

BL O/1221/24

TRADE MARKS ACT 1994

IN THE MATTER OF

INTERNATIONAL REGISTRATION NO. WO0000001689137

DESIGNATING THE UNITED KINGDOM

BY LEVELS INC.

IN RESPECT OF THE TRADE MARK:

LEVELS

IN CLASS 9, 16, 35, 36, 38, 41, 42 AND 45

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 440254

BY LEVELS GROUP LTD

BACKGROUND AND PLEADINGS

1. Levvels Inc. (“the holder”), is the holder of international trade mark registration number 1689137 (“the IR”), shown on the cover page of this decision. The IR is registered with effect from 22 June 2022, but claims a priority date of 21 June 2022.¹ The request to protect the IR in the UK was made on 22 June 2022. It was accepted and published for opposition purposes on 13 January 2023, in respect of goods and services in Classes 9, 16, 35, 36, 38, 41, 42 and 45.

2. On 13 April 2023, LEVELS GROUP LTD (“the opponent”) partially opposed the protection of the IR in the UK based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition was directed at all of the goods and services in Classes 9, 16, 35, 38, 41 and 42.² For the purposes of its opposition, the opponent relies upon its UK trade mark number 3430280, ‘LEVELS’ (“the earlier mark”). The earlier mark was filed on 20 September 2019. The mark became registered on 21 February 2020. The opponent relies on some of its goods and services in Classes 9, 16 and 41.³

3. Following the filing of the opposition, the holder requested specification limitations in Classes 9, 16, 35, 38, 41 and 45, at the World Intellectual Property Office (WIPO). Notwithstanding the limitations filed by the holder, the opponent indicated that it intended to continue with the opposition.

4. In its notice of opposition, the opponent claims that the respective marks are similar and that the respective goods and services are either identical or similar, resulting in a likelihood of confusion and association. The holder filed its defence and counterstatement admitting that the marks are similar but denied any similarity between the goods and services at issue.

5. Given the respective filing dates, the opponent’s mark is an earlier mark, in accordance with section 6 of the Act. However, as it had not been registered for five years or more at the filing date of the application, it is not subject to the proof of use

¹ Priority claimed from the Republic of Korea – filing No. 4020220115118

² These will be listed in the goods and services comparison.

³ These will be listed in the goods and services comparison.

requirements specified within section 6A of the Act. As a consequence, the opponent may rely upon all of the goods and services for which the earlier mark is registered without having to establish genuine use.

6. Neither party filed evidence. The opponent is represented by Trademark Eagle Limited; the holder is represented by Wilson Gunn. Neither party requested a hearing and only the holder chose to file written submissions in lieu of a hearing. This decision is taken following careful consideration of the papers.

Relevance of EU law

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

DECISION

Section 5(2)(b)

8. Sections 5(2)(b) is relied on and reads as follows:

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

(a)...

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

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

9. Section 5A states:

[...]

“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.”

10. 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.

Comparison of goods and services

11. Section 60A of the Act provides:

“(1) For the purpose of this Act goods and services-

(a) 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.

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

12. When considering whether goods and services are similar, all the relevant factors relating to the goods and services should be taken into account.

Those factors include, *inter alia*:⁴

- the physical nature of the goods or acts of service;
- their intended purpose;
- their method of use / uses;
- who the users of the goods and services are;
- the trade channels through which the goods or services reach the market;
- 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
- whether they are in competition with each other (taking into account how those in trade classify goods and services, for instance whether market research companies put them in the same or different sectors)

or

- whether they are complementary to each other. 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*”.⁵ I note that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity.⁶

⁴ See *Canon*, Case C-39/97, paragraph 23; and *British Sugar PLC v James Robertson & Sons Ltd.*, [1996] R.P.C. 281 – the “*Treat*” case

⁵ *Boston Scientific Ltd v OHIM*, Case T-325/06, paragraph 82

⁶ *Kurt Hesse v OHIM*, Case C-50/15

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

- (i) 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 in question*”.⁷

14. The goods and services to be compared are:

The holder’s goods and services

Class 9 (following limitation)

Non-fungible tokens (NFTs) transaction brokerage computer software; computer software for wireless content delivery; computer application software for mobile phone for non-fungible tokens (NFTs) transaction brokerage; computer software for application and database integration; computer; software to enhance the audio-visual capabilities of multimedia applications, namely, for the integration of text, audio, graphics, still images and moving pictures; computer software for digital information and data access; downloadable software for virtual currency; downloadable cryptographic key software for sending and receiving virtual currency; computer software for transmitting and broadcasting audio, video, multimedia contents; computer software for distributing and monitoring content on the internet; computer e-commerce software handling non- fungible tokens (NFTs); computer software for personal information management; downloadable video files; downloadable image files; encoded cards for use in point of sale transactions; CDs; USB memories; prerecorded motion picture videos; downloadable coupon; downloadable publications; none of the aforementioned goods being computer games software, video games software, online gaming software or any goods/services relating to computer, video or online games.

⁷ *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch), paragraphs 11 - 12

Class 16 (following limitation)

Collectible trading cards; plastic film for wrapping; boxes of paper or cardboard; gift bags of paper or plastic; table decorations of paper; credit cards without magnetic coding; paintings and calligraphic works; collector's photographs of players; photographic prints; architects' models.

Class 35 (following limitation)

Sales agency services for non-fungible tokens (NFTs); sales agency services for downloadable video files; sales agency services for downloadable music files; sales agency services for downloadable image files; advertising services related to digital content; on-line marketing; marketing the goods and services of others in the field of non-fungible tokens (NFTs); sales promotion through customer loyalty programs; organization of events, exhibitions, fairs and shows for commercial, promotional and advertising purposes; arranging of contracts for the buying and selling digital contents between non-fungible tokens (NFTs) users; mediation and conclusion of commercial transactions for digital content between non-fungible tokens (NFTs) users; providing of product information including cost and shop information; commercial information agency services via online marketplaces that handle non fungible tokens (NFTs); provision of an online marketplace for buyers and sellers of goods and services in the field of non-fungible tokens (NFTs); updating and maintenance of information in registries related to sales of limited edition digital content; administrative processing of purchase orders in an online marketplace that handles non-fungible tokens (NFTs); auctioneering; business intermediary services relating to mail order by telecommunications; management of sales accounts; promotion of musical concerts; none of the aforementioned services being in the field of computer/video games software or any services relating to computer, video or online games.

Class 38 – (following limitation)

Providing access to online marketplaces that handle non-fungible tokens (NFTs); providing access to electronic information, communication and transaction platforms on the Internet that handles non-fungible tokens (NFTs); providing access to platforms on the Internet, as well as on the mobile Internet that handles non-fungible tokens (NFTs); electronic transmission of audio, video and other data and documents via a peer-to-peer network; interactive communications services by means of computer;

electronic transmission and streaming of digital media content for others via global and local computer networks; access to content, websites and portals; electronic transmission of images, photographs, graphic images and illustrations over a global computer network; streaming of audio, visual and audiovisual material via a global computer network; transmission of data, audio, video and multimedia files, including downloadable files and files streamed over a global computer network; providing non-fungible tokens (NFTs)' multiple-user wireless access to the Internet; providing access to information via data networks; providing access to multimedia content on-line; transmission of billing digital files for online content; providing on-line chatrooms for the transmission of messages, comments and multimedia content among users; providing telecommunication services for e-commerce platforms on the Internet and other electronic media, transmission of mobile content via cellular telephone; providing access to mobile content via cellular telephone; providing access to Internet platforms for the purpose of exchanging digital photographs; Internet protocol broadcasting; none of the aforementioned services being in the field of computer/video games software or any services relating to computer, video or online games.

Class 41 – (following limitation)

Multimedia contents production of photos, videos, music, magazines, printed matter, graphics; production of sound recordings; video clips production; animation production services; recording, production and distribution of films, video and audio recordings, radio and television programs; production and presentation of audio and video recordings, and still and moving images; digital imaging services [editing of images]; on- line publication of celebrity-related multimedia material; production, post-production editing and presentation of digital contents (collectibles) in the nature of interactive media, video, photography, music, statistics, data, graphics, or visual effects, represented by non-fungible tokens (NFTs) via a blockchain network; none of the aforementioned services being in the field of computer/video games software or any services relating to computer, video or online games.

Class 42

Research and development of computer software relating to non-fungible tokens (NFTs); development and hosting of platforms on the Internet for issuance, transaction, sales, management and verification of non-fungible tokens (NFTs);

development and hosting of platforms on the Internet for issuance, transaction, sales, management and verification of digital certificates for ownership and right to use of blockchain-based digital content; development and hosting of platforms in the form of an online marketplace that handles non-fungible tokens (NFTs); cross-platform conversion of digital content into other forms of digital content; programming of software for e-commerce platforms that handles non-fungible tokens (NFTs); platform as a service [PaaS] for brokerage of limited edition digital content transactions between non-fungible tokens (NFTs) users; application service provider (ASP) relating to non-fungible tokens (NFTs); hosting platforms on the Internet for delivery of multimedia content; hosting platforms on the Internet for online content; software design and development; design and development of electronic data security systems; data encryption and decoding services; provision of security services for computer networks, computer access and computerized transactions; monitoring of computer systems for detecting unauthorized access or data breach; development of interactive multimedia software; on-line data storage; development of computer software for big data processing; original certification [quality control] for limited edition digital content; information technology [IT] consultancy.

The opponent's good and services

Class 9

Mobile applications; computer games software; video games software; e-sports video games; computer and on-line games.

Class 16

Printed matter relating to computer games and entertainment; cardboard badges; stationery.

Class 41

Events organisation; workshops; entertainment provided via the Internet; on-line gaming services; providing on-line computer games, on-line entertainment.

15. With regard to the similarity of the goods and services, in its statement of grounds the opponent submits the following:

“The Opponent's goods in class 9 are identical or similar to those goods covered by the Application in class 9 bearing in mind that the Opponent's goods cover the broad term mobile applications. Further, the identity or similarity of those goods lies on the fact that mobile applications are complimentary to all the goods covered in class 9 by the Applicant. Further, the Opponent's registration also covers computer games software, video games software, e-sports video games and computer and on-line games which also overlaps with some of the goods listed by the Opponent and to that extent, these are identical or similar.

The goods covered by the Opponent's registration in class 16 and those covered by the Application in class 16 are identical or similar.

The services covered by the Application in class 35 are similar to the goods covered by the Opponent's mark in classes 9 and 16 because providing online market places in general for any commercialization of goods is complimentary to the goods covered by the Application in classes 9 and 16. Further the organization of shows and related covered by the Application in class 35 overlap and are complimentary to the services covered by the Application in class 41.

The rest of the services in class 35, also overlap with those covered by the Opponent's earlier mark in classes 9, 16 and 41.

The services covered by the Opponent's registration in class 41 are identical or similar to those covered by the Application in the same class 41 as the Opponent's mark covers the broad term entertainment provided via the Internet, on-line gaming services, providing on-line computer games, on-line entertainment, all of which encompass the services covered by the Application.

The Application also covers class 38 that is complimentary to the Opponent's services in class 41 which are entertainment provided via the Internet, on-line gaming services, providing on-line computer games, on-line entertainment and

to that extent, the services in class 38 are also similar to those relied on by the Opponent in class 41.

The Application also covers class 42 which are similar to the Opponent's goods in class 9 as these are complimentary. In particular, development or research regarding computer software are similar to computer software or mobile apps in class 9.”

16. It is acknowledged that these are the only submissions made by the opponent regarding the similarity of the respective goods and services. Therefore, I bear in mind that as these submissions were made in the opponent's statement of grounds, they do not take into account the limitations applied to the holder's goods and services in Classes 9, 16, 35, 38 and 41 (Class 42 remains as originally filed).

17. With regard to the similarity of the goods and services, in its written submissions in lieu of a hearing,⁸ the holder stated the following:

“The Applicant's goods and services, as amended, are specifically restricted to areas unconnected to the areas covered by the Opponent's goods/services. The respective uses, users, nature, and purpose of the goods are therefore dissimilar. The goods will not be in competition and will not be available via the same or similar trade channels. The average consumer of the Opponent's goods is the gaming enthusiast whereas the average consumer for the Applicant's goods is interested in non-fungible tokens and transactions relating thereto. This is a completely different sector to the gaming industry.

The respective goods in class 16 are dissimilar. The Applicant's goods do not include printed matter, badges, or items of stationery.

The Opponent's services in class 41 are dissimilar to the Applicant's services in class 41. The Applicant's services do not include entertainment services or organization of events and exclude any 'gaming' related services. The

⁸ Dated 28 March 2024.

Applicant's services are specialist services directed at a specific industry sector unrelated to the Opponent's services and the gaming industry. The respective goods/services are not in competition and will not be provided via the same or similar trade channels.

There is no similarity between the Opponent's goods/services and the Applicant's services in classes 35, 38 and 42. The respective uses, users, nature and purpose of the goods/services are completely dissimilar. The goods/services are not in competition and will not be available via the same or similar trade channels.

The respective class 9 goods are dissimilar, the Applicant's goods exclude any gaming or similar goods.

In conclusion there is no risk of a likelihood of direct or indirect confusion on the part of the average consumer.

There is no similarity between the respective goods/services, and consequently there can be no likelihood of confusion. [...] The Opponent's goods/services predominantly relate to computer gaming and entertainment, whereas the Applicant's goods/services are for specific non-fungible token related goods/services. The respective goods and services do not overlap."

Class 9 of the contested application

Non-fungible tokens (NFTs) transaction brokerage computer software; computer software for wireless content delivery; computer application software for mobile phone for non-fungible tokens (NFTs) transaction brokerage; computer software for application and database integration; computer; software to enhance the audio-visual capabilities of multimedia applications, namely, for the integration of text, audio, graphics, still images and moving pictures; computer software for digital information and data access; downloadable software for virtual currency; downloadable cryptographic key software for sending and receiving virtual currency; computer software for transmitting and broadcasting audio, video, multimedia contents;

computer software for distributing and monitoring content on the internet; computer e-commerce software handling non-fungible tokens (NFTs); computer software for personal information management; **none of the aforementioned goods being computer games software, video games software, online gaming software or any goods/services relating to computer, video or online games**

18. Broadly speaking, *software/applications* are a collection of instructions, data, or computer programs that enable computers/mobile phones to perform specific tasks. Accordingly, as there is a clear overlap between the above goods (which are all types of software) and the opponent's *mobile applications* which are unlimited and cover applications/software performing the same functions as those of the applied-for software goods, I find the goods at issue to be identical in line with the principle set out in *Meric*. For the avoidance of doubt, I do not consider the limitation in the holder's specification alters this conclusion.

Downloadable video files; downloadable image files; prerecorded motion picture videos; downloadable coupon; downloadable publications; **none of the aforementioned goods being computer games software, video games software, online gaming software or any goods/services relating to computer, video or online games**

19. The opponent has cover for *mobile applications*. It is common to access various types of media via such applications. Accordingly, I find there to be a degree of shared trade channels with the above contested goods. As such, I find that there is a low degree of similarity between the goods. Whilst the limitation in the holder's application is noted, I do not consider that it has an impact on my finding.

Encoded cards for use in point-of-sale transactions; **none of the aforementioned goods being computer games software, video games software, online gaming software or any goods/services relating to computer, video or online games**

20. In general, the above goods are types of credit/debit cards that are compatible with point-of-sale terminals and cashpoints (ATM's) that handle chip-card transactions. These goods have a different nature and purpose compared with the nature and

purpose of the opponent's goods in Class 9, namely *mobile applications; computer games software; video games software; e-sports video games; computer and on-line games*. They do not have the same intended purpose or method of use and are neither complementary, nor are they in competition. Therefore, I find the above contested goods dissimilar to all the opponent's Class 9 goods. Furthermore, the same conclusion also applies to the opponent's remaining goods and services in Classes 16 and 41, on the basis that they share no direct similarities with the above contested goods.

CDs; USB memories; none of the aforementioned goods being computer games software, video games software, online gaming software or any goods/services relating to computer, video or online games

21. The above goods are used to record, store or/and carry data. As such, I find that there is a correlation between these recording and data storage devices and the opponent's *mobile applications*, on the basis that such devices can come with their own integrated software. In those circumstances, consumers may think that the goods coincide in origin or producer. Accordingly, considering these factors, I find that the competing goods are similar to a low degree. For the avoidance of doubt, I do not consider the limitation in the holder's specification alters this conclusion.

Class 16 of the contested application

Collectible trading cards

22. Trading cards are a type of game card used predominantly for entertainment purposes but can also have a collectable appeal. The cards are usually made from paperboard or thick paper and contain images, figurative representations or other printed information, relating to various characters or topics such as those from computer games, etc. As such, I find that these goods are encompassed by the opponent's wide term *printed matter relating to computer games and entertainment*. Accordingly, I find that the competing goods are identical in line with the principle set out in *Meric*. However, if I am wrong, then the respective goods are similar to a high

degree on the basis that the goods can share a similar purpose and can coincide in end users and producers.

Plastic film for wrapping; boxes of paper or cardboard; gift bags of paper or plastic

23. Broadly speaking, the contested goods can be categorised as articles for packaging, wrapping and storage. I find that these goods share a degree of similarity with the opponent's *stationery*, on the basis that it includes, amongst other things, items such as paper, envelopes, card, and office supplies, etc. I am of the view that the competing goods belong to homogeneous sectors of products on the market and therefore may well be produced by the same companies, target the same end user and be sold through the same distribution channels. Accordingly, based on this conclusion, I find that the contested goods and the opponent's *stationery* are similar to a low degree.

Table decorations of paper

24. Table decorations of paper can include functional or purely decorative items and are mainly used to dress a table. Such decorations are made out of paper and/or card, and can either be bought ready assembled, or for a more affordable and/or individual option, the decorations can be homemade. The paper decorations, can include, amongst other things, placemats, menu lists, name cards, napkin holders and table centrepieces. As these goods are predominately made from paper and card, I find that they share a degree of similarity with the opponent's *stationery*, which includes paper and card. Therefore, these goods can target the same end user, can be distributed via the same channels of trade and can coincide in producers. Furthermore, I find that there is complementarity between the goods since paper/card is an essential component of the above goods and consumers may believe that the responsibility for the goods lies with the same undertaking. Accordingly, I find these goods to be similar to a low degree.

Credit cards without magnetic coding

25. The above goods are normally issued by banks, businesses, etc., and enable the user to obtain goods and services on credit. Accordingly, I find that these goods have a very different nature, purpose and method of use to the opponent's goods, namely *printed matter relating to computer games and entertainment; cardboard badges; stationery*. Accordingly, I find the above goods to be dissimilar to all of the opponent's Class 16 goods. The same conclusion also applies to the opponent's remaining goods and services in Classes 9 and 41, on the basis that they share no direct similarities with the above contested goods.

Paintings and calligraphic works; collector's photographs of players; photographic prints; architects' models

26. The contested goods are of a very specific nature. The specific nature of these goods means that they bear no relevant points of contact with the opponent's Class 16 goods, namely *printed matter relating to computer games and entertainment; cardboard badges; stationery*. Their purpose and method of use are different, and they are also likely to differ in their end users, distribution channels and providers. Accordingly, I find these goods to be dissimilar to all of the opponent's Class 16 goods. Furthermore, they are neither in competition with each other, nor are they complementary. This is even truer when comparing these goods with all the remaining opposing goods and services in Class 9 and 41.

Class 35 of the contested application

Sales agency services for non-fungible tokens (NFTs); sales agency services for downloadable video files; sales agency services for downloadable music files; sales agency services for downloadable image files; advertising services related to digital content; on-line marketing; marketing the goods and services of others in the field of non-fungible tokens (NFTs); sales promotion through customer loyalty programs; arranging of contracts for the buying and selling digital contents between non-fungible tokens (NFTs) users; mediation and conclusion of commercial transactions for digital content between non-fungible tokens (NFTs) users; providing of product information

including cost and shop information; commercial information agency services via online marketplaces that handle non fungible tokens (NFTs); provision of an online marketplace for buyers and sellers of goods and services in the field of non-fungible tokens (NFTs); updating and maintenance of information in registries related to sales of limited edition digital content; administrative processing of purchase orders in an online marketplace that handles non-fungible tokens (NFTs); auctioneering; business intermediary services relating to mail order by telecommunications; management of sales accounts; **none of the aforementioned services being in the field of computer/video games software or any services relating to computer, video or online games**

27. The above services will include a wide range of business responsibilities, such as, amongst other things, sales, auctioneering, advertising and marketing, commercial administration and mediation, etc. I also note that the holder has specifically stated that none of the services at issue are in the field of computer/video games software or any services relating to computer, video or online games. As such, I find that these services are fundamentally different in nature, method of use, and purpose, to the opponent's goods and services in Classes 9, 16 and 41. Furthermore, the trade channels will also differ. Moreover, the goods and services at issue are neither in competition nor complementary. I bear in mind that there may be some overlap in user, however, that is not enough on its own for a finding of similarity. Accordingly, I find that the above contested services are dissimilar to all the opponent's goods and services contained in Classes 9, 16 and 41.

Organization of events, exhibitions, fairs and shows for commercial, promotional and advertising purposes; promotion of musical concerts; **none of the aforementioned services being in the field of computer/video games software or any services relating to computer, video or online games**

28. The opponent's specification does not include any services in Class 35. However, I bear in mind that section 60A of the Act sets out that services may still be similar even if they are not in the same class. I find that to be the case here, insofar as the opponent's *events organisation* in Class 41, is concerned. While the nature, method

of use and purpose of the services all differ, I consider that they overlap in user, trade channels and share a complementary relationship (in the way described by the case law). I say this because someone looking for organisation of an event (being the user of the opponent's services) is also likely to seek to advertise and promote the same (by seeking the holder's services). In my view, an undertaking that organises events is also likely to offer to consumers the advertising and promotion of the same. Furthermore, I consider the services complementary because the advertising and promoting of an event is likely to be considered important to the organising of the same. For example, for an event to attract attendees, it is important to advertise and promote that event. Accordingly, I consider that consumers will believe that the services are the responsibility of the same undertaking. As such, I find that these contested services in Class 35 are similar to between a low to medium degree to the opponent's *events organisation* in Class 41. Whilst the limitation in the holder's application is noted, I do not consider that it has an impact on my finding.

Class 38 of the contested application

Providing access to online marketplaces that handle non-fungible tokens (NFTs); providing access to electronic information, communication and transaction platforms on the Internet that handles non-fungible tokens (NFTs); providing access to platforms on the Internet, as well as on the mobile Internet that handles non-fungible tokens (NFTs); electronic transmission of audio, video and other data and documents via a peer-to-peer network; interactive communications services by means of computer; electronic transmission and streaming of digital media content for others via global and local computer networks; access to content, websites and portals; electronic transmission of images, photographs, graphic images and illustrations over a global computer network; streaming of audio, visual and audiovisual material via a global computer network; transmission of data, audio, video and multimedia files, including downloadable files and files streamed over a global computer network; providing non-fungible tokens (NFTs)' multiple-user wireless access to the Internet; providing access to information via data networks; providing access to multimedia content on-line; transmission of billing digital files for online content; providing on-line chatrooms for the transmission of messages, comments and multimedia content among users; providing telecommunication services for e-commerce platforms on the Internet and

other electronic media, transmission of mobile content via cellular telephone; providing access to mobile content via cellular telephone; providing access to Internet platforms for the purpose of exchanging digital photographs; Internet protocol broadcasting; **none of the aforementioned services being in the field of computer/video games software or any services relating to computer, video or online games.**

29. Broadly speaking, the above services relate to varying forms of telecommunication services, such as, providing access to platforms on the internet, providing access to telecommunications, electronic transmission, streaming, and providing online chatrooms, etc. However, contrary to the opponent's submissions, I find that the fact that the above services might be needed to provide some of the opponent's services in Class 41, is not sufficient to render them similar or to consider them complementary. These services have a different nature (telecommunication versus entertainment and gaming services), and method of use. Further, they are not complementary in the sense that consumers may think that responsibility for provision of the services at issue lies with the same undertaking. Neither are they in competition with each other. Furthermore, they are not likely to be provided by the same undertakings (as they require different knowledge and expertise) and they are likely to be distributed/offered through different trade channels. Accordingly, I find the contested services to be dissimilar to all the opponent's Class 41 services. Furthermore, this is even truer when comparing these services with all the remaining opposing goods in Classes 9 and 16.

Class 41 of the contested application

Multimedia contents production of photos, videos, music, magazines, printed matter, graphics; production of sound recordings; video clips production; animation production services; recording, production and distribution of films, video and audio recordings, radio and television programs; production and presentation of audio and video recordings, and still and moving images; digital imaging services [editing of images]; on-line publication of celebrity-related multimedia material; production, post-production editing and presentation of digital contents (collectibles) in the nature of interactive media, video, photography, music, statistics, data, graphics, or visual effects, represented by non-fungible tokens (NFTs) via a blockchain network; **none of**

the aforementioned services being in the field of computer/video games software or any services relating to computer, video or online games

30. I find that the above contested services share a degree of similarity with the opponent's *entertainment provided via the Internet* and *providing online entertainment*. Whilst the methods of use differ, the respective services can coincide in purpose, user, distribution channels and provider, and there is also a complementarity between the services at issue. Accordingly, I find that the services at issue are similar to a low degree. Whilst the limitation in the holder's application is noted, I do not consider that it has an impact on my finding.

Class 42 of the contested application

Research and development of computer software relating to non-fungible tokens (NFTs); programming of software for e-commerce platforms that handles non-fungible tokens (NFTs); software design and development; development of interactive multimedia software; development of computer software for big data processing

31. Broadly speaking, the above services are concerned with the design, development and programming of *computer software*. As previously stated above, the opponent's *mobile applications* are a type of software. Whilst it is acknowledged that services are not the same as goods, I consider the opponent's *mobile applications* in Class 9 to be the end result of its design, development and programming. As such, I find that there exists a complementary relationship with the above contested services and the opponent's *mobile applications*, on the basis that without the above services there would be no mobile application (software) end product. Whilst I acknowledge that the nature, purpose and method of use of the goods and services at issue is different, there may be an element of competition, with the consumer selecting either bespoke goods from the designer or choosing specific apparatus or software already on the market. As such, I do not consider it unreasonable for the consumer to believe that the goods and services derive from the same or related undertakings. Overall, I find there to be a medium degree of similarity between the above services and the opponent's *mobile applications*.

Platform as a service [PaaS] for brokerage of limited edition digital content transactions between non-fungible tokens (NFTs) users;

32. In general Platform as a service [PaaS], is a category of cloud computing that allows users to manage the combination of a computing platform with computer applications. Accordingly, I find that there is an overlap between these services and *mobile applications* contained in the opponent's specification. It is entirely possible that a user of *mobile applications* would also use a platform system that allows the use of applications within a cloud environment. As such, I find there to be a medium degree of similarity between the above services and the opponent's *mobile applications*, insofar as they are likely to share intended purposes, uses, end users and trade channels. Additionally, they may also be in competition.

Application service provider (ASP) relating to non-fungible tokens (NFTs)

33. Generally speaking, an application service provider (ASP) is a third-party entity that provides access to software applications and related services over the Internet, allowing users to use software applications without having to install and maintain them on their own systems. Accordingly, I find that there is a degree of similarity between these services and the opponent's *mobile applications*. Whilst I acknowledge that the nature, purpose and method of use of the goods and services at issue is different, I do not consider it unreasonable for the consumer to believe that the goods and services at issue derive from the same or related undertakings. Overall, I find there to be a medium degree of similarity between the above services and the opponent's *mobile applications*.

Development and hosting of platforms on the Internet for issuance, transaction, sales, management and verification of non-fungible tokens (NFTs); development and hosting of platforms on the Internet for issuance, transaction, sales, management and verification of digital certificates for ownership and right to use of blockchain-based digital content; development and hosting of platforms in the form of an online marketplace that handles non-fungible tokens (NFTs); hosting platforms on the Internet for delivery of multimedia content; hosting platforms on the Internet for online content; cross platform conversion of digital content into other forms of digital content

34. The contested terms relate largely to the development, hosting and conversion of platforms, that is, in broad terms, the construction and provision of digital services that facilitate online users to interact and participate in networked sites. However, in the absence of evidence or submissions from the opponent, it is not obvious to me how these services could be similar to the opponent's goods and services. For example, the above services concern the construction, hosting and development of platforms, whereas the opponent's Class 9 goods relate to applications/software, which allow the end user to access various platforms through their devices. For me, these clearly have a different nature and purpose. Furthermore, with regards to methods of use, the opponent's mobile applications/software is likely to be accessed via a device, as opposed to the holder's services, which are likely to be accessed via contact with a provider because of the need to discuss complex requirements and needs for the development/hosting of platforms. Therefore, their methods of use are also different. Even if the holder's services can be accessed via a mobile telephone or computer, this general similarity does not result in any shared methods of use.

35. Accordingly, I find that the opponent's *mobile applications; computer games software; video games software; e-sports video games; computer and on-line games* are in no way indispensable or important to the provision of the holder's services.⁹ I see no reason why consumers would consider them to be provided by the same undertakings, therefore, there is no complementary relationship between the respective goods and services. There is unlikely to be any overlap in the trade channels, nor any degree of competition between them. Therefore, I find the above services and the opponent's Class 9 goods to be dissimilar. Furthermore, this is even truer when comparing these services with all the remaining opposing goods and services in Classes 16 and 41.

Design and development of electronic data security systems; data encryption and decoding services; provision of security services for computer networks, computer access and computerized transactions; monitoring of computer systems for detecting

⁹ See *Sandra Amelia Mary Elliot v LRC Holdings Limited*, BL-O/255/13

unauthorized access or data breach; on-line data storage; original certification [quality control] for limited edition digital content

36. I do not find any obvious similarity between the holder's remaining Class 42 services, listed above, and the opponent's Class 9 goods. I find that the competing goods and services at issue will satisfy different consumer needs, will ordinarily originate from different providers and will move through different trade channels. Furthermore, I am of the view that the goods and services are neither in competition nor are they complementary. Moreover, the opponent has not provided any persuasive submissions in relation to the comparison between the competing goods and services, beyond suggesting that they are identical or similar. Accordingly, I find that the above contested services are dissimilar to all the opponent's Class 9 goods. The same conclusion also applies to the opponent's remaining goods and services in Classes 16 and 41, on the basis that they share no direct similarities with the above contested services.

Information technology [IT] consultancy

37. Generally speaking, information technology (IT) consultancy refers to a professional service provided by IT specialists who are able to provide advice regarding a wide range of computer-based technology. Whilst it is noted that the opponent's Class 9 specification contains, technology type goods, namely mobile applications, and software goods, I do not believe that the contested services are complementary to the opponent's Class 9 goods, to the extent that consumers would believe the responsibility for the goods and services lies with the same undertakings. Whilst I acknowledge that those who provide *mobile applications* may also provide *IT consultancy services* in relation not those applications, I am of the view that those providing mobile applications for use on mobile phones, in general, only provide the mobile applications and not the related IT consultancy services, and I have no evidence before me to the contrary. Further, just because a person might use mobile applications or computer (game) software and also require IT-related services, it does not automatically follow that those goods and services are similar. Having considered the factors outlined in the case law in relation to each of these terms, I can see no other point of similarity. Accordingly, I find that the above contested services and the

opponent's Class 9 goods to be dissimilar. Furthermore, the same conclusion also applies to the opponent's remaining goods and services in Class 16 and 41, on the basis that they share no direct similarities with the above contested services.

38. Similarity of goods and services is essential for a finding of a likelihood of confusion.¹⁰ As a consequence, the opposition fails with respect of the following goods and services:

Class 9 Encoded cards for use in point of sale transactions; none of the aforementioned goods being computer games software, video games software, online gaming software or any goods/services relating to computer, video or online games

Class 16 Credit cards without magnetic coding; Paintings and calligraphic works; collector's photographs of players; photographic prints; architects' models

Class 35 Sales agency services for non-fungible tokens (NFTs); sales agency services for downloadable video files; sales agency services for downloadable music files; sales agency services for downloadable image files; advertising services related to digital content; on-line marketing; marketing the goods and services of others in the field of non-fungible tokens (NFTs); sales promotion through customer loyalty programs; arranging of contracts for the buying and selling digital contents between non-fungible tokens (NFTs) users; mediation and conclusion of commercial transactions for digital content between non-fungible tokens (NFTs) users; providing of product information including cost and shop information; commercial information agency services via online marketplaces that handle non fungible tokens (NFTs); provision of an online marketplace for buyers and sellers of goods and services in the field of non-fungible tokens (NFTs); updating and maintenance of information in registries related to sales of limited edition digital content; administrative processing of purchase orders in an online marketplace that handles non-fungible tokens (NFTs); auctioneering; business intermediary services relating to mail order by telecommunications; management of sales accounts; none of the aforementioned

¹⁰ *Waterford Wedgwood plc v OHIM*, Case C-398/07 P, CJEU

services being in the field of computer/video games software or any services relating to computer, video or online games

Class 38 Providing access to online marketplaces that handle non-fungible tokens (NFTs); providing access to electronic information, communication and transaction platforms on the Internet that handles non-fungible tokens (NFTs); providing access to platforms on the Internet, as well as on the mobile Internet that handles non-fungible tokens (NFTs); electronic transmission of audio, video and other data and documents via a peer-to-peer network; interactive communications services by means of computer; electronic transmission and streaming of digital media content for others via global and local computer networks; access to content, websites and portals; electronic transmission of images, photographs, graphic images and illustrations over a global computer network; streaming of audio, visual and audiovisual material via a global computer network; transmission of data, audio, video and multimedia files, including downloadable files and files streamed over a global computer network; providing non-fungible tokens (NFTs)' multiple-user wireless access to the Internet; providing access to information via data networks; providing access to multimedia content on-line; transmission of billing digital files for online content; providing on-line chatrooms for the transmission of messages, comments and multimedia content among users; providing telecommunication services for e-commerce platforms on the Internet and other electronic media, transmission of mobile content via cellular telephone; providing access to mobile content via cellular telephone; providing access to Internet platforms for the purpose of exchanging digital photographs; Internet protocol broadcasting; none of the aforementioned services being in the field of computer/video games software or any services relating to computer, video or online games.

Class 42 Development and hosting of platforms on the Internet for issuance, transaction, sales, management and verification of non-fungible tokens (NFTs); development and hosting of platforms on the Internet for issuance, transaction, sales, management and verification of digital certificates for ownership and right to use of blockchain-based digital content; development and hosting of platforms in the form of an online marketplace that handles non-fungible tokens (NFTs); hosting platforms on the Internet for delivery of multimedia content; hosting platforms on the Internet for

online content; cross platform conversion of digital content into other forms of digital content; Design and development of electronic data security systems; data encryption and decoding services; provision of security services for computer networks, computer access and computerized transactions; monitoring of computer systems for detecting unauthorized access or data breach; on-line data storage; original certification [quality control] for limited edition digital content; Information technology [IT] consultancy.

The average consumer and the nature of the purchasing act

39. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question (see *Lloyd Schuhfabrik Meyer*, Case C-342/97).

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

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

41. The average consumer of the goods and services at issue is likely to include members of the general public as well as businesses and professional users. The goods and services will be available via both general retailers and more specialist ones, and their online or catalogue equivalents. At the retailers' physical premises, the goods will be displayed on shelves and in cabinets and information about the services will be displayed on signs and placards, both being self-selected by the consumer. A similar process will apply when the goods and services are selected online or via

catalogues, in that a consumer will select them after seeing an image, on, for example, a webpage or in a catalogue. In my view, the visual component will dominate all methods of sale, although I do not discount an aural component playing a part given that orders may be placed by telephone or that word-of-mouth recommendations and advice may be received from sales assistants. Given the range of goods and services at issue, the price and frequency of purchase will vary depending on their nature and type. In this regard, when selecting the goods and services at issue, the average consumer is likely to pay at least a medium degree of attention.

Comparison of the marks

42. It is clear from *Sabel BV v. Puma AG* that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by them, bearing in mind their distinctive and dominant components. The CJEU stated in *Bimbo SA v OHIM*, that:

“34. [...] 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.”

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

44. The trade marks to be compared are as follows:

Opponent's mark	Holder's mark
LEVELS	LEVVELS

45. Both parties have filed submissions regarding the similarity of the marks. As noted above, I bear in mind that in its counterstatement, the holder admits that the respective marks are similar. Whilst I do not propose to reproduce the parties' submissions here, I have taken them all into consideration in reaching my decision.

Overall impression

46. Both marks are presented in standard upper-case letters without any stylisation. The opponent's mark comprises of the word 'LEVELS'. The overall impression resides in this single element. The holder's mark comprises of the word 'LEVVELS'. The overall impression of the mark lies in this single element.

Visual comparison

47. Visually, the competing marks identically share the same letters in the same order, with the exception of the fourth letter 'V' present in the holder's mark, which has no counterpart in the opponent's mark, i.e. 'LEVELS / LEVVELS'. Accordingly, weighing up the similarities with the differences, I find the marks to be visually similar to a very high degree.

Aural comparison

48. The competing marks have the same number of syllables, namely 'LEV-ELS' and 'LEVV-ELS' or 'LEV-VELS'. I find the aural difference created by the additional 'V' in the holder's mark to be negligible or non-existent, and therefore both marks will be pronounced as the word 'LEVELS', creating aural identity.

Conceptual comparison

49. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM* [2006] E.C.R.-I-643; [2006] E.T.M.R 29. The assessment must, therefore, be made from the point of view of the average consumer.

50. In my view the word 'LEVELS' in the opponent's mark will be an immediately recognisable word for the average consumer, i.e. as, *inter alia*, a reference to the height of things, such as seas or rivers, etc.

51. With regards to the holder's mark, I am of the view that there are two possible scenarios. The first is that conceptually the mark 'LEVVELS' may be perceived by a proportion of consumers as an invented word. For this group of average consumers, the marks are conceptually dissimilar. The second possibility is for consumers to see 'LEVVELS', articulate it in their heads as 'LEVELS', and immediately think of the ordinary meaning of that word. For this group of average consumers, the marks are conceptually identical as they immediately conjure the ordinary meaning of the dictionary word 'LEVELS'. On balance, I am of the view that those who perceive the marks as conceptually identical will represent a significant proportion of the relevant public.

Distinctive character of the earlier trade mark

52. The distinctive character of a trade mark can be measured only, first, by reference to the goods or services in respect of which registration is sought and, second, by reference to the way it is perceived by the relevant public. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, 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).”

53. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The degree of distinctiveness is an important factor as it directly relates to whether there is a likelihood of confusion; the more distinctive the earlier mark, the greater the likelihood of confusion.

54. Neither party has made any specific comments on the distinctiveness of the earlier mark. Although the distinctiveness of a mark can be enhanced by virtue of the use that has been made of it, the opponent has not filed any evidence of use. Consequently, I have only the inherent position to consider.

55. The earlier mark comprises the word ‘LEVELS’. Whilst this word will be understood as a reference to, *inter alia*, the height of things, such as seas or rivers, etc., it has no obvious connection with the goods or services for which the opponent’s mark is registered. On this basis, the mark is inherently distinctive to a medium degree.

Likelihood of confusion

56. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. One such factor is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services, and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier trade mark, the average consumer for the goods and services, and the nature of the purchasing process. In doing so, I must be mindful 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.

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

58. Earlier in the decision I concluded that the respective marks are visually similar to a very high degree, aurally identical and conceptually identical or dissimilar (depending on how the mark is perceived). I have found that the earlier mark has a medium degree of inherent distinctive character for the goods and services at issue. I have found the parties' goods and services to range between identical and dissimilar. I have identified the average consumer to be members of the general public as well as business and professional users, who will pay at least a medium degree of attention during the selection of the goods and services at issue. I am of the view that the purchasing process for the goods and services at issue would be predominantly visual in nature, though I have not discounted aural considerations.

59. Whilst the marks are not identical, I have found them to be visually similar to a very high degree, aurally identical and either conceptually identical (for a significant proportion of average consumers), or conceptually dissimilar. The marks at issue

identically share the letters 'LEVELS / LEV_ELS' with the only difference being that the holder's mark contains a double 'V'. The fact that the marks identically share these letters is an important point of coincidence. Overall, given the high similarities between the marks, I am of the view that a significant proportion of average consumers will likely conceptualise the holder's mark as 'LEVELS' and overlook or misremember the additional letter 'V' in the holder's mark. As such, I find that a significant proportion of consumers will mistake one trade mark for the other, despite some of the goods and services being similar to only a low degree. Accordingly, taking all these factors into account, I find that there is a likelihood of direct confusion.

Conclusion

60. The opposition under section 5(2)(b) is partially successful. Therefore, the holder's IR is refused registration for the following goods and services:

Class 9 Non-fungible tokens (NFTs) transaction brokerage computer software; computer software for wireless content delivery; computer application software for mobile phone for non-fungible tokens (NFTs) transaction brokerage; computer software for application and database integration; computer; software to enhance the audio-visual capabilities of multimedia applications, namely, for the integration of text, audio, graphics, still images and moving pictures; computer software for digital information and data access; downloadable software for virtual currency; downloadable cryptographic key software for sending and receiving virtual currency; computer software for transmitting and broadcasting audio, video, multimedia contents; computer software for distributing and monitoring content on the internet; computer e-commerce software handling non-fungible tokens (NFTs); computer software for personal information management; downloadable video files; downloadable image files; prerecorded motion picture videos; downloadable coupon; downloadable publications; CDs; USB memories; none of the aforementioned goods being computer games software, video games software, online gaming software or any goods/services relating to computer, video or online games.

Class 16 Collectible trading cards; plastic film for wrapping; boxes of paper or cardboard; gift bags of paper or plastic; Table decorations of paper.

Class 35 Organization of events, exhibitions, fairs and shows for commercial, promotional and advertising purposes; promotion of musical concerts; none of the aforementioned services being in the field of computer/video games software or any services relating to computer, video or online games.

Class 41 Multimedia contents production of photos, videos, music, magazines, printed matter, graphics; production of sound recordings; video clips production; animation production services; recording, production and distribution of films, video and audio recordings, radio and television programs; production and presentation of audio and video recordings, and still and moving images; digital imaging services [editing of images]; on- line publication of celebrity-related multimedia material; production, post-production editing and presentation of digital contents (collectibles) in the nature of interactive media, video, photography, music, statistics, data, graphics, or visual effects, represented by non-fungible tokens (NFTs) via a blockchain network; none of the aforementioned services being in the field of computer/video games software or any services relating to computer, video or online games.

Class 42 Research and development of computer software relating to non-fungible tokens (NFTs); programming of software for e-commerce platforms that handles non-fungible tokens (NFTs); software design and development; development of interactive multimedia software; development of computer software for big data processing; Platform as a service [PaaS] for brokerage of limited edition digital content transactions between non-fungible tokens (NFTs) users; application service provider (ASP) relating to non-fungible tokens (NFTs).

61. The holder's IR can proceed to registration in respect of the unopposed services in Classes 36 and 45, and the following goods and services for which the opposition has been unsuccessful:

Class 9 Encoded cards for use in point of sale transactions; none of the aforementioned goods being computer games software, video games software, online gaming software or any goods/services relating to computer, video or online games.

Class 16 Credit cards without magnetic coding; paintings and calligraphic works; collector's photographs of players; photographic prints; architects' models.

Class 35 Sales agency services for non-fungible tokens (NFTs); sales agency services for downloadable video files; sales agency services for downloadable music files; sales agency services for downloadable image files; advertising services related to digital content; on-line marketing; marketing the goods and services of others in the field of non-fungible tokens (NFTs); sales promotion through customer loyalty programs; arranging of contracts for the buying and selling digital contents between non-fungible tokens (NFTs) users; mediation and conclusion of commercial transactions for digital content between non-fungible tokens (NFTs) users; providing of product information including cost and shop information; commercial information agency services via online marketplaces that handle non fungible tokens (NFTs); provision of an online marketplace for buyers and sellers of goods and services in the field of non-fungible tokens (NFTs); updating and maintenance of information in registries related to sales of limited edition digital content; administrative processing of purchase orders in an online marketplace that handles non-fungible tokens (NFTs); auctioneering; business intermediary services relating to mail order by telecommunications; management of sales accounts; none of the aforementioned services being in the field of computer/video games software or any services relating to computer, video or online games.

Class 38 Providing access to online marketplaces that handle non-fungible tokens (NFTs); providing access to electronic information, communication and transaction platforms on the Internet that handles non-fungible tokens (NFTs); providing access to platforms on the Internet, as well as on the mobile Internet that handles non-fungible tokens (NFTs); electronic transmission of audio, video and other data and documents via a peer-to-peer network; interactive communications services by means of computer; electronic transmission and streaming of digital media content for others via global and local computer networks; access to content, websites and portals; electronic transmission of images, photographs, graphic images and illustrations over a global computer network; streaming of audio, visual and audiovisual material via a global computer network; transmission of data, audio, video and multimedia files, including downloadable files and files streamed over a global computer network;

providing non-fungible tokens (NFTs) multiple-user wireless access to the Internet; providing access to information via data networks; providing access to multimedia content on-line; transmission of billing digital files for online content; providing on-line chatrooms for the transmission of messages, comments and multimedia content among users; providing telecommunication services for e-commerce platforms on the Internet and other electronic media, transmission of mobile content via cellular telephone; providing access to mobile content via cellular telephone; providing access to Internet platforms for the purpose of exchanging digital photographs; Internet protocol broadcasting; none of the aforementioned services being in the field of computer/video games software or any services relating to computer, video or online games.

Class 42 Development and hosting of platforms on the Internet for issuance, transaction, sales, management and verification of non-fungible tokens (NFTs); development and hosting of platforms on the Internet for issuance, transaction, sales, management and verification of digital certificates for ownership and right to use of blockchain-based digital content; development and hosting of platforms in the form of an online marketplace that handles non-fungible tokens (NFTs); hosting platforms on the Internet for delivery of multimedia content; hosting platforms on the Internet for online content; cross platform conversion of digital content into other forms of digital content; design and development of electronic data security systems; data encryption and decoding services; provision of security services for computer networks, computer access and computerized transactions; monitoring of computer systems for detecting unauthorized access or data breach; on-line data storage; original certification [quality control] for limited edition digital content; Information technology [IT] consultancy.

Costs

62. On balance, I consider that both parties have achieved a relatively equal level of success in these proceedings. In the circumstances, I do not consider it appropriate to make a costs award in favour of either party. Therefore, I order both parties to bear their own costs in these proceedings.

Dated this 30th day of December 2024

**Sam Congreve
For the Registrar**