

O/098/21

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003434616

BY FORTUNATE ICON LIMITED

TO REGISTER:



AS A TRADE MARK IN CLASSES 9, 35, 36 AND 42

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 419158 BY

ZUMEX GROUP S.A

## BACKGROUND AND PLEADINGS

1. On 8 October 2019, Fortunate Icon Limited (“the applicant”) applied to register the trade mark shown on the cover of this decision in the UK (“the applicant’s mark”). The applicant’s mark was published for opposition purposes on 18 October 2019 and registration is sought for the following goods and services:

Class 9: Computer programs, recorded; downloadable image files; computer software applications, downloadable; Counters; Network communication Equipment; cameras; Electronic advertising displays; electronic notice boards; downloadable mobile applications; mobile telephones; electronic tags for goods; computer programs [downloadable software].

Class 35: Advertising; business management assistance; organization of trade fairs for commercial or advertising purposes; providing business information via a web site; provision of commercial and business contact information; online advertising on a computer network; provision of an online marketplace for buyers and sellers of goods and services; import-export agency services; marketing; sales promotion for others.

Class 36: Financial consultancy; investment of funds; fiduciary; clearing, financial; stock exchange quotations; pawnbrokerage; financial analysis; charitable fund raising; issuance of tokens of value; mutual funds; real estate brokerage; brokerage.

Class 42: Computer programming; computer software consultancy; providing information on computer technology and programming via a web site; computer security consultancy; creating and designing website-based indexes of information for others [information technology services]; data encryption services; biological research; vehicle roadworthiness testing; design of

interior decor; authenticating works of art; computer software design; cloud computing.

2. On 17 January 2020, the applicant's mark was opposed by Zumex Group, S.A ("the opponent"). The opposition is based on section 5(2)(b) of the Trade Marks Act 1994 ("the Act") and is aimed at all of the applicant's goods and services. The opponent relies on the following trade marks:



EUTM registration no. 18021795<sup>1</sup>

Filing date 12 February 2019; registration date 31 July 2019

("the opponent's first mark"); and



International registration no. 1501462 designating the European Union (EU)

Priority date 12 February 2019; designation date 27 March 2019;

Protection conferred 14 February 2020

("the opponent's second mark")

3. The opponent relies on all goods and services for which its marks are registered. The opponent's goods and services are set out in the **Annex** to this decision.
4. In its notice of opposition, the opponent submits that given the similarities between the marks and the high degree of similarity between the goods and services

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<sup>1</sup> Although the UK has left the EU and the transition period has now expired, EUTMs, and International Marks which have designated the EU for protection, are still relevant in these proceedings given the impact of the transitional provisions of The Trade Marks (Amendment etc.) (EU Exit) Regulations 2019 – please see Tribunal Practice Notice 2/2020 for further information.

offered, there exists a likelihood of confusion. The applicant filed a counterstatement denying the claims.

5. The applicant is represented by Bayer & Norton Business Consultant Ltd and the opponent is represented by Maria Consuelo March Cabrelles. Only the opponent has filed evidence. No hearing was requested and only the opponent filed written submissions in lieu. This decision is taking following a careful perusal of the papers.
6. Although the UK has left the EU, section 6(3)(a) of the European (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

## **EVIDENCE**

7. The opponent filed evidence in the form of the witness statement of Santiago Soler Lerma dated 19 June 2020. Mr Lerma is employed by the opponent in the position of attorney. The evidence discusses the history of the ZUMEX brand and the diversity of its business including setting out the wide range of goods and services it offers. I will not reproduce these here. Mr Lerma states that opponent has established goodwill and a wide reputation in respect of the 'ZUMEX' brand. There is a reference to a Spanish court decision dated 19 December 2018<sup>2</sup> wherein the court considered 'ZUMEX' to be a "notorious trademark in Spain". While I note the contents of this evidence, the reputation of the opponent's mark in Spain is not relevant to these proceedings.
8. Mr Lerma also states that "ZUMEX has a high distinctive character in the machinery field, beverage preparation machines field and restaurant field" and that this conclusion can be reached after consideration of all of the exhibits included with the statement. A complete list of the documents that are attached is provided and I note that there are 32 exhibits that mostly relate to the opponent's use of the

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<sup>2</sup> Exhibit N-3

mark in Europe. As the opponent has not been put to proof of use of its mark, I do not consider it necessary to summarise the evidence here. However, insofar as the evidence assists the opponent in respect of enhanced distinctive character, I may reference it at that point.

## **DECISION**

### **Section 5(2)(b): legislation and case law**

9. Section 5(2)(b) of the Act reads as follows:

“(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 or association with the earlier trade mark.”

10. Section 5A of the Act states as follows:

“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.”

11. 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.

12. The opponent's marks qualify as earlier trade marks under the above provisions. As the opponent's marks had not completed their registration process more than 5 years before the application date of the contested mark, they are not subject to proof of use pursuant to section 6A of the Act. The opponent can, therefore, rely on all goods and services for which its marks are registered.

13. 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 Office for Harmonization in the Internal Market (Trade Marks and Designs) ("OHIM")*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

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

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

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

- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

## Comparison of goods and services

14. The applicant's goods and services are set out in **paragraph 1** of this decision. The opponent's goods and services are set out in the **Annex** to this decision.

15. 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 that:

"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".

16. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

- (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.



17. The General Court 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 fur 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”.

18. I have read the detailed submissions from the opponent regarding the similarity of the parties' goods and services. While I do not intend to reproduce these here, I have taken them into account in making my assessment.

#### Class 9 goods

19. I am of the view that computer programs, software and applications all describe the same good and the terms can be used interchangeably. Therefore, I am of the view that “computer programs, recorded” in the applicant's specification and “computer software applications, downloadable” and “downloadable computer programs” in the opponent's specifications are identical under the principle outlined in *Merica*. However, I recognise that the applicant's term may also describe a program stored on a CD or that is not accessed via download. Therefore, if I am wrong that these goods are identical under *Merica*, I am of the view that they are similar to a high degree. This is because these goods will overlap in user and purpose in that the consumer base will be largely the same and both goods will be used as computer programs, software or applications. While one will be downloaded and the other may not, there will still be overlap in method of use and nature in that they are both programs, software or applications that are used on a computer or other electronic device. They will also overlap in trade channels in that an undertaking that provides programs, software or applications via CDs is also likely to make them available via download. Further, there will be a competitive

relationship between the goods in that a consumer may choose to download the program, software or application over purchasing a CD containing the same program, software or application.

20. “Computer software applications, downloadable” in the applicant’s specification has a direct counterpart in the opponent’s first mark’s specification. These goods are identical. Additionally, the applicant’s term also has a direct counterpart in the opponent’s second mark’s goods and, although expressed slightly differently (“downloadable computer applications”), these goods will also be identical.
21. The applicant’s specification also includes the term “computer programs [downloadable software]” which will be identical to the terms “computer software applications, downloadable” and “downloadable computer applications” in the opponent’s specifications. This is because, as above, programs, applications and software all describe the same good.
22. “Downloadable image files” in the applicant’s specification is self-descriptive. In my view, a downloadable image file could be used as a poster or flyer and, therefore, considered a publication. As a result, this term will fall within the category of “electronic publications, downloadable” and “downloadable electronic publications” in the opponent’s specifications. These goods are, therefore, identical under the principle outlined in *Meric*. However, if I am wrong in this finding, I am of the view that there is between a medium and high degree of similarity between them. This is because there will be an overlap in method of use in that both will be downloaded and nature in that both are digital files, albeit different types. There may also be an overlap in user as the user base for both goods will be wide. An undertaking that provides an electronic image file may also provide electronic publications meaning that there may be an overlap in trade channels. However, I am of the view that the purposes will differ as one is an image and the other is a publication.
23. “Downloadable mobile applications” in the applicant’s specification will fall within the category of “mobile apps” and “mobile applications” in the opponent’s specifications. These goods are, therefore, identical under the principle outlined *Meric*.

24. In the absence of any submissions to the contrary, I find that “counters” in the applicant’s specification describes a small device that contains a number counter that counts whenever it the user presses a button or lever. I see no obvious similarities between these goods and any of the opponent’s goods and services. These goods are, therefore, dissimilar. While my primary finding is that these goods are physical devices, I do not rule out that software could also serve the function of counting such as a counter for tracking visitors to a website. However, in line with the more restrictive approach signaled by the case of *Sky v Skykick* [2020] EWHC 990 (Ch), I do not consider it appropriate to equate computer software applications to every permutation of their potential functions. Therefore, I am of the view that these goods are dissimilar to “computer software applications, downloadable” and “downloadable computer programs” in the opponent’s marks’ specifications.

25. “Mobile telephones” in the applicant’s specification has no counterpart in the opponent’s specifications. However, the opponent’s specifications contain the terms “mobile apps” and “mobile applications”. I find that there is an overlap in user in that a user of a mobile telephone will also use mobile applications. However, I do not consider there to be any overlap in nature, purpose or method of use. While there may a degree of overlap in trade channels as it is common for applications for a mobile phone to be accessed via an electronic store that is associate with the undertaking that produced the mobile phone itself, I have also considered whether the goods are important or indispensable to each other and whether or not the average consumer would consider the undertaking responsible for one to be responsible for the other.<sup>3</sup> While the goods are clearly important to each other, I do not consider that the average consumer will believe that the undertaking responsible for the phone is necessarily responsible for the application and vice versa. This is because, while mobile telephone providers often produce their own applications that come preloaded on the phone itself, the majority of applications available to the user are produced by a third party. Therefore, I do not consider there to be any complementarity between the goods, however, if I am wrong on this any complementarity will be limited. Overall, I have found an overlap in user,

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<sup>3</sup> *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06

trade channels and a limited complementary relationship, at best. Therefore, I find that these goods are similar to a low degree.

26. I have no submissions as to what type of goods “electronic notice boards” and “electronic advertising displays” in the applicant’s specification describe. In the absence of any evidence or submissions, I am of the view that these goods are physical devices that have a large screen upon which a notice or advert is displayed. While these goods will include some form of software, for the same reasons as set out in paragraph 24 above, I do not consider it appropriate to equate computer software applications to every permutation of their potential functions. Therefore, I find these goods to be dissimilar to “computer software applications, downloadable” and “downloadable computer programs” in the opponent’s mark’s specifications.

27. “Network communication equipment”, “cameras” and “electronic tags for goods” in the applicant’s specification do not have any counterpart in the opponent’s specifications and neither do I consider there to be any level of similarity between these goods and the opponent’s goods or services. These goods will, therefore, be dissimilar.

#### Class 35 services

28. “Advertising”, “organization of trade fairs for commercial or advertising purposes”, “online advertising on a computer network”, “marketing” and “sales promotion for others” in the applicant’s specification all describe types of advertising, marketing and promotional services. These services all fall within the same categories as “advertising, marketing and promotional services” and “promotional, marketing and advertising services” in the opponent’s specifications. These services are, therefore, identical under the principle outlined in *Meric*.

29. “Business management assistance” in the applicant’s specification describes a service of providing a business with management assistance. This can be said to be an advisory and/or consultancy services and will, therefore, fall within the categories of “business consultancy services” and “services of business advisory

and consultancy". These services are, therefore, identical under the principle outlined in *Meric*.

30. Both the opponent's mark's specifications contain the term "provision of commercial information". I am of the view that commercial information covers business information. Contact information regarding commercial enterprises and businesses will fall within this broad category and, therefore, "provision of commercial and business contact information" in the applicant's specification is identical under the principle outlined in *Meric* to these services. The opponent's terms will also cover business information that is provided online and, therefore, "providing business information via a web site" will also fall within those terms, meaning that these services are identical under the principle outlined in *Meric*.

31. "Provision of an online marketplace for buyers and sellers of goods and services" in the applicant's specification describes the provision of a website where a consumer can both place items for sale and/or buy items from other sellers. The opponent's marks' specifications contain the services "online ordering services" and "online purchase order services", which, in my view, will overlap in users and trade channels. The user base for both services will be very broad and include anyone looking to buy something online. I do note, however, that the applicant's term offers a service to the seller of goods/services whereas the opponent's terms do not, meaning that any overlap will be limited. As for trade channels, it is possible for an undertaking to provide their own online ordering service as well as providing the user with a market place to sell their own goods. Further, there may be a competitive relationship between these services as a user may choose to buy from an online service itself over a peer to peer marketplace and vice versa. Overall, I am of the view that these services are similar to between a low and medium degree.

32. "Import-export agency services" in the applicant's term describes a service wherein an agent will deal with the importing and exporting of goods on behalf of the consumer. I consider that these services will fall within the category of "import and export services" in the opponent's specifications. This is because it is expected that when engaging in import and export services, the service will involve an agent

or professional who will arrange for the import and export services on the user's behalf. These services are, therefore, identical under the principle outlined in *Meric*.

### Class 36 services

33. A majority, but not all, of the opponent's terms in its class 36 services are succeeded by the following limitation:

"All these services relating to the hotel, catering, restaurant, supermarket sector, to beverages, to machines and apparatus for the preparation, processing, treatment, sale, distribution, dispensing, displaying, packaging, bottling or providing food and drink"

34. The applicant's class 36 services contain no similar limitation. I will move on to undertake a comparison for these services in turn. Where the limitation applies, I will clarify as such in my assessment of those terms and will proceed to consider similarity rather than discussing this issue with each individual assessment. As a result of the limitation, any overlap in the user and purpose will be limited. This is because the user base of the opponent's services will only include those users in the relevant sectors and the purpose of the opponent's services will be for those specified in the limitation. Where I go on to find overlap in user and purposes in making my comparisons below, this reasoning will apply.

35. "Financial consultancy" in the applicant's specification will involve a consultancy service regarding any type of financial transaction. This will include loans, credit cards, sponsorship and more. The opponent's specifications contain the terms "provision of consumer credit", "provision of consumer loans", "provision of finance for credit sales", "provision of finance for hire-purchase", "provision of finance for trade credit", "provision of financing of commercial credit", "provision of funds for hire purchase and for leasing", "provision of funds for hire-purchase and for leasing", "sale on credit (financing)", "loan and credit, and lease-finance services" and "loan, credit and financial leasing services". I also note that the opponent's class 36 specification includes "information, advisory and consultancy services relating to all the aforesaid services." This means that the opponent's marks are

also registered for consultancy services in relation to the above financial services. These services are, therefore, identical under the principle outlined in *Merit*. As the opponent's services all fall within the limitation referred to at paragraphs 33 and 34 above, I will proceed to consider similarity in the event that I am wrong in my finding of identity between these services. These services share a limited overlap in user and purpose for reasons I have set out above. Further, the nature and method of use of the services will also overlap because they are all types of financial services that will be sought by seeking advice from a professional representative. They will also overlap in trade channels as undertakings that provide financial consultancy services are likely to cover all types of financial transactions. Overall, I find that these services are similar to at between a medium and high degree.

36. I have no submissions as to what "clearing, financial" in the applicant's specification is. I am of the view that clearing in respect of finance is where the service provider handles the confirmation, settlement and delivery of a financial transaction on behalf of the consumer. I am of the view that this service is for the handling of a payment process and will, therefore, be the same as "payment processing" in the opponent's specifications. These services are, therefore, identical under the principle outlined in *Merit*. As the opponent's service falls within the limitation referred to at paragraphs 33 and 34 above, I will proceed to consider similarity in the event that I am wrong in my finding of identity between these services. These services share a limited overlap in user and purpose for reasons I have set out above. These services will overlap in nature in that they will be a service surrounding financial transactions. They will also overlap in method of use as both involve the processing of finances that will be provided by a professional undertaking. They will also overlap in trade channels as undertakings that provide financial consultancy services are likely to cover all types of financial transactions. Overall, I find that there is a high degree of similarity between these services.

37. "Financial analysis" in the applicant's specification does not have a counterpart in the opponent's marks' specifications and neither do I consider there to be any degree of similarity with the opponent's goods and services. This is because financial analysis is a service wherein the undertaking analyses its customers finances and provides reports in relation to the same. All of the opponent's terms

are for the facilitation of financial transactions such as loans, credit cards and leases and do not cover the provision of analysis. I recognise that the opponent's class 38 services include 'information, advisory or consultancy services', however there is no evidence that such information, advice and consultancy equates to analysis. While there may be an overlap in user and trade channels, this will be very low due to the difference in the services provided and also the limitation in the opponent's specification. I do not consider a limited overlap in user and trade channels to be enough to warrant a finding of similarity. These services are, therefore, dissimilar.

38. "Pawnbrokerage" in the applicant's specification is a type of loan transaction wherein the consumer 'pawns' property that is used as collateral in exchange for a loan. Given that it is a type of loan service, this term falls within the categories of "loan and credit, and lease-finance services" and "loan, credit and financial leasing services" in the opponent's specifications. These services are, therefore, identical under the principle outlined in *Meric*. As the opponent's services fall within the limitation referred to at paragraphs 33 and 34 above, I will proceed to consider similarity in the event that I am wrong in my finding of identity between these services. These services share a limited overlap in user and purpose for reasons I have set out above. They will also overlap in method of use, nature and trade channels. As a result, I find that these services will be similar to a high degree.

39. Insofar as "investment of funds" includes investment for charitable purposes, it will fall within the term of "investment of funds for charitable purposes" in the opponent's specifications. These services are identical under the principle outlined in *Meric*. However, the applicant's term is very broad and will cover other types of investments. If I am wrong in my finding of identity, I am of the view that these services are similar to a high degree. This is because, even where the applicant's term does not cover charitable investments, it will overlap in nature in that both services are investment services. The method of use will also overlap in that both services will involve the investment of money. Further, while there will be slight differences in the purpose in that one will be specifically for charities and the other will be investment generally, I still consider there to be an overlap in that both services aim to invest in an entity, regardless of whether it is charitable or not.



There will also be an overlap in trade channels in that one undertaking is likely to provide both general investment of funds for general purposes and for charitable purposes.

40. “Fiduciary” in the applicant’s specification describes a service wherein the provider takes care of money and/or assets of its customer. While the opponent’s specifications contain a number of financial services, such as “financial sponsorship and patronage” and “financial grant services”, I do not consider the applicant’s term to fall within any of them. Given that the range of the opponent’s services are so wide, there will inevitably be an overlap in user, however, I consider this to be limited. Further, I also consider that there will be a limited overlap in purposes and nature in that all of the terms involve finances. There will also be some overlap in trade channels, but in the absence of evidence and submissions on the point I do not consider this enough to warrant a finding of similarity – or certainly no more than a very low degree.
41. “Stock exchange quotations” and “issuance of tokens of value” in the applicant’s specification do not have any counterpart in the opponent’s specifications and neither do I consider there to be any level of similarity between these services and the opponent’s goods or services. These services are dissimilar.
42. “Charitable fund raising” in the applicant’s specification will fall within the broader category of “fundraising” and “fund raising” in the opponent’s specifications and are, therefore, identical under the principle outline in *Meric*.
43. “Mutual funds” in the applicant’s specification is a type of investment fund wherein a number of investors pool their money together and invest it in a portfolio of assets including bonds and stocks. As it is an investment fund, there will be a level of similarity with “investment of funds for charitable purposes”. I have no evidence or submissions regarding these services’ user base, however, it could be that investment in mutual funds is used by more involved investors whereas charitable investments may be used by the casual investor. There will, however, be slight overlap because an investor in a mutual fund may still invest for charitable purposes and vice versa. There will also be an overlap in nature due to the fact

that they are both investment services. However, I consider this to be limited due to the fact that the services are aimed at specific type of investments. The purposes will differ as one is for charitable purposes whereas the other is not. There may also be a slight overlap in trade channels due to the fact that larger financial services providers will likely offer both services. Given the limited overlap in user, nature and trade channels, I find that these services are similar to a low degree.

44. “Real estate brokerage” and “brokerage” in the applicant’s specification have no counterpart in the opponent’s specification and neither do I consider them to be similar to any degree with the opponent’s terms. These services are dissimilar.

#### Class 42 services

45. While computer programs and software are terms that are used interchangeably, I do not consider that to be the case for computer programming and software programming. This is because the programming of software is limited to the programming of the software application itself whereas computing programming will involve programming the hardware to perform certain functions that allow the computer to run. While I acknowledge both programming for computers and software will be used via different types of software, their end purposes will differ. Therefore, I do not consider “computer programming” in the applicant’s specification to be identical with “[...] programming [...] of software”. These services will, however, be sought by users looking for services relating to computer and may, therefore, overlap. Further, these services will overlap in nature in that both are programming services and also in method of use as both will involve the writing and execution of computer code via computer software. The trade channels will overlap due to the fact that undertakings are likely to offer both software and general computing programming services. Overall, I consider these services to be similar to a high degree.

46. The opponent’s specifications include a number of services relating to software, such as “software development, programming and implementation”, “software as a service [SaaS]” and “technical support services relating to software and

applications”. The opponent’s specifications also contain the following term at the end of its class 42 specifications, “information, advisory and consultancy services relating to all the aforesaid services”. Therefore, I find that “computer software consultancy” in the applicant’s specification will fall within the above categories as they will include consultancy in respect of computer software. These services are, therefore, identical under the principle outlined in *Meric*.

47. The opponent’s specifications contain the term “[..] programming [...] of software”. Together with the inclusion of the term at the end of the class 42 services, being “information, advisory and consultancy services relating to all the aforesaid services”, the opponent’s marks are essentially protected for the service of providing information on programming of software. For the reasons set out above, computer programming and software programming describe different types of services, albeit I have found them similar. However, I am of the view that “providing information on computer technology and programming via a website” in the applicant’s specification will share a level of similarity with the opponent’s service of “[..] programming [...] of software”. I find that there will be an overlap in user in that a consumer looking for information regarding software programming may also require information regarding technology and programming generally. The purposes will also overlap at their cores as they both relate to the provision of information in respect of computing, albeit for separate sub-categories, being software, computer technology and programs. There will be an overlap in trade channels as it would be expected that an undertaking providing information in respect of computer software would also provide information regarding a wide range of computing topics. I consider that there will be a slight difference in method of use and nature because the applicant’s term is limited to services provided by a website whereas the opponent’s term is not. Therefore, where the opponent’s term covers websites, there will be a limited overlap. Overall, I find that these services are similar to a high degree.

48. While I recognise that the opponent’s term protecting its class 42 terms in respect of information, advisory and consultancy services covers a wide range of software services, I am of the view that it does not cover computer security consultancy. Therefore, I find no similarity between “computer security consultancy” in the

applicant's specification and any of the goods or services in the opponent's specifications. While the opponent's specification includes a wide range of computer and/or software services, none of them relate to security. Therefore, the protection for 'consultancy' does not cover the applicant's term. These services will differ in user, nature, method of use and purpose. They will also differ in trade channels in that computer security consultancy is commonly provided by more specialised undertakings. Overall, these services are dissimilar to any of those services in the opponent's specifications.

49. "Creating and designing website-based indexes of information for others [information technology services]" in the applicant's specification has no obvious counterpart in the opponent's specifications. While the opponent's specifications contain design services, they relate to computer software only and not website-based indexes of information for others, which is a very specific type of service. I do not consider that these services have any obvious overlap in user, nature, method of use, purpose or trade channels. Therefore, I find that these services are dissimilar.

50. "Computer software design" in the applicant's specification has a direct counterpart in both the opponent's specifications, albeit worded slightly differently ("design [...] of computer software"). These services are identical.

51. "Cloud computing" in the applicant's specification describes a service wherein data and/or files are stored on a cloud-based server. The server is hosted by an undertaking who provides the user with a set amount of storage wherein they can store their data and/or files remotely. As cloud computing is a hosting service, I consider that it would fall within the categories of "online data storage", "hosting of computerized data, files, applications and information", "hosting apps", "hosting information, data, files and computer applications" and "application hosting" in the opponent's specifications. These services are, therefore, identical under the principle outlined in *Meric*.

52. "Data encryption services" in the applicant's specification describes a security service that uses encryption to secure its users data. Commonly, the data will be

given to the service provider who will convert that data from a readable format into an encoded form. It will then remain encoded until the user needs it to be decoded. The service provider will then decode it back into a readable format. I am of the view that this service is an important one when it comes to cyber security and, while the opponent's specifications contain services such as "[...] implementation of software", "software [...] implementation" and "online data storage", I do not consider these to describe a similar service. The user will differ in that the applicant's term's user will likely be someone who is seeking to secure data whereas the user of the aforementioned services of the opponent is likely to be a general software or computer user looking to use software or data storage via a cloud. The purposes will also differ, as will the services' nature and method of use. The provider of data encryption services will be specialized and is unlikely to also provide other types of software or data storage services meaning that there will be no overlap in trade channels. Overall, I consider these services to be dissimilar.

53. "Biological research", "vehicle roadworthiness testing", "design of interior décor" and "authenticating works of art" in the applicant's specification have no counterparts in the opponent's specifications and neither do they share any obvious similarities with the opponent's goods and services. These services will, therefore, be dissimilar.

54. Overall, I have found identity between some of the parties' goods and services and varying levels of similarity. However, I have also found some goods and services to be dissimilar. As some level of similarity is required to engage the test for likelihood of confusion, my findings above mean that the opposition must fail in respect of those goods and services which I have found to be dissimilar. Those goods and services are as follows:

Class 9: Network communication equipment; cameras; electronic advertising displays; electronic notice boards; electronic tags for goods.

Class 36: Financial analysis; stock exchange quotations; issuance of tokens of value; real estate brokerage; brokerage.

Class 42: Computer security consultancy; creating and designing website-based indexes of information for others [information technology services]; data encryption services; biological research; vehicle roadworthiness testing; design of interior décor; authenticating works of art.

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

55. The case law, as set out earlier, requires that I determine who the average consumer is for the respective parties' goods. I must then decide the manner in which these goods are likely to be selected by the average consumer in the course of trade. 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.”

56. I note that in its counterstatement, the applicant has stated that the parties' goods and services are aimed at different consumer groups and that its mark will be used by “only a few professional investors”. I refer to the case of *Pooja Sweets & Savouries Ltd V Pooja Sweets Limited*, BL O-195-15, wherein Ms Anna Carboni, as the Appointed Person, held that where goods are targeted at the general public the mere fact that they might be of greater interest to a particular sub-set of the relevant public did not justify narrowing the assessment of distinctiveness to just that sub-set of the relevant public. I make a comparable finding here. While the applicant's goods and services may be of greater interest to only a small number

of professional investors, the goods and services applied for are aimed at the public at large and I see no justification in narrowing the relevant public.

57. I am of the view that the parties' goods and services will clearly be goods and services that are purchased/selected by members of the general public and business users. For example, a member of the general public may wish to buy computer software and seek an advertising services (such as the services of local newspaper advertising, for example). Alternatively, a business user may wish to purchase software specific to its business (such as business management or accounting software) or seek the services of a software design company.

58. For the member of the general public, the goods and services are likely to be available through a range of retail shops and their online equivalents. Some of the services (such as financial consultancy) will also be available via specialist providers and/or websites. Where the goods are selected at a retailer, they will be displayed on shelves and self-selected by a consumer. A similar process will apply to websites where the consumer will select the goods and/or services having viewed an image displayed on a website. For specialist providers, the services may also be selected after a discussion with a salesperson. The selection of the goods by members of the public will be primarily visual but I do not discount the aural component playing a part. However, for some services I am of the view that the selection of these will be both visual and aural depending on the method of sale used.

59. For business users, I am of the view that the goods and services will be purchased or selected via specialist providers and/or specialist websites. The goods and/or services will be selected after seeing an image on a website or after a discussion with a sales person. As a result, the purchase/selection of the goods and services will be both visual and aural depending on the method of sale used.

60. The goods and services at issue will range from inexpensive items such as mobile phone applications to relatively expensive services such as large advertising campaigns. The goods and services are likely to range from being purchased/selected frequently to infrequently, depending on which goods/service

is being purchased/selected. Depending on what is being chosen the average consumer will bear in mind a wide range of factors such as reliability and ease of use for computer software to a more measured thought process for advertising services. For example, advertising services would be an important choice for a business user looking to ensure that they receive the correct quality and quantity of exposure to the most appropriate audience. The user of these services would want to ensure that they will be provided professionally and meet their particular needs. The level of attention paid by both the member of the general public and business user will generally be medium, although I recognise that it will also be low for some goods such as mobile applications and that it will also range to a higher degree of attention for advertising services and mutual funds, for example.

### **Distinctive character of the opponent's mark**

61. 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-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).”

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

“ZUMEX has [an] enhanced distinctive character in the territory of Europe for beverage making machines, and goods and services related, such as bottles, juices, coolers, and services such as cash wallet services, applications, financial services, online management services, software related to those machinery.”

63. I also note that the opponent has submitted that its “trade mark is considered as NOTORIOUS in SPAIN”. I have set out above that the opponent’s evidence consists of a total of 32 exhibits. The opponent’s witness statement that appended these exhibits did not, save for listing them in a table, offer any explanation as to what this evidence showed. I note that the bulk of the evidence relates to use of the opponent’s mark in Spain and Europe. I note that there is reference to ‘Dealers’ of the opponent’s goods and services in the UK via a print out from the opponent’s evidence, however, I do not consider this to be evidence of use in the UK. I also note that the opponent seeks to rely on a decision of the Spanish Intellectual Property Office regarding the ‘notoriety’ of the opponent’s marks. The reputation of the opponent’s marks in respect of Spain is not relevant to its reputation within the UK. As the evidence does not show any evidence of use in the UK, let alone evidence of enhanced character of the opponent’s marks in the UK, I have only the inherent position to consider.

64. The opponent’s marks are identical to one another. They consist of a device element and a word element. The word element is the word ‘zumex’ presented in a lower-case, grey typeface. The letter ‘u’ is presented smaller than the remaining

letters. Above the letter 'u' sit three orange circles. I note that, in its counterstatement, the applicant has stated that the three orange circles will be seen as three oranges about to enter a juicer. I do not consider that the average consumer will consider this to be the case. I am of the view that, while the orange device element will contribute slightly to the distinctiveness of the marks, I find that marks are dominated by the word 'zumex', which will be seen as a made-up word with no obvious meaning. As a result, 'zumex' will have no allusive or descriptive qualities. Overall, I find that the opponent's marks enjoy a high degree of distinctive character.

### **Comparison of marks**




65. It is clear from *Sabel 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.

66. 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.”

67. 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.

68. The respective trade marks are shown below:

The opponent's marks	The applicant's mark
 <p data-bbox="347 622 746 658">("the opponent's first mark")</p>  <p data-bbox="322 922 772 958">("the opponent's second mark")</p>	 <p data-bbox="957 551 1289 586">("the applicant's mark")</p>

69. I note that in the opponent's notice of opposition, it states that the marks are visually similar due to the fact that the applicant's mark "includes a device which is very similar to the letter Z, which is the capital letter of the opponent [sic] name and trade mark." The opponent then displayed the following visual comparison:



70. Firstly, I do not consider that the applicant's device element is similar to the letter 'Z'. Secondly, I do not consider that the average consumer would mentally rotate the applicant's device element when encountering the mark. This line of argument is dismissed. I have further submissions from the opponent regarding the comparison of the marks and I also note that the applicant has addressed the comparison in its counterstatement. While I will not reproduce the submissions/counterstatement here, I have borne them in mind in assessing the comparison of the marks.

71. Given that the opponent's marks are identical, I will compare them with the applicant's mark together.

### Overall Impression

#### *The applicant's mark*

72. The applicant's mark consists of a device and a word element. The device element sits at the front of the mark and, while appearing as one shape, is made up of two striated triangles pointing towards each other. While I note the size and placement of the device element, its design is fairly unremarkable. The word element sits to the right of the device element and is 'KuMEX'. While the word element is presented in a black, standard typeface, I note that the letters K, E and X are more stylised in that small parts of the letters are missing. However, I do not consider this will alter how the word is viewed. As the eye is usually drawn to the element of the mark that can be read, I am of the view that the word element will play a greater role in the overall impression of the mark with the device element playing a lesser role.

#### *The opponent's marks*

73. While the device element is presented in a different colour to the word element, its placement and size means that it will play a lesser role in the overall impression of the opponent's marks. As a result, 'zumex' will play a greater role in the overall impression of the opponent's marks.

### Visual Comparison

74. While the first letter of the word elements in the marks differ, they share the same following four letters, being 'U-M-E-X'. The marks also share the fact that the 'u' is presented smaller than the remaining letters. While the word elements are similar, they are presented differently in that the opponent's marks are in a grey, lower-case typeface whereas the applicant's mark is in a black, upper-case typeface.

While the typefaces used are both (more or less) standard, they are different. Further, the word elements differ in that the applicant's mark is presented in an unusual manner with parts of the letters 'K', 'E' and 'X' missing. While this does not affect the perception of the applicant's word element, it will constitute a visual difference.

75. As for the respective marks devices elements, these are different. While I have found that the device elements play lesser roles in their respective marks, they will still constitute a visual difference. Taking all of the above into account and bearing in mind that the average consumer tends to focus on the beginning of marks,<sup>4</sup> being the point of significant difference between these marks, I find that the marks are visually similar to between a low and medium degree.

#### Aural Comparison

76. The only elements of the marks that will be pronounced are the word elements. The opponents marks will consist of two syllables that will be pronounced 'ZOO-MEKS'. The applicant's mark will also consist of two syllables that will be pronounced 'KOO-MEKS'. The second syllables are identical, but the first syllables differ. While the similarities make up half of the aural components of the marks, the differences are at the beginning and, as I have set out above, the average consumer will tend to focus of the beginning of marks. Taking all of this into account, I am of the view that the marks are aurally similar to a medium degree.

#### Conceptual Comparison

77. I note that in its counterstatement, the applicant stated that the device element is representative of the up and down nature of bitcoin. While this may be the applicant's intention, I do not consider that the average consumer will make this connection. I have also set out above that I do not consider that the opponent's device will be seen as three oranges entering a juicer. It is my view that the device elements of the marks carry no conceptual meaning. The words 'zumex' and

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<sup>4</sup> *El Corte Inglés, SA v OHIM* Cases T-183/02 and T-184/02

'KuMEX' will both be seen as made up words with no obvious meaning. Therefore, I find that the marks are conceptually neutral.

### **Likelihood of confusion**

78. 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 earlier mark, the average consumer for 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.

79. I have found some of the applicant's goods and services to be identical to the opponent's goods and services. However, I have also found some goods and services similar to varying degrees and some to be dissimilar. I have found the average consumer to be both members of the public and business users. I have found that, depending on the goods and/or services selected, the average consumer will select them through primarily visual means (although I do not discount an aural component) or through both visual and aural means. I have concluded that the average consumer will mostly pay a medium degree of attention during the purchasing/selection process, although I have found that for some goods and services, the average consumer will pay a low degree of attention and for some others, they will pay a higher degree of attention.

80. I have found the opponent's marks to have a high level of distinctive character. I have also found the marks to be visually similar to between a low and medium degree, aurally similar to a medium degree and conceptually neutral. I have taken these factors into account in my assessment of the likelihood of confusion between the marks.
81. Taking all of the above factors and the principle of imperfect recollection into account, I consider that the visual and aural differences between the marks are sufficient to ensure that they will not be misremembered or mistakenly recalled as each other. Consequently, I am satisfied that there is no likelihood of direct confusion between the marks. I make this finding even on goods or services that are identical and also in respect of those goods where I have concluded that the average consumer would pay a low degree of attention.
82. It now falls to me to consider whether there is a likelihood of indirect confusion. Indirect confusion involves recognition by the average consumer of the difference between the marks. In the present case, simply because the marks share the common element 'UMEX', there is no plausible basis for an average consumer to believe that the applicant's mark is another brand of the owner of the opponent's marks.<sup>5</sup> There is no rationale for the differences between the word elements, being the letters 'z' and 'K' at the beginning of the marks. Considering both marks as wholes, neither with a clear conceptual significance for the UK consumers, there will be no indirect confusion. I make this finding even on goods or services that are identical and also in respect of those goods where I have concluded that the average consumer would pay a low degree of attention.

## **CONCLUSION**

83. The opposition fails in its entirety and the applicant's mark can proceed to registration.

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<sup>5</sup> Paragraphs 16 & 17 of *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10

## **COSTS**

84. As the applicant has been successful, it is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 2/2016. In the circumstances, I award the applicant the sum of **£700** as a contribution towards its costs. The sum is calculated as follows:

Considering the opponent's statement / preparing counterstatement:	£200
Considering evidence:	£500
<b>Total</b>	<b>£700</b>

85. I therefore order Zumex Group S.A to pay Fortunate Icon Limited the sum of £700. This sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

**Dated this 10th day of February 2021**

**A COOPER**  
**For the Registrar**



## ANNEX

### *The opponent's first mark*

#### Class 9

Databases (electronic); Electronic publications, downloadable; Mobile apps; Computer software applications, downloadable; Computer applications for use in portable computer devices; Computer software packages; Computer application software for use in implementing the Internet of Things [IoT]; Internet of Things [IoT] gateways; Computer hardware modules for use in electronic devices using the Internet of Things [IoT]; Payment software; Business management software; Software for data management; Software for processing electronic payments to and from others; Computer software for processing market information; Software for the analysis of business data; Computer software for managing lifecycles of goods; Electronic control systems for machines; Electronic components used in machines; Coin-operated mechanisms for vending machines; Coin-operated mechanisms; Software for controlling machines; Regulating apparatus, electric; Power controllers; Electronic controllers; Monitors; Testing and quality control devices.

#### Class 20

Furniture, mirrors, picture frames; Tables; Vitrines; Racks; Display racks; Point of purchase displays; Transformable furniture; Dinner wagons; Pedestals; Cocktail units [furniture]; Legs for furniture; Furniture for displaying goods; Furniture for industrial use; Rollers [casters], not of metal; Feet (Non-metallic -) for furniture; Furniture handles, not of metal; Parts of furniture (Non-metallic -); Containers, not of metal, for storage and transport; Closures for containers, non-metallic; Corks for bottles; Corks for containers; Non-metallic caps and closures for bottles and for containers; Stoppers, not of glass, metal or rubber; Bottle caps, incorporating filters; Cask caps, incorporating filters; Combined stoppers for containers [non-metallic and not for household or kitchen use]; Composite caps for containers [non-metallic and not for household or kitchen use]; Child resistant security closures (Non-metallic -) for bottles; Valves, not of metal (taps) for controlling the flow of liquid that enters and leaves the barrels; Non-metal bottle caps; Bottle casings of wood; Non-metal bottle

caps; Cases (Non-metallic -) for bottles; Plastic trays [containers] used in food packaging; Food racks; Transparent food containers for commercial packaging use.

### Class 21

Bottles; Plastic bottles; Glass flasks [containers]; Refrigerating bottles; Insulating flasks; Vacuum flask bottles; Bottle stands; Pouring spouts; Bottle pourers; Pouring spouts for household use; Bottle cradles; Drip preventers for bottles; Bottle brushes; Bottle coolers; Jars; Glass stoppers for bottles; Dispensers for liquids for use with bottles; Bottle openers, electric and non-electric; glasses and drinking vessels; Beverageware; Straws for drinking; Drinks containers; Thermal insulated containers for food or beverage; Beverage coolers [containers]; Food storage containers; Glasses [receptacles]; Serving pots; Containers for household or kitchen use; Brushes for cleaning tanks and containers; Cold packs for chilling food and beverages; Beverage stirrers; Coolers [non-electric containers]; Vegetable racks; Non electric juice extractors; citrus juicers; Portable beverage dispensers; Cold packs used to keep food and drink cold; Plastic juice box holders; Beaters, non-electric; Whisks; Litter baskets of metal; Baskets of common metal for household use; Cooking utensils, non-electric; Fruit cups; Buckets; Funnels; Strainers for household use; Flasks; Fruit bowls of glass; Dishes; Pitchers; Glass jars; Mugs; Storage tins; Finger bowls; Non-electric coffee machines; Beaters, non-electric; Hand-operated food grinders; Coolers [non-electric containers]; Potato ricers; Hand-operated pressers for fruits and vegetables; Graters; Grinders (Non-electric -); Insulating sleeve holders for beverage cans; Sieves [household utensils]; Kitchen utensils; Portable beverage container holders; Hand-operated machines for making pasta.

### Class 29

Preserved, frozen, dried and cooked fruits and vegetables; Jellies, jams, compotes, fruit and vegetable spreads; Milk and milk products; Vegetable-based snack foods; Fruit-based snack food; Fruit peel; Dips; Vegetarian sausages; Prepared meals consisting principally of vegetables; Vegetable juice concentrates for food; Extracts of vegetables [juices] for cooking; Fruit juices for cooking; Fruit salads; Vegetable salads; Arrangements of processed fruit; Aromatized fruit; Pickled fruits; Packaged fruits; Fruit jellies; Prepared fruits; Cut fruits; Fruits, tinned [canned (Am.)]; Fruit pulp; Fruit-based snack food; Dried fruit; Crystallized fruits; Sliced fruit; Crystallized fruits;

Fruit chips; Fruit Powders; Crystallized fruits; Fermented fruits; Glazed fruits; Fruit preserves; Dried nuts; Fruit jellies; Vegetable preserves; fruit flakes; Fruit salads; Citric fruits in processed, dried, cooked, preserved, prepared, drained, ground, manufactured, dehydrated, powdered, tinned, peeled, chopped, and packaged form; Marmalade; Canned pulses; Processed legumes; Salted vegetables; Snack food mixtures consisting of processed fruits and processed nuts (fruits); Mousses (Vegetable -); Raisons; Fruit peel; Prepared vegetable dishes; Fruit desserts; Dried fruit products; Prepared vegetable products; Vegetable puree; Fruit purees; fruit-based filling for pies; Edible seeds; Seeds, prepared; Seeds, prepared; Vegetable powders; Pickled vegetables; Fermented vegetables; Freeze-dried vegetables; Peeled vegetables; Processed vegetables; Processed vegetables; Grilled vegetables; Cut vegetables.

### Class 31

Raw and unprocessed agricultural, aquacultural, horticultural and forestry products; Raw and unprocessed grains and seeds; Fresh fruits and vegetables; Fresh citrus fruits; Fruit trees; Arrangements of fresh fruit; Mixtures of fresh fruits; Citrus fruit, fresh; Unprocessed vegetables; Unprocessed vegetables; Garden herbs, fresh; Natural plants and flowers; Bulbs, seedlings and seeds for planting.

### Class 35

Advertising, marketing and promotional services; Online advertising; Advertising services to promote the sale of beverages; Commercial management; Management assistance to commercial companies; Import and export services; Sales promotion; Organisation of business and advertising schemes; Wholesaling in relation to downloadable software; Organization of events, exhibitions, fairs and shows for commercial, promotional and advertising purposes; Business representative services; Merchandising; Provision of commercial information; Providing consumer product information relating to food or drink products; Business brokerage services; Business consultancy and advisory services; Production of advertising material; Distribution of advertising material; Arranging of product launches; Sales promotion; Customer relationship management; Provision of space on web-sites for advertising goods and services; Wholesaling and retailing of machines for preparing and processing foodstuffs and beverages, machines for making beverages, machines for

preparing juices, pressing machines, food blenders, fruit and vegetable pressing machines, pressing machines for preparing beverages, industrial presses for preparing beverages, industrial machines for preparing beverages, industrial juice extracting machines, electric food processors; Wholesaling and retailing in relation to bottling machines, machine tools for making beverages, dispensing machines, automatic distributing machines, vending machines; Wholesaling and retailing in relation to parts, fittings and accessories of machines for making beverages, juice extracting machines, machines for preparing juices, food blenders, fruit and vegetable pressing machines, pressing machines for preparing beverages, pressing machines, dispensing machines, vending machines, bottling machines; Wholesaling and retailing of non-alcoholic beverages, mineral and aerated waters, fruit or vegetable-based beverages, vegetable beverages, fruit juices, fruit juice concentrates, non-alcoholic fruit beverages, vegetable juices, non-alcoholic fruit extracts, iced fruit beverages, soft drinks, preparations for making beverages; Wholesaling and retailing in relation to preserved, frozen, dried, cooked, chopped, treated, prepared, cut, dehydrated, packaged, processed, ground, manufactured, powdered, tinned and peeled fruits and vegetables; Wholesaling and retailing of fresh fruits and vegetables; Wholesaling and retailing of bottles, caps and closures for bottles and containers, jars, displays, furniture for displaying goods, glasses and drinking vessels, non-electric presses, portable beverage dispensers; Wholesaling and retailing in relation to hand-operated presses for fruits and vegetables, heat-insulated containers, cooling containers, taps, filters and sieves, crushers; Rental of vending machines; Rental of vending machines; Rental of card-operated vending machines; Rental of coin-operated vending machines; Rental of electronic point of sale (EPOS) equipment; Computerized file management; Provision of computerised data relating to business; Analysis of market research data and statistics; Collection, processing and treatment of business data; Providing advice relating to the analysis of consumer buying habits; Consumer response analysis; Marketing services; Drawing up of business statistical information; Compilation of statistics [for business or commercial purposes]; Services rendered by a franchisor, namely, assistance in the running or management of industrial or commercial enterprises; Business management services relating to electronic commerce; Electronic order processing; Mediation of contracts for purchase and sale of products; Online ordering services; information, advisory and

consultancy services relating to the aforesaid services; All of the aforesaid services also provided via global computer communications networks.

### Class 36

Warranty services; Extended warranties; Loan and credit, and lease-finance services; Credit leasing; Credit leasing; Provision of finance for trade credit; Provision of finance for hire-purchase; Provision of funds for hire purchase and for leasing; Installment loans; Installment loans; Provision of consumer credit; Credit card and payment card services; Provision of finance for credit sales; Electronic wallet services (payment services); Payment processing; Processing of payments for the purchase of goods and services; Electronic payment services; Collection of payments for goods and services; Collection of credit sales; Issuing electronic payment cards in connection with bonus and reward schemes; Debit card services; Payment transaction card services; Cash card services; Processing payments made by charge cards; All of the aforesaid services in relation to the hotel sector, food and drink catering, restaurants, supermarkets, beverages, machines and apparatus for preparing, processing, treating, the sale, distribution, display, packaging, bottling or supply of beverages and food; Crowdfunding; Financial sponsorship and patronage; Investment of funds for charitable purposes; Awarding of grants; Fundraising; Financial grant services; Information, advice and consultancy services relating to all the aforesaid services; All of the aforesaid services also provided via global computer communications networks and electronic media.

### Class 40

Custom manufacture, namely custom manufacture of machines and apparatus for preparing, processing, treating, the sale, distribution, dispensing, display, packaging, bottling or supply of beverages and food, squeezing machines, food blenders, pressing machines, parts, fittings, accessories for the aforesaid machines, and machinery for the hotel sector, restaurants, food and drink catering and supermarkets; Customer construction of machines, in particular, machines and apparatus for preparing, processing, treating, the sale, distribution, dispensing, display, packaging, bottling or supply of beverages and food, squeezing machines, food blenders, pressing machines, parts, fittings, accessories for the aforesaid machines, and machinery for the hotel industry, restaurants, food and drink catering and

supermarkets; 3D printing; Food and beverage treatment; Food and drink preservation; Fruit and vegetable presses; Food processing; Pasteurization services for food and beverages; Food grinding; Manufacturing of beverages for others; Production of juice for others; Making of beverages, for others (processing of foodstuffs and beverages); Preservation of food; Rental of machines and apparatus for processing foods; Rental of machines and apparatus for processing beverages; Providing of information in relation to the rental of machines and apparatus for processing foodstuffs and beverages; Information, advisory and consultancy services relating to all the aforesaid services.

#### Class 42

Design, maintenance, rental and updating of computer software; Software development, programming and implementation; Providing online, non-downloadable software; Online data storage; Rental of software; Rental of application software; Providing temporary use of online non-downloadable software; Providing temporary use of non-downloadable software applications accessible via a web site; Platform as a Service [PaaS]; Application service provider services; Infrastructure as a Service [IaaS]; Software as a service [SaaS]; Application service provider services; Providing temporary use of on-line non-downloadable software for importing and managing data; Providing temporary use of web-based applications; Provision of on-line support services for computer program users; Hosting of computerized data, files, applications and information; hosting apps; Design and development of software in the field of mobile applications; Technical assistance in relation to software and applications; Development of computer software application solutions; Providing of downloadable applications; Maintenance of software for use in the operation of apparatus and machines for preparing and treating beverages; Advisory services relating to man-machine interfaces for computer software; Software design for machines for preparing and treating beverages; Testing, authentication and quality control; Conducting of technical machine tests; Certification [quality control]; Engineering design and consultancy; Research and development services; Industrial development in relation to machine tools; Product development consultation; Technological studies relating to machine tools; Design of specialist machinery; Engineering services relating to machine tool design; Design and development of industrial machinery; Product research and development; Industrial design; Product

design; Custom design services; Information, advisory and consultancy services relating to all of the aforementioned services; All of the aforesaid services also provided via global computer communications networks and electronic media.

*The opponent's second mark*

### Class 9

Electronic databases; downloadable electronic publications; mobile applications; downloadable computer applications; computer applications for use in portable computer devices; software packages; computer application software for use in the implementation of the Internet of Things [IOT]; gateways for the internet of things [IoT]; hardware modules for use on the internet of things (IoT); payment software; business management software; data management software; software for processing electronic payments to third parties, as well as for third parties; software for processing market information; software for business data analysis; management software of the lifecycle of the product; electronic control systems for machines; electronic components used in machines; mechanisms for coin-operated vending machines; coin-operated mechanisms; software for controlling machines; electric control apparatus; electrical controllers; electronic controllers; control screens; devices for testing and quality control.

### Class 12

Vegetable Cart

### Class 20

Furniture, mirrors, picture frames; tables; showcases; shelves; display stands; displays stands for points of sale; convertible furniture; dinner wagons [furniture]; pedestals; cocktail bar furniture; furniture legs; furniture for displaying products; furniture for industrial use; furniture casters, not of metal; feet not of metal for furniture; non-metallic handles for furniture; components for furniture (not of metal); containers not of metal for storage or transport; container stoppers and closures; corks for bottles; stoppers for containers; stoppers and closures, not of metal for bottles and for containers; stoppers, not of glass, metal or rubber inserting in bottles; bottle caps, incorporating filters; barrel plugs, incorporating filters; multipurpose stoppers for

containers [not of metal and not for household or kitchen use]; composite stoppers for containers [not of metal and not for household or kitchen use]; child-proof security closures (not of metal) for bottles; valves (not of metal) (valves ) for controlling the flow of liquid entering and exiting barrels; bottle caps, not of metal; casings of wood for bottles; bottle caps, not of metal; cases for bottles, not of metal; tray or plastic containers used for packaging food; shelves for food; transparent food containers for use in commercial packaging; Bottle racks.

### Class 21

Bottles; plastic bottles; glass bottles; cooling bottles; insulating bottles; thermo bottles; nozzles (bottles); measuring nozzles for bottles; pouring nozzles for household purposes; bottle holders; drip stop articles for bottles; bottle brushes; containers for cooling bottles; jars (carboys); glass stoppers for bottles; liquid distributors for use with bottles; bottle openers, electric and non-electric; glasses and containers for drinking; tableware serving beverages; drinking straws; containers for beverages; thermally insulated containers for food and beverages; containers for cooling beverages; storage containers for food; glass containers; serving containers; containers for household and kitchen use; bottle-cleaning brushes; cold accumulators for cooling food and drink; beverage stirrers; portable coolers; non-electric juice extractors; citrus presses; portable beverage dispensers; cooling bags for food and beverages; flasks of plastic for juices; non-electric beaters; whisks; waste baskets of metal; baskets of common metal for use in the home; non-electric cooking utensils; fruit cups; buckets; funnels; filters and drainers for household use; flasks; fruit bowls of glass; dishes (tableware); pitchers; glass pitchers; pitchers for drinking; storage cans; wash-hand basins (finger bowls); non-electric coffee machines; mixers; hand-operated food mills; coolers (non-electrical containers); potato presses; hand-operated presses for fruits and vegetables; graters; grinders not electric; media insulating covers for beverage cans; sieves (household utensils); kitchen utensils; holders for portable beverage containers; machines for preparing food pastes, hand-operated.

### Class 29

Preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes, fruit and vegetable spreads; milk and dairy products; snack foods based on vegetables of all kinds; fruit snacks; fruit peel; spreads; vegetarian charcuterie; prepared meals



consisting mainly of vegetables; vegetable juice concentrates for food; vegetable extracts for cooking [juices]; fruit juices for cooking; fruit salads; vegetable salads; arrangements of processed fruits; aromatized fruit; pickled fruit; packaged fruit; fruit jellies; prepared fruit; cut fruits; canned fruit; fruit pulp; fruit-based snack food; dried fruit; candied fruits; chopped fruit; crystallized fruits; dried fruits; powdered fruit; crystallized fruits; fermented fruits; glazed fruits; canned fruits; dried fruits; fruit jellies; vegetable preserves; fruit chips; fruit salads; citrus fruits processed, dry, cooked, preserved, prepared, dried, ground, prepared, dried, powdered, canned, shelled, chopped, packaged; citrus marmalades; canned vegetables; processed legumes; salted vegetables; snack food mixes consisting of processed fruits and processed dried fruits; vegetable mousse; raisins; fruit peel; prepared vegetable-based dishes; fruit desserts; dried fruit products; prepared vegetable products; vegetables puree; fruit purees; fruit-based fillings for cakes; edible seeds; prepared seeds; processed seeds; powdered vegetables; pickled vegetables; fermented vegetables; freeze-dried vegetables; peeled vegetables; prepared vegetables; processed vegetables; roasted vegetables; cut vegetables.

### Class 31

Raw and unprocessed agricultural, aquacultural, horticultural and forestry products; raw or unprocessed grains and seeds; fresh fruits and vegetables; fresh citrus fruit; fruit trees; fresh fruit arrangements; fresh fruit mixtures; citrus fruits; unprocessed vegetables; raw vegetables; fresh garden herbs; natural plants and flowers; bulbs, seedlings and seeds for planting.

### Class 35

Promotional, marketing and advertising services; online advertising; advertising services for beverage sales promotion; commercial management; commercial management assistance; import and export services; sales promotion services; arranging of commercial and advertising transactions; wholesale services relating to downloadable software; organization of events, exhibitions, fairs and shows for commercial, promotional and advertising purposes; commercial representation services; commercial promotion services; provision of commercial information; provision of information regarding food or beverages; commercial intermediation services; services of business advisory and consultancy; creation of advertising

material; distribution of advertising material; organization of product launches; promotion of sales; customer relationship management; provision of space on websites for advertising products and services; wholesale and retail sale services for machines for preparing and processing food and beverages, machines for preparing beverages, machines for preparing juices, juice extractors, liquefiers, fruit and vegetable pressing machines, pressing machines for the preparation of beverages, industrial presses for preparing beverages, industrial machines for preparing beverages, industrial juice extractor machines, electric food processors; wholesale and retail sale services relating to bottling machines, machine tools for preparing beverages, dispensing machines, automatic distributing machines, vending machines; wholesale and retail sale services relating to parts, pieces, fittings and accessories of machines for making beverages, juice extracting machines, machines for preparing juices, liquefiers, fruit and vegetable pressing machines, pressing machines for preparing beverages, juicing machines, dispensing machines, vending machines, bottling machines; wholesale and retail sale of non-alcoholic beverages, mineral and aerated waters, beverages made with fruit, fruit juices or vegetables, vegetable beverages, fruit juices, fruit juice concentrates, non-alcoholic fruit juice beverages, vegetable juices, non-alcoholic fruit extracts, fruit sherbets, beverages, preparations for making beverages; wholesale and retail sale services relating to fruits and vegetables preserved, frozen, dried, cooked, chopped, treated, prepared, cut, dried, packaged, processed, cooked, ground prepared, powdered, canned, peeled; wholesale and retail sale services for fresh fruits and vegetables; wholesale and retail sale services relating to bottles, stoppers and bottle closures, not of metal and for containers, pitchers, display stands, furniture for displaying products, glasses and containers for drinking, non-electric juicers, portable beverage dispensers, wholesale and retail sale services relating to hand-operated presses for fruits and vegetables, thermo containers, cooling containers, valves, filters and sieves, grinders; rental of vending machines; rental of vending machines; rental of vending machines operated by card; rental of vending machines based on coins; rental of electronic point-of-sale systems (EpoS); computer data management; providing computerized commercial information; analysis of market research data and statistics; collecting, processing and treatment of business data; advice relating to the analysis of consumer buying habits; consumer response analysis; marketing; preparation of commercial statistics; compilation of statistics [for commercial or business purposes]; services provided by

a franchiser, namely assistance in the operation or management of industrial or commercial businesses; Business management services relating to e-commerce; electronic processing of orders; mediation of contracts for the purchase and sale of goods; online purchase order services; information, advisory and consultancy services relating to all the aforesaid services; all the aforesaid services also provided via global computer communication networks.

#### Class 36

Guarantee services; extended warranties; loan, credit and financial leasing services; leasing; hire-purchase financing; provision of financing of commercial credit; provision of funds for hire-purchase and for leasing; funds for leasing with the option to purchase and leasing; instalment loans; installment loans; provision of consumer loans; credit card and payment card services; sale on credit (financing); electronic wallet services (payment services); payment processing; processing of payments for the purchase of goods and services; electronic payment services; collection of payments for goods and services; collection of credit sales; issuing electronic payment cards associated with incentive and bonus schemes; charge card services; payment transaction card services; prepaid card services; arranging payment relating to charge cards; all these services relating to the hotel, catering, restaurant, supermarket sector, to beverages, to machines and apparatus for the preparation, processing, treatment, sale, distribution, dispensing, displaying, packaging, bottling or providing food and drink; crowdfunding; financial sponsorship and patronage; investment of funds for charitable purposes; allocation of grants; fund raising; financial grant services; information, advisory and consultancy services relating to all the aforesaid services; all the aforesaid services also provided via global computer communication networks and electronic means.

#### Class 40

Custom manufacture services, namely services of custom manufacture of machines and apparatus for the preparation, processing, treatment, sale, distribution, dispensing, displaying, packaging, bottling or providing food and drink, juicing machines, pressing machines, juice extractors, parts, fittings, accessories for such machines, and machinery for use in the hotel, restaurant, catering and supermarkets industry; on-request construction of machines, in particular, machines and apparatus

for the preparation, processing, treatment, sale, distribution, dispensing, displaying, packaging, bottling or providing food and drink, juicing machines, pressing machines, juice extractors, parts, fittings, accessories for such machines, and machinery for use in the hotel, restaurant, catering and supermarkets industry; 3D printing; treatment of foodstuffs and beverages; preservation of food and beverages; pressing of fruit and vegetables; processed food; pasteurizing of food and beverages; grinding of foodstuffs; production of beverages for others; production of juices for others; production of beverages for others (processed food and drink); food canning; rental of machines and apparatus for processing foods; rental of machines and apparatus for processing beverages; providing information relating to the rental of machines and apparatus for processing foods or beverages; information, advisory and consultancy services relating to all the aforesaid services.

#### Class 42

Design, maintenance, rental and updating of computer software; development, programming and implementation of software; provision of online non-downloadable software; online data storage; rental of software; application software rental; provision of temporary use of online non-downloadable software; provision of temporary access to non-downloadable software applications via a website; platform as a service [PaaS]; application service provider (ASP); (IaaS) infrastructure as a service; Software as a service [SaaS]; application services provider services; providing temporary use of online non-downloadable software for importing and managing data; providing temporary use of web-based applications; support services online (online) for users of computer programs; hosting information, data, files and computer applications; application hosting; design and development of software in the field of mobile applications; technical support services relating to software and applications; development of software application solutions; providing downloadable applications; software maintenance for use in the operation of apparatus and machines for preparing and treating beverages; advisory services relating to man-machine interfaces for computer software; software design for machines for preparation and treatment of beverages; testing, authentications and quality control; conducting technical machine tests; certification [quality control]; engineering and design services and consultancy; research and development services; industrial development services relating to machine tools; consultancy relating to product development; technological

studies relating to machine tools; specialized machinery design; engineering services relating to the design of machine tools; industrial machinery design and development; research and development of products; industrial design services; product design; custom design services; information, advisory and consultancy services relating to all the aforesaid services; all the aforesaid services also provided via global computer communication networks and electronic means.