

O-631-21

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 3488148

BY CITY BRANDS LTD

TO REGISTER

Use Blueprint

AS A TRADE MARK

IN CLASSES 9, 35, 38 & 42

AND

THE OPPOSITION THERETO UNDER NUMBER OP000421284

BY

O2 WORLDWIDE LIMITED

Background and pleadings

1. On 8 May 2020, City Brands Ltd (“the Applicant”) applied to register the trade mark, Use Blueprint; which was published in the Trade Marks Journal for opposition purposes on 5 June 2020. The application relates to the following goods and services:

Class 9 Computer software; Computer software for operating, installing, testing, diagnosing and managing telecommunications equipment; Computer software programmed to enable ordering of products via telecommunication methods such as text message and instant messaging; Downloadable instant messaging software; Downloadable software for instant messaging; Instant messaging software; Downloadable software for instant messaging and email services; Downloadable software for instant messaging and electronic mail services; Downloadable software for instant messaging and e-mail services; Mobile application for users to access to raise orders, replenish stock and communicate directly with vendors; Downloadable mobile application for users to access to raise orders, replenish stock and communicate directly with vendors; Computer software for transmission of voice, data, graphics, sound and video by means of broadband or wireless networks; Computer software for aiding the development of blockchain-based applications; Artificial intelligence software; Artificial intelligence software for analysis; Intercommunication apparatus with artificial intelligence; Artificial intelligence and machine learning software; Downloadable computer chatbot software for simulating conversations with artificial intelligence; Computer software applications for use with artificial intelligence; Artificial and machine learning software enabling chatbot software to simulate conversations with customers based on their order history and personal ordering patterns and preferences; Computer programs; Computer software in the form of an application for mobile devices and

computers; Software applications for use with mobile devices; Software for processing electronic payments to and from others; Computer software and software applications used in relation to financial services, financial transactions, electronic commerce, electronic payments, foreign currency exchange, trading and brokerage services and investment advisory services; Authentication software; File sharing software; Communications software for electronically exchanging data, audio, video, images and graphics via computer, mobile, wireless, and telecommunication networks; Computer software for processing images, graphics, audio, video, and text; Downloadable computer software which allows users to participate in web-based meetings and classes, with access to data, documents, images and software applications through a web browser; Downloadable computer software for accessing, viewing, and controlling remote computers and computer networks; Downloadable cloud-computing software; Downloadable cloud-based software; Computer software for tracking and evaluating customer and personal behaviour in relation to purchasing decisions; Computer peripherals.

Class 35 Advertising; Business management; business administration; Office functions; Database management; Market research and business consulting services; Business consultancy services relating to facilitating the transaction of business via local and global computer networks by locating and providing referrals for the delivery of a wide variety of business and consumer products and services; Dissemination of business information of goods and services of others via local and global computer networks; Business consultancy services relating to providing a web site on a global computer network by which third parties can offer and source goods and services, place, determine the status of and fulfil trade leads and orders, enter into contracts and transact business; Providing computerised online ordering services;

Advertising of goods and services of others via local and global computer networks; Rental of advertising space on communication media; Providing a directory of third party web sites to facilitate business transactions; Business consultancy services relating to operating an electronic marketplace for the buyers and sellers of goods and/or services on a global computer network; Business assistance relating to facilitating business transaction via local and global computer networks; corporate management consultancy services; Marketing and promotion services; Dissemination of advertising materials, updating of advertising materials, compilation of advertisements for use as web pages on the Internet; rental of advertising space; Computer data processing; Sales information, business information and promotional information services; Provision of sales, business, advertising and promotional information through a global computer network and via the Internet; Selection of goods and procurement of goods for individuals and businesses; Organisation of exhibitions for commercial or advertising purposes; Business administration services for the processing of sales made on the Internet; Customer relationship management; Business management services relating to electronic commerce; Consultancy, information and advisory services relating to the aforesaid services .

Class 38 Telecommunications services; Provision of telecommunication access and links to computer database and to the Internet; Electronic communication services; Interactive telecommunications services; Telecommunication of information (web pages), computer programs and data; Computer aided transmission of messages and images; Message transmission; Numeric messaging; Message sending; Instant messaging; Electronic messaging; Video messaging; Digital text messaging; Digital text messaging services; Message sending services; Message transmission services; Instant messaging services;

Providing instant messaging services; Transmission of instant messages; Computer aided transmission of messages; Electronic transmission of instant messages; Online message sending services; Computer-aided transmission of messages and images; Collection and transmission of electronic messages; Transmission of data, messages and information; Providing online chatrooms for the transmission of messages, comments and multimedia content among users; Electronic message sending, receiving and forwarding services; collection, transmission and delivery of data by electronic means; Collection, transmission and delivery of mail messages, still picture and/or moving picture information such as characters, messages, music and images, telegrams, information and data by mechanical, electronic, telephone, telex, cable, computer and satellite means; Transmission, broadcast and reception of audio, video, still and moving images and data whether in compressed or uncompressed form and whether in real or delayed time; Electronic messaging, conferencing and order-transmission services; Communication by electronic bulletin board that enables users to perform a real-time interactive talk between a computer terminal and an electronic bulletin board containing still picture and moving picture information and voice information such as characters; Provision of discussion forums; Transmission of information relating to online shopping and general retail services; Providing access to computer database on the global computer network for searching and retrieving information, data, web sites and resources available on computer networks; Providing access to a website on a global computer network by which third parties can offer goods and services, place and fulfil orders, enter into contracts and transact business; Providing access to an interactive website on a global computer network for third parties to post information, respond to requests and place and fulfil orders for products, services and business opportunities; Interactive instant messaging services on a global computer

network for customers to request and place orders of products directly via text message or instant messaging; Transmission of information by data communications for assisting decision making; Electronic communication services for establishing virtual chatrooms via text messaging; Providing electronic bulletin boards for the posting and transmission of messages among and between computer users concerning products, services and business leads and opportunities; Providing an online interactive bulletin board for the posting, promotion, sale and resale of items via a global computer network; Providing access to a web site on a global computer network by which third parties can offer goods and services, place and fulfil orders, enter into contracts and transact business; Providing a web accessible user area/portal for clients and customers to use to fulfil orders, replenish stock, track sales data and provide push messaging services; Providing access to electronic calendar, address book and notes feature, via local and global computer networks; Providing access to an interactive web site on a global computer network for third parties to post information, respond to requests and place and fulfil orders for products, services and business opportunities; Providing computer links to third party web sites to facilitate e-commerce and real world business transactions; consultancy, information and advisory services relating to the aforesaid services.

Class 42 Design and development of computer hardware and software; Software as a service [SaaS]; Consultancy in the field of software as a service [SaaS]; Computer services; Computer programming; Computer system software services; Providing direct connection services between computer users for exchanging data; Computer software design; Computer system design; Design and development of webpages; Hosting webpages for others; Hosting computer application software for searching and retrieving information from databases and computer networks; Providing

technical information at the specific request of end-users by means of telephone, text message, instant messaging or global computer network; Computer services relating to customised searching of computer databases and websites; information and advisory services relating to the aforesaid services .

2. O2 Worldwide Limited (“the Opponent”) opposed the application in its entirety, claiming that it offends against section 5(2)(b) of the Trade Marks Act 1994 (“the Act”); based upon its two earlier marks: BLUE - UK00916057002 (“the first earlier mark”)¹ and OUR BLUEPRINT - UK00003296222 (“the second earlier mark”). The first earlier mark has a filing date of 18 November 2016; and 22 November 2017 as its date of entry in the register. I also note that “[t]he existing EU trademark to which this comparable right corresponds is subject to invalidation or revocation action [at the EUIPO], the outcome of which may be applied to this trademark”. Nevertheless, having considered the earlier marks, in the interest of procedural efficiency, I will approach the assessment, at least initially, on the basis of the opponent’s second earlier mark; as this mark prima facie presents the best prospect of success. I will only consider the first earlier mark should it prove necessary to do so.

3. The second earlier mark has a filing date of 12 March 2018 and was entered in the register on 9 November 2018. The goods and services relied upon under this mark are as follows:

Class 9 Computer application software; computer software applications, downloadable; computer software downloadable from the Internet; data processing apparatus; downloadable electronic publications; mobile phone application software; mobile software applications, downloadable applications for multimedia devices; recorded computer software; software applications; software for telecommunication; parts and fittings for all the aforesaid goods;

¹ The goods and services under this registration are reproduced and shown in the Annex to this decision.

none of the aforesaid relating to the banking and financial services industry.

Class 35 Advertising; business management; business administration; office functions; advertising services to promote public awareness of environmental matters; advertising services to promote public awareness of environmental issues and initiatives; advertising services to promote public awareness in the field of social welfare; advertising services to promote community projects; business consultancy services relating to management of fund raising campaigns; business consultancy services relating to the promotion of fund raising campaigns; charitable services; developing and coordinating community projects; developing and coordinating volunteer projects; developing and coordinating volunteer projects in the field of environmental and social wellbeing; development of promotional campaigns; financial sponsorship search; preparation of advertising campaigns; promotion of goods and services through sponsorship; sponsorship search; sponsorship search consultancy services; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided over a telecommunications network.

Class 38 Telecommunications; providing access to databases; telecommunications portal services; Internet portal services; providing electronic bulletin board services; providing access to weblogs; providing access to podcasts; providing online forums; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided over a telecommunications network.

4. The Opponent claims that the competing marks are highly similar, “on the basis of phonetic, visual and conceptual comparisons”. “Moreover [the Opponent contends], the class 9, 35, 38 and 42 goods and services covered by the subject application are highly similar to the goods and services covered by the Earlier Marks”; and that “there exists a likelihood of confusion on the part of the public”.
5. The Applicant filed a Notice of Defence and Counterstatement in which it contends that:

“... the mark ‘Use Blueprint’ is not highly similar, nor conflicts with either mark relied upon by the Opponent, namely the marks ‘BLUE’ and ‘Our Blueprint’”;

“It is to be noted that the mark ‘BLUE’ itself had 4 oppositions when going through the trade marking process before the European Union Intellectual Property Office (EUIPO) and currently awaits a decision on whether a cancellation proceeding will be successful or not against the mark”; and

“Furthermore, the grounds on which the Opponent relies on are unfounded and while there is a similarity in the classifications themselves, the marks should be looked at as a whole and contrary to the Opponent’s claims, they are not phonetically, nor visually, nor aurally comparable or similar”.

6. In these proceedings the Opponent is represented by Stobbs (IP) Limited; Trademark Brothers Ltd represents the Applicant. The Opponent filed submissions and the Applicant filed (amended) evidence, in addition to their respective (amended) TM7 and TM8 forms. A hearing was neither requested nor considered necessary. Therefore, I give this decision after careful review of all the papers before me.

DECISION

Section 5(2)(b)

7. The opposition is founded upon section 5(2)(b) of the Act, which stipulates that:

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

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

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

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

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

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

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

9. Given its date of filing (12 March 2018), the Opponent’s mark qualifies as an earlier mark in accordance with the above provisions. Further, given that it had not been registered for more than five years at the date the contested application

was filed (8 May 2020), it is not subject to the proof of use provisions under section 6A of the Act.² The Opponent is, as a consequence, entitled to rely upon its earlier mark in relation to all of the goods and services indicated without having to prove that genuine use has been made of it. Therefore, I must make the assessment based upon the full width of the goods and services relied upon by the Opponent, regardless of whether or not the mark has actually been used in relation to those goods and services. This is because the Opponent is entitled to protection across the breadth of what it has registered on a 'notional' use basis.

Relevant caselaw

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

11. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

² As these proceedings commenced after 14 January 2019, when the Trade Mark Regulations 2018 came into force, the relevant period for proof of use purposes is the five years prior to and ending on the date of application of the contested application.

The principles:

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

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

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

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

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

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

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

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

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

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

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

Comparison of goods and services

12. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In *Canon*, the CJEU stated at paragraph 23 of its judgment:

“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”.

13. 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 users of the respective goods or services;
- b. The physical nature of the goods or acts of services;
- c. The respective trade channels through which the goods or services reach the market;

- d. 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;
- e. The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

14. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the GC stated that “complementary” means:

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

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

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

16. Whilst on the other hand:

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

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

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

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

Similarity of goods and services – Nice Classification

19. Section 60A of the Act provides:

“(1) For the purpose of this Act goods and services-

1. are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.
2. are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

(2) In subsection (1), the "Nice Classification" means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1975.”

20. The Opponent submits: “the Applicant has accepted that the goods and services are similar, and this is as such not in dispute”. To my mind, however, the Applicant’s submission on the similarity of the goods and services is ambiguous. The Applicant states, without clarifying the degree and extent (whether this pertains to all of the terms of the specifications), that “there is a similarity in classifications”. I could not take this as an explicit admission; therefore, I shall proceed to undertake a comparison of the respective goods and services.

Class 9 Goods

21. The applied-for class 9 specification includes terms identical to the earlier specification under the same classification. However, the earlier terms are qualified by the limitation: “*none of the aforesaid relating to the banking and financial services industry*”. I consider that this limitation has very little, if any, practical impact on the identity of the competing terms; not least because it

does not alter the nature of the goods at issue. Computer software appears in both specifications and the limitation pertains only to the banking and financial services industry. The only terms which potentially present an issue, are the applied-for terms: “*Software for processing electronic payments to and from others; Computer software and software applications used in relation to financial services, financial transactions, electronic commerce, electronic payments, foreign currency exchange, trading and brokerage services and investment advisory services*”. Notwithstanding the fact that these may be banking and finance related, they are not restricted to the banking and finance industry. Therefore, I do not consider the limitation to be reasonably sufficient to distinguish between said later goods and the earlier goods; all of which are types of software, composed of programmes or systems that can be used for a wide range of activities *related* to the financial field. Furthermore, the aforesaid later terms still fall within the broad term computer software and will remain identical (at least under the principle outlined in *Meric*) to the Opponent’s goods. In the alternative, even if these terms are not identical, they will in any event be highly similar; as they coincide in respect of nature, manufacturer and trade channels.

22. “*Computer peripherals*”, in the later specification, is one such term that may be challenged as to its identity to the earlier specification. Nevertheless, it can also be compared with the earlier “parts and fittings...” term; as both terms are either specifically intended for use with computer software and so, are complementary (to computer software); and/or are broad terms which may cover the same or related devices. These goods are also provided through the same distribution channels and target the same relevant public. Some may also have the same nature and coincide in producers. Therefore, if they are not considered to be identical, they will at least be highly similar.

Class 35 services

23. All of the contested services under the class 35 specification are identical to the Opponent’s class 35 services, in particular: “*Advertising; business management; business administration; office functions; development of promotional campaigns; financial sponsorship search; preparation of advertising campaigns;*”

promotion of goods and services through sponsorship; sponsorship search; sponsorship search consultancy services; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided over a telecommunications network”; either because they are identically contained in the competing specifications (including synonyms) or because the Applicant’s services include, or overlap with, the abovenamed earlier services.

Class 38 services

24. The Applicant’s class 38 specification consists of narrower terms, which essentially pertain to telecommunications and computer network or web access, as well as consultancy, information and advisory services relating to same. All of the later terms are identically contained in the Opponent’s class 38 specification: *“Telecommunications; providing access to databases; telecommunications portal services; Internet portal services; providing electronic bulletin board services; providing access to weblogs; providing access to podcasts; providing online forums; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided over a telecommunications network”*. Therefore, these services are self-evidently identical; or at least *Merit* identical.

Class 42 services

25. The contested: *“Design and development of computer hardware and software; Software as a service [SaaS]; Computer services; Computer programming; Computer system software services; Computer software design; Computer system design”*, share some similarities with the Opponent’s *“Computer application software; computer software applications, downloadable; computer software downloadable from the Internet; data processing apparatus; downloadable electronic publications; mobile phone application software; mobile software applications, downloadable applications for multimedia devices; recorded computer software; software applications; software for telecommunication; parts and fittings for all the aforesaid goods”*. They are likely

to coincide in terms of producer and consumer. Furthermore, (the Opponent's) computer software is essentially the end result of the process involved in (the Applicant's) design and development services. Therefore, there is also complementarity between them; and they may compete. For example, a user may decide to commission bespoke software, or subscribe to a software service, or purchase equivalent software as goods. These goods and services are therefore highly similar.

26. It is common for software providers to offer updates to further improve, and to provide continuing technical support for users of, its software. Therefore I find that "*Providing technical information at the specific request of end-users by means of telephone, text message, instant messaging or global computer network; and ... information and advisory services relating to the aforesaid services*" (under the Applicant's class 42 specification) are similar to a moderate degree to the software goods under the earlier class 9 specification.

27. The contested "*Consultancy in the field of software as a service [SaaS]*" differs in nature and method of use to the earlier class 9 software goods; however, I find that their purposes may be similar to the extent that they provide technical solutions for computer-based operations or applications delivered over the internet. I consider further, that there is usually some degree of similarity or complementarity between consultancy about a good or service and the good or service itself. Therefore, I find that there is a medium degree of similarity between this contested service and the earlier mark's class 9 goods, in particular: *computer software applications, downloadable; computer software downloadable from the Internet; mobile phone application software; mobile software applications, downloadable applications for multimedia devices; recorded computer software; software applications.*

28. The contested services, "*Providing direct connection services between computer users for exchanging data*" and "*Computer services relating to customised searching of computer databases and websites*", overlap on pertinent points with some of the earlier goods and services, such as: "*data processing apparatus*" (in class 9); "*providing access to databases; Internet*

portal services; providing electronic bulletin board services; providing access to weblogs; providing online forums; and information and advisory services relating to the aforesaid" (in class 38). They can coincide in producer, distribution channels and the relevant public. Furthermore, they are complementary; as the said later terms require data processing apparatus and/or portal services in order to provide computer services relating to customised searching of computer databases and websites, for example. Therefore, these competing terms are similar to a high degree.

29. "*Design and development of webpages*" and "*Hosting webpages for others*", of the opposed mark, are closely related to the earlier services: "*Internet portal services; providing electronic bulletin board services; providing online forums; information and advisory services relating to the aforesaid*" (in class 38). An internet portal, for example, is "[a] website acting as a gateway to online information on some topic, [A] portal presents information from diverse sources in a unified way, often for a particular target audience³. I therefore consider that the earlier services, particularly "*internet portal services - information and advisory services relating to the aforesaid...*", are wide enough to include functions that overlap with design and development of webpages and hosting of webpages for others. A provider of internet portal services, for example, may include a package of integrated services, comprising of design, development and hosting of webpages. These services also overlap in distribution channels, target the same relevant consumer group and share a degree of complementarity (in the sense, for example, that aspects of internet portal services could not be provided without websites). Therefore, these services are highly similar.

30. The opposed service, "*Hosting computer application software for searching and retrieving information from databases and computer networks*", is clearly different in nature to the earlier class 9 software goods. However, users of computer software will often also use cloud services to store data generated

³ Oxford Reference - portal (information portal, subject portal, web portal, internet portal, portal site) - <https://www.oxfordreference.com/view/10.1093/acref/9780191803093.001.0001/acref-9780191803093-e-1125?rskey=SgrxUh&result=18>.

through that software; and it is not uncommon for providers of software to also provide cloud services. Therefore, there will be some overlap in trade channels; though these goods and services are not in competition. Accordingly, I consider there to be a low to moderate degree of similarity between the respective goods and services.

Average consumer and the purchasing act

31. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods and services. I must then decide the manner in which these goods and services are likely to be selected by the average consumer in the course of trade. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

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

32. For the purpose of assessing the likelihood of confusion, it must also 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.

33. In its written submissions the Opponent contends “that the [Applicant's] services are commonplace in that they are all available to any potential customer and are interacted with on a highly frequent basis; [and that] the average consumer of the Applicant's services is the general public at large, who are deemed to be

reasonably well informed, observant and circumspect, and whose level of attention would be average at most”.

34. In its witness evidence, the Applicant asserts that: “‘Use Blueprint’ was founded to make it easier for e-commerce brands to sell online. ... We designed ‘Use Blueprint’ so ecommerce brands could install our application and chat to their customers in just a few minutes. ‘Use Blueprint’ allows 1:1 communication through a chat interface using SMS and WhatsApp. Automated messages are sent based on various events e.g., when a purchase is made from our customers ecommerce store”.

35. Although I agree that the parties’ goods and services are wide ranging (from computer software goods and services, business services and telecommunication services, in general terms), aimed at the public at large, I also find that some of the goods and services are more specialised solutions specifically intended for the business to business sector. This user group (of commercial consumers) is more likely to exercise a high degree of attention, particularly for those goods and services relating to e-commerce and/or financial affairs, which will call for closer consideration, as to technical specifications, compatibility with existing software, ease of use and security (for example).

36. The general public is likely to have an average degree of attention when making purchases with respect to the competing goods and services. According to the GC, computer software is “no longer sold merely on ‘focused markets’ but have gone ‘mainstream’ (*Kalypso Media Group v EUIPO — Wizards of the Coast (DUNGEONS)* (Case T-700/18) at paragraph 36).

37. The purchase of the goods and services is, predominantly, a visual one; as they will be bought by self-selection either from a physical or virtual marketplace or from app stores. Visual considerations are, therefore, likely to dominate the purchasing process. However, given that word-of-mouth recommendations and advice from technical advisors (for example) may also play a part, I do not discount that there will also be an aural component to the selection of the goods and services.

Comparison of the marks

38. 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 Court of Justice of the European Union stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

39. 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

40. The respective trade marks are shown below:

BLUE OUR BLUEPRINT	Use Blueprint
Earlier trade mark	Contested trade mark

30. As I have previously indicated, I will make the second earlier mark the focus of my comparison on the basis that the first earlier mark offers no advantage over the former. I will, of course, revisit the position should it become necessary to do so.
31. In comparing the marks there is no difference between the variation in casing; because a word trade mark registration protects the word itself, irrespective of the font capitalisation or otherwise. Therefore, a trade mark in capital letters covers notional use in lower case and vice versa.⁴
32. The Opponent's mark consists of two standard dictionary words "OUR" and "BLUEPRINT". The latter of these is likely to have greater impact upon the perception than the relatively short word, "OUR"; a common possessive determiner, which qualifies to whom the "BLUEPRINT" is associated or belongs.
33. In similar fashion, the Applicant's mark consists of two dictionary words, "Use" and "Blueprint"; the latter of which is also more dominant than the short, common prefix "Use" (despite its placement at the beginning of the mark), which designates the purpose, or what is to be done with, the "Blueprint". I must make clear, however, that the average consumer will not spend time considering what part of speech words in the marks fall under, but will simply look at each mark as a whole, instinctively perceive how the words function in them and attach more significance to the word "Blueprint" (a standard dictionary word, with recognisable meaning), given its perceptible distinctiveness and dominance in relation to the shorter, commonplace words, "our" and "use".
34. There is a single, though significant, point of visual and aural similarity between the respective marks: the word "blueprint", which is positioned at the end of both marks, with the first elements being of weaker or lesser dominance in the respective marks. The first element of the earlier mark is "our"; whereas the opposed mark starts with the word "use". I therefore find that there is an above average degree of similarity, both visually and aurally, between the marks.

⁴ *Bentley Motors Limited v Bentley 1962 Limited* BL O/159/17

35. Conceptually, as earlier indicated, meaning attaches to the respective word combinations of each mark. However, the dominant word “blueprint” in both marks will be understood as referring to “something that acts as a plan, model, or template.”⁵ The Opponent contends that “the applied for mark is close to identical to [its] OUR BLUEPRINT mark in that they both have the same basic meaning(s) – i.e. a design plan or other technical drawing. ... The USE element in the applied for mark does not change the overall impression of the element BLUEPRINT, in that it does not hang together with the BLUEPRINT element. As such, the BLUEPRINT element clearly plays and (sic) independent and distinctive role within the applied for mark, and the Opponent’s Earlier Mark”.
36. Although there may be subtle differences in the perceived meaning, there is clear conceptual commonality between the marks by virtue of the shared, dominant element, “blueprint”. Furthermore, I consider that the almost indistinctive words “our” and “use” at the beginnings of the respective marks, have little to no impact on the perceived meaning of “blueprint”. Therefore, I find that the marks are conceptually similar to a high degree.

Distinctive character of the earlier trade mark

41. The degree of distinctiveness of the earlier mark is an important factor as it directly relates to whether there is a likelihood of confusion; the more distinctive the earlier mark, the greater the likelihood of confusion⁶. 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.
42. “In determining the distinctive character of a trade mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the trade mark to identify the goods for which it has been registered as coming from a particular undertaking

⁵ Oxford Dictionary, Lexico: <https://www.lexico.com/en/definition/blueprint>

⁶ *Sabel BV v Puma AG*, Case C-251/95, § 24.

and thus to distinguish those goods from those of other undertakings” - *Windsurfing Chiemsee v Huber and Attenberger* Joined Cases C-108/97 and C-109/97 [1999] ETMR 585.

43. Trade marks possess various degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. Further, the distinctiveness of a mark can be enhanced by virtue of the use made of it. In this case, however, the opponent has not pleaded that its mark has acquired enhanced distinctiveness through use and has not filed any evidence to support such a claim. Consequently, I have only the inherent position to consider.

44. In its Counterstatement, the Applicant submits, with an illustration of its search results, and without a rationale for the submission, that: “While conducting an advanced similarity search in Europe for the word ‘BLUEPRINT’, it should be noted that there are approximately 430 possible combinations of the word ‘BLUEPRINT’ with either a word preceding it or following it. The search was conducted on the basis of the classifications of the Opponent’s mark ‘BLUE’, namely classifications 9, 35, 38 and 42.” On the inference that this submission is directed at the question of the distinctiveness of the earlier mark, I must point out that I could not take judicial notice of the information presented in support of this submission; and furthermore, there is no evidence as to whether any or all of the marks are in use in the marketplace. It is settled law that the state of the register (alone) is not enough to establish that the distinctive character of a mark or element of a mark has been weakened because of its frequent use in the field concerned.⁷ There is no evidence that the registrations cited by the Applicant are actually in use. Therefore, I must disregard this submission; and instead focus my consideration on the potential for conflict between the mark applied for and the earlier mark/s.

⁷ *Zero Industry Srl v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-400/06, the General Court (“GC”), §73.

45. On the question of the earlier mark's inherent distinctive character, as indicated earlier, the mark consists of two standard words, to which the average consumer will attribute meaning. However, the overall impression of the mark and its distinctiveness will be largely influenced by the dominant element "blueprint". I consider that although "OUR BLUEPRINT" is not descriptive or allusive of the goods and services for which it is registered, it may be laudatory or evocative of the idea that the Opponent's goods and services are of such quality/design that they are the original, or the model or standard, to follow. More significantly, given that the mark consists of ordinary dictionary words, rather than an invented term, I find that "OUR BLUEPRINT" has a moderate degree of inherent distinctive character.

Conclusions on Likelihood of Confusion

46. There is no simple formula for determining whether there is a likelihood of confusion. I must make a global assessment of the competing factors (*Sabel* at [22]), keeping in mind the interdependency between them (*Canon* at [17]) and considering the various factors from the perspective of the average consumer. In making my assessment, I must bear 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]).

47. In reaching a decision, I am also reminded that there are two types of possible confusion: direct, where the average consumer mistakes one mark for the other; and indirect, where the average consumer realises the marks are not the same but puts the similarity that exists between the marks/goods down to the responsible undertakings being the same or related.⁸

48. Earlier in this decision, I found that the Opponent's mark comprises of two standard dictionary words, "Our" and "Blueprint", the latter of which is the more dominant and distinctive element. I found that the competing marks share an

⁸ *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10.

above average degree of visual and aural similarity; and are highly similar conceptually, on grounds of the shared, dominant element “blueprint”. The earlier mark was found to have a medium degree of inherent distinctiveness.

49. I have identified the average consumer to be a member of the general public or a business user, who will select the goods primarily by visual means (though I do not discount an aural component); and determined that the degree of attention paid will range from average to high, according to the respective groups of the average consumer and the spectrum of variables at play. I have found the parties’ competing goods and services to be identical, or in some cases similar, to a high, medium, or low to moderate degree.

50. Although I have concluded that the average consumer will pay at least a moderate degree of attention during the purchasing process, which should theoretically make them less susceptible to the effect of imperfect recollection, the above average degree of visual and aural similarity and the high conceptual similarity I have identified earlier, when combined with the average degree of inherent distinctive character the earlier trade mark possesses, is more than sufficient for me to conclude there is a likelihood of confusion.

51. As the differences between the competing trade marks do not play a significant role in the overall impression the marks convey, it appears to me to be highly likely that the parties’ trade marks will be mistaken for one another; that is, there will be direct confusion. However, even if I am considered to be wrong in that regard, applying the guidance provided by Mr Iain Purvis Q.C, sitting as the Appointed Person in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10, I am satisfied that the overall impression conveyed by the dominant, distinctive element “blueprint” in the competing trade marks (an impression which is scarcely, if at all, affected by the other elements in the respective marks) is also sufficient to lead to a likelihood of indirect confusion.

52. The dominant and distinctive shared element “blueprint” will convey an identical conceptual message, which is qualified by the presence of the relatively nondescript elements, “our” and “use” in the respective marks. However, I find

that the conceptual difference is not sufficiently distinct to preclude an instinctive reaction that the respective marks are connected or that the goods and services (even those at the lower end of the similarity spectrum), originate from undertakings that are economically linked.

53. Given all of the above factors and findings, there is a likelihood of confusion under section 5(2)(b) of the Act.

Conclusion

54. The opposition succeeds in full. Subject to appeal, the application is refused.

COSTS

55. As the Opponent has been successful, it is entitled to a contribution towards its costs. Awards of costs in proceedings are governed by Annex A of Tribunal Practice Notice (“TPN”) 2 of 2016. Applying the above guidance, I award costs to the opponent on the following basis:

Preparing a Notice of Opposition and reviewing the counterstatement and evidence	£300
Preparing Submissions	£300
Official fee:	£100
Total:	£700

56. I order City Brands Ltd to pay to O2 Worldwide Limited the sum of £700. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 25th day of August 2021

**Denzil Johnson,
For the Registrar**

Annex

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; magnetic data carriers, recording discs; compact discs, DVDs and other digital recording media; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment, computers; computer software; fire-extinguishing apparatus; telecommunications apparatus; mobile telecommunication apparatus; mobile telecommunications handsets; digital telecommunication apparatus and instruments; digital tablets; computer hardware; computer application software; computer software downloadable from the Internet; recorded computer software; software applications; mobile software applications, downloadable applications for multimedia devices; computer games; computer game software; computer games programs; PDAs (Personal Digital Assistants); pocket PCs; mobile telephones; laptop computers; telecommunications network apparatus; drivers software for telecommunications networks and for telecommunications apparatus; protective clothing; protective helmets; televisions; headphones; global positioning system [GPS] apparatus; satellite navigation devices; computer software recorded onto CD Rom; SD-Cards (secure digital cards); glasses; spectacle glasses; sunglasses; protective glasses and cases therefor; contact lenses; cameras; camera lenses; MP3 players; audio tapes, audio cassettes; audio discs; audio-video tapes; audio-video cassettes; audio-video discs; video tapes; video cassettes; video discs; CDs, DVDs; downloadable electronic publications; downloadable image files; downloadable music files; mouse mats; magnets; mobile telephone covers; mobile telephone cases; hands free kits for phones; magnetic cards; encoded cards; mobile phone application software; software for telecommunication; software for the processing of financial transactions; electronic notice boards; electric batteries; battery chargers; security alarms; security cameras; security warning apparatus; security control apparatus; security surveillance apparatus; computer software for security purposes; computer software for insurance purposes; SIM cards; aerials; alarms; electric cables; chemistry apparatus and instruments; recorded computer operating programs; computer peripheral devices; data processing

apparatus; diagnostic apparatus, not for medical purposes; distance measuring apparatus; distance recording apparatus; downloadable ring tones for mobile phones; electronic tags for goods; eyepieces; goggles for sports; magnetic identity cards; intercommunication apparatus; loudspeakers; magnetic data media; mathematical instruments; modems; electric monitoring apparatus; television apparatus; testing apparatus not for medical purposes; telecommunication transmitters; parts and fittings for all the aforesaid goods; none of the aforesaid goods being microphones or microphone cables.

Class 35

Advertising; business management; business administration; office functions; organisation, operation and supervision of loyalty and incentive schemes; retail services and online retail services connected with the sale of 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; retail services and online retail services connected with the sale of magnetic data carriers, recording discs, compact discs, DVDs and other digital recording media, mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment, computers, computer software, fire-extinguishing apparatus, apparatus for the transmission of sound and image, telecommunications apparatus, mobile telecommunication apparatus, mobile telecommunications handsets; retail services and online retail services connected with the sale of digital telecommunication apparatus and instruments, digital tablets, computer hardware, computer application software, computer software downloadable from the Internet, recorded computer software, software applications, mobile software applications, downloadable applications for multimedia devices, computer games, computer game software, computer games programs, PDAs (Personal Digital Assistants); retail services and online retail services connected with the sale of pocket PCs, mobile telephones, laptop computers, telecommunications network apparatus, drivers software for telecommunications networks and for telecommunications

apparatus, protective clothing, protective helmets, televisions, headphones, global positioning system [GPS] apparatus, satellite navigation devices, computer software recorded onto CD Rom, SD-Cards (secure digital cards), glasses, spectacle glasses, sunglasses; retail services and online retail services connected with the sale of protective glasses and cases therefor, contact lenses, cameras, camera lenses, MP3 players, audio tapes, audio cassettes, audio discs, audio-video tapes, audio-video cassettes, audio-video discs, video tapes, video cassettes, video discs, CDs, DVDs, downloadable electronic publications, downloadable image files, downloadable music files, mouse mats, magnets, mobile telephone covers, mobile telephone cases; retail services and online retail services connected with the sale of hands free kits for phones, magnetic cards, encoded cards, mobile phone application software, software for telecommunication, software for the processing of financial transactions, electronic notice boards, electric batteries, battery chargers, security alarms, security cameras, security warning apparatus, security control apparatus, security surveillance apparatus, computer software for security purposes; retail services and online retail services connected with the sale of computer software for insurance purposes, SIM cards, aerials, alarms, electric cables, chemistry apparatus and instruments, recorded computer operating programs, computer peripheral devices, data processing apparatus, diagnostic apparatus, not for medical purposes, distance measuring apparatus, distance recording apparatus, downloadable ring tones for mobile phones, electronic tags for goods; retail services and online retail services connected with the sale of electronic tags for goods, eyepieces, goggles for sports, magnetic identity cards, intercommunication apparatus, loudspeakers, magnetic data media, mathematical instruments, modems, electric monitoring apparatus, television apparatus, testing apparatus not for medical purposes, telecommunication transmitters, paper, cardboard, printed matter, photographs, stationery; retail services and online retail services connected with the sale of office requisites, instructional and teaching material, packaging material, educational equipment, writing implements, writing instruments, writing materials, books, catalogues, cards, instruction manuals, magazines, mail order catalogues, newspapers, pamphlets, periodical publications, calendars, diaries, labels, maps, printed publications, postcards, posters, printed tariffs, printed forms; retail services and online retail services connected with the sale of gift boxes, gift bags, clothing, footwear, headgear, household or kitchen utensils and containers, jewellery, precious stones, horological and chronometric instruments,

musical instruments, apparatus for lighting, textiles, household textile articles, leather and imitations of leather, handbags, rucksacks, purses, bags and sports bags, travel bags, backpacks, duffel bags; retail services and online retail services connected with the sale of boot bags, holdalls, wallets, purses, credit card holders, games and playthings, gymnastic and sporting articles, meat, fish, poultry, game, coffee, tea, cocoa, sugar, rice, beers, mineral waters, aerated waters and other non-alcoholic drinks, alcoholic beverages, matches; retail services and online retail services relating to white goods; arranging subscriptions to telecommunications for others; compilation and systemisation of information into computer databases; compilation of statistics; cost price analysis; arranging of competitions for advertising purposes; recruitment services; employment recruitment; employment consultancy; employment agencies; providing employment information; commercial administration of the licensing of the goods and services of others; commercial information and advice for consumers [consumer advice shop]; opinion polling; personnel recruitment; price comparison services; procurement services for others [purchasing goods and services for other businesses]; rental of advertising space; rental of advertising time on communication media; sales promotion for others; sponsorship search; information and advisory services relating to the aforesaid services; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

Class 38

Telecommunications; cable television broadcasting; cellular telephone communication; communications by computer terminals; communications by fiber [fibre] optic networks; communications by telephone; computer aided transmission of messages and images; electronic bulletin board services [telecommunications services]; electronic mail; facsimile transmission; information about telecommunication; message sending; paging services [radio, telephone or other means of electronic communication]; providing access to databases; providing internet chatrooms; providing telecommunication channels for teleshopping services; providing telecommunications connections to a global computer network; providing

user access to global computer networks; radio broadcasting; rental of access time to global computer networks; rental of message sending apparatus; rental of modems; rental of telecommunication equipment; rental of telephones; satellite transmission; telecommunications routing and junction services; teleconferencing services; telegraph services; telephone services; television broadcasting; telex services; transmission of digital files; transmission of greeting cards online; transmission of telegrams; voice mail services; wire service; wireless broadcasting; telecommunications services; mobile telecommunications services; telecommunications portal services; Internet portal services; mobile telecommunications network services; fixed line telecommunication services; provision of broadband telecommunications access; broadband services; wireless communication services; digital communication services; broadcasting services; television broadcasting services; broadcasting services relating to Internet protocol TV; provision of access to Internet protocol TV; Internet access services; email and text messaging services; telecommunications information provided via telecommunication networks; services of a network provider, namely rental and handling of access time to data networks and databases, in particular the Internet; communications services for accessing a database; leasing of access time to a computer database; providing access to computer databases; rental of access time to a computer database; operation of a network, being telecommunication services; providing electronic bulletin board services; providing access to weblogs; providing access to podcasts; chatroom services for social networking; providing online forums; forums for social networking; providing electronic telecommunication connections; routing and connecting services for telecommunications; rental of telecommunications equipment; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

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; calibration [measuring]; cloud seeding; computer programming; computer rental; computer software consultancy; computer software design; updating of computer software; computer system analysis; computer system design; construction drafting; consultancy in the design and development of computer hardware; consultancy in the field of energy-saving; conversion of data or documents from physical to electronic media; creating and maintaining web sites for others; data conversion of computer programs and data [not physical conversion]; digitization of documents [scanning]; duplication of computer programs; engineering; hosting computer sites [web sites]; industrial design; installation of computer software; scientific laboratory services; land surveying; maintenance of computer software; material testing; mechanical research; monitoring of computer systems by remote access; packaging design; technical project studies; providing search engines for the internet; provision of scientific information, advice and consultancy in relation to carbon offsetting; quality control; recovery of computer data; rental of computer software; rental of web servers; research and development for others; surveying; technical research; it services; computer programming services; programming of data processing equipment; recovery of computer data; consultancy in the field of computer hardware; rental of computer hardware; application service provider (ASP); consultancy in the field of computer software; creating and maintaining blogs for others; expert advice and expert opinion relating to technology; rental of data processing apparatus and computers; technical services relating to projection and planning of equipment for telecommunications; product research services; weather forecasting; research in the field of telecommunication technology; monitoring of network systems in the field of telecommunications; technical support services relating to telecommunications and apparatus; data security services; data security services [firewalls]; research relating to security; computer security system monitoring services; maintenance of computer software relating to computer security and prevention of computer risks; updating of computer software relating to computer security and prevention of computer risks; computer virus protection services; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.