

**O/0119/23**

**TRADE MARKS ACT 1994**

**TRADE MARKS APPLICATIONS 3657157 and 3657155**

**BY MARTIN ORENA**

**AND**

**CONSOLIDATED OPPOSITIONS 428330 & 432018**

**BY GIORGIO ARMANI SpA**

## Background and pleadings

1. These are consolidated oppositions by Giorgio Armani S.p.A. (“the opponent”) to applications 3657157 and 3657155 filed on 17<sup>th</sup> June 2021 (“the relevant date”) by Martin Orena (“the applicant”) to register the trade marks shown below.



2. The first application is for a series of two marks with the mark shown on the left above represented in black and white, as well as in the colours dark blue and gold. Nothing turns on the precise colours used because registration in black and white covers use of the logo in any colours, provided they respect the contrast of dark/light tones depicted in the black and white mark.<sup>1</sup> For the sake of simplicity, I will therefore examine the application to register the series of marks as though it was an application to register (just) the mark shown above on the left. However, my findings will apply to both marks in the series. The second application is for the same (black and white) logo mark with the words ‘DIGITAL MONEY’ shown beneath.

3. The applications cover a wide range of goods in class 9, including *computers and computer peripheral devices; computer software; computer software in relation to finance and managing finance; computer software for managing, buying and exchanging cryptocurrency and assets*, a wide range of services in class 35, including retail services for the above goods, financial services in class 36, and scientific and technological services in class 42, including *design and development services of*

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<sup>1</sup> The Court of Appeal has stated on two occasions following the CJEU’s judgment in C-252/12 *Specsavers*, (see paragraph 5 of the judgment of the Court of Appeal in *Specsavers* [2014] EWCA Civ 1294 and *J.W. Spear & Sons Ltd v Zynga, Inc.* [2015] EWCA Civ 290, at paragraph 47) that registration of a trade mark in black and white covers use of the mark in colour.

*computer software and computer hardware*. A full list of the goods/services applied for is shown in Annex A.<sup>2</sup>

4. The opponent is the proprietor of the marks shown below.

UK00915743891



UK00915743818



5. These marks were applied for on 10<sup>th</sup> August 2016 as EU trade marks. They were registered as such on 6<sup>th</sup> January 2017. Following the UK's departure from the EU they are now protected in the UK as 'comparable' trade marks. This means they are treated as having been applied for and registered in the UK on the dates they were applied for and registered in the EU. They are therefore 'earlier trade marks' for the purposes of section 6 of the Trade Marks Act 1994 ("the Act").

6. The earlier marks are registered for a very wide range of goods/services in 28 of the 45 classes of goods/services into which the register is divided. The opponent relies on the registration of the earlier marks for goods/services in classes 9, 10, 14, 28, 35,

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<sup>2</sup> The list of goods/services is the same for both applications.

41 and 42. The opponent's pleadings say these goods/services are identical or similar to the goods/services covered by the contested marks. The opponent now accepts that none of the goods/services covered by the earlier marks are similar to the applicant's financial services in class 36, or a few of the goods specified in class 9 of the applications. As regards the goods/services the opponent maintains are identical or similar, it claims that:

- (i) The contested marks are similar to the earlier marks;
- (ii) The earlier marks have acquired an enhanced level of distinctiveness as a result of extensive use;
- (iii) There is a likelihood of confusion on the part of the public, including the likelihood of association.

7. Consequently, the opponent claims that registration of the contested marks in relation to identical or similar goods/services would be contrary to section 5(2)(b) of the Act, and registration should be refused accordingly.

8. The opponent further claims that the earlier marks have been used extensively in the UK and EU, prior to the relevant date, and acquired a substantial reputation in relation to a range of clothing, headgear and footwear in class 25. The opponent claims that use of the contested marks would, without due cause, take unfair advantage and/or be detrimental to the reputation or distinctive character of the earlier marks.

9. Consequently, the opponent claims that registration of the contested marks for any of the goods/services applied for would be contrary to section 5(3) of the Act, and registration should be refused accordingly.

10. The applicant filed a counterstatement denying the claims made, including that the claim that the marks are similar, and putting the opponent to proof of the reputation claimed for the earlier trade marks.

11. Both sides ask for costs.

## **Representation**

12. The applicant is represented by Trade Mark Wizards Limited, who I understand are a firm of trade mark attorneys. The opponent is represented by Haseltine Lake Kempner LLP (also trade mark attorneys).

13. A hearing took place (remotely) on 12<sup>th</sup> January 2023 at which Mr Michael Conway of Haseltine Lake Kempner represented the opponent. Ms. Kendal Watkinson appeared as counsel for the applicant.

## **The evidence**

14. Both sides filed evidence. The opponent's evidence consists of a witness statement (with 14 exhibits) by Antonio Croce, who is the opponent's Intellectual Property Manager. The main purposes of Mr Croce's evidence is to (1) provide the history and evidence of extensive use of the earlier marks in the UK and EU, (2) show there is a connection between fashion retailers and financial services through the provision of in-store credit cards and loyalty cards, and (3) show that the applicant trades in cryptocurrency goods/services, and that 40% of the British have a negative view of cryptocurrency.

15. The applicant's evidence consists of a witness statement (with 1 exhibit) by Martin Orena. The purposes of Mr Orena's evidence are to (1) show that third parties use eagle logos, including in relation to clothing, and (2) dispute the facts relied on by the opponent to support its claim that there is a connection between fashion goods and financial services.

## **The statutory provisions**

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

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

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

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

17. Section 5(3) states:

*“(3) A trade mark which-  
  
is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.”*

17. Section 5A of the Act is as follows:

*“5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”*

## **Decision and outcome**

18. The opposition fails. The opposed marks will therefore proceed to registration. The main reason for this is that the respective marks are not similar enough to give rise to any of the conditions against which protection is provided by sections 5(2) or 5(3) of the Act. In relation to the opposition under section 5(2)(b), the opposition must fail anyway in respect of the goods/services covered by the contested marks which are not similar to any of the goods/services covered by the earlier marks. This includes all the applicant’s specified financial services in class 36.

## **Detailed assessment of section 5(2)(b) ground**

19. 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 upon in these proceedings are derived from an EU Directive. That is why this decision continues to refer to retained EU trade mark case law.

### Global assessment of the likelihood of confusion

20. 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 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/services

21. The opponent maintains that some of the goods/services covered by the earlier marks are identical or similar to the goods/services covered by the contested marks (to the extent indicated in Annex B).

22. The opponent (rightly) no longer maintains that any of the goods/services covered by the earlier marks are similar to any of the services listed in class 36 of the applications, or the following goods in class 9:

*Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling the distribution or use of electricity; mechanisms for coin-operated apparatus.*

23. Establishing some similarity between the respective goods/services is a precondition for the application of section 5(2) of the Act. It follows that the opposition under section 5(2) fails in respect of the applicant's services in class 36 and the goods in class 9 listed in the previous paragraph.

24. Some of the respective goods/services are clearly identical. For example, *computer software; computer software applications* in class 9 cover (and are therefore identical to) *downloadable applications and software for smart watches and mobile devices, for processing, reviewing and editing data, to enable users to control the presentation and information available from the devices*. For present purposes, I therefore accept that the respective goods/services the opponent claims are identical are indeed so, or at least similar.

25. The opponent relies on the generality of many of the terms covered by the earlier marks, and the generality of some of the terms covered by the contested marks, to identify possible similarities in the nature, purpose, method of use, or a complementary relationship between the goods/services it claims are similar.<sup>3</sup> For example, the following goods/services covered by the earlier marks:

*Class 9: Wireless communication devices featuring telecommunication functionality to allow the transmission of text, data, audio, image and video files; downloadable applications and software for smart watches and mobile devices, for processing, reviewing and editing data, to enable users to control the presentation and information available from the devices.*

*Class 35: The bringing together, for the benefit of others of electronic devices....*

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<sup>3</sup> Per paragraph 23 of the CJEU's judgment in *Canon* case C-39/97

*Class 42: Design of software to identify, store, report, monitor, upload and download data and information from wearable digital electronic devices; design consultancy; industrial design.*

26. Even allowing for the generality of many of the terms at issue and the case law about complementary goods/services, I see no relevant similarity between any of the goods/services covered by the earlier marks and the following very specific goods/services covered by the contested marks:

*Class 9: Computer software for sending cryptocurrency and crypto tokens to other users; computer software for storing cryptocurrencies and cryptotokens; crypto tokens; security tokens; cryptographically protected virtual currency systems for facilitating digitally recorded financial transactions within an organized, internet-based virtual community, business or social network;*

*Class 35: Retail and online retail services in relation to the sale of computer software for sending cryptocurrency and crypto tokens to other users, computer software for storing cryptocurrencies and crypto tokens, crypto tokens, security tokens.*

*Class 42: Consultation services in relation to all types of currency, including digital currency; data storage, authentication, and certification via blockchain.*

27. The same applies to the following more general services, which appear to me to be different in all relevant respects to the goods/services covered by the earlier marks:

*Class 35: Advertising [which in this context means advertising for others]; business administration and management; office functions.*

*Class 42: Quality control and authentication services.*

28. It follows that the opposition under section 5(2)(b) would also have failed in relation to the goods/services specified in the previous two paragraphs, even if I were with the opponent on the other aspects of its section 5(2) case.

### Average consumer

29. The opponent submits that the average consumer of all the goods/services covered by the contested marks is, or includes, members of the general public. According to the opponent, such consumers will pay a normal degree of attention when using the goods/services. Where the goods/services may be selected by professional or business users, the opponent concedes that such consumers will pay a higher degree of attention, but only at the level of “*slightly above average.*”

30. In my view, some of the goods/services covered by the contested marks are likely to be selected mainly or exclusively by business users. For example:

Class 9: Quantum computers; Cryptographically protected virtual currency systems for facilitating digitally recorded financial transactions within an organized, internet-based virtual community, business or social network

Class 42: Design and development services of computer software and computer hardware; scientific and technological services and research and design relating thereto; industrial analysis, industrial research and industrial design services.

31. I accept that most (but not all) of the goods/services covered by the contested marks could be used by members of the general public, even if they are not involved in the selection process. However, as they are nearly all technical, scientific or financial goods/services, I find that the average consumer or user of most of the goods/services is likely to pay an above average degree of attention ranging from just ‘above average’ to ‘high’. However, there are a couple of descriptions in the specification (e.g. computer software at large) which could cover relatively everyday goods, such as an app’ for a phone. The user of such goods could indeed be a member of the general public paying a normal degree of attention. I will keep this in mind.

Similarity of marks

32. The respective trade marks are shown below:

Earlier trade marks	Contested trade marks
UK00915743891 	UK3657157 
UK00915743818 	UK3657155 

33. The CJEU stated in *Bimbo SA v OHIM*<sup>4</sup> 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*

<sup>4</sup> See paragraph 34 of the judgment in Case C-591/12P

*impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”*

34. Mr Conway accepted that the opponent’s best case rested on UK00915743891. I will therefore focus mainly on the similarity between this mark and the contested marks. Mr Conway also made it clear at the hearing that the opponent’s case does not rest merely on the conceptual similarity of the marks depicting eagles; it also depends on the visual similarities listed below.

35. The opponent has identified the following similarities:

- (i) The earlier mark is an abstract depiction of an eagle;
- (ii) The contested marks also depict an eagle;
- (iii) Each of the depictions shows an eagle with its head facing to the right (from the viewer’s perspective);
- (iv) The earlier mark features horizontal dark and white lines, as does the wing of the eagle depicted in the contested marks;
- (v) Although the wing(s) shown in the marks are basically rectilinear (i.e. formed from mainly straight lines), the tips of the wing(s) are similarly rounded.

36. Ms Watkinson’s skeleton argument (for the applicant) accepted that the bird-like element of the contested marks was intended to represent the side of an eagle. She therefore also accepted that there was some degree of conceptual similarity between the marks in that they each represented *“a bird or flying animal of some description.”* However, she pointed out that the device in the contested marks includes a D-like central element from which the ‘wing’ and ‘head’ of the eagle emerge. The applicant therefore contends that the contested marks are clearly different from the earlier mark.

37. As the applicant accepts that the bird-like device element of its marks is intended to represent an eagle, I find that at least a significant proportion of the relevant public would see it as intended. I therefore find that the marks are conceptually similar.

38. I also accept that there is a degree of similarity in the way the wing shown in the contested marks is – like the wings in the earlier mark - composed of a number of thicker dark lines separated by thinner white (or lighter) lines. The direction of the eagles' heads is another point of similarity. And the absence of any visible legs could be said to be a further point of similarity. However, in my view, the visual similarities are more than offset by the differences between the marks. These include:

- (i) The D-like 'body' of the eagle in the contested marks, which has no counterpart in the earlier mark and stands out, partly because of its relative size, and partly because of the difference in tone between this and the rest of the device;
- (ii) The eagle represented in the earlier mark is depicted with two open wings creating a very angular V-like shape and the impression of a front-on view of the eagle, whereas the eagle represented in the contested marks appears to be a side-on view;
- (iii) The head of the eagle represented in the contested marks is positioned above the top line of the wing, whereas the head of the eagle in the earlier mark is positioned in line with the top of the wings (making the top of the mark noticeably flat across its whole width).

39. There are other differences, such as the number of horizontal lines used to make up the wing(s), and the different shape and lower degree of abstraction in the head of the applicant's eagle (e.g. the presence of an eye). However, although these detailed differences may contribute to the overall impressions created by the marks, I do not think that, by themselves, they are likely to be recalled as points of significant difference. Consequently, I do not attach much weight to them.

40. It appears to be common ground that as the earlier '891 mark contains no words/letters, it is not possible to undertake a meaningful aural comparison of the marks.

41. I find that the visual differences identified above more than offset the conceptual and visual similarities between the respective marks. Standing back and just looking

at the marks from the perspective of an average consumer, I find them to be similar to only a low degree.

42. These considerations apply equally to the earlier '818 mark, which includes the letters 'GA'. As the applicant points out, the inclusion of these letters creates a point of aural dissimilarity between this mark and the contested '155 mark. This is because this mark is likely to be referred to by the words 'Digital Money', whereas the '818 mark is likely to be referred to by the letters 'GA'.

#### Distinctive character of the earlier marks

43. In *Lloyd Schuhfabrik Meyer & Co.* the CJEU stated that:

*“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).*

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

44. The opponent submits that the earlier marks are inherently highly distinctive. The opponent accepts that a device of an eagle is not highly distinctive *per se*. As I

understand it, the opponent's case is that the particular form of the eagle taken in the earlier marks is particularly striking and memorable. When I asked her about it at the hearing, Ms Watkinson accepted that the earlier marks were inherently distinctive to a normal degree. She disputed the opponent's submission that they are highly distinctive marks.

45. The earlier marks are not descriptive of the goods/services for which they are registered. There is a significant degree of stylisation about them, so they are more than just a picture of an eagle. However, the stylisation (described in paragraph 35 above) is not, in my view, so striking and memorable as to elevate the earlier marks into the highest category of inherently distinctive marks, such as wholly invented words (e.g. HOVIS) or novel, attention grabbing devices, such as a representation of a pheasant wearing a top hat and carrying a cane. In my judgement, the earlier '891 mark has a 'normal' degree of inherent distinctive character. The mere addition of the letters 'GA' to the '818 mark does not change that assessment.

46. The opponent's pleaded case is that the earlier marks have an enhanced degree of distinctive character because they are well known marks as a result of their use in the UK and EU. At the hearing, the opponent's representative realistically accepted that the claim of reputation and enhanced distinctive character was limited to use of the marks in relation to clothing, headgear and footwear in class 25.<sup>5</sup>

47. This was a realistic assessment because, with one exception, there is no evidence of any use of the earlier marks in the UK or EU in relation to any of the goods/services on which the opponent relies for its section 5(2)(b) case. The exception is smartwatches. There is an example of smartwatches bearing the '818 mark on sale on the website of Selfridges in 2019.<sup>6</sup> The goods were priced in sterling, indicating they were aimed at the UK market. There is also a couple of examples of press coverage about the launch of smartwatches under the earlier marks in 2016-2018.<sup>7</sup> However, these articles are from US websites and they appear to be aimed at the US market. Mr Croce's narrative evidence takes the matter no further. He says that the earlier marks have been used in the UK since 1989 in relation to various items of

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<sup>5</sup> See pages 8 and 12 of the transcript of the hearing

<sup>6</sup> See exhibit AC6

<sup>7</sup> See exhibit AC10

clothing. He also says that the marks are used in relation to watches, baby products and fragrances. However, he does not say when such broader use started, or provide any information about the extent of any sales of such goods.

48. Section 100 of the Act states that:

*“100. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”*

49. In my view, the opponent has not shown that, at the relevant date, the earlier marks had acquired an enhanced distinctive character through use in relation to any of the goods/services it relies on for its section 5(2)(b) case.

#### Likelihood of confusion

50. The opponent’s case is that there is a likelihood of direct and indirect confusion. The likelihood of direct confusion rests on the proposition that a significant proportion of average consumers will confuse the marks through imperfect recollection. The opponent points out, correctly, that this risk is highest where the respective goods are identical. For example, *downloadable applications and software for smart watches and mobile devices, for processing, reviewing and editing data, to enable users to control the presentation and information available from the devices*. These goods are expressly listed in the specifications of the earlier marks and included within the terms *computer software; computer software applications* in the specifications of the contested marks.

51. I earlier found that, unlike most of the goods/services listed in the applications, an average consumer of such goods would pay only a normal or average degree of attention during the selection process. So the registration of the contested marks in relation to downloadable software apps is the high point of the opponent’s section 5(2) case.

52. Accepting that there are some visual differences between the marks, Mr Conway drew my attention to the judgment of Arnold J. (as he then was) in *Jack Wills Limited*

*v House of Fraser (Stores) Limited*<sup>8</sup> where the judge found a likelihood of confusion through imperfect recollection between a device consisting of a silhouette of a pheasant with a top hat and a cane, and a silhouette of a pigeon with a top hat and bow tie. The relevant part of the judgment is shown below.

*“93. If the respective logos are compared side by side, particularly in printed form, it can be seen that there are both similarities and differences. The key differences are as follows: one is a pheasant, while the other is a pigeon; one has a cane, while the other has a bow tie; and one faces left, while the other faces right. As counsel for Jack Wills rightly emphasised, however, the side-by-side comparison is not what matters. What matters is what the average consumer would remember of the Trade Marks when confronted with the Pigeon Logo, particularly in embroidered form.*

*94. This takes me to the conceptual comparison. The concept of the Trade Marks is a silhouette of a pheasant with top hat and cane. The concept of the Pigeon Logo is a silhouette of a pigeon with top hat and bow tie. In both cases the concept is not merely a silhouette of an anthropomorphised bird, but more specifically a silhouette of a bird with accoutrements suggestive of an English gentleman, in particular a top hat. While there is a conceptual difference between a pheasant and a pigeon, I consider that this is far less significant than the conceptual similarity.*

*95. Accordingly, I conclude that there is a reasonable degree of visual similarity and a high degree of conceptual similarity.”*

53. Mr Conway submitted that:

*“Similarly here, my submission is the opponent's mark is not merely a silhouette of an eagle but an abstractly drawn stylised eagle represented with its wings spread, facing to the right and characterised by the rectilinear form and striated effect, particularly on the wings. The applicant's mark obviously adopts the concept of an eagle. It is also an abstract stylised form rather than a realistic*

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<sup>8</sup> [1984] EWHC 110 (Ch)

*one. It faces to the right. It is upright and also takes a rectilinear form and has horizontal striations on the otherwise black rings.”*

54. In my view, the concept of the marks that the average consumer will remember is that of an abstract eagle. The rectilinear form of the earlier marks, and the striated effect on the wing(s) of all the marks, are detailed visual, not conceptual, features. They cannot be compared to the lasting impression likely to be created by “*a silhouette of a bird with accoutrements suggestive of an English gentleman, in particular a top hat.*” It is always risky to make judgements about the likelihood of confusion between trade marks by analogy with earlier decisions made about different marks. In any event, I do not accept that the suggested analogy stands scrutiny. After making an appropriate allowance for imperfect recollection, I find that the visual differences between the marks at issue in this case are such that there is no likelihood of a reasonably circumspect and observant consumer of such goods, paying a normal level of attention, confusing the marks.

55. The opponent’s case for a likelihood of direct confusion through imperfect recollection based on the use of the contested marks in relation to the other goods/services covered by the applications is, if anything, weaker than the case based upon software apps. This is because the other goods/services are (1) selected by consumers likely to be paying a higher degree of attention because of the nature of the goods/services or the type of customer involved, and/or (2) are similar rather identical goods/services.

56. For the avoidance of doubt, I would have come to the same conclusion even if I had accepted that the earlier marks have an above average degree of distinctive character in relation to the goods/services on which the opponent relies for its section 5(2) case. In my view, the contested marks are still too different to be imperfectly recollected as the earlier marks by any significant proportion of relevant average consumers.

57. The opponent’s submission that there is a likelihood of indirect confusion depends on those consumers who recognise the marks are different nevertheless concluding that the contested marks are variants of the earlier marks, and used by the same or a connected undertaking. The opponent submits that its use of the ‘818 mark alone, and

with the letters 'GA' on it, somehow adds to the likelihood of the contested marks being taken as a further variant of the earlier marks.

58. In *L.A. Sugar Limited v By Back Beat Inc.*,<sup>9</sup> Mr Iain Purvis Q.C., as the Appointed Person, explained that:

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

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

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (‘26 RED TESCO’ would no doubt be such a case).*
- (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as ‘LITE’, ‘EXPRESS’, ‘WORLDWIDE’, ‘MINI’ etc.).*

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<sup>9</sup> Case BL O/375/10

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

59. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors*,<sup>10</sup> 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.

60. It is not sufficient that a mark merely calls to mind another mark: *Duebros Limited v Heirler Cenovis GmbH*.<sup>11</sup> This is mere association not indirect confusion.

61. The examples given in paragraph 17 (a) to (c) of Mr Purvis's decision do not apply. They are not exhaustive. However, I see no other "proper basis" to find that average consumers who recognise the parties' marks are different are likely to suppose that the contested marks are variants of the earlier marks used by the same or related undertakings. The contested marks do not look like natural developments of the earlier marks. I fail to understand why use of the opponent's device mark with, and without, the letters 'GA' on it, makes it more plausible that the opponent would adopt a quite different eagle device.

62. This is why I reject the opponent's section 5(2) case based on the likelihood of indirect confusion.

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<sup>10</sup> [2021] EWCA Civ 1207

<sup>11</sup> BL O/547/17

## Detailed assessment of section 5(3) ground

63. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, Case 252/07, *Intel*, Case C-408/01, *Adidas-Salomon*, Case C-487/07, *L’Oreal v Bellure* and Case C-323/09, *Marks and Spencer v Interflora* and Case C383/12P, *Environmental Manufacturing LLP v OHIM*. The law appears to be as follows.

(a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Saloman*, paragraph 29 and *Intel*, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark’s reputation and distinctiveness; *Intel*, paragraph 42

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel*, paragraph 68; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel*, paragraph 79.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark’s ability to identify the goods/services for which it is registered is

weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel, paragraphs 76 and 77* and *Environmental Manufacturing, paragraph 34*.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel, paragraph 74*.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV, paragraph 40*.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora, paragraph 74 and the court's answer to question 1 in L'Oreal v Bellure*).

### Reputation

64. The opponent claims that the earlier marks have a reputation in relation to all the goods for which they are registered in class 25. That is:

Coats; jackets; trousers; skirts; tops; raincoats; overcoats; belts; braces for clothing; suits; stuff jackets; jumpers; jeans; dresses; cloaks; parkas; shirts; T-shirts; sweaters; underwear; baby-dolls being nightwear; bathrobes; bathing costumes; *négligée*; swim suits; dressing gowns; shawls; neckerchiefs; scarves; ties; neckties; sweat shirts; under shirts; polo shirts; body suits; shorts; combinations [clothing]; wedding dresses; stockings; socks; shoes; slippers; overshoes; galoshes; wooden clog; soles for footwear; footwear upper; boots; ski boots; snow boots; half boots; esparto shoes or sandals; sandals; bath sandals; gloves; mittens; hats and caps; visors (headwear).

65. Mr Croce's evidence is that the earlier marks were first used in the UK in 1989 and they have been extensively used since then in relation to clothing, headgear and footwear. UK sales under the marks between 2016 - 2020 ranged from €85m to €107m per annum. The opponent spends between about €1.5m and €3m per annum advertising goods in the UK under the marks. The marks are frequently shown in fashion magazines, such as Elle and 10 Magazine.<sup>12</sup>

66. Judging from the exhibits, most of the use appears to relate to the '818 mark (with the letters 'GA'). However, there is some evidence of use of the '891 mark (without the letters GA). In any event, it is well established that a mark can acquire an enhanced distinctive character as a result of its use as part of another mark.<sup>13</sup> In a case such as this, where both versions of the mark are distinctive *per se*, it must also be possible for a mark to acquire a reputation as a result of its use as part of another mark. I find that, contrary to the applicant's denials, the earlier trade marks had acquired a reputation in the UK and EU by the relevant date. The evidence does not show use of the mark in relation to all the goods listed in the opponent's claim. For example, there is no evidence of use of the marks in relation to *wedding dresses*. Nevertheless, the evidence shows use in relation to a wide range of *clothing, headgear and footwear*. For the purposes of this decision, I accept that the reputation extends to these categories of goods.

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<sup>12</sup> See exhibit AC7

<sup>13</sup> See *Société des Produits Nestlé SA v Mars UK Ltd*, CJEU, Case C-353/03

## Link

67. As I noted above, my assessment of whether the public will make the required mental 'link' between the marks must take account of all relevant factors. The factors identified in *Intel* are:

### *The degree of similarity between the conflicting marks*

68. For the reasons already given, the marks are similar to only a low degree.

### *The nature of the goods or services for which the conflicting marks are registered, or proposed to be registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public*

69. The goods/services covered by the applications are mostly technical, scientific, or financial in nature, or they appear to be mainly aimed at business users, e.g. advertising, business administration. By contrast the goods for which the earlier marks have a reputation are items of apparel associated with the fashion industry. On the face of it the respective goods/services are dissimilar and distant.

70. The opponent submits that there is a degree of closeness between the financial services covered by the contested marks and clothing. Mr Croce gives evidence on this matter. He points out that luxury fashion retailers offer co-branded credit cards (Harrods) or loyalty schemes (Harvey Nichols, Liberty and - online retailer - Net-a-Porter).<sup>14</sup> The applicant points out that although stores may issue store cards, it is the financial company that the store partners with that provides any financial services. The opponent counters that this does not matter, if the average consumer perceives that the store is partly responsible for the quality of the services. I agree, but this is irrelevant in this case. This is because it is not claimed that the earlier marks have a reputation for retail store services. The reputation claimed for the earlier marks is limited to goods in class 25.

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<sup>14</sup> See exhibit AC12

71. In any event, the logic of the opponent's submission would mean that there is a general complementary relationship between financial services and providers of retail services for virtuality any kind of goods. I would not accept such a far ranging submission on the basis of just a single example of a famous department store offering a co-branded credit card, and three examples of other high profile retailers offering customer loyalty schemes.

72. In a further attempt to identify a connection between clothing and the goods/services covered by the applications, the opponent's witness gives evidence that several luxury fashion brands, such as Gucci, Dolce & Gabbana, and Burberry, have started to sell digital versions of their fashion products in the metaverse in the form of non-fungible tokens ("NFTs"). According to an article dated December 2021 on the website of Bloomberg, an NFT is a virtual certificate of ownership which can be used to show a virtual product through virtual media.<sup>15</sup> Some virtual products can be purchased using cryptocurrencies. The argument seems to be that because of the potential for marketing digital versions of fashion items, users of the applicant's *blockchain software and technology and/or financial transactions via blockchain* will see a connection between these types of goods/services and the opponent's class 25 goods.

73. In my view, the mere fact that NFTs run on blockchain technology, and that some virtual fashion items can be purchased using cryptocurrency, will not give rise to a close connection, from the user's perspective, between (physical) clothing/headgear and *blockchain software and technology and/or financial transactions via blockchain*. This is because (1) the goods for which the earlier marks have a reputation are physical goods in class 25, (2) it appears that any virtual goods can be the subject of an NFT; they are not specifically associated with virtual clothing, and (3) the use of cryptocurrency to purchase virtual (or indeed physical) clothing creates no more of a connection with such goods than services for the provision of traditional currencies creates a connection with physical clothes. From someone who accepts it, any currency can be used to buy anything. I do not, therefore, accept that there is a degree of closeness between the goods/services mentioned above.

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<sup>15</sup> See exhibit AC12

74. These are my reasons for concluding that the respective goods/services are dissimilar.

*The strength of the earlier mark's reputation*

75. I have accepted that the earlier marks have a substantial reputation for clothing, headgear and footwear.

*The degree of the earlier mark's distinctive character, whether inherent or acquired through use*

76. I accept that the earlier marks have a acquired a highly distinctive character through use in relation to clothing, headgear and footwear. The applicant's witness draws attention to other traders of clothing that use devices of an eagle to market their goods.<sup>16</sup> However, as I mentioned earlier, the opponent's claim that the earlier marks have a highly distinctive character does not rest on the mere fact that they represent an eagle. The opponent's case is that the specific representation of an eagle it uses is highly distinctive. At the hearing, the only eagle device Mr Conway considered was similar to the earlier marks is shown on page 18 of exhibit MO1. However, as he pointed out, there is no evidence that goods bearing that mark have been marketed in the UK (the prices shown are in Euros). Consequently, any use of that mark will not affect the distinctiveness of the earlier marks in the perception of UK consumers.

*Whether there is a likelihood of confusion*

77. There is no likelihood of confusion. The dissimilarity of the respective goods/services, combined with the low degree of similarity between the marks, is sufficient to rule out any risk of confusion.

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<sup>16</sup> See pages 3 – 20 of exhibit MO1

### *Conclusion on link*

78. Taking account of all the above, I find that relevant average consumers of the parties' goods/services will make no link any of any kind between the respective marks.

### Unfair advantage/detriment

79. In the absence of a mental link, there is no possibility that use of the contested marks would take unfair advantage, and/or be detrimental to, the reputation or distinctive character of the earlier marks.

80. I would add that even if I had found that a significant proportion of relevant consumers would make a weak link between the parties' marks (in the sense that the contested marks may remind some of the earlier marks), I would nevertheless have rejected the opponent's section 5(3) case. This is because in order to establish taking unfair advantage, or causing detriment, it is necessary to show a serious risk of a change in the economic behaviour of average UK consumers as a result of the link they make between the marks.

81. In the case of unfair advantage, this means an increased chance of consumers selecting the goods/services marketed under the contested marks. In the case of detriment, this means a decreased chance of consumers selecting the goods/services marketed under the earlier marks.

82. As regards taking unfair advantage of the earlier marks, I find it difficult to see how the image of the earlier marks as symbols of fashion would easily transfer to the types of goods/services covered by the contested marks and economically benefit the applicant. After all, they are not fashion products or services.

83. As regards detriment to the reputation/distinctive character of the earlier marks, the proposition that average consumers would be less likely to select the opponent's goods in future as a result of being, at most, reminded of the applicant's marks for very different goods/services, seems farfetched and/or purely speculative.

84. In this connection, the opponent relies on evidence that a YouGov poll found that 40% of Britons had a negative, or fairly negative, view of cryptocurrency<sup>17</sup> and an article stating that Santander UK bank is receiving reports of around £1m worth of cryptocurrency scams each month. The former goes to the public's attitude to cryptocurrency itself. It does not mean that the public necessarily has a negative view of traders who provide goods/services for using cryptocurrency appropriately. The latter report may indicate that scams involving cryptocurrency are more common than scams involving conventional currency. However, in the absence of comparative data no such inference can be drawn from this one report. Further, this does not mean that those traders who provide legitimate goods/services for using cryptocurrency will be viewed as potential scammers (any more than scams involving conventional currency necessarily reflect on the reputation of legitimate banks). These points do not represent a serious risk to the reputation or distinctiveness of the earlier marks.

### **Costs**

85. The applicant has been successful and is entitled to a contribution towards his costs. I assess these as follows:

£400 for considering the notice of opposition and filing a counterstatement;

£1200 for considering the opponent's evidence and filing evidence in response;

£1200 for filing a skeleton argument and taking part in the hearing.

86. I therefore order Giorgio Armani S.p.A. to pay Martin Orena the sum of £2800. This sum to be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

**Dated this 3<sup>rd</sup> day of February 2023**

**Allan James**  
**For the Registrar**

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<sup>17</sup> See exhibit AC13

## **Annex A**

Class 9: Computers and computer peripheral devices; computer software; quantum computers; computer software in relation to finance and managing finance; computer software for managing, buying and exchanging cryptocurrency and assets; computer software for managing investments; computer software for debit card management; computer software for banking; investment software; computer software for sending cryptocurrency and crypto tokens to other users; computer software for storing cryptocurrencies and crypto tokens; computer software for financial trading; computer software for obtaining rewards and discounts, accessing products, connecting to webinars and growing investments; crypto tokens; blockchain software and technology; security tokens; computer software applications; computer software applications in relation to finance, managing finance, managing, buying and exchanging cryptocurrency and assets, and making and managing investments; downloadable e-wallets; downloadable computer software for use as an electronic or digital wallet; software for digital and virtual currency, merchant services, exchange of digital and virtual currency to traditional currency, digital and virtual currency and taxes, digital and virtual currency and barter transactions, acquiring digital and virtual currency, the use of digital and virtual currency electronically, and the use of digital and virtual currency as an alternative to traditional currency to obtain goods or services; wallet software; software for commerce over a global communications network; payment protocol software; encryption software; security software; cryptographically protected virtual currency systems for facilitating digitally recorded financial transactions within an organized, internet-based virtual community, business or social network; software relating to digital and virtual currency; scientific, research, navigation, surveying, photographic, cinematographic, audiovisual, optical, weighing, measuring, signalling, detecting, testing, inspecting, life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling the distribution or use of electricity; apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data; recorded and downloadable media, blank digital or analogue recording and storage media; mechanisms for coin-operated apparatus.

Class 35: Advertising; retail and online retail services in relation to the sale of computers and computer peripheral devices, computer software, quantum computers, computer software in relation to finance and managing finance, computer software for managing, buying and exchanging cryptocurrency and assets, computer software for managing investments, computer software for debit card management, computer software for banking, investment software, computer software for sending cryptocurrency and crypto tokens to other users, computer software for storing cryptocurrencies and crypto tokens, computer software for financial trading, computer software for obtaining rewards and discounts, accessing products, connecting to webinars and growing investments, crypto tokens, blockchain software and technology, security tokens, computer software applications, computer software applications in relation to finance, managing finance, managing, buying and exchanging cryptocurrency and assets, and making and managing investments, downloadable e-wallets, downloadable computer software for use as an electronic or digital wallet, software for digital and virtual currency, merchant services, exchange of digital and virtual currency to traditional currency, digital and virtual currency and taxes, digital and virtual currency and barter transactions, acquiring digital and virtual currency, the use of digital and virtual currency electronically, and the use of digital and virtual currency as an alternative to traditional currency to obtain goods or services, wallet software, software for commerce over a global communications network, payment protocol software, encryption software, security software, cryptographically protected virtual currency systems for facilitating digitally recorded financial transactions within an organized, internet-based virtual community, business or social network, software relating to digital and virtual currency, scientific, research, navigation, surveying, photographic, cinematographic, audiovisual, optical, weighing, measuring, signalling, detecting, testing, inspecting, life-saving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling the distribution or use of electricity, apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data, recorded and downloadable media, blank digital or analogue recording and storage media, mechanisms for coin-operated apparatus; business administration and management; office functions.

Class 36: Financial affairs; monetary affairs; financial services; currency trading; investment services; provision of tokens of value; financial transactions via blockchain; buying and selling of securities, trading of securities index futures, trading of securities options, and trading of overseas market securities futures; management of assets; insurance; real estate affairs; fundraising and sponsorship; cash management namely facilitating and tracking transfers of electronic cash equivalents; virtual currency exchange transaction services for transferable electronic cash equivalent units having specified cash value; provision of prepaid cards and tokens; electronic financial services provided by means of the internet; credit card services; money transfer services; processing payments to and from third parties; foreign exchange transactions; financial transaction services; providing secure commercial transactions and payment options via electronic communication networks; financial transaction services using a mobile device; person-to-person financial services via electronic communications networks; clearing and reconciling financial transactions via electronic communications networks; banking and financial services; business banking; consumer banking; electronic banking via electronic communications networks; payment services; electronic payment services; electronic wallet services (payment services); processing electronic payments; payment processing; payment administration services; financial transfers and transactions; payment and receipt of money as agents; currency dealing; currency trading; exchange services (currency); brokerage of currency; swaps of currency rates; currency exchange rate quotations; financial services provided by mobile telephone connections, near field communication connections, retail point of sale connections and the internet, namely, mobile banking and mobile money transfers; mobile purchasing, namely, providing electronic processing of credit cards, debit cards, prepaid gift cards, stored value cards and electronic payments via mobile phones for allowing consumers to pay bills and purchase goods and services of others; electronic payment services; automated payment services; processing of payment transactions via the Internet; money transfer services; electronic funds transfer services; bill payment services; automated payment services; payment transaction card services; electronic payment services; credit card and payment card services; financial payment services; information services relating to the payment of accounts; processing of payments for banks; payment processing and administration services.

Class 42: Design and development services of computer software and computer hardware; design of financial computer software and hardware; blockchain as a service [BaaS]; data storage, authentication, and certification via blockchain; IT consulting services; design and development of computer hardware and software in relation the financial industry and to all types of currency, including, cryptocurrencies, digital and virtual currency; computer programming; installation, maintenance and repair of computer software; technological consultation services; computer consultancy services; consultation services relating to computer hardware; consultation services relating to computer software; consultation services relating to computer systems; consultation services relating to the financial industry; consultation services in relation to all types of currency, including digital currency; design, drawing and commissioned writing for the compilation of web sites; creating, maintaining and hosting the web sites of others; advisory services relating to computer software used for graphics; webhosting; web site design; website development services; computer website design; rental of web servers; creation, design, hosting, customizing, development and maintenance of websites for third parties; software design and development; image processing software design; advisory services relating to computer software design; development, design and updating of home pages; computer website design; designing websites for promoting and advertising purposes; consultancy services relating to design; design of printed material; design of printed matter; design of promotional matter; information and advisory services relating to any of the aforesaid services including such services provided on-line from a computer database or the Internet; scientific and technological services and research and design relating thereto; industrial analysis, industrial research and industrial design services; quality control and authentication services.

**Annex B**

<b>Goods and services under the Application</b>	<b>Similar/identical goods and services under the Opponent's earlier registrations relied on in this opposition</b>	<b>Goods alleged to be identical or similar</b>
Class 9: Computers and computer peripheral devices; quantum computers;	<p>Class 9: smartphones; wireless communication devices featuring telecommunication functionality to allow the transmission of text, data, audio, image and video files;</p> <p>electronic monitoring devices comprised of microprocessors and accelerometers, for identifying, storing, reporting, monitoring, uploading and downloading data and information for personal physical fitness and training purposes;</p> <p>wearable sensors for personal physical fitness and training purposes to gather biometric data and also including monitors and displays sold as a unit; smartwatches; wearable activity trackers; pedometers.</p>	Identical or similar
Class 9: computer software; computer software applications;	Class 9: Downloadable applications and software for smart watches and mobile devices, for processing, reviewing and editing data, to enable users to control the presentation and information available from the devices;	Identical
Class 9: computer software in relation to finance and managing finance; computer software for managing, buying and exchanging cryptocurrency and assets; computer software for managing investments; computer software for debit card management; computer software for banking; investment software; computer software for	<p>Class 9: downloadable applications and software for smart watches and mobile devices, for processing, reviewing and editing data, to enable users to control the presentation and information available from the devices;</p> <p>Class 42: Design of software to identify, store, report, monitor, upload and download data and information</p>	Similar

<p>sending cryptocurrency and crypto tokens to other users; computer software for storing cryptocurrencies and cryptotokens; computer software for financial trading; computer software for obtaining rewards and discounts, accessing products, connecting to webinars and growing investments; crypto tokens; blockchain software and technology; security tokens; computer software applications in relation to finance, managing finance, managing, buying and exchanging cryptocurrency and assets, and making and managing investments; downloadable e-wallets; downloadable computer software for use as an electronic or digital wallet; software for digital and virtual currency, merchant services, exchange of digital and virtual currency to traditional currency, digital and virtual currency and taxes, digital and virtual currency and barter transactions, acquiring digital and virtual currency, the use of digital and virtual currency electronically, and the use of digital and virtual currency as an alternative to traditional currency to obtain goods or services; wallet software; software for commerce over a global communications network; payment protocol software; encryption software; security software; cryptographically protected virtual currency systems for facilitating digitally recorded financial transactions within an</p>	<p>from wearable digital electronic devices</p>	
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<p>organized, internet-based virtual community, business or social network; software relating to digital and virtual currency;</p>		
<p>Class 9: cinematographic, audiovisual apparatus and instruments</p>	<p>Class 9: cellular phones; smartphones; wireless communication devices featuring telecommunication functionality to allow the transmission of text, data, audio, image and video files;</p> <p>Class 28: Appliances, machines and devices for sports games, for sport and for physical exercises; video game machines</p>	<p>Identical or similar</p>
<p>Class 9: weighing, measuring, detecting, testing, inspecting, apparatus and instruments;</p>	<p>Class 9: electronic monitoring devices comprised of microprocessors and accelerometers, for identifying, storing, reporting, monitoring, uploading and downloading data and information for personal physical fitness and training purposes;</p> <p>Class 14: Timepieces comprised primarily of wristwatches featuring software for sending and receiving data or to be used to monitor personal fitness activity; bracelets, rings or necklaces featuring software for sending and receiving data or to be used to monitor personal fitness activity.</p>	<p>Identical or similar</p>
<p>Class 9: scientific, research, navigation, surveying, photographic, optical, signalling, life-saving and teaching apparatus and instruments;</p>	<p>Class 9: Electronic monitoring devices comprised of microprocessors and accelerometers, for identifying, storing, reporting, monitoring, uploading and downloading data and information for personal physical fitness and training purposes;</p> <p>wireless communication devices featuring telecommunication functionality to allow the transmission</p>	<p>Similar</p>

	<p>of text, data, audio, image and video files;</p> <p>Class 10: Wearable sensors for health and wellness purposes to gather biometric data and also including monitors and displays sold as a unit; heart rate monitoring apparatus.</p>	
Class 9: apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data;	Class 9: wireless communication devices featuring telecommunication functionality to allow the transmission of text, data, audio, image and video files;	Identical
Class 9: recorded and downloadable media, blank digital or analogue recording and storage media;	<p>Class 9: wireless communication devices featuring telecommunication functionality to allow the transmission of text, data, audio, image and video files;</p> <p>downloadable applications and software for smart watches and mobile devices, for processing, reviewing and editing data, to enable users to control the presentation and information available from the devices</p>	Similar
Class 35: Retail and online retail services in relation to the sale of computers and computer peripheral devices, quantum computers, cinematographic, audiovisual apparatus and instruments, weighing, measuring, detecting, testing, inspecting, apparatus and instruments; apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data; scientific, research, navigation, surveying, photographic, optical, signalling, life-saving and teaching apparatus and instruments; recorded and downloadable media, blank	Class 35: The bringing together, for the benefit of others of <u>electronic devices</u> (emphasis added), telephones, smartwatches and covers for smartwatches, sensors for health purposes and heart rate monitoring apparatus; the bringing together, for the benefit of others of timepieces, wallets; all the aforesaid goods, excluding the transport thereof, enabling customers to conveniently view and purchase those goods.	Identical

digital or analogue recording and storage media,		
<p>Class 35: Advertising; retail and online retail services in relation to the sale of computer software, computer software in relation to finance and managing finance, computer software for managing, buying and exchanging cryptocurrency and assets, computer software for managing investments, computer software for debit card management, computer software for banking, investment software, computer software for sending cryptocurrency and crypto tokens to other users, computer software for storing cryptocurrencies and crypto tokens, computer software for financial trading, computer software for obtaining rewards and discounts, accessing products, connecting to webinars and growing investments, crypto tokens, blockchain software and technology, security tokens, computer software applications, computer software applications in relation to finance, managing finance, managing, buying and exchanging cryptocurrency and assets, and making and managing investments, downloadable e-wallets, downloadable computer software for use as an electronic or digital wallet, software for digital and virtual currency, merchant services, exchange of digital and virtual currency to traditional currency, digital and virtual</p>	<p>Class 9: electronic monitoring devices comprised of microprocessors and accelerometers, for identifying, storing, reporting, monitoring, uploading and downloading data and information for personal physical fitness and training purposes; downloadable applications and software for smartwatches and mobile devices, for processing, reviewing and editing data, to enable users to control the presentation and information available from the devices; wearable sensors for personal physical fitness and training purposes to gather biometric data and also including monitors and displays sold as a unit; smartwatches; wearable activity trackers; pedometers.</p> <p>Class 35: The bringing together, for the benefit of others of electronic devices, telephones, smartwatches and covers for smartwatches, sensors for health purposes and heart rate monitoring apparatus; the bringing together, for the benefit of others of timepieces, wallets; all the aforesaid goods, excluding the transport thereof, enabling customers to conveniently view and purchase those goods.</p> <p>Class 42: Design of software to identify, store, report, monitor, upload and download data and information from wearable digital electronic devices</p>	Similar

currency and taxes, digital and virtual currency		
Class 35: business administration and management; office functions.	<p>Class 35: The bringing together, for the benefit of others of electronic devices, telephones, smartwatches and covers for smartwatches, sensors for health purposes and heart rate monitoring apparatus; the bringing together, for the benefit of others of timepieces, wallets; all the aforesaid goods, excluding the transport thereof, enabling customers to conveniently view and purchase those goods.</p> <p>Class 41: Organization of events, conferences, conventions, exhibitions and fair for cultural and educational purposes; club services; education; providing of training;</p>	Similar
Class 42: Design and development services of computer software; software design and development; image processing software design; computer programming	Class 42: Design of software to identify, store, report, monitor, upload and download data and information from wearable digital electronic devices	Identical
Class 42: Design and development services of computer hardware; installation, maintenance and repair of computer software;	<p>Class 9: wireless communication devices featuring telecommunication functionality to allow the transmission of text, data, audio, image and video files; electronic monitoring devices comprised of microprocessors and accelerometers, for identifying, storing, reporting, monitoring, uploading and downloading data and information for personal physical fitness and training purposes; downloadable applications and software for smart watches and mobile devices, for processing, reviewing and editing data, to enable users to control the presentation and information available from the devices</p> <p>Class 42: Design of software to identify, store, report, monitor, upload</p>	Similar

	and download data and information from wearable digital electronic devices	
Class 42: Design of financial computer software and hardware; blockchain as a service [BaaS]; design and development of computer hardware and software in relation the financial industry and to all types of currency, including, cryptocurrencies, digital and virtual currency;	Class 9: wireless communication devices featuring telecommunication functionality to allow the transmission of text, data, audio, image and video files; downloadable applications and software for smart watches and mobile devices, for processing, reviewing and editing data, to enable users to control the presentation and information available from the devices  Class 42: Design of software to identify, store, report, monitor, upload and download data and information from wearable digital electronic devices	Similar
Class 42: technological consultation services; consultancy services relating to design; industrial design services;	Class 42: design consultancy; industrial design	Identical
Class 42: consultation services relating to computer hardware; consultation services relating to computer software; consultation services relating to computer systems; consultation services relating to the financial industry; consultation services in relation to all types of currency, including digital currency; design, drawing and commissioned writing for the compilation of web sites; computer consultancy services; advisory services relating to computer software used for graphics; IT consulting services; advisory services relating to computer software design; information and advisory services relating	Class 41: education; providing of training  Class 42: Design of software to identify, store, report, monitor, upload and download data and information from wearable digital electronic devices; design consultancy; industrial and graphic art design.	Similar

<p>to any of the aforesaid services including such services provided on-line from a computer database or the Internet</p>		
<p>Class 42: data storage, authentication, and certification via blockchain</p>	<p>Class 9: wireless communication devices featuring telecommunication functionality to allow the transmission of text, data, audio, image and video files; electronic monitoring devices comprised of microprocessors and accelerometers, for identifying, storing, reporting, monitoring, uploading and downloading data and information for personal physical fitness and training purposes; downloadable applications and software for smart watches and mobile devices, for processing, reviewing and editing data, to enable users to control the presentation and information available from the devices</p> <p>Class 42: Design of software to identify, store, report, monitor, upload and download data and information from wearable digital electronic devices</p>	
<p>Class 42: creating, maintaining and hosting the web sites of others; webhosting; web site design; website development services; computer website design; rental of web servers; creation, design, hosting, customizing, development and maintenance of websites for third parties; development, design and updating of home pages; computer website design; designing websites for promoting and advertising purposes; design of printed material; design of printed matter; design of promotional matter;</p>	<p>Class 42: Design of software to identify, store, report, monitor, upload and download data and information from wearable digital electronic devices; design consultancy</p>	<p>Similar</p>

<p>Class 42: scientific and technological services and research and design relating thereto; industrial analysis, industrial research and quality control and authentication services.</p>	<p>Class 42: Design of software to identify, store, report, monitor, upload and download data and information from wearable digital electronic devices; interior design; architectural consultancy; industrial and graphic art design; design of interior decor; lighting design; construction drafting; architectural design; architectural services; design consultancy; industrial design; design of building interiors.</p>	<p>Identical or similar</p>
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