

**O/0405/23**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. UK00003694023**

**BY NUFIN GMBH**

**TO REGISTER THE TRADE MARK:**

**Moss**

**IN CLASSES 9, 35, 36, 38 AND 42**

**AND**

**IN THE MATTER OF OPPOSITION THERETO**

**UNDER NO. 431740**

**BY AMAFIN**

## BACKGROUND AND PLEADINGS

1. On 13 September 2021, Nufin GmbH (“the applicant”) applied to register the mark shown on the cover page of this decision in the UK. The application was filed pursuant to Article 59 of the Withdrawal Agreement.<sup>1</sup> As a consequence, it is deemed to have the same filing date as the corresponding trade mark application filed in the EU. Since the EU trade mark application was an international registration designating the EU, which claimed priority from the applicant’s earlier German registration, the application in turn also claims the same priority being 2 September 2020.

2. Registration is sought for the goods and services in classes 9, 35, 36, 38 and 42 set out in the Annex to this decision.

3. The application was opposed by Amafin (“the opponent”) on the 10 March 2022. The opposition is based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opponent relies upon the following trade mark:

## Myos

Comparable UK trade mark (EU) registration no. UK00918057187

Filing date 29 April 2019; Registration date 30 August 2019.

Relying upon all of the services for which the mark is registered, namely:

Class 35      Retail services in relation to sporting articles; Retail services relating to sporting goods; Retail services in relation to kitchen appliances; Online retail store services relating to cosmetic and beauty products; Retail services in relation to domestic electronic equipment; Retail services relating to food preparation implements; Retail services in relation to beauty implements for humans; Retail services in relation to hygienic implements for humans; Retail services in relation to gardening articles; Retail services in relation to lighting; Retail services in relation to

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<sup>1</sup> ‘Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019/C 384 I/01)’, also known as the ‘Withdrawal Agreement’.

luggage; Retail services in relation to footwear; Retail services in relation to clothing; Retail services in relation to furnishings; Retail services in relation to cookware; Retail services in relation to car accessories; Retail services in relation to toys; Retail services in relation to pet products; Retail services in relation to bicycle accessories; Retail services relating to food.

Class 36 Financial and monetary services, and banking; Loan and credit, and lease-finance services; Financial information, data, advice and consultancy services; Financing and funding services; Financial transfers and transactions, and payment services; Debt recovery and factoring services; Facilitating and arranging financing; Providing funding for commercial entities; Finance services; Finance services; Arranging the provision of finance; Financial services relating to business; Trade finance services; Financial banking; Financial risk assessment services; Commodities financing.

Class 39 Transport; Packaging and storage of goods; Storage of commercial goods; Storage and delivery of goods; Transportation and delivery of goods.

4. As shown above, the opposition is based upon the opponent's comparable UK trade mark (EU),<sup>2</sup> claiming that there is a likelihood of confusion because the marks "show enormous visual and phonetic similarities" and the goods and services are identical/highly similar.

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

6. The opponent is represented by Raphael Thomas and the applicant is represented by Barker Brettell LLP. A hearing was neither requested nor considered necessary.

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<sup>2</sup> Following the end of the transition period of the UK's withdrawal from the EU, all EU trade marks ("EUTM") registered before 1 January 2021 were recorded as comparable trade marks in the UK trade mark register (and as a consequence, have the same legal status as if they had been applied for and registered under UK law). A 'comparable trade mark (EU)' retains the same filing date, priority date (if applicable) and registration date of the EUTM from which it derives.

The opponent filed submissions during the evidence rounds and the applicant filed submissions in lieu of a hearing. I make this decision having taken full account of all the papers, referring to them as necessary.

7. Although the UK has left the EU, section 6(3)(a) of the European Union (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 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.

## **DECISION**

8. Section 5(2)(b) reads as follows:

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

(a)...

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

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

9. The earlier mark had not completed its registration process more than five years before the relevant date (the priority date of the mark in issue). Accordingly, the use provisions at s.6A of the Act do not apply. The opponent may rely on all of the services it has identified without demonstrating that it has used the mark.

### **Section 5(2)(b) case law**

10. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer*

*Inc, Case C-39/97, Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V. Case C-342/97, Marca Mode CV v Adidas AG & Adidas Benelux BV, Case C-425/98, Matratzen Concord GmbH v OHIM, Case C-3/03, Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH, Case C-120/04, Shaker di L. Laudato & C. Sas v OHIM, Case C-334/05P and Bimbo SA v OHIM, Case C-591/12P:*

- (a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

- (g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

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

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

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

12. I note that at least some of the goods and services covered by the parties’ respective specifications are identical. For example, the terms “financial services in the field of electronic payments” and “financial services relating to credit cards, debit cards and prepaid cards” in the applicant’s specifications fall within the broader categories of “finance services” and “financial and monetary services, and banking” in

the opponent's specifications. They are identical on the principle outlined in *Meric*. For this reason, I will not undertake a full comparison of the goods and services above. The examination of the opposition will proceed on the basis that the contested goods and services are identical to those covered by the opponent's mark. If the opposition fails, even where the goods and services are identical, it follows that the opposition will also fail where the goods and services are only similar.

### **The average consumer and the nature of the purchasing act**

13. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective 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 (as he then was) described the average consumer in these terms:

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

14. The average consumer for the goods and services will be both members of the general public and business users. The cost of purchase is likely to vary, but it is not likely to be at the very highest end of the scale. The frequency of the purchase is also likely to vary, although it is unlikely to be particularly regular. Even where the cost of the purchase is low, such as for the applicant's “mobile apps”, various factors will be taken into consideration such as suitability for the user's particular needs, ease of use and reliability. Consequently, I consider that a medium degree of attention will be paid during the purchasing process.

15. However, I recognise that some of the goods and services under classes 9, 38 and 42 are particularly technical in nature, and that the majority of the applicant's goods and services are financial in nature, and therefore could involve significant sums of money. Consequently, I consider that for the majority of the goods and services, between a medium and high degree of attention will be paid during the purchasing process.

16. The applicant's mobile apps are likely to be purchased from app stores. The rest of the class 9, 38 and 42 goods and services are likely to be purchased from IT retail outlets, their online equivalent or following inspection of a specialist catalogue. The class 35 and 36 services are likely to be purchased from a specialist financial undertaking or online equivalent. Alternatively, all of the goods and services may be purchased following perusal of advertisements or inspection of a business directory. Consequently, visual considerations are likely to dominate the selection process. However, I do not discount that there may also be an aural component to the purchase through word-of-mouth recommendations or advice sought from financial advisors or a sales assistant.

### **Comparison of the trade marks**

17. 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 the trade marks must be assessed by reference to 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.”

18. 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.

19. The respective trade marks are shown below:

Opponent's trade mark	Applicant's trade mark
<b>Myos</b>	<b>Moss</b>

20. The opponent's mark consists of the word Myos. There are no other elements to contribute to the overall impression which lies in the word itself.

21. The applicant's mark consists of the word Moss. There are no other elements to contribute to the overall impression which lies in the word itself.

22. Visually, the marks coincide in the presence of the letter M at the beginning of the marks. They also coincide in the presence of the letters O and S; however, these letters are presented together at the end of the opponent's mark, and these letters are presented together in the middle of the applicant's mark. The second letter of the opponent's mark is the letter Y, and the applicant's mark ends in another letter S. These all act as visual points of difference. I also note that the marks are short in length. There is no special test which applies to the comparison of short marks, the visual similarities must be assessed in the normal way.<sup>3</sup> However, it is clear that the change of one letter, or the order of the letters, to a mark which is only four letters long is clearly more significant than such a change to a longer mark. Therefore, I consider

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<sup>3</sup> *Bosco Brands UK Limited v Robert Bosch GmbH*, Case BL- O/301/20, paragraph 44

that the letter Y in the opponent's mark will be noticed and the double S at the end of the applicant's mark will be noticed. Therefore, taking all of the above into account, I consider the marks to be visually similar to between a low and medium degree.

23. Aurally, the opponent submits that its mark will be pronounced as "mjos" as a single syllable, and that the Y has "an obtrusive J sound when pronounced between M and O". However, I consider that the opponent's mark is likely to be pronounced as MY-OSS or MI-OSS. The applicant's mark will be pronounced as MOSS (its ordinary dictionary pronunciation). As the marks overlap in the "M" and "OS" elements, I consider that they are aurally similar to between a low and medium degree.

24. Conceptually, I consider that the opponent's mark will be viewed as an invented word which will be attributed no particular meaning. The applicant's mark, as highlighted by the opponent, is an ordinary dictionary word. I consider that it will be recognised by the average consumer as a small soft green plant which grows on damp soil, wood or stone.<sup>4</sup> Consequently, as the opponent's mark has no conceptual meaning, and the applicant's does, the marks are conceptually dissimilar.

### **Distinctive character of the earlier trade mark**

25. 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 C108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, paragraph 49).

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<sup>4</sup> <https://www.collinsdictionary.com/dictionary/english/moss> accessed 10 April 2023

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 promotion of 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).”

26. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

27. I note that in its Notice of Opposition (Form TM7), the opponent states that “the distinctive character of the opposing mark is average”. However, I consider that this statement is unclear as to whether the opponent is referring to its own mark, or the applicant’s mark.

28. As highlighted above, I consider that the word Myos will be viewed as an invented word which is neither allusive nor descriptive in relation to the goods and services for which the mark is registered. Therefore, I consider the opponent’s mark to be inherently distinctive to a high degree.

### **Likelihood of confusion**

29. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. 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 and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and services and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

30. The following factors must be considered to determine if a likelihood of confusion can be established:

- I have found the marks to be visually and aurally similar to between a low and medium degree.
- I have found the marks to be conceptually dissimilar.
- I have found the opponent's mark to be inherently distinctive to a high degree.
- I have identified the average consumer to be members of the general public and business users who will select the goods and services primarily by visual means, although I do not discount an aural component.
- I have concluded that a medium degree of attention will be paid during the purchasing process for the goods and services, however, I recognise that the level of attention may be between a medium and high degree where they are particularly technical or financial in nature.
- I have found the parties' goods and services to be identical for the purpose of my analysis.

31. As established above, the opponent's Myos mark is an invented word with no meaning, and therefore it is highly distinctive. I have also found the goods and services to be identical. These are clearly factors in favour of the opponent.

32. However, it is well established that where the meaning of at least one of the two supposedly conflicting marks at issue is so clear and specific that it can be grasped

immediately by the relevant public, the conceptual differences observed between those signs may counteract the visual and phonetic similarities between them.<sup>5</sup> In this instance, the marks are visually and aurally similar only to between a low and medium degree. Furthermore, in some circumstances where the goods and services are particularly technical, or financial in nature, the average consumer will be paying between a medium and high degree of attention during the purchasing process. Consequently, they are less prone to the effects of imperfect recollection. Nonetheless, even where the average consumer pays a medium degree of attention, the length of the parties' marks are short, and therefore I consider that the differences are more likely to be noticed. I do not consider that the average consumer would overlook the second letter Y in the opponent's mark, nor do I consider that the average consumer would overlook the second letter S at the end of the applicant's mark, especially as the effect is to change the concept of the marks from an invented word with no meaning, to the concept of "moss" (which is a green plant) creating a strong conceptual hook in order to differentiate the marks. Therefore, taking all of the above factors into account, I do not consider that the marks will be mistakenly recalled or misremembered as each other. I do not consider there to be a likelihood of direct confusion.

33. It now falls to me to consider the likelihood of indirect confusion. 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

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<sup>5</sup> The Picasso Estate v OHIM, Case C-361/04P, CJEU

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.”

34. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Arnold LJ agreed, pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

35. Mr Purvis KC in *L.A Sugar Limited* sets out that there are three main categories of indirect confusion and that indirect confusion ‘tends’ to fall in one of them (paragraphs 16 & 17). I note that the opponent hasn’t provided any submissions as to what category this case would fall within. I also bear in mind that the examples set out by Mr Purvis are not exhaustive. However, having noticed that the competing trade marks are different, I see no reason why the average consumer would assume that they come from the same or economically linked undertakings. I do not consider that the average consumer would think the applicant’s trade mark was connected with the opponent or vice versa. Although both marks use the letters M, O and S, given the clear and distinct conceptual difference separating the marks, they are not natural variants or brand extensions of each other. Therefore, taking all of the above into account, I do not consider there to be a likelihood of indirect confusion.

## **CONCLUSION**

36. The opposition is unsuccessful, and the application may proceed to registration.

## **COSTS**

37. The applicant has been successful and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 2/2016. In the

circumstances, I award the applicant the sum of **£550** as a contribution towards the costs of the proceedings. The sum is calculated as follows:

Considering the Notice of opposition and preparing a Counterstatement	£200
Preparing and filling written submissions in lieu	£350
<b>Total</b>	<b>£550</b>

38. I therefore order Amafin to pay Nufin GmbH the sum of £550. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

**Dated this 2<sup>nd</sup> day of April 2023**

**L FAYTER**

**For the Registrar**

## ANNEX

### **The applicant's mark**

#### Class 9

Application software for wireless devices; accounting software; computer communication software to allow customers to access bank account information and transact bank business; data processing systems; electronic publications [downloadable]; downloadable mobile coupons; downloadable computer software for use as an electronic wallet; downloadable e-wallets; encoded cards; mobile apps; encoded or virtual prepaid cards; software; computer software applications [downloadable]; credit screening software; software to enable secure credit-, debit- and prepaid-card transactions; workflow software; all of the foregoing related to budgeting, expense and revenue management, accounting, payroll, payment services, electronic payments and financial planning services; encoded cards for use in relation to the electronic transfer of financial transactions; encoded cards for use in point of sale transactions; credit cards; magnetically encoded debit cards; interface software; payment software.

#### Class 35

Billing; administrative data processing; cost price analysis; business inquiries; consulting and information concerning accounting; benchmarking services; advice on the analysis of consumer buying habits and needs provided with the help of sensory, quality and quantity-related data; payroll preparation advisory services; business statistical information services; business analysis, research and information services; business administration assistance; assessment analysis relating to business management; book-keeping and accounting services; computerised accounting; computerised file management; computerised payroll preparation; data processing [clerical work]; market reports and studies; analysis of business statistics; preparation of annual returns for business undertakings; invoicing; marketing; market research; market analysis; price analysis services; price comparison services; book-keeping; collection and systematization of business data; administration, billing and reconciliation of accounts on behalf of others; all of the foregoing related to budgeting, expense and revenue management, accounting, payroll, payment services, electronic payments and financial planning services; loyalty, incentive and bonus program services; coupon procurement services for others [sales promotion].



### Class 36

Credit card, debit card and prepaid card services; issuance of tokens of value; issuance of credit cards, debit cards and prepaid cards; issue of tokens, coupons and vouchers of value; banking and financing services; debt recovery and collection agencies; credit card, debit card and prepaid card advisory services; providing financial information via a web site; provision of credit cards, debit cards and prepaid cards; credit assessment services; clearing, financial; credit card, debit card and prepaid card payment services; management of credit card, debit card and prepaid card services; on-line bill payment services; financial analysis; conducting cashless payment transactions; financial transaction services; electronic payment services; provision of information relating to credit card, debit card and prepaid card transactions; financial information; e-wallet payment services; factoring of debts; financial analysis; financial services in the field of electronic payments; financial services relating to credit cards, debit cards and prepaid cards; financial transfers and transactions, and payment services; financial payment services; credit card, debit card and prepaid card validation services; credit card, debit card and prepaid card verification; arranging of credit; financial loan services; insurance services relating to credit cards, debit cards and prepaid cards; payment processing.

### Class 38

Provision of access to content, websites and portals; providing access to platforms on the Internet; provision of electronic data links; computer communication and Internet access; data transmission for others; communication services provided electronically; electronic communications services; electronic data interchange services; electronic transmission of data; electronic communications services relating to credit card, debit card and prepaid card authorization; electronic communication services for preparing financial information; electronic data interchange services; electronic data transmission services; electronic communication services in the context of credit, debit and prepaid card verification; electronic communication services for the presentation of financial information; communications services; all of the foregoing related to budgeting, expense and revenue management, accounting, payroll, payment services, electronic payments and financial planning services.

## Class 42

Updating and adapting of computer programs according to user requirements; providing temporary use of non-downloadable software applications accessible via a web site; providing temporary use of on-line non-downloadable software for importing and managing data; cloud-computing; software engineering; application service provider services; software development, programming and implementation; design services for data processing systems; hosting services, software as a service, and rental of software; hosting of transaction platforms on the Internet; platform as a service [PaaS]; rental of data processing programs; providing temporary use of non-downloadable computer software for use in the creation and publication of on-line journals and blogs; all of the foregoing related to budgeting, expense and revenue management, accounting, payroll, payment services, electronic payments and financial planning services.