

O/0386/25

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF APPLICATION NOS. 3864388 & 3882658

BY PERMIAN TRIASSIC LTD

AND

IN THE MATTER OF THE OPPOSITIONS THERETO

UNDER NOS. 440494 & 441595 BY

STICHTING SEA SHEPHERD GLOBAL

BACKGROUND AND PLEADINGS

Opposition No. 440494

1. On 4 January 2023, Permian Triassic Limited (“the applicant”) applied to register the following series of two marks (“the first application”) in the United Kingdom for a long list of goods and services in Classes 9, 14, 16, 18, 21, 24, 25, 35, 36, 41, 42 and 45. A full list can be found in the Annex to this decision.



2. The application was opposed on 27 April 2023 by Stichting Sea Shepherd Global. The opposition was originally based on sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”), but, as the opponent filed no evidence, the claims under sections 5(3) and 5(4)(a) were struck out. Only the section 5(2)(b) ground remains. The opposition concerns all the goods and services in the application.

3. The opponent relies on two marks, which are shown below.

a) UKTM No. 913304563



Filing date: 17 November 2014

Registration date: 30 July 2015

Class 16

Stationery; Photographs; Calendars; Printed calendars; Wall calendars.

Class 25

Clothing; Footwear; Shirts; Casual shirts.

Class 35

Advertising.

b) UKTM No. 3863219



Filing date: 29 December 2022

Registration date: 16 June 2023

Class 16

Paper, cardboard; printed matter; publications; newsletters; catalogues; pamphlets; manuals; posters; calendars; geographical maps; postcards; greeting cards; postage stamps; flags of paper; pennants (flags of paper); albums; books; booklets; bookbinding material; bookmarks; magazines (periodicals), newspapers, periodicals; photographs; stationery; folders for papers; labels, not of textile; pens, fountain pens, pencils; pen holders; pencil holders; pen cases; school supplies; adhesives for stationery or household purposes; artists' materials; paintbrushes; instructional or teaching material (except apparatus); paper packaging materials; plastic materials for packaging.

Class 25

Clothing, footwear, headgear; leisurewear; casualwear; shirts, t-shirts, hoodies; shorts, skirts, trousers, jackets, coats, hats, jumpers, cardigans, pullovers, sweaters, swimming costumes, trousers, boots, shoes, wrist bands, head bands, gloves, sweatshirts, jogging bottoms, tracksuits, tracksuits tops, tracksuit bottoms.

Class 35

Advertising, marketing and promotional services; organising, planning, arranging of exhibitions, trade fairs and tradeshow for business purposes; advertising and marketing services provided by means of social media; development of promotional campaigns; preparation of publicity leaflets; publication of publicity materials on-line; advertising services to promote and raise public awareness of environmental protection, marine ecosystems and marine conservation; publication of publicity materials; information, advice and consultancy in relation to all the aforesaid services.

Class 36

Charitable fundraising services; political fundraising services; organisation of charitable collections; financial sponsorship, including the provision research grants; managing and monitoring of charitable funds; charitable collections; arranging charitable fundraising events and activities; investment of funds for charitable purposes; charitable fundraising by means of entertainment events; information, advice and consultancy in relation to all the aforesaid services.

Class 39

Collection of domestic and industrial waste; collection of ocean waste; transport and storage of domestic and industrial waste; transport and collection of ocean waste; information, advice and consultancy in relation to all the aforesaid services.

Class 41

Education; provision of training; entertainment; cultural activities; arranging and conducting of courses and training workshops, conferences and seminars; organisation of concerts, musicals, recitals, music, dramatic and theatrical entertainment; arranging and conducting of exhibitions, fairs, trade shows, conferences, seminars, courses, displays, events; organisation of competitions and awards; arranging and conducting competitions; arranging and conducting award ceremonies; publication, releasing, lending out and distribution of books, newspapers, magazines, CD-ROM's, video films and other publications, whether on data carriers, online or otherwise; composing, producing and directing of audio-visual programmes; arranging and conducting of congresses, seminars,

readings and other educational activities; photographic, film and video reporting; organization of educational activities, including those concerning politics, political formation and training; arranging and conducting of workshops, courses and educational events to raise public awareness of the environment, marine ecosystems and marine conservation; information, advice and consultancy in relation to all the aforesaid services.

Class 42

Providing information and advice in relation to environmental protection, marine ecosystems and marine conservation; analysis and research services regarding environmental protection, marine ecosystems and marine conservation; technical project studies and development of measures for environmental protection, conservation of marine environments and preservation of marine ecosystems; information, advice and consultancy in relation to all the aforesaid services.

4. Both marks qualify as earlier marks under section 6(1)(a) of the Act by virtue of their earlier filing dates. As UKTM No. 913304563 had been registered more than five years before the filing date of the applicant's series of marks, the opponent made a statement to say that it had used the mark for all the goods and services relied upon.

5. The opponent states that it is a non-profit, marine conservation organisation. It claims that the applicant's goods and services are identical or similar to goods and services covered by its own marks, and that the marks are visually and conceptually highly similar. It continues: *"In particular, both feature a skull with two sea creatures circling on the forehead of the skull. In addition, both feature a devil's fork and a shepherd's crook crossed to portray the cross bones typically seen on Jolly Roger flags."* Consequently, it claims that there is a likelihood of confusion on the part of the public, which includes a likelihood of association, and that the registration should be refused under section 5(2)(b) of the Act.

6. The applicant filed a defence and counterstatement. It denied that the marks were highly similar, arguing that the earlier marks contained the distinctive word elements "SEA SHEPHERD", which were not part of the contested marks. It also denied that all the goods and services applied for were identical or similar to the opponent's goods

and services. It denied that there was a likelihood of confusion and put the opponent to proof of use of UKTM No. 913304563.

7. As I have already noted, the opponent filed no evidence and so may only rely on UKTM No. 3863219, which I shall from now on refer to as “the earlier mark”.

Opposition No. 441595

8. On 27 January 2023, the applicant applied to register the following series of two marks (“the second application”) in the United Kingdom for the goods listed below:



Class 24

Fabric flags; Cloth flags; Plastic flags; Flags of textile; Flags and pennants of textile; Pennants namely flags, other than of paper; Cloth pennants; Plastic pennants; Pennants of textile; Felt pennants; Towels of textiles; Cotton towels; Towel sheet; Hand towels; Tea towels; Tea cloths; Dish towels; Kitchen towels; Bath towels; Beach towels; Bunting flags; Bunting of textile or plastic; Cloth bunting; Streamers of textile; Banners of textile or plastic; Cloth banners.

9. On 26 June 2023, the application was opposed by the opponent on the same grounds as the other opposition in these proceedings. Only the section 5(2)(b) claim is now in play. The opponent relies on the earlier mark from the other opposition, and the following goods:

Class 16

Paper, cardboard; printed matter; publications; newsletters; catalogues; pamphlets; manuals; posters; calendars; geographical maps; postcards; greeting cards; postage stamps; flags of paper; pennants (flags of paper); albums; books; booklets; bookbinding material; bookmarks; magazines (periodicals), newspapers, periodicals; photographs; stationery; folders for papers; labels, not

of textile; pens, fountain pens, pencils; pen holders; pencil holders; pen cases; school supplies; adhesives for stationery or household purposes; artists' materials; paintbrushes; instructional or teaching material (except apparatus); paper packaging materials; plastic materials for packaging.

Class 25

Clothing, footwear, headgear; leisurewear; casualwear; shirts, t-shirts, hoodies; shorts, skirts, trousers, jackets, coats, hats, jumpers, cardigans, pullovers, sweaters, swimming costumes, trousers, boots, shoes, wrist bands, head bands, gloves, sweatshirts, jogging bottoms, tracksuits, tracksuits tops, tracksuit bottoms.

10. The opponent claims that the goods are highly similar and that the marks are visually highly similar and conceptually identical, such that there exists a strong likelihood of confusion on the part of the public, including a strong likelihood of association.

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

12. Neither side requested a hearing and so this decision has been taken following a careful consideration of the papers. In these proceedings, the opponent is represented by Freeths LLP and the applicant by Stone King LLP.

EVIDENCE AND SUBMISSIONS

13. Only the applicant filed evidence. This comes from Gavin Lloyd Llewellyn, a partner of Stone King LLP. His witness statement is dated 22 February 2024 and presents the results of an internet search for examples of the use of the Jolly Roger device, which he submits is a common motif. It is accompanied by 14 exhibits.

14. The applicant filed written submissions dated 22 February 2024. The opponent filed written submissions in lieu of a hearing on 28 May 2024. These submissions in lieu include an Annex covering the goods and services comparison.

RELEVANCE OF EU LAW

15. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

DECISION

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

“A trade mark shall not be registered if because—

...

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

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

17. In considering this opposition, I am guided by the following principles, gleaned from the decisions of the Court of Justice of the European Union (“CJEU”) 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 BV* (Case C-342/97), *Marca Mode CV v Adidas AG & Adidas Benelux BV* (Case C-425/98), *Matratzen Concord GmbH v Office for Harmonisation 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-334/05 P) and *Bimbo SA v OHIM* (Case C-519/12 P):

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. The average consumer is deemed to be reasonably well informed and reasonably circumspect and observant, but someone who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them they have kept in their mind, and whose attention varies according to the category of goods or services in question;
- c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks and vice versa;
- h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- i) mere association, in the strict sense that the later mark brings 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; and

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

18. It is settled case law that I must make my comparison of the goods and services on the basis of all relevant factors. These include the nature of the goods and services, their purpose, their users and method of use, the trade channels through which they reach the market, and whether they are in competition with each other or are complementary: see *Canon*, paragraph 23, and *British Sugar Plc v James Robertson & Sons Limited (TREAT Trade Mark)* [1996] RPC 281 at [296]. As the General Court (“GC”) said in *Boston Scientific Ltd v OHIM*, Case T-325/06, goods and services are complementary when

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

19. The first application covers goods and services in Classes 9, 14, 16, 18, 21, 24, 25, 35, 36, 41, 42 and 45. The opponent has provided submissions and a table setting out what it considers to be the best comparators for the goods and services for which registration is sought. The goods and services it submits are identical are underlined, while those that it submits are similar are shown in bold. In some instances, these submissions are at a fairly general level. For example, a long list of goods in Class 9 is presented besides some of the applicant’s Class 35, 41 and 42 services without identifying the particular services that should be compared to the goods. There is some further detail in the body of the submissions, but this does not cover all the goods and services.

20. In his decision in *SmartX Trade Mark*, BL O/0911/24, Mr Iain Purvis KC, sitting as the Appointed Person, said:

“28. ... it is for the Opponent to put forward the combination of goods on which it relies for similarity (or identity). If it fails to identify a particular

combination, it cannot expect the Hearing Officer to do the job for it. The approach ... would place an intolerable burden on Hearing Officers in cases of this nature in which there will be thousands of potential combinations of goods which could be relied on, and for each combination a slightly different argument for similarity could be made. Furthermore, such an approach would be unfair on the Applicant for the mark, since they will have had no opportunity to address points on similarity taken by the Hearing Officer if those points are not first raised by the Opponent.”

21. Later, he said:

“31(v). In fact (as I have pointed out) the Hearing Officer went beyond the written submissions in making findings of similarity in respect of a number of groups of goods on the basis of arguments which had not been raised by the Opponent. If the Applicant had complained about this by way of an Appeal, there would probably have been a good argument that he had been the victim of procedural unfairness. ...”

22. While the specifications of the opponent are not particularly long, the specification of the first application is voluminous and covers goods and services in classes not included in the earlier marks. Therefore, in some instances, the opponent’s best case is not particularly clear. I do not consider that the case law I have cited means that I have to find that the parties’ goods and services are dissimilar. There is a balance to be struck. In the light of *SmartX*, it would be unfair for me to go through all the opponent’s terms and assess every possible comparison with the applicant’s goods and services. Instead, I consider that it is reasonable that, where possible, I identify the closest terms and carry out the comparison on that basis. In doing so, I will remain mindful of the comments of the Appointed Person regarding the danger of procedural unfairness.

23. In carrying out my assessment, I shall keep in mind the approach to the construction of terms in specifications set out in *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36. Lord Kitchin said:

“365. ... The correct approach, as a matter of principle, in considering a specification of services which is defined by terms which are not clear or

precise, is to confine the terms used to the substance or core of their possible meanings: see, for example, *Reed Executive plc v Reed Business Information Ltd* [2004] EWCA Civ 195; [2004] RPC 40 at para 43. So too, if a specification of goods is defined by terms which are ambiguous, then it should be confined to those goods which are clearly covered. These principles are consistent with first, the requirement that the specification of goods and services must be clear and precise so that others know what they can and cannot do; and secondly, general fairness because any ambiguity is the responsibility of the owner of the mark. If despite this, the words are still unclear so that they cannot be interpreted, then it is permissible to disregard them. But, in my opinion, that will rarely be the case.”

24. I shall also group together goods and services where they are sufficiently comparable to be assessable for registration in essentially the same way for essentially the same reasons: see *SEPARODE Trade Mark*, BL O-399-10, paragraph 5.

Class 9

25. The opponent submits that the applicant’s goods in Class 9 are similar to its services in Classes 35, 41 and 42 on the grounds of complementarity. It argues that they are necessary for the supply of the following services in Class 42: *Analysis and research services regarding environmental protection, marine ecosystems and marine conservation and Technical project studies and development of measures for environmental protection, conservation of marine environments and preservation of marine ecosystems*. In paragraph 32 of its written submissions in lieu, it hones in on computer software and hardware, mobile applications and databases as being used to conduct the services. I shall deal with the software goods first.

Computer software; computer software for use in collecting, compiling, storing, registering, creating, downloading, managing, summarising, sharing, collaborating, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, compare, synchronise, merge, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, performance requirements and quality compliance reports, tracking, analysing, visualising, recording, describing, modelling, researching,

transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, design, development, testing, engineering, reporting, monitoring, systemising, settling, tracking changes and modifications, updating, maintaining, calculating, projecting, forecasting, tracking, assessing, visualising, recording, transforming, supporting, mapping, operating, scheduling, dispatching, planning, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, displaying, processing data, information, analytics, graphics, projects, prioritizing, assigning, tracking, auditing, summaries, cost-benefit analysis; computer software for use in collecting, compiling, storing, registering, creating, downloading, managing, summarising, sharing, collaborating, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, compare, synchronise, merge, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, performance requirements and quality compliance reports, tracking, analysing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, design, development, testing, engineering, reporting, monitoring, systemising, settling, tracking changes and modifications, updating, maintaining, calculating, projecting, forecasting, tracking, assessing, visualising, recording, transforming, supporting, mapping, operating, scheduling, dispatching, planning, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, displaying, processing data, information, analytics, graphics, projects, prioritizing, assigning, tracking, auditing, summaries, cost-benefit analysis in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans; computer software packages; computer software packages in relation to analysing market data, market modelling, performing market simulations, price forecasting, price back casting, market forecasting, prediction of consumption determination of asset revenues, summaries, cost-benefit analysis, instruments, indicators, trading strategies in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans; software application in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans; databases; database engines; electronic databases recorded for computer media, database server software in relation to the protection and conservation of oceans and oceans

life and the intervention against illegal operations exploiting life in the oceans; ... downloadable mobile application for the management of data in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans; computer programs and software, in particular for modelling, evaluating and displaying data relating to weather, climate change, data carriers containing data and information, in particular relating to weather, climate, climate change, impacts of climate change and adaptation to climate change

26. I understand the opponent's Class 42 services to involve research and analysis of scientific information relating to environmental protection and marine conservation, the production of reports and studies, and advising on the development of indicators to measure the state of the oceans and the environment more broadly. In my view, analysis and research in this particular field involves the definition of a problem or question, the systematic gathering of evidence (for example, through desk research, surveys or experiments), an assessment of the evidence and the light it sheds on the problem or question raised at the start of the process. It may also involve the development of options for further action at an individual, governmental or inter-governmental level to conserve the environment. I consider that Technical project studies would involve time-limited pieces of work to deliver particular products, using scientific and technical skills, such as those held by engineers or IT experts. I have already said that, in my view, one of the possible products could be software to assist in the monitoring of key performance indicators relating to environmental protection or marine conservation.

27. The applicant's software goods listed above are specifically related to environmental protection and marine conservation, or include the more specific terms. There is an overlap between the parties' goods and services in both user and purpose. I consider that it is likely that the same undertaking could provide software and analytical and research services. Therefore, there is likely to be some overlap in trade channels. There may also be a degree of competition and complementarity. I find there is a medium degree of similarity between these goods and the opponent's services.

28. The users of the opponent's Class 42 services are likely to be organisations, either in the private or public sector, who are interested in marine conservation. They may also be the users of software or databases produced as part of the *Technical project*

studies and development of measures for environmental protection, conservation of marine environments and preservation of marine ecosystems. Measures for environmental protection require some method of monitoring them on an ongoing basis and, in my view, this is likely to involve the use of software. Consequently, I find that there is at least some overlap in user and trade channels. The goods and services are different in nature and method of use. I agree with the opponent that providers of the Class 42 services are likely to use computer software, mobile applications and databases, but this does not in itself mean that the goods and services are complementary. The consumer must assume that they come from the same undertaking and I consider that it is likely that the good and services would be expected to be the responsibility of different, specialist businesses. I find the goods to be dissimilar to the opponent's services.

Mobile applications; mobile application for the provision of news, articles, journals in relation the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans.

29. I shall compare these goods to the opponent's *Publication, releasing, lending out and distribution of books, newspapers, magazines, CD-ROM's, video films and other publications, whether on data carriers, online or otherwise.* The users of the goods and services are the same. The purpose of the goods and services overlaps, as they will both enable the user to remain informed about topics of particular interest. The applicant's goods are one means of delivering the opponent's services and I consider it likely that the average consumer would assume that they are the responsibility of the same undertaking. I therefore find them to be complementary and there will be an overlap in trade channels. In my view, there is a medium degree of similarity between them.

Communication software; communication software for use in communication in relation to finance, accounting, reporting, documentation, annual reporting, online training, tracking payments and debts, collecting payments and debts, bookkeeping, business management, subscription management and communications services; computer software for tracking changes and modifications to software; computer software for managing software development projects

30. The goods listed here are all specific types of software. While there is likely to be some overlap in user between the opponent's Class 42 services and these goods, the purposes are different, as are the nature and method of use. Given these differences, I do not consider it likely that there will be shared trade channels, or any complementarity or competition. I find these goods to be dissimilar to the opponent's services.

Computer hardware for use in network hardware, memory hardware, telecommunications, communication servers, computer assisted software engineering, transmission of data, collection of data, remotely accessing data, remotely transmitting data, computer network attached storage (NAS), central processing unit, central processing unit boards, central processing unit coolers, computer central processing units, in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans

31. The opponent also submits that the computer hardware goods are complementary to its Class 42 services. I have had some difficulty in construing the above term. This is because I struggle to see how, for example, a central processing unit might be said to be "*in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans*". A central processing unit is a fundamental component of a computer, and the average consumer would not, in my view, expect it to be specially configured for the purposes of environmental protection or conservation. Nevertheless, those are the words in the specification, and I must do my best with them.

32. In my view, the literal meaning of the applicant's term encompasses computer hardware used for a variety of purposes (such as processing or transmitting data), but all with the same end: *the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans*. I shall compare them to the opponent's *Analysis and research services regarding environmental protection, marine ecosystems and marine conservation* and *Technical project studies and development of measures for environmental protection, conservation of marine environments and preservation of marine ecosystems*. The users of the goods and services will be the same. I agree with the opponent that the delivery of such services

is likely to involve the use of computer hardware, but that can be said about a great many services today. I have no evidence before me to suggest that there are particular types of hardware that are targeted towards customers interested in environmental protection and marine conservation. I am not persuaded that the average consumer would assume that the same undertaking is responsible for the hardware and the analysis and research services or project studies and development of measures. The gap between them is too great. Consequently, I do not find them to be complementary. The trade channels are likely to be different. They are also different in nature and method of use. The goods and services are not in competition with each other. I find that they are dissimilar.

Computers and computer peripheral devices; computer hardware

33. For the same reasons, I find that these goods are dissimilar to the opponent's services.

Educational computer software; Educational mobile applications

34. The opponent submits that these goods are similar to its *Education* services in Class 41, as the services are delivered through a variety of channels, including the aforementioned goods. I consider that the users of the goods and the services will be the same, and there could be some shared channels of trade. In addition, the goods and services may be in competition with each other. I also find that they are complementary. Education service providers may also produce software and mobile applications to enable their students to access course materials, practice tests, and so on. I find that the applicant's goods are similar to *Education* to a medium degree.

35. This concludes my assessment of the specific comparisons highlighted by the opponent, and now I turn to the table in Annex A of the opponent's submissions in lieu. The opponent states that the terms it believes to be identical are underlined, while those it believes to be similar are shown in bold.

Blank digital or analogue recording and storage media; communication software for use in communication in relation to finance, accounting, reporting, documentation, annual reporting, online training, tracking payments and debts, collecting payments and debts, bookkeeping, business management, subscription management and

communications services; computer software for tracking changes and modifications to software; computer software for managing software development projects

36. These terms are neither underlined nor emboldened. I cannot see any terms in the opponent's specifications that are self-evidently identical or similar, and it appears from my reading of the table that the opponent has not been able to find any reasonable comparisons. Consequently, I find that these goods are dissimilar to the opponent's goods and services.

Scientific, research, navigation, surveying, photographic, cinematographic, audiovisual, optical, weighing, measuring, signalling, detecting, testing, inspecting, life-saving and teaching apparatus and instruments

37. The remaining terms in Class 9 are emboldened, indicating that the opponent considers them to be similar to some of its services, but has not specified which of these it believes to be the best comparison. The first of these is the Class 9 heading. I shall deal with *teaching apparatus and instruments* first. These are specific goods, such as science sets or simulators. They have a shared purpose with the opponent's *Education* services and there is an overlap in user. I also consider that there is some degree of complementarity, as specific apparatus is essential for the teaching of some lessons or subjects and the average consumer might expect the teaching and the apparatus to be the responsibility of the same undertaking, particularly where the apparatus is specialised. I find a low degree of similarity between the goods and services.

38. The services that I shall use for comparison with the rest of these goods are *Analysis and research services regarding environmental protection, marine ecosystems and marine conservation* and *Technical project studies and development of measures for environmental protection, conservation of marine environments and preservation of marine ecosystems*. I accept that some of the goods may be used during the course of carrying out the services, but I consider it unlikely that the average consumer would assume they are the responsibility of the same undertaking. The nature of the goods and services differs, as does the purpose. The trade channels are also likely to be different. There may be an overlap in user, but this is not sufficient for me to find that the goods and services are similar. In my view, they are dissimilar.

Recorded and downloadable media

39. I shall compare these goods to *Publication, releasing, lending out and distribution of books, newspapers, magazines, CD-ROM's, video films and other publications, whether on data carriers, online or otherwise*. The goods and services are complementary to the extent that one is indispensable for the other, and, in my view, consumers will assume that the responsibility for the goods and services lies with the same undertaking. There are some shared trade channels and users. I find that the goods and services are similar to a medium degree.

Apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data

40. I can see no similarity between these goods and the services covered by the opponent's marks, apart from some overlap in user. The purpose, nature, method of use and trade channels differ. The goods and services are not in competition or complementary. I find that they are dissimilar.

Class 14

41. The opponent submits that all the goods in this Class of the applicant's specification are similar to its own Class 25 goods.

42. In *Compagnie des montres Longines, Francillon SA v OHIM*, Case T-505/12, the GC considered the argument that jewellery and watches were similar to clothing. The Court acknowledged that jewellery and watches were sold under the same marks as high-end clothing and that there was a certain proximity between those goods. However, it considered that clothing, jewellery and watches differed in their nature, intended purpose and method of use. The raw materials from which they were manufactured were different. Clothing was purchased in order to cover, conceal, protect and adorn the body, while the purpose of jewellery was ornamental and that of watches was to enable the wearer to know the time. As the purpose and method of use differed, the goods were not in competition. The Court also considered whether there was aesthetic complementarity between the goods. It said:

“59. Furthermore, according to the case-law, aesthetic complementarity between goods may give rise to a degree of similarity for the purposes of Article 8(1)(b) of Regulation No 207/2009. Such aesthetic complementarity must involve a genuine aesthetic necessity, in the sense that one product is indispensable or important for the use of the other and consumers consider it ordinary and natural to use those products together. That aesthetic complementarity is subjective and is determined by the habits and preferences of consumers, to which producers’ marketing strategies or even simple fashion trends may give rise (see judgment in *Emidio Tucci*, cited in paragraph 48 above, EU:T:2012:499, paragraph 51 and the case-law cited).

60. However, it is important to point out that the mere existence of aesthetic complementarity between the goods is not sufficient to conclude that there is a similarity between them. For that, the consumers must consider it usual that the goods are sold under the same trade mark, which normally implies that a large number of the producers or distributors of the goods are the same (see judgment in *Emidio Tucci*, cited in paragraph 48 above, EU:T:2012:499, paragraph 52 and the case-law cited).”

Tie clips and tie pins; cuff links

43. The opponent submits that these goods are similar to *Clothing* (particularly *Shirts*), as they are complementary and sold side by side. In my view, the applicant’s goods are likely to be sold by jewellers, although I accept they may also be sold in menswear sections of department stores or retailers of men’s businesswear. However, the goods are different in nature and purpose and I do not consider that the average consumer would expect them to come from the same undertaking. There may be a degree of aesthetic complementarity, but as the GC found this is not sufficient for me to find similarity. I find that the goods are dissimilar.

Hat ornaments; pins

44. The opponent makes a similar argument with respect to the applicant’s *Hat ornaments* and *Pins* (which would include hat pins) and its own *Headgear* and *Hats*. For the same reasons as set out in the above paragraph, I find that the goods are dissimilar.

Watch bands; watch straps; watch strap buckles

45. The opponent then submits that the applicant's *Watch bands; watch straps; watch strap buckles* are similar, and sold side-by-side with, its own *Wrist bands* in Class 25. I do not agree that they would be sold side-by-side. The opponent's goods are clothing accessories and would be sold by separate retailers, or in different parts of larger stores. I do not consider that the goods are complementary: the opponent's goods are not essential for the use of the applicant's goods (or vice versa). I find them to be dissimilar.

Jewellery; bracelets; chains

46. For the same reasons, I also find that the applicant's *Jewellery, bracelets and chains* (all mentioned in paragraph 39 of the opponent's written submissions in lieu) are dissimilar to the opponent's Class 25 goods.

Buckles

47. The opponent submits that the applicant's *Buckles* are complementary to its own *Clothing and Footwear*, as buckles feature on belts and on footwear. However, where a term (such as *Buckles*) may fall into one or more classes of the Nice Agreement, I may take the class heading into account: see *Pathway IP Sarl (formerly Regus No 2 Sarl) v Easygroup Ltd (formerly Easygroup IP Licensing Limited)* [2018] EWHC 3608 (Ch), paragraph 94. The heading for Class 14 is *Precious metals and their alloys; jewellery; precious and semi-precious stones; horological and chronometric instruments*. The Explanatory Note states that it includes component parts for jewellery, clocks and watches. I therefore construe the opponent's *Buckles* to cover buckles for watch straps and find them to be dissimilar to the opponent's Class 25 goods.

Precious metals and their alloys; precious and semi-precious stones; horological and chronometric instruments; metal badges for wear; commemorative medals; chronographs (watches); chronometers; clocks; clock cases; clock and watch hands; dials for watches and clocks; watch cases; watch faces; watch chains; watch crystals; watch glasses; watch strap buckles; watches of imitation gold or imitation precious metals; earrings; figurines of precious metal; badges of precious metal or their alloys;

boxes of precious metal; bracelets; brooches; key rings; medallions; medals; necklaces; keyrings; ornaments; rings; statues; statuettes; paste jewellery; silver ornaments; works of art of precious metal or their alloys; parts and fittings for all the aforesaid goods.

48. The opponent has made no specific submissions relating to these goods, beyond claiming that they are similar: I see no reason why these goods should be considered similar to the opponent's Class 25 goods. Their nature and purpose are different; they will be sold by different retailers or in different parts of a larger shop; and they are neither in competition nor complementary. I find that they are dissimilar.

Class 16

49. The applicant admits that the majority of goods in this class are either identical or similar to goods in the opponent's Class 16, but does not provide any further details. The submissions provided by the opponent are brief and are based on the understanding that the applicant has accepted that all the Class 16 goods in the first application are identical to goods in Class 16 of the earlier registrations. As I have just noted, this is not what the applicant said.

50. The following terms appear in both specifications and so are self-evidently identical: *Paper and cardboard; printed matter; bookbinding material; photographs; adhesives for stationery or household purposes; paintbrushes; instructional and teaching materials; books; paper; cardboard; book binding materials; stationery; publications, manuals, magazines; pamphlets; artists' materials; plastic materials for packaging; postcards, greeting cards; posters.*

51. I also consider that the following terms are synonymous with terms in the applicant's specifications, and so are identical:

Contested goods	Earlier goods
Stationery adhesive materials	Adhesives for stationery or household purposes
Bookmarkers	Bookmarks

52. Where goods in the specification of one party are included in a broader term from the other party's specification, those goods are considered to be identical: see *Gérard Meric v OHIM*, Case T-133/05, paragraph 29. In the table below, I set out where I consider that this principle applies. I find these goods to be identical.

Contested goods	Comparison to earlier goods
Stationery and office requisites, except furniture.	Includes <i>Stationery</i> .
Drawing materials and materials for artists; stencils.	Included in <i>Artists' materials</i> .
Plastic sheets, films and bags for wrapping and packaging.	Included in <i>Plastic materials for packaging</i> .
Textbooks; note books; address books; date books; diaries; writing books; reference books; scrapbooks; birthday/special occasion books; pocket diaries; pocket address books and pocket notebooks.	Included in <i>Books</i> .
Note pads; writing papers; notes.	Included in <i>Paper</i> .
Wrapping paper; bottle envelopes of ... paper; bottle wrappers of ... paper; gift wrapping materials; gift wrap; paper bags; boxes.	Included in <i>Paper packaging materials</i>
Packaging materials.	Includes <i>Paper packaging materials</i> and <i>Plastic materials for packaging</i>
Leaflets, ... brochures, newsletters and other printed materials; brochures ...; printed publications; promotional publications; promotional materials; information sheets; contemporary and miniature greeting cards and cards bearing personal expressions and/or puzzle greetings; calendars;	Included in <i>Printed matter</i>

Contested goods	Comparison to earlier goods
engagement calendars; postcard calendars; desk diary/appointment calendars; photo frame calendars; advent calendars; greeting booklets; invitations; name tags; place cards; reminders; scorepads; tallies; stickers; stickers and seals.	
Photo albums	Included in <i>Albums</i>
Binders; writing instruments; pens and pencils; rubber erasers; rubbers for erasing written text; erasers; envelopes and envelope packs.	Included in <i>Stationery</i> .

Printers' type; printing blocks

53. It is my understanding that these terms refer to the small blocks of moveable type that may be used to print books and other publications. As such, I do not see that they have any obvious similarities to any of the opponent's terms. They would not, in my view, be regarded as an item of *Stationery*. I find that they are dissimilar.

Bottle envelopes of cardboard ...; bottle wrappers of cardboard ...;

54. Consumers purchase bottle envelopes and bottle wrappers when they are giving bottles as gifts to others. They hide the contents so that the recipient can enjoy the surprise when they open the packaging. Using these goods reinforces the fact that the bottle is a gift. They are therefore in competition with goods covered by the applicant's *Paper packaging materials*. The nature is slightly different, as the opponent's goods will be more robust, but the users, method of use and trade channels are the same. I find that *Bottle envelopes of cardboard ...* and *bottle wrappers of cardboard ...* are highly similar to *Paper packaging materials*.

Photograph stands

55. A *photograph stand* is a means of displaying one or more photographs. The users of these two goods are the same and there is likely to be some similarity in trade

channels, as retailers that sell photographs are likely also to sell different options for displaying them. The goods differ in nature. I do not find them to be in competition or complementary. While I accept that photographs are essential for the use of a photograph stand, it does not seem to me likely that the average consumer will believe that they come from the same undertaking, given their difference in nature. I find that *Photograph stands* are similar to the opponent's *Photographs* to a low to medium degree.

Stamp cases; stamp holders; stamp inks; stamp mounts; stamp pad inks; stamp pads

56. In my view, these goods may be used to create artistic works and so would be identical to *Artists' materials* in the opponent's specification. However, if I am wrong in this, I consider that they have the same purpose, have the same users and trade channels, and are similar to at least a medium degree.

Stencils for decorating food and beverages

57. The wording of the term indicates the purpose of these goods. They are used in the decoration of food and drinks to improve their appearance. This purpose is different from that of any of the opponent's goods. I do not consider that the trade channels would be the same. The opponent's goods would be sold by booksellers, stationers and art supplies, while the applicant's goods are more likely to be found in kitchen or cookware shops. Where the goods are sold in more general stores, they are unlikely to be found in close proximity. I do not consider that they would share the same physical nature as any of the opponent's goods. They are not in competition or complementary. Both parties' goods would be purchased by the general public, but this is not sufficient for me to find any similarity. I consider that they are dissimilar.

Enclosures

58. The applicant has not explained what this term is meant to cover. In *Pathway IP Sarl (formerly Regus No 2 Sarl) v Easygroup Ltd (formerly Easygroup IP Licensing Limited)* [2018] EWHC 3608 (Ch), Carr J said that where

"94. ... the words chosen may be vague or could refer to goods or services in numerous classes, the class may be used as an aid to interpret what the

words mean with the overall objective of legal certainty of the specification of goods and services.”

59. The heading for Class 16 is *Paper and cardboard; printed matter; bookbinding material; photographs; stationery and office requisites, except furniture; adhesives for stationery or household purposes; drawing materials and materials for artists; paintbrushes; instructional and teaching materials; plastic sheets, films and bags for wrapping and packing; printers' type, printing blocks*. The Explanatory Note says that “Class 16 covers mainly paper, cardboard and certain goods made of those materials, as well as office requisites.”

60. In the context of this class, it is my view that “Enclosures” would be understood to refer to something that is placed inside a package, such as a card giving the details of the seller of goods that have been purchased or information about those goods, or a simple “with compliments” slip. Consequently, I consider that they are a type of printed material and identical per *Meric* to the opponent’s *Printed matter*.

Gift trims; gift boxes or bags; bows and gift card combinations; gift boxes and decorative containers; decorative materials for gifts

61. The purpose of these goods is to make gifts appear attractive. Most of them could be made from paper and I consider that the goods falling into this category are *Gift trims; gift ... bags; bows and gift card combinations; decorative materials for gifts*. In my view, they would fall within the broader category of *Paper packaging materials* and so be identical per *Meric*. However, if I am wrong in this, I find that they would be highly similar, on the basis of shared trade channels, a similar purpose and nature, shared users, and a degree of complementarity. I say that there is some complementarity, because the use of wrapping paper would, in my view, be important for the use of the trims and decorations, and the average consumer is likely to think that the same undertaking is responsible for both.

62. *Gift boxes* and *gift boxes and decorative containers* may be made from paper. They will share the same trade channels as *Paper packaging materials* and overlap in purpose. The users will be the same and the goods are likely to be in competition, as the consumer could choose between a gift box and wrapping paper. I do not consider

them to be complementary. In my view, the applicant's goods are identical to the opponent's goods, but if I am wrong in this they are similar to a high degree.

Greeting card organisers

63. I understand that *Greeting card organisers* are files or boxes in which the user can store greetings cards. The opponent has not indicated which of its goods it considers to be the best comparison for the applicant's goods. I shall compare them to *Albums*, which are also used to store and organise collections of printed materials, most commonly photographs. There is some similarity in purpose, but the physical nature and method of use are different. Photographs and other material are generally fixed permanently into an album. There may be some overlap in trade channels and user. I do not consider that the goods are in competition, on the basis of their different methods of use. I also do not find any complementarity. Taking account of these factors, I find that there is a low degree of similarity between the goods.

Organiser files

64. An organiser file is a box or expanding folder containing separate sections, which may be marked with tabs, so that the user can store documents of the same type or subject together. I shall compare it to the opponent's *Folders for papers*. These are also purchased in order to store documents, so there is a degree of similarity in purpose, and some competition, although I note that the opponent's goods have features that are likely to be attractive to some consumers and that the opponent's goods lack, namely, the facility to store documents in a single place where they can easily be found when needed. There is some similarity in method of use: the user will store papers in them and be able to retrieve them at a later date. I also find some similarity in physical nature, although this will be fairly limited, as the applicant's goods are likely to comprise a series of folders joined together in a concertina-type arrangement or a container made from a harder material with folders inside. The goods are likely to share the same trade channels and be sold in fairly close proximity. I do not, however, find them to be complementary. In my view, they are similar to a medium degree.

Desk organisers

65. A desk organiser is a means of storage containing drawers, pots, shelves and other features for keeping small stationery items tidy on a desk. I shall compare them to the opponent's *Pen holders* and *Pencil holders*. These goods share a purpose: to keep items tidy and accessible. They are targeted towards the same users and will share the same trade channels. The method of use and physical nature are the same. There is a degree of competition, although I note that the opponent's goods are likely to be configured to contain a wider range of stationery items. I find that *Desk organisers* are highly similar to the opponent's *Pen holders* and *Pencil holders*.

Personal organisers

66. I understand that *Personal organisers* are small files in which loose-leaf pages can be inserted. They are likely to be supplied with printed diary, calendar and address pages, as well as blank or lined pages that can be used for notetaking. They may also come with dividers to create separate sections. I shall compare them to the opponent's *Printed matter*. The physical nature of the goods is different as, although the applicant's goods include paper inserts, the file itself is likely to be made from a more robust material, such as leather or an imitation of leather, and contain metal rings to hold the paper pages in place. They will be targeted towards the same users and sold in the same retail outlets or the same sections of larger stores. The purpose of the goods overlaps and there is some competition, although I note that the average consumer is likely to need at least a diary and a notebook to duplicate the function of a personal organiser. There is also some complementarity, as the opponent's term *Printed matter* would cover the printed pages purchased to go in the organiser, and that are essential to its use. The average consumer would expect the same undertaking to be responsible for the organiser and additional pages. Taking all these factors into account, I find that *Personal organisers* are highly similar to *Printed matter*.

Hand labelling appliances

67. I shall compare these goods to *Labels, not of textile*. In my view, the appliances are likely to be purchased by businesses who need to label large quantities of goods, for example with barcodes. The appliances are different in physical nature and purpose from labels. However, there is likely to be an overlap in trade channels. I do not

consider that there is any complementarity between the goods. While the opponent's *Labels* are indispensable for the use of the appliances, I am not persuaded that the average consumer would believe them to be the responsibility of the same undertaking. This is largely because of the significant difference in physical nature. I find that there is a low degree of similarity between *Hand labelling appliances* and *Labels, not of textiles*.

Passport holders

68. *Passport holders* are covers used to protect a passport while travelling. They are therefore likely to be made from a robust material. The opponent has not indicated which of its goods it considers to be the best comparator. I accept that they will be used by the same users as many of the opponent's goods, but that is because the user is a member of the general public. They may be sold in the same retail outlets as some of the opponent's goods, but I do not consider that they will be sold in the same part of the shop. The nature, purpose and method of use is different from any of the opponent's goods. I find that they are dissimilar.

Napkins; Doilies; Coasters; paper coasters; Paper napkins; Table covers; Centrepieces

69. The opponent has not stated which of its goods it considers to be the best comparator. I cannot see any that are evidently similar, as they all have different purposes and would be sold by different retailers, or in different parts of a shop. Their method of use is different, and the only similarity in nature is being made of paper. I find that these goods are dissimilar to the opponent's goods.

Whiteboard erasers; Whiteboards

70. I consider that these goods are frequently used in schools and so find that they are encompassed by the opponent's broader term, *School supplies*, and so are identical per *Meric*.

Paper clips

71. I shall compare these terms to the opponent's *Stationery*, which, to my mind, covers writing materials and equipment such as pens, pencils and erasers, along with

writing paper, folders, files and so on. The parties' goods are targeted towards the same users and sold through the same outlets, often in close proximity to each other. Their purpose is different, as is their method of use. They are not in competition. There may be a degree of complementarity, as paper is indispensable for the use of paper clips and the average consumer may think the same undertaking produces them both. I find that the goods are similar to a medium degree.

Figurines made from cardboard; Figurines made from paper; Figurines made of papier mâché; Works of art and figurines of paper and cardboard

72. The opponent has not indicated which goods in its specification it considers to be its best comparator. None of the goods appear to me to be similar. I note that *Paper* and *Cardboard* are both included in the opponent's specification, but the mere fact that a good is made from a material does not in itself mean that they are similar: see *Les Éditions Albert René v OHIM*, Case T-336/03, paragraph 61. The purpose of the applicant's goods is decorative, and it seems to me unlikely that they will be sold through the same trade channels as any of the opponent's goods. Their method of use is different, and I do not see that there is any competition or complementarity. I find the goods to be dissimilar.

Class 18

73. The opponent submits that the applicant's Class 18 goods are similar to its Class 25 goods as they are complementary and form part of an outfit.

74. In *Gitana SA v OHIM*, Case T-569/11, the GC said:

"45. Moreover, in respect of the relationship between the 'goods in leather and imitations of leather' in Class 18 covered by the trade mark sought and the goods in Class 25 covered by the earlier mark, it is apparent also from settled case-law that the 'goods in leather and imitations of leather' include clothing accessories such as 'bags or wallets' made from that raw material and which, as such, contribute, with clothing and other clothing goods, to the external image ('look') of the consumer concerned, that is to say coordination of its various components at the design stage or when they are purchased. Furthermore, the fact that those goods are often sold in the

same specialist sales outlets is likely to facilitate the perception by the relevant consumer of the close connections between them and support the impression that the same undertaking is responsible for the production of those goods. It follows that some consumers may perceive a close connection between clothing, footwear and headgear in Class 25 and certain ‘goods made of these materials [leather and imitations of leather] and not included in other classes’ in Class 18 which are clothing accessories. Consequently, clothing, shoes and headgear in Class 25 bear more than a slight degree of similarity to a category of ‘goods made of these materials [leather and imitations of leather] and not included in other classes’ in Class 18 consisting of clothing accessories made of those materials (see, to that effect, *PiraÑAM diseño original Juan Bolaños*, paragraph 42 above, paragraphs 49 to 51; *exē*, paragraph 42 above, paragraph 32; and *GIORDANO*, paragraph 42 above, paragraphs 25 to 27).”

Leather bags; bags; handbags; shoulder bags; cross-body bags; leather bags; clutch bags; tote bags

75. In my view, these goods could all be conceived by some consumers as aesthetically complementary accessories to articles of clothing. The terms *Leather bags* and *Bags* are broad terms that include handbags and shoulder bags. I also consider that *Tote bags* would also include a rectangular style of shoulder bag. They are likely to be sold in the same outlets as clothing and the average consumer may expect them to be produced by the same undertaking. Consequently, I find there is a low degree of similarity between these goods and the opponent’s *Clothing, footwear and headgear*.

Leather pouches; leather boxes; luggage and carrying bags; shopping bags; weekend bags; cosmetic bags; wash bags for carrying toiletries; carrying bags; duffle bags; travel bags; suitcases; work bags; bum bags; belt bags and hip bags; sports bags; sports packs; all-purpose sports bags; gym bags; yoga mat bags; barrel bags; backpacks; rucksacks; camping bags; hiking bags; credit card cases; wallets; purses; pouches.

76. The purpose of these goods is to transport or store other, sometimes very specific, items. I do not consider that they would be intended to be coordinated with items of clothing to present a particular image, or sold as such. In my view, these goods are dissimilar to the opponent's Class 25 goods.

Leather and imitations of leather

77. The applicant's *Leather and imitations of leather* may be used in the manufacture of some of the opponent's Class 25 goods. However, while the opponent's finished products may be made from the applicant's goods, that does not in itself make them similar in nature: see *Les Éditions Albert René*, paragraph 61. I consider this to be the case in respect of the goods at issue here. Furthermore, I do not find them to be in competition or complementary. I find that they are dissimilar.

Leather straps

78. The users of *Leather straps* are the same as the users of the opponent's Class 25 goods. The purposes are different. The opponent's goods are purchased in order to cover the body, feet or head, with the aim of protection from the elements and, in the case of footwear, hard surfaces, concealing certain parts of the body or adorning it. A user would buy a leather strap in order to fix it to another good, such as a bag, in that case enabling it to be carried more easily. They would not buy a leather strap for any of the reasons cited for buying Class 25 goods. They are not likely to share the same trade channels and are not in competition or complementary. I find that they are dissimilar.

Umbrellas

79. The applicant's goods are different in physical nature, purpose and method of use from the opponent's Class 25 goods, although they share the same user. They are unlikely to share the same distribution channels and while both parties' goods are likely to be stocked by large retailers they will not be sold in close proximity. They are not in competition or complementary. I find them to be dissimilar.

Class 21

Household or kitchen utensils and containers; cookware and tableware; combs and sponges; brushes; unworked or semi-worked glass, except building glass; glassware, porcelain and earthenware; 3D wall art of made of ceramic; 3D wall art of made of earthenware; 3D wall art of made of glass; 3D wall art of made of porcelain; bottle coolers; bottle openers; bottles; bowls; mugs; mugs made of ceramic materials; mugs made of china; mugs made of earthenware; mugs made of fine bone china; mugs made of plastic; mugs made of porcelain; mugs, not of precious metals; travel mugs; drinking bottles; drinking bottles for sports; drinking bottles for game shows; drinking cups; drinking flasks; drinking glass holders; drinking straw dispensers; glass bottles.

80. The opponent submits that the applicant's Class 21 goods are similar to its own goods, such as *Clothing, footwear and headgear* and *Stationery*, on the grounds that all these goods are bought in supermarkets by the general public. In *Unicorn Studio Inc v Veronese (Société par Actions Simplifiée)* [2024] EWHC 1098 (Ch), Mr Iain Purvis KC, sitting as a deputy High Court judge, said:

"23. ... it seems to me the greater the level of generality at which some similarity under *Canon* factors can be found (i.e. both goods are 'sold in large department stores' or both goods are 'used by ordinary people') the less relevant could it be to any question of confusion, and any assessment of similarity of goods should take that into account.

81. Supermarkets sell an enormous variety of different goods. The mere fact that they are bought in such outlets has little weight in an assessment of the similarity of goods.

82. The applicant's Class 21 goods are different in nature, purpose and method of use from the opponent's goods. They are not in competition, and I do not find any complementarity. Consequently, I find that they are dissimilar to the opponent's goods.

Class 24

Towels (the first application)

83. I shall compare them to the opponent's *Clothing*. Both parties' goods are made from textiles, but they have completely different purposes. I have already referred to

the purpose of clothing; towels are used to dry the body. Their method of use is therefore also different. They are not in competition or complementary. Finally, they have different trade channels and sales outlets, or will be sold in different parts of large shops. I find the goods to be dissimilar.

Towels of textiles; Cotton towels; Towel sheet; Hand towels; Tea towels; Tea cloths; Dish towels; Kitchen towels; Bath towels; Beach towels (second application)

84. For the reasons outlined above, I find that these goods are dissimilar to the opponent's goods.

Fabric flags; Cloth flags; Plastic flags; Flags of textile; Flags and pennants of textile; Pennants namely flags, other than of paper; Cloth pennants; Plastic pennants; Pennants of textile; Felt pennants; Bunting flags; Bunting of textile of plastic; Cloth bunting; Streamers of textile; Banners of textile or plastic; Cloth banners

85. The opponent submits that the remaining goods are similar to its *Flags of paper; pennants (flags) of paper* in Class 16. Both parties' goods are used to decorate a room or building or to show support for a particular cause or event. I find that the purpose of both parties' goods is the same and the method of use will also be the same. They are likely to be sold through the same trade channels to the same users. The physical nature is different and the goods will be in competition. I do not consider them to be complementary. Taking these factors into account, I find that they are highly similar.

Class 25

86. The applicant accepts that the majority of its goods in this class are identical or similar to the opponent's goods. The terms *Clothing* and *footwear* appear in both specifications, and the applicant's *Headwear* is synonymous with the opponent's *Headgear*. In addition, the following terms also appear in both parties' specifications: *Wristbands; headbands; leisure wear; casualwear; tshirts; shirts; hoodies; sweatshirts; tracksuits; shorts; trousers; skirts; jackets; coats; cardigans; sweaters; jumpers; shoes; hats; gloves.*

87. I also find these goods to be identical per *Meric*:

Contested goods	Comparison to earlier goods
Branded clothing, footwear and headwear	Included in <i>Clothing, footwear and headgear</i> .
Uniforms; workwear; sportswear; thermal clothing; waterproof clothing; sweatbands; tops; printed tops; short-sleeved, long-sleeved and sleeveless tops; sleeveless t-shirts; printed t-shirts; short-sleeved and long-sleeved t-shirts; polo shirts; vests; tank tops; stringer vests; jerseys; dungarees; overalls; track pants; bodysuits; playsuits; jumpsuits; jeans; sweat pants; joggers; leggings; tights; hosiery; stockings; lounge wear; nightwear; pyjamas; robes; underwear and undergarments; slips; bras; knickers; camisoles; outerwear; gilets; parkas; ponchos; waistcoats; bodywarmers; suits; blazers; knitwear; dresses; socks; scarves; belts.	Included in <i>Clothing</i> .
Slippers; sandals; boots; trainers; sneakers; clogs; running shoes.	Included in <i>Footwear</i>
Caps; snapback caps; visors; sports headgear [other than helmets].	Included in <i>Headgear</i>

Cleats for attachment to sports shoes

88. I shall compare these goods to *Footwear*, which self-evidently includes *Sports shoes*. Cleats are attachments to shoes that improve the traction of the shoe on a surface. An example would be studs on a football boot or attachments on cycling shoes that slot into the pedals of the bicycle. There is an overlap in user as the cleats will be purchased by manufacturers and the end-user as replacements. There may also be an overlap in trade channels and a degree of complementarity. The physical nature, however, is different. I find the goods to be similar to a medium degree.

Class 35

89. The applicant accepts that the following services are identical to services covered by the opponent's specification: *Arranging promotion of charitable fundraising events; public advocacy to promote global awareness of environmental issues; public advocacy to promote global awareness of issues associated with illegal wildlife trade; association services namely, promoting awareness and participation in activities to protect and conserve the ocean and marine animals and habitats through distribution of educational materials, conducting public awareness campaigns, citizen science programs, monitoring relevant legislation and the like; conducting opinion polls, questionnaires and surveys for commercial and advertising purposes, in particular with regard to oceans, seas and marine life, weather, climate, climate change, impacts of climate change and adaptation to climate change; consultancy with regard to oceans, seas, marine life, weather, climate, climate change, impacts of climate change and adaptation to climate change for commercial and advertising purposes; public relations services; providing interview partners and consultancy for business purposes and advertising purposes.* It submits that the remaining services are dissimilar to the opponent's services.

Providing assistance and advice in the field of commercial lobbying

90. I shall compare these services to the opponent's *Advertising, marketing and promotional services*. The applicant's services involve advising clients who wish to influence the policies and actions of third parties, such as governments or other funding bodies, so that the client's business interests are better served. The opponent's promotional services are also directed towards improving the commercial position of the user. The purposes and users are the same and the services are likely to share the same trade channels. They may also be delivered by the same undertakings. I find that they are highly similar.

Business communication

91. The opponent has neither underlined nor emboldened this term in the table in the Annex to its written submissions in lieu. In my view, *Business communication* would be understood to cover communications services provided to businesses. Consequently, I find that it would include some of the opponent's Class 35 services

relating to *marketing and promotional services and development of promotional campaigns*. If I am wrong in finding identity per *Meric*, I find that they are similar to at least a medium degree.

Computerised file management

92. The opponent has neither underlined nor emboldened this term in the table in the Annex to its written submissions in lieu. I cannot see any terms in the opponent's specifications that are self-evidently identical or similar, bearing in mind the requirement not to interpret the terms used for services too liberally. Consequently, I find that these services are dissimilar to the opponent's goods and services.

Collating and systematic ordering of data in a computer database; data and database management

93. The opponent has not indicated which of its terms it considers to be its best comparator. The applicant's service is in Class 35, which, as the Explanatory Note states, covers "*mainly services involving business management, operation, organization and administration of a commercial or industrial enterprise*". Therefore, I see this term as referring to an essentially administrative task. I do not see it as self-evidently similar to any of the list suggested in the opponent's table or any other goods or services covered by its specification. I find it to be dissimilar to the opponent's goods and services.

Market monitoring and market analysis

94. I consider that these services are identical per *Meric* to the opponent's ... *marketing ... services*. Even if I am wrong in this, I consider that the purposes of the services will be the same and they will be targeted towards the same users and are likely to be supplied by the same undertakings through the same trade channels. If they are not identical, they are highly similar.

News clipping services

95. I understand that news clipping services are businesses that monitor media sources for articles of interest to its clients. I shall compare the services to *Publication, releasing, lending out and distribution of ... newspapers, magazines ... and other*

publications, whether on data carriers, online or otherwise. The users of the services are the same, and there is an overlap in purpose, as both parties' services may be used to enable the consumer to be kept informed of the latest developments in a particular field or industry. The opponent's services are essential for the provision of those of the applicant and in my view the average consumer would assume that the news clipping service was the responsibility of the publisher and/or distributor of the newspapers and magazines. Therefore, I consider that the services are complementary. There is also a degree of competition, as the user may choose to access the publications themselves or rely on a news clipping service to select only those articles that are of most relevance. I find that the services are similar to a medium degree.

Business services relating to charity and good cause fundraising campaigns; business services relating to charities, non-governmental organisations, social enterprises and social organisations; business management and administration services in connection with charities, non-governmental organisations, social enterprises and social organisations.

96. I shall compare these services to the opponent's *Arranging charitable fundraising events and activities* in Class 36. In my view, the services covered by the applicant's specification relate to business administration and management. The services are delivered to charities and similar organisations, but this does not appear to me to change the nature of the service. They would still cover, for example, payroll, human resource management and bookkeeping, and be essentially the same services as offered to for-profit organisations. The purpose and nature of the services are different from the purpose and nature of the opponent's services. They would not be obtained from the same providers, and are not in competition or complementary. They overlap only in user, but I do not find that this is sufficient for the services to be similar. Consequently, I find that they are dissimilar.

Retail and wholesale services

97. In *Tony van Gulck v Wasabi Frog Ltd (MissBoo Trade Mark)*, Case BL O/391/14, Mr Geoffrey Hobbs QC, sitting as the Appointed Person, reviewed the law concerning the comparison of goods and retail services and concluded that:

- i) it is not permissible to treat a mark registered for “retail services for goods X” as though the mark were registered for goods X;
- ii) goods and services are not similar on the basis that they are complementary if the complementarity between them is insufficiently pronounced that, from the consumer’s point of view, they are unlikely to be offered by one and the same undertaking;
- iii) in making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it is necessary to envisage the retail services normally associated with the opponent’s goods and then to compare the opponent’s goods with the retail services covered by the applicant’s trade mark; and
- iv) the General Court’s findings in *Oakley, Inc. v OHIM*, Case T-116/06, did not mean that goods could only be regarded as similar to retail services where the retail services related to exactly the same goods as those for which the other party’s trade mark was registered (or proposed to be registered).

98. The opponent notes that all the goods that are the subject of the applicant’s retail and wholesale services are found in the specification of the first application, and that it considered that all those goods were identical or similar to goods or services covered by the earlier mark. I have not found similarity for all the applicant’s goods, but, even if I had, this would not mean that the retail and wholesale services are similar. However, where I have found dissimilarity, I cannot see that there is any similarity between the opponent’s goods and services and the applicant’s retail and wholesale services. This means that I find that the following services are dissimilar:

Online and offline retail and wholesale services in relation to scientific, research, navigation, surveying, photographic, cinematographic, audiovisual, optical, weighing, measuring, signalling, detecting, testing, inspecting, life-saving ... apparatus and instruments, apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data, ...blank digital or analogue recording and storage media, ... communication software, communication software for use in communication in relation to finance, accounting, reporting, documentation, annual reporting, online training, tracking

payments and debts, collecting payments and debts, bookkeeping, business management, subscription management and communications services, computer software for tracking changes and modifications to software, computer software for managing software development projects, ... computers and computer peripheral devices, computer hardware, computer hardware for use in network hardware, memory hardware, telecommunications, communication servers, computer assisted software engineering, transmission of data, collection of data, remotely accessing data, remotely transmitting data, computer network attached storage (nas), central processing unit, central processing unit boards, central processing unit coolers, computer central processing units, in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans, computer programs and software, in particular for modelling, evaluating and displaying data relating to weather, climate, climate change, impacts of climate change and adaptation to climate change, data carriers containing data and information, in particular relating to weather, climate, climate change, impacts of climate change and adaptation to climate change, precious metals and their alloys, jewellery, precious and semi-precious stones, horological and chronometric instruments, metal badges for wear, commemorative medals, chronographs (watches), chronometers, watches, clocks, clock cases, clock and watch hands, dials for watches and clocks, watch bands, watch cases, watch faces, watch chains, watch crystals, watch glasses, watch straps, watch strap buckles, watches of imitation gold or imitation precious metals, tie clips and tie pins, cuff links, earrings, figurines of precious metal, hat ornaments, badges of precious metal or their alloys, boxes of precious metal, bracelets, brooches, buckles, chains, key rings, medallions, medals, necklaces, keyrings, ornaments, pins, rings, statues, statuettes, paste jewellery, silver ornaments, works of art of precious metals or their alloys, parts and fitting for all the aforesaid goods, ... printers' type, printing blocks, ... stencils for decorating food and beverages, ... passport holders, ... napkins, babies' napkin-pants, doilies, coasters, paper coasters, paper napkins, table covers, ... , guest towels, centrepieces, streamers and party blowouts, all made of paper, ... figurines made from cardboard, figurines made from paper, figurines of papier mâché, works of art and figurines of paper and cardboard, leather and imitations of leather, leather pouches, leather straps, leather boxes,

... luggage and carrying bags, shopping bags, weekend bags, cosmetic bags, wash bags for carrying toiletries, ... carrying bags, ... duffle bags, ... travel bags, suitcases, work bags, bum bags, belt bags and hip bags, ... sports bags, sports packs, all-purpose sport bags, gym bags, yoga mat bags, barrel bags, backpacks, rucksacks, camping bags, hiking bags, credit card cases, wallets, purses, pouches, umbrellas, household or kitchen utensils and containers, cookware and tableware, combs and sponges, brushes, unworked or semi-worked glass, except building glass, glassware, porcelain and earthenware, 3d wall art of made of ceramic, 3d wall art of made of earthenware, 3d wall art of made of glass, 3d wall art of made of porcelain, bottle coolers, bottle openers, bottles, bowls, mugs, mugs made of ceramic materials, mugs made of china, mugs made of earthenware, mugs made of fine bone china, mugs made of plastic, mugs made of porcelain, mugs, not of precious metals, travel mugs, drinking bottles, drinking bottles for sports, drinking bottles for game shows, drinking cups, drinking flasks, drinking glass holders, drinking straw dispensers, glass bottles,...

99. I found that the goods that are the subject of *Online and offline retail and wholesale services in relation to ... teaching apparatus and instruments* were similar to *Education* to a low degree on the basis of an overlap in user, a shared purpose and a degree of complementarity. I consider that, while there may be an overlap in user, the purposes of the *Education* and retail and wholesale services are different, and the services are not complementary. I find them to be dissimilar. I consider that the same rationale applies with respect to the retail and wholesale services in respect of *Educational computer software* and *Educational mobile applications*.

100. I shall compare *Online and offline retail and wholesale services in relation to ... recorded and downloadable media to publication, releasing, lending out and distribution of books, newspapers, magazines, CD-ROM's, video films and other publications, whether on data carriers, online or otherwise*. I consider that the users will be the same and there will be some overlap in distribution channels. I find that the services are similar to a low degree.

101. I use the same Class 41 services as my comparison for *Online and offline retail and wholesale services in relation to ... mobile applications, mobile application for the*

provision of news articles, journals in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans. The retail and wholesale services are most likely to be supplied, in my view, through an App Store or a website. The consumer would expect to see a range of different options brought together for their convenience. Both parties' services are targeted towards the same users, but the purpose is different. However, there is likely to be some overlap in distribution channels, with some services covered by the opponent's services purchased through the retail and wholesale services supplied by the applicant. I find that they are similar to a low degree.

102. I shall now consider the retail and wholesale services associated with the following goods:

computer software, computer software for use in collecting, compiling, storing, registering, creating, downloading, managing, summarising, sharing, collaborating, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, compare, synchronise, merge, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting performance requirements and quality compliance reports, tracking, analysing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, design, development, testing, engineering, reporting, monitoring, systemising, settling, tracking changes and modifications, updating, maintaining, calculating, projecting, forecasting, tracking, assessing, visualising, recording, transforming, supporting, mapping, operating, scheduling, dispatching, planning, monitoring, systemising, settling, updating, maintaining, displaying and processing data, information, analytics, displaying, processing data, information, analytics, graphics, projects, prioritizing, assigning, tracking, auditing, summaries, cost-benefit analysis, computer software for use in collecting, compiling, storing, registering, creating, downloading, managing, summarising, sharing, collaborating, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, compare, synchronise, merge, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, performance requirements and quality compliance reports, tracking, analysing, visualising,

recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, design, development, testing, engineering, reporting, monitoring, systemising, settling, tracking changes and modifications, updating, maintaining, calculating, projecting, forecasting, tracking, assessing, visualising, recording, transforming, supporting, mapping, operating, scheduling, dispatching, planning, monitoring, systemising, settling, updating, maintaining, displaying and processing data, information analytics, displaying, processing data, information, analytics, graphics, projects, prioritizing, assigning, tracking, auditing, summaries, cost-benefit analysis in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans, computer software packages, computer software packages in relation to analysing market data, market modelling, performing market simulations, price forecasting, price back casting, market forecasting, prediction of consumption determination of asset revenues, summaries, cost-benefit analysis, instruments, indicators, trading strategies in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans, ... software applications in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans, databases, data and database management, database engines, electronic databases recorded for computer media, database server software in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans, ... downloadable mobile application for the management of data in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans, ...

103. These services involve the bringing together of a variety of software goods, either in a physical store or online. The opponent's submission is, in effect, that these services are similar to the Class 42 services I found to be similar to the underlying goods. The purpose, method of use and nature of the services are different, and I do not consider there to be any complementarity or competition between them. In my view, none of the opponent's other goods or services puts it in a better position. I find that these services are dissimilar.

104. Turning now to the retail and wholesale services associated with the Class 16 goods I found to be identical or similar, I note that I found many of the underlying goods to be identical. Where this is the case, I consider that the goods and services will share distribution channels and users and be complementary, and so I find the following services to be similar to a medium degree to goods in the opponent's specification:

Online and offline retail and wholesale services in relation to paper and cardboard, printed matter, bookbinding material, photographs, stationery and office requisites, except furniture, adhesives for stationery or household purposes, drawing materials and materials for artists, paintbrushes, instructional and teaching materials, plastic sheets, films and bags for wrapping and packaging, books, textbooks, note books, note pads, address books, date books, diaries, writing books, reference books, plastic sheets, stationery and office requisites, except furniture, paper, cardboard, wrapping, packaging materials, bottle envelopes of cardboard or paper, bottle wrappers of cardboard or paper, book binding materials, stationery, stationery adhesive materials, leaflets, publications, manuals, binders, bookmarkers, magazines, brochures, newsletters and other printed materials, brochures and pamphlets, printed publications, promotional publications, promotional materials, information sheets, photographs, adhesives for stationery or household purposes, drawing materials and materials for artists, paintbrushes, artists' materials, plastic materials for packaging, stamp cases, stamp holders, stamp inks, stamp mounts, stamp pad inks, stamp pads, stencils, ... postcards, greeting cards, contemporary and miniature greeting cards and cards bearing personal expressions and/or puzzle greetings, photo albums, scrapbooks, gift wrapping materials, gift wrap, enclosures, gift trims, gift boxes or bags, bows and gift card combinations, gift boxes and decorative containers, decorative materials for gifts, birthday/special occasion books, calendars, engagement calendars, postcard calendars, desk diary/appointment calendars, photo frame calendars, advent calendars, greeting booklets, paper bags, invitations, ... name tags, place cards, ... posters, reminders, pocket diaries, pocket address books and pocket notebooks, scorepads, tallies, stickers, stickers and seals, writing instruments, pens and pencils, writing papers, notes, boxes, rubbers, rubbers for erasing written text, erasers, envelopes and envelope packs.

105. In my view, *Online and offline retail and wholesale services in relation to photograph stands, greeting card organisers, organiser files, desk organisers, personal organisers, whiteboard erasers, whiteboards, paper clips* are likely to share the same trade channels as the opponent's *periodicals, photographs and stationery* and overlap in users. The average consumer would not be surprised to see these goods being sold as own-brand goods by the retailer, and so I find that they are similar to a low degree.

106. I had found a low degree of similarity between *Hand labelling appliances* in the applicant's specification and *Labels, not of textile* in the opponent's specification. It seems to me likely that the applicant's *Online and offline retail and wholesale services in relation to hand labelling appliances* would share the same trade channels as the opponent's *Labels, not of textile*. I consider that the retail and wholesale services would also be supplied by the same undertakings that sell stationery goods, particularly targeting businesses. Consequently, I find that there will also be some shared trade channels here. The users in that case would be the same. I find a low degree of similarity between the applicant's services and the opponent's *Stationery*.

107. Earlier in my decision, I found that *leather bags, bags, ... handbags, shoulder bags, ... cross-body bags, ... leather bags, ... clutch bags, tote bags* were similar to the opponent's *Clothing, footwear and headgear* to a low degree, on the basis of shared outlets and a degree of aesthetic complementarity. However, I am not comparing goods with goods, but the retailing of bags with clothing. Nevertheless, as Mr Hobbs said in *MissBoo*, it is not necessary for the underlying goods to be identical. I consider that there will be shared trade channels and shared users. I consider there is likely to be some degree of complementarity, as the average consumer will assume that the undertaking responsible for the retail services is the same as the undertaking responsible for the opponent's goods. I find there is a low to medium degree of similarity between these services and the opponent's goods.

108. Finally, I come to the retail and wholesale services related to the following goods:

... clothing, footwear, headwear, branded clothing, footwear and headwear, uniforms, workwear, sportswear, thermal clothing, waterproof clothing, sweatbands, wristbands, headbands, leisure wear, casualwear, tops, printed

tops, short-sleeved, long- sleeved and sleeveless tops, t-shirts, sleeveless t-shirts, printed t-shirts, short-sleeved and long-sleeved t-shirts, shirts, polo shirts, vests, tank tops, stringer vests, hoodies, sweatshirts, jerseys, dungarees, overalls, joggers, track pants, tracksuits, shorts, bodysuits, playsuits, jumpsuits, jeans, trousers, skirts, sweat pants, joggers, tracksuits, leggings, tights, hosiery, stockings, lounge wear, nightwear, pyjamas, robes, underwear and undergarments, slips, bras, knickers, camisoles, outerwear, jackets, gilets, coats, parkas, ponchos, waistcoats, bodywarmers, suits, blazers, knitwear, cardigans, sweaters, jumpers, dresses, socks, shoes, slippers, sandals, boots, trainers, sneakers, clogs, running shoes, cleats for attachment to sports shoes, hats, caps, snapback caps, visors, sports headgear [other than helmets], scarves, gloves and belts.

109. In my view, these services are complementary to the opponent's *Clothing, footwear, headgear*, will share the same trade channels and be directed towards the same users. I find that they are similar to a medium degree.

Class 36

110. The opponent submits that the applicant has accepted that the Class 36 terms in its specification are identical to services covered by its mark. However, the applicant has merely accepted that the majority of the services in this class are identical or similar to the opponent's goods and services.

111. The following term appears identically in both parties' specifications: *Charitable fundraising services*. In addition, the following terms are synonymous with terms in the opponent's specification: *Fund raising for charity; charitable fund raising; provision of information relating to charity fundraising; information and advisory services relating to charitable and good cause giving and fundraising; financial sponsorship*.

112. I also find these services to be identical per *Meric*:

Contested services	Comparison to earlier services
Financial, monetary ... services.	Includes <i>Investment of funds for charitable purposes</i> .

Contested services	Comparison to earlier services
Charitable fundraising services in relation to the conservation and preservation of oceans, seas and marine life; charitable fundraising through the sale of charity stamps.	Included in <i>Charitable fundraising services</i>
Providing monetary grants to charities; financing of studies and projects for oceans, seas and marine life conservation; financial assistance for non-profit bodies, non-governmental organisations or specific programmes in the field of environmental action or financial sponsorship.	Included in <i>Financial sponsorship, including the provision of research grants</i>
Good cause fundraising services.	Includes <i>Charitable fundraising services</i>
Provision of information relating to good cause fundraising.	Includes <i>Information ... in relation to all the aforesaid services</i> (which include <i>Charitable fundraising services</i>)

Banking services

113. I have noted above that the applicant has accepted that the majority of the services are similar, and lists ones that it considers to be dissimilar. The unlisted services include all those shown above and *Banking services*. The opponent's specification includes *Investment of funds for charitable purposes*. These might be delivered by the same undertaking as the banking services through the same trade channels. There is an overlap in user and some similarity in purpose, as both services are directed towards the management of money. I find that they are similar to at least a medium degree.

Insurance services

114. The opponent indicates that it considers these services to be similar to services in its own specification, but it does not provide me with the detail to be sure which services those are. I do not see any similarity between *Insurance services* and the

opponent's services. They are of a different nature and purpose and are neither complementary nor in competition with each other. I find that they are dissimilar.

Real estate affairs

115. The opponent has neither underlined nor emboldened these terms in the table in the Annex to its written submissions in lieu. I cannot see any terms in the opponent's specifications that are self-evidently identical or similar, bearing in mind the requirement not to interpret the terms used for services too liberally. Consequently, I find that these services are dissimilar to the opponent's services.

Payment services; payment services relating to charity and good cause fundraising; electronic payment services; money transfer services; financial transactions

116. These are services that facilitate the payment by a purchaser to the business or individual supplying them with goods or services, or that enable one party to transfer money to another, for example, when making a charitable donation. I note that the opponent has not underlined or emboldened *Payment services*, but as it has underlined the other services in this group (indicating it considers them to be identical to services in its own specification), I shall cover them here. I am comparing these services to the opponent's *Charitable collections*, which I interpret as concerning the activities involved in taking the donation from the donor. In my view, there is some similarity in the nature of the services and an overlap in user and purpose. I also consider that there is likely to be some similarity in the method of use. I find that the services are similar to at least a medium degree.

Mutual funds

117. I shall compare these services to *Investment of funds for charitable purposes*. The nature of the services is the same and the purpose and users overlap. The trade channels are also likely to overlap. I find that the services are highly similar.

Class 41

118. The applicant accepts that its services in Class 41 are identical or similar to services covered by the opponent's specification. The following terms appear in both: *Education; organisation of competitions*.

119. In addition, the following terms are synonymous with terms in the opponent's specification: *Training; training services; advisory and consultancy services relating to training; education services; advisory and consultancy services relating to education; arranging and conducting of events, exhibitions, seminars, ... conferences; consultancy and information services relating to arranging and conducting events, exhibitions, seminars, ... conferences; publishing of publications including books, newsletters, research reports, research papers, journals, briefing notes and guides; organisation, arranging and conducting of conferences, congresses, seminars, ... colloquiums and symposium; video-tape film production; organisation of colloquiums, lectures and congresses, organisation of exhibitions for educational purposes ...; organisation of events and shows.*

120. I also find these services to be identical per *Meric*:

Contested services	Comparison to earlier services
Training and education relating to environmental matters	Included in <i>Education and Provision of training</i>
Arranging and conducting of ... workshops, lectures, ... and training; Organisation, arranging and conducting of ... workshops	Included in <i>Provision of training</i>
Consultancy and information services relating to arranging and conducting ... workshops, lectures, and training	Included in <i>Information, advice and consultancy in relation to all the aforesaid services</i> (where those services include <i>Provision of training</i>)
Publication of multimedia material online; providing non-downloadable video content; providing non-downloadable electronic publications; publication of books; ... electronic publication of books and periodicals online; providing (rental or loan) of recorded data carriers for teaching or entertainment purposes	Included in <i>Publication, releasing, lending out and distribution of books, newspapers, magazines, CD-ROM's, video films and other publications, whether on data carriers, online or otherwise</i>

Contested services	Comparison to earlier services
Organisation of sports competitions; arranging of competitions for education or entertainment	Included in <i>Organisation of competitions</i>
Distance learning in the field of the protection and conservation of oceans and seas and marine life, the environment, climate change and its [sic] effects on the environment	Included in <i>Education</i>

121. Given the applicant's admission, I shall proceed on the basis that the following services are similar to the opponent's goods to at least a low degree: *providing non-downloadable audio content; providing non-downloadable images; development and dissemination of campaign and educational materials and digital media in the field of ocean conservation and sustainability, namely web sites, digital applications, online and offline media, marketing campaign collateral, membership cards, and informational announcements or press releases pertaining to the protection and conservation of the ocean and marine animals and habitats; organisation of cultural events concerning oceans, seas, marine life and the conservation and preservation thereof.*

Class 42

122. The following terms are synonymous with terms in the opponent's specification: *Environmental consultancy services; environmental advisory services; research, consultancy and advisory services relating to environmental protection and conservation*

123. I also find these services to be identical per *Meric*:

Contested services	Comparison to earlier services
Research in the field of environmental protection; research in the field of environmental conservation; environmental research services;	Included in <i>Analysis and research services regarding environmental protection, marine ecosystems and marine conservation; Providing</i>

Contested services	Comparison to earlier services
<p>preparation of reports relating to environmental research; collection of information relating to the environment; compilation of environmental information; environmental monitoring services; environmental surveys; environmental testing; environmental mapping; preservation of sea life and their habitats through designing community-based anti-poaching and anti-whaling programs for others; research, in particular development of prototypical products enabling decision makers to understand and apply scientific information relating to seas, oceans, marine life, weather, climate, climate change, impacts of climate change and adaptation to climate change; evaluation, preparation, display and publication of data relating to seas, oceans, marine life, weather, climate, climate change, impacts of climate change and adaptation to climate change, and data from climate and climate impact models and observation data on the earth system; research in the field of seas, oceans, marine life, weather, climate, climate change, impacts of climate change and adaptation to climate change, ...; research, in particular conveying of scientific research results to others</p>	<p><i>information and advice in relation to environmental protection, marine ecosystems and marine conservation</i></p>

Contested services	Comparison to earlier services
relating to research on seas, oceans, marine life, weather, climate, climate change, impacts of climate change and adaptation to climate change	
Preparation of reports relating to scientific research; preparation of reports relating to technical research	Includes <i>Analysis and research services regarding environmental protection, marine ecosystems and marine conservation</i>
Advisory and consultancy services relating to environmental monitoring, surveys, testing, mapping and information collection; scientific consultancy, in particular relating to seas, oceans, marine life, weather, climate, climate change, impacts of climate change and adaptation to climate change.	Included in <i>Information, advice and consultancy in relation to all the aforesaid services</i>
... technical support for drawing up project proposals relating to the fields of seas, oceans, marine life, weather, climate, climate change, impacts of climate change and adaptation to climate change	Included in <i>Technical project studies and development of measures for environmental protection, conservation of marine environments and preservation of marine ecosystems</i>

124. The following services are neither underlined nor emboldened: *Design services; design and development of computer hardware, software, programs and mobile apps; web hosting services; hosting of blogs; hosting of podcasts; hosting of videocasts; hosting of mobile applications; hosting of digital content; hosting multimedia entertainment content; hosting of digital content online; hosting of digital content, namely, on-line journals and blogs; creation and maintenance of software for blogs; design, development and updating of computer software, in particular for evaluating, displaying, assessing and interpreting data relating to seas, oceans, marine life, weather, climate, climate change, impacts of climate change and adaptation to climate*

change, and data from climate and climate impact models, and observation data on the earth system; design and hosting of websites and on-line services, including for others.

125. I cannot see any terms in the opponent's specification that seem to me to be self-evidently similar and so I find that they are dissimilar.

Class 45

126. The applicant makes no submissions on the Class 45 services, beyond noting that the earlier marks do not cover any services in this class. However, as section 60A of the Act makes clear, services are not to be regarded as dissimilar simply because they appear in different classes.

Providing investigations for others concerning anti-poaching and anti-whaling strategies; providing the general public and policy makers with information about sea life trade reform; providing information and advice to support individuals in protecting and conserving the sea, environment and marine life

127. The opponent submits that these services are similar to its *Providing information and advice, analysis and research services and technical project studies and development of measures all in relation to environmental protection, conservation of marine environments and preservation of marine ecosystems; information, advice and consultancy in relation to all the aforesaid services* in Class 42. It argues that they are aimed at the same public and serve the same cause. I agree that the users of the services are the same, and that the purpose of both parties' services is marine conservation. I consider it likely that the same undertaking would provide both parties' services, and so they would share the same distribution channels. There is some similarity in nature, as both parties' services are concerned with providing information and advice on marine conservation. I consider this to be the case for *Providing investigations ...* as well as the services that explicitly mention *Information*, as my understanding is that the very act of supplying that investigation service would involve gathering information and providing it to the user. I also consider that there is complementarity between the services. I find them to be highly similar.

Protection of sea, ocean and marine life, provided by a non-governmental organisation

128. The opponent has not specified which term in its specification it considers to be most similar to the applicant's term. It makes some general submissions that this service is similar to its own services because they all relate to the cause of marine protection. Given the inclusion of this term in Class 45, I understand that the services are likely to be legal in nature. I shall compare them to *providing information and advice in relation to environmental protection, marine ecosystems and marine conservation* in Class 42. These services are more likely to be scientific in nature. However, I consider that there are likely to be some shared trade channels and organisations that will provide both services. The users will be the same. In my view, there is some complementarity as the opponent's services will be essential for the supply of the applicant's. Taking these factors into account, I find that the services are similar to a medium to high degree.

Social services; lobbying services

129. The opponent submits that these services are similar to its *Organization of education activities, including those concerning politics, political formation and training* as both parties' services are political and aim to promote change in society's understanding of marine conservation. I shall deal with them separately, beginning with *Social services*.

130. The Explanatory Note in the Nice Classification states that "*Class 45 includes mainly legal and security services, as well as certain personal and social services rendered by others to meet the needs of individuals*". I consider that *Social services* would include services such as babysitting, chaperoning, providing non-medical care services to vulnerable individuals, and social introduction services. In my view, the average consumer would not understand the term to include services that aim to effect societal change, and it would be stretching the term too far to give it the meaning argued for by the opponent. Given my interpretation of the term, I cannot see any goods or services in the opponent's specification that I consider to be similar. I therefore find that *Social services* are dissimilar to the opponent's goods and services.

131. I turn now to *Lobbying services*. The average consumer would understand this term to refer to services aimed at persuading governments or other decision-making

bodies to adopt particular policies and programmes. The users of these services would be organisations with an interest in those policies or programmes. They may also use the opponent's educational services. However, the purpose of the opponent's service is different. I have no evidence to suggest that the trade channels are likely to be shared. The nature of the services is different. I do not consider them to be complementary or in competition. I find them to be dissimilar.

132. As I have already noted that the opponent has made some general submissions about the Class 45 services, I shall also compare *Lobbying services* to the Class 42 services I used as a basis for my comparison in paragraph 128 above: *providing information and advice in relation to environmental protection, marine ecosystems and marine conservation*. This is because I accept that a lobbying service may provide services related to environmental and marine protection issues. It may even specialise in them. There is a degree of complementarity between these services and there may also be some shared trade channels with the same services providing lobbying and information. There is an overlap in user. I find that the services are similar to a low to medium degree.

Providing assistance and advice in the field of policy-related lobbying

133. For the same reasons as outlined in the previous paragraph, I consider that there is a low to medium degree of similarity between these services and *Providing information and advice in relation to environmental protection, marine ecosystems and marine conservation*.

Legal and policy-related auditing for companies

134. I understand this service to refer to checking that companies are complying with their legal obligations and assessing the extent to which they are acting in accordance with particular policies. The legal obligations and policies could include ones that are related to environmental protection. I shall therefore compare these services to *Providing information and advice in relation to environmental protection, marine ecosystems and marine conservation*. The users of the services are the same and there may be some shared trade channels, with the same undertaking doing the auditing and providing the information. There is likely to be a degree of complementarity, as the information service is essential for the delivery of the auditing

and the average consumer may assume that they come from the same undertaking. I find that the services are similar to a medium degree.

Legal representation of companies and company associations

135. These are legal services, provided by professionally qualified lawyers. While the users may be the same as the users of the opponent's services, I do not consider that the services would be provided by the same undertakings. Their purposes also differ, as do their natures and method of use. I find that they are dissimilar to any of the opponent's services.

Average consumer and the purchasing process

136. The average consumer is deemed to be reasonably well informed and reasonably circumspect: see *Hearst Holdings Inc & Anor v A.V.E.L.A. Inc & Ors*, [2014] EWHC 439 (Ch), paragraph 60. For the purposes of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods and services in question: see *Lloyd Schuhfabrik*, paragraph 26.

137. The applicant submits that the average consumer of the goods and services is a member of the general public, although it acknowledges that some of the goods and services might also be used by the trade public. The opponent submits that the average consumer would be a member of the general public interested in, supportive of, or working in, environmental conservation. It invites me to dismiss the applicant's submission that some of the goods and services would be purchased by the trade public, because the applicant has not specified precisely what it means by this term. I am not going to do this, as it is self-evident that the average consumer of some of the services, for example, the business-related services in Class 35, would be a business, rather than a member of the general public.

138. In my view, the average consumer of the applicant's software with an environmental and conservation purpose would be a business or organisation interested in conservation. It does not seem likely to me that a member of the general public would purchase such goods. It is even less likely that they would purchase the analytical, research and technical services I used as a comparison for these goods. It

is the average consumer exposed to both parties' goods and services that is relevant for an assessment of the likelihood of confusion. The average consumer would purchase the goods on an infrequent basis and pay at least a medium degree of attention. The goods are likely to be purchased after browsing through websites or printed promotional literature, and so the visual element of the mark will be more important. However, the average consumer may receive word-of-mouth recommendations.

139. The average consumer of *Mobile applications, Educational computer software, Educational mobile applications*, on the other hand, may be either a member of the general public or an education professional or institution. For the member of the general public, these will be fairly infrequent purchases; a professional would buy them more often. The member of the general public would, in my view, pay a medium degree of attention when purchasing the goods, while the professional purchaser is likely to be more slightly more attentive, given the importance of the goods in delivering, or supporting the delivery of, the services they provide and for which they receive remuneration. Both types of consumer would purchase the goods from websites or app stores, or in bricks-and-mortar shops. Before deciding which goods to buy, they may have looked at reviews in print or online, or seen advertisements. The visual aspect of the mark will be more important, but there is also a role for word-of-mouth recommendations. I make the same findings in respect of *Teaching apparatus and instruments*.

140. The average consumer of *Recorded and downloadable media*, the majority of the Class 16 goods and the Class 18 and 25 goods is a member of the general public. In my view, they would pay a medium degree of attention when purchasing all these goods, which would be bought from physical shops or websites. The purchasing process will be largely visual, with some role for word-of-mouth recommendations and assistance from sales staff.

141. The Class 16 goods in respect of which I consider that the average consumer would not be a member of the general public are *Hand labelling appliances, whiteboard erasers and whiteboards*. In the case of the latter, this is because of the comparison I made with *School supplies*. *Hand labelling appliances* are likely to be fairly infrequent purchases and obtained from specialist office and business stationery suppliers. They

will be bought online or in a physical sales outlet, after browsing websites or the shelves, and the average consumer may also have seen advertising or reviews. They will pay a medium degree of attention and the visual aspect of the mark will be more important, with some role for the aural. I consider that *Whiteboard erasers* and *whiteboards* are likely to be fairly regular purchases that will be made through specialist stationery suppliers or general retailers, either online or in a physical shop. The visual aspect is likely to be more important than the aural and, in my view, the average consumer will pay a medium degree of attention.

142. The Class 24 goods may be purchased either by an organisation or by a member of the general public. They are not likely to be expensive goods, but will, in my view, be purchased relatively infrequently. However, I consider that, where the goods are used for promoting an organisation or cause, they are likely to be chosen with a medium to high degree of attention, as the quality of the banners or flags will reflect upon that organisation or cause. Where the goods are purchased by a member of the general public and are intended to be more decorative, the level of attention will be medium. Organisations are likely to purchase the goods online from a supplier that will provide customised goods. The general public is more likely to purchase the goods from a general retailer, either online or in a physical shop. Either way, it is my view that visual aspects of the mark will be more important, even though both types of consumer may receive word-of-mouth recommendations.

143. The average consumer of the retail services is likely to be a member of the general public, while the average consumer of the wholesale services is likely to be a business or other organisation. When making their choice, they will consider the range of goods offered, prices, levels of customer service, location or delivery arrangements, and so on. In my view, the degree of attention paid would be at a medium level. The average consumer of both kinds is likely to see the mark used on signage on premises, in advertising, or on websites. They may also hear it spoken, but I consider that the selection process will largely be visual.

144. For the rest of the Class 35 services, I consider that the average consumer will be a business or other organisation, as these are all services connected with the running of a business or promoting goods and services or a cause. Given the important role they play in the success of the organisation, I find that the average consumer

would pay a fairly high degree of attention when choosing the services. They will see the mark used on promotional literature and websites and are also likely to receive word-of-mouth recommendations. Both visual and aural aspects of the mark will have a role to play, although I consider that the visual will be more important.

145. The average consumer for the charitable fundraising services in Class 36 and the services in Classes 42 and 45 is also likely to be a business or organisation. I consider that the services are likely to be purchased fairly infrequently and with a high degree of attention. The average consumer will peruse printed and online promotional material and may also receive word-of-mouth recommendations before making a purchase.

146. The average consumer for the banking and financial services in Class 36 may be either a member of the general public or a business or organisation. Either type of consumer would pay a high degree of attention, given the importance of trust in this particular sector. They are likely to see the mark in use in promotional material and may also see or hear advertisements on television, radio or podcasts. The purchasing process will be visual and aural. The consumer would be expected to read a good deal of information before signing up to a product, but this is also a sector where many customers seek professional advice on financial products.

147. I also consider that the average consumer for the services in Class 41 could be either a member of the general public or an organisation. The level of attention paid is likely to be slightly above medium where the services involve training, and medium for the rest of the services, e.g. *providing non-downloadable audio content*. The purchasing process would, in my view, be largely visual as the average consumer would use websites, brochures, and advertisements to help them in their selection. They may also receive word-of-mouth recommendations.



Comparison of marks

148. It is clear from *SABEL* (particularly paragraph 23) that the average consumer normally perceives a 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 marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated in *Bimbo* that:

“34. ... it is necessary to ascertain in each individual case, the overall impression made on the target public by the sign for which the 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.”

149. Artificial dissection of the marks would therefore be wrong, although it is necessary for me to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and, therefore, contribute to the overall impressions created by the marks.

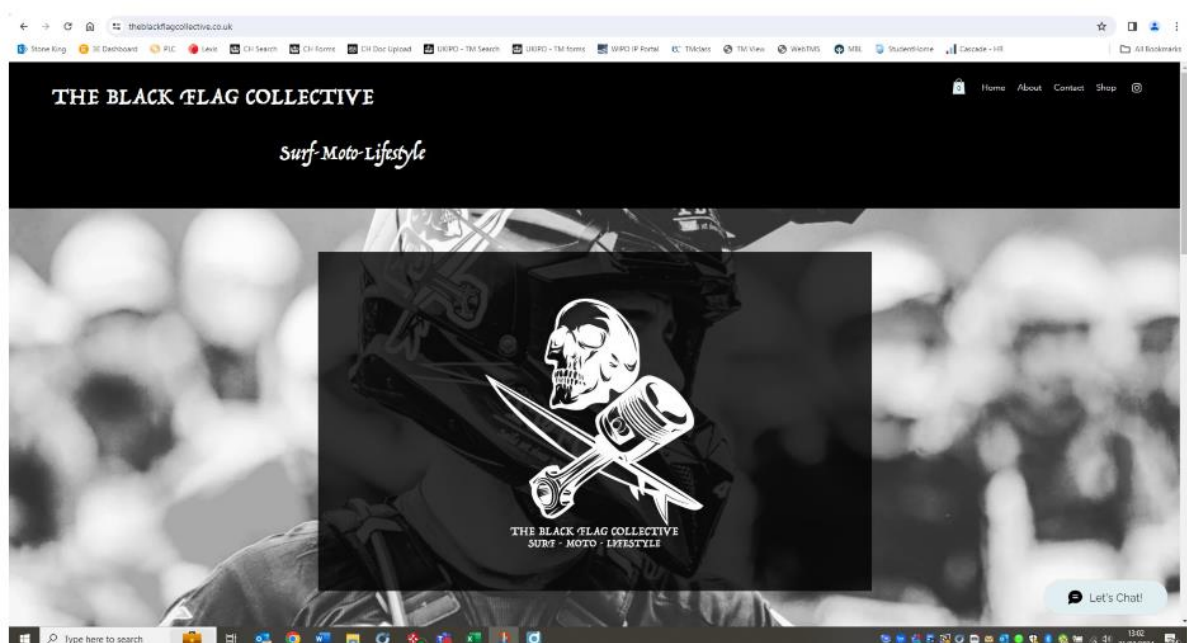
150. The respective marks are shown below:

Contested series of marks	Earlier mark
	

151. The earlier mark is a composite mark consisting of a black rectangle containing the words “SEA SHEPHERD” in white capital letters. The letters contain small breaks. Above the letters is a device consisting of a forward-facing skull (minus the lower jaw), on the forehead of which can be seen two marine creatures which appear to be a whale and dolphin forming a round shape, and beneath the skull, there are a crossed

trident and shepherd's crook. The trident is decorated with an image of a fish, just below the middle prong. The pole of the trident is notched on the sides, giving it a textured appearance. The crook is decorated with lines that make it look as though it is made of wood. The prongs of the trident are on the left of the device and the rounded top of the crook on the right. The trident is overlaid on the crook.

152. I consider that the device will be seen as a play on the Jolly Roger pirate flag. The applicant submits that the Jolly Roger is a common device that will be familiar to the average consumer. To support this submission, it has filed evidence in the form of the results of a Google search conducted by Mr Gavin Lloyd Llewellyn. The first exhibit, Exhibit GLL1, contains images produced by a search for Jolly Roger. The majority of these show a skull with crossed bones, while others show a skull and crossed swords. The remaining exhibits show use of Jolly Roger devices on goods covered by the applicant's specifications. There is more variation apparent here, but it also seems to me that some of these devices are being used to show the origin of the goods sold, as in the example below:¹



153. In my view, the changes to the Jolly Roger, with the trident and crook replacing the crossed bones or swords, will be noticed by the average consumer. They will also take note of the sea creatures. The device is significantly larger than the words and I

¹ Exhibit GLL11, page 42.

consider it to be the dominant element of the mark. Both the verbal element and the device contribute to the distinctive character of the mark. Although verbal elements tend to be more distinctive than figurative elements, the size of the device and the inclusion of unexpected elements in a well-known image lead me to find that it makes an equal contribution to the overall impression of the mark to that of the words.

154. The contested series of marks also shows a skull above a crossed shepherd's crook and a trident. The shepherd's crook is decorated with three fish and has a leaf-life device at the bottom. The trident is decorated with what appears to be the tail of a fish or marine mammal which extends in a straight line down the pole. At the bottom of the pole is a monkey wrench. Neither the crook nor the trident is textured and the crook is overlaid on the trident. The prongs of the trident are on the left of the device and the top of the crook on the right, with the crook overlaying the trident. The skull is shown rotated very slightly to its left and the lower jaw is present. On the forehead of the skull is a device reminiscent of the yin-and-yang symbol containing what appear to be orcas, and there is a speckled pattern on the visible side of the skull. The first mark in the series shows a white device on a rectangular black background, with the markings on the skull appearing in black; the second shows a black device on a white background, with the markings in white. The device will also be seen as a play on the Jolly Roger symbol and so will be seen as a whole. The overall impression of the contested marks therefore lies in this device.

Visual comparison

155. I have described the devices in some detail above. Both devices replace the common bones or swords with a trident and shepherd's crook; both skulls are decorated with sea creatures. There are differences, but these are quite small: the exact nature of the sea creatures; the different overlay of the trident and crook; the decoration on those elements; the presence or absence of a lower jaw in the skull; the inclusion of a yin and yang symbol and a monkey wrench in the contested marks. The first three of these differences in particular require some detailed study of the respective marks, and it is clear from the case law that the average consumer would not undertake such an exercise. A more significant difference is the verbal element that is absent from the contested marks. I cannot ignore this, but I do bear in mind my finding that the device is the dominant element and makes a slightly greater

contribution to the overall impression of the mark. Consequently, I find that the marks are visually highly similar.

Aural comparison

156. There is no aural similarity between the marks, as only the earlier mark contains a verbal element that can be spoken.

Conceptual comparison

157. I have already noted that both marks contain a play on the Jolly Roger pirate flag, with both showing a crossed trident and shepherd's crook and decorated with sea creatures. I note that the opponent in its pleadings referred to the trident as a devil's fork, but even if some consumers do perceive it as such, I consider that a significant proportion will see it as a trident. Tridentes are associated with the sea, in particular with the Roman god Neptune. A significant proportion of consumers would also recognise the crook as belonging to a shepherd, who would be understood to be a person responsible for protecting a flock of sheep. In the earlier mark, the meaning of the device is reinforced by the words "SEA SHEPHERD". The earlier mark would convey the message of a protector of the seas, albeit one with the rebellious tendencies of a pirate.

158. The contested marks share the concept of an association with the sea and the rebellious nature of a pirate. For a significant proportion of consumers, the crook would also convey the message of a shepherd, although the message will not be as strong without the reinforcement of the words. Consequently, I find that the parties' marks are conceptually highly similar.

Distinctive character of the earlier mark

159. Distinctive character is a measure of how strongly a mark distinguishes the goods or services of one undertaking from those of others. The factors that I must take into account in assessing the level of distinctive character were set out by the CJEU in *Lloyd Schuhfabrik Meyer*.

"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)."

160. Registered trade marks possess varying degrees of inherent distinctive character from the very low, because they are suggestive of, or allude to, 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 the mark can be enhanced by the use that has been made of it. However, as the opponent has filed no evidence of use of the mark, I have only the inherent position to consider.

161. I have already found that both the verbal and figurative elements contribute to the distinctive character of the earlier mark. The phrase "SEA SHEPHERD" is a coining of a new term. The device itself is striking and the average consumer will notice the changes that have been made to the standard form of the Jolly Roger flag. Consequently, I find that the mark has a high degree of inherent distinctive character.

Conclusions on likelihood of confusion

162. Making an assessment of the likelihood of confusion is a matter of considering the relevant factors from the viewpoint of the average consumer of the goods and services at issue and determining whether they are likely to be confused. When doing this, I am required to bear in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely on the imperfect picture of them that they have in their mind. This means that the global assessment emulates what happens in the mind of the average consumer on encountering the later mark with an imperfect recollection of the earlier mark. The courts have not said what weight should be attached to each of the factors or provided a formula that can be applied to any set of circumstances. However, I am required to take account of the interdependency principle, i.e. that a lesser degree of similarity

between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services or vice versa.

163. There are two types of confusion: direct and indirect. In *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10, Mr Iain Purvis QC, sitting as the Appointed Person, explained that:

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

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

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

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

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

164. In *Liverpool Gin Distillery Limited & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ commented that:

"12. This is a helpful explanation of the concept of indirect confusion, which has frequently been cited subsequently, but as Mr Purvis made clear it was not intended to be an exhaustive definition.

13. As James Mellor QC sitting as the Appointed Person pointed out in *Cheeky Italian Ltd v Sutaria* (O/291/16) at [16] 'a finding of likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion'. Mr Mellor went on to say that, if there is no likelihood of direct confusion, 'one needs a reasonably special set of circumstances for a finding of a likelihood of indirect confusion'. I would prefer to say that there must be a proper basis for concluding that there is a likelihood of indirect confusion given that there is no likelihood of direct confusion."

165. I do not consider that there is a likelihood of direct confusion. Although I found that the device would make a greater contribution to the overall impression of the earlier mark than the words, the difference is slight. It is my view that the absence or presence of the words makes it unlikely that one party's mark would be mistaken for the other. They are, however, accustomed to seeing a single undertaking using different forms of marks.

166. The applicant submits that the average consumer will not assume that only the opponent would be using a Jolly Roger-style device. To an extent, I agree, but it is important to recall that the devices in the marks here are not the standard Jolly Roger device. I have found that significant changes have been made that would be seen and understood by a significant proportion of average consumers.

167. I accept that there are differences between the devices, but, in my view, these are small and are likely to be remembered only imperfectly. As I have already noted,

the average consumer does not subject the mark to close scrutiny. They would, however, recall the replacement of the crossed bones or swords with a trident and shepherd's crook, and the inclusion of sea creatures on the forehead of the skull. In my view, the average consumer would assume that only one undertaking had made this particular change to a common device. Even where the goods and services are similar to only a low degree, and the average consumer is paying a high degree of attention, I find that there is a likelihood of indirect confusion, with a significant proportion of average consumers believing that the marks are different forms used by the same undertaking.

168. In *Comic Enterprises Ltd v Twentieth Century Fox Film Corporation* [2016] EWCA Civ 41, Kitchin LJ (as he then was) held that if a court concludes that a significant proportion of the relevant public is likely to be confused such as to warrant the intervention of the court, then it may properly find infringement. The same principle applies in the case of oppositions. I consider that the proportion of consumers likely to be confused is sufficient for the section 5(2)(b) ground to be successful in relation to all the goods and services for which I found similarity or identity.

Conclusion

169. The oppositions have been partially successful.

Opposition No. 440494

170. The opposition is successful for the following goods and services:

Class 9

Teaching apparatus and instruments; ... recorded and downloadable media; ... computer software; computer software for use in collecting, compiling, storing, registering, creating, downloading, managing, summarising, sharing, collaborating, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, compare, synchronise, merge, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, performance requirements and quality compliance reports, tracking, analysing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning,

design, development, testing, engineering, reporting, monitoring, systemising, settling, tracking changes and modifications, updating, maintaining, calculating, projecting, forecasting, tracking, assessing, visualising, recording, transforming, supporting, mapping, operating, scheduling, dispatching, planning, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, displaying, processing data, information, analytics, graphics, projects, prioritizing, assigning, tracking, auditing, summaries, cost-benefit analysis; computer software for use in collecting, compiling, storing, registering, creating, downloading, managing, summarising, sharing, collaborating, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, compare, synchronise, merge, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, performance requirements and quality compliance reports, tracking, analysing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, design, development, testing, engineering, reporting, monitoring, systemising, settling, tracking changes and modifications, updating, maintaining, calculating, projecting, forecasting, tracking, assessing, visualising, recording, transforming, supporting, mapping, operating, scheduling, dispatching, planning, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, displaying, processing data, information, analytics, graphics, projects, prioritizing, assigning, tracking, auditing, summaries, cost-benefit analysis in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans; computer software packages; computer software packages in relation to analysing market data, market modelling, performing market simulations, price forecasting, price back casting, market forecasting, prediction of consumption determination of asset revenues, summaries, cost-benefit analysis, instruments, indicators, trading strategies in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans; ... educational computer software; ... software application in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans; databases; database engines; electronic databases recorded for computer media, database

server software in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans; mobile applications; mobile application for the provision of news, articles, journals in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans; downloadable mobile application for the management of data in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans; educational mobile applications.

Class 16

Paper and cardboard; printed matter; bookbinding material; photographs; stationery and office requisites, except furniture; adhesives for stationery or household purposes; drawing materials and materials for artists; paintbrushes; instructional and teaching materials; plastic sheets, films and bags for wrapping and packaging; books; textbooks; note books; note pads; address books; date books; diaries; writing books; reference books; plastic sheets, stationery and office requisites, except furniture; paper; cardboard; wrapping paper; packaging materials; bottle envelopes of cardboard or paper, bottle wrappers of cardboard or paper; book binding materials; stationery; stationery adhesive materials; leaflets, publications, manuals, binders, bookmarkers, magazines, brochures, newsletters and other printed materials; brochures and pamphlets; printed publications; promotional publications; promotional materials; information sheets; photographs; photograph stands; adhesives for stationery or household purposes; drawing materials and materials for artists; paintbrushes; artists' materials; plastic materials for packaging; stamp cases; stamp holders; stamp inks; stamp mounts; stamp pad inks; stamp pads; stencils; postcards, greeting cards, contemporary and miniature greeting cards and cards bearing personal expressions and/or puzzle greetings; photo albums; scrapbooks; gift wrapping materials; gift wrap; enclosures; gift trims; gift boxes or bags; bows and gift card combinations; gift boxes and decorative containers; decorative materials for gifts; greeting card organisers; organiser files; desk organisers; personal organisers; hand labelling appliances; birthday/special occasion books; calendars; engagement calendars; postcard calendars; desk diary/appointment calendars; photo frame calendars; advent calendars; greeting booklets; paper bags;

invitations; name tags; place cards; posters; reminders; pocket diaries, pocket address books and pocket notebooks; scorepads; tallies; stickers; stickers and seals; whiteboard erasers; whiteboards; writing instruments; pens and pencils; writing papers; notes; boxes; rubber erasers; paper clips; rubbers for erasing written text; erasers; envelopes and envelope packs.

Class 18

Leather bags; bags; handbags; shoulder bags; cross-body bags; leather bags; clutch bags; tote bags.

Class 25

Clothing, footwear, headwear; branded clothing, footwear and headwear; uniforms; workwear; sportswear; thermal clothing; waterproof clothing; sweatbands; wristbands; headbands; leisure wear; casualwear; tops; printed tops; short-sleeved, long-sleeved and sleeveless tops; t-shirts; sleeveless t-shirts; printed t-shirts; short-sleeved and long-sleeved t-shirts; shirts; polo shirts; vests; tank tops; stringer vests; hoodies; sweatshirts; jerseys; dungarees; overalls; track pants; tracksuits; shorts; bodysuits; playsuits; jumpsuits; jeans; trousers; skirts; sweat pants; joggers; tracksuits; leggings; tights; hosiery; stockings; lounge wear; nightwear; pyjamas; robes; underwear and undergarments; slippers; bras; knickers; camisoles; outerwear; jackets; gilets; coats; parkas; ponchos; waistcoats; bodywarmers; suits; blazers; knitwear; cardigans; sweaters; jumpers; dresses; socks; shoes; slippers; sandals; boots; trainers; sneakers; clogs; running shoes; cleats for attachment to sports shoes; hats; caps; snapback caps; visors; sports headgear [other than helmets]; scarves; gloves; belts.

Class 35

Arranging promotion of charitable fundraising events; public advocacy to promote global awareness of environmental issues; public advocacy to promote global awareness of issues associated with illegal wildlife trade; association services namely, promoting awareness and participation in activities to protect and conserve the ocean and marine animals and habitats through distribution of educational materials, conducting public awareness campaigns, citizen science programs, monitoring relevant legislation and the like; providing assistance and

advice in the field of commercial lobbying; business communication; conducting of opinion polls, questionnaires and surveys for commercial and advertising purposes, in particular with regard to oceans, seas and marine life, weather, climate, climate change, impacts of climate change and adaptation to climate change; ... consultancy with regard to oceans, seas, marine life, weather, climate, climate change, impacts of climate change and adaptation to climate change for commercial and advertising purposes; market monitoring and market analysis; public relations services; news clipping services; providing interview partners and consultants for business purposes and advertising purposes; ... online and offline retail and wholesale services in relation to ... recorded and downloadable media, ... mobile applications, mobile application for the provision of news, articles, journals in relation the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans, ... paper and cardboard, printed matter, bookbinding material, photographs, stationery and office requisites, except furniture, adhesives for stationery or household purposes, drawing materials and materials for artists, paintbrushes, instructional and teaching materials, plastic sheets, films and bags for wrapping and packaging, ... books, textbooks, note books, note pads, address books, date books, diaries, writing books, reference books, plastic sheets, stationery and office requisites, except furniture, paper, cardboard, wrapping, packaging materials, bottle envelopes of cardboard or paper, bottle wrappers of cardboard or paper, book binding materials, stationery, stationery adhesive materials, leaflets, publications, manuals, binders, bookmarks, magazines, brochures, newsletters and other printed materials, brochures and pamphlets, printed publications, promotional publications, promotional materials, information sheets, photographs, photograph stands, adhesives for stationery or household purposes, drawing materials and materials for artists, paintbrushes, artists' materials, plastic materials for packaging, stamp cases, stamp holders, stamp inks, stamp mounts, stamp pad inks, stamp pads, stencils, ... postcards, greeting cards, contemporary and miniature greeting cards and cards bearing personal expressions and/or puzzle greetings, photo albums, scrapbooks, gift wrapping materials, gift wrap, enclosures, gift trims, gift boxes or bags, bows and gift card combinations, gift boxes and decorative containers, decorative materials for gifts, greeting card organisers, organiser files, desk organisers, personal

organisers, hand labelling appliances, ... birthday/special occasion books, calendars, engagement calendars, postcard calendars, desk diary/appointment calendars, photo frame calendars, advent calendars, greeting booklets, paper bags, invitations, ... name tags, place cards, ... posters, reminders, pocket diaries, pocket address books and pocket notebooks, scorepads, tallies, stickers, stickers and seals, whiteboard erasers, whiteboards, writing instruments, pens and pencils, writing papers, notes, boxes, rubbers, paper clips, rubbers for erasing written text, erasers, envelopes and envelope packs, ... leather bags, bags, ... handbags, shoulder bags, ... cross-body bags, ... leather bags, ... clutch bags, tote bags, ... clothing, footwear, headwear, branded clothing, footwear and headwear, uniforms, workwear, sportswear, thermal clothing, waterproof clothing, sweatbands, wristbands, headbands, leisure wear, casualwear, tops, printed tops, short-sleeved, long-sleeved and sleeveless tops, t-shirts, sleeveless t-shirts, printed t-shirts, short-sleeved and long-sleeved t-shirts, shirts, polo shirts, vests, tank tops, stringer vests, hoodies, sweatshirts, jerseys, dungarees, overalls, joggers, track pants, tracksuits, shorts, bodysuits, playsuits, jumpsuits, jeans, trousers, skirts, sweat pants, joggers, tracksuits, leggings, tights, hosiery, stockings, lounge wear, nightwear, pyjamas, robes, underwear and undergarments, slips, bras, knickers, camisoles, outerwear, jackets, gilets, coats, parkas, ponchos, waistcoats, bodywarmers, suits, blazers, knitwear, cardigans, sweaters, jumpers, dresses, socks, shoes, slippers, sandals, boots, trainers, sneakers, clogs, running shoes, cleats for attachment to sports shoes, hats, caps, snapback caps, visors, sports headgear [other than helmets], scarves, gloves and belts...

Class 36

Financial, monetary and banking services; fund raising for charity; charitable fundraising services; charitable fundraising services in relation to the conservation and preservation of oceans, seas and marine life; providing monetary grants to charities; charitable fundraising through the sale of charity stamps; provision of information relating to charity fundraising; information and advisory services relating to charitable and good cause giving and fundraising; good cause fundraising services; provision of information relating to good cause fundraising; payment services; payment services relating to charity and good

cause fundraising; electronic payment services; money transfer services; financial sponsorship; charitable fund raising; financing of studies and projects for oceans, seas and marine life conservation; mutual funds; financial transactions; financial assistance for non-profit bodies, non-governmental organisations or specific programmes in the field of environmental action or financial sponsorship.

Class 41

Training; training services; advisory and consultancy services relating to training; education; education services; advisory and consultancy services relating to education; training and education relating to environmental matters; arranging and conducting of events, exhibitions, seminars, workshops, lectures, conferences and training; consultancy and information services relating to arranging and conducting events, exhibitions, seminars, workshops, lectures, conferences and training; publication of multimedia material online; providing non-downloadable audio content; providing non-downloadable video content; providing non-downloadable electronic publications; providing non-downloadable images; publishing of publications including books, newsletters, research reports, research papers, journals, briefing notes and guides; development and dissemination of campaign and educational materials and digital media in the field of ocean conservation and sustainability, namely web sites, digital applications, online and offline media, marketing campaign collateral, membership cards, and informational announcements or press releases pertaining to the protection and conservation of the ocean and marine animals and habitats; organisation, arranging and conducting of conferences, congresses, seminars, workshops, colloquiums and symposium; publication of books; video-tape film production; organisation of competitions, organisation of sports competitions; organisation and conducting of colloquiums, lectures or congresses, organisation of exhibitions for educational purposes, electronic publication of books and periodicals online; distance learning in the field of the protection and conservation of oceans and seas and marine life, the environment, climate change and it's effects on the environment; organisation of cultural events concerning oceans, seas, marine life and the conservation and preservation thereof; arranging of competitions for education or entertainment; providing

(rental or loan) of recorded data carriers for teaching or entertainment purposes; organisation of events and shows.

Class 42

... Research in the field of environmental protection; research in the field of environmental conservation; environmental research services; environmental consultancy services; environmental advisory services; research, consultancy and advisory services relating to environmental protection and conservation; preparation of reports relating to scientific research; preparation of reports relating to technical research; preparation of reports relating to environmental research; collection of information relating to the environment; compilation of environmental information; environmental monitoring services; environmental surveys; environmental testing; environmental mapping; advisory and consultancy services relating to environmental monitoring, surveys, testing, mapping and information collection; preservation of sea life and their habitats through designing community-based anti-poaching and anti-whaling programs for others; ... research, in particular development of prototypical products enabling decision makers to understand and apply scientific information relating seas, oceans, marine life, weather, climate, climate change, impacts of climate change and adaptation to climate change; ... evaluation, preparation, display and publication of data relating to seas, oceans, marine life, weather, climate, climate change, impacts of climate change and adaptation to climate change, and data from climate and climate impact models, and observation data on the earth system; research in the field of seas, oceans, marine life, weather, climate, climate change, impacts of climate change and adaptation to climate change, technical support for drawing up project proposals relating to the fields of seas, oceans, marine life, weather, climate, climate change, impacts of climate change and adaptation to climate change; research, in particular conveying of scientific research results to others relating to research on seas, oceans, marine life, weather, climate, climate change, impacts of climate change and adaptation to climate change; scientific consultancy, in particular relating to seas, oceans, marine life, weather, climate, climate change, impacts of climate change and adaptation to climate change.

Class 45

... lobbying services; providing investigations for others concerning anti-poaching and anti-whaling strategies; providing the general public and policy makers with information about sea life trade reform; protection of sea, ocean and marine life, provided by a non-governmental organisation; providing assistance and advice in the field of policy-related lobbying; legal and policy-related auditing for companies; ... providing information and advice to support individuals in protecting and conserving the sea, environment and marine life.

171. The opposition has failed for the following goods and services:

Class 9

Scientific, research, navigation, surveying, photographic, cinematographic, audiovisual, optical, weighing, measuring, signalling, detecting, testing, inspecting, life-saving ... apparatus and instruments; apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data; ... blank digital or analogue recording and storage media; ... communication software; communication software for use in communication in relation to finance, accounting, reporting, documentation, annual reporting, online training, tracking payments and debts, collecting payments and debts, bookkeeping, business management, subscription management and communications services; computer software for tracking changes and modifications to software; computer software for managing software development projects; computers and computer peripheral devices; computer hardware; computer hardware for use in network hardware, memory hardware, telecommunications, communication servers, computer assisted software engineering, transmission of data, collection of data, remotely accessing data, remotely transmitting data, computer network attached storage (NAS), central processing unit, central processing unit boards, central processing unit coolers, computer central processing units, in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans; computer programs and software, in particular for modelling, evaluating and displaying data relating to weather, climate, climate change, impacts of climate change and adaptation to climate change, data carriers containing data and information, in particular

relating to weather, climate, climate change, impacts of climate change and adaptation to climate change.

Class 14

Precious metals and their alloys; jewellery, precious and semi-precious stones; horological and chronometric instruments; metal badges for wear; commemorative medals; chronographs (watches); chronometers; watches; clocks; clock cases; clock and watch hands; dials for watches and clocks; watch bands; watch cases; watch faces; watch chains; watch crystals; watch glasses; watch straps; watch strap buckles; watches of imitation gold or imitation precious metals; earrings; figurines of precious metal; badges of precious metal or their alloys; boxes of precious metal; bracelets; brooches; buckles; chains; key rings; medallions; medals; necklaces; keyrings; ornaments; rings; statues; statuettes; paste jewellery; silver ornaments; works of art of precious metals or their alloys; parts and fitting for all the aforesaid goods.

Class 16

Printers' type, printing blocks; stencils for decorating food and beverages; passport holders; napkins; doilies; coasters; paper coasters; paper napkins; table covers; centrepieces; figurines made from cardboard; figurines made from paper; figurines of papier mâché; works of art and figurines of paper and cardboard.

Class 18

Leather and imitations of leather; leather pouches; leather straps; leather boxes; luggage and carrying bags; shopping bags; weekend bags; cosmetic bags; wash bags for carrying toiletries; carrying bags; duffle bags; travel bags; suitcases; work bags; bum bags; belt bags and hip bags; sports bags; sports packs; all-purpose sport bags; gym bags; yoga mat bags; barrel bags; backpacks; rucksacks; camping bags; hiking bags; credit card cases; wallets; purses; pouches; umbrellas.

Class 21

Household or kitchen utensils and containers; cookware and tableware; combs and sponges; brushes; unworked or semi-worked glass, except building glass; glassware, porcelain and earthenware; 3D wall art of made of ceramic; 3D wall

art of made of earthenware; 3D wall art of made of glass; 3D wall art of made of porcelain; bottle coolers; bottle openers; bottles; bowls; mugs; mugs made of ceramic materials; mugs made of china; mugs made of earthenware; mugs made of fine bone china; mugs made of plastic; mugs made of porcelain; mugs, not of precious metals; travel mugs; drinking bottles; drinking bottles for sports; drinking bottles for game shows; drinking cups; drinking flasks; drinking glass holders; drinking straw dispensers; glass bottles.

Class 24

Towels.

Class 35

... Computerised file management; collating and systematic ordering of data in a computer database; ... business services relating to charity and good cause fundraising campaigns; business services relating to charities, non-governmental organisations, social enterprises and social organisations; business management and administration services in connection with charities, non-governmental organisations, social enterprises and social organisations; online and offline retail and wholesale services in relation to scientific, research, navigation, surveying, photographic, cinematographic, audiovisual, optical, weighing, measuring, signalling, detecting, testing, inspecting, life-saving and teaching apparatus and instruments, apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data, ... blank digital or analogue recording and storage media, computer software, computer software for use in collecting, compiling, storing, registering, creating, downloading, managing, summarising, sharing, collaborating, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, compare, synchronise, merge, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, performance requirements and quality compliance reports, tracking, analysing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, design, development, testing, engineering, reporting, monitoring, systemising, settling, tracking changes and modifications, updating, maintaining, calculating, projecting, forecasting, tracking, assessing,

visualising, recording, transforming, supporting, mapping, operating, scheduling, dispatching, planning, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, displaying, processing data, information, analytics, graphics, projects, prioritizing, assigning, tracking, auditing, summaries, cost-benefit analysis, computer software for use in collecting, compiling, storing, registering, creating, downloading, managing, summarising, sharing, collaborating, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, compare, synchronise, merge, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, performance requirements and quality compliance reports, tracking, analysing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, design, development, testing, engineering, reporting, monitoring, systemising, settling, tracking changes and modifications, updating, maintaining, calculating, projecting, forecasting, tracking, assessing, visualising, recording, transforming, supporting, mapping, operating, scheduling, dispatching, planning, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, displaying, processing data, information, analytics, graphics, projects, prioritizing, assigning, tracking, auditing, summaries, cost-benefit analysis in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans, computer software packages, computer software packages in relation to analysing market data, market modelling, performing market simulations, price forecasting, price back casting, market forecasting, prediction of consumption determination of asset revenues, summaries, cost-benefit analysis, instruments, indicators, trading strategies in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans, communication software, communication software for use in communication in relation to finance, accounting, reporting, documentation, annual reporting, online training, tracking payments and debts, collecting payments and debts, bookkeeping, business management, subscription management and communications services, computer software for tracking changes and modifications to software, computer software for managing software

development projects, educational computer software, software application in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans, databases, data and database management, database engines, electronic databases recorded for computer media, database server software in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans, ... downloadable mobile application for the management of data in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans, educational mobile applications, computers and computer peripheral devices, computer hardware, computer hardware for use in network hardware, memory hardware, telecommunications, communication servers, computer assisted software engineering, transmission of data, collection of data, remotely accessing data, remotely transmitting data, computer network attached storage (nas), central processing unit, central processing unit boards, central processing unit coolers, computer central processing units, in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans, computer programs and software, in particular for modelling, evaluating and displaying data relating to weather, climate, climate change, impacts of climate change and adaptation to climate change, data carriers containing data and information, in particular relating to weather, climate, climate change, impacts of climate change and adaptation to climate change, precious metals and their alloys, jewellery, precious and semi-precious stones, horological and chronometric instruments, metal badges for wear, commemorative medals, chronographs (watches), chronometers, watches, clocks, clock cases, clock and watch hands, dials for watches and clocks, watch bands, watch cases, watch faces, watch chains, watch crystals, watch glasses, watch straps, watch strap buckles, watches of imitation gold or imitation precious metals, tie clips and tie pins, cufflinks, earrings, figurines of precious metal, hat ornaments, badges of precious metal or their alloys, boxes of precious metal, bracelets, brooches, buckles, chains, key rings, medallions, medals, necklaces, keyrings, ornaments, pins, rings, statues, statuettes, paste jewellery, silver ornaments, works of art of precious metals or their alloys, parts and fitting for all the aforesaid goods, ...

printers' type, printing blocks, ... stencils for decorating food and beverages, ... passport holders, ... napkins, babies' napkin-pants, doilies, coasters, paper coasters, paper napkins, table covers, ... guest towels, centrepieces, streamers and party blowouts, all made of paper, ... figurines made from cardboard, figurines made from paper, figurines of papier mâché, works of art and figurines of paper and cardboard, ... leather and imitations of leather, leather pouches, leather straps, leather boxes, ... luggage and carrying bags, shopping bags, weekend bags, cosmetic bags, wash bags for carrying toiletries, ... carrying bags, ... duffle bags, ... travel bags, suitcases, work bags, bum bags, belt bags and hip bags, ... sports bags, sports packs, all-purpose sport bags, gym bags, yoga mat bags, barrel bags, backpacks, rucksacks, camping bags, hiking bags, credit card cases, wallets, purses, pouches, umbrellas, household or kitchen utensils and containers, cookware and tableware, combs and sponges, brushes, unworked or semi-worked glass, except building glass, glassware, porcelain and earthenware, 3d wall art of made of ceramic, 3d wall art of made of earthenware, 3d wall art of made of glass, 3d wall art of made of porcelain, bottle coolers, bottle openers, bottles, bowls, mugs, mugs made of ceramic materials, mugs made of china, mugs made of earthenware, mugs made of fine bone china, mugs made of plastic, mugs made of porcelain, mugs, not of precious metals, travel mugs, drinking bottles, drinking bottles for sports, drinking bottles for game shows, drinking cups, drinking flasks, drinking glass holders, drinking straw dispensers, glass bottles ... data and database management.

Class 36

Insurance services; real estate affairs.

Class 42

Design services; design and development of computer hardware, software, programs and mobile apps; web hosting services; hosting of blogs; hosting of podcasts; hosting of videocasts; hosting of mobile applications; hosting of digital content; hosting multimedia entertainment content; hosting of digital content online; hosting of digital content, namely, on-line journals and blogs; creation and maintenance of software for blogs; ... design, development and updating of computer software, in particular for evaluating, displaying, assessing and

interpreting data relating to seas, oceans, marine life, weather, climate, climate change, impacts of climate change and adaptation to climate change, and data from climate and climate impact models, and observation data on the earth system; design and hosting of websites and on-line services, including for others.

Class 45

Social services; ... legal representation of companies and company associations.

Opposition No. 441595

172. The opposition is successful for the following goods:

Class 24

Fabric flags; cloth flags; Plastic flags; Flags of textile; Flags and pennants of textile; Pennants namely flags, other than of paper; Cloth pennants; Plastic pennants; Pennants of textile; Felt pennants; Bunting flags; Bunting of textile or plastic; Cloth bunting; Streamers of textile; Banners of textile or plastic; Cloth banners.

173. The opposition fails for the following goods:

Class 24

Towels of textiles; Cotton towels; Towel sheet; Hand towels; Tea towels; Tea cloths; Dish cloths; Kitchen towels; Bath towels; Beach towels.

COSTS

174. Both parties have enjoyed some success in these proceedings, with a slightly greater part going to the opponent. I therefore make an award to contribute to the opponent's costs, in line with the scale set out in Tribunal Practice Notice No. 2/2016, and reflecting the proportion of success gained by each party. The award is calculated as follows:

£100 for preparing statements and considering the other side's statements

£100 for considering the other side's evidence

£100 for preparing written submissions

£200 for official fees

£500 in total

175. I therefore order Permian Triassic Ltd to pay Stichting Sea Shepherd Global the sum of £500. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 25th day of April 2025

**Clare Boucher
For the Registrar,
Comptroller-General**

ANNEX

Specification of Application No. 3844388

Class 9

Scientific, research, navigation, surveying, photographic, cinematographic, audiovisual, optical, weighing, measuring, signalling, detecting, testing, inspecting, life-saving and teaching apparatus and instruments; apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data; recorded and downloadable media, blank digital or analogue recording and storage media; computer software; computer software for use in collecting, compiling, storing, registering, creating, downloading, managing, summarising, sharing, collaborating, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, compare, synchronise, merge, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, performance requirements and quality compliance reports, tracking, analysing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, design, development, testing, engineering, reporting, monitoring, systemising, settling, tracking changes and modifications, updating, maintaining, calculating, projecting, forecasting, tracking, assessing, visualising, recording, transforming, supporting, mapping, operating, scheduling, dispatching, planning, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, displaying, processing data, information, analytics, graphics, projects, prioritizing, assigning, tracking, auditing, summaries, cost-benefit analysis; computer software for use in collecting, compiling, storing, registering, creating, downloading, managing, summarising, sharing, collaborating, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, compare, synchronise, merge, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, performance requirements and quality compliance reports, tracking, analysing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, design, development, testing, engineering, reporting, monitoring, systemising, settling, tracking changes and modifications, updating, maintaining, calculating, projecting, forecasting, tracking, assessing, visualising,

recording, transforming, supporting, mapping, operating, scheduling, dispatching, planning, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, displaying, processing data, information, analytics, graphics, projects, prioritizing, assigning, tracking, auditing, summaries, cost-benefit analysis in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans; computer software packages; computer software packages in relation to analysing market data, market modelling, performing market simulations, price forecasting, price back casting, market forecasting, prediction of consumption determination of asset revenues, summaries, cost-benefit analysis, instruments, indicators, trading strategies in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans; communication software; communication software for use in communication in relation to finance, accounting, reporting, documentation, annual reporting, online training, tracking payments and debts, collecting payments and debts, bookkeeping, business management, subscription management and communications services; computer software for tracking changes and modifications to software; computer software for managing software development projects; educational computer software; software application in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans; databases; database engines; electronic databases recorded for computer media, database server software in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans; mobile applications; mobile application for the provision of news, articles, journals in relation the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans; downloadable mobile application for the management of data in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans; educational mobile applications; computers and computer peripheral devices; computer hardware; computer hardware for use in network hardware, memory hardware, telecommunications, communication servers, computer assisted software engineering, transmission of data, collection of data, remotely accessing data, remotely transmitting data, computer network attached storage (NAS), central processing unit, central processing unit boards, central processing unit coolers,

computer central processing units, in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans; computer programs and software, in particular for modelling, evaluating and displaying data relating to weather, climate, climate change, impacts of climate change and adaptation to climate change, data carriers containing data and information, in particular relating to weather, climate, climate change, impacts of climate change and adaptation to climate change.

Class 14

Precious metals and their alloys; jewellery, precious and semi-precious stones; horological and chronometric instruments; metal badges for wear; commemorative medals; chronographs (watches); chronometers; watches; clocks; clock cases; clock and watch hands; dials for watches and clocks; watch bands; watch cases; watch faces; watch chains; watch crystals; watch glasses; watch straps; watch strap buckles; watches of imitation gold or imitation precious metals; tie clips and tie pins; cuff links; earrings; figurines of precious metal; hat ornaments; badges of precious metal or their alloys; boxes of precious metal; bracelets; brooches; buckles; chains; key rings; medallions; medals; necklaces; keyrings; ornaments; pins; rings; statues; statuettes; paste jewellery; silver ornaments; works of art of precious metals or their alloys; parts and fitting for all the aforesaid goods.

Class 16

Paper and cardboard; printed matter; bookbinding material; photographs; stationery and office requisites, except furniture; adhesives for stationery or household purposes; drawing materials and materials for artists; paintbrushes; instructional and teaching materials; plastic sheets, films and bags for wrapping and packaging; printers' type, printing blocks; books; textbooks; note books; note pads; address books; date books; diaries; writing books; reference books; plastic sheets, stationery and office requisites, except furniture; paper; cardboard; wrapping paper; packaging materials; bottle envelopes of cardboard or paper, bottle wrappers of cardboard or paper; book binding materials; stationery; stationery adhesive materials; leaflets, publications, manuals, binders, bookmarks, magazines, brochures, newsletters and other printed materials; brochures and pamphlets; printed publications; promotional publications; promotional materials; information sheets; photographs; photograph stands; adhesives for

stationery or household purposes; drawing materials and materials for artists; paintbrushes; artists' materials; plastic materials for packaging; stamp cases; stamp holders; stamp inks; stamp mounts; stamp pad inks; stamp pads; stencils; stencils for decorating food and beverages; postcards, greeting cards, contemporary and miniature greeting cards and cards bearing personal expressions and/or puzzle greetings; photo albums; scrapbooks; gift wrapping materials; gift wrap; enclosures; gift trims; gift boxes or bags; bows and gift card combinations; gift boxes and decorative containers; decorative materials for gifts; greeting card organisers; organiser files; desk organisers; personal organisers; hand labelling appliances; passport holders; birthday/special occasion books; calendars; engagement calendars; postcard calendars; desk diary/appointment calendars; photo frame calendars; advent calendars; greeting booklets; paper bags; invitations; napkins; doilies; coasters; paper coasters; paper napkins; table covers; name tags; place cards; centrepieces; posters; reminders; pocket diaries, pocket address books and pocket notebooks; scorepads; tallies; stickers; stickers and seals; whiteboard erasers; whiteboards; writing instruments; pens and pencils; writing papers; notes; boxes; rubber erasers; paper clips; rubbers for erasing written text; erasers; envelopes and envelope packs; figurines made from cardboard; figurines made from paper; figurines of papier mâché; works of art and figurines of paper and cardboard.

Class 18

Leather and imitations of leather; leather pouches; leather straps; leather boxes; leather bags; bags; luggage and carrying bags; shopping bags; weekend bags; cosmetic bags; wash bags for carrying toiletries; handbags; shoulder bags; carrying bags; cross-body bags; duffle bags; leather bags; travel bags; suitcases; work bags; bum bags; belt bags and hip bags; clutch bags; tote bags; sports bags; sports packs; all-purpose sport bags; gym bags; yoga mat bags; barrel bags; backpacks; rucksacks; camping bags; hiking bags; credit card cases; wallets; purses; pouches; umbrellas.

Class 21

Household or kitchen utensils and containers; cookware and tableware; combs and sponges; brushes; unworked or semi-worked glass, except building glass; glassware, porcelain and earthenware; 3D wall art of made of ceramic; 3D wall art of made of earthenware; 3D wall art of made of glass; 3D wall art of made of porcelain; bottle

coolers; bottle openers; bottles; bowls; mugs; mugs made of ceramic materials; mugs made of china; mugs made of earthenware; mugs made of fine bone china; mugs made of plastic; mugs made of porcelain; mugs, not of precious metals; travel mugs; drinking bottles; drinking bottles for sports; drinking bottles for game shows; drinking cups; drinking flasks; drinking glass holders; drinking straw dispensers; glass bottles.

Class 24

Towels.

Class 25

Clothing, footwear, headwear; branded clothing, footwear and headwear; uniforms; workwear; sportswear; thermal clothing; waterproof clothing; sweatbands; wristbands; headbands; leisure wear; casualwear; tops; printed tops; short-sleeved, long-sleeved and sleeveless tops; t-shirts; sleeveless t-shirts; printed t-shirts; short-sleeved and long-sleeved t-shirts; shirts; polo shirts; vests; tank tops; stringer vests; hoodies; sweatshirts; jerseys; dungarees; overalls; track pants; tracksuits; shorts; bodysuits; playsuits; jumpsuits; jeans; trousers; skirts; sweat pants; joggers; tracksuits; leggings; tights; hosiery; stockings; lounge wear; nightwear; pyjamas; robes; underwear and undergarments; slippers; bras; knickers; camisoles; outerwear; jackets; gilets; coats; parkas; ponchos; waistcoats; bodywarmers; suits; blazers; knitwear; cardigans; sweaters; jumpers; dresses; socks; shoes; slippers; sandals; boots; trainers; sneakers; clogs; running shoes; cleats for attachment to sports shoes; hats; caps; snapback caps; visors; sports headgear [other than helmets]; scarves; gloves; belts.

Class 35

Arranging promotion of charitable fundraising events; public advocacy to promote global awareness of environmental issues; public advocacy to promote global awareness of issues associated with illegal wildlife trade; association services namely, promoting awareness and participation in activities to protect and conserve the ocean and marine animals and habitats through distribution of educational materials, conducting public awareness campaigns, citizen science programs, monitoring relevant legislation and the like; providing assistance and advice in the field of commercial lobbying; business communication; conducting of opinion polls, questionnaires and surveys for commercial and advertising purposes, in particular with regard to oceans, seas and marine life, weather, climate, climate change, impacts of

climate change and adaptation to climate change; computerised file management; collating and systematic ordering of data in a computer database; consultancy with regard to oceans, seas, marine life, weather, climate, climate change, impacts of climate change and adaptation to climate change for commercial and advertising purposes; market monitoring and market analysis; public relations services; news clipping services; providing interview partners and consultants for business purposes and advertising purposes; business services relating to charity and good cause fundraising campaigns; business services relating to charities, non-governmental organisations, social enterprises and social organisations; business management and administration services in connection with charities, non-governmental organisations, social enterprises and social organisations; online and offline retail and wholesale services in relation to scientific, research, navigation, surveying, photographic, cinematographic, audiovisual, optical, weighing, measuring, signalling, detecting, testing, inspecting, life-saving and teaching apparatus and instruments, apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data, recorded and downloadable media, blank digital or analogue recording and storage media, computer software, computer software for use in collecting, compiling, storing, registering, creating, downloading, managing, summarising, sharing, collaborating, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, compare, synchronise, merge, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, performance requirements and quality compliance reports, tracking, analysing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, design, development, testing, engineering, reporting, monitoring, systemising, settling, tracking changes and modifications, updating, maintaining, calculating, projecting, forecasting, tracking, assessing, visualising, recording, transforming, supporting, mapping, operating, scheduling, dispatching, planning, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, displaying, processing data, information, analytics, graphics, projects, prioritizing, assigning, tracking, auditing, summaries, cost-benefit analysis, computer software for use in collecting, compiling, storing, registering, creating, downloading, managing, summarising, sharing, collaborating, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, compare, synchronise, merge, viewing,

interpreting, cleansing, consolidating, engineering, calculating, projecting, performance requirements and quality compliance reports, tracking, analysing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, design, development, testing, engineering, reporting, monitoring, systemising, settling, tracking changes and modifications, updating, maintaining, calculating, projecting, forecasting, tracking, assessing, visualising, recording, transforming, supporting, mapping, operating, scheduling, dispatching, planning, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, displaying, processing data, information, analytics, graphics, projects, prioritizing, assigning, tracking, auditing, summaries, cost-benefit analysis in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans, computer software packages, computer software packages in relation to analysing market data, market modelling, performing market simulations, price forecasting, price back casting, market forecasting, prediction of consumption determination of asset revenues, summaries, cost-benefit analysis, instruments, indicators, trading strategies in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans, communication software, communication software for use in communication in relation to finance, accounting, reporting, documentation, annual reporting, online training, tracking payments and debts, collecting payments and debts, bookkeeping, business management, subscription management and communications services, computer software for tracking changes and modifications to software, computer software for managing software development projects, educational computer software, software application in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans, databases, data and database management, database engines, electronic databases recorded for computer media, database server software in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans, mobile applications, mobile application for the provision of news, articles, journals in relation the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans, downloadable mobile application for the management of data in relation to the protection and conservation of oceans and

ocean life and the intervention against illegal operations exploiting life in the oceans, educational mobile applications, computers and computer peripheral devices, computer hardware, computer hardware for use in network hardware, memory hardware, telecommunications, communication servers, computer assisted software engineering, transmission of data, collection of data, remotely accessing data, remotely transmitting data, computer network attached storage (nas), central processing unit, central processing unit boards, central processing unit coolers, computer central processing units, in relation to the protection and conservation of oceans and ocean life and the intervention against illegal operations exploiting life in the oceans, computer programs and software, in particular for modelling, evaluating and displaying data relating to weather, climate, climate change, impacts of climate change and adaptation to climate change, data carriers containing data and information, in particular relating to weather, climate, climate change, impacts of climate change and adaptation to climate change, precious metals and their alloys, jewellery, precious and semi-precious stones, horological and chronometric instruments, metal badges for wear, commemorative medals, chronographs (watches), chronometers, watches, clocks, clock cases, clock and watch hands, dials for watches and clocks, watch bands, watch cases, watch faces, watch chains, watch crystals, watch glasses, watch straps, watch strap buckles, watches of imitation gold or imitation precious metals, tie clips and tie pins, cuff links, earrings, figurines of precious metal, hat ornaments, badges of precious metal or their alloys, boxes of precious metal, bracelets, brooches, buckles, chains, key rings, medallions, medals, necklaces, keyrings, ornaments, pins, rings, statues, statuettes, paste jewellery, silver ornaments, works of art of precious metals or their alloys, parts and fitting for all the aforesaid goods, paper and cardboard, printed matter, bookbinding material, photographs, stationery and office requisites, except furniture, adhesives for stationery or household purposes, drawing materials and materials for artists, paintbrushes, instructional and teaching materials, plastic sheets, films and bags for wrapping and packaging, printers' type, printing blocks, books, textbooks, note books, note pads, address books, date books, diaries, writing books, reference books, plastic sheets, stationery and office requisites, except furniture, paper, cardboard, wrapping, packaging materials, bottle envelopes of cardboard or paper, bottle wrappers of cardboard or paper, book binding materials, stationery, stationery adhesive materials, leaflets, publications, manuals, binders, bookmarkers, magazines, brochures,

newsletters and other printed materials, brochures and pamphlets, printed publications, promotional publications, promotional materials, information sheets, photographs, photograph stands, adhesives for stationery or household purposes, drawing materials and materials for artists, paintbrushes, artists' materials, plastic materials for packaging, stamp cases, stamp holders, stamp inks, stamp mounts, stamp pad inks, stamp pads, stencils, stencils for decorating food and beverages, postcards, greeting cards, contemporary and miniature greeting cards and cards bearing personal expressions and/or puzzle greetings, photo albums, scrapbooks, gift wrapping materials, gift wrap, enclosures, gift trims, gift boxes or bags, bows and gift card combinations, gift boxes and decorative containers, decorative materials for gifts, greeting card organisers, organiser files, desk organisers, personal organisers, hand labelling appliances, passport holders, birthday/special occasion books, calendars, engagement calendars, postcard calendars, desk diary/appointment calendars, photo frame calendars, advent calendars, greeting booklets, paper bags, invitations, napkins, babies' napkin-pants, doilies, coasters, paper coasters, paper napkins, table covers, name tags, place cards, guest towels, centrepieces, streamers and party blowouts, all made of paper, posters, reminders, pocket diaries, pocket address books and pocket notebooks, scorepads, tallies, stickers, stickers and seals, whiteboard erasers, whiteboards, writing instruments, pens and pencils, writing papers, notes, boxes, rubbers, paper clips, rubbers for erasing written text, erasers, envelopes and envelope packs, figurines made from cardboard, figurines made from paper, figurines of papier mâché, works of art and figurines of paper and cardboard, leather and imitations of leather, leather pouches, leather straps, leather boxes, leather bags, bags, luggage and carrying bags, shopping bags, weekend bags, cosmetic bags, wash bags for carrying toiletries, handbags, shoulder bags, carrying bags, cross-body bags, duffle bags, leather bags, travel bags, suitcases, work bags, bum bags, belt bags and hip bags, clutch bags, tote bags, sports bags, sports packs, all-purpose sport bags, gym bags, yoga mat bags, barrel bags, backpacks, rucksacks, camping bags, hiking bags, credit card cases, wallets, purses, pouches, umbrellas, household or kitchen utensils and containers, cookware and tableware, combs and sponges, brushes, unworked or semi-worked glass, except building glass, glassware, porcelain and earthenware, 3d wall art of made of ceramic, 3d wall art of made of earthenware, 3d wall art of made of glass, 3d wall art of made of porcelain, bottle coolers, bottle openers, bottles, bowls, mugs, mugs made of ceramic materials, mugs made of china,

mugs made of earthenware, mugs made of fine bone china, mugs made of plastic, mugs made of porcelain, mugs, not of precious metals, travel mugs, drinking bottles, drinking bottles for sports, drinking bottles for game shows, drinking cups, drinking flasks, drinking glass holders, drinking straw dispensers, glass bottles, clothing, footwear, headwear, branded clothing, footwear and headwear, uniforms, workwear, sportswear, thermal clothing, waterproof clothing, sweatbands, wristbands, headbands, leisure wear, casualwear, tops, printed tops, short-sleeved, long-sleeved and sleeveless tops, t-shirts, sleeveless t-shirts, printed t-shirts, short-sleeved and long-sleeved t-shirts, shirts, polo shirts, vests, tank tops, stringer vests, hoodies, sweatshirts, jerseys, dungarees, overalls, joggers, track pants, tracksuits, shorts, bodysuits, playsuits, jumpsuits, jeans, trousers, skirts, sweat pants, joggers, tracksuits, leggings, tights, hosiery, stockings, lounge wear, nightwear, pyjamas, robes, underwear and undergarments, slips, bras, knickers, camisoles, outerwear, jackets, gilets, coats, parkas, ponchos, waistcoats, bodywarmers, suits, blazers, knitwear, cardigans, sweaters, jumpers, dresses, socks, shoes, slippers, sandals, boots, trainers, sneakers, clogs, running shoes, cleats for attachment to sports shoes, hats, caps, snapback caps, visors, sports headgear [other than helmets], scarves, gloves and belts; data and database management.

Class 36

Financial, monetary and banking services; insurance services; real estate affairs; fund raising for charity; charitable fundraising services; charitable fundraising services in relation to the conservation and preservation of oceans, seas and marine life; providing monetary grants to charities; charitable fundraising through the sale of charity stamps; provision of information relating to charity fundraising; information and advisory services relating to charitable and good cause giving and fundraising; good cause fundraising services; provision of information relating to good cause fundraising; payment services; payment services relating to charity and good cause fundraising; electronic payment services; money transfer services; financial sponsorship; charitable fund raising; financing of studies and projects for oceans, seas and marine life conservation; mutual funds; financial transactions; financial assistance for non-profit bodies, non-governmental organisations or specific programmes in the field of environmental action or financial sponsorship.

Class 41

Training; training services; advisory and consultancy services relating to training; education; education services; advisory and consultancy services relating to education; training and education relating to environmental matters; arranging and conducting of events, exhibitions, seminars, workshops, lectures, conferences and training; consultancy and information services relating to arranging and conducting events, exhibitions, seminars, workshops, lectures, conferences and training; publication of multimedia material online; providing non-downloadable audio content; providing non-downloadable video content; providing non-downloadable electronic publications; providing non-downloadable images; publishing of publications including books, newsletters, research reports, research papers, journals, briefing notes and guides; development and dissemination of campaign and educational materials and digital media in the field of ocean conservation and sustainability, namely web sites, digital applications, online and offline media, marketing campaign collateral, membership cards, and informational announcements or press releases pertaining to the protection and conservation of the ocean and marine animals and habitats; organisation, arranging and conducting of conferences, congresses, seminars, workshops, colloquiums and symposium; publication of books; video-tape film production; organisation of competitions, organisation of sports competitions; organisation and conducting of colloquiums, lectures or congresses, organisation of exhibitions for educational purposes, electronic publication of books and periodicals online; distance learning in the field of the protection and conservation of oceans and seas and marine life, the environment, climate change and it's effects on the environment; organisation of cultural events concerning oceans, seas, marine life and the conservation and preservation thereof; arranging of competitions for education or entertainment; providing (rental or loan) of recorded data carriers for teaching or entertainment purposes; organisation of events and shows.

Class 42

Design services; design and development of computer hardware, software, programs and mobile apps; web hosting services; hosting of blogs; hosting of podcasts; hosting of videocasts; hosting of mobile applications; hosting of digital content; hosting multimedia entertainment content; hosting of digital content online; hosting of digital content, namely, on-line journals and blogs; creation and maintenance of software for

blogs; research in the field of environmental protection; research in the field of environmental conservation; environmental research services; environmental consultancy services; environmental advisory services; research, consultancy and advisory services relating to environmental protection and conservation; preparation of reports relating to scientific research; preparation of reports relating to technical research; preparation of reports relating to environmental research; collection of information relating to the environment; compilation of environmental information; environmental monitoring services; environmental surveys; environmental testing; environmental mapping; advisory and consultancy services relating to environmental monitoring, surveys, testing, mapping and information collection; preservation of sea life and their habitats through designing community-based anti-poaching and anti-whaling programs for others; design, development and updating of computer software, in particular for evaluating, displaying, assessing and interpreting data relating to seas, oceans, marine life, weather, climate, climate change, impacts of climate change and adaptation to climate change, and data from climate and climate impact models, and observation data on the earth system; research, in particular development of prototypical products enabling decision makers to understand and apply scientific information relating seas, oceans, marine life, weather, climate, climate change, impacts of climate change and adaptation to climate change; design and hosting of websites and on-line services, including for others; evaluation, preparation, display and publication of data relating to seas, oceans, marine life, weather, climate, climate change, impacts of climate change and adaptation to climate change, and data from climate and climate impact models, and observation data on the earth system; research in the field of seas, oceans, marine life, weather, climate, climate change, impacts of climate change and adaptation to climate change, technical support for drawing up project proposals relating to the fields of seas, oceans, marine life, weather, climate, climate change, impacts of climate change and adaptation to climate change; research, in particular conveying of scientific research results to others relating to research on seas, oceans, marine life, weather, climate, climate change, impacts of climate change and adaptation to climate change; scientific consultancy, in particular relating to seas, oceans, marine life, weather, climate, climate change, impacts of climate change and adaptation to climate change.

Class 45

Social services; lobbying services; providing investigations for others concerning anti-poaching and anti-whaling strategies; providing the general public and policy makers with information about sea life trade reform; protection of sea, ocean and marine life, provided by a non-governmental organisation; providing assistance and advice in the field of policy-related lobbying; legal and policy-related auditing for companies; legal representation of companies and company associations; providing information and advice to support individuals in protecting and conserving the sea, environment and marine life.