ to mean an opening, passage or canal.

65. I have proceeded on the view that the figurative element of the contested mark will be viewed as a letter N. As noted above, a significant portion of consumers will view the contested mark as the non-dictionary word “lumenai”. This word will have no concept to consumers. A second significant portion of consumers will view the mark as two words: “lumen” and “AI”. Lumen will have the meaning given above, while “AI” will be understood to be the initialism commonly used for the term “artificial intelligence”, which the consumer will understand to mean software used to perform tasks or produce output previously thought to require human intelligence.²⁰

66. Where consumers view the contested mark as being one word, the marks will differ in their concepts as the contested mark will have no concept while the earlier marks do.

67. Where consumers view the contested mark as being two words, the concepts of the marks overlap in the meaning of the word “lumen” and differ where the contested mark also contains the concept of AI. Overall, I find the marks to be conceptually similar to at least a medium degree.

Average consumer and the purchasing act

68. As the case law above indicates, it is necessary to determine who the average consumer is for the respective parties’ goods. I must then determine the manner in which the goods are likely to be selected by the average consumer. In *Hearst Holdings*

¹⁹ Oxford English Dictionary, https://www.oed.com/dictionary/lumen_n?tab=meaning_and_use#38696350, accessed 3 November 2025

²⁰ Oxford English Dictionary, https://www.oed.com/dictionary/artificial-intelligence_n?tl=true, accessed 13 November 2025

Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

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

69. The average consumer of the goods at issue will include members of the general public purchasing goods such as software applications and services such as electronic data storage, which are relatively low-cost items. Consumers would consider factors such as security and privacy for their data, as well as functionality and suitability of the software in the purchasing act. I consider that this group of consumers will pay an average level of attention during the purchasing act.

70. The average consumer will also include members of the general public purchasing services such as education services, which will typically be high-cost services, although I appreciate that some education services are available to the general public for free. These services will be infrequently bought, and consideration will be taken of factors such as price and suitability. I consider this group of consumers will pay a higher than average level of attention during the purchasing act.

71. Further, average consumers will also include professionals purchasing goods and services for business use. During the purchasing process, consideration will be taken of factors such as price and suitability. I consider that this group of consumers will pay a higher than average level of attention during the purchasing act.

72. The goods and services are likely to be engaged with visually, via websites or visual advertising. However, I cannot discount the possibility that that there will be recommendations made by word of mouth, or that goods or services will be discussed over the telephone. I therefore cannot completely disregard the aural comparison.

Distinctive character of the earlier trade mark

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

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

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

74. 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 distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

75. There is no evidence regarding the use of the earlier mark. Consequently, I have only the inherent position to consider.

76. The earlier marks consist of the dictionary word “LUMEN”. This word is neither descriptive nor illusive of the goods and services at issue. Therefore, I am of the view that both earlier marks are inherently distinctive to a medium degree.

GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion

77. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle, i.e., a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods (or services) and vice versa (*Canon* at [17]). It is necessary to keep in mind the distinctive character of the opponent’s trade mark, the average consumer of the goods and the nature of the purchasing act. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind (*Lloyd Schuhfabrik* at [26]).

78. 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 down to the responsible undertakings being the same or related.

79. Earlier in this decision, I found that the goods ranged from dissimilar to identical. I found all the marks to have a medium visual and aural similarity. I found the marks to be conceptually different or to have at least a medium conceptual similarity, depending on how the consumer views the contested mark. I found the opponent’s earlier registrations to possess a medium level of inherent distinctive character for the relevant goods.

80. I identified two groups of average consumers. Firstly, members of the general public, who will pay an average level of attention or a higher than average level of attention depending on the goods and services. Secondly, professionals purchasing

goods and services for business use, who will pay a higher than average level of attention. I found that the goods would be selected primarily by visual means.

81. As noted above, 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 (*Lloyd Schuhfabrik* at [26]).

82. Firstly, I will consider likelihood of direct confusion for consumers who view the contested mark as one invented word, 'lumenai'. Given that the similarities between the marks are placed at the beginning, with only the sixth and seventh letters of the contested mark differing, and considering all of the relevant factors, I consider that it is likely that the average consumer would overlook these additional letters and mistake the parties' marks for each other on goods and services that are similar or identical. Whilst I note that in this case there will be a point of conceptual difference between the marks, I do not consider this to remove the risk of direct confusion in this particular case.²¹ I therefore find a likelihood of direct confusion on all goods and services.

83. Secondly, I will consider the consumers who would view the contested mark as two words: "Lumen" and "AI". The word "AI" is descriptive or allusive of the goods and services in at least classes 9 and 42, and in respect of class 41, it will still likely be considered to simply allude to educational and training services offered in relation to or with the assistance of artificial intelligence and is therefore less memorable to the consumer. As a result, this word is more likely to go unnoticed. In this situation, I am satisfied that the average consumer would likely mistake the parties' marks for each other on goods and services that are similar or identical.

84. However, in case I am wrong in my finding of direct confusion, I will proceed to consider whether there is a likelihood of indirect confusion whilst reminding myself that, 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".

²¹ See *Nokia Oyj v OHIM*, Case T-460/07 in which the GC confirmed conceptual differences are not always sufficient to outweigh visual and aural similarities between marks.

85. 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).”

86. While the above examples in *L.A. Sugar* are noted, they are not intended to be treated as an exhaustive list of the only instances in which indirect confusion occurs.

87. Taking the above into consideration, I consider there to be a likelihood of indirect confusion between the marks where the consumer views the contested mark as two words, those being LUMEN and AI. The addition of the words “AI” to later mark is likely to be seen as a brand extension, perhaps used in relation to a particular subset of goods and services within the “Lumen” brand which is supported or aided by artificial intelligence. Given the prevalence of artificial intelligence in every sector, I consider it highly likely that the average consumer conclude that the services are supplied by the same, or economically linked, undertakings.²²

88. Taking all of this into account, I consider there to be a likelihood of indirect confusion where there is any level of similarity between the goods and services.

Final Remarks

89. The opposition under Section 5(2)(b) has been successful in respect of the following goods:

Class 9: ‘Computer and software products [...]; software applications; software; software for computers; software for smartphones; software for televisions; software for tablet computers; educational software; educational computer software; software for computers; software for mobile phones; software downloadable from the internet; software applications for mobile devices; software and applications for mobile devices; software applications for use with mobile devices; educational computer applications; educational mobile applications; educational tablet applications; training software; software (computer), recorded; Software development programmes; software development tools; Software for the analysis of business data; Software for monitoring, analysing, controlling and running physical world operations; Software for product development; Software for Automated Business Process Discovery (ABPD); Software for converting natural language into machine executable commands; Software compiler; software compiling tools; software

²² *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10

converters of natural language into machine executable commands; Software drivers; artificial intelligence and machine learning software; artificial intelligence software for analysis; machine learning software; machine learning software for analysis; AI software; artificial intelligence software’.

Class 41: ‘Education; training and education services; education and training; training of teachers; training relating to employment skills; training services; training in the operation of software systems; education and instruction; education and training in the field of business management; education and training in the field of electronic data processing; education and training services in relation to business management; education in the field of data processing; Education services; Education services for imparting data processing teaching methods; Education services in the nature of courses at the university level; Education services related to the arts; Education services relating to business training; Education services relating to communication skills; Education services relating to computer software; Education services relating to data processing; Education services relating to design; Education services relating to languages; Education services relating to the application of computer software; Education services relating to the application of computer systems; Education services relating to vocational training; Education, teaching and training; Educational and teaching services; Educational courses (Provision of -); Educational courses relating to design; Educational demonstrations; Educational instruction; Educational seminars; Educational services; Educational services for providing courses of education; Educational services for providing courses of instruction; Educational services for the teaching of languages; Educational services provided by a school; Educational services provided by academies; Educational services provided by colleges; Educational services provided by institutes of further education; Educational services provided by institutes of higher education; Educational services provided by schools; Educational services provided by senior high schools; Educational services provided by universities; Educational services provided for children; Educational services provided for teachers of children; Educational services provided to industry; Educational services relating to business; Educational services relating to data processing; Educational services relating

to information technology; Educational services relating to management; Educational services relating to sales training; Adult education services; Training and instruction; Training courses; Training courses (Provision of -); Training courses relating to computer software; Training courses relating to system analysis; Training in administration; Training in business management; Training in business skills; Training in communication techniques; Training in data processing techniques; Training in the design of computer programs; Training in the design of software systems; Training in the development of software systems; Training in the operation of computer programs; Training in the operation of computerised systems; Training in the use and operation of data processors; Training in the use of data processing programs; Training of teacher; Training or education services in the field of life coaching; Training relating to computer programmes; Training relating to computer software; Training relating to data processing; Training relating to data processing techniques; Training relating to employment opportunities; Training services concerned with the use of computer software; Training services in the field of computer software development; Training services relating to computer software; Training; Training services relating to; Training services relating to management consultancy; Adult training; Advanced training; Business training; Business training provided through a game; Business training services; Coaching [training]; Courses for the development of consulting skills; Vocational skills training; Vocational skills training (Provision of -); Instructional and training services; Instructional services relating to data processing; Conducting of instructional, educational and training courses for young people and adults; Arrangement of training courses in teaching institutes; Arranging of conferences relating to training; Arranging professional workshop and training courses; Education examination; educational assessment services; educational examination; educational examination services; educational examination services (information relating to -); educational testing; Education information; educational information; educational information provided on-line from a computer database or the internet; Training consultancy; business training consultancy; education and training consultancy; education advisory services; educational consultancy; educational consultancy services; advisory services relating to training; consultancy relating to vocational skills training;

educational research; Educational materials or apparatus (rental of -); production and rental of educational and instructional materials; publication of instructional literature; publishing of instructional books; rental of instructional material'.

Class 42: 'Software installation; Software maintenance services; computer and software services [...]; software (updating of computer -); Software as a service; Software as a service [SaaS] featuring computer software platforms for artificial intelligence; Software as a service [SaaS] featuring software for machine learning; Software as a service [SaaS] services featuring software for machine learning, deep learning and deep neural networks; Software as a service [SaaS] services featuring software for machine learning, deep learning and deep neural networks; Software as a service [SaaS] featuring software for deep learning; Software authoring; Software creation; Software design; Software design and development; Software creation; Software development, programming and implementation; Software engineering; Software engineering services; Advisory services relating to computer software; Advisory services relating to computer software design; Advisory services relating to the use of computer software; software consultancy services; software research'.

90. The opposition has failed in respect of the following goods:

Class 9: 'Scientific products'.

Class 41: 'Analysing educational test scores and data for others'

Class 42: 'Scientific services'.

COSTS

91. Both parties have achieved success in these proceedings, but the opponent has achieved considerably more success and is therefore entitled to a contribution towards its costs. In the circumstances, I award the opponent the sum of £1200 as a contribution towards the cost of the proceedings, in accordance with Tribunal Practice Notice 1/2023. The sum is calculated as follows:

Preparing and filing the TM7 and statement of grounds, and considering the TM8 and counterstatement:	£250
Considering the other side's evidence:	£600
Filing submissions-in-lieu:	£350
Total:	£1200

92. I therefore order Lumenai Ltd to pay CenturyLink Communications LLC the sum of £1200. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 18th day of December 2025

K HARBACH

For the Registrar