

**O/693/21**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF  
TRADE MARK APPLICATION NO. 3528118  
BY JING LIU  
TO REGISTER:**

golivetrade

GOLIVETRADE

**(SERIES OF TWO)**

**AS A TRADE MARK  
IN CLASSES 9,35,36,38,39,41,42,43,45**

**AND**

**IN THE MATTER OF OPPOSITION THERETO  
UNDER NO. 600001572  
BY BORDEAUX INDEX LIMITED**

## Background and Pleadings

1. On 29 August 2020 Jing Liu (“the applicant”) applied to register the series of two trade marks “golivetrade” and “GOLIVETRADE” in the UK. The application was accepted and published in the Trade Marks Journal on 9 October 2020 in respect of the goods and services set out in **Annex 1** to this decision.

2. Bordeaux Index Limited (“the opponent”) filed a notice of opposition on 12 January 2021 under the fast track opposition procedure on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opponent relies on the trade marks shown below:

**UK00003434091** (“first earlier mark”)

LIVETRADE

**Filing date:** 4 October 2019.

**Date of entry in register:** 9 August 2020.

Relying on the goods and services in classes 9, 35, 36, 38 and 42.

**UK00918272866** (“second earlier mark”)

 **LIVETRADE**

**Filing date:** 14 July 2020.

**Date of entry in register:** 26 November 2020.

Relying on the goods and services in classes 9, 33, 35, 36, 38 and 42.

3. A full list of the goods and services the opponent relies upon are set out in **Annex 2** to this decision.

4. The opponent submits that the earlier marks and the applicant's marks are similar; and the respective goods and services are identical or similar.

5. The applicant filed a defence and counterstatement denying the claims made.

6. Rule 6 of the Trade Marks (Fast Track Opposition)(Amendment) Rules 2013, S.I. 2013 No. 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Marks Rules 2008 ("TMR") but provides that Rule 20(4) shall continue to apply. Rule 20(4) states that:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit”.

7. The effect of the above is that parties are required to seek leave in order to file evidence (other than the proof of use evidence which is filed with the notice of opposition) in fast track oppositions. No leave was sought in respect of these proceedings.

8. Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the Registrar considers that oral proceedings are necessary to deal with the case justly and at a proportionate cost. Otherwise, written arguments will be taken. A hearing was neither requested nor considered necessary. Neither party filed evidence or submissions in lieu of a hearing. This decision is taken following a careful reading of all of the papers.

9. The opponent is represented by Shepherd and Wedderburn LLP and the applicant is represented by Albright IP Limited.

## **Decision**

10. Section 5(2)(b) of the Act is as follows:

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

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

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

11. An earlier trade mark is defined in Section 6 of the Act, the relevant parts state:

“6(1) In this Act an “earlier trade mark” means –

(a) a registered trade mark, international trade mark (UK) or Community trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks.

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b) subject to its being so registered.”

12. The opponent’s marks qualify as earlier marks within the meaning of Section 6(1) of the Act because they have an earlier filing date than the contested application. The earlier marks have not been registered for more than five years on the date on which the contested mark was filed and, as a result, are not subject to proof of use.

13. Although the UK has left the EU, Section 6(3)(a) of the European (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Trade Marks Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

### **Section 5(2) -Case Law**

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

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

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impression created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;

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

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

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

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

### **Comparison of the goods and services**

15. The opponent objects to all the applicant's goods and services in this opposition; the applicant's specification can be found in **Annex 1**. The opponent relies on all the goods and services in its earlier trade marks, which can be found in **Annex 2**.

16. The parties have not provided any submissions or evidence in regard to what the goods and services are.

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

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

18. Guidance on this issue has also come from Jacob J. (as he was then) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

(a) The respective uses of the respective goods or services;

(b) The respective users of the respective goods or services;

(c) The physical nature of the goods or acts of service;

(d) The respective trade channels through which the goods or services reach the market;

(e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and, in particular, whether they are or are likely to be found on the same or different shelves;

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance, whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.”

19. In *Gérard Meric v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* case T-133/05, the General Court (“GC”) stated:

“29 In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by the trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM – Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark”

20. In *Kurt Hesse v OHIM* (Case C-50/15 P), the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*, (Case T-325/06), the GC stated that “complementary” means:

“...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking”.

21. In *SEPARODE Trade Mark*, BL O-399-10, Mr Geoffrey Hobbs QC, sitting as the Appointed Person, said:



“The determination must be made with reference to each of the different species of goods listed in the opposed application for registration; if and to the extent that the list includes goods which are sufficiently comparable to be assessable for registration in essentially the same way for essentially the same reasons, the decision taker may address them collectively in his or her decision.

## **Class 9**

22. The class 9 specification in the earlier marks are nearly identical, the only difference being that the specification in the second earlier mark does not cover *investment portfolio management for wine, spirits and other commodity asset classes*. The following findings apply to both earlier marks.

23. The opponent submits that both parties' goods in class 9 are identical or, at the very least, highly similar, as the goods have the potential to be marketed to the same consumers, be in competition and be identical in nature and users. I agree that some of the goods at issue are identical. For example, Software downloadable from the internet in the applicant's specification is a broad category that encompasses a wide range of software, as it is commonly accepted that most software can be downloaded from the internet. Therefore, I find these goods to be identical, on the principle outlined in *Meric*, to *Investment portfolio management software* in the opponent's specification. Software for operating an online shop; Software for the processing of business transactions; Software for processing electronic payments to and from others in the applicant's specification are all software that pertain to online store processes and are used to assist in processing payments and managing an online store. Consequently, I consider these goods to be identical, on the principle outlined in *Meric*, to *e-commerce software* in the opponent's specification.

24. Software and applications for mobile devices; Software for mobile phones; Software for smartphones in the applicant's specification are identical to *investment portfolio management software* in the opponent's specification insofar as they include

investment portfolio management software for mobile devices. The goods are identical on the principle outlined in *Meric*. If I am wrong about this, the considerations I make in the following paragraph also apply to these goods.

25. The applicant's specification includes various software-type goods for specific purposes, namely *Games software; Software for Smart Contracts; Software for accessing information on a global computer network; Software for monitoring, analysing, controlling and running physical world operations; Software for online messaging; Software for processing images, graphics, audio, video and text; Software for renting advertising space on websites; Software for the integration of artificial intelligence and machine learning in the field of Big Data; Software for use in advertising; Artificial intelligence and machine learning software; Communication software; Communication, networking and social networking software; Communications processing computer software; Data communications software; Unified communications software; Computer software for advertising (twice); Instant messaging software; Downloadable instant messaging software; Application software for social networking services via internet; Data and file management and database software; Data processing software; Software for the analysis of business data; Training software; Education software; Educational mobile applications.* I find that these goods and *computer-software platforms* in the opponent's specification share a level of similarity. *Computer software platforms* are platforms under which various computer software can be designed to run. The parties' goods may coincide in users, nature, and trade channels but differ in uses and purpose. However, the goods are highly complementary as the opponent's computer software platforms provide the digital platforms where the applicant's software goods can be executed - so the opponent's goods are indispensable or important for the use of the applicant's goods in such a way that customers may think that the responsibility for those goods lies with the same undertaking. Therefore, I find these goods to be similar to a medium degree.

26. *Data engines; Data banks* in the applicant's specification and *computer software for accessing browsing and searching online database* in the opponent's specification share a level of similarity. Although the goods in the applicant's specification may have

a different nature, they have a similar purpose to that of the opponent's *computer software for accessing, browsing and searching online database*, because they all permit users to access (and process) data in an electronic format. The goods target the same consumers and have similar uses, can be available through the same trade channels and are complementary to a degree. In my view these goods are similar to a medium degree.

27. *Data communications apparatus; Data terminals; Data networks* in the applicant's specification are items of computer hardware. These goods and *computer software for accessing, browsing and searching online database* in the opponent's specification might coincide in users, trade channels and are complementary. However, they differ in nature, as they are hardware rather than software, and are not in competition. Therefore, I find the goods to be similar to a low to medium degree.

28. *Data conversion apparatus; Data encoding apparatus* in the applicant's specification are equipment that are used to convert or encode data. These goods coincide with *computer software for accessing, browsing and searching online database* in the opponent's specification in users, nature and trade channels. However, the goods differ in uses and purpose. They are not in competition but are complementary. Therefore, I find the goods to be similar to a low to medium degree.

29. *Data encryption apparatus* in the applicant's specification are software or hardware that are used to convert data into encoded information that can only be decoded with a unique decryption key. The goods may coincide in nature, users and trade channels to *computer software for accessing, browsing and searching online database* in the opponent's specification but differ in purpose and uses. The goods are neither competitive nor complementary. Therefore, I find the goods to be similar to a low degree.

30. The opponent submits that the applicant's goods in class 9 can be summarised as a range of software products and submits that the goods are identical or at least highly similar to the opponent's goods. However, in my view, Photographic cameras for the instant production of pictures; Apparatus for broadcasting sound, data or images; Broadcasting equipment; Data Carriers in the applicant's specification cannot be summarised as software products; further, I do not consider them to be items of hardware. The applicant's goods are used for capturing or broadcasting sound, images or data and do not overlap with any of the opponent's goods or services. They are neither complementary nor in competition. Therefore, I consider the goods to be dissimilar.

### **Class 35**

31. The opponent submits that its services in class 35 are identical or highly similar to the applicant's services in the same class. However, the opponent has given no explanation as to why or how these services are similar to those in its specification. Some of the services are identical to one another, even taking into account that all of the opponent's services are limited by the wording "all of the aforesaid in relation to investments in wine, spirits and other commodity asset classes" since the applicant's services are broad enough to relate to the same field. For example, Auction and reverse auction services; Auctioneering; Auctioneering provided on the internet; Auctioneering services; Auctioning via telecommunication networks; Telephone and television auctions; carrying out auction sales; Bidding quotation; On-line auction bidding for others in the applicant's specification fall within the wider category of auction services in the opponent's specification; Provision of an online marketplace for buyers and sellers of goods and services in the applicant's specification and provision of an online marketplace for buyers and sellers in the opponent's specification, although worded slightly differently, are identical; Analysis of business data in the applicant's specification is encompassed by the broad category of business analysis, research and information services in the opponent's specification; Providing trade information in the applicant's specification is encompassed by the broad category of business information services in the opponent's specification; Collection

of commercial information; Collection of data; Compilation and provision of trade and business price and statistical information; Compilation of business data in the applicant's specification are broad categories that encompass *compilation and provision of information relating to investments* in the opponent's specification. On that basis, I find that all of the services listed above are identical on the principle outlined in *Meric*.

32. I find that the following services in the applicant's specification are identical, on the principle outlined in *Meric*, to the broad category of *Advertising, marketing and promotional services* in the opponent's specification. This is because they involve the advertising, marketing, promoting and/or presenting goods in various methods:

Advertising agencies; Advertising agency services; Advertising space (Rental of -); Advertising space (Rental of -) on the internet; Audio-visual displays for advertising purposes (Preparation or presentation of -); Consultancy relating to advertising; Customer club services, for commercial, promotional and/or advertising purposes; Customer loyalty services for commercial, promotional and/or advertising purposes (twice); Production of video recordings for advertising purposes; Production of visual advertising matter; Providing user rankings for commercial or advertising purposes; Providing user ratings for commercial or advertising purposes; Providing user reviews for commercial or advertising purposes; Brand creation services; Brand evaluation services; Promoting the goods and services of others over the Internet; Provision of advertising space by electronic means and global information networks; Organisation of exhibitions or trade fairs for commercial or advertising purposes; Conducting, arranging and organizing trade shows and trade fairs for commercial and advertising purposes; Demonstration [for promotional/advertising purposes] (twice).

33. Business management services are intended to help companies manage their business and therefore will be involved in activities associated with the running of a

business. I consider the following services in the applicant's specification to be identical, on the principle outlined in *Meric*, with *Business assistance, management and administration services* in the opponent's specification:

*Business process management; Business record keeping services; Business records keeping; Interim business management; Data processing for businesses; Data processing for the collection of data for business purposes; Conference call transcription services; Customer relationship management; Business organisation; Business planning services for enterprises; Compilation and systematisation of information in databanks; Compilation and systemization of written communications and data; Data collection [for others]; Data collection services; Data compilation for others; Data management; Data management services; Data processing; Administration of membership schemes; Cost analysis; Cost assessment services; Cost price analysis; Goods or services price quotations.*

34. The following services in the applicant's specification are all various services that are rendered by specialist companies such as business consultants. I find the following services to be either identical or similar with *Business assistance, management and administration services* in the opponent's specification:

*Export and import agencies; Import and export services; Export-import agency services; Economic forecasting analysis for business purposes; Business networking; Business networking services; Business consultancy services relating to manufacturing; Business consultancy services relating to product development; Advisory services relating to business planning; Business organisation advice; Benchmarking (evaluation of business organisation practices); Business intelligence services; Business introduction services.*

I consider that the services, if not identical, will overlap in nature, users, purpose, and trade channels. Therefore, if I am wrong, I find them to be similar to at least a medium degree.

35. Compilation of business directories; Compilation of online business directories; Compilation of registers relating to exporters; Compilation of registers relating to importers in the applicant's specification are identical or highly similar to the opponent's *information services provided online from a computer database* (in class 35) as the opponent's services can relate to the same information to which the applicant's services relate.

36. The applicant's the bringing together, for the benefit of others, of a variety of insurance services, enabling consumers to conveniently compare and purchase those services are either identical or highly similar to the opponent's *provision of online marketplace for buyers and sellers* (in class 35) as the latter can relate to the buyers and sellers of insurance services.

37. Online community management services. I cannot find any similarity between the applicant's services and any of the opponent's goods and services. Therefore, I find the services to be dissimilar.

### **Class 36**

38. The opponent submits that both parties' services in class 36 are highly similar, however, the opponent has given no explanation as to why or how these services are similar to those in their specification. In my view, some of the services in class 36 are identical. For example, Trade finance services in the applicant's specification is a broad category that encompasses *electronic financial trading services for wine, spirits and other commodity investment classes* in the opponent's specification; Finance services in the applicant's specification is also a broad category that encompasses

*Investment portfolio management* in the opponent's specification. Therefore, I find these services to be identical on the principle outlined in *Meric*.

39. *Provision of commercial finance; Provision of equipment finance; Provision of finance; Provision of finance for business ventures; Finance (Provision of -); Provision of finance for enterprises; Finance (Raising of -); Provision of trade finance; Provision of finance for trade credit* in the applicant's specification are broad terms given to a variety of business finance products. These services are similar to *Investment portfolio management* in the opponent's specification because they are all financial services and share the same nature. They can also coincide in users, trade channels and may be provided by the same or economically linked undertakings. Therefore, I find the services to be similar to a medium degree.

40. *Insurance (Arranging of -); Arranging insurance; Insurance agency and brokerage; Brokerage agency relating to ship insurance; Insurance underwriting in the field of professional liability insurance; Insurance underwriting services; Insurance underwriting; Insurance underwriting and appraisals and assessment for insurance purposes; Insurance advisory services; Insurance; Insurance services; Insurance services relating to sea cargo; Insurance for businesses; Extended guarantee insurance; Extended warranty insurance; Insurance guarantees; Commodities insurance; Providing insurance information; Providing online information about insurance from a computer database or the Internet; Computerised information services relating to insurance; Providing insurance premium quotations; Provision of insurance information* in the applicant's specification are all insurance services and are similar to *Investment portfolio management* in the opponent's specification. It should be noted that insurance services are of a financial nature and insurance companies are subject to licensing, supervision and solvency rules similar to those governing banks and other institutions providing financial services. Most banks will also offer insurance services, such as business insurance, or act as agents for insurance companies with whom they are often economically linked. In *Fil Investment Services Limited v Fidelis Underwriting Limited* - [2018] EWHC 1097 (Pat) (11 May 2018), paragraph 89, it was found that financial services cover insurance services.



Additionally, it is not unusual to see a financial institution and insurance company in the same economic group. Bearing this in mind, the services are of a similar nature, may be provided by the same or economically linked undertakings, target the same users and share trade channels. Therefore, I find them to be similar to a medium degree.

### **Class 38**

41. The opponent submits that the applicant's services in class 38 are identical or highly similar to the opponent's services in the same class. Further, the opponent submits the applicant's services in class 38 are similar to its services in classes 35 and 42, particularly to the services concerning the provision of an online marketplace and hosting e-commerce platforms. The opponent has given no explanation as to why or how these services are similar to those in their specification.

42. *Providing access to platforms on the internet* in the opponent's specification is a very broad service which refers to the provision of services for accessing online platforms. Therefore, I find the following services in the applicant's specification are similar to a medium degree to the opponent's services:

*Providing instant messaging services; Chat room services for social networking; Forums [chat rooms] for social networking; Providing on-line chat rooms for social networking; Communication of data by means of telecommunications; Electronic transmission of instant messages and data; Transmission of messages, data and content via the Internet and other computer and communications networks; E-mail data services; Instant electronic messaging services; Instant messaging services; Provision of access to an electronic marketplace [portal] on computer networks; Providing access to electronic communications networks and electronic databases; Transmission of messages, data and content via the Internet and other communications*

networks; Data streaming; Data streaming services; Provision of [...] links to computer databases and the internet (twice).

All of the aforementioned contested services are different forms of internet based telecommunication services similarly to the opponent's *Providing access to platforms on the internet* services. These services can be provided by the same service providers to the same customers and be complementary to each other.

43. Audio and video broadcasting services provided via the Internet; Data broadcasting services; Internet broadcasting services; Broadcasting of audiovisual and multimedia content via the Internet; Broadcasting services relating to Internet protocol TV; Transmission of digital audio and video broadcasts over a global computer network; Data transmission and data broadcasting; Video broadcasting; Wireless broadcasting; Interactive broadcasting and communications services; Music broadcasting; Information services relating to broadcasting in the applicant's specification are all services that relate to broadcasting. Even when the applicant's services are compared to the closest service that I can identify, *Providing access to platforms on the internet*, in the opponent's specification, I find the services to be dissimilar. The services differ in purpose, nature, trade channels, method of use and are neither complementary nor in competition.

44. Provision of telecommunication access [...] (twice) in the applicant's specification is a broad category that encompasses communication over distance by cable, telegraph, telephone, or broadcasting, and thus is inclusive of the internet. Therefore, I find *Providing access to platforms on the internet* in the opponent's specification to be identical to the applicant's services on the principal outlined in *Meric*.

45. I was unable to find any similarity between some of the applicant's services and any of the opponent's goods or services. Therefore, I find the following services in the applicant's specification to be dissimilar:

Transmission of data, audio, video and multimedia files, including downloadable files and files streamed over a global computer network; Transmission of sound, picture and data signals; Network transmission of sounds, images, signals and data; Electrical data transmission over a global remote data processing network, including the internet; Wireless transfer of data via digital mobile telephony; Wireless transfer of data via the Internet; Wireless transfer of data via wireless application protocols; Communication services between data banks; Data bank interconnection services; Provision of communication facilities for the interchange of data by electronic means; Data communication by electronic means; Transmission of information by data communications for assisting decision making; Data communication services.

### **Class 39**

46. The opponent submits that the applicant's services in class 39 are similar to computer software services, business advisory and assistance services, providing access to internet platforms and online trading services in the opponent's specification. The opponent has given no explanation as to why or how these services are similar to those in their specification. Whilst there may be some overlap in terms of users (in that they may be a business) the respective services differ in uses, nature, trade channels, purpose and providers. The services are neither competitive nor complementary. Therefore, I find all of the services in class 39 of the applicant's specification shown below to be dissimilar:

Courier services; Courier services [merchandise]; Courier services for cargo; Courier services for goods; Courier services for merchandise; Courier services for the delivery of goods; Courier services for the delivery of parcels; Courier services for the delivery packages; Courier services for the transportation of cargo; Travel agency services for arranging travel; Travel agency services for business travel; Travel agents services for arranging travel; Agency services

for arranging travel; Arranging of business travel; Computerised reservation services for travel; Organising of foreign travel; Planning and booking of travel and transport, via electronic means; Providing information about travel, via the Internet; Providing information relating to travel and transport, via electronic means; Travel arrangement and reservation services; Travel consultancy and information services; Travel reservation and booking services.

## **Class 41**

47. The opponent submits that the applicant's services in class 41, given the wide nature of the services, are similar to software products and services, business advisory and assistance services, providing access to internet platforms and online trading services in the opponent's earlier marks. The opponent has given no explanation as to why or how these services are similar to those in their specification.

48. Electronic game services and competitions provided by means of the internet; On-line game services; Online game services through mobile devices; Providing interactive multi-player computer games via the internet and electronic communication networks; Games services provided via computer networks and global communication networks; Virtual reality game services provided on-line from a computer network; Entertainment services provided on-line from a computer database or the internet; Providing online entertainment in the nature of game shows; Game services provided by means of communications by computer terminals or mobile telephone; Provision of games by means of a computer based system; Arranging and conducting of games; Organisation of quizzes, games and competitions; Computer and video game amusement services; Video game entertainment services; Game shows in the applicant's specification relate to the provision of games services. Although opponent's specification covers computer software goods, they are not related to computer games. Further, although the opponent's specification covers services in class 38 which consists of providing access to platforms on the Internet, and although the applicant's gaming services might be provided online, this is too weak a link to

create a similarity, otherwise the opponent's services would be similar to any service provided online. These services are dissimilar.

49. Information relating to computer gaming entertainment provided online from a computer database or a global communication network; Information relating to entertainment, provided on-line from a computer database or the internet; Provision of information relating to entertainment online from a computer database of the Internet; Information relating to education, provided on-line from a computer database or the internet. Although the opponent's services cover some information services, namely *information services provided online from a computer database* (in class 35) they are related to investment in wine, spirits and other commodity classes. The nature of the information covered by the services is different and so it follows that the users and purpose of the services are different; the services are likely to be provided by different providers and are neither complementary nor in competition. These services are dissimilar.

50. Provision of education on-line from a computer database or via the internet or extranets. I cannot find any similarity between the applicant's services and any of the opponent's goods and services. Therefore, I find the services to be dissimilar.

51. Training courses relating to computer software; Training in business skills; Training in communication techniques; Adult training; Business training; Computer based training; Conducting training seminars for clients; Education and training consultancy; Education, teaching and training; Provision of online training; Training services relating to logistics; Education and instruction; Education and instruction services; Education examination; Adult education services; Organising of business training in the applicant's specification are all training services where individuals are taught a particular skill. In my view, the users may overlap on a superficial level between some of the applicant's services and some of the services in the opponent's specification. For example, there may be an overlap in users between Business training in the applicant's specification and *business advisory services in the field of selling products*

*and rendering services* in the opponent's specification. However, the uses, nature, purpose, methods of use and trade channels of the services are different. In my view, the average consumers will not think that the services lie with the same undertaking. Furthermore, there is no competition nor complementarity between the services. Bearing this in mind, I do not view the superficial overlap in users as being sufficient to substantiate similarity. Therefore, I find that the services are dissimilar.

## **Class 42**

52. *Data encryption [...] services; Data encryption services; Encryption [...] of information, messages and data* in the applicant's specification describes a security service that uses encryption to secure its users data. While the opponent's specification contains the services of *Storage of information relating to investments*, I do not consider this to describe a similar service. In my view, the users will differ, as the users of the applicant's services will be seeking to secure data, whereas, the users of the opponent's services are likely to be general computer users looking to use data storage. The purposes, nature and method of use will also differ. In my view, the provider of data encryption services will be specialised and it is unlikely to also provide other types of data storage services, meaning that there will be no overlap in trade channels. Therefore, I find the services to be dissimilar. Applying the reasoning above and considering that data decryption services transform encrypted information into its original format, I find the following services in the applicant's specification to be dissimilar: *Data decryption services; decryption [...] of information, messages and data; Data [...] decoding services; Decoding of data; [...] data coding services.*

53. *Computerised data storage; Computerised data storage services* in the applicant's specification encompass *storage of information relating to investments* in the opponent's specification. Therefore, I find the services to be identical on the principal outlined in Meric. If I am wrong, I find the services to be similar to a high degree.

54. Authentication of information, messages and data; Authentication services (control) of data transmitted via telecommunications; Data authentication via blockchain(twice) in the applicant's specification are mechanisms for the authentication of the identity of network clients by servers and vice versa. I cannot find any similarity with any of the opponent's goods and services. Similarly to what I found in relation to *Data encryption [...] services; Data encryption services; Encryption [...] of information, messages and data*, I conclude that these services are dissimilar.

55. Cloud computing; Cloud computing services; Cloud storage services for electronic data; Data storage via blockchain in the applicant's specification describes services wherein data and/or files are stored on a cloud-based server. The server is hosted by an undertaking who provides the user with a set amount of storage wherein they can store their data and/or files remotely. As cloud computing is a hosting service, I consider that it is identical on the principle outlined in *Meric to hosting of e-commerce platforms on the internet* in the opponent's specification. If I am wrong, I find the services to be highly similar.

56. Certification services of data transmitted via telecommunications; Certification of data via blockchain in the applicant's specification are services where the undertaking certifies that the data being transmitted is authentic or coming from legitimate sources. The applicant's services and, the closest clash I can identify, *Providing access to platforms on the internet* (in class 38) of the opponent's specification differ in purpose, as one is to certify that the data being transmitted is authentic or coming from a legitimate source and the other to provide access to platforms on the internet in general. The services also differ in nature, trade channels and method of use. They are neither complementary nor in competition. Therefore, I find the services to be dissimilar.

57. Data duplication and conversion services [...] in the applicant's specification are the processes of translating data from one format to another (data conversion) and creating an exact copy of data on a different medium (data duplication). The applicant's services and *storage of information relating to investments* in the

opponent's specification are likely to be offered by the same or economically linked undertakings. The services may coincide in trade channels and users, as consumers looking to store their data are likely to require services to duplicate or translate their data. The services differ in purpose, nature and uses. The services are not in competition but they may be complementary, as in order to store information it is necessary to create an exact copy of the data on a different medium and the data may need to be translated from one format to another. Therefore, I find the services to be similar to a medium degree.

58. Data warehousing in the applicant's specification is a system that is used for reporting and data analysis. The system is designed to enable and support business intelligence activities. I cannot find any similarity with any of the opponent's goods and services. Therefore, I conclude that the services are dissimilar.

59. Data migration services in the applicant's specification is the process of moving data from one location to another, one format to another, or one application to another. The services are now commonly used by businesses to move on-premises infrastructure and applications to cloud-based storage and applications. The applicant's services and *storage of information relating to investments* in the opponent's specification overlap in users, as consumers looking to migrate their data are likely to require a place to store their data. The services also overlap in trade channels and are likely to be offered by the same or economically linked undertakings. The services differ in nature, purpose and uses. The services are not competitive but could be complementary as in order to store data it is necessary that it is migrated to the storage location. Therefore, I find the services to be similar to a medium degree.

60. Cloud seeding. In the absence of explanation as to what the services cover, I do not consider that these services have any obvious overlap in users, nature, method of use, purpose or trade channels. There is no competition or complementarity between the goods and services at issue. Therefore, I find that the services are dissimilar.



61. Data mining in the applicant's specification is the process of extracting and discovering patterns in large data sets to predict outcomes. I cannot find any similarity with any of the opponent's goods and services. Therefore, I find the services to be dissimilar.

62. Database development services in the applicant's specification is the process of developing a strategic database for an organisation to meet their requirements. The applicant's services and *providing an online searchable database for the sale of wine, spirits and other commodities* in the opponent's specification overlap in users and nature but differ in purpose and method of use. The services are in competition as a business can use the applicant's services to have a database built to its requirement or use the opponent's ready-made database. Therefore, I find the services to be similar to a medium degree.

63. Access Control as a Service (ACaaS) in the applicant's specification is where customers pay to use access control systems for a fixed period. These control systems are cloud-based solutions that can be accessed remotely and backup and store data securely, providing permanent records of individuals who have accessed controlled areas or systems. I am unable to identify any obvious counterpart in the opponent's specifications. I do not consider that these services have any obvious overlap in users, nature, method of use, purpose or trade channels. Therefore, I find the services to be dissimilar.

64. Application service provider [ASP], namely, hosting computer software applications of others; Web hosting; Web hosting services in the applicant's specification encompasses *hosting of e-commerce platforms on the internet* in the opponent's specification. Therefore, I find these services to be identical on the principle outlined in *Meric*.

65. Blockchain as a Service [BaaS] in the applicant's specification is defined in the Collins English dictionary as "Blockchain is a system for storing records of transactions using digital currencies, that can be accessed by linked computers". The applicant's

service and *storage of information relating to investments* in the opponent's specification (in class 42) may overlap in users and trade channels. The services differ in uses, nature, method of use and purpose. The services are not in competition but may be complementary. Therefore, I find the services to be similar to a medium degree.

66. *Consumer product design; Industrial design services; Product design and development; Provision of information relating to industrial design; Interior and exterior design services* in the applicant's specification are services for designing products and objects for manufacture and/or interiors or exteriors of buildings. I am unable to identify any obvious counterpart in the opponent's specifications. I do not consider that these services have any obvious overlap in terms of users, nature, method of use, purpose or trade channels and I consider that they are neither competitive nor complementary. Therefore, I find that the services are dissimilar.

67. *Creating, maintaining [...]the websites of others; Design, creation,[...] and maintenance of websites for others; Design, creation and programming of web pages; Web site design and creation services; Internet web site design services* in the applicant's specification and *Constructing an internet platform for electronic commerce* (in class 42) in the opponent's specification overlap in users, trade channels, nature and method of use. The services also coincide in uses and purpose, as they both create a good that is used by businesses or individuals to engage with their audience/consumers online. The services are not competitive although they are complementary insofar as a website needs a platform for functioning and can be delivered by the same providers. Therefore, I find these services to be similar to a high degree.

68. [...] *hosting the websites of others; hosting [...]of websites for others* in the applicant's specification and *hosting of e-commerce platforms on the internet* in the opponent's specification coincide in purpose, as both services allow individuals and businesses to make their websites/platforms accessible to the public online. The services also overlap in trade channels and are likely to be offered by the same or economically linked undertakings. They also coincide in nature, users and method of

use. However, they differ in uses, as one service is used to host a website and the other is used to host a platform. The services are competitive but are not complementary. Therefore, I find the services to be similar to a high degree.

69. Data back-up services in the applicant's specification is a service that creates a copy of data that can be recovered. This service and *storage of information relating to investments* (in class 42) in the opponent's specification overlap in users, nature, and trade channels. The services differ in uses and purpose, as data backup services save data in case of loss or damage, whereas, the storage of information creates a gateway to access information from anywhere. The services are not competitive but they are complementary, as the storage of information (relating to any topic) is an important part of data back-up services as the data needs to be stored in a safe location to be accessed by the consumers. Therefore, I find the services to be similar to a medium degree.

70. Enterprise content management in the applicant's specification is a system solution that is designed to manage an organisation's documents. In this system unstructured information, such as word documents, excel spreadsheets and PDF's, are stored and made accessible to the right consumers at the right time. This service and *storage of information relating to investments* in the opponent's specification may overlap in nature and users, as consumers of both services are looking to store information. The services may be provided by the same or economically linked undertakings. However, the services differ in uses and purpose, as one stores information/data and the other stores the information but makes it accessible to the right people at the right time. They are not competitive but may be complementary. Therefore, I find the services to be similar to a medium degree.

71. Industrial development services; Industrial process development. I am unable to identify any obvious counterpart in the opponent's specifications. I do not consider that these services have any obvious overlap in users, nature, method of use, purpose or trade channels. I do not consider the services to be competitive or complementary. Therefore, I find that the services are dissimilar.

72. Infrastructure as a Service [IaaS] in the applicant's specification is a form of cloud computing that delivers fundamental computer, network and storage resources to customers on-demand, over the internet, and on a pay as you go basis. I am unable to identify any obvious counterpart in the opponent's specification to the applicant's services. I do not consider that these services have any obvious overlap in users, nature, method of use, purpose or trade channels. I do not consider the services to be competitive or complementary. Therefore, I find that the services are dissimilar.

73. Installation of Access Control as a Service (ACaaS) software in the applicant's specification is the installation of the software where customers pay to use access control systems for a fixed period. I am unable to identify any obvious counterpart in the opponent's specification. I do not consider that these services have any obvious overlap in users, nature, method of use, purpose or trade channels. Therefore, I find that the services are dissimilar.

74. Installing web pages on the internet for others in the applicant's specification is a service where all of the necessary code and files which are associated with web pages are uploaded to a server. This service and *hosting of e-commerce platforms on the internet* may coincide in trade channels and users, as consumers seeking services to upload information for their web pages will also seek a service to receive the uploaded website and store it. However, the services differ in uses, purpose and nature. The services are not in competition but are complementary, as web pages that are installed will need a platform to host them to be able to access the world wide web. Therefore, I find the services to be similar to a medium degree.

75. Platform as a Service [PaaS]; Platform as a service [PaaS] featuring software platforms for transmission of images, audio-visual content, video content and messages in the applicant's specification are cloud based computing models where a third-party provider delivers hardware and software tools to users over the internet. The provider hosts the hardware and software on its own infrastructure. These

services encompass *hosting of e-commerce platforms on the internet* in the opponent's specification. Therefore, I find these services to be identical on the principle outlined in *Meric*. If I am wrong, I find the services to be highly similar, as the services will overlap in trade channels, users, purpose, method of use and nature.

76. *Provision of on-line support services for computer program users.* I was unable to select an obvious comparator in the opponent's specification, as I do not find the opponent's specification to describe a similar service. The users, uses, purpose, nature, trade channels and method of use of the services will differ. The services are neither in competition nor complementary. Therefore, I find the services to be dissimilar.

77. *Quality assurance services; Quality control and authentication services; Providing quality assurance services; Product safety testing services; Product quality control testing; Consumer product safety testing; Consumer product safety testing and consultation; Testing, analysis and evaluation of the goods and services of others for the purpose of certification; Inspection of goods for quality control; Industrial testing* in the applicant's specification are all services that will be used to maintain the desired quality in product or output and to check its validity and compliance to relevant regulations, such as consumer product safety standards. I was unable to identify any goods or services in the opponent's specification that shares similarity with the applicant's services. In my view, the services differ in nature, users, purpose, uses, trade channels and method of use to the opponent's specification. The services are neither complementary nor competitive. Therefore, I find the services to be dissimilar.

78. *Quantum computing services* in the applicant's specification are computing services that are operated via quantum computers. I am unable to identify any obvious counterpart in the opponent's specification. I do not consider that these services have any obvious overlap in users, nature, method of use, purpose or trade channels. Therefore, I find that the services are dissimilar.

79. Software as a service [SaaS] in the applicant's specification is a type of service that an undertaking provides whereby the user subscribes to or pays a licence fee that allows them to access software that is hosted on the provider's server. I find that there is an overlap between these services and the opponent's *hosting of e-commerce platforms on the Internet* insofar as they are both hosting services for online access to software or websites respectively. In my view the services are similar to a medium degree. I apply the same conclusion to Software as a service [SaaS] services featuring software for machine learning, deep learning and deep neural networks.

80. Hosting of communication platforms on the internet in the applicant's specification and *hosting of e-commerce platforms on the internet* in the opponent's specification are both IT specialist services and overlap in nature, method of use and purpose (to host platforms on the internet). The services may be provided by the same or economically linked undertaking but are neither complementary nor in competition. However, the services differ in users and trade channels. Therefore, I find the services to be similar to a low to medium degree. Applying the reasoning above, I find the following services in the applicant's specification to be similar to a low to medium degree: Hosting of digital content, namely, on-line journals and blogs; Hosting of memory space on the Internet for storing digital photographs; Hosting of podcasts; Hosting of videocasts; Hosting services, software as a service, and rental of software.

### **Class 43**

81. The opponent submits that the applicant's services in class 43 are similar to software products and services, business advisory and assistance services, providing access to internet platforms, online trading services and services related to wine and spirits in the opponent's specification. The opponent has given no reason as to why or how these services are similar to those in their specification. The applicant's services in class 43 are all, broadly, accommodation, travel and hotelier services or information services relating to these services. I am unable to identify any obvious counterpart in the opponent's specification. I do not consider that these services have any obvious overlap in users, nature, method of use, purpose or trade channels. The services are

neither in competition nor complementary. Therefore, I find the services in the applicant's specification are dissimilar:

Accommodation bureau services [hotels, boarding houses]; Accommodation bureaux [hotels, boarding houses]; Hotels, hostels and boarding houses, holiday and tourist accommodation; Arranging of hotel accommodation; Booking agency services for hotel accommodation; Making hotel reservations for others; Hotel accommodation reservation services; Hotel reservation services; Hotel reservation services provided via the Internet; Hotel room booking services; Travel agency services for reserving hotel accommodation (twice); Travel agency services for making hotel reservations; Providing room reservation and hotel reservation services; Hotel services for preferred customers; Provision of conference, exhibition and meeting facilities; Electronic information services relating to hotels; Providing online information relating to hotel reservations; Information, advice and reservation services for the provision of food and drink; Information relating to hotels; Provision of information relating to the booking of accommodation; Provision of information relating to the preparation of food and drink.

## **Class 45**

82. Company registration services in the applicant's specification is a legal service that is provided to register companies. This service and *business assistance, management and administration services* in (class 35 of) the opponent's specification may overlap in users, as business providers will be the users of the applicant's services. However, I do not consider that these describe a similar service as the purpose, nature, method of use, uses and trade channels will differ. The services are neither competitive nor complementary. In my view, the overlap in users is insufficient to substantiate similarity. Therefore, I find the services to be dissimilar.

83. Identity validation services; Identity verification in the applicant's specification are used by businesses to ensure that users or customers provide information that is associated with the identity of a real person. Similarly to what I found above, although there might be an overlap in terms of users with other services (in class 35) covered by the opponent's specification, that fact alone is insufficient to substantiate similarity. Therefore, I find the services to be dissimilar.

84. Information services relating to manufacturing standards; Information services relating to safety; Information services relating to trading standards in the applicant's specification and *Business information and advice* in (class 35 of) the opponent's specification may coincide in users and nature, as they are both information services which might be provided to business users. However, the information provided and the purpose of the service is different, and the services would normally be provided by companies who specialise in different fields. Therefore, I find the services to be dissimilar.

85. Although Online social networking services; Online social networking services accessible by means of downloadable mobile applications; Internet based matchmaking services in the applicant's specification need an online platform in order to be provided, they are different from any of the opponent's services including the opponent's *providing access to platforms on the internet* (in class 38), because the opponent provides the infrastructure whilst the applicant provides the services which are delivered through websites such as Facebook or dating sites. I cannot detect any obvious similarity between these services and the services covered by the opponent's specification. These services are dissimilar.

86. Domain name advisory services; Domain name registration services; Registration of domain names for identification of users on a global computer network. As I have said above although these services might target the same business users which are targeted by the opponent's services in class 35, that is where the similarity ends. These services are dissimilar.



87. Trademark agent services; Trademark watch services; Advisory services relating to intellectual property licensing; Advisory services relating to intellectual property protection; Advisory services relating to intellectual property rights; Consultancy relating to intellectual property management; Consultancy relating to the licensing of intellectual property; Consultancy relating to the management of intellectual property and copyright; Consultancy relating to the protection of geographical indications; Intellectual property agency services; Licensing of intellectual property rights; Management and exploitation of copyright and industrial property rights by licensing for others; Consultancy relating to the protection of industrial designs. For the same reasons to those outlined above, I find that these services are dissimilar.

88. As some degree of similarity between the goods and services is necessary to engage the test for likelihood of confusion,<sup>1</sup> the opposition must fail in respect of the following goods and services in the applicant's specification that I have found to be dissimilar to the opponent's goods and services:

**Class 9:** *Photographic cameras for the instant production of pictures; Apparatus for broadcasting sound, data or images; Broadcasting equipment; Data Carriers.*

**Class 38:** *Audio and video broadcasting services provided via the Internet; Data broadcasting services; Internet broadcasting services; Broadcasting of audiovisual and multimedia content via the Internet; Broadcasting services relating to Internet protocol TV; Transmission of digital audio and video broadcasts over a global computer network; Data transmission and data broadcasting; Video broadcasting; Wireless broadcasting; Interactive broadcasting and communications services; Music broadcasting; Information services relating to broadcasting; Transmission of data, audio, video and multimedia files, including downloadable files and files streamed over a global*

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<sup>1</sup> eSure Insurance v Direct Line Insurance [2008] ETMR 77 CA

*computer network; Transmission of sound, picture and data signals; Network transmission of sounds, images, signals and data; Electrical data transmission over a global remote data processing network, including the internet; Wireless transfer of data via digital mobile telephony; Wireless transfer of data via the Internet; Wireless transfer of data via wireless application protocols; Communication services between data banks; Data bank interconnection services; Provision of communication facilities for the interchange of data by electronic means; Data communication by electronic means; Transmission of information by data communications for assisting decision making; Data communication services.*

**Class 39:** *Courier services; Courier services [merchandise]; Courier services for cargo; Courier services for goods; Courier services for merchandise; Courier services for the delivery of goods; Courier services for the delivery of parcels; Courier services for the delivery packages; Courier services for the transportation of cargo; Travel agency services for arranging travel; Travel agency services for business travel; Travel agents services for arranging travel; Agency services for arranging travel; Arranging of business travel; Computerised reservation services for travel; Organising of foreign travel; Planning and booking of travel and transport, via electronic means; Providing information about travel, via the Internet; Providing information relating to travel and transport, via electronic means; Travel arrangement and reservation services; Travel consultancy and information services; Travel reservation and booking services.*

**Class 41:** *Provision of education on-line from a computer database or via the internet or extranets; Information relating to computer gaming entertainment provided online from a computer database or a global communication network; Information relating to entertainment, provided on-line from a computer database or the internet; Provision of information relating to entertainment online from a computer database of the Internet; Information relating to education, provided on-line from a computer database or the internet;*

*Electronic game services and competitions provided by means of the internet; On-line game services; Online game services through mobile devices; Providing interactive multi-player computer games via the internet and electronic communication networks; Games services provided via computer networks and global communication networks; Virtual reality game services provided on-line from a computer network; Entertainment services provided on-line from a computer database or the internet; Providing online entertainment in the nature of game shows; Game services provided by means of communications by computer terminals or mobile telephone; Provision of games by means of a computer based system; Training courses relating to computer software; Training in business skills; Training in communication techniques; Adult training; Business training; Computer based training; Conducting training seminars for clients; Education, teaching and training; Provision of online training; Training services relating to logistics; Education and instruction; Education and instruction services; Education examination; Adult education services; Education and training consultancy; Organising of business training; Arranging and conducting of games; Organisation of quizzes, games and competitions; Computer and video game amusement services; Video game entertainment services; Game shows.*

**Class 42:** *Decoding of data; Encryption, decryption [...] of information, messages and data; Data decryption services; [...], data coding services; Data encryption and decoding services; Data encryption services; Cloud seeding; Access Control as a Service (AcaaS); Consumer product design; Industrial design services; Industrial development services; Industrial process development; Infrastructure as a Service [IaaS]; Installation of Access Control as a Service (AcaaS) software; Interior and exterior design services; Product design and development; Provision of information relating to industrial design; Provision of on-line support services for computer program users; Quality assurance services; Quality control and authentication services; Providing quality assurance services; Product safety testing services; Product quality control testing; Consumer product safety testing; Consumer product safety testing and consultation; Testing, analysis and evaluation of the goods and*

*services of others for the purpose of certification; Inspection of goods for quality control; Industrial testing; Quantum computing services; Data warehousing; Data mining.*

**Class 43:** *Electronic information services relating to hotels; Providing online information relating to hotel reservations; Information, advice and reservation services for the provision of food and drink; Information relating to hotels; Provision of information relating to the booking of accommodation; Provision of information relating to the preparation of food and drink; Accommodation bureau services [hotels, boarding houses]; Accommodation bureaux [hotels, boarding houses]; Hotels, hostels and boarding houses, holiday and tourist accommodation; Arranging of hotel accommodation; Booking agency services for hotel accommodation; Making hotel reservations for others; Hotel accommodation reservation services; Hotel reservation services; Hotel reservation services provided via the Internet; Hotel room booking services; Travel agency services for reserving hotel accommodation (twice); Travel agency services for making hotel reservations; Providing room reservation and hotel reservation services; Hotel services for preferred customers; Provision of conference, exhibition and meeting facilities.*

**Class 45:** *Company registration services; Identity validation services; Identity verification; Domain name advisory services; Domain name registration services; Registration of domain names for identification of users on a global computer network; Trademark agent services; Trademark watch services; Advisory services relating to intellectual property licensing; Advisory services relating to intellectual property protection; Advisory services relating to intellectual property rights; Consultancy relating to intellectual property management; Consultancy relating to the licensing of intellectual property; Consultancy relating to the management of intellectual property and copyright; Consultancy relating to the protection of geographical indications; Intellectual property agency services; Licensing of intellectual property rights; Management and exploitation of copyright and industrial property rights by licensing for*

*others; Consultancy relating to the protection of industrial designs; Information services relating to manufacturing standards; Information services relating to safety; Information services relating to trading standards; Online social networking services; Online social networking services accessible by means of downloadable mobile applications; Internet based matchmaking services.*

## **Average consumer and the purchasing act**

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

90. The breadth of the competing goods and services is wide, so the average consumer will vary. The average consumer will be either a member of the general public or a business user.


91. The goods and services at issue are likely to be selected visually from the shelves of a retail shop (or its online equivalent) or from the website or the premises of a specialist provider (for example an IT provider or a provider of the specialised

services in classes 35, 36, 38 and 42 that I found to be similar). Consequently, I do not discount aural considerations in the form of, for example, advice received from a salesperson or a provider of specialised services or word-of mouth recommendations.

92. The cost of the goods and services and the frequency of the purchase will range from inexpensive items which are bought relatively frequently from member of the public, such as software for mobile phones, to relatively expensive services which are purchased relatively infrequently by business users, such as some business related services in class 35. The level of attention paid by both the members of the general public and business users will be high for some of the goods and services involved, but for most of them it will be medium (for goods in class 9) and above medium (for services in class 35, 36, 38 and 42).

**Comparison of the marks**

93. The respective trade marks are shown below:

golivetrade  <b>GOLIVETRADE</b>  (series of two marks)	<b>LIVETRADE</b>  (“first earlier mark”)
	  (“second earlier mark”)
Contested trade mark	Opponent’s trade marks

94. It is clear from *Sabel BV v Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural, and conceptual similarities of trade marks must be assessed by reference to all the overall impressions created by the trade marks, bearing in mind their distinctive and dominant

components. The CJEU stated, at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

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

### **Overall impression**

96. The applicant's mark is a series of two word-only marks that consists of the text “golivetrade” and “GOLIVETRADE”. One of the marks in the series is presented in lower case and the other in capitals. There are no other elements that contribute to the overall impression of this series of marks.

97. The opponent's first earlier mark is a word only mark that consists of the text “LIVETRADE” in capital letters. There are no other elements that contribute to the overall impression of this mark.

98. The opponent's second earlier mark is a composite mark. The mark is made up of the capitalised text “LIVETRADE”. The element “LIVE” in the mark is emboldened whilst the word “TRADE” is not. The “A” within the mark is stylised as a chevron. The text is preceded by a figurative device of what appears to be a spiral. Bearing in mind

the principle that “words speak louder than devices”, the eye is drawn to the word element of the mark. Overall, I consider that the emboldened word “live” plays a greater role in the overall impression of the mark, with “trade” playing a slightly secondary role and the spiral playing a lesser role that still contributes to the overall impression of the mark.

## **Visual Similarity**

99. Visually, the opponent submits that the applicant’s mark consists of two parts: “GO” and “LIVETRADE” and that the second part of the mark is identical to the earlier mark. When marks comprise conjoined words, consumers will naturally dissect the words into ones that they recognise. In the present case, all of the three words making up the mark are very well-known to the average consumer and I have no doubt that, despite the words being conjoined, the average consumer will view the mark as three separate words. The same can be said about the first earlier mark whereby the words “LIVE” and “TRADE” although conjoined will be perceived as separate words within the mark as a whole.

100. As regards to the comparison between the applicant’s marks and the first earlier mark, the only point of difference is the addition of the word “GO” at the beginning of the applicant’s mark . The marks are visually similar to a high degree. The fact that one of the marks in the applicant’ series is presented in lower case rather than capital letter makes no difference, because the registration of a word mark does not prevent its use in different fonts or typefaces.<sup>2</sup> As regards to the second earlier mark, there are additional differences created by the slight stylisation of the letters and the presence of the figurative element in the opponent’s mark, which reduces the degree of visual similarity to medium.

## **Aural similarity**

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<sup>2</sup> Case T-364/04 Sadas SA v OHIM



101. Aurally, the applicant's series of marks will be pronounced as three separate words Go-Live-Trade and the opponent's first earlier mark will be pronounced as two words Live-Trade. The only point of difference between the marks is the pronunciation of "Go" at the beginning of the applicant's mark. I do not consider that the figurative device in the second earlier mark will be articulated. Therefore, I find all the marks aurally similar to a high degree.

### **Conceptual similarity**

102. Conceptually, LIVETRADE will be perceived as the two words LIVE and TRADE and will convey the same meaning in all of the marks. The only difference between the marks is the presence of "GO" at the beginning of the contested mark, which will be perceived as an encouragement referring to LIVETRADE and does not counter the conceptual similarity between the marks. Therefore, I find the marks to be conceptually similar to a high degree.

### **Distinctiveness of the earlier marks**

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

"22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in *Joined Cases C- 108/97 and C-109/97 Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, paragraph 49).

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

104. 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 a high inherent distinctive character, such as invented words which have no allusive qualities.

105. The opponent has not pleaded that the mark has acquired enhanced distinctive character through use and has not filed evidence to support such a claim. I have, therefore, only the inherent position to consider.

106. As outlined in paragraph 102 of this decision, although the conjoined word “LIVETRADE” is not dictionary defined, I do not consider that the average consumer would see it as an invented word, but as two words “LIVE” and “TRADE”. Although the words LIVE TRADE can be allusive of some of the services in relation to which the earlier marks are registered, i.e. online trading services in relation to investments in wine, spirits and other commodity asset classes, these are not the services which I found to be similar to the applicant’s services. For the goods and services which I found to be similar, the words LIVE TRADE are neither descriptive nor allusive, and I find that the opponent’s first earlier mark has a medium degree of distinctive character. Although the stylisation and the figurative element of the second earlier mark might

slightly increase the distinctiveness of the mark, that is not to any material extent; further, it is the distinctiveness of the common element that matters.

### **Likelihood of confusion**

107. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle, i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services or vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's trade marks, 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 he has retained in his mind.

108. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other. Indirect confusion was described in the following terms by Iain Purvis Q.C., sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

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

different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (“26 RED TESCO” would no doubt be such a case).

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

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

109. I have found the marks to be varying in visual similarity from a high degree to a medium degree and to be conceptually and aurally similar to a high degree. I have identified the average consumer to be the public at large and/or businesses. I have found that, depending on the goods and/or services involved, the average consumer will select them through primarily visual means (although I do not discount an aural component). I have concluded that the average consumer will mostly pay a medium or above medium degree of attention during the purchasing/selection process, although I have found that for some of the goods and services, the average consumer

will pay high degree of attention. I have found the earlier marks to be inherently distinctive to a medium degree for the goods and/or services which are similar to the applicant's goods and services (and in relation to which I must carry out the assessment). I have found some of the applicant's goods and services to be identical to the opponent's goods and services. However, I have also found some of the goods and services to be similar to varying degrees and some to be dissimilar.

110. Taking all of the above factors into account, I consider that the differences between the marks are insufficient to avoid confusion, when the principle of imperfect recollection is considered. I consider it is likely that the applicant's marks and the opponent's first earlier mark will be misremembered or mistakenly recalled as each other. Alternatively, if the differences between the marks are noted, I consider that the presence in both marks of the identical word "LIVETRADE" will create an expectation on the part of the average consumer that the goods and/or services originate from the same or economically linked undertaking. This is also the case in respect of the second earlier mark. There is a likelihood of direct and indirect confusion.

## **Outcome**

111. The opposition has succeeded for the following goods and services which will be refused:

**Class 9:** *Software downloadable from the internet; Software for operating an online shop; Software for the processing of business transactions; Software for processing electronic payments to and from others; Software and applications for mobile devices; Software for mobile phones; Software for smartphones; Data engines; Data banks; Data communications apparatus; Data terminals; Data networks; Data conversion apparatus; Data encoding apparatus; Data encryption apparatus; Games software; Software for Smart Contracts; Software for accessing information on a global computer network; Software for*

*monitoring, analysing, controlling and running physical world operations; Software for online messaging; Software for processing images, graphics, audio, video and text; Software for renting advertising space on websites; Software for the integration of artificial intelligence and machine learning in the field of Big Data; Software for use in advertising; Artificial intelligence and machine learning software; Communication software; Communication, networking and social networking software; Communications processing computer software; Data communications software; Unified communications software; Computer software for advertising (twice); Instant messaging software; Downloadable instant messaging software; Application software for social networking services via internet; Data and file management and database software; Data processing software; Software for the analysis of business data; Training software; Education software; Educational mobile applications.*

**Class 35:** *Auction and reverse auction services; Auctioneering; Auctioneering provided on the internet; Auctioneering services; Auctioning via telecommunication networks; Telephone and television auctions; carrying out auction sales; Bidding quotation; On-line auction bidding for others; Provision of an online marketplace for buyers and sellers of goods and services; Analysis of business data; Providing trade information; Collection of commercial information; Collection of data; Compilation and provision of trade and business price and statistical information; Compilation of business data; Advertising agencies; Advertising agency services; Advertising space (Rental of -); Advertising space (Rental of -) on the internet; Audio-visual displays for advertising purposes (Preparation or presentation of -); Consultancy relating to advertising; Customer club services, for commercial, promotional and/or advertising purposes; Customer loyalty services for commercial, promotional and/or advertising purposes (twice); Production of video recordings for advertising purposes; Production of visual advertising matter; Providing user rankings for commercial or advertising purposes; Providing user ratings for commercial or advertising purposes; Providing user reviews for commercial or advertising purposes; Brand creation services; Brand evaluation services;*

*Promoting the goods and services of others over the Internet; Provision of advertising space by electronic means and global information networks; Organisation of exhibitions or trade fairs for commercial or advertising purposes; Conducting, arranging and organizing trade shows and trade fairs for commercial and advertising purposes; Demonstration [for promotional/advertising purposes] (twice); Business process management; Business record keeping services; Business records keeping; Interim business management; Data processing for businesses; Data processing for the collection of data for business purposes; Conference call transcription services; Customer relationship management; Business organisation; Business planning services for enterprises; Compilation and systematisation of information in databanks; Compilation and systemization of written communications and data; Data collection [for others]; Data collection services; Data compilation for others; Data management; Data management services; Data processing; Administration of membership schemes; Online community management services; Cost analysis; Cost assessment services; Cost price analysis; Goods or services price quotations; Export and import agencies; Import and export services; Export-import agency services; Economic forecasting analysis for business purposes; Business networking; Business networking services; Business consultancy services relating to manufacturing; Business consultancy services relating to product development; Advisory services relating to business planning; Business organisation advice; Benchmarking (evaluation of business organisation practices); Business intelligence services; Business introduction services; Compilation of business directories; Compilation of online business directories; Compilation of registers relating to exporters; Compilation of registers relating to importers; The bringing together, for the benefit of others, of a variety of insurance services, enabling consumers to conveniently compare and purchase those services.*

**Class 36:** *Trade finance services; Finance services; Provision of commercial finance; Provision of equipment finance; Provision of finance; Provision of finance for business ventures; Finance (Provision of -); Provision of finance for enterprises; Finance (Raising of -); Provision of trade finance; Provision of*

*finance for trade credit; Insurance (Arranging of -); Arranging insurance; Insurance agency and brokerage; Brokerage agency relating to ship insurance; Insurance underwriting in the field of professional liability insurance; Insurance underwriting services; Insurance underwriting; Insurance underwriting and appraisals and assessment for insurance purposes; Insurance advisory services; Insurance; Insurance services; Insurance services relating to sea cargo; Insurance for businesses; Extended guarantee insurance; Extended warranty insurance; Insurance guarantees; Commodities insurance; Providing insurance information; Providing online information about insurance from a computer database or the Internet; Computerised information services relating to insurance; Providing insurance premium quotations; Provision of insurance information.*

**Class 38:** *Providing access to electronic communications networks and electronic databases; Provision of telecommunication access and links to computer databases and the internet (twice); Providing instant messaging services; Chat room services for social networking; Forums [chat rooms] for social networking; Providing on-line chat rooms for social networking; Communication of data by means of telecommunications; Electronic transmission of instant messages and data; Transmission of messages, data and content via the Internet and other computer and communications networks; E-mail data services; Instant electronic messaging services; Instant messaging services; Provision of access to an electronic marketplace [portal] on computer networks; Transmission of messages, data and content via the Internet and other communications networks; Data streaming; Data streaming services; ; Provision of telecommunication access [...](twice).*

**Class 42:** *Computerised data storage; Computerised data storage services; Authentication of information, messages and data; Authentication services (control) of data transmitted via telecommunications; Data authentication via blockchain(twice); Cloud computing; Cloud computing services; Cloud storage services for electronic data; Data storage via blockchain; Certification services*



*of data transmitted via telecommunications; Certification of data via blockchain; Data duplication and conversion services[...]; Data migration services; Database development services; Application service provider [ASP], namely, hosting computer software applications of others; Web hosting; Web hosting services; Blockchain as a Service [BaaS];\_Creating, maintaining and hosting the websites of others; Design, creation and programming of web pages; Design, creation, hosting and maintenance of websites for others; Web site design and creation services; Internet web site design services; Data back-up services; Enterprise content management; Installing web pages on the internet for others; Platform as a Service [PaaS];Platform as a service [PaaS] featuring software platforms for transmission of images, audio-visual content, video content and messages; Software as a service [SaaS]; Software as a service [SaaS] services featuring software for machine learning, deep learning and deep neural networks; Hosting of communication platforms on the internet; Hosting of digital content, namely, on-line journals and blogs; Hosting of memory space on the Internet for storing digital photographs; Hosting of podcasts; Hosting of videocasts; Hosting services, software as a service, and rental of software.*

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

**Class 9:** *Photographic cameras for the instant production of pictures; Apparatus for broadcasting sound, data or images; Broadcasting equipment; Data Carriers.*

**Class 38:** *Audio and video broadcasting services provided via the Internet; Data broadcasting services; Internet broadcasting services; Broadcasting of audiovisual and multimedia content via the Internet; Broadcasting services relating to Internet protocol TV; Transmission of digital audio and video broadcasts over a global computer network; Data transmission and data*

*broadcasting; Video broadcasting; Wireless broadcasting; Interactive broadcasting and communications services; Music broadcasting; Information services relating to broadcasting; Communication services between data banks; Data bank interconnection services; Provision of communication facilities for the interchange of data by electronic means; Data communication by electronic means; Transmission of information by data communications for assisting decision making; Data communication services; Wireless transfer of data via digital mobile telephony; Wireless transfer of data via the Internet; Wireless transfer of data via wireless application protocols; Transmission of data, audio, video and multimedia files, including downloadable files and files streamed over a global computer network; Transmission of sound, picture and data signals; Network transmission of sounds, images, signals and data; Electrical data transmission over a global remote data processing network, including the internet.*

**Class 39:** *Courier services; Courier services [merchandise]; Courier services for cargo; Courier services for goods; Courier services for merchandise; Courier services for the delivery of goods; Courier services for the delivery of parcels; Courier services for the delivery packages; Courier services for the transportation of cargo; Travel agency services for arranging travel; Travel agency services for business travel; Travel agents services for arranging travel; Agency services for arranging travel; Arranging of business travel; Computerised reservation services for travel; Organising of foreign travel; Planning and booking of travel and transport, via electronic means; Providing information about travel, via the Internet; Providing information relating to travel and transport, via electronic means; Travel arrangement and reservation services; Travel consultancy and information services; Travel reservation and booking services.*

**Class 41:** *Provision of education on-line from a computer database or via the internet or extranets; Information relating to computer gaming entertainment provided online from a computer database or a global communication network;*

*Information relating to entertainment, provided on-line from a computer database or the internet; Provision of information relating to entertainment online from a computer database of the Internet; Information relating to education, provided on-line from a computer database or the internet; Electronic game services and competitions provided by means of the internet; On-line game services; Online game services through mobile devices; Providing interactive multi-player computer games via the internet and electronic communication networks; Games services provided via computer networks and global communication networks; Virtual reality game services provided on-line from a computer network; Entertainment services provided on-line from a computer database or the internet; Providing online entertainment in the nature of game shows; Game services provided by means of communications by computer terminals or mobile telephone; Provision of games by means of a computer based system; Training courses relating to computer software; Training in business skills; Training in communication techniques; Adult training; Business training; Computer based training; Conducting training seminars for clients; Education, teaching and training; Provision of online training; Training services relating to logistics; Education and instruction; Education and instruction services; Education examination; Adult education services; Education and training consultancy; Organising of business training; Arranging and conducting of games; Organisation of quizzes, games and competitions; Computer and video game amusement services; Video game entertainment services; Game shows.*

**Class 42:** *Decoding of data; Encryption, decryption and [...] of information, messages and data; Data decryption services; [...], data coding services; Data encryption and decoding services; Data encryption services; Cloud seeding; Access Control as a Service (AcaaS); Consumer product design; Industrial design services; Industrial development services; Industrial process development; Infrastructure as a Service [IaaS]; Installation of Access Control as a Service (AcaaS) software; Interior and exterior design services; Product design and development; Provision of information relating to industrial design; Provision of on-line support services for computer program users; Quality*

*assurance services; Quality control and authentication services; Providing quality assurance services; Product safety testing services; Product quality control testing; Consumer product safety testing; Consumer product safety testing and consultation; Testing, analysis and evaluation of the goods and services of others for the purpose of certification; Inspection of goods for quality control; Industrial testing; Quantum computing services; Data warehousing; Data mining.*

**Class 43:** *Electronic information services relating to hotels; Providing online information relating to hotel reservations; Information, advice and reservation services for the provision of food and drink; Information relating to hotels; Provision of information relating to the booking of accommodation; Provision of information relating to the preparation of food and drink; Accommodation bureau services [hotels, boarding houses]; Accommodation bureaux [hotels, boarding houses]; Hotels, hostels and boarding houses, holiday and tourist accommodation; Arranging of hotel accommodation; Booking agency services for hotel accommodation; Making hotel reservations for others; Hotel accommodation reservation services; Hotel reservation services; Hotel reservation services provided via the Internet; Hotel room booking services; Travel agency services for reserving hotel accommodation(twice); Travel agency services for making hotel reservations; Providing room reservation and hotel reservation services; Hotel services for preferred customers; Provision of conference, exhibition and meeting facilities.*

**Class 45:** *Company registration services; Identity validation services; Identity verification; Domain name advisory services; Domain name registration services; Registration of domain names for identification of users on a global computer network; Trademark agent services; Trademark watch services; Advisory services relating to intellectual property licensing; Advisory services relating to intellectual property protection; Advisory services relating to intellectual property rights; Consultancy relating to intellectual property management; Consultancy relating to the licensing of intellectual property;*

*Consultancy relating to the management of intellectual property and copyright; Consultancy relating to the protection of geographical indications; Intellectual property agency services; Licensing of intellectual property rights; Management and exploitation of copyright and industrial property rights by licensing for others; Consultancy relating to the protection of industrial designs; Information services relating to manufacturing standards; Information services relating to safety; Information services relating to trading standards; Online social networking services; Online social networking services accessible by means of downloadable mobile applications; Internet based matchmaking services.*

## **Costs**

113. Both sides have achieved a measure of success. In the circumstances, the opponent has had more success overall and is entitled to an award of costs. The award of costs in fast track proceedings are governed by TPN 2/2015. I will reduce the award to reflect the overall balance of success. I will award costs to the opponent as follows:

Official fee	£100
Filing a notice of opposition	£200
<b>Total</b>	<b>£300</b>

114. I therefore order Jing Liu to pay Bordeaux Index Limited the sum of £300. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 22nd day of September 2021

A Klass

For the Registrar,

The Comptroller-General

## Annex 1

### Contested mark

**Class 9:** *Games software; Software and applications for mobile devices; Software downloadable from the internet; Software for Smart Contracts; Software for accessing information on a global computer network; Software for mobile phones; Software for monitoring, analysing, controlling and running physical world operations; Software for online messaging; Software for operating an online shop; Software for processing electronic payments to and from others; Software for processing images, graphics, audio, video and text; Software for renting advertising space on websites; Software for smartphones; Software for the integration of artificial intelligence and machine learning in the field of Big Data; Software for the processing of business transactions; Software for use in advertising; Artificial intelligence and machine learning software; Communication software; Communication, networking and social networking software; Communications processing computer software; Data communications software; Unified communications software; Computer software for advertising; Apparatus for broadcasting sound, data or images; Broadcasting equipment; Instant messaging software; Downloadable instant messaging software; Photographic cameras for the instant production of pictures; Application software for social networking services via internet; Data and file management and database software; Data banks; Data carriers; Data communications apparatus; Data conversion apparatus; Data encoding apparatus; Data encryption apparatus; Data engines; Data networks; Data processing software; Data terminals; Software for the analysis of business data; Training software; Education software; Educational mobile applications; Computer software for advertising.*

**Class 35:** *Auction and reverse auction services; Auctioneering; Auctioneering provided on the internet; Auctioneering services; Auctioning via*

*telecommunication networks; Telephone and television auctions; The bringing together, for the benefit of others, of a variety of insurance services, enabling consumers to conveniently compare and purchase those services; Provision of an online marketplace for buyers and sellers of goods and services; Bidding quotation; Advertising agencies; Advertising agency services; Advertising space (Rental of -);Advertising space (Rental of -) on the internet; Audio-visual displays for advertising purposes (Preparation or presentation of -);Consultancy relating to advertising; Customer club services, for commercial, promotional and/or advertising purposes; Customer loyalty services for commercial, promotional and/or advertising purposes; Demonstration [for promotional/advertising purposes]; Organisation of exhibitions or trade fairs for commercial or advertising purposes; Production of video recordings for advertising purposes; Production of visual advertising matter; Providing user rankings for commercial or advertising purposes; Providing user ratings for commercial or advertising purposes; Providing user reviews for commercial or advertising purposes; Administration of membership schemes; Advisory services relating to business planning; Analysis of business data; Benchmarking (evaluation of business organisation practices); Brand creation services; Brand evaluation services; Business consultancy services relating to manufacturing; Business consultancy services relating to product development; Business intelligence services; Business introduction services; Business networking; Business networking services; Business organisation; Business organisation advice; Business planning services for enterprises; Business process management; Business record keeping services; Business records keeping; Carrying out auction sales; Collection of commercial information; Collection of data; Compilation and provision of trade and business price and statistical information; Compilation and systematisation of information in databanks; Compilation and systemization of written communications and data; Compilation of business data; Compilation of business directories; Compilation of online business directories; Compilation of registers relating to exporters; Compilation of registers relating to importers; Conducting, arranging and organizing trade shows and trade fairs for commercial and advertising purposes; Conference call transcription services; Cost analysis; Cost assessment services; Cost price analysis; Customer loyalty services for*



*commercial, promotional and/or advertising purposes; Customer relationship management; Data collection [for others];Data collection services; Data compilation for others; Data management; Data management services; Data processing; Data processing for businesses; Data processing for the collection of data for business purposes; Demonstration [for promotional/advertising purposes]; Economic forecasting analysis for business purposes; Export and import agencies; Export-import agency services; Goods or services price quotations; Import and export services; Interim business management; Online community management services; Promoting the goods and services of others over the Internet; Providing trade information; Provision of advertising space by electronic means and global information networks; On-line auction bidding for others.*

**Class 36:** *Provision of commercial finance; Provision of equipment finance; Provision of finance; Provision of finance for business ventures; Finance (Provision of -);Finance (Raising of -);Finance services; Provision of finance for enterprises; Provision of finance for trade credit; Provision of trade finance; Trade finance services; Insurance (Arranging of -);Insurance advisory services; Insurance agency and brokerage; Insurance for businesses; Insurance guarantees; Arranging insurance; Brokerage agency relating to ship insurance; Commodities insurance; Computerised information services relating to insurance; Extended guarantee insurance; Extended warranty insurance; Insurance underwriting in the field of professional liability insurance; Insurance underwriting services; Providing insurance information; Providing insurance premium quotations; Providing online information about insurance from a computer database or the Internet; Insurance; Insurance services; Insurance services relating to sea cargo; Insurance underwriting; Insurance underwriting and appraisals and assessment for insurance purposes; Provision of insurance information.*

**Class 38:** *Audio and video broadcasting services provided via the Internet; Data broadcasting services; Information services relating to broadcasting;*

*Interactive broadcasting and communications services; Internet broadcasting services; Music broadcasting; Transmission of digital audio and video broadcasts over a global computer network; Video broadcasting; Broadcasting of audiovisual and multimedia content via the Internet; Broadcasting services relating to Internet protocol TV; Wireless broadcasting; Instant electronic messaging services; Instant messaging services; Electronic transmission of instant messages and data; Providing instant messaging services; Chat room services for social networking; Forums [chat rooms] for social networking; Providing on-line chat rooms for social networking; Communication of data by means of telecommunications; Communication services between data banks; E-mail data services; Electrical data transmission over a global remote data processing network, including the internet; Network transmission of sounds, images, signals and data; Providing access to electronic communications networks and electronic databases; Provision of communication facilities for the interchange of data by electronic means; Provision of telecommunication access and links to computer databases and the internet; Provision of telecommunication access and links to computer databases and to the internet; Data bank interconnection services; Data communication by electronic means; Data communication services; Data streaming; Data streaming services; Data transmission and data broadcasting; Transmission of data, audio, video and multimedia files, including downloadable files and files streamed over a global computer network; Transmission of information by data communications for assisting decision making; Transmission of messages, data and content via the Internet and other communications networks; Transmission of messages, data and content via the Internet and other computer and communications networks; Transmission of sound, picture and data signals; Wireless transfer of data via digital mobile telephony; Wireless transfer of data via the Internet; Wireless transfer of data via wireless application protocols; Provision of access to an electronic marketplace [portal] on computer networks.*

**Class 39:** *Courier services; Courier services [merchandise]; Courier services for cargo; Courier services for goods; Courier services for merchandise; Courier services for the delivery of goods; Courier services for the delivery of parcels;*

*Courier services for the delivery packages; Courier services for the transportation of cargo; Travel agency services for arranging travel; Travel agency services for business travel; Travel agents services for arranging travel; Agency services for arranging travel; Arranging of business travel; Computerised reservation services for travel; Organising of foreign travel; Planning and booking of travel and transport, via electronic means; Providing information about travel, via the Internet; Providing information relating to travel and transport, via electronic means; Travel arrangement and reservation services; Travel consultancy and information services; Travel reservation and booking services.*

**Class 41:** *Arranging and conducting of games; Computer and video game amusement services; Electronic game services and competitions provided by means of the internet; On-line game services; Online game services through mobile devices; Organisation of quizzes, games and competitions; Providing interactive multi-player computer games via the internet and electronic communication networks; Providing online entertainment in the nature of game shows; Provision of games by means of a computer based system; Game services provided by means of communications by computer terminals or mobile telephone; Game shows; Games services provided via computer networks and global communication networks; Video game entertainment services; Virtual reality game services provided on-line from a computer network; Entertainment services provided on-line from a computer database or the internet; Information relating to computer gaming entertainment provided online from a computer database or a global communication network; Information relating to education, provided on-line from a computer database or the internet; Information relating to entertainment, provided on-line from a computer database or the internet; Provision of education on-line from a computer database or via the internet or extranets; Provision of information relating to entertainment online from a computer database of the Internet; Training courses relating to computer software; Training in business skills; Training in communication techniques; Adult training; Business training; Computer based training; Conducting training seminars for clients; Education*

*and training consultancy; Education, teaching and training; Organising of business training; Provision of online training; Training services relating to logistics; Education and instruction; Education and instruction services; Education examination; Adult education services.*

**Class 42:** *Authentication services (control) of data transmitted via telecommunications; Certification of data via blockchain; Certification services of data transmitted via telecommunications; Cloud storage services for electronic data; Decoding of data; Encryption, decryption and authentication of information, messages and data; Data authentication via blockchain; Data decryption services; Data duplication and conversion services, data coding services; Data encryption and decoding services; Data encryption services; Data migration services; Data mining; Data storage via blockchain; Data warehousing; Database development services; Access Control as a Service (ACaaS); Application service provider [ASP], namely, hosting computer software applications of others; Blockchain as a Service [BaaS]; Cloud computing; Cloud computing services; Cloud seeding; Computerised data storage; Computerised data storage services; Consumer product design; Consumer product safety testing; Consumer product safety testing and consultation; Creating, maintaining and hosting the websites of others; Data authentication via blockchain; Data back-up services; Design, creation and programming of web pages; Design, creation, hosting and maintenance of websites for others; Enterprise content management; Hosting of communication platforms on the internet; Hosting of digital content, namely, on-line journals and blogs; Hosting of memory space on the Internet for storing digital photographs; Hosting of podcasts; Hosting of videocasts; Hosting services, software as a service, and rental of software; Industrial design services; Industrial development services; Industrial process development; Industrial testing; Infrastructure as a Service [IaaS]; Inspection of goods for quality control; Installation of Access Control as a Service (ACaaS) software; Installing web pages on the internet for others; Interior and exterior design services; Internet web site design services; Platform as a Service [PaaS]; Platform as a service [PaaS] featuring software platforms for*

*transmission of images, audio-visual content, video content and messages; Product design and development; Product quality control testing; Product safety testing services; Providing quality assurance services; Provision of information relating to industrial design; Provision of on-line support services for computer program users; Quality assurance services; Quality control and authentication services; Quantum computing services; Software as a service [SaaS]; Software as a service [SaaS] services featuring software for machine learning, deep learning and deep neural networks; Testing, analysis and evaluation of the goods and services of others for the purpose of certification; Web hosting; Web hosting services; Web site design and creation services.*

**Class 43:** *Accommodation bureau services [hotels, boarding houses]; Accommodation bureaux [hotels, boarding houses]; Arranging of hotel accommodation; Booking agency services for hotel accommodation; Electronic information services relating to hotels; Making hotel reservations for others; Providing online information relating to hotel reservations; Providing room reservation and hotel reservation services; Hotel accommodation reservation services; Hotel reservation services; Hotel reservation services provided via the Internet; Hotel room booking services; Hotel services for preferred customers; Hotels, hostels and boarding houses, holiday and tourist accommodation; Travel agency services for reserving hotel accommodation; Information, advice and reservation services for the provision of food and drink; Information relating to hotels; Provision of conference, exhibition and meeting facilities; Provision of information relating to the booking of accommodation; Provision of information relating to the preparation of food and drink; Travel agency services for making hotel reservations; Travel agency services for reserving hotel accommodation.*

**Class 45:** *Advisory services relating to intellectual property licensing; Advisory services relating to intellectual property protection; Advisory services relating to intellectual property rights; Company registration services; Consultancy relating to intellectual property management; Consultancy relating to the licensing of intellectual property; Consultancy relating to the management of intellectual*

*property and copyright; Consultancy relating to the protection of geographical indications; Consultancy relating to the protection of industrial designs; Domain name advisory services; Domain name registration services; Identity validation services; Identity verification; Information services relating to manufacturing standards; Information services relating to safety; Information services relating to trading standards; Intellectual property agency services; Internet based matchmaking services; Licensing of intellectual property rights; Management and exploitation of copyright and industrial property rights by licensing for others; Online social networking services; Online social networking services accessible by means of downloadable mobile applications; Registration of domain names for identification of users on a global computer network; Trademark agent services; Trademark watch services.*

## Annex 2

First earlier mark

**Class 9:** *Investment portfolio management software; computer software for uploading stock information; computer software platforms; e-commerce software; computer software for accessing, browsing and searching online database; investment portfolio management for wine, spirits and other commodity asset classes; computer software for uploading stock information in relation to wine, spirits and other commodity asset classes; computer software for accessing, browsing and searching online database for wine, spirits and other commodity asset classes.*

**Class 35:** *Business information and advice; business advisory services in the field of selling products and rendering services; advertising, marketing and promotional services; business assistance, management and administration services; compilation, analysis, retrieval and provision of information relating to investments; information services provided online from a computer database; business analysis, research and information services; provision of an online marketplace for buyers and sellers; auction services; the bringing together, for the benefit of others, of a variety of investment services in relation to wine, spirits and other tradable commodities, enabling customers to conveniently compare and purchase those services; advertising, marketing and promotional services; business assistance, management and administration services; all of the aforesaid in relation to investments in wine, spirits and other commodity asset classes; marketplace for investments in wine, spirits and other commodity asset classes; business information, business advice, advertising in the field of investments in wine, spirits and other commodity asset classes; business assistance, management and administration services in the field of investments in wine, spirits and other commodity investment classes; compilation, storage, analysis, retrieval and provision of information all relating to wine, spirits and other commodity investment classes; on-line trading services in which seller posts products to be auctioned and bidding is done via the Internet; auction services for wine, spirits and*

*other commodity asset classes; the bringing together, for the benefit of others, of a variety of goods (excluding the transport thereof), namely wine, spirits and other tradable commodities, enabling consumers to conveniently compare and purchase those goods; marketplace for investments in wine, spirits and other commodity investment classes.*

**Class 36:** *Investment portfolio management; investment portfolio management services; including, for the avoidance of doubt, exchange price quotations, cost price analysis, financial spread betting, electronic financial trading services; information services relating to all of the aforesaid; investment portfolio and management services for wine, spirits and other commodity asset classes; Investment and trading services for wine, spirits and other commodity asset classes; exchange price quotations for wine, spirits and other commodity asset classes; cost price analysis for wine, spirits and other commodity asset classes; financial spread betting for wine, spirits and other commodity asset classes; electronic financial trading services for wine, spirits and other commodity investment classes; online trading services in relation to investments in wine, spirits and other commodity asset classes; automated and computerised trading services in relation to investments in wine, spirits and other commodity asset classes.*

**Class 38:** *Providing access to platforms on the internet; providing access to platforms on the internet for investments in wine, spirits and other commodity asset classes.*

**Class 42:** *Constructing an internet platform for electronic commerce; hosting of e-commerce platforms on the internet; constructing an internet platform for electronic commerce in the field of wine, spirits and other commodity asset classes; hosting of e-commerce platforms for the sale and purchase of wine, spirits and other commodity asset classes; providing temporary use of online non-downloadable investment software; hosting an electronic trading platform for wine, alcohol and other commodity asset classes; storage of information relating to investments; providing an on-line searchable database for the sale of wine, spirits and other commodity asset classes.*



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**Class 9:** *Investment portfolio management software; computer software for uploading stock information; computer software platforms; e-commerce software; computer software for accessing, browsing and searching online database; computer software for uploading stock information in relation to wine, spirits and other commodity asset classes; computer software for accessing, browsing and searching online database for wine, spirits and other commodity asset classes.*

**Class 33:** *Alcoholic beverages (except beers) including alcoholic beverages containing wine; wine; champagne; spirits; distilled liquors; whisky; liqueurs.*

**Class 35:** *Advertising, marketing and promotional services; business assistance, management and administration services; office services of electronically collecting, collating and manipulating data relating to investments; provision of an online marketplace for buyers and sellers; auction services; the bringing together, for the benefit of others, of a variety of investment services in relation to wine, spirits and other tradable commodities, enabling customers to conveniently compare and purchase those services; all of the aforesaid in relation to investments in wine, spirits and other tradable commodities; marketplace for investments in wine, spirits and other commodity asset classes; advertising in the field of investments in wine, spirits and other tradable commodities; business assistance in the field of investments in wine, spirits and other tradable commodities; office services of electronically collecting, collating and manipulating data all relating to wine, spirits and other tradable commodities; on-line trading services in which seller posts products to be auctioned and bidding is done via the Internet; auction services for wine, spirits and other tradable commodities; the bringing together, for the benefit of others, of a variety of goods (excluding the transport thereof), namely wine, spirits and other tradable commodities, enabling consumers to conveniently compare and purchase those goods; providing an on-line searchable database for the sale of wine, spirits and other tradable commodities; computer services, namely services to facilitate the buying or*

*sale of wine, spirits and other tradable commodities; marketplace for investments in wine, spirit and other tradable commodities; trading services for wine, spirits and other tradable commodities; cost price analysis for wine, spirits and other tradable commodities.*

**Class 36:** *Information and advice; information services provided online from a computer database; analysis, research and information services; online trading services; automated and computerised trading services; compilation, analysis, retrieval and provision of information relating to investments; all of the aforesaid in relation to investments in wine, spirits and other tradable commodities; investment portfolio management; investment portfolio management services; including, for the avoidance of doubt, exchange price quotations, financial spread betting, electronic financial trading services; investment portfolio management for wine, spirits and other tradable commodities; information services relating to all of the aforesaid; investment portfolio and management services for wine, spirits and other commodity asset classes; investment services for wine, spirits and other tradable commodities; exchange price quotations for wine, spirits and other commodity asset classes; financial spread betting for wine, spirits and other commodity asset classes; electronic financial trading services for wine, spirits and other tradable commodities; information and advice in the field of investments in wine, spirits and other tradable commodities; management and administration services in the field of investments in wine, spirits and other tradable commodities; compilation, analysis, retrieval and provision of information all relating to wine, spirits and other tradable commodities; commodities trading services.*

**Class 38:** *Providing access to platforms on the internet; providing access to platforms on the internet for investments in wine, spirits and other tradable commodities.*

**Class 42:** *Constructing an internet platform for electronic commerce; hosting of e-commerce platforms on the internet; constructing an internet platform for electronic commerce in the field of wine, spirits and other commodity asset classes; hosting of*

*e-commerce platforms for the sale and purchase of wine, spirits and other commodity asset classes; providing temporary use of online non-downloadable investment software; hosting an electronic trading platform for wine, alcohol and other commodity asset classes.*