

O/465/21

TRADE MARKS ACT 1994

**IN THE MATTER OF
TRADE MARK APPLICATION NO. 3467430
IN THE NAME OF Game Theory Soapbox Limited
FOR THE TRADE MARK:**

CLOUDBET

**IN CLASSES 9, 36, 38,41
AND 42**

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. OP000420519
BY SC IP Limited**

BACKGROUND AND PLEADINGS

1. On 17 February 2020, Game Theory Soapbox Limited (“the applicant”) applied to register the trade mark

CLOUDBET

for goods and services in classes 9, 36, 38, 41 and 42, as listed in Annex A at the end of this decision.

2. The application was published for opposition purposes on 13 March 2020.

3. The application is opposed by SC IP Limited (“the opponent”). The opposition is based upon Section 5(2)(b) and Section 5(4)(a) of the Trade Marks Act 1994 (“the Act”), and was filed on 15 June 2020. The opposition is directed against all of the goods and services in the application.

4. For the purpose of its claim under Section 5(2)(b), the opponent relies upon its UK trade mark registration number 3124915, being a series of 2 marks, as shown below, which has a filing date of 01 September 2015 and for which the registration procedure was completed on 25 December 2015:

BETCLOUD

BET CLOUD

5. The opposition relies upon all of the goods and services for which the earlier marks are registered, in classes 9, 16, 28, 35, 41 and 42, as listed at Annex B of this decision.

6. Under Section 5(4)(a), the opponent relies upon the sign “BETCLOUD” which it states was first used in the UK on 16 September 2015 in relation to “online gaming and gambling computer programmes and corresponding services”.

7. The opponent claims that there exists a likelihood of confusion between the contested mark and the earlier marks in the UK under Section 5(2)(b) of the Act; and that the adoption by the applicant of a trade mark similar to the opponent's would constitute a misrepresentation and cause confusion with its established sign and damage to the opponent under Section 5(4)(a) of the Act. Accordingly, the opponent requests that the application be refused and that an award of costs be made in its favour.

8. The applicant filed a counterstatement denying the claims, and requests that the opposition be completely dismissed for all grounds relied upon by the opponent for all goods and services, and that an award of costs be made in favour of the applicant.

9. The applicant admits that the the inclusion of class headings in the earlier mark means that it cannot deny that there is identity between the goods and services in all classes apart from class 36 (relating to financial affairs and monetary affairs) and class 38 (relating to telecommunications services). It further submits that, in view of the aural, visual and conceptual differences between the marks, the later mark is not a similar mark within the meaning of Section 5(2)(b) of the Act to the extent that a likelihood of confusion on the part of the public does not exist for any goods and services, regardless of the identity or similarity thereof.

10. In relation to the opposition under Section 5(4)(a), the applicant submits that the opponent has not acquired sufficient goodwill and hence there can be no misrepresentation or damage insofar as any goods and services are concerned.

11. Neither party filed written submissions, and only the opponent elected to file evidence which I will summarise to the extent that I consider necessary. Neither party requested a hearing, therefore this decision is taken following a careful perusal of the papers.

12. In these proceedings, the opponent is represented by Birkett Long LLP and the applicant is represented by Murgitroyd & Company.

Evidence

13. The opponent filed a witness statement in the name of Jonathan Perlmutter, the Head of Intellectual Property for Birkett Long LLP. It was filed on 25 May 2021.¹ Mr Perlmutter was authorised by the opponent to make this witness statement on its behalf. Mr Perlmutter adduces eight exhibits in support of the opponent's claims, labelled **Exhibit SCIP-1** to **Exhibit SCIP-8** accordingly.

14. **Exhibit SCIP-1** is a printout showing information about the product "Betcloud", from the website www.betconstruct.com, accessed on 13 January 2021.

15. **Exhibit SCIP-2** is a screenshot of a page on "YouTube" showing a link to a video from the Betcloud launch party. The date shown under the link to the clip is 02 November 2015.

16. **Exhibit SCIP-3** is a printout of an interview with BetCloud product manager Alik Harutyunyan, dated 15 November 2015.

17. **Exhibit SCIP-4** is a 4 minute video in MP4 format containing an introductory video to BETCLOUD (undated).

18. **Exhibit SCIP-5** is a printout showing the first page of a Google search for "cloudbet" (undated).

19. **Exhibit SCIP-6** is a selection of printouts showing various Twitter posts from @Cloudbet proclaiming "The oldest and most trusted bitcoin sportsbook & casino operator with better odds than flat books" (undated).

20. **Exhibit SCIP-7** is a copy of a UK Trade Mark Opposition decision O/382/01 under number 48321, dated 04 September 2001. This compares the similarity of the marks

¹ The witness statement replaces the undated and unverified Statutory Declaration which was filed on the 15 January 2021, as requested by the Registry.

wherein one mark contains the same two words but in a reverse order to those of another mark (Next Generation/Generation Next).

21. **Exhibit SCIP-8** is a copy of a UK Trade Mark Opposition decision O/092/04 under number 90709, dated 31 March 2004. This compares the similarity of the marks wherein one mark contains the same (or highly similar) words but in a reverse order to another mark (Breathe Easy/Easi-Breathe).

DECISION

22. Although the UK has left the European Union, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied on in these proceedings are derived from an EU Directive. Therefore, this decision contains references to the trade mark case-law of the European courts.

Section 5(2)(b)

23. Section 5(2)(b) is relied on which reads as follows:

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

(a) ...

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

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

24. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

“6.- (1) In this Act an “earlier trade mark” means –

(a) a registered trade mark, international trade mark (UK), European Union trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,

...”

25. The series of 2 trade marks upon which the opponent relies qualify as earlier trade marks under the above provisions. As the trade marks had not completed the registration procedure more than five years before the date the application was filed, they are not subject to the proof of use provisions contained in section 6A of the Act. The opponent is, therefore, entitled to rely upon them in relation to all of the goods and services indicated without having to prove that genuine use has been made of them.

26. I am guided by the following principles which are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v Office for 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-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

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

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of

them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

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

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

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

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

(g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings to mind the earlier mark, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

27. In *Canon*, Case C-39/97, the Court of Justice of the European Union (“CJEU”) stated that:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary”.²

28. Guidance on this issue has also come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

- “(a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for

² Paragraph 23

instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.”

29. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the General Court (“GC”) stated that “complementary” means:

“...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking”.³

30. The goods and services to be compared are:

Opponent’s goods and services	Applicant’s services
<p><u>Class 9</u> <i>Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers; recording discs; application software; electronic components for gambling machines being mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire</i></p>	

³ Paragraph 82

extinguishing apparatus; apparatus and instruments for recording, transmission or reproduction of sound, data and/or images; application software relating to and for playing casino games, gambling and betting; audio and video tapes; electronic components for gambling machines being mechanisms for coin-operated apparatus; betting terminals; betting terminals with internet connections; betting terminals with screens; calculators; cards bearing magnetic data; cash registers; CD-ROMs; checking (supervision) apparatus and instruments; compact discs; computer and electronic games software; computer game tapes; computer hardware and software for playing games; computer hardware and software for digital lotteries and casinos; computer hardware and software for gaming, gambling and betting; computer interfaces; computer lottery games; computer lottery games downloadable from the Internet; computer software; computer software applications, downloadable; computer software distributed via the Internet; computer software downloadable from the Internet; computer software and programs for use on computer networks including the Internet; computer software platforms for social networking; computer software to enable uploading, posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information in the fields of virtual

communities, electronic gaming, entertainment, and general interest via the Internet or other communications networks with third parties; computer software platforms for computer software programs running on, or in connection with, mobile devices; computer software for the provision and management of on-line games and competitions; computer software for use on computer networks, including the Internet for gaming, gambling and betting; computer software relating to and for playing casino games, gambling and betting; computer software for use on computer networks, including the Internet for gaming, gambling and betting; computer programs and application software for use on telephones and handheld mobile devices; computer programs relating to and for playing casino games, gambling and betting; data processing equipment and computers; devices for checking tickets, passes and lottery tickets; devices operated by inserting coins, chips and cards, and mechanisms therefor; digital video discs; display equipment and installations; downloadable electronic publications; downloadable electronic publications featuring gaming, gambling and betting; electric and electronic apparatus for betting offices; electric, electronic or mechanical apparatus for betting; electronic apparatus and instruments for use in relation to betting and gaming, bonus schemes related to betting and

gaming, amusement, and entertainment services; electrical and electronic apparatus for use in on-line betting; electronic betting terminals; electronic cards for use in connection with promotion schemes; electronic loyalty scheme cards; electronic game equipment; electronic number generators; electronic number terminals; electronic publications; electronic publications and information provided on-line from databases or the Internet (downloadable); electronic publications provided by electronic mail; electronic publications featuring gaming, gambling and betting; electronic tags; electro pneumatic and electric machines for detecting winning symbols or winning numbers; entertainment software; equipment for apparatus for sorting and counting; games and competitions in electronic and computer form; games, gaming, and gambling related software; holographic images; indication panels, data and information transmission installations, monitors, control consoles and printers all for bookmaking; information recorded on computer media; interactive computer systems; interactive computer and mobile device systems; interactive software; interactive games, gaming and gambling software; Internet terminals and terminals for receiving and arranging sports betting; machines for issuing tickets, lottery tickets and forms; magnetic, optic and recording data- and sound carriers; magnetic, optical,

<p><i>electronic and smart cards (cards with integrated circuits); magnetically encoded cards; online games, gaming and gambling related software; operating terminals for acceptance of betting games; publications in electronic form supplied online from a computer database or the Internet; interactive computer software; electronic number generators; software for use with games, entertainment, recreational, amusement, gaming and video game terminals, machines and apparatus; software for interactive scratch cards and scratch card games; software and software packages for the registration and operation of betting related to sports; software and hardware for automatic gaming machines and gaming machines; software for processing bets including through the Internet; sound and video recordings; totalisators; video screens; virtual reality games software; voting machines; wagering systems; wagering terminals; parts and fittings for all the aforesaid goods.</i></p>	
<p><u>Class 28</u> <i>Games, toys, playthings and novelties; apparatus for games; appliances, equipment and accessories for bingo; arcade games; articles and apparatus for use in games, in lottery games and in playing games and lottery games; automatic gaming machines; automatic slot machines; bags specially adapted for handheld games; bags specially adapted</i></p>	

for handheld video games; bingo game playing apparatus; bingo cards; bingo markers; board games; bill-operated gaming equipment; bowling apparatus and machines; card games; cards (games); casino games, equipment and accessories therefor; chips and dice [gaming equipment]; chips, counters, discs and tokens for gambling; action skill games; coin fed gaming machines; coin-operated amusement gaming machines; coin-operated gambling and betting machines; coin-operated games; coin-operated gaming equipment; counters, discs and pawns for games; darts, quoits; dart games; dice and cases therefor; dice games; electronic board games; electronic games other than those adapted for use with television receivers only; free standing games apparatus; free standing video games apparatus; free standing gaming and gambling apparatus; game boards; game cards; gaming apparatus; gaming and amusement machines and parts and fittings therefor; gaming chips; gaming equipment; gaming machines; gaming machines, operated by inserting coins, counters, chips and cards; gaming tables; gaming tables for poker and blackjack; gambling machines; hand held computer games; lottery balls; mahjong (Chinese gambling game); parlour games, devices, equipment and accessories therefor; pinball games; pinball games machines (coins or counter operated); pinball machines (pachinko machines,

<p><i>korinto games machines, smartball machines); playing cards; poker chips; portable games with liquid crystal displays; puzzle games; puzzles; question sets for games, gaming and gambling; quiz games; roulette sets, chips, wheels, tables, equipment and accessories therefor; scratch cards; scratch card games; slot machines (gaming devices); snooker tables and snooker accessories; sports games; amusement apparatus and accessories for games; amusement apparatus and accessories for games, adapted for use with televisions; slot machines; parts and fittings for all the aforesaid goods.</i></p>	
<p><u>Class 35</u> <i>Advertising; business management; business administration; office functions; auctioneering, including on the Internet; bookkeeping; business management; business administration; classified advertising services; collating of data in computer databases; compilation of statistics; computerised file managing; demonstration of goods; distribution of samples; business services related to establishing and providing sales, brokerage and collection points for betting; betting, games, gaming and gambling machine rental services; layout design for advertising purposes; loyalty card services; office functions; on-line advertising in computer networks; on-line advertising on a computer network; on-line data processing services; organisation of</i></p>	

<p><i>promotional incentive schemes; presentation of goods on communication media, for retail purposes; production of radio, television and cinema advertisements; retail services in relation to games, apparatus and devices for betting, games, gaming, gambling and wagering; retail services in relation to software and software packages for the registration and operation of betting related to sports, magnetic, optic and recording data- and sound carriers, data processing equipment and computers and CD-ROMs; sales promotion [for others]; retail services connected with the sale of printed publications; sponsoring in the form of advertising; systematic ordering of data in computer databases; business organisation consultancy with regard to providing of betting; television advertising; vending machine rental services; wholesale services in relation to games, gaming and gambling equipment, games and books relating to gambling, and betting materials, devices and equipment; information concerning the services mentioned before; services mentioned before through or not through the Internet; advisory and consultancy services in relation to the aforesaid.</i></p>	
	<p><u>Class 36</u> <i>On-line real-time currency trading; financial exchange of virtual currency; currency trading and exchange services; virtual currency transfer services; foreign</i></p>

	<p><i>currency transfer services; currency exchange and advice; currency exchange rate quotations; trading in foreign currency; buying and selling currency; swaps of currency rates; provision of foreign currency; virtual currency exchange; currency transfer services; virtual currency services; foreign currency exchange; currency exchange services; exchange services (currency -); foreign currency dealing; brokerage of currency; foreign currency services; currency dealing; currency trading; exchange of currency (agencies for the -); financial transactions relating to currency swaps; issuing of travellers' cheques and currency vouchers; computerised financial services relating to foreign currency dealings; financial spread betting; financial transactions; financial exchange; financial consultancy; financial advice; financial studies; financial services; financial information; trading in virtual currency; virtual currency exchange; virtual currency services; virtual currency transfer services; consultancy, information and advisory services relating to the aforesaid.</i></p>
	<p><u>Class 38</u> <i>Providing access to gambling, betting and gaming websites on the internet; streaming of sports and entertainment; streaming of audio, visual and audio-visual material via a global computer network; streaming audio and video material on the internet; streaming of video material on the internet; streaming</i></p>

	<p><i>of audio material on the internet; video, audio and television streaming services; streaming of television over the internet; streaming of data; data streaming; data streaming services; broadcasting services; television broadcasting; video broadcasting; audio broadcasting; internet broadcasting services; data broadcasting services; communication by online blogs; online communications services; online messaging services; providing access to multimedia content online; providing access to online computer databases; providing an online interactive bulletin board; providing online chat rooms and electronic bulletin boards; providing online chatrooms for the transmission of messages, comments and multimedia content among users; providing online facilities for real-time interaction with other computer users; providing online forums; providing online forums for communication in the field of gaming, betting and gambling; providing user access to a global computer network and online sites containing information on a wide range of topics including gaming, betting and gambling; provision of telecommunication access to video and audio content provided via an online video-on-demand service; transfer of information and data via online services and the internet; providing access to gambling and gaming websites on the internet; consultancy, information and advisory services relating to the aforesaid.</i></p>
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Class 41

Education (training); entertainment services; sporting and cultural activities; entertainment by or relating to games, competitions, quizzes and audience participation events; amusement arcades; amusement arcade gaming machine rental services; amusement parks; arranging and conducting of contests and competitions, including offline and online by way of a computer database or the Internet; arranging, organizing, providing, presenting, management and administration of a lottery, of competitions, games, quizzes, fun events and audience participation events, and of gaming and gambling services; betting; betting, gaming, games, gambling, book-making, bingo, poker and casino services; betting and pools services; betting services for receiving, recording and conducting bets and paying out betting winnings; betting and bookmaking services provided by means of the internet; betting offices and sports betting terminals; betting shop services provided through retail betting shops; casino, gaming and gambling services; conducting lotteries; electronic betting, gambling and gaming services; entertainment; entertainment information for tourists; entertainment services in the nature of on-line gaming and gambling; entertainment services, namely, providing virtual environments in which users can interact through social games for recreational, leisure or entertainment

purposes; electronic game, quiz and competition services provided by means of the Internet or on-line from a computer network or database; entertainment in the form of services providing an Internet platform for downloading software for electronic games, electronic games downloadable from the Internet, electronic action games downloadable from the Internet, electronic puzzles downloadable from the Internet, electronic board games downloadable from the Internet, electronic games of skill, electronic gambling games and electronic card games downloadable from the Internet, skill games, electronic games and software for fixed odds betting programs, horse racing betting, instant lotteries, pools; entertainment and sporting services provided on-line from a computer database or the Internet; Provision of sports betting offices (gambling); gambling, gaming, betting and wagering services; gambling services provided by means of the internet; horses (betting on-); entertainment; information services relating to recreation; information relating to online computer games; interactive entertainment; interactive lottery, gambling, gaming, betting and pools services; internet lottery, gambling, gaming, betting and pools services; lottery services; lottery, gambling, gaming, betting and pools services; on-line betting, gambling and gaming services; on-line spread betting, gaming, betting, gambling bookmaking and wagering services;

organization, production, presentation and conducting of betting events and forums, competitions, contests, games and quizzes; organization, production and presentation of television and radio programs; organization, production and presentation of shows and live performances; organisation and operation of football pools, lotteries and betting; organisation and holding of contests and competitions, including on-line by way of a computer database or the Internet; organising of lotteries; organisation of television lotteries; organisation of on-line betting; organisation of television games and on-line games in the global computer network; prize draws; providing interactive multi-player computer games via the Internet and electronic communication networks; providing temporary use of non-downloadable interactive, multiplayer and single player games; providing online computer and electronic games by means of a web-based system; providing a computer game that may be accessed network-wide by network users; provision of betting and gaming services by means of a computer based system; provision of non-downloadable internet games; providing games online, namely, interactive scratch cards and scratch card games by wireless, mobile phone, telephone, television, internet or by remote or network communication; providing online reviews of computer games, and providing of information

relating to computer games; provision of information on-line via the Internet or from a computer network or database relating to entertainment, lottery, gaming, betting and gambling services; providing casino facilities (gambling); providing casino and gaming services by means of a website and a global computer network; providing on-line information about casinos, gambling and general news about the gaming industry; providing on-line computer games; providing information regarding on-line games; providing information on-line from a computer database or electronic network, including the Internet, relating to entertainment and sporting events; provision of information relating to sporting events; publishing of books; publication of texts, other than publicity texts; production of radio and television programmes; publication of electronic books or periodicals on-line; providing of on-line electronic publications, not downloadable; providing services in halls with games machines; provision of information on-line from a computer database or from the Internet in relation to casinos, gaming, gambling, general news about the gaming industry, bonus schemes related to betting and gaming, betting services, sporting events, amusement, casino, entertainment and betting consultation services; providing on-line information in the field of computer gaming entertainment; providing gaming house facilities; providing computerised,

electronic and online databases in the field of sport and entertainment; providing information relating to sport and entertainment online from a computerised database on the Internet; provision of information about gambling and games; on-line gaming services; provision of on-line publications about gambling; rental of gaming and gambling machines and equipment; receiving and conducting of betting, in particular sports betting; running lotteries, exchange rate betting, pools, jackpot systems, tipping competitions and games, running online games, keeping gambling houses, keeping casinos; provision of gambling services in the field of racing, wagers and betting, games of chance, entertainment, bingo halls, casinos, contests, gaming, gambling, games of chance, electronic games, media games, tournaments for poker and other card games, action skill games and lotteries, including online via a computer database, telecommunications and the Internet; provision of gambling and betting services managed by a sports bookmaker; gambling and betting services providing and operating computerized bingo; spread betting, gaming, betting, gambling, bookmaking and wagering services; television betting, gambling and gaming services; telephone betting, gambling and gaming services and offshore betting, gambling and gaming services; provision of the aforesaid services in electronic or computer form,

<p><i>via the television, radio or other means of broadcasting; provision of the aforesaid services on-line via the Internet or from a computer network or database; consultancy, information and advisory services relating to all the aforesaid services.</i></p>	
<p><u>Class 42</u> <i>Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; application service provider (ASP); computer services, namely, creating an online community for registered users to participate in competitions, showcase their skills, get feedback from their peers, form virtual communities, and engage in social networking; application service provider (ASP) featuring software to enable or facilitate the uploading, downloading, streaming, posting, displaying, blogging, linking, sharing or otherwise providing electronic media or information over communication networks; computer game design; creation, hosting, updating and maintaining Internet sites; design and development of software in the form of services relating to the development and creation of software for use in relation to electronic games downloadable from the Internet, electronic puzzles downloadable from the Internet, electronic board games downloadable from the Internet, electronic games of skill, electronic gambling games</i></p>	

and electronic card games downloadable from the Internet, skill games, electronic games and software for fixed odds betting programs, spread betting programs, horse racing betting, instant lotteries, and pools; design and development services in relation to gaming and gambling machines, apparatus and accessories; design and development services in relation to interactive entertainment products; design of scratch cards and electronic scratch cards and scratch card games; design services relating to the production of computer games and interactive entertainment products; design services in relation to interactive games enabling users to buy, sell, and participate in auctions whilst participating in the game; design of graphics, visuals, virtual and interactive images, and of special effects for games, audiovisual, multimedia productions and for Internet gaming and gambling website pages; development of computer software applications solutions; providing temporary use of non-downloadable software for use in connection with interactive, multiplayer and single player games, gaming and gambling; providing a web hosting platform for use of non-downloadable software in connection with interactive, multiplayer and single player games, gaming and gambling for third parties; providing multiple user access to information and news information over the Internet and other global networks;

<p><i>provision of quality assurance services in relation to equipment for gambling in casinos; consultancy, information and advisory services relating to all the aforesaid services.</i></p>	
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31. While the opponent has stated at Question 1 of Form TM7 that it is relying on all goods and services covered by the earlier trade mark, in its Statement of Grounds dated 13 August 2020, it has included a table which underlines the goods and services which it considers relevant to the opposed application. It further states that “Class 16 of the registered earlier right has been omitted due its lack of relevance to the case”. It submits that “Although the prior registration does not cover all the same classes as the opposed mark, it is clear that many if not all instances where an item is in a class of the opposed application CLOUDBET, there is a similar or identical item offered by BETCLOUD in another class”.

32. The applicant does not deny that there is identity between the goods and services in classes 9, 41 and 42 by dint of the class headings in the earlier mark. It further submits that the financial and monetary services in class 36 and the telecommunications services in Class 38 are of such a nature that they are neither identical nor similar to the opponent’s goods or services and that in view of these dissimilarities, the later mark meets the requirements of Section 5(2)(b) of the Act.

33. Consequently, I will focus my analysis by comparing the applicant’s services in Classes 36 and 38 only against the Class 9 and Class 28 goods and all of the services of the earlier mark, as I see fit. The full class specifications of both marks can be found in Annex A and B respectively, following the conclusion of this decision.

34. For the purposes of considering the issue of similarity of goods, it is permissible to consider groups of terms collectively where appropriate. In *Separode Trade Mark*, BL O-399-10, Mr Geoffrey Hobbs QC, sitting as the Appointed Person, said:

“The determination must be made with reference to each of the different species of goods listed in the opposed application for registration; if and to the

extent that the list includes goods which are sufficiently comparable to be assessable for registration in essentially the same way for essentially the same reasons, the decision taker may address them collectively in his or her decision.”⁴

35. In *Gérard Meric v OHIM*, Case T-133/05, the GC stated that:

“In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.⁵

36. While making my comparison, I bear in mind the comments of Floyd J. (as he then was) in *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch):

“... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question.”⁶

⁴ Paragraph 5

⁵ Paragraph 29

⁶ Paragraph 12

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

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

38. In *Sky v Skykick* [2020] EWHC 990 (Ch), Arnold LJ considered the validity of trade marks registered for, amongst many other things, the general term ‘computer software’. In the course of his judgment he set out the following summary of the correct approach to interpreting broad and/or vague terms:

“...the applicable principles of interpretation are as follows:

(1) General terms are to be interpreted as covering the goods or services clearly covered by the literal meaning of the terms, and not other goods or services.

(2) In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms.

(3) An unclear or imprecise term should be narrowly interpreted as extending only to such goods or services as it clearly covers.

(4) A term which cannot be interpreted is to be disregarded.”

Class 36

39. “*Financial transactions; financial exchange*”. These services would be widely understood as relating to payment for goods and services rendered and the transfer of monies or the exchange of currency. As per *Avnet*, I see no justification in giving the terms an unduly wide interpretation. While there may be an overlap in the users of the opponent’s “*bookkeeping*” services in Class 35, I consider that the methods of

use and nature of the services to be different, as are the channels of trade. In my view, it is unlikely that customers would believe that the responsibility for the services lie with the same undertaking. I therefore find the services to be dissimilar.

40. “*Financial consultancy; financial advice; financial studies; financial services; financial information*”. In my view, there may be an overlap in the users of these various types of financial services and the “*bookkeeping*” services being provided under Class 35 of the earlier mark. However, the essential nature of the services are different, with the providers of the respective services likely to be specialists in their particular field. The purpose and method of use also differ, and the services are not complementary. To my mind, the average consumer would not expect that “*bookkeeping*” would automatically be provided by the same or economically linked undertakings as those providing “*Financial consultancy; financial advice; financial studies; financial services; financial information*”. Consequently, I find the services to be dissimilar.

41. “*On-line real-time currency trading; financial exchange of virtual currency; currency trading and exchange services; virtual currency transfer services; foreign currency transfer services; currency exchange and advice; currency exchange rate quotations; trading in foreign currency; buying and selling currency; swaps of currency rates; provision of foreign currency; virtual currency exchange; currency transfer services; virtual currency services; foreign currency exchange; currency exchange services; exchange services (currency -); foreign currency dealing; brokerage of currency; foreign currency services; currency dealing; currency trading; exchange of currency (agencies for the -); financial transactions relating to currency swaps; issuing of travellers' cheques and currency vouchers; computerised financial services relating to foreign currency dealings; trading in virtual currency; virtual currency exchange; virtual currency services; virtual currency transfer services*”. All of these services are specific to currency which in my view would be perceived by the relevant public as being provided by an undertaking specialising in the trade. I accept that there may be some overlap in the users of these services and the opponent’s “*business management*” services in Class 35, but they are different in nature and use, they are not in competition or complementary, and they are unlikely to share the same channels of trade. Consequently, I find the services to be dissimilar.

42. “*Financial spread betting*” is defined as “the activity of risking money on the price changes of shares, without buying the shares themselves”.⁷ While “*Financial spread betting*” in the later mark and “*Betting*” in Class 41 of the opponent’s mark, may, at first glance, be perceived as similar as both are in relation to a form of gambling, in reality the two services are quite different. The term “*betting*” alone would be perceived as the activity of staking money on the outcome of, for example, a sporting contest, or game of cards (gambling), and as such is a form of entertainment, compared with “*Financial spread betting*”, which is a form of investment. The services differ in nature and use, and while there may be an overlap in end users, they share different trade channels. Neither do I consider the services to be complementary or in competition with each other. I therefore find the services to be dissimilar.

43. “*Consultancy, information and advisory services relating to the aforesaid*”. Having found all of the services in Class 36 to be dissimilar, as outlined above, it follows that the consultancy services in relation to the same are also dissimilar.

Class 38

44. “*Providing access to gambling, betting and gaming websites on the internet; providing access to gambling and gaming websites on the internet*”. Providing access to the internet is a telecommunications service which provides a direct network connection, which in this case is the means of gaining access to the gambling and betting websites. The “*betting and bookmaking services provided by means of the internet*” in Class 41 of the earlier mark, meanwhile, is concerned with the betting and bookmaking services themselves. There will therefore be an overlap in end users, although the nature of the respective services are different, as are the uses and the respective channels of trade. In my view, however, the services are complementary as access to the websites is indispensable to the provision of the “*betting and bookmaking services provided by means of the internet*”. I therefore find that the services are similar to a medium degree.

⁷ <https://dictionary.cambridge.org/dictionary/english/spread-betting?>

45. *“Providing user access to a global computer network and online sites containing information on a wide range of topics including gaming, betting and gambling”*. The opponent’s Class 41 service *“provision of information on-line via the Internet or from a computer network or database relating to entertainment, lottery, gaming, betting and gambling services”* would first require the provision of access in order for the consumer to be able avail themselves of such information. To my mind, the services are complementary, as per *Kurt Hesse*. There will be an overlap in users, and while they differ in the nature, I consider the respective services to be similar to at least a medium degree.

46. *“Providing access to multimedia content online; providing access to online computer databases; provision of telecommunication access to video and audio content provided via an online video-on-demand service ”*. I consider there to be an overlap between the users of these services and the users of the opponent’s *“application service provider (ASP) featuring software to enable or facilitate the uploading, downloading, streaming, posting, displaying, blogging, linking, sharing or otherwise providing electronic media or information over communication networks”* in Class 42. While the nature of the respective services differ, I consider it reasonable that the average consumer would expect the same undertaking to provide both services. I find that the services which provide access to be complementary to the services of the ASP and therefore similar to at least a medium degree.

47. *“Providing an online interactive bulletin board; providing online chat rooms and electronic bulletin boards; providing online chatrooms for the transmission of messages, comments and multimedia content among users; providing online facilities for real-time interaction with other computer users; providing online forums; providing online forums for communication in the field of gaming, betting and gambling”*. All these services provide a means of communication to online users. I consider there to be an overlap with the users of the opponent’s *“computer services, namely, creating an online community for registered users to participate in competitions, showcase their skills, get feedback from their peers, form virtual communities, and engage in social networking”* in Class 42, where bulletin boards and chatrooms and the like would feasibly be created as part of such services. In my view, the respective

services are similar in nature and purpose, with an overlap in end-users, and both services could be expected to be provided by the same or economically linked undertakings. To my mind, the competing services are similar to a medium degree.

48. “*Streaming of sports and entertainment; streaming of audio, visual and audio-visual material via a global computer network; streaming audio and video material on the internet; streaming of video material on the internet; streaming of audio material on the internet; video, audio and television streaming services; streaming of television over the internet; streaming of data; data streaming; data streaming services*”. These services provide access to a variety of material which may be related to, *inter alia*, entertainment, sport, or education. Some undertakings providing streaming services will also produce the content that is being streamed, while other companies will produce the content which is then licensed to the third party streaming service providers. For the former, there will be an overlap in end users and trade channels, however, the physical nature of the two services differ, although they may share an end goal to provide entertainment or information. There is also an element of competition between those undertakings which produce and stream their own content with those who provide streaming services alone. Considering the essential purpose of the services, in my view, there is at least a medium degree of similarity between the various streaming services and the “*Entertainment services*” in Class 41 of the earlier mark.

49. “*Broadcasting services; television broadcasting; video broadcasting; audio broadcasting; internet broadcasting services; data broadcasting services*”. As for the aforementioned streaming services, there will be an overlap between broadcasting and the data which is actually broadcast, which may encompass the “*Entertainment services*” of the opponent’s mark. There is a degree of complementarity between the services and it would not be unreasonable for consumers to expect the same provider to deliver both services. Although the physical nature of the respective services differ, I consider there to be at least a medium degree of similarity between the services.

50. “*Communication by online blogs; online communications services; online messaging services*”. In my view, there is some connection between these services and “*Computer software to enable uploading, posting, showing, displaying, tagging,*

blogging, sharing or otherwise providing electronic media or information in the fields of virtual communities, electronic gaming, entertainment, and general interest via the Internet or other communications networks with third parties” provided under Class 9 of the earlier mark, in as much that the software may be utilised to access the services. I accept that it is possible that an undertaking may provide both the software and the services, however, in this instance, I consider it more likely that the relevant public will not automatically make any such connection. The respective goods and services are different in nature and use and the goods are not necessarily indispensable to the provision of the services. Therefore, I consider there to be a low degree of similarity between the goods and services.

51. “*Transfer of information and data via online services and the internet*”. I consider this to be a broad term which could easily relate to the transfer of such information and data as for the “*provision of information on-line via the Internet or from a computer network or database relating to entertainment, lottery, gaming, betting and gambling services*” in Class 41 of the opponent’s mark. There will be an overlap between the end-users of the respective services, however, the physical nature and methods of use of the respective services are different – how the information and data are being transferred is the fundamental aspect of the applicant’s services, being a technical, telecommunications service, whereas it is the type and quality of the information itself that is being provided in Class 41 of the earlier mark which will be more important than the way in which that information is transmitted. Consequently, it would not be a foregone conclusion that both services would be provided by the same or economically linked undertakings. I find there to be a low degree of similarity between the services.

52. “*Consultancy, information and advisory services relating to the aforesaid*”. Although the methods of use and nature of providing information and advice about the respective services is different to the provision of the actual services, provision of a consultancy service has a clear complementary relationship with the provision of the aforementioned services themselves, with an overlap in end users and trade channels. I consider that the average consumer would expect the same undertaking to provide both services. I therefore find the term to be similar to a medium degree

for wherever I found similarity for the earlier services, as considered in the previous paragraphs.

The average consumer and the nature of the purchasing act

53. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. (as he was then) described the average consumer in these terms:

“The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The word “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median”.⁸

54. For the purpose 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 or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

55. In its Statement of Grounds, the opponent submits that the goods and services in relation to gambling in classes 9 and 41 respectively of the contested marks are aimed at consumers in general, and that online gambling is a popular and mainstream pursuit in the UK. It further submits that gambling apps and streaming services are easily accessed on a frequent basis and often impulsively, and that the consumer's level of attention may be rather low or, at the very least, not heightened.

56. In its counterstatement, the applicant submits that all of the goods and services are connected with betting and would be encountered by members of the public that place bets. It further asserts that such consumers have a necessarily high level of attention due to the care that they need to take when placing bets and handling

⁸ Paragraph 60

potentially large sums of money to the extent that they would not confuse the earlier and later marks.

57. In my view, the average consumer for the competing services will most likely be a member of the public with an interest in betting and/or gaming as a regular pastime, or they may be a professional gambler or gamer. The services are likely to be accessed frequently, and the level of attention will be commensurate with the size of the stake or prize, which will range from relatively low to comparatively high. I also recognise that there may be the casual gambler who will only place bets on the occasional big event, such as the Grand National or FA Cup. These consumers will be less knowledgeable and are likely to pay a lower degree of attention to the purchasing process than either the regular player or professional gambler.

58. Purchases of software in relation to gambling and betting are likely to be acquired by the service providers of, for example, casinos or turf accountants, rather than the public at large, who will then access the services as the end user. The software will therefore be sourced from specialist providers where a high level of attention will be paid to ensure that the software procured is appropriate to specific business needs.

59. Purchases of software in relation to gaming are likely to be bought relatively frequently, where the hobbyist will pay at least an average degree of attention to the genre of games they wish to play and the features and player options available, while the professional gamer will pay a high level of attention to their selection. The goods may be sold through a range of channels including via online sales or through a high street retail outlet, with the purchasing process being a combination of visual and aural; some consumers would seek information from written reviews and recommendations, particularly on the internet, whereas other consumers would receive verbal advice and recommendations from sales representatives, as well as from fellow gamers. The initial outlay of gaming equipment is likely to be relatively high, however subsequent purchases of compatible software will be much less expensive.

Comparison of marks

60. It is clear from *Sabel BV v. Puma AG* (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 SA v OHIM* Case C-591/12P, that:

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”⁹

61. It would be wrong, therefore, to artificially dissect the trade marks, although, it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

62. The respective trade marks are shown below:

Opponent’s trade marks (series of 2 marks)	Applicant’s trade mark
<p style="text-align: center;">BETCLOUD</p> <p style="text-align: center;">BET CLOUD</p>	<p style="text-align: center;">CLOUDBET</p>

63. The opponent submits that the marks are highly similar visually, aurally and conceptually and that the only change preventing them from being entirely identical is

⁹ Paragraph 34

the reversing of the order of BET and CLOUD, with no other differences whatsoever. It has provided analogous examples from the EU IPO opposition manual.¹⁰

64. In its counterstatement, the applicant submits that the marks are aurally and visually different and comprise different prefixes. It refers to the decision of the GC in *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02 and submits that as the GC held that prefixes of marks have more visual and aural impact than the suffix that the order in which the words CLOUD and BET appear are important.

Overall impression

65. The opponent's mark consists of a series of two marks as shown above. The first mark of the series comprises the single word "BETCLOUD", while the second mark is portrayed as two separate words "BET CLOUD". Both marks are presented in capital letters in a standard font without any other elements to contribute to the overall impression. In order to be accepted as a series of trade marks, Section 41(2) of the Act states that:

"A series of trade marks means a number of trade marks which resemble each other as to their material particulars and differ only as to matters of a non-distinctive character not substantially affecting the identity of the trade mark."

In my view, there is a natural break between the letter T and the letter C of the first mark, which would lead the average consumer to perceive it as two separate words BET and CLOUD, giving the same overall impression as the second mark in the series, which rests in the words themselves. In spite of a slight visual disparity between the two marks of the series, as nothing else turns upon the difference in the presentation of the marks, for convenience, I will, from this point, refer to the first mark of the series, "BETCLOUD", though my comments should be taken as referring equally to both marks in the series.¹¹

¹⁰ See the opponent's amended Statement of Grounds dated 13 August 2020.

¹¹ For further guidance on series of marks, see the decision of Professor Ruth Annand, sitting as Appointed Person in the *Logica Trade Mark* BL O/068/03.

66. The applicant's mark consists of the single word "CLOUDBET", presented in a standard font in capital letters. As the mark contains no other elements, the overall impression therefore rests in the word itself.

Visual comparison

67. Both marks contain the exact same 8 letters, presented in a different order in each of the marks. The applicant's mark is "CLOUDBET", while the opponent's mark is "BETCLOUD". This can be further compared as being the same two words, albeit conjoined, presented in reverse order. Considering the identity of the letters and the two words that they form contained within each of the marks, and with no other elements to consider, while the marks cannot be described as being visually identical, I consider them to be highly similar.

Aural comparison

68. Each of the marks would be read as two separate words, "CLOUD BET" and "BET CLOUD" respectively. There are clearly phonetic differences between the marks, however, there are also similarities, as the words CLOUD and BET would be pronounced identically in each of the respective marks, albeit in a different order in each. In my view, the marks are aurally similar to a medium degree.

Conceptual comparison

69. Neither of the conjoined forms of "CLOUDBET" nor "BETCLOUD" are dictionary defined, however, individually, each of the words CLOUD and BET can be found in any recognised English dictionary as a descriptor, each having several meanings. To my mind, both marks strongly allude to a form of online betting which utilises cloud technology, "the cloud" being a data centre where files and programs can be stored and quickly accessed, over the internet, rather than on physical data centres and hard drives. The applicant submits that the term "BETCLOUD" alludes to a cloud-based computing system that is intended to handle bets, whereas the term "CLOUDBET" alludes to a bet which has been placed in the cloud, and thus the two marks are conceptually different. In my view, the average consumer is unlikely to make any such

distinction without complex analysis - I agree with the opponent that both marks combine the idea of betting with the known term “the cloud”, and that neither mark holds any immediate additional concept beyond the two words used in conjunction, regardless of the order in which those words are presented. Consequently, I consider that the marks convey the same message and are therefore conceptually identical.

Distinctive character of the earlier marks

70. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91.

71. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

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

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

commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

72. In its counterstatement, the opponent accepts that the level of distinctiveness of the earlier trade mark is relatively low.

73. As outlined in paragraph 69 of this decision, although the conjoined word “BETCLOUD” is not dictionary defined, I do not consider that the average consumer would see it as an invented word, but as two words “BET” and “CLOUD”, as per the second mark of the series. Invented words usually have the highest degree of distinctive character, while words which are descriptive of the goods and/or services relied upon typically have the lowest degree. As the opponent has not provided evidence demonstrating the extent of the use or promotion of the mark in the UK, I have only the inherent characteristics of its trade marks to consider. I consider that the earlier marks allude to a form of online betting which utilises cloud technology, and as such, I find the marks to be at the lower end of the spectrum, although not of the very lowest degree.

Likelihood of confusion

74. There is no scientific formula to apply in determining whether there is a likelihood of confusion. It is a global assessment of the competing factors (*Sabel* at [22]), keeping in mind the interdependency between them i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods/services and vice versa (*Canon* at [17]). In making my assessment, I must consider the various factors from the perspective of the average consumer, bearing in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he has retained in his mind (*Lloyd Schuhfabrik* at [26]).

75. There are two types of possible confusion: direct, where the average consumer mistakes one mark for the other, or indirect, where the average consumer realises the marks are not the same but puts the similarity that exists between the marks/goods and services down to the responsible undertakings being the same or related. The

distinction between these was explained by Mr Iain Purvis Q.C., sitting as the Appointed Person, in *L.A. Sugar Limited v Back Beat Inc*, Case BL-O/375/10. He said:

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

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

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

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

(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).”

76. The above are examples only which are intended to be illustrative of the general approach. These examples are not exhaustive but provide helpful focus.

77. Earlier in this decision, I found that:

- The level of attention of the general public or professional gamer or gambler as the average consumer of the services will range from low to high, dependent on the size of the prize and the level of knowledge of the individual consumer;
- In relation to gaming software, the average consumer will be the general public or a professional whose level of attention during the selection process will be at least average; however, the relevant public of software in relation to gambling and betting will be gambling operators whose level of attention will be high;
- For all consumers, the selection of the goods and services at issue will be a combination of visual and aural;
- The competing trade marks are visually similar to a high degree and are aurally similar to a medium degree, and are conceptually identical;
- The series of earlier marks allude to online betting which utilises cloud technology, and as such they are inherently distinctive to a relatively low degree;
- The contested services in class 38 are similar to at least a low degree to the goods and services provided by the opponent;
- I found there to be no similarity between the applicant's services under Class 36 and the goods and services of the earlier mark.

78. A degree of similarity between the services is essential for there to be a finding of likelihood of confusion. In *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, Lady Justice Arden stated that:

“49..... I do not find any threshold condition in the jurisprudence of the Court of Justice cited to us. Moreover I consider that no useful purpose is served by holding that there is some minimum threshold level of similarity that has to be shown. If there is no similarity at all, there is no likelihood of confusion to be considered. If there is some similarity, then the likelihood of confusion has to be considered but it is unnecessary to interpose a need to find a minimum level of similarity.”

79. As no similarity was found for the services in Class 36, there is no likelihood of confusion to consider for these services.

80. I bear in mind the decision of the CJEU in *L'Oréal SA v OHIM*, Case C-235/05 P, in which the court confirmed that weak distinctive character of the earlier trade mark does not preclude a likelihood of confusion.¹²

81. It is settled case-law that the average consumer is unlikely to see the marks side-by-side and will therefore be reliant on the imperfect picture of them they have kept in their mind. I acknowledge the opponent's reference to the decisions of the Hearing Officers in O/382/01 NEXT GENERATION/GENERATION NEXT and O/092/04 BREATHE EASY/EASI-BREATHE respectively, where it was considered that the only difference between the marks was the reversal of the words which was not enough to find no likelihood of confusion. I also note the applicant's reference to *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02. However, in *Bristol Global Co Ltd v EUIPO*, T-194/14, the GC held that there was a likelihood of confusion between AEROSTONE (slightly stylised) and STONE if both marks were used by different undertakings in relation to identical goods (land vehicles and automobile tyres). While that case is not directly comparable to the present matter, it shows that it does not necessarily follow that there is no likelihood of confusion where the beginnings of

¹² Paragraph 45.

marks are different. It is my view that in this present case, the relevant public would be likely to recall the words CLOUD and BET, but, as a result of imperfect recollection, be less certain about the order of those words. Keeping in mind the global assessment of the competing factors in my decision, and in particular the conceptual identity of the marks, I find that there is a likelihood of direct confusion for those goods and services where there was considered to be similarity.

Outcome of opposition under Section 5(2)(b)

82. The claim under section 5(2)(b) succeeds with respect to the goods and services in Classes 9, 38, 41 and 42.

Section 5(4)(a)

83. Section 5(4)(a) states:

“(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented -

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

(aa) ...

(b)...

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark.”

84. Subsection (4A) of section 5 of the Act states:

“The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of

application for registration of the trade mark or date of the priority claimed for that application.”

85. It is settled law that for a successful finding under the law of passing-off, three factors must be present: i) goodwill, ii) misrepresentation and, iii) damage. In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

“55. The elements necessary to reach a finding of passing off are the ‘classical trinity’ of that tort as described by Lord Oliver in the Jif Lemon case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56. In relation to deception, the court must assess whether “a substantial number” of the Claimants’ customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21).”

Relevant date

86. A claim for passing off must be judged at a particular point (or points) in time. In *Advanced Perimeter Systems v Multisys Computers Limited*, BL O-410-11, Mr Daniel Alexander QC, sitting as the Appointed Person, quoted with approval the summary made by Mr Allan James, acting for the Registrar, in *SWORDERS Trade Mark*, BL O/212/06:

“Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the applicant has used the mark before the date of the application it is necessary to consider what the position

would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made.”¹³

87. There is no indication by the applicant that it has used its mark prior to its application. As such, all factors should be assessed as at the date of application, being 17 February 2020 (“the relevant date”).

Goodwill

88. In *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 (HOL), goodwill was described in the following terms:

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start. The goodwill of a business must emanate from a particular centre or source. However widely extended or diffused its influence may be, goodwill is worth nothing unless it has the power of attraction sufficient to bring customers home to the source from which it emanates.”

89. In *Starbucks (HK) Limited & Anor v British Sky Broadcasting Group Plc & Ors* [2015] UKSC 31, Lord Neuberger (with whom the rest of the Supreme Court agreed) stated that:

“I consider that we should reaffirm that the law is that a claimant in a passing off claim must establish that it has actual goodwill in this jurisdiction, and that such goodwill involved the presence of clients or customers in the jurisdiction for the products or services in question.”¹⁴

¹³ See paragraph 43 of BL O-410-11.

¹⁴ Paragraph 47.

90. In *South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)* [2002] RPC 19 (HC), Pumfrey J. stated:

“27. There is one major problem in assessing a passing of claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent's reputation extends to the goods comprised in the applicant's specification of goods. The requirements of the objection itself are considerably more stringent than the enquiry under s.11 of the 1938 Act (see *Smith Hayden & Co. Ltd's Application (OVAX)* (1946) 63 R.P.C. 97 as qualified by *BALI Trade Mark [1969] R.P.C. 472*). Thus the evidence will include evidence from the trade as to reputation; evidence as to the manner in which the goods are traded or the services supplied; and so on.

28. Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed to the relevant date. Once raised, the applicant must rebut the prima facie case. Obviously, he does not need to show that passing off will not occur, but he must produce sufficient cogent evidence to satisfy the hearing officer that it is not shown on the balance of probabilities that passing off will occur.”

91. However, in *Minimax GmbH & Co KG v Chubb Fire Limited* [2008] EWHC 1960 (Pat) Floyd J. (as he then was) stated that:

“[The above] observations are obviously intended as helpful guidelines as to the way in which a person relying on section 5(4)(a) can raise a case to be answered of passing off. I do not understand Pumfrey J to be laying down any absolute requirements as to the nature of evidence which needs to be filed in every case. The essential is that the evidence should show, at least prima facie, that the opponent's reputation extends to the goods comprised in the

application in the applicant's specification of goods. It must also do so as of the relevant date, which is, at least in the first instance, the date of application.”

92. The opponent submits that “as a consequence of the use thereof, the opponent has built a reputation in its trade mark BETCLOUD and enjoys extensive goodwill in it in relation to the fields of gaming, gambling and software”. The opponent has, however, provided no evidence of customers in the UK. There are no sales figures or evidence as to how the goods and services are supplied. Consequently, I am unable to find that it has a protectable goodwill and so the section 5(4)(a) ground fails.

Outcome of opposition under Section 5(4)(a)

93. The opposition under Section 5(4)(a) fails.

CONCLUSION

94. The opponent has been partially successful. The application by Game Theory Soapbox Limited may proceed to registration in respect of the following services:

Class 36

On-line real-time currency trading; financial exchange of virtual currency; currency trading and exchange services; virtual currency transfer services; foreign currency transfer services; currency exchange and advice; currency exchange rate quotations; trading in foreign currency; buying and selling currency; swaps of currency rates; provision of foreign currency; virtual currency exchange; currency transfer services; virtual currency services; foreign currency exchange; currency exchange services; exchange services (currency -); foreign currency dealing; brokerage of currency; foreign currency services; currency dealing; currency trading; exchange of currency (agencies for the -); financial transactions relating to currency swaps; issuing of travellers' cheques and currency vouchers; computerised financial services relating to foreign currency dealings; financial spread betting; financial transactions; financial exchange; financial consultancy; financial advice; financial studies; financial services; financial information; trading in virtual currency; virtual currency exchange; virtual

currency services; virtual currency transfer services; consultancy, information and advisory services relating to the aforesaid.

COSTS

95. Both parties have enjoyed a share of success, with the greater part going to the opponent, who is therefore entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice (“TPN”) 2/2016. Applying the guidance in that TPN, and taking into account the partial success of the applicant for which I have made a slight reduction to the costs, I award the opponent the sum of £900, which is calculated as follows:

Official fee:	£200
Preparing a notice of opposition and considering the counterstatement:	£200
Preparing evidence:	£500
Total:	£900

96. I therefore order Game Theory Soapbox Limited to pay SC IP Limited the sum of £900. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 21st day of June 2021

Suzanne Hitchings
For the Registrar,
the Comptroller-General

Annex A

Applicant's good and services:

Class 9

Computer software; gambling, gaming and betting software; currency authentication apparatus and equipment; currency recognition machines; electronic currency converters; sports betting applications; computer application software; devices for streaming media content over local wireless networks; digital media streaming devices; media streaming software; video streaming devices; apparatus and instruments for transmitting, verifying, storing, spending and receiving virtual currency; electronic broadcasting apparatus; downloadable cryptographic keys for receiving and spending crypto-currency; cryptography, security and cryptography software; electronic apparatus for gambling and betting; parts and fittings for the aforesaid goods.

Class 36

On-line real-time currency trading; financial exchange of virtual currency; currency trading and exchange services; virtual currency transfer services; foreign currency transfer services; currency exchange and advice; currency exchange rate quotations; trading in foreign currency; buying and selling currency; swaps of currency rates; provision of foreign currency; virtual currency exchange; currency transfer services; virtual currency services; foreign currency exchange; currency exchange services; exchange services (currency -); foreign currency dealing; brokerage of currency; foreign currency services; currency dealing; currency trading; exchange of currency (agencies for the -); financial transactions relating to currency swaps; issuing of travellers' cheques and currency vouchers; computerised financial services relating to foreign currency dealings; financial spread betting; financial transactions; financial exchange; financial consultancy; financial advice; financial studies; financial services; financial information; trading in virtual currency; virtual currency exchange; virtual currency services; virtual currency transfer services; consultancy, information and advisory services relating to the aforesaid.

Class 38

Providing access to gambling, betting and gaming websites on the internet; streaming of sports and entertainment; streaming of audio, visual and audio-visual material via a global computer network; streaming audio and video material on the internet; streaming of video material on the internet; streaming of audio material on the internet; video, audio and television streaming services; streaming of television over the internet; streaming of data; data streaming; data streaming services; broadcasting services; television broadcasting; video broadcasting; audio broadcasting; internet broadcasting services; data broadcasting services; communication by online blogs; online communications services; online messaging services; providing access to multimedia content online; providing access to online computer databases; providing an online interactive bulletin board; providing online chat rooms and electronic bulletin boards; providing online chatrooms for the transmission of messages, comments and multimedia content among users; providing online facilities for real-time interaction with other computer users; providing online forums; providing online forums for communication in the field of gaming, betting and gambling; providing user access to a global computer network and online sites containing information on a wide range of topics including gaming, betting and gambling; provision of telecommunication access to video and audio content provided via an online video-on-demand service; transfer of information and data via online services and the internet; providing access to gambling and gaming websites on the internet; consultancy, information and advisory services relating to the aforesaid.

Class 41

Gambling; online gambling services; providing gambling, gaming and betting facilities; betting, gaming and gambling services; betting exchange services; sports betting services; online betting services; providing entertainment via a website; consultancy, information and advisory services relating to the aforesaid.

Class 42

Design and development of computer hardware and software; computer game design; creating, developing, hosting, updating and maintaining internet websites; hosting a website for the provision of on-line gaming, gambling and betting; providing online, non-downloadable software for gaming, gambling, betting and entertainment;

providing temporary use of non-downloadable software for gaming, gambling, betting and entertainment; consultancy, information and advisory services relating to the aforesaid.

Annex B

Opponent's good and services as registered:

Class 9

Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers; recording discs; application software; electronic components for gambling machines being mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire extinguishing apparatus; apparatus and instruments for recording, transmission or reproduction of sound, data and/or images; application software relating to and for playing casino games, gambling and betting; audio and video tapes; electronic components for gambling machines being mechanisms for coin-operated apparatus; betting terminals; betting terminals with internet connections; betting terminals with screens; calculators; cards bearing magnetic data; cash registers; CD-ROMs; checking (supervision) apparatus and instruments; compact discs; computer and electronic games software; computer game tapes; computer hardware and software for playing games; computer hardware and software for digital lotteries and casinos; computer hardware and software for gaming, gambling and betting; computer interfaces; computer lottery games; computer lottery games downloadable from the Internet; computer software; computer software applications, downloadable; computer software distributed via the Internet; computer software downloadable from the Internet; computer software and programs for use on computer networks including the Internet; computer software platforms for social networking; computer software to enable uploading, posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information in the fields of virtual communities, electronic gaming, entertainment, and general interest via the Internet or other communications networks with third parties; computer software platforms for computer software programs running on, or in connection with, mobile devices; computer software for the provision and management of on-line games and competitions; computer software for use on computer networks, including

the Internet for gaming, gambling and betting; computer software relating to and for playing casino games, gambling and betting; computer software for use on computer networks, including the Internet for gaming, gambling and betting; computer programs and application software for use on telephones and handheld mobile devices; computer programs relating to and for playing casino games, gambling and betting; data processing equipment and computers; devices for checking tickets, passes and lottery tickets; devices operated by inserting coins, chips and cards, and mechanisms therefor; digital video discs; display equipment and installations; downloadable electronic publications; downloadable electronic publications featuring gaming, gambling and betting; electric and electronic apparatus for betting offices; electric, electronic or mechanical apparatus for betting; electronic apparatus and instruments for use in relation to betting and gaming, bonus schemes related to betting and gaming, amusement, and entertainment services; electrical and electronic apparatus for use in on-line betting; electronic betting terminals; electronic cards for use in connection with promotion schemes; electronic loyalty scheme cards; electronic game equipment; electronic number generators; electronic number terminals; electronic publications; electronic publications and information provided on-line from databases or the Internet (downloadable); electronic publications provided by electronic mail; electronic publications featuring gaming, gambling and betting; electronic tags; electro pneumatic and electric machines for detecting winning symbols or winning numbers; entertainment software; equipment for apparatus for sorting and counting; games and competitions in electronic and computer form; games, gaming, and gambling related software; holographic images; indication panels, data and information transmission installations, monitors, control consoles and printers all for bookmaking; information recorded on computer media; interactive computer systems; interactive computer and mobile device systems; interactive software; interactive games, gaming and gambling software; Internet terminals and terminals for receiving and arranging sports betting; machines for issuing tickets, lottery tickets and forms; magnetic, optic and recording data- and sound carriers; magnetic, optical, electronic and smart cards (cards with integrated circuits); magnetically encoded cards; online games, gaming and gambling related software; operating terminals for acceptance of betting games; publications in electronic form supplied online from a computer database or the Internet; interactive computer software; electronic number generators; software for use with games, entertainment, recreational, amusement, gaming and video game terminals, machines

and apparatus; software for interactive scratch cards and scratch card games; software and software packages for the registration and operation of betting related to sports; software and hardware for automatic gaming machines and gaming machines; software for processing bets including through the Internet; sound and video recordings; totalisators; video screens; virtual reality games software; voting machines; wagering systems; wagering terminals; parts and fittings for all the aforesaid goods.

Class 16

Paper, cardboard; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); printers' type; printing blocks; instructional and informative printed matter relating to bets, betting, games, gaming and gambling betting forms; betting slips; coupons for betting purposes; calendars; lottery tickets; printed cards; printed game instruction sheets; printed scoring sheets; scratch cards; tickets; tokens; vouchers; printed publications relating to bets, betting, games, gaming and gambling.

Class 28

Games, toys, playthings and novelties; apparatus for games; appliances, equipment and accessories for bingo; arcade games; articles and apparatus for use in games, in lottery games and in playing games and lottery games; automatic gaming machines; automatic slot machines; bags specially adapted for handheld games; bags specially adapted for handheld video games; bingo game playing apparatus; bingo cards; bingo markers; board games; bill-operated gaming equipment; bowling apparatus and machines; card games; cards (games); casino games, equipment and accessories therefor; chips and dice [gaming equipment]; chips, counters, discs and tokens for gambling; action skill games; coin fed gaming machines; coin-operated amusement gaming machines; coin-operated gambling and betting machines; coin-operated games; coin-operated gaming equipment; counters, discs and pawns for games; darts, quoits; dart games; dice and cases therefor; dice games; electronic board games; electronic games other than those adapted for use with television receivers only; free standing games apparatus; free standing video games apparatus; free standing

gaming and gambling apparatus; game boards; game cards; gaming apparatus; gaming and amusement machines and parts and fittings therefor; gaming chips; gaming equipment; gaming machines; gaming machines, operated by inserting coins, counters, chips and cards; gaming tables; gaming tables for poker and blackjack; gambling machines; hand held computer games; lottery balls; mahjong (Chinese gambling game); parlour games, devices, equipment and accessories therefor; pinball games; pinball games machines (coins or counter operated); pinball machines (pachinko machines, korinto games machines, smartball machines); playing cards; poker chips; portable games with liquid crystal displays; puzzle games; puzzles; question sets for games, gaming and gambling; quiz games; roulette sets, chips, wheels, tables, equipment and accessories therefor; scratch cards; scratch card games; slot machines (gaming devices); snooker tables and snooker accessories; sports games; amusement apparatus and accessories for games; amusement apparatus and accessories for games, adapted for use with televisions; slot machines; parts and fittings for all the aforesaid goods.

Class 35

Advertising; business management; business administration; office functions; auctioneering, including on the Internet; bookkeeping; business management; business administration; classified advertising services; collating of data in computer databases; compilation of statistics; computerised file managing; demonstration of goods; distribution of samples; business services related to establishing and providing sales, brokerage and collection points for betting; betting, games, gaming and gambling machine rental services; layout design for advertising purposes; loyalty card services; office functions; on-line advertising in computer networks; on-line advertising on a computer network; on-line data processing services; organisation of promotional incentive schemes; presentation of goods on communication media, for retail purposes; production of radio, television and cinema advertisements; retail services in relation to games, apparatus and devices for betting, games, gaming, gambling and wagering; retail services in relation to software and software packages for the registration and operation of betting related to sports, magnetic, optic and recording data- and sound carriers, data processing equipment and computers and CD-ROMs; sales promotion [for others]; retail services connected with the sale of printed publications; sponsoring in the form of advertising; systematic ordering of data in

computer databases; business organisation consultancy with regard to providing of betting; television advertising; vending machine rental services; wholesale services in relation to games, gaming and gambling equipment, games and books relating to gambling, and betting materials, devices and equipment; information concerning the services mentioned before; services mentioned before through or not through the Internet; advisory and consultancy services in relation to the aforesaid.

Class 41

Education (training); entertainment services; sporting and cultural activities; entertainment by or relating to games, competitions, quizzes and audience participation events; amusement arcades; amusement arcade gaming machine rental services; amusement parks; arranging and conducting of contests and competitions, including offline and online by way of a computer database or the Internet; arranging, organizing, providing, presenting, management and administration of a lottery, of competitions, games, quizzes, fun events and audience participation events, and of gaming and gambling services; betting; betting, gaming, games, gambling, book-making, bingo, poker and casino services; betting and pools services; betting services for receiving, recording and conducting bets and paying out betting winnings; betting and bookmaking services provided by means of the internet; betting offices and sports betting terminals; betting shop services provided through retail betting shops; casino, gaming and gambling services; conducting lotteries; electronic betting, gambling and gaming services; entertainment; entertainment information for tourists; entertainment services in the nature of on-line gaming and gambling; entertainment services, namely, providing virtual environments in which users can interact through social games for recreational, leisure or entertainment purposes; electronic game, quiz and competition services provided by means of the Internet or on-line from a computer network or database; entertainment in the form of services providing an Internet platform for downloading software for electronic games, electronic games downloadable from the Internet, electronic action games downloadable from the Internet, electronic puzzles downloadable from the Internet, electronic board games downloadable from the Internet, electronic games of skill, electronic gambling games and electronic card games downloadable from the Internet, skill games, electronic games and software for fixed odds betting programs, horse racing betting, instant lotteries, pools; entertainment and sporting services provided on-line from a computer

database or the Internet; Provision of sports betting offices (gambling); gambling, gaming, betting and wagering services; gambling services provided by means of the internet; horses (betting on-); entertainment; information services relating to recreation; information relating to online computer games; interactive entertainment; interactive lottery, gambling, gaming, betting and pools services; internet lottery, gambling, gaming, betting and pools services; lottery services; lottery, gambling, gaming, betting and pools services; on-line betting, gambling and gaming services; on-line spread betting, gaming, betting, gambling bookmaking and wagering services; organization, production, presentation and conducting of betting events and forums, competitions, contests, games and quizzes; organization, production and presentation of television and radio programs; organization, production and presentation of shows and live performances; organisation and operation of football pools, lotteries and betting; organisation and holding of contests and competitions, including on-line by way of a computer database or the Internet; organising of lotteries; organisation of television lotteries; organisation of on-line betting; organisation of television games and on-line games in the global computer network; prize draws; providing interactive multi-player computer games via the Internet and electronic communication networks; providing temporary use of non-downloadable interactive, multiplayer and single player games; providing online computer and electronic games by means of a web-based system; providing a computer game that may be accessed network-wide by network users; provision of betting and gaming services by means of a computer based system; provision of non-downloadable internet games; providing games online, namely, interactive scratch cards and scratch card games by wireless, mobile phone, telephone, television, internet or by remote or network communication; providing online reviews of computer games, and providing of information relating to computer games; provision of information on-line via the Internet or from a computer network or database relating to entertainment, lottery, gaming, betting and gambling services; providing casino facilities (gambling); providing casino and gaming services by means of a website and a global computer network; providing on-line information about casinos, gambling and general news about the gaming industry; providing on-line computer games; providing information regarding on-line games; providing information on-line from a computer database or electronic network, including the Internet, relating to entertainment and sporting events; provision of information relating to sporting events; publishing of books; publication of texts, other than publicity texts;

production of radio and television programmes; publication of electronic books or periodicals on-line; providing of on-line electronic publications, not downloadable; providing services in halls with games machines; provision of information on-line from a computer database or from the Internet in relation to casinos, gaming, gambling, general news about the gaming industry, bonus schemes related to betting and gaming, betting services, sporting events, amusement, casino, entertainment and betting consultation services; providing on-line information in the field of computer gaming entertainment; providing gaming house facilities; providing computerised, electronic and online databases in the field of sport and entertainment; providing information relating to sport and entertainment online from a computerised database on the Internet; provision of information about gambling and games; on-line gaming services; provision of on-line publications about gambling; rental of gaming and gambling machines and equipment; receiving and conducting of betting, in particular sports betting; running lotteries, exchange rate betting, pools, jackpot systems, tipping competitions and games, running online games, keeping gambling houses, keeping casinos; provision of gambling services in the field of racing, wagers and betting, games of chance, entertainment, bingo halls, casinos, contests, gaming, gambling, games of chance, electronic games, media games, tournaments for poker and other card games, action skill games and lotteries, including online via a computer database, telecommunications and the Internet; provision of gambling and betting services managed by a sports bookmaker; gambling and betting services providing and operating computerized bingo; spread betting, gaming, betting, gambling, bookmaking and wagering services; television betting, gambling and gaming services; telephone betting, gambling and gaming services and offshore betting, gambling and gaming services; provision of the aforesaid services in electronic or computer form, via the television, radio or other means of broadcasting; provision of the aforesaid services on-line via the Internet or from a computer network or database; consultancy, information and advisory services relating to all the aforesaid services.

Class 42

Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; application service provider (ASP); computer services, namely, creating an online community for registered users to participate in

competitions, showcase their skills, get feedback from their peers, form virtual communities, and engage in social networking; application service provider (ASP) featuring software to enable or facilitate the uploading, downloading, streaming, posting, displaying, blogging, linking, sharing or otherwise providing electronic media or information over communication networks; computer game design; creation, hosting, updating and maintaining Internet sites; design and development of software in the form of services relating to the development and creation of software for use in relation to electronic games downloadable from the Internet, electronic puzzles downloadable from the Internet, electronic board games downloadable from the Internet, electronic games of skill, electronic gambling games and electronic card games downloadable from the Internet, skill games, electronic games and software for fixed odds betting programs, spread betting programs, horse racing betting, instant lotteries, and pools; design and development services in relation to gaming and gambling machines, apparatus and accessories; design and development services in relation to interactive entertainment products; design of scratch cards and electronic scratch cards and scratch card games; design services relating to the production of computer games and interactive entertainment products; design services in relation to interactive games enabling users to buy, sell, and participate in auctions whilst participating in the game; design of graphics, visuals, virtual and interactive images, and of special effects for games, audiovisual, multimedia productions and for Internet gaming and gambling website pages; development of computer software applications solutions; providing temporary use of non-downloadable software for use in connection with interactive, multiplayer and single player games, gaming and gambling; providing a web hosting platform for use of non-downloadable software in connection with interactive, multiplayer and single player games, gaming and gambling for third parties; providing multiple user access to information and news information over the Internet and other global networks; provision of quality assurance services in relation to equipment for gambling in casinos; consultancy, information and advisory services relating to all the aforesaid services.