BL O/1197/25

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF
INTERNATIONAL TRADE MARK REGISTRATION NO. 1659722
DESIGNATING THE UK FOR THE TRADE MARK:

WELL HEALTH

IN CLASSES 9, 35, 42 AND 44

AND IN THE MATTER OF
INTERNATIONAL TRADE MARK REGISTRATION NO. 1660882
DESIGNATING THE UK FOR THE TRADE MARK:

IN CLASSES 9, 35, 42 AND 44

BOTH IN THE NAME OF WELL HEALTH TECHNOLOGIES CORP.

– AND –

THE OPPOSITIONS THERETO
UNDER NUMBERS 437283 AND 437692 RESPECTIVELY

BY WELL HEALTH INC.

Background and pleadings

1. Well Health Technologies Corp. ("the Applicant") is the holder of the international trade mark registrations shown on the cover page of this decision. On 15 November 2021 the Proprietor applied to protect both marks in the UK. The applications were accepted and published in the Trade Marks Journal – the word mark was published on 5 August 2022; and the figurative mark was published on 26 August 2022 – both in respect of the following goods and services:

> Class 9:
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> Computer software for medical records management; computer application software for mobile phones and tablet computers, namely software for helping patients manage their health by making available medical records, medical recommendations and by coordinating and facilitating access to and use of health care services provided by medical professionals; artificial intelligence based software for automating workflows and administrative tasks in the field of electronic medical records management and in the provision of healthcare and medical clinic patient services.
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> Class 35:
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> Administrative management of health care clinics; electronic processing of health care information.
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> Class 42:
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> Electronic storage of medical records; computer network security services; computer security consultancy; software as a service (saas) provider of artificial intelligence based software for automating workflows and administrative tasks in the field of electronic medical records management and in the provision of healthcare and medical clinic patient services; electronic medical record software support and maintenance.
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> Class 44:
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> Telemedicine; medical clinic services; operation of medical clinics; medical care services, namely, primary care medical services, urgent care, family medicine, internal medicine, telemedicine, pediatrics and specialized medical care services in the management of complex and chronic diseases.

2. On 4 November 2022, Well Health Inc. ("the Opponent") opposed the application for the word mark, number 1659722, and was allocated proceedings number 437283. The opposition is based on:

(1) sections (5)(1) and (5)(2)(a) of the Trade Marks Act 1994 ("the Act"),[1] relying on international trade mark (UK) shown below:

WELL HEALTH

International Registration ("IR") No. – 1595434
UK Designation Date – 19 April 2021
Priority Date – 27 October 2020[2]
Date Protection Conferred in UK – 28 October 2021

Class 42: Software as a service (SAAS) services featuring software for healthcare communication between healthcare providers, payers and patients for communication in the nature of telemedicine, appointment scheduling, care management, payment management, patient surveys, the aforementioned sold to healthcare facilities, clinics, hospitals, and health insurers.

and

(2) section 5(2)(b) of the Act, relying on international trade mark (UK) shown below:

IR No. – 1596632
UK Designation Date – 19 April 2021
Priority Date – 27 October 2020[3]
Date Protection Conferred in UK – 4 November 2021

Class 42: Software as a service (SAAS) services featuring software for healthcare communication between healthcare providers, payers and patients

[1] 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.
[2] Priority is claimed from US trade mark number 90280740.
[3] Priority is claimed from US trade mark number 90280785.

for communication in the nature of telemedicine, appointment scheduling, care management, payment management, patient surveys, the aforementioned sold to healthcare facilities, clinics, hospitals, and health insurers.

3. The Opponent claims: under the section 5(1) ground, that the competing marks are identical and that the respective Class 42 services are identical; under the section 5(2)(a) ground, that the competing marks are identical and that the respective goods and services are similar, giving rise to a likelihood of confusion; under the section 5(2)(b) ground, that the competing marks are similar and that the respective goods and services are similar, giving rise to a likelihood of confusion.

4. On 25 November 2022, the Opponent opposed the application for the figurative mark, number 1660882, and was allocated proceedings number 437692. The opposition is based on section 5(2)(b) of the Act, relying on the two registrations detailed in paragraphs 2(1) and 2(2) above. The Opponent claims that the competing marks are similar and that the respective goods and services are similar, giving rise to a likelihood of confusion.

5. By virtue of their priority dates, the registrations upon which the Opponent relies qualify as earlier trade marks pursuant to section 6 of the Act. As the Opponent's marks had not completed their registration process in the UK more than 5 years before the designation date of the applications in issue, they are not subject to the use provisions of section 6A of the Act, accordingly, the Opponent may rely on all the services for which its marks are registered without having to show any use at all.

6. The Applicant filed defences denying the claims made,[4] and filed a counterstatement only in relation to proceedings number 437692.

7. On 1 December 2024, the Tribunal wrote to the parties, directing that these cases be consolidated in accordance with Rule 62(1)(g) of the Trade Mark Rules 2008. From that point on, the two opposition cases proceed as one consolidated set of proceedings.

[4] In its defence of opposition proceedings number 437283, the Applicant requested that the Opponent prove use of its earlier marks. Despite being informed by the Registry that the Opponents marks were not subject to the use provisions, the Applicant did not remove this request from its defence as directed. Therefore on 1 December 2024, the Registry struck the request for proof of use from the TM8 defence form.

8. For ease of reference, the claims under the consolidated opposition proceedings are as follows:

Ground	Claim
5(1)	WELL HEALTH (the contested word mark) is identical to WELL HEALTH (the earlier word mark). The earlier Class 42 services are identical to the contested Class 42 services.
5(2)(a)	WELL HEALTH (the contested word mark) is identical to WELL HEALTH (the earlier word mark). The earlier Class 42 services are similar to the contested services in Classes 9, 35, 42 and 44.
5(2)(b)	WELL HEALTH (the contested word mark) is similar to WELL (the earlier figurative mark) The earlier Class 42 services are identical or similar to the contested services in Classes 9, 35, 42 and 44.
5(2)(b)	WELL Health TECHNOLOGIES CORP (the contested figurative mark) is similar to WELL HEALTH (the earlier word mark) The earlier Class 42 services are identical or similar to the contested services in Classes 9, 35, 42 and 44.
5(2)(b)	WELL Health TECHNOLOGIES CORP (the contested figurative mark) is similar to WELL (the earlier figurative mark) The earlier Class 42 services are identical or similar to the contested services in Classes 9, 35, 42 and 44.

9. Neither party filed evidence nor submissions during the evidence rounds. A hearing was not requested and neither party elected to file submissions in lieu of a hearing either. I make this decision following a careful consideration of the papers before me.

10. The Opponent is represented by Gill Jennings & Every LLP and the Applicant is represented by Harold Benjamin Solicitors.

DECISION

Legislation and case law

11. The relevant provisions of the Act are set out below.

Section 5 – Relative grounds for refusal of registration

5(1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected.

5(2) A trade mark shall not be registered if because-

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

(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 - Grounds for refusal relating to only some of the goods or services

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.

12. I am guided by the following principles which 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 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.

Identity of the marks – claims under section 5(1) and 5(2)(a)

13. It is self-evident that the competing word marks under the sections 5(1) and 5(2)(a) grounds are identical as both consist of the words 'WELL HEALTH' in capital letters. In light of this finding, I have set out below the approach I shall take for the remainder of my decision.

Approach

14. The Class 42 specifications for both earlier marks are identical to each other; and the Class 9, 35, 42 and 44 specifications for both applications are identical to each other. Accordingly, a single comparison of the goods and services will suffice to cover all grounds claimed under the consolidated proceedings.

15. The opposition to the contested word mark under section 5(2)(b) of the Act is based on alleged similarity between the contested word mark and the earlier figurative mark. However, since I have found the competing word-only marks to be identical, considering the 5(2)(b) ground would not place the Opponent in a more favourable position. I will therefore proceed to assess the opposition to the contested word mark under sections 5(1) and 5(2)(a) only.

16. Regarding the opposition to the contested figurative mark under section 5(2)(b) of the Act, I consider reliance on the earlier word mark to represent the Opponent's most

favourable case. This is because it contains both words 'WELL' and 'HEALTH' and is not limited by features such as capitalisation or typeface, since word marks protect the words themselves rather than their presentation.[5] Accordingly, reliance on the earlier figurative mark would not place the Opponent in a better position. I will therefore assess the section 5(2)(b) claim against the contested figurative mark solely on the basis of the earlier word mark, returning to the position based on the earlier figurative mark only if necessary.

Comparison of goods and services

17. In *Gérard Meric v OHIM,*[6] ("*Meric*"), the General Court held to the effect that goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by the trade mark application and vice versa (this principle equally applies to services).

18. When considering whether goods and services are similar, all the relevant factors relating to the goods and services should be taken into account. According to the judgement of the Court of Justice of the European Union ("CJEU") in *Canon,*[7] and the guidance from Jacob J. (as he then was) in the *Treat* case,[8] those factors include, *inter alia*:

(1) the physical nature of the goods or acts of service;
(2) their intended purpose;
(3) their method of use / uses;
(4) who the users of the goods and services are;
(5) the trade channels through which the goods and services reach the market;
(6) in the case of self-serve consumer items, where in practice they are found or likely to be found in shops and in particular whether they are, or are likely to be, found on the same or different shelves; and

[5] See the comments of Iain Purvis KC, sitting as the Appointed Person in the following two cases: *Groupement Des Cartes Bancaires v China Construction Bank Corporation,* Case BL O/281/14, paragraph 21; and *HERNO S.p.A. v Miss Sparrow Ltd,* BL O/954/22, paragraph 37.
[6] Case T- 133/05
[7] Case C-39/97, paragraph 23.
[8] *British Sugar PLC v James Robertson & Sons Ltd.,* [1996] R.P.C. 281 – the *"Treat"* case.

(7) whether they are in competition with each other (taking into account how those in trade classify goods, for instance whether market research companies put them in the same or different sectors);

or

(8) whether they are complementary to each other.

19. 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"*.[9] Complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity.[10]

20. Section 60A(1)(a) of the Act provides that goods and services are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification, nor dissimilar to each other on the ground that they appear in different classes under the Nice Classification.

21. When interpreting the terms in a specification I bear in mind:

(a) that it is *"necessary to focus on the core of what is described* [... and that] *trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise",* although *"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* [and services] *in question"*;[11]

(b) where *"the words chosen may be vague or could refer to goods or services in numerous classes* [of the Nice classification system]*, the class may be used as an aid to interpret what the words mean with the overall objective of legal certainty of the specification of goods and services"*;[12]

[9] *Boston Scientific Ltd v OHIM,* Case T-325/06, paragraph 82
[10] *Kurt Hesse v OHIM*, Case C-50/15 P
[11] *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch), paragraphs 11 - 12
[12] *Pathway IP Sarl (formerly Regus No. 2 Sarl) v Easygroup Ltd (formerly Easygroup IP Licensing Limited),* [2018] EWHC 3608 (Ch), paragraph 94

(c) the following applicable principles of interpretation:

"(1) General terms are to be interpreted as covering the goods or services clearly covered by the literal meaning of the terms, and not other goods or services.

(2) In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms.

(3) An unclear or imprecise term should be narrowly interpreted as extending only to such goods or services as it clearly covers.

(4) A term which cannot be interpreted is to be disregarded."[13]

22. I note that the Opponent does not specify which of the applied-for goods and services are identical to its Class 42 and which are similar. I also note that the Applicant *"denies the services are identical and admits there is only a lesser degree of similarity between the services in some elements, but not all"* – providing no further detail about its admission.

23. The parties' respective goods and services are largely technical. However, no evidence or submissions have been provided to assist me in interpreting their specifications. I therefore rely on the ordinary and natural meaning of the competing terms and what they are apt to protect, having regard to the Nice Classification system and applicable principles as an aid to interpretation.

24. The competing goods and services are as follows:

Opponent's services	**Applicant's goods and services**
Class 42 Software as a service (SAAS) services featuring software for healthcare communication between healthcare providers, payers and patients for communication in the nature of	Class 9 Computer software for medical records management; computer application software for mobile phones and tablet computers, namely software for helping

[13] See *Sky v Skykick* [2020] EWHC 990 (Ch), paragraph 56 (wherein Lord Justice Arnold, in the course of his judgment, set out a summary of the correct approach to interpreting broad and/or vague terms)

telemedicine, appointment scheduling, care management, payment management, patient surveys, the aforementioned sold to healthcare facilities, clinics, hospitals, and health insurers.	patients manage their health by making available medical records, medical recommendations and by coordinating and facilitating access to and use of health care services provided by medical professionals; artificial intelligence based software for automating workflows and administrative tasks in the field of electronic medical records management and in the provision of healthcare and medical clinic patient services. <u>Class 35</u> Administrative management of health care clinics; electronic processing of health care information. <u>Class 42</u> Electronic storage of medical records; computer network security services; computer security consultancy; software as a service (saas) provider of artificial intelligence based software for automating workflows and administrative tasks in the field of electronic medical records management and in the provision of healthcare and medical clinic patient services; electronic medical record software support and maintenance. <u>Class 44</u> Telemedicine; medical clinic services; operation of medical clinics; medical

	care services, namely, primary care medical services, urgent care, family medicine, internal medicine, telemedicine, pediatrics and specialized medical care services in the management of complex and chronic diseases.

25. The Opponent's Class 42 is a single term, which outlines a specific type of 'software as a service (saas)', namely it relates to cloud-based software which enables communication between healthcare providers (e.g. doctors, clinics, hospitals etc.), payers (e.g. health insurance companies) and patients. More specifically, it is for communication in the nature of telemedicine (i.e. remote consultations via video or messaging); appointment scheduling; care management (e.g. coordinating treatment plans and follow-ups etc.); payment management (e.g. handling billing and health insurance claims); and patient surveys (e.g. for collecting health data from patients or feedback for care provided etc.). In accordance with the limitation applied to the term, this service is to be sold to healthcare facilities, clinics, hospitals, and health insurers.

26. In the various subsequent tables I have set out the applied-for terms, grouping them together for the purpose of comparison, where the same reasoning applies.[14]

Class 9:	Computer application software for mobile phones and tablet computers, namely software for helping patients manage their health by making available medical records, medical recommendations and by coordinating and facilitating access to and use of health care services provided by medical professionals.

27. The term 'saas' in the Applicant's specification refers to cloud-based software used over an internet connection. Therefore on a general level, the only real difference between software included in Class 9 and 'saas' in Class 42 is the nature of the

[14] *Separode Trade Mark* BL O/399/10, paragraph 5. Also see: *BVBA Management, Training en Consultancy v. Benelux-Merkenbureau* [2007] ETMR 35 (case C-239/05), paragraphs 37 – 38 (i.e. *"where the same ground of refusal is given for a category or group of goods or services, the competent authority may use only general reasoning for all of the goods or services concerned."*)

delivery system of that software – software included in Class 9 is downloadable for the purchaser to own whereas the software delivered via 'saas' is non-downloadable, and is usually dependent on the payment of a subscription to the software provider i.e. the consumer essentially rents the software instead of buying it.

28. Albeit the Applicant's software is for use with mobile phones and tablet computers, this does not provide a point of distinction since the Opponent's software delivered via 'saas' could conceivably be accessed via such devices.

29. The purpose of the Applicant's software is self-explanatory and it overlaps with the purpose of the Opponent's cloud-based software as follows:

(1) The Applicant's software is for *"helping patients manage their health by making available medical records, medical recommendations"*. The Opponent's cloud-based software facilitates communication between healthcare providers and patients for care management, which would include enabling patients to access their medical records and treatment plans. They therefore share a highly similar purpose.

(2) The Applicant's software is for *"helping patients manage their health by* […] *coordinating and facilitating access to and use of health care services provided by medical professionals"*. The Opponent's cloud-based software facilitates communication between healthcare providers and patients for the provision of telemedicine, which is itself a healthcare service delivered by medical professionals. Their purposes are therefore the same, or at least highly similar.

30. Although the respective goods and services differ in nature (one being downloadable software and the other non-downloadable) they share the same method of use since patients would access healthcare services through the software, and healthcare providers would use it to share information and deliver services to patients. They also share the same trade channels, and there may be a degree of competition between them, as consumers could opt for a cloud-based platform instead of purchasing downloadable software. Overall, the goods and services are **highly similar**.

Class 9:	Artificial intelligence based software for automating workflows and administrative tasks in the field of electronic medical records management and in the provision of healthcare and medical clinic patient services.
Class 42:	Software as a service (saas) provider of artificial intelligence based software for automating workflows and administrative tasks in the field of electronic medical records management and in the provision of healthcare and medical clinic patient services.

31. The Applicant's above terms relate to software which uses artificial intelligence (AI) to automate workflows and administrative tasks in the fields of:

(1) medical records management – within the context of the term, I interpret this as including patient record updating to include medical history data, details of prescriptions, test results etc; and

(2) the provision of healthcare and medical clinic patient services – I interpret this as including appointment scheduling and reminders; billing; recording and updating medical history information etc.

32. Notwithstanding the respective Class 42 terms are 'saas' solutions aimed at healthcare-related operations, their specific purposes differ – the earlier Class 42 service focuses on communication and interaction, whereas the contested service is directed towards administrative workflow automation and medical records management. Accordingly, they are self-evidently not identical to each other, nor do I consider either term to be broad enough to encompass the other, therefore I also rule out a finding of identity under the principle outlined in *Meric*.

33. While their purposes differ, there is sufficient overlap between the respective Class 42 services to render them similar, on the basis that the services share the same nature (i.e. cloud-based software); method of use; user (e.g. healthcare providers, clinics, hospitals, etc.); and trade channels (e.g. healthcare IT vendors). Furthermore, the services are complementary, as the respective software would likely integrate to provide patient services and may be perceived by the relevant consumer as originating

from the same undertaking. Consequently, the services are **similar to a medium degree.**

34. Although the Applicant's Class 9 goods and the Opponent's Class 42 services differ in nature (one being downloadable software and the other non-downloadable) they are nonetheless both forms of software sharing the same methods of use. Therefore, applying the same reasoning as above, I consider the Class 9 goods to be similar to the Opponent's Class 42 services to a **medium degree**.

Class 9:	Computer software for medical records management.
Class 42:	Electronic storage of medical records; electronic medical record software support and maintenance.

35. The Applicant's Class 42 *"electronic storage of medical records"* is self-evidently not identical to the Opponent's Class 42 term, nor do I consider the competing terms to be identical under the *Meric* principle, as the Opponent's specification does not encompass electronic storage as a subset. Applying the relevant factors of comparison, I find that the respective services differ in purpose – one facilitates communication and sharing information/ data, whilst the other provides secure storage of patient data. Their method of use also differs.

36. However, they share a similar nature (they are both software-related services for healthcare institutions), would be delivered through the same trade channels and would share the same user. Furthermore, the Opponent's services would require the electronic storage of medical records to operate effectively (e.g. telemedicine and care management depend on access to stored patient data), creating a complementary relationship, leading the consumer to assume a common origin. Accordingly, despite the identified differences, the competing services are **similar to a low degree**.

37. To the extent that the Applicant's Class 9 *"computer software for medical records management"* refers to the actual software that enables the management of medical records (which would encompass the storage and processing of medical records), I consider there to be an overlap with the Opponent's services on much the same reasoning as set out above – the Opponent's software services are complementary to the Applicant's software, would share the same user and would likely share the same

trade channels. The competing goods and services are therefore **similar to a low degree**.

38. I interpret the Applicant's *"electronic medical record software support and maintenance"* as comprising a technical service to maintain and update an electronic medical record software system. It is therefore a technical support service whereas the Opponent's service is, by contrast, an online software application service. The services therefore differ in nature, purpose, method of use and would not be in competition with each other.

39. However, to the extent that the Applicant's *"computer software for medical records management"* and *"electronic storage of medical records"* are complementary to the Opponent's services, the related support and maintenance services would likewise be complementary. This is because the Opponent's services depend on the effective operation and accuracy of the medical record storage system, which may lead consumers to assume a common commercial origin. Consequently, there is an overlap in users, and the respective services may share the same trade channels. These services are therefore **similar to a low degree**.

Class 42:	Computer network security services; computer security consultancy.

40. I bear in mind that the Applicant's services are broad and would therefore encompass the provision of those services tailored to the healthcare sector. The Opponent's 'saas', sold to healthcare facilities, clinics, hospitals, and health insurers, would necessarily rely on secure network infrastructure and robust data protection measures. Computer network security is likely integral to 'saas' platforms, particularly those handling sensitive healthcare data.

41. Purchasers of healthcare 'saas' solutions may reasonably expect security and consultancy services to be integrated or offered by the same provider, given the sensitivity of healthcare data and the reliance on secure systems to process such information. Computer network security services would conceivably be applied to 'saas' environments, especially those managing confidential patient data. This reflects a functional interdependence, meaning the 'saas' platform would unlikely be able to effectively operate without strong network security.

42. This interdependence would lead consumers to believe the respective services originate from the same or economically linked undertaking, thereby establishing complementarity between them. Combined with the shared users and overlapping trade channels, these factors support a finding of a **low degree of similarity**.

Class 35:	Administrative management of health care clinics; electronic processing of health care information.

43. The Opponent's services consist of a healthcare-related cloud-based software platform, whereas the contested services provide management and administrative support within the healthcare sector. The services therefore differ in both nature and purpose, and I do not consider them to be complementary.

44. However, they would share the same users, namely healthcare providers. There may also be some overlap in their method of use, as the Class 35 services may be delivered via a cloud-based platform. Furthermore, the respective services could be promoted or procured through the same trade channels.

45. It is also conceivable that a degree of competition exists between them, as a healthcare provider could use the Opponent's 'saas' platform to perform administrative management tasks and process healthcare information, rather than outsourcing these functions to a provider of the Class 35 services. Taking all factors into account, there is sufficient overlap to find a **low degree of similarity**.

Class 44:	Telemedicine; medical clinic services; operation of medical clinics; medical care services, namely, primary care medical services, urgent care, family medicine, internal medicine, telemedicine, pediatrics and specialized medical care services in the management of complex and chronic diseases.

46. The contested services include the provision of telemedicine and medical care, as well as the operation and management of medical clinics. The Opponent's services consist of a cloud-based software platform designed to enable communication and coordination between healthcare providers, payers, and patients for purposes such as

telemedicine and care management, and to facilitate operational tasks including appointment scheduling, payment processing, and patient surveys.

47. While the 'saas' platform does not itself constitute the provision of medical care, and the nature and purpose of the respective services therefore differ, the platform functions as an interface through which patients and other healthcare users access and manage the contested Class 44 services.

48. Healthcare services, particularly telemedicine and care management, frequently depend on digital platforms to enable consultations, scheduling, and patient engagement, just as financial services often rely on bespoke software to deliver advice, manage portfolios, and execute transactions.[15] In both cases, the software does not replace the underlying service (financial advice or medical care), but it plays an integral role in its delivery. From the perspective of the end user, these services may appear inextricably linked. For example, a patient accessing telemedicine through an online portal provided by their clinic may reasonably assume that the platform is part of the healthcare service itself, much like a consumer expects a banking app to originate from the same source as their bank. This functional integration and user perception create a strong complementary relationship, even though the nature and purpose of the services differ.

49. Taking all factors into account, I find that the applied-for services in Class 44, considered collectively, **are similar to a low degree overall** to the Opponent's services, with telemedicine sitting at the higher end of that range due to its close operational integration with the Opponent's platform.

Conclusions following the comparison of the goods and services

50. I have found that none of the Applicant's Class 42 services are identical to the Opponent's Class 42 service. Accordingly, the section 5(1) opposition against the contested word mark, IR number 1659722, fails.

51. I have found that all the applied for goods and services are similar to the Opponent's Class 42 services to varying degrees. I therefore proceed to consider a

[15] See by analogy the decision of the Appointed Person in *Massachusetts Financial Services Company v MFS Africa Limited,* Case O/531/22, paragraphs 18-21.

likelihood of confusion under: section 5(2)(a) with regard to the contested word mark and; section 5(2)(b) with regard to the contested figurative mark.

The average consumer and the nature of the purchasing act

52. Trade mark questions, including the likelihood of confusion, must be viewed through the eyes of the average consumer of the goods and services in question. It is therefore necessary to determine who the average consumer of the goods and services is, and how the consumer is likely to select them. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. The word 'average' merely denotes that the person is typical,[16] which in substance means that they are neither deficient in the requisite characteristics of being well informed, observant and circumspect, nor top performers in the demonstration of those characteristics.[17]

53. Bearing in mind the sector in which both parties' goods and services would notionally intersect i.e. a healthcare system, the average consumer will be a combination of professional users and members of the public using a healthcare system.

54. Although in general terms the average consumer's level of attention is likely to vary according to the category of goods and services in question,[18] such that the average consumer can be deemed to demonstrate a low degree of attention when selecting certain categories of goods and services for instance, given the nature of the goods and services at hand, I do not consider any of them fall into that 'low level of attention' category.

55. Rather, the relevant average consumer (whether they are members of the general public, a professional, or a business, organisation/undertaking) is at the very least, likely to pay a medium level of attention when selecting some of the respective goods and services. Where the goods and services are of a more specialised nature, then the level of attention paid by the relevant average consumer is only likely to increase, such that the level of attention paid would be high – this is true whether the consumer

[16] *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), paragraph 60
[17] *Schutz (UK) Ltd v Delta Containers Ltd* [2011] EWHC 1712, paragraph 98
[18] *Lloyd Schuhfabrik Meyer & Co. GmbH* v *Klijsen Handel BV*, Case C-342/97

of those goods and services is a member of the general public or a business/ professional user.

56. The goods and services will be predominantly selected visually following perusal of brochures and websites for example, whereby the consumer will be presented with an image of the competing marks. I do not completely rule out an aural selection although given the nature of the goods and services it is unlikely that the average consumer will make an aural selection without having viewed the marks first.

Comparison of marks – the section 5(2)(b) claim

57. It is clear from *Sabel BV v. Puma AG*[19] 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 Court of Justice of the European Union ("CJEU") stated in *Bimbo SA v OHIM*,[20] 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."

58. 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.

[19] *Sabel BV v. Puma AG,* Case C-251/95, paragraph 23.
[20] Case C-591/12P, at paragraph 34.

59. The marks being compared are shown below:

Earlier word mark	Contested figurative mark
WELL HEALTH	

60. The Applicant submits that the *"Opponent's mark is a simple mark consisting of two separate elements, the word 'Well' and the word 'Health'. Both words are generic words in common usage and lack distinction"* and that by contrast, the Applicant's mark is *"highly stylised"* which distinguishes it from the Opponent's mark. More specifically, it submits that from a visual perspective, the marks are very different: *"the use of the two ordinary, generic words and the visual simplicity of the Opponent's non-coloured and non-stylised mark contrasts significantly with the Applicant's highly stylised mark which has a considerable degree of visual distinctiveness represented in three different elements and containing coloured tones."*[21]

61. Before I proceed with comparing the marks, I shall address these submissions. Firstly, the point the Applicant makes about the Opponent's earlier word mark being generic could have been equally made about its own, identical, contested word mark. Therefore I do not quite see what the Applicant seeks to achieve by making this submission, and I nevertheless proceed on the basis that a registered mark has some degree of distinctive character[22] (for the avoidance of doubt, trade mark applications accepted for publication benefit from the same consideration).

62. Secondly, the Applicant addresses the visual simplicity of the Opponent's mark, noting that it is it is neither stylised nor coloured. This reflects a misunderstanding of the protection afforded to word marks. A word mark grants exclusive rights to the word(s) themselves – features such as the font, capitalisation, or colour in which they are presented on the Register are therefore irrelevant.[23] Whilst it would not be appropriate to consider specific ways in which the words might be presented by notionally applying a stylised font and colour to a word-only registration, the key point

[21] See the Applicant's counterstatement.
[22] See *Formula One Licensing BV v OHIM,* Case C-196/11P.
[23] See *HERNO S.p.A. v Miss Sparrow Ltd,* BL O/954/22.

is that such a mark can be used in a wide range of fonts and colours. Therefore, the font and colour used for the words 'WELL Health' in the figurative mark do not, in themselves, provide a point of distinction.[24]

Overall impression

63. The overall impression of the earlier word mark rests in the word 'WELL' followed by the word 'HEALTH'.

64. The contested figurative mark consists of several elements, namely a device made up of dots of varying sizes presented in varying shades of blue. The Applicant submits that these dots are arranged in the form of the letter 'W'. While I can see that interpretation, I consider that the average consumer may not. Therefore, I take into account that a proportion of the average consumer will perceive it as a stylised 'W', while another proportion will merely see it as a decorative arrangement of dots.

65. In any event I note that, *"according to well-established case-law, in the case of a mark consisting of both word and figurative elements, the word elements must generally be regarded as more distinctive than the figurative elements, or even as dominant, since the relevant public will keep in mind the word elements to identify the mark concerned, the figurative elements being perceived more as decorative elements"*.[25]

66. To the right of the device element appears the words 'WELL' followed by 'Health' in a plain grey font. Beneath them, in a smaller plain blue font, are the words 'TECHNOLOGIES CORP'. The larger size of 'WELL Health' compared to 'TECHNOLOGIES CORP' highlights the prominence of the words 'WELL Health' within the mark.

67. The phrase 'TECHNOLOGIES CORP' would generally be understood as 'technologies corporation', i.e. an entity providing technological goods and services - this, together with the element's smaller size and subordinate position beneath 'WELL Health', gives the impression that the words 'TECHNOLOGIES CORP' carry limited weight in relation to the goods and services for which protection is sought. Indeed, it

[24] Ibid., paragraphs 23 and 34.
[25] *Migros-Genossenschafts-Bund v EUIPO – Luigi Lavazza (CReMESPRESSO)*, Case T-189/16, paragraph 52

is possible that the average consumer may not even perceive these words as an intentional part of the brand name. Consequently, they are likely to attract less attention than 'WELL Health'.

68. Taking all the foregoing into account, I consider that the average consumer, while perceiving the contested mark as a whole, will also recognise that it consists of three components and that the words 'WELL Health' have an independent distinctive role within the mark.[26] Consequently, the overall impression is dominated by the words 'WELL Health', with the other elements carrying less weight in comparison.

Visual comparison

69. The entirety of the earlier mark is reproduced within the Applicant's mark. As previously noted, the earlier word mark is not tied to any stylisation. Therefore, the fact that the words 'WELL Health' appear in a grey, stylised font in the contested mark does not constitute a point of distinction.

70. The visual differences are limited to the device element and the words 'TECHNOLOGIES CORP'. Given my earlier comments regarding the relative weight of these elements, these differences are not materially significant. The size of the words 'WELL Health' (relative to 'TECHNOLOGIES CORP') serves to emphasise the words which are common between the two marks, thereby increasing the overall visual similarity between them. Taking all the foregoing into account, even though the common element is identical, I assess the visual similarity as medium to high overall, because although the other elements have limited weight, this does not mean they will be ignored in a visual comparison.

Aural comparison

71. Aurally, the marks coincide in the words 'WELL HEALTH', rendering that element of the contested mark aurally identical to the entirety of the earlier mark.

72. The device element in the contested mark is unlikely to be articulated even where the average consumer perceives it as the letter 'W'. While 'TECHNOLOGIES CORP'

[26] See *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another,* [2015] EWHC 1271 (Ch), paragraphs 19 – 21 with regard to the assessment of composite marks.

is not present in the earlier mark, given my assessment of the relative weight this wording carries in the overall impression of the contested mark, this difference is not significant. I therefore assess the aural similarity as high.

Conceptual comparison

73. Conceptually, the earlier mark 'WELL HEALTH' conveys the idea of wellness and good health. The word 'WELL' is commonly understood as meaning healthy or in good condition, while 'HEALTH' directly refers to physical and mental well-being. Together, the phrase suggests a focus on promoting or maintaining overall health and gives the impression of a brand associated with healthcare, medical services, and well-being.

74. The contested mark incorporates this same concept through the identical wording 'WELL Health', which dominates its overall impression. Although the additional words 'TECHNOLOGIES CORP' introduce a notion of a corporate entity involved in technology, this does not materially alter the core concept of health and wellness conveyed by the shared element – if anything, it merely conveys that the entity is a technology corporation operating in the health and wellness sector. Little, if any, conceptual meaning would be derived from the device element in the earlier mark, which is likely to be perceived as merely decorative. Accordingly, I consider the conceptual similarity between the marks to be high.

Distinctive character of the earlier word mark

75. The degree of distinctiveness of the earlier mark is one of the factors that must be taken into account when assessing whether there is a likelihood of confusion. This is because the more distinctive the earlier mark, the greater the likelihood of confusion may be.[27]

76. 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 or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

[27] *Sabel v Puma*.

77. The Opponent makes no claim to enhanced distinctiveness through the use made of the earlier word mark, and has filed no evidence of use, therefore I only have the inherent distinctiveness of the mark to consider.

78. I have already indicated that 'WELL HEALTH' suggests a focus on promoting or maintaining overall health and gives the impression of a brand associated with healthcare, medical services, and well-being. Given its attributable meaning, it has an allusive quality in relation to the services for which it is registered. Accordingly, it is inherently distinctive to between a low and medium degree.

Conclusions on the likelihood of confusion

79. In assessing the likelihood of confusion, I must adopt the global approach advocated by case law and take into account who the average consumer of the goods and services is, the nature of the purchasing process, the distinctiveness of the earlier mark and bear in mind the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa.[28]

80. Making an assessment as to the likelihood of confusion is a matter of considering the relevant factors from the viewpoint of the average consumer and determining whether they are likely to be confused. This is because the global assessment is supposed to emulate what happens in the mind of the average consumer – it is not a process of analysis or reasoning, but an impression or instinctive reaction.[29] The relative weight of the factors is not laid down by law but is a matter of judgement for the tribunal on the particular facts of each case.[30]

81. It is well established that confusion can be direct, which is a simple matter of the consumer mistaking one mark for another, or indirect, which is where the consumer notices that the marks are different, but the later mark and the earlier mark share common elements that lead the consumer to conclude that it is another brand of the

[28] *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, Case C-39/97, paragraph 17

[29] *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, paragraph 81

[30] See paragraph 33 of the Appointed Person's decision in Case No. O/049/17, (*Rochester Trade Mark*).

owner of the earlier mark,[31] for example, 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.[32]

82. I have found that the contested word mark is identical to the earlier word mark. With regard to the contested figurative mark, I have found that it is dominated by an element which is identical to the entirety of the earlier word mark (namely the words 'WELL HEALTH'), although overall the marks are visually similar to a medium to high degree and aurally and conceptually highly similar.

83. I have found that the respective goods and services are similar to varying degrees, ranging from high to low, with the majority of my findings being that they are similar to a low degree. In regard to these findings, I note that there is no minimum threshold level of similarity between the goods and services that has to be shown as it is sufficient that some similarity exists in order to consider the likelihood of confusion.[33]

84. I have also found that the average consumer will predominantly visually select the goods and services and will likely pay at least a medium degree of attention (increasing to high where the goods and services are of a more specialised nature) when selecting them. Notwithstanding the relevant consumer will pay a high or at least a medium level of attention when selecting the goods and services, this point is largely neutralised (especially when taking into account the interdependency principle) by the identity of the competing word marks; and the 'medium to high' and 'high' degrees of similarity between the contested figurative mark and earlier word mark.

85. I have found that the earlier word mark has a low to medium degree of distinctive character. The Applicant submits that it "*lack*[s] *distinction".* However, the distinctive character of the earlier mark is only a single factor in the multifactorial assessment in any event – the Applicant's approach would have me disregard the similarity between the marks in favour of one based on the distinctive character of the earlier mark, which would then be given undue importance.[34] In this regard, the CJEU in *L'Oréal SA v*

[31] See *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, paragraphs 16 to 17 wherein Mr Iain Purvis QC, sitting as the Appointed Person, dealt with the distinction between direct and indirect confusion.
[32] Ibid.
[33] See *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, paragraph 49.
[34] See *L'Oréal SA v OHIM,* C-235/05 P at paragraph 45

OHIM,[35] (a case in which the earlier mark 'FLEX' was compared to the later mark 'FLEXI AIR') stated that:

> "45. […] The result would be that where the earlier mark is only of weak distinctive character a likelihood of confusion would exist only where there was a complete reproduction of that mark by the mark applied for, whatever the degree of similarity between the marks in question. If that were the case, it would be possible to register a complex mark, one of the elements of which was identical with or similar to those of an earlier mark with a weak distinctive character, even where the other elements of that complex mark were still less distinctive than the common element and notwithstanding a likelihood that consumers would believe that the slight difference between the signs reflected a variation in the nature of the products or stemmed from marketing considerations and not that that difference denoted goods from different traders."

86. I also take into account that the distinctive character of the earlier mark *"is not a factor which influences the perception which the consumer has of the similarity* [or identity] *of the signs"*[36].

87. Furthermore, characterising a mark as having a low to medium level of distinctive character is not the same as saying that it is devoid of distinctive character, therefore the earlier mark is still capable of indicating trade origin. In this case, to repeat a point already made, what is particularly relevant is the fact that the contested word mark is identical to the earlier word mark; and the contested figurative mark is dominated by an element which is identical to the earlier word mark.

88. Having weighed up all the relevant factors, I find a likelihood of confusion would exist. More specifically I find:

(1) in relation to the section 5(2)(a) claim against the contested word mark:

(i) that the average consumer, when encountering identical marks on similar goods and services would be directly confused as to the trade

[35] Ibid.
[36] Ibid., paragraph 42.

origin of those goods and services, even where the similarity between some of the respective goods and services is low.

(ii) As the opposition to the contested word mark is successful in its entirety based upon section 5(2)(a), there is no need to consider the remaining section 5(2)(b) ground.

(2) in relation to the section 5(2)(b) claim against the contested figurative mark:

(i) that the average consumer or at least a significant proportion thereof, when encountering the respective marks on similar goods and services would simply mistake one mark for the other on account of the shared identity of the common element, and will be directly confused as to the origin of the goods and services as a result.

(ii) Where a proportion of the average consumer recognises the differences between the marks due to the other elements, I consider this would nonetheless result in indirect confusion. This is because they are likely to believe that the goods and services offered under the later mark originate from the same undertaking, or from an economically linked undertaking, owing to the shared common element. They would attribute the differences to factors such as marketing considerations, rather than concluding that the goods and services come from different undertakings.

(iii) As the earlier word mark leads to the opposition being successful in its entirety, there is no need to consider the remaining trade mark upon which the 5(2)(b) opposition is based.

OUTCOME of the claim against IR number 1659722 under section 5(2)(a)

89. The opposition under section 5(2)(a) of the Act is successful. Subject to any appeal, contested IR number 1659722, shall be refused protection in the UK.

OUTCOME of the claim against IR number 1660882 under section 5(2)(b)

90. The opposition under section 5(2)(b) of the Act is successful. Subject to any appeal, contested IR number 1660882, shall be refused protection in the UK.

COSTS

91. The Opponent has been successful and is entitled to a contribution towards its costs based on the contributory scale set out in Tribunal Practice Notice 2/2016. In the circumstances I award the Opponent the sum of £600 as a contribution towards the cost of the proceedings. This sum is calculated as follows:

Official fee for filing Form TM7 x 2	£200
Preparing the Statement of Grounds and considering the Counterstatements x 2	£400
TOTAL	**£600**

92. I therefore order Well Health Technologies Corp. to pay Well Health Inc. the sum of £600. This amount 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 22nd day of December 2025

Daniela Ferrari

For the Registrar