

O/583/18

TRADE MARKS ACT 1994

**IN THE MATTER OF REGISTRATION NO. UK00003230602
IN THE NAME OF BEIJING DA MI TECHNOLOGY CO., LTD
FOR THE FOLLOWING TRADE MARK:**

WowSchool

IN CLASSES 9, 16, 35, 38, 41 AND 42

AND

**AN APPLICATION FOR A DECLARATION OF INVALIDITY
UNDER NO. 501829 BY INSTITUTO DE EMPRESA, S.L**

BACKGROUND AND PLEADINGS

1. Beijing Da Mi Technology Co., Ltd (“the proprietor”) applied for the trade mark shown on the cover page of this decision (“the contested trade mark”) on 12 May 2017. It was registered on 1 September 2017 for the following goods and services:

- Class 9 Downloadable application software for smart phones; Computer software, recorded; Electronic publications, downloadable; Computer programs [downloadable software]; Computer game software; Downloadable music files; Downloadable image files; Data processing apparatus; Computer programmes [programs], recorded; Measures; Radios; Portable media players; Audiovisual teaching apparatus; Video screens; Eyeglasses; Animated cartoons; Tablet computers; Smartwatches; Electronic pocket translators; Headphones.
- Class 16 Paper; Cardboard; Handbooks [manuals]; Printed publications; Periodicals; Advertising posters; Bags [envelopes, pouches] of paper or plastics, for packaging; Stationery; Writing materials; Teaching materials [except apparatus]; Copying paper [stationery]; Towels of paper; Printed matter; Bookbinding material; Ink; Gummed tape [stationery]; Drawing squares; Drawing materials; Inking ribbons; Architects’ models.
- Class 35 Advertising; Providing business information via a web site; Provision of an on-line marketplace for buyers and sellers of goods and services; Marketing; Personnel management consultancy; Relocation services for businesses; Web site traffic optimization; Business auditing; Sponsorship search; Retail or wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; On-line advertising on a computer network; Business management and organization consultancy; Commercial administration of the licencing of the goods and services for others; Provision of commercial and business contact information; Sales promotion for others; Telemarketing services; Business management for freelance service providers; Compilation of information into computer databases; Updating and maintenance of data

in computer databases; Appointment scheduling services [office functions].

Class 38 Wireless broadcasting; Message sending; Communications by computer terminals; Computer aided transmission of messages and images; Providing user access to global computer networks; Transmission of electronic mail; Providing telecommunications connections to a global computer network; Videoconferencing services; Providing online forums; Rental of access time to global computer networks; Electronic bulletin board services [telecommunications services]; Providing internet chatrooms; Providing access to databases; Transmission of digital files; Video-on-demand transmission; Streaming of data; Teleconferencing services; Transmission of greeting cards online; Voice mail services; Radio communications.

Class 41 Tuition; Nursery schools; Vocational guidance [education or training advice]; Coaching [training]; Education; On-line publication of electronic books and journals; Club services [entertainment or education]; Arranging and conducting of workshops [training]; Bookmobile services; Videotape production; Health club services [health and fitness training]; Toy rental; Games equipment rental; Arranging and conducting of colloquiums; Organization of shows [impresario services]; Providing on-line electronic publications, not downloadable; Film production, other than advertising films; Translation; Providing on-line videos, not downloadable; Game services provided on-line from a computer network.

Class 42 Technical project studies; Research and development of new products for others; Software as a service [SaaS]; Computer programming; Computer software design; Updating of computer software; Maintenance of computer software; Creating and maintaining web sites for others; Conversion of data or documents from physical to electronic media; Data conversion of computer programs and data [not physical conversion]; Quality control; Surveying; Chemical research; Material

testing; Packaging design; Design of interior décor; Dress designing; Authenticating works of art; Graphic arts design; Digital asset management.

2. On 17 October 2017, Instituto De Empresa, S.L (“the applicant”) applied to have the contested trade mark declared invalid under s.47 of the Trade Marks Act 1994 (“the Act”). The application is based on s.5(2)(b) of the Act. The invalidity is directed against all of the goods and services in the contested trade mark’s specification.

3. The applicant relies upon the trade mark shown below and relies upon all of the goods and services for which the mark is registered (see paragraph 13 below):

EU trade mark 16408049: Wow room

Filing date 24 February 2017; date of entry in the register 11 August 2017

Classes 9, 38 and 41

4. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which 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.”

5. Given the filing date for the applicant’s trade mark, it qualifies as an earlier trade mark under section 6 of the Act.

6. The applicant claims that the contested trade mark is similar to its mark and is registered for identical or similar goods and there is a likelihood of confusion.

7. The proprietor filed a counterstatement in which it denies the grounds of invalidity.

8. Only the applicant filed written submissions. Neither party requested a hearing and so this decision is taken following a careful perusal of all of the papers.

DECISION

9. Section 5 of the Act has application in invalidation proceedings because of the provisions set out in section 47. The relevant legislation is set out below:

“47. –[...]”

(2) The registration of a trade mark may be declared invalid on the ground-

(a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or

(b) that there is an earlier right in relation to which the condition set out in section 5 (3) is satisfied

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

(2A) But the registration of a trade mark may not be declared invalid on the ground that there is an earlier trade mark unless –

(a) the registration procedure for the earlier trade mark was completed within the period of five years ending with the date of the application for the declaration,

(b) the registration procedure for the earlier trade mark was not completed before that date, or

(c) the use conditions are met.”

10. Given the date of registration for the applicant’s mark and the date of this application, section 2A of the Act is satisfied. It is not subject to proof of use as the earlier mark completed its registration period less than five years before the date on which the invalidation application was made.

11. The invalidation is based on section 5(2)(b) of the Act, which 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.”

Section 5(2)(b) – case law

12. 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.

The principles:

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

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

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

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

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

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

(g) a lesser degree of similarity between the goods or services may be offset by a 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 goods and services

13. The competing goods and services are as follows:

Applicant's goods and services	Proprietor's goods and services
<p><u>Class 9</u></p> <p>Instructional and teaching apparatus and instruments; Apparatus for recording, transmission or reproduction of sound or images; Magnetic data carriers, recording discs; Compact discs, DVDs and other digital recording media; Data processing terminals; Computers; Data processing equipment; Computer software; Electronic publications, downloadable.</p> <p><u>Class 38</u></p>	<p><u>Class 9</u></p> <p>Downloadable application software for smart phones; Computer software, recorded; Electronic publications, downloadable; Computer programs [downloadable software]; Computer game software; Downloadable music files; Downloadable image files; Data processing apparatus; Computer programmes [programs], recorded; Measures; Radios; Portable media players; Audiovisual teaching apparatus; Video screens; Eyeglasses; Animated cartoons; Table computers;</p>

Telecommunications; Access to content, websites and portals; Providing access to blogs and websites; Webcasting services; Web site forwarding services; Telecommunications information; Forum [chat rooms] for social networking; Provision of on-line forums; Services regarding electronic bulletin boards (telecommunications); News agencies; News agencies; Telephone services; Communications by computer terminals; Communications by fiber optic networks; Television broadcasting; Satellite television broadcasting; Wireless broadcasting; Providing access to databases; Providing user access to global computer networks; Information about telecommunication; Transmission of electronic mail; Radio broadcasting; Radio communications; Radio broadcasting; Radio broadcasting; Radio mobile telephony; Teleconferencing services; Cable television broadcasting; Rental of access time to global computer networks; Transmission of digital files; Message sending; Videoconferencing.

Class 41

Education; Providing of training; Preparing, conducting and arranging of congresses and seminars; Arranging and conducting of training and teaching courses; Entertainment; Sporting and

Smartwatches; Electronic pocket translators; Headphones.

Class 16

Paper; Cardboard; Handbooks [manuals]; Printed publications; Periodicals; Advertising posters; Bags [envelopes, pouches] of paper or plastic, for packaging; Stationery; Writing materials; Teaching materials [except apparatus]; Copying paper [stationery]; Towels of paper; Printed matter; Bookbinding material; Ink; Gummed tape [stationery]; Drawing squares; Drawing materials; Inking ribbons; Architects' models.

Class 35

Advertising; Providing business information via a web site; Provision of an on-line marketplace for buyers and sellers of goods and services; Marketing; Personnel management consultancy; Relocation services for businesses; Web site traffic optimization; Business auditing; Sponsorship search; Retail or wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; On-line advertising on a computer network; Business management and organization consultancy; Commercial administration of the licencing of the goods and services

cultural activities; Publication of texts; Publication of printed matter relating to education; Providing on-line electronic publications, not downloadable; Providing electronic publications online (not downloadable).

of others; Provision of commercial and business contact information; Sales promotion for others; Telemarketing services; Business management for freelance service providers; Compilation of information into computer databases; Updating and maintenance of data in computer databases; Appointment scheduling services [office functions].

Class 38

Wireless broadcasting; Message sending; Communications by computer terminals; Computer aided transmission of messages and images; Providing user access to global computer networks; Transmission of electronic mail; Providing telecommunications connections to a global computer network; Videoconferencing services; Providing online forums; Rental of access time to global computer networks; Electronic bulletin board services [telecommunications services]; Providing internet chatrooms; Providing access to databases; Transmission of digital files; Video-on-demand transmission; Streaming of data; Teleconferencing services; Transmission of greeting cards online; Voice mail services; Radio communications.

Class 41

Tuition; Nursery schools; Vocational guidance [education or training advice]; Coaching [training]; Education; On-line publication of electronic books and journals; Club services [entertainment or education]; Arranging and conducting of workshops [training]; Bookmobile services; Videotape production; Health club services [health and fitness training]; Toy rental; Games equipment rental; Arranging and conducting of colloquiums; Organization of shows [impresario services]; Providing on-line electronic publications, not downloadable; Film production, other than advertising films; Translation; Providing on-line videos, not downloadable; Game services provided on-line from a computer network.

Class 42

Technical project studies; Research and development of new products for others; Software as a service [SaaS]; Computer programming; Computer software design; Updating of computer software; Maintenance of computer software; Creating and maintaining web sites for others; Conversion of data or documents from physical to electronic media; Data conversion of computer programs and data [not physical conversion]; Quality

	control; Surveying; Chemical research; Material testing; Packaging design; Design of interior décor; Dress designing; Authenticating works of art; Graphic arts design; Digital asset management.
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14. 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.”

15. Guidance on this issue has also come from Jacob J. (as he then was) 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.

16. The General Court (“GC”) confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, that, even if goods or services are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

“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.”

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

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

unnaturally so as to produce a narrow meaning which does not cover the goods in question.”

18. In *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another*, [2000] F.S.R. 267 (HC), Neuberger J. (as he then was) stated that:

“I should add that I see no reason to give the word “cosmetics” and “toilet preparations” anything other than their natural meaning, subject, of course, to the normal and necessary principle that the words must be construed by reference to their context.”

19. In *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. (as the then was) stated that:

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.”

20. For the purposes of considering the issue of similarity of goods and services, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons (see *Separode Trade Mark* BL O-399-10 and *BVBA Management, Training en Consultancy v Benelux-Merkenbureau* [2007] ETMR 35 at paragraphs [30] to [38]).

21. 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 Office for Harmonization in the Internal Market (Trade Marks and Designs) (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 the responsibility for those goods lies with the same undertaking.”

22. In *Sanco SA v OHIM*, Case T-249/11, the GC indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. *chicken* against *transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted, as the Appointed Person, in *Sandra Amelia Mary Elliot v LRC Holdings Limited* BL-0-255-13:

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense – but it does not follow that wine and glassware are similar goods for trade mark purposes.”

Whilst on the other hand:

“... it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.”

23. I have submissions from both parties on the similarity of the goods and services in issue. I have not reproduced those submissions in full, but I have taken them all into consideration when reaching this decision.

Class 9

24. “Electronic publications, downloadable” appears in both the proprietor’s specification and the applicant’s specification. These goods are plainly identical. “Table computers” in the proprietor’s specification is clearly the same as “Computers” in the applicant’s specification. These goods are plainly identical. “Data processing apparatus” in the proprietor’s specification is clearly identical to “Data processing equipment” in the applicant’s specification.

25. “Downloadable application software for smartphones”, “Computer programs [downloadable software]”, “Computer software, recorded”, “Computer game software” and “Computer programmes [programs], recorded” in the proprietor’s specification all fall within the broader category of “Computer software” in the applicant’s specification. “Radios”, “Portable media players”, “Video screens” and “Headphones” in the proprietor’s specification all fall within the broader category of “Apparatus for recording, transmission or reproduction of sound or images” in the applicant’s specification. “Audiovisual teaching apparatus” in the proprietor’s specification falls within the broader category of “Instructional and teaching apparatus and instruments” in the applicant’s specification. These goods can, therefore, be considered identical on the principle outlined in *Meric*.

26. The Oxford English dictionary defines “Computers” as¹:

“An electronic device (or system of devices) which is used to store, manipulate, and communicate information, perform complex calculations, or control or regulate other devices or machines, and is capable of receiving information (data) and of processing it in accordance with variable procedural instructions (programs or software)...”

27. In light of this, I consider that “Smartwatches” and “Electronic pocket translators” in the proprietor’s specification fall within the broader category of “Computers” in the applicant’s specification. These goods can, therefore, be considered identical on the principle outlined in *Meric*. However, even if I am wrong then these goods would be considered highly similar.

28. “Downloadable music files” and “downloadable image files” in the proprietor’s specification have similar uses to “compact discs, DVDs and other digital recording media” in the applicant’s specification (that is, to convey the images or music stored on them). They will have the same uses because they can all be used to transfer images or sound and there will be competition between them because they are alternatives in the market place. I am satisfied that these goods are highly similar.

¹ <http://www.oed.com/view/Entry/37975?redirectedFrom=computer#eid>

29. That leaves “Measures”, “Eyeglasses” and “Animated Cartoons” in the proprietor’s specification. I have no submissions from the applicant on their similarity to its goods. The proprietor has argued that there is no similarity between “Measures” and “Eyeglasses” and the applicant’s goods. I have considered the nature, intended purpose, users, trade channels of the goods and whether there is a competitive or complementary relationship between these goods and the applicant’s goods and services. Without the benefit of any substantive submissions to assist me, I am not satisfied that there is any similarity between the goods and services at issue.

Class 16

30. “Handbooks [manuals]”, “Printed publications”, “Periodicals” and “Printed matter” in the proprietor’s specification share a degree of similarity with “Electronic publications, downloadable” in the applicant’s specification. They are likely to share the same users, for example in the case of a specialist magazine, people looking for information on a particular topic. They also have the same uses in that they provide information to the public. They are, of course, by their nature available through different channels (with printed publications being available through retail outlets and their online equivalents and electronic publications only being available through websites), but it is not uncommon for the same undertaking (such as a newspaper or magazine) to provide both electronic and printed publications. I therefore consider that these goods are highly similar.

31. The applicant argues that there is some similarity between “Advertising posters” in the proprietor’s specification and “Electronic publications, downloadable” in the applicant’s specification. I have no substantive submissions from the applicant as to why this is the case. The proprietor argues that there is no similarity between “Advertising posters” and any of the applicant’s goods. I have considered the nature, intended purpose, users, trade channels of the goods and whether there is a competitive or complementary relationship between these goods and the applicant’s goods. Without the benefit of any substantive submissions to assist me, I am not satisfied that there is any similarity between the goods at issue. Even if I am wrong in my finding that there is no similarity between these goods, they would only be similar

to a low degree. I am also satisfied that there is no similarity between “Advertising posters” in the proprietor’s specification and any of the services in the applicant’s specification.

32. The applicant argues that “Writing materials” and “Teaching materials [except apparatus]” in the proprietor’s specification are similar to “Instructional and teaching apparatus and instruments” in the applicant’s specification. “Teaching materials [except apparatus]” will have the same users and uses as “Instructional and teaching apparatus and instruments” as they will be used by teachers in the course of the provision of education. I have no submissions from the parties on what is meant by either of these terms. In my view, “Teaching materials [except apparatus]” will be goods such as lesson plans and reference books that will be used by teachers to prepare for and present lessons or courses. “Instructional and teaching apparatus and instruments”, on the other hand, will be equipment used during the course of lessons (for example, a Bunsen burner). Whilst these will have the same uses and users they will be available through different trade channels and will have different methods of use. I therefore consider that there will be only a medium degree of similarity between these goods.

33. With regard to “Writing materials”, I accept that these will, no doubt, be used by teachers during the course of educational activities. However, they will be available from very general retail outlets (such as stationary shops or supermarkets) whereas “Instructional and teaching apparatus and instruments” and specialist teaching materials will not. Whilst their uses (in an educational context) may be similar on a superficial level in that they are items used to assist education providers, their specific uses will clearly be very different. Taking all of this into account, I am not satisfied that there is any similarity between these goods, but if I am wrong, then they will be similar to only a low degree.

34. The applicant argues that the remaining goods in this class share a “low level of similarity” with its goods, although no further substantive submissions on this point are provided. The proprietor argues that there is no similarity between these goods and its own. I have considered the nature, intended purpose, users, trade channels of the goods and whether there is a competitive or complementary relationship between

these goods and the applicant's goods. Without the benefit of any substantive submissions to assist me, I am not satisfied that there is any similarity between the goods at issue. I am also satisfied that there is no similarity between the remaining goods in the proprietor's specification and the services in the applicant's specification.

Class 35

35. "Website traffic optimization" in the proprietor's specification shares a degree of similarity with "Web site forwarding services" in the applicant's specification. Website traffic optimisation services aim to increase the volume of traffic to a website and to improve the type of traffic visiting the website. Website forwarding services enable traffic to be re-directed to a different website. The use of these services is similar in that the main aim is to direct web traffic, although the uses are likely to differ in that forwarding services will be used for the purpose of re-directing (such as if a domain name has been changed) whereas website traffic optimisation services aim to bring in new traffic to an existing website. They are both services most likely to be used by businesses and are most likely to be purchased through specialist websites. These services are, therefore, similar to a medium degree.

36. "Providing access to databases" in the applicant's specification is the end result of "Compilation of information into computer databases" and "Updating and maintenance of data in computer databases" in the proprietor's specification. These services are complementary and are likely to be such that the average consumer would regard the same undertaking as being the provider of both access to the database and its compilation and maintenance. I therefore consider that these services are similar to a medium degree.

37. In respect of the remaining services in this class, the applicant argues that they have a "low level of similarity", although no substantive submissions are provided as to why this is the case. The proprietor argues that there is no similarity between the remaining services and its own services. I have considered the nature, intended purpose, users, trade channels of the services and whether there is a competitive or complementary relationship between these services and the applicant's services. Without the benefit of any substantive submissions to assist me, I am not satisfied that

there is any similarity between the services at issue. I am also satisfied that there is no similarity between the remaining services in the proprietor's specification and the goods in the applicant's specification.

Class 38

38. "Wireless broadcasting", "Message sending", "Communications by computer terminals", "Providing user access to global computer networks", "Transmission of electronic mail", "Rental of access time to global computer networks", "Providing access to databases", "Transmission of digital files", "Teleconferencing services" and "Radio communications" appear in both the proprietor's specification and the applicant's specification. These services are plainly identical.

39. "Videoconferencing services" in the proprietor's specification is plainly identical to "Videoconferencing" in the applicant's specification. "Providing online forums" in the proprietor's specification is plainly identical to "Provision of on-line forums" in the applicant's specification. "Electronic bulletin board services [telecommunications services]" in the proprietor's specification is plainly identical to "Services regarding electronic bulletin boards (telecommunications)" in the applicant's specification.

40. "Transmission of electronic mail" in the applicant's specification falls within the broader category of "computer aided transmission of messages and images" in the proprietor's specification. "Providing user access to global computer networks" in the applicant's specification falls within the broader category of "Providing telecommunications connections to a global computer network" in the proprietor's specification. "Providing internet chatrooms" in the proprietor's specification falls within the broader category of "Provision of on-line forums" in the applicant's specification. "Video-on-demand transmission" and "Streaming of data" in the proprietor's specification both fall within the broader category of "Webcasting services" in the applicant's specification. "Transmission of greetings cards online" and "Voice mail services" in the proprietor's specification both fall within the broader category of "Message sending" in the applicant's specification. These goods can, therefore, be considered identical on the principle outlined in *Meric*.

Class 41

41. The applicant submits that the “class 41 services of the contested Registration are identically contained in the list of services of the Earlier Registration”. The proprietor has made no submissions in respect of these services.

42. “Education” and “Providing on-line electronic publications, not downloadable” appear in both the proprietor’s specification and the applicant’s specification and are plainly identical. “On-line publication of electronic books and journals” in the proprietor’s specification falls within the broader category of “Providing electronic publications online (not downloadable)” in the applicant’s specification. These goods can, therefore, be considered identical on the principle outlined in *Meric*.

43. “Tuition”, “Nursery schools” and “Vocational guidance [education or training advice]” in the proprietor’s specification falls within the broader category of “Education” in the applicant’s specification. “Coaching [training]” in the proprietor’s specification falls within the broader category of “Providing of training” in the applicant’s specification. “Arranging and conducting of workshops [training]” in the proprietor’s specification falls within the broader category of “Arranging and conducting of training and teaching courses” in the applicant’s specification. “Arranging and conducting of colloquiums” in the proprietor’s specification falls within the broader category of “Preparing, conducting and arranging of congresses and seminars” in the applicant’s specification. “Toy rental”, “Games equipment rental”, “Organization of shows [impresario services]”, “Games services provided on-line from a computer network”, “Club services [entertainment or education]” and “Providing on-line videos, not downloadable” in the proprietor’s specification all fall within the broader category of “Entertainment” in the applicant’s specification. “Health club services [health and fitness training]” in the proprietor’s specification falls within the broader category of “Sporting and cultural activities” in the applicant’s specification. These goods and services can, therefore, be considered identical on the principle outlined in *Meric*.

44. That leaves “Bookmobile services”, “Videotape production”, “Film production, other than advertising films” and “Translation” in the proprietor’s specification. Although the applicant argues in its submissions that all services in this category are “identical” to

the proprietor's specification, I have no specific submissions on why it considers this to be the case. I have considered the nature, intended purpose, users, trade channels of the services and whether there is a competitive or complementary relationship between these services and the applicant's goods and services. Without the benefit of any substantive submissions to assist me, I am not satisfied that there is any similarity between the services at issue.

Class 42

45. "Software as a service" in the proprietor's specification is a software licencing and delivery model. This is, therefore, similar to "Computer software" in the applicant's specification. They are likely to have the same users as people looking to purchase a specific type of software may choose to do so through the "Software as a service" model rather than purchasing it outright. They will also have the same uses. These goods/services are likely to be in competition because users will have the option of purchasing the software outright and paying a one-off fee or purchasing the "Software as a service" and paying through the licencing model. These may also be available through the same channels in some circumstances, such as websites offering software for purchase and software as a service. I therefore consider these goods/services to be highly similar.

46. Computer software is the end result of computer software design. The relationship between software itself and the design, development and maintenance of it, which is complementary, is likely to be one where the average consumer regards the same undertaking as being the provider of both the goods and the services. As noted by the applicant, "it is common for software providers to offer/release updates for software products." I therefore consider that "Computer software design", "Maintenance of computer software" and "Updating of computer software" in the proprietor's specification will be highly similar to "Computer software" in the applicant's specification.

47. "Computer programming" is the process of building computer programs. For the same reasons outlined above, the public are likely to consider that computer programs are provided by the same undertaking that has carried out the "Computer

programming". I found in paragraph 25 above, that "Computer programs [downloadable software]" in the proprietor's specification falls within the broader category of "Computer software" in the applicant's specification. I therefore consider that the service of "Computer programming" in the proprietor's specification will be similar to a medium degree to "Computer software" in the applicant's specification.

48. The applicant submits that "Creating and maintaining web sites for others", "Conversion of data or documents from physical to electronic media" and "Data conversion of computer programs and data [not physical conversion]" in the proprietor's specification are similar to "computer software" in the applicant's specification. The applicant argues that software will be:

"...produced/offered by the same kinds of companies as the Proprietor's aforesaid services. They will be aimed at the same end consumers and there is a complementary relationship between the goods and services. They would be provided via the same distribution channels."

49. I am not satisfied that these goods and services would be provided by the same companies. The services in the proprietor's specification are mainly, in my experience, delivered by businesses that specialise in this service area and that would not normally also sell goods such as computer software. Whilst there may be similar users on a very superficial level (such as businesses that may use both computer software and these services) this is not enough on its own to find similarity. Without the benefit of detailed submissions on why these goods and services should be considered similar, I am not satisfied that they share any similarity. If I am wrong and there is similarity between the goods and services, they would only be similar to a low degree.

50. The applicant submits that the remaining services in this class have a "low similarity" to the proprietor's services. The proprietor submits that the remaining services in this class are not similar to its own goods or services. I have considered the nature, intended purpose, users, trade channels of the services and whether there is a competitive or complementary relationship between these services and the applicant's goods and services. Without the benefit of any substantive submissions to assist me, I am not satisfied that there is any similarity between the services at issue.

Summary of goods and services comparison

51. As some similarity between the goods and services is necessary to engage the test for likelihood of confusion², my findings above mean that the application must fail in respect of the following goods and services:

- Class 9 Measures; Eyeglasses; Animated cartoons
- Class 16 Paper; Cardboard; Bags [envelopes, pouches] of paper or plastics, for packaging; Stationery; Writing Materials; Copying Paper [stationery]; Towels of Paper; Bookbinding material; Ink; Gummed tape [stationery], Drawing squares; Drawing materials; Inking ribbons; Architects models.
- Class 35 Advertising; Providing business information via a web site; Provision of an on-line marketplace for buyers and sellers of goods and services; Marketing; Personnel management consultancy; Relocation services for businesses; Business auditing; Sponsorship search; Retail or wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; On-line advertising on a computer network; Business management and organization consultancy; Provision of commercial and business contact information; Sales promotion for others; Telemarketing services; Business management for freelance service providers; Appointment scheduling services [office functions].
- Class 41 Bookmobile services; Videotape production; Film production, other than advertising films; Translation.
- Class 42 Technical project studies; Research and development of new products for others; Creating and maintaining websites for others; Conversion of data or documents from physical to electronic media; Data conversion of computer programs and data [not physical conversion]; Quality

² For example, see *Waterford Wedgwood PLC v OHIM*, C-398/07 P (CJEU)

control; Surveying; Chemical research; Material testing; Packaging design; Design of interior décor; Dress designing; Authenticating works of art; Graphic arts design; Digital asset management.

The average consumer and the nature of the purchasing act

52. 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 these 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”.

53. I have no submissions from the proprietor on the average consumer for these goods and services or on the purchasing process for the goods and services at issue. The applicant argued as follows in its submissions dated 8 March 2018:

“9. ...In the present case, the goods and services found to be identical or similar are directed at the public at large and business customers with specific professional knowledge or expertise. The public's degree of attentiveness may vary from average to high depending on the goods and services at issue.”

54. The goods and services vary from specialist products such as website traffic optimization to more general products such as headphones. The average consumer in these proceedings will therefore either be a specialist user (such as a technological business looking to purchase specialist software) or a member of the general public.

The frequency of purchase of the goods and services in issue will vary, but are likely to be fairly infrequent. The cost of the goods and services in issue will vary significantly (from headphones which can be of low cost to specialist computer software which will be of higher cost). The level of attention paid by the average consumer is likely to vary from average (such as a member of the public purchasing a set of headphones) to high (such as a business user purchasing specialist computer software).

55. The goods are, in my experience, most likely to be obtained by self-selection from the shelves of a retail outlet or a website equivalent. Consequently, visual considerations are likely to dominate the selection process. However, I do not discount that there may be an aural component to the purchase of the goods, given that advice may be sought from sales assistants or representatives. The services are likely to be purchased from specialist retail outlets or their online equivalent. The purchasing process for the services is likely to be dominated by visual considerations, as the average consumer is likely to select the services at issue following inspection of the premises' frontage on the high street, on websites and in advertisements (such as flyers, posters or online adverts). However, given that word-of-mouth recommendations may also play a part, I do not discount that there will be an aural component to the selection of the services.

Comparison of the trade marks

56. 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.”

57. 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.

58. The respective trade marks are shown below:

Applicant’s trade mark	Proprietor’s trade mark
Wow room	WowSchool

59. I have lengthy submissions from the applicant on the similarity of the marks, which I do not propose to reproduce in full. However, I have given all of its submissions consideration in reaching this decision.

60. In its Counterstatement, the proprietor argues as follows:

“The subject mark is “WowSchool”, while the Earlier Trade Mark of the Cancellation Applicant is “Wow room”. Even though both the subject mark and the Earlier Trade Mark contain the element “Wow”, the remaining elements in the marks, namely “School” and “room”, are visually, phonetically and conceptually different from each other. As marks should be compared as a whole, the significant difference between “School” in the subject mark and “room” in the Earlier Trade Mark should also be taken into consideration. The subject mark and the Earlier Trade Mark are therefore not confusingly similar to each other as a whole.”

61. The proprietor’s mark consists of nine letters – “WowSchool”. The first and fourth letters are capitalised whilst the rest of the letters are in lower case. Although

conjoined, I think it clear that the mark will be perceived as the two dictionary words “Wow” and “School”. The applicant’s mark consists of seven letters – “Wow room”. The first letter is capitalised whilst the rest of the letters are in lower case. The mark consists of two dictionary words “Wow” and “room”. The word “Wow” in both marks is exclamatory and conveys the impression of surprise or awe. The word “School” in the proprietor’s mark is descriptive of some of the goods and services in issue, specifically those relating to education. I agree that the use of the word “room” in the applicant’s mark may also allude to some of the goods and services in issue (again, predominantly those relating to education), although the link is less clear than in the case of the word “School”. The word “Wow” is not descriptive or allusive and in my view it plays the greater role in the overall impression of both marks. The words “School” and “room” play a lesser role in the overall impression of the marks.

62. Visually, both marks contain the word “Wow”. There is, of course, a difference on account of the additional words at the end of the marks (“School” and “room”). I note the applicant’s argument that both words contain the double letter “o” which it claims increases the degree of similarity between them. I am not convinced that this argument adds much to the applicant’s position given that the second word in both marks have an ordinary dictionary meaning which the consumer will recognise. I consider that the consumer is more likely to recognise the words themselves, rather than give detailed consideration to their construction.

63. The applicant has also argued that the position of the common word “Wow” at the start of both marks is important because consumers read from left to right. In *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, the GC noted that the beginnings of words tend to have more visual and aural impact than the ends. The court stated:

“81. It is clear that visually the similarities between the word marks MUNDICOLOR and the mark applied for, MUNDICOR, are very pronounced. As was pointed out by the Board of Appeal, the only visual difference between the signs is in the additional letters ‘lo’ which characterise the earlier marks and which are, however, preceded in those marks by six letters placed in the same position as in the mark MUNDICOR and followed by the letter ‘r’, which is also the final letter of the mark applied for. Given that, as the Opposition Division

and the Board of Appeal rightly held, the consumer normally attaches more importance to the first part of words, the presence of the same root 'mundico' in the opposing signs gives rise to a strong visual similarity, which is, moreover, reinforced by the presence of the letter 'r' at the end of the two signs. Given those similarities, the applicant's argument based on the difference in length of the opposing signs is insufficient to dispel the existence of a strong visual similarity.

82. As regards aural characteristics, it should be noted first that all eight letters of the mark MUNDICOR are included in the MUNDICOLOR marks.

83. Second, the first two syllables of the opposing signs forming the prefix 'mundi' are the same. In that respect, it should again be emphasised that the attention of the consumer is usually directed to the beginning of the word. Those features make the sound very similar."

64. As the marks both start with the same word, I consider there to be a medium degree of visual similarity between them.

65. Aurally, each mark will be broken down into its two respective words – "Wow" and "School" or "Wow" and "room". There is of course, a degree of aural similarity between the marks because the first word will be pronounced identically. However, the different second word will provide a point of difference. Consequently, I consider the marks to be aurally similar to a medium degree.

66. Conceptually, the word "Wow" is a recognisable dictionary word with no connection to the goods and services in issue. "Wow" is laudatory in its meaning and is often used to express surprise or admiration. The words "School" and "room" are recognisable dictionary words with recognisable meanings. "School" is recognised as meaning an institution for learning. "Room" is recognised as meaning a particular space (such as a room in a house). The word "School" is very strongly associated with education. The word "Room" may be associated with education (in that teaching commonly takes places in a classroom), but it of course can also be associated with any number of

other places or uses. I consider that the marks are conceptually similar to a medium degree.

Distinctive character of the earlier mark

67. 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 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).”

68. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

69. As the opponent has not filed any evidence to show that its mark has enhanced its distinctiveness through use, I have only the inherent position to consider. I have no submissions from the proprietor on the distinctiveness of the earlier mark. The applicant argues, in their submissions dated 8 March 2018:

“14. ...In the present case, the earlier trade mark as a whole has no descriptive or generic meaning for any of the goods or services from the perspective of the public in the relevant territory. Therefore, the distinctiveness of the earlier mark must be seen as normal.”

70. I must make an assessment of the inherent distinctiveness of the earlier mark as a whole. Both words are common dictionary words with a recognisable meaning. The word “wow” is laudatory and is, consequently, not a highly distinctive word to use in a trade mark. The word “room” may be considered allusive in respect of some of the goods and services (although not all). In considering the degree of inherent distinctive character in the earlier mark I remind myself of the decision in *Kurt Geiger v A-List Corporate Limited*, BL O-075-13, in which Mr Iain Purvis Q.C. as the Appointed Person pointed out that the level of ‘distinctive character’ is only likely to increase the likelihood of confusion to the extent that it resides in the element of the marks that is identical or similar. I, therefore, consider that the mark has a medium degree of inherent distinctiveness.

Likelihood of confusion

71. 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. As I mentioned above, it is necessary for me to keep in mind the distinctive

character of the opponent's trade mark, the average consumer of the goods and the nature of the purchasing 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 he has retained in his mind.

72. I have found the parties' marks to be visually, aurally and conceptually similar to a medium degree. I have found the earlier mark to have a medium degree of inherent distinctive character. I have identified the average consumer to be a specialist (such as a technological business) or a member of the general public who will select the goods and services primarily by visual means (although I do not discount an aural component), and I have concluded that the degree of attention paid will vary from average to high. I have found the parties' goods and services to be either identical, highly similar or similar to a medium or low degree (except for those which I have listed in paragraph 51, which are not similar).

73. Whilst keeping in mind the conceptual similarity of the marks, I consider that the visual and aural differences between the marks are sufficient to ensure that the marks will not be misremembered or mistakenly recalled as each other. This is particularly so given that I have found that the primary means of contact with the marks will be visual. I am satisfied that the consumer will not simply mistake one mark for another and that there is therefore no risk of direct confusion.

74. 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 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.”

75. The marks are conceptually, aurally and visually similar to a medium degree. The earlier mark is of medium inherent distinctiveness and the goods and services at issue are either identical, highly similar or similar to a medium or low degree. The common element of the marks, the word “wow”, is laudatory and therefore lower in distinctiveness. It does not, itself, describe or allude to the goods or services. In this case, it is used in combination with the words “school” and “room” which themselves are either descriptive or allusive of some of the goods and services in issue (in that schools are an institution for learning and classrooms are associated with education). I, therefore, consider that there will be an expectation on the part of the average consumer that the goods and services which are either identical or similar to a high or medium degree will come from the same or economically linked undertakings. The combination of the word “wow” with the words “room” and “school” in the parties’ mark give the impression of being two separate sub-brands of the same economic undertaking. There is a likelihood of indirect confusion in respect of these goods and services. I am satisfied that in respect of the goods and services which are only similar to a low degree, the similarities between the marks will be offset by the differences between the goods and services. There will, consequently, be no expectation on the part of the consumer that they are from the same or economically linked undertakings. No likelihood of confusion will exist in respect of these goods and services.

CONCLUSION

76. The invalidation has succeeded in relation to some of the goods and services. **The registration is hereby declared invalid in respect of the following:**

Class 9 Electronic publications, downloadable; Table computers; Data processing apparatus; Downloadable application software for smartphones; Computer programs [downloadable software];

Computer software, recorded; Computer game software; Computer programmes [programs], recorded; Radios; Portable media players; Video screens; Headphones; Audiovisual teaching apparatus; Smartwatches; Electronic pocket translators; Downloadable music files; Downloadable image files.

Class 16 Handbooks [manuals]; Printed publications; Periodicals; Printed matter; Teaching materials [except apparatus].

Class 35 Website traffic optimization; Compilation of information into computer databases; Updating and maintenance of data in computer databases.

Class 38 Wireless broadcasting; Message sending; Communications by computer terminals; Providing user access to global computer networks; Transmission of electronic mail; Rental of access time to global computer networks; Providing access to databases; Transmission of digital files; Teleconferencing services; Radio communications; Videoconferencing services; Providing online forums; Electronic bulletin board services [telecommunications services]; Computer aided transmission of messages and images; Providing telecommunications to a global computer network; Providing internet chatrooms; Video-on-demand transmission; Streaming of data; Transmission of greetings cards online; Voice mail services.

Class 41 Education; Providing on-line electronic publications, not downloadable; On-line publication of electronic books and journals; Tuition; Nursery Schools; Vocational guidance [education or training advice]; Coaching [training]; Arranging and conducting of workshops [training]; Arranging and conducting of colloquiums; Toy rental; Games equipment rental; Organization of shows [impresario services]; Games services provided on-line from a computer network; Club services [entertainment or

education]; Providing on-line videos, not downloadable; Health club services [health and fitness training].

Class 42 Software as a service [SaaS]; Computer software design; Maintenance of computer software; Updating of computer software; Computer programming.

77. Under the provisions of section 47(6) of the Act, the registration is deemed never to have been made in respect of the goods and services listed above. The trade mark remains validly registered for the following goods and services:

Class 9 Measures; Eyeglasses; Animated Cartoons

Class 16 Paper; Cardboard; Advertising posters; Bags [enveloped, pouches] of paper or plastic, for packaging; Stationery; Writing materials; Copying paper [stationery]; Towels of paper; Bookbinding material; Ink; Gummed tape [stationery]; Drawing squares; Drawing materials; Inking ribbons; Architects' models.

Class 35 Advertising; Providing business information via a web site; Provision of an on-line marketplace for buyers and sellers of goods and services; Marketing; Personnel management consultancy; Relocation services for businesses; Business auditing; Sponsorship search; Retail or wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; On-line advertising on a computer network; Business management and organization consultancy; Commercial administration of the licencing of the goods and services of others; Provision of commercial and business contact information; Sales promotion for others; Telemarketing services; Business management for freelance service providers; Appointment scheduling services [office functions].

Class 41 Bookmobile services; Videotape production; Film production, other than advertising films; Translation.

Class 42 Technical project studies; Research and development of new products for others; Creating and maintaining web sites for others; Conversion of data or documents from physical to electronic media; Data conversion of computer programs and data [not physical conversion]; Quality control; Surveying; Chemical research; Material testing; Packaging design; Design of interior décor; Dress designing; Authenticating works of art; Graphic arts design; Digital asset management.

COSTS

78. As the parties have both been successful in roughly equal measure I do not consider that it would be appropriate to make an award of costs in either of their favour.

Dated 20th September 2018

S WILSON

For the Registrar