

O/0169/23

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3623271
BY EDGE INFOSYS LTD
TO REGISTER THE FOLLOWING TRADE MARK:**



EdgeInfosys

IN CLASSES 9 & 42

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 426854
BY INFOSYS LIMITED**

Background and pleadings

1. On 8 April 2021, Edge Infosys Ltd (“the applicant”) applied to register the trade mark displayed on the cover page of this decision in the UK, under number 3623271 (“the contested mark”). Details of the application were published for opposition purposes on 11 June 2021. Registration is sought for the following goods and services:¹

Class 9: Computer application software; computer software applications; computer software applications, downloadable; software applications; application software; web application and server software; web application software; computer application software for mobile phones; computer software for controlling and managing access server applications; application software for cloud computing services; mobile application software; computer software; enterprise application software [EAS]; application software for robot; computer software for mobile applications that enable interaction and interface between vehicles and mobile devices; software applications for mobile devices; computer software for use as an application programming interface (API); AI software, none of the aforesaid goods in relation to software for accessing, browsing and searching the internet.

Class 42: Hosting computer software applications for others; computer software consulting; consultancy and advice on computer software and hardware; IT services; IT project management; information technology [IT] consulting services; all of the aforesaid goods provided in a business to business setting.

2. On 13 September 2021, Infosys Limited (“the opponent”) opposed the application in full under sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”).²

¹ I note that the application was originally made in relation to a wider range of goods and services in these classes. However, by way of a Form TM21B dated 6 January 2022, the applicant restricted the scope of the application. By email, on 3 March 2022, the opponent indicated that it wished to continue with the proceedings, notwithstanding the specification amendments.

² The opponent had also originally brought a claim under section 3(6) of the Act. However, the opponent withdrew reliance on this particular ground within its email dated 20 October 2021 (and amended statement of grounds of the same date).

3. For the purposes of its claim under 5(2)(b), the opponent relies upon the following trade marks:³

INFOSYS COBALT

UK registration no. 3614977

Filing date: 23 March 2021

Registration date: 30 July 2021

("the first earlier mark")

Infosys Nia

Comparable UK registration no. 916609232

Filing date: 13 April 2017

Registration date: 16 August 2017

("the second earlier mark")

The logo for Infosys, featuring the word "Infosys" in a bold, black, sans-serif font. The letter 'I' is significantly larger than the other letters, and the 'o' is stylized with a dot.

Comparable UK registration no. 903355245

Filing date: 17 September 2003

Registration date: 7 December 2005

("the third earlier mark")

4. Given the respective filing dates, the opponent's marks are earlier marks in accordance with section 6 of the Act.⁴ As the first and second earlier marks had not completed their registration processes more than five years before the filing date of the contested mark, they are not subject to the proof of use provisions specified in

³ The opponent had originally sought to rely upon additional registrations under section 5(2)(b) of the Act. However, within its written submissions dated 19 May 2022 (and amended statement of grounds of the same date), the opponent confirmed that it only wished to continue with its claim on the basis of the three registrations listed.

⁴ On 1 January 2021, the UK left the EU after the expiry of the transition period. Under Article 54 of the Withdrawal Agreement, the Registry created comparable UK trade marks for all right holders with an existing EUTM. As a result of the opponent's EUTM numbers 16609232 and 3355245 being registered as at the end of the Implementation Period, comparable UK trade marks were automatically created. The comparable UK marks are now recorded on the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and retain their original filing dates.

section 6A of the Act. Consequently, the opponent is entitled to rely upon all the goods and services identified for these marks, without having to demonstrate genuine use. I note that the third earlier mark had completed its registration process more than five years before the filing date of the contested mark. As such, it is subject to the proof of use requirements specified within section 6A of the Act.

5. The goods and services relied upon by the opponent are outlined in full in Annex A. The opponent contends that the contested mark is similar to each of its earlier marks and that the parties' goods and services are identical or similar. Based upon these factors, the opponent submits that there is a likelihood of confusion, including the likelihood of association. Moreover, due to an alleged family of 'INFOSYS' marks, the opponent argues that confusion is more likely to occur. Within its statement of grounds, the opponent made a statement of use in relation to the third earlier mark and all the goods and services thereof relied upon.

6. As for its claim under section 5(3), the opponent claims that the third earlier mark has a reputation in respect of the goods and services specified in Annex B. The opponent argues that the similarity between the third earlier mark and the contested mark is such that the relevant public will assume that there is an economic connection between the users thereof. Moreover, the opponent claims that the applicant would gain an unfair commercial advantage through free riding on the reputation of its earlier mark, allowing the applicant to achieve consumer recognition without having to make its own investment in advertising and marketing. Further, the opponent argues that there would be detriment to the reputation of the third earlier mark because a lack of control over the goods and services sold by the applicant may result in tarnishing; additionally, use of the contested mark on inferior goods and services may lead to a change in the economic behaviour of its customers. Finally, the opponent contends that the distinctive character of the earlier mark is at risk of dilution through the average consumer's loss of capacity to identify and distinguish the opponent's goods and services from those of other undertakings.

7. Under section 5(4)(a), the opponent claims that it has a protectable goodwill in relation to which it has used the sign **INFOSYS** throughout the UK since 1994. The goods and services in respect of which the sign is said to have been used are also set

out in Annex B.⁵ The opponent argues that the similarity between the sign and the contested mark, as well as the identity or similarity between the parties' respective goods and services, would give rise to misrepresentation and damage.

8. The applicant filed a counterstatement denying the grounds of opposition. It also indicated that it would require the opponent to demonstrate proof of use of the third earlier mark.

9. The opponent is professionally represented by Finnegan Europe LLP, whereas the applicant represents itself.⁶ Only the opponent filed evidence in these proceedings. Both parties were given the option of an oral hearing, though neither asked to be heard. Only the applicant filed written submissions in lieu of attendance, though I note that the opponent filed written submissions during the evidence rounds. This decision is taken following a careful perusal of the papers before me, keeping all submissions in mind.

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 Act relied upon in these proceedings are derived from an EU Directive and, therefore, this decision continues to refer to the trade mark case law of the EU courts.

Evidence

11. The opponent's evidence is given in the statement of Judy McCullagh, dated 18 July 2022, and five accompanying exhibits (JM1 to JM5), and the statement of Faiz Ur Rahman, dated 18 July 2022, and thirty-nine accompanying exhibits.

12. Ms McCullagh is a Chartered Trade Mark Attorney with the opponent's professional representatives. Her statement serves as a vehicle to introduce evidence

⁵ Being an identical list of goods and services for which a reputation has been claimed under 5(3).

⁶ I note, however, that the applicant was professionally represented by TPT Cambridge until after the opponent had filed its evidence. Thereafter, on 18 August 2022, TPT Cambridge wrote to the Registry to request that it be removed as the applicant's representative.

on the meaning of the term “edge computing”. The evidence is the result of internet searches carried out by Ms McCullagh on 16 May 2022.

13. Mr Rahman is the Head of Intellectual Property Team and Assistant Vice President of the opponent company, a position he has held since July 2020. He says that he was in the employ of the opponent for a number of years prior to taking up this role. Mr Rahman gives evidence as to the background of the opponent, its activities and its use of the third earlier mark.

14. I have read all of the evidence and will return to it to the extent I consider necessary in the course of this decision.

Section 5(2)(b)

The law

15. Sections 5(2)(b) and 5A of the Act read as follows:

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

[...]

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

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

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

16. 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:

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

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

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

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

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

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

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

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

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

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

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

My approach

17. As noted above, the opponent relies upon all three earlier marks under this ground. However, the third earlier mark is subject to proof of use, while the goods and services of the second earlier mark do not strike me, at least on the surface, as being more favourable than those of the first earlier mark (particularly considering the highly specific descriptions utilised in its specification). As such, I will proceed on the basis of the first earlier mark only, returning to consider the other earlier marks should it become necessary to do so.

Comparison of goods and services

18. In *Canon*, the Court of Justice of the European Union (“CJEU”) stated at paragraph 23 of its judgment that:

“In assessing the similarity of the goods or services concerned, [...] 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”.

19. The relevant factors identified by Jacob J (as he then was) in *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281 for assessing similarity were:

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

20. Further, 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/services. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the General Court (“GC”) stated that “complementary” means:

“[...] there is 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.”

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

“29. [...] goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by the 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”.

22. The goods and services to be compared are outlined in paragraph 1 and Annex A.

Class 9

23. The applicant’s goods in class 9 comprise various types of computer software. Clearly, the nature, intended purpose and method of use of these goods and ‘*software design and development*’ in class 42 of the first earlier mark differs. However, computer software is the end result of its design and development, and consumers are likely to believe that the responsibility for them lies with the same undertaking. It is also not uncommon for software providers to offer updates to further develop the software and to provide ongoing technical support for its users. Although, by virtue of a limitation, the applicant’s specification does not include goods relating to software for accessing, browsing and searching the internet, the opponent’s services are not limited in any way and, therefore, could relate to the design and development of precisely the same software. As such, it is my view that the respective goods and services are complementary. Moreover, the goods and services may reach the market through shared trade channels. There is also a degree of competition between them,

since a consumer could purchase computer software or, instead, choose to have bespoke computer software designed, or vice versa. Overall, I find that the respective goods and services are similar to a medium degree.

Class 42

24. I understand *'hosting computer software applications for others'* to describe a software delivery model whereby the user accesses software hosted and managed by the manufacturer or a third party entirely from a remote server or location through the internet. *'Software as a service (SAAS) services featuring cloud solution blueprints and cloud assets to accelerate cloud-powered enterprise transformation and increase business value; cloud computing software and services, namely, providing cloud-based software for project management, business management, and operations management'* in class 42 of the first earlier mark also refer to models in which centrally hosted computer software is accessed by the user on a licence or subscription basis. It is my view that they essentially describe the same service and, given that the applicant's hosting service could feature the software solutions named in the opponent's specification, I find that they are identical in accordance with *Meric*. If I am wrong in this finding, it remains the case that there are substantial overlaps in nature, intended purpose, method of use and trade channels. Further, the respective services are in competition. Therefore, if not identical, I find that the respective services are highly similar.

25. *'Computer software consulting'* appears in the specifications of both the application and the first earlier mark. Although the applicant's services are limited to those provided in a business-to-business setting, the opponent's term is not limited in any way. Therefore, the latter encompasses the former and the respective services are to be regarded as identical in accordance with *Meric*.

26. Although expressed slightly differently, the applicant's *'consultancy and advice on computer software [...]*' and *'computer software consulting'* in class 42 of the first earlier mark essentially describe the same services. Again, while the applicant's services are limited to those provided in a business-to-business setting, the

opponent's term is not limited in any way. The opponent's term incorporates the applicant's term, rendering the services identical under the principle outlined in *Meric*.

27. '*Consultancy and advice on computer [...] hardware*' and '*computer software consulting*' in class 42 of the first earlier mark overlap considerably in nature, method of use and intended purpose; they are both consultancy services in the field of computers, with the only difference being the specific content of the advice, i.e. the applicant's relates to the use of hardware whereas the opponent's relates to the use of software. The respective services are not in direct competition; they cannot be considered interchangeable due to the specific content of the advice. Moreover, the services are not important or indispensable to one another and, as such, are not complementary. However, the respective services are likely to reach the market through the same trade channels and may be provided by the same undertakings; a consultant in this field may provide services in relation to both hardware and software. As the opponent's consulting could also be provided in a business-to-business setting, the respective services are likely to share users. Taking all of this into account, I find that there is a high degree of similarity between the respective services.

28. '*IT services*' is a broad term which incorporates, for example, cloud computing, software as a service and software development processes. It is my view that the term covers the services which appear within class 42 of the first earlier mark. Accordingly, I find that they are identical under the principle outlined in *Meric*. This finding is not disturbed by the applicant's limitation since the opponent's services are either not limited in any way or also relate to use in business contexts.

29. I understand '*IT project management*' provided in a business-to-business setting to refer to the planning, leading and executing of an organisation's IT goals. Clearly, this service has a different nature and method of use to '*cloud computing software and services, namely, providing cloud-based software for project management [...]*' in class 42 of the first earlier mark. Further, these services are not complementary. However, given that the opponent's cloud-based software will be used in project management (and could be used in relation to IT projects), the respective services have an overlapping intended purpose. As a business could reasonably select cloud-based software tools to assist with their project management needs over the

applicant's project management services, or vice versa, there is a degree of competition between the respective services. They are likely to reach the market through overlapping trade channels and may be provided by the same undertakings. They will also share users. Overall, I find that there is a medium degree of similarity between the respective services.

30. '*Information technology [IT] consulting services*' is a broad term which includes consultancy services relating to the use of computers. To my mind, these services incorporate '*consulting services in the field of cloud computing; computer software consulting*' in class 42 of the first earlier mark. As such, I find that the respective services are identical in accordance with *Meric*. Given that the opponent's services are not limited (and could, therefore, be provided in a business-to-business setting) the applicant's limitation does not preclude such a finding.

The average consumer and the nature of the purchasing act

31. 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 then was) 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 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.⁷

⁷ *Lloyd Schuhfabrik Meyer*, Case C-342/97

33. Consistent with my approach to the comparison of the parties' goods and services, my assessment will focus on the average consumer of the goods and services for which I have found similarity. Some of those goods and services are available to both the general public and business users. Others are more likely to be purchased by business users alone.

34. In respect of the general public, the goods and services are likely to be occasional purchases. The cost of the goods and services may vary, though, overall, they are likely to require an average outlay. The general public will consider factors such as cost, features and ease of use when selecting software products in class 9. When selecting the services in class 42, they will consider factors such as cost, the provider's expertise and prior outcomes. Although the level of attention of the general public may vary, overall, I am of the view that it would be medium. The goods are typically purchased by the general public from physical retail establishments, their online equivalents, or through an 'app store' on an electronic device, after viewing information on physical displays or the internet. In these circumstances, visual considerations would dominate. However, I do not discount aural considerations entirely as the general public may wish to discuss the products with a sales assistant prior to purchasing the goods. The services are likely to be purchased after viewing information on the internet, in brochures or prospectuses. Again, visual considerations would dominate, though I do not discount aural considerations completely as members of the general public may receive word-of-mouth recommendations or engage in verbal consultations with the provider before purchasing the services.

35. As for business users, the goods and services may be purchased more frequently for the ongoing technological needs of the business. The selection of the goods would be relatively important for business users as they will wish to ensure that they are choosing products which reflect their specification requirements. Similarly, the selection of the services would be relatively important for these consumers as they will wish to ensure that they are provided to a professional standard and suitable for their needs. Business users may also consider factors such as the provider's technical knowledge and previous outcomes when selecting the services. In light of the above, I find that the level of attention of business users would be between medium and high. The goods are typically sold by retail establishments, specialist outlets, or their online

equivalents, where they are likely to be purchased after viewing information on physical displays or on the internet. In these circumstances, visual considerations would dominate. However, I do not discount aural considerations entirely as it is possible that the purchasing of these kinds of goods would involve discussions with sales representatives. The services are likely to be purchased after viewing information on the internet, in business prospectuses or brochures. Overall, I am of the view that the purchasing process would be predominantly visual in nature. However, I do not discount aural considerations as it is possible that the purchasing of the services would incorporate verbal consultations with the provider.

Distinctive character of the earlier mark

36. 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 *WindsurfingChiemsee 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 *WindsurfingChiemsee*, paragraph 51).”

37. Registered trade marks possess varying degrees of inherent distinctive character. These range from the very low, such as those which are suggestive or allusive of the goods or services, to those with high inherent distinctive character, such as invented words. Dictionary words which do not allude to the goods or services will be somewhere in the middle. The degree of distinctiveness 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 confusion.

38. The first earlier mark is in word-only format and consists of the words 'INFOSYS COBALT'. The word 'INFOSYS' appears to be an invented word. In relation to services in the field of computer software, it is my view that it is likely to be perceived as a combination of the common English words 'INFORMATION' and 'SYSTEM'. In this regard, it could, therefore, be considered somewhat allusive of the services relied upon, though not in any direct or unambiguous way. The word 'COBALT' is dictionary defined as a hard silver-white metal and a shade of blue.⁸ It is my view that consumers in the UK will be aware of at least one of these meanings. Whilst it is possible that some individuals may not be aware of either meaning, I do not consider that they will be sufficient enough in number so as to constitute a significant proportion of consumers. The word is neither descriptive nor allusive of the services relied upon. Overall, I find that the first earlier mark possesses between a medium and high level of inherent distinctive character. I should add that the two words in the mark do not combine to form a unit; rather, each plays an independent distinctive role.

39. The distinctive character of a mark may be enhanced as a result of it having been used in the market. Although evidence has been filed by the opponent, I will proceed on the basis that the first earlier mark did not have an enhanced distinctive character at the relevant date of 8 April 2021, returning to consider the matter if it becomes necessary to do so.

⁸ <https://dictionary.cambridge.org/dictionary/english/cobalt>


Comparison of trade marks

40. 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 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.”

41. Therefore, it would be wrong to dissect the trade marks artificially, though it is necessary to take into account the distinctive and dominant components of the marks; due weight must be given to any other features which are not negligible and hence contribute to the overall impressions created by the marks.

42. The competing trade marks are as follows:

The first earlier mark	The contested mark
INFOSYS COBALT	 The contested mark is the logo for EdgeInfosys, which consists of the word "EdgeInfosys" in a blue, sans-serif font. The word "Edge" is in a lighter blue, and "Infosys" is in a darker blue. The logo is set against a black rectangular background.

Overall impressions

43. The first earlier mark is in word-only format and consists of the words 'INFOSYS COBALT' with no other elements. The two words in the mark provide a roughly equal contribution to the overall impression.

44. The contested mark is figurative and comprises the word 'EdgeInfosys' in a blue/grey colour atop a black background. Notwithstanding the lack of spacing between the two words, I am of the view that consumers will perceive the verbal element of the mark as 'Edge Infosys', i.e. two separate words. This is because the capitalisation introduces a natural break, with the word 'Edge' also being an easily recognisable word in the English language. Both words in the mark provide a roughly equal contribution to the overall impression. The colours used, whilst still contributing, will be seen as decorative and, therefore, play a much lesser role in the overall impression of the mark.

Visual comparison

45. The competing marks are visually similar in that they both contain the word 'INFOSYS'/'Infosys'. This word co-dominates the overall impressions of both marks. The difference in letter case is not significant, since the registration of word-only marks provides protection for the words themselves, irrespective of whether they are presented in upper, lower or title case.⁹ Further, the font used in the contested mark does not create a point of significant difference as it is a standard typeface which is likely to go unnoticed by consumers. Visually, the competing marks differ in that the shared word appears in a different position, as well as each mark containing a verbal element not replicated in the other, i.e. 'COBALT' and 'Edge'. Moreover, the first earlier mark consists of plain words, while the contested mark utilises colour. However, I remind myself that the use of colour plays a much lesser role in the overall impression of the latter. Taking all of this into account, as well as my assessment of the overall impressions, I find that there is between a low and medium degree of visual similarity between the competing marks.

⁹ *Migros-Genossenschafts-Bund v EUIPO*, Case T-189/16

Aural comparison

46. The first earlier mark comprises five syllables and will be pronounced as “IN-FO-SIS-CO-BALT”, whereas the contested mark consists of four syllables and will be articulated as “EDJ-IN-FO-SIS”. The competing marks share three identical syllables, i.e. “IN-FO-SIS”. They differ in that these syllables appear in different positions. Moreover, each mark contains syllables which have no counterparts in the other, i.e. “CO-BALT” and “EDJ”. Overall, I find that there is a medium degree of aural similarity between the competing marks.

Conceptual comparison

47. As noted above, the word ‘INFOSYS’ in first earlier mark is likely to be understood as alluding to the words ‘INFORMATION’ and ‘SYSTEM’, while the word ‘COBALT’ will be understood as referring to either a metal or a colour. The word ‘Infosys’ in the contested mark is also likely to be perceived in the sense outlined above. Ms McCullagh has produced printouts of online articles which suggest that “edge computing” appears to be a type of distributed computing that brings computation and data storage closer to the source of data.¹⁰ Although none of this evidence appears to clearly precede the relevant date and none appears to be specific to the UK, I am prepared to accept that some consumers (namely, professionals in this specialist field) may be aware of its meaning and, therefore, perceive the word ‘Edge’ in the contested mark as alluding to a characteristic of the goods and services. However, other relevant consumers will not be aware of its technical meaning and will, instead, understand the word in accordance with its ordinary dictionary meanings (such as, for example, the outer or furthest point of something, a sharp part of an object or an advantage¹¹). The competing marks conceptually overlap in that they are both likely to be perceived as alluding to the words ‘INFORMATION’ and ‘SYSTEM’. They are conceptually different insofar as each conveys an additional concept that is lacking from the other, i.e. those associated with the words ‘Edge’ and ‘COBALT’. This remains the case irrespective

¹⁰ Exhibits JM1 to JM4

¹¹ <https://dictionary.cambridge.org/dictionary/english/edge>

of which particular meaning consumers attribute to the words. Overall, I find that the competing marks are conceptually similar to a medium degree.

Likelihood of confusion

48. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. One such factor is the interdependency principle, i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services, and vice versa. As mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier trade mark, the average consumer for the goods and services and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

49. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related.

50. Earlier in this decision, I concluded that:

- The applicant's goods in class 9 and the services in class 42 of the first earlier mark are similar to a medium degree;
- The similarity between the parties' services in class 42 ranges from identical to similar to at least a medium degree;
- Relevant consumers of the goods and services are likely to include the general public and business users;

- The general public will demonstrate a medium level of attention during the purchasing process, whereas business users will demonstrate between a medium and high level of attention when selecting the goods and services;
- The purchasing process will be predominantly visual in nature, though aural considerations have not been discounted;
- The first earlier mark possesses between a medium and high level of inherent distinctive character;
- The overall impression of the first earlier mark is dominated by the words 'INFOSYS' and 'COBALT' in roughly equal measure;
- The overall impression of the contested mark is dominated by the words 'Edge' and 'Infosys' in roughly equal measure, while the use of colour plays a much lesser role;
- The competing marks are visually similar to between a low and medium degree, aurally similar to a medium degree and conceptually similar to a medium degree.

51. I accept that the first element of the first earlier mark, i.e. 'INFOSYS', is reproduced in the contested mark and that this element co-dominates the overall impressions of the competing marks. I also acknowledge that the stylisation of the contested mark plays a much lesser role in its overall impression and that the use of a different letter case is not significant. Nevertheless, there are differences between the competing marks which are not negligible. The first earlier mark also contains the word 'COBALT' which has no counterpart in the contested mark. Similarly, the contested mark begins with the word 'Edge', which is not replicated in the first earlier mark. These elements co-dominate the overall impressions of the competing marks; therefore, it is extremely unlikely that they will be overlooked or that relevant consumers, even those who are familiar with the concept of "edge computing", will fail to recall them. Taking all of the above factors into account, despite the distinctiveness of the first earlier mark, it is my

view that the differences between the competing marks are likely to be sufficient for consumers – paying at least a medium level of attention – to distinguish between them and avoid mistaking one for the other, even in relation to services that I have found to be identical. Accordingly, notwithstanding the principles of imperfect recollection and interdependency, it follows that there will be no direct confusion. I should add that, even if the opponent was able to demonstrate that the distinctiveness of the first earlier mark had been enhanced through use, it would not materially affect this finding. This is because the differences between the competing marks would still, in my view, enable consumers to differentiate between them.

52. That leaves indirect confusion to be considered. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis QC, sitting as the Appointed Person, explained that:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually 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).”

53. These three categories are not exhaustive. Rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal.¹²

54. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), Arnold J (as he then was) considered the impact of the CJEU’s judgment in *Bimbo*, Case C-591/12P, on the court’s earlier judgment in *Medion v Thomson*. The judge said:

“18. The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.

19. The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also

¹² *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207

perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

20. The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).

21. The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors.”

55. In its notice of opposition, the opponent argues that the contested mark will be mistaken for being member of its family of ‘INFOSYS’ marks. In *Il Ponte Finanziaria SpA v OHIM*, Case C-234/06, the CJEU stated that:

“62. While it is true that, in the case of opposition to an application for registration of a Community trade mark based on the existence of only one earlier trade mark that is not yet subject to an obligation of use, the assessment of the likelihood of confusion is to be carried by comparing the two marks as they were registered, the same does not apply where the opposition is based on the existence of several trade marks possessing common characteristics which make it possible for them to be regarded as part of a ‘family’ or ‘series’ of marks.

63. The risk that the public might believe that the goods or services in question come from the same undertaking or, as the case may be, from economically-linked undertakings, constitutes a likelihood of confusion within the meaning of Article 8(1)(b) of Regulation No 40/94 (see *Alcon v OHIM*, paragraph 55, and, to that effect, *Canon*, paragraph 29). Where there is a ‘family’ or ‘series’ of trade marks, the likelihood of confusion results more specifically from the possibility that the consumer may be mistaken as to the provenance or origin of goods or services covered by the trade mark applied for or considers erroneously that that trade mark is part of that family or series of marks.

64. As the Advocate General stated at paragraph 101 of her Opinion, no consumer can be expected, in the absence of use of a sufficient number of trade marks capable of constituting a family or a series, to detect a common element in such a family or series and/or to associate with that family or series another trade mark containing the same common element. Accordingly, in order for there to be a likelihood that the public may be mistaken as to whether the trade mark applied for belongs to a ‘family’ or ‘series’, the earlier trade marks which are part of that ‘family’ or ‘series’ must be present on the market.

65. Thus, contrary to what the appellant maintains, the Court of First Instance did not require proof of use as such of the earlier trade marks but only of use of a sufficient number of them as to be capable of constituting a family or series of trade marks and therefore of demonstrating that such a family or series exists for the purposes of the assessment of the likelihood of confusion.

66. It follows that, having found that there was no such use, the Court of First Instance was properly able to conclude that the Board of Appeal was entitled to disregard the arguments by which the appellant claimed the protection that could be due to ‘marks in a series’.”

56. I note that five of the eight marks listed as belonging to this alleged family of marks (‘INFOSYS ZERO DISTANCE’, ‘Infosys Be More’, ‘Infosys BigDataEdge’, ‘INFOSYS WINGSPAN’ and ‘Infosys Labstorm’) are not relied upon in these proceedings. Therefore, they are not relevant. Even if they were, evidence to establish that these

marks were on the market at the relevant date is extremely limited. Mr Rahman provides articles and press releases, dated between 20 February 2013 and 13 August 2020, in which some of the marks feature.¹³ However, 'INFOSYS ZERO DISTANCE' appears to be an ethos for the opponent's own employees; this is indicative of internal use, rather than evidence that the mark was on the market. In addition, the press releases regarding the launch of 'Infosys Be More', 'Infosys BigDataEdge' and 'INFOSYS WINGSPAN' are extremely light on detail and there is no other evidence to corroborate that they were on the market. As for 'Infosys Labstorm', there is a distinct lack of evidence that it was on the market at the relevant date; the mark is mentioned in Mr Rahman's statement,¹⁴ but he gives very little detail about it, and it appears nowhere else in the evidence. I also note that none of the opponent's turnover has been attributed to any of these sub-brands and there is no evidence of how they interacted with consumers. Further, it is not possible to ascertain where these sub-brands were launched.

57. 'INFOSYS COBALT' and 'INFOSYS NIA' are, of course, relied upon under this ground of opposition. Again, I note that none of the opponent's turnover has been attributed to business conducted under these sub-brands. Press releases regarding their launches, dated 20 August 2020 and 26 April 2017, respectively, are in evidence and Mr Rahman refers to the marks in his statement.¹⁵ Nevertheless, very little detail is provided. 'INFOSYS NIA' sponsored the party at the AI Congress 2018, London,¹⁶ and Mr Rahman says that the opponent offers solutions and services on Google Cloud as part of 'INFOSYS COBALT'.¹⁷ To my mind, this, alone, is far from compelling evidence to establish that either of the marks were on the market. It is, in my view, more arguable that 'INFOSYS' was on the market at the relevant date (as will be discussed in further detail below). However, the presence of one mark on the market clearly does not constitute a family of marks. In light of the above, the opponent's family of marks argument is dismissed.

¹³ Exhibits 4, 6, 8 and 9

¹⁴ Witness statement of Faiz Ur Rahman, §5

¹⁵ Exhibits 5 and 7; Rahman, §5

¹⁶ Rahman, §18; Exhibit 18

¹⁷ Rahman, §28

58. I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark: this is mere association not indirect confusion.¹⁸ The Court of Appeal has also emphasised that, where there is no direct confusion, there must be a “proper basis” for finding indirect confusion.¹⁹ I am conscious not to artificially dissect the competing marks and I acknowledge that consumers tend to perceive trade marks as wholes. However, I have found that ‘INFOSYS’/‘Infosys’ co-dominates the overall impressions of the competing marks. Further, it plays an independent distinctive role within the marks, i.e. it has a distinctive significance which is independent of the significance of the whole. It does not combine with ‘COBALT’ or ‘Edge’ in any way and the competing marks are both likely to be perceived by consumers as consisting of two separate and seemingly unconnected elements. This element is aurally and conceptually identical. Save for the use of colour (which plays a much lesser role in the overall impression of the contested mark), this element of the competing marks is also visually identical, the differences in letter case and font being insignificant. Although I have found that ‘INFOSYS’/‘Infosys’ could be considered somewhat allusive of the goods and services at issue, it is an invented word with an indirect and ambiguous message. Therefore, whilst it may not be at the highest level of distinctiveness, it is sufficiently distinctive to result in confusion occurring. In the circumstances, the differences between the competing marks appear consistent with the use of variant brands, denoting particular sub-brands, namely, ‘COBALT’ and ‘Edge’, within the ‘INFOSYS’ commercial offering. The stylisation of the contested mark is likely to be perceived as indicative of a variation which uses additional decorative elements. Alternatively, due to the co-dominant and distinctive element ‘INFOSYS’/‘Infosys’, consumers may believe that the goods and services have been co-branded or that there has been a collaboration between ‘Edge’ and ‘Infosys’. Taking all of the above into account, I am satisfied that consumers – even those paying between a medium and high level of attention – would assume a commercial association between the parties, or sponsorship on the part of the opponent, due to the common presence of the word ‘INFOSYS’/‘Infosys’. Consequently, I consider there to be a likelihood of indirect confusion.

¹⁸ *Duebros Limited v Heirler Cenovis GmbH*, Case BL O/547/17

¹⁹ *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207

Conclusion

59. The opposition under section 5(2)(b) succeeds in its entirety. Given the outcome, it is not necessary to go on to consider the opponent's reliance on the second and third earlier marks as they would not take this ground any further.

Section 5(3)

The law

60. Sections 5(3) and 5(3A) of the Act state as follows:

“(3) A trade mark which-

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

“(3A) Subsection (3) applies irrespective of whether the goods and services for which the trade mark is to be registered are identical with, similar to or not similar to those for which the earlier trade mark is protected.”

61. As the third earlier mark is a comparable mark, paragraph 10 of Part 1, Schedule 2A of the Act is also relevant. It reads:

“10.— (1) Sections 5 and 10 apply in relation to a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the reputation of a comparable trade mark (EU) falls to be considered in respect of any time before IP completion day, references in sections 5(3) and 10(3) to—

(a) the reputation of the mark are to be treated as references to the reputation of the corresponding EUTM; and

(b) the United Kingdom include the European Union.”

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

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

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

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

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

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

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel, paragraphs 76 and 77* and *Environmental Manufacturing, paragraph 34*.

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

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

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

63. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that its earlier mark is similar to the contested mark.²⁰ Secondly, the opponent must show that the mark has achieved a level of knowledge, or reputation, amongst a significant part of the public. Thirdly, the opponent must establish that the public will make a link between the marks, in the sense of the earlier mark being brought to mind by the contested mark. Fourthly, assuming the foregoing conditions have been met, section 5(3) requires that one or more of three types of damage claimed by the opponent will occur. It is not necessary for the purposes of section 5(3) that the goods or services are similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

64. The relevant date for the assessment under section 5(3) is the filing date of the contested application, namely, 8 April 2021.

Reputation

65. In *General Motors*, Case C-375/97, the CJEU held that:

“25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.

26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.

²⁰ Given my findings at paragraphs 45 to 47, this condition has clearly been satisfied.

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation ‘in the Member State’. In the absence of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation ‘throughout’ the territory of the Member State. It is sufficient for it to exist in a substantial part of it.”

66. The opponent is said to be the second largest Indian IT company and in the top 500 of the largest public companies in the world.²¹ It has 1,626 clients in 46 countries and, at the date of Mr Rahman’s statement, a market capitalisation of \$93.6bn.²² As reported by Forrester Wave (2019), the opponent is one of the nine key players in the market of consulting and IT services in Europe and the UK.²³ In 2018/2019, it was categorised as a leader in digital banking services and insurance application services by NelsonHall and Everest Group.²⁴ The opponent is a member of many industry groups such as the World Economic Forum, the Electronic Business Group and Syntec.²⁵

67. Mr Rahman gives evidence that ‘Infosys’ has been used continuously in the UK since 1994; the opponent opened its first UK office that year and had offices in Germany, Sweden and Belgium by 1999.²⁶ In April 2019, the opponent had 36 offices in 19 European countries including, *inter alia*, France, Germany, Italy, Spain and the Netherlands; the opponent also had several offices in the UK, including in Edinburgh and London.²⁷ Mr Rahman provides the following turnover figures, which are taken from the annual reports in evidence:²⁸

²¹ Rahman, §4; Exhibit 1

²² Rahman, §4; Exhibit 2

²³ Rahman, §7; Exhibit 10

²⁴ Exhibit 15

²⁵ Rahman, §8; Exhibit 11

²⁶ Rahman, §4

²⁷ Rahman, §4; Exhibit 3

²⁸ Rahman, §9; Exhibit 12

At paragraph 9 of his statement, Mr Rahman suggests an exchange rate of 0.013 Rupees to the Euro.

Annual Report	Total Revenue in Rupees	Percentage of revenue from Europe (including the UK)
2020	100,472 crore*	24.2%
2019	82,675 crore*	24.1%
2018	61,941 crore*	23.3%
2017	59,289 crore*	22.0%
2016	53,983 crore*	21.8%
2015	47,300 crore*	21.8%
2014	44,341 crore*	22.1%
2013	36,765 crore*	21.8%
2012	31,254 crore*	21.2%
2011	25,385 crore*	21.5%
2010	21,140 crore*	22.2%

*1 crore equals 10,000,000.

68. Mr Rahman says that the opponent is active in more than one traditionally defined market and ranks amongst the key players in various industries.²⁹ He explains that the opponent's goods and services feature in the Magic Quadrant (a series of market research reports published by Gartner).³⁰ Extracts from an article by Gartner are in evidence,³¹ which say that the opponent is in the leaders quadrant and describes it as a cloud engagement partner that can deliver and execute tech-powered solutions. Further, it suggests that the top five industries in which the opponent had the most projects were banking, industrial machinery, high-tech, automotive and retail. I note the Investors Report (2021) in evidence,³² which also states that the opponent has customers in these industries, as well as others such as life sciences, energy and utilities, and communications. It suggests that operations predominantly relate to providing end-to-end business solutions using technology.

69. The opponent has global alliances with technology partners with whom it delivers business solutions.³³ Examples of alliance partners as of both 7 January 2019 and 5 May 2021 included, *inter alia*, Adobe, Amazon Web Services, Google, HP and IBM.³⁴ Mr Rahman says that the opponent helps clients modernise and transform legacy systems into next-generation digital advisory platforms using Avaloq's wealth management solutions; couples Nokia's technology, products and services with its

²⁹ Rahman, §16

³⁰ Rahman, §16

³¹ Exhibit 16

³² Exhibit 27

³³ Exhibit 33

³⁴ Exhibit 35

platform solutions, engineering and operations management expertise to drive digital transformation; runs cloud pilots and staffs client innovation centres to assist in the transition, modernisation and transformation of clients' workloads and applications using IBM's public cloud; and streamlines the processing of documents and emails, integrating AI capabilities to automate text-based processes, using WorkFusion's cloud.³⁵ The opponent is also said to be amongst Google's GSI partners, helping the opponent to design and develop cloud transformation and migration services for enterprises, as well as providing solutions and services on Google Cloud. Moreover, Mr Rahman says that the opponent and Microsoft have had a fifteen-year partnership, working together to deliver specialised capabilities, industry solutions and services. Between 2012 and 2020, the opponent had an alliance with Liberty Global, managing its IT and infrastructure platforms.³⁶ Mr Rahman adds that the opponent has a longstanding partnership with IBM which has involved providing them with a number of solutions.³⁷ I note that, as of 28 September 2015, the opponent was providing business consulting, process design, systems integration, application management and design, while IBM was providing technology products.³⁸

70. A series of articles, published between 15 February 2018 and 12 June 2019, which discuss the opponent's European contracts has been provided.³⁹ I note that the opponent was selected as one of the main suppliers of digital transformation services to Volvo; the opponent was to deliver engineering and digital services to Rolls-Royce Group; the opponent was selected by Posti (Finnish postal service) as a partner for the digital transformation of its business and IT services; the opponent and MeDirect Bank (Belgium) launched a regulated savings product on the opponent's core banking solution; the opponent was appointed UCAS' core technology partner up to 2021, providing a wide range of digital services; and Santander UK was to use the opponent's solutions to launch an inter-bank cash management portal.

³⁵ Rahman, §28

³⁶ Exhibit 34

³⁷ Rahman, §31

³⁸ Exhibit 36

³⁹ Exhibit 37

71. Mr Rahman says the opponent has spent the following sums on marketing in the UK and EU:⁴⁰

Year	Marketing expenditure (\$)
2013	592,698
2014	595,855
2015	705,838
2016	2,982,104
2017	2,476,634
2018	2,925,326
2019	9,276,326
2020	7,936,315
2021 ⁴¹	705,227
Total	28,196,323

72. These sums are said to have been spent on, *inter alia*, memberships, brand outreach, World Economic Forum (Davos) and sponsorship of tennis events.⁴² The opponent has also participated in various industry events where they run exhibitor stands, including HP Discover (Barcelona, 2014), Amex Innovation Day (UK, 2017) and the AI Congress (London, 2018).⁴³ The mark is said to have been displayed on posters and marketing displays at the events.

73. Mr Rahman says that the opponent sponsored the French Tennis Federation at Roland Garros in 2019, 2020 and 2021 and has also been a global technology service partner of the Association of Tennis Professionals (“ATP”) since 2015.⁴⁴ He explains that the opponent’s sponsorship sees the ‘Infosys’ brand displayed on advertising banners at tennis matches held in Europe, as well as on the Roland Garros and ATP Tour websites.⁴⁵ A printout from the Roland Garros website has been provided,

⁴⁰ Rahman, §11

⁴¹ I note that the relevant date falls partway through 2021. Therefore, in the absence of any explanation or evidence to the contrary, I infer that a significant proportion of the figure for this calendar year resulted from marketing activities conducted after the relevant date.

⁴² Rahman, §10

⁴³ Rahman, §18; Exhibit 18

⁴⁴ Rahman, §19

⁴⁵ Rahman, §19

wherein the word 'Infosys' can be seen in plain text and in a slightly stylised font; the printout is undated but references a tournament in May/June 2021.⁴⁶ Still images of videos of the Roland Garros Final and ATP Finals (both 2019) are also in evidence; 'Infosys' can be seen on advertising boards in the stadiums.⁴⁷ The videos had 3.2m views and 700k views, respectively. A photograph from 9 June 2019 is in evidence,⁴⁸ which shows 'Infosys' on advertising and match statistics boards at the Roland Garros Final. A printout from the ATP Tour website referencing a tournament in May 2021 says that 'Infosys' was its digital innovation partner, whilst another printout shows 'Infosys' advertising boards within a photograph of Roger Federer posted in November 2019.⁴⁹ As part of its partnership with the ATP, the opponent's mark appears on its website and on digital banners in matches, while the opponent provides data analysis for the tournaments.⁵⁰ An example from the ATP website dated 11 July 2018 has been provided; 'Infosys' is visible on the same.⁵¹ The evidence suggests that 973m viewers watched ATP events in 2015, whilst, between 2009 and 2019, ATP Tour Finals in London reached a cumulative total global audience of more than 850m.⁵² Moreover, the French Open Men's Single final drew 3.77m French viewers, while Wimbledon had 9.6m viewers in the UK.⁵³ According to Roland Garros, digital interaction with the tournament reached 353m page views in 2019; there were over 1.2m downloads/updates of the mobile app; 263m people interacted with tournament publications on social media; and videos were viewed 121m times during the tournament.⁵⁴ 'Infosys' appeared on the match statistics and player data pages of the website/app. Extracts from the ATP Tour and Roland Garros Twitter accounts from 2018 and 2019 are in evidence.⁵⁵ These feature the third earlier mark or refer to the opponent's collaborations therewith.

⁴⁶ Exhibit 19

⁴⁷ Exhibit 19

⁴⁸ Exhibit 26

⁴⁹ Exhibit 19

⁵⁰ Rahman, §§20 and 23; Exhibit 27

⁵¹ Exhibit 20

⁵² Exhibit 21

⁵³ Exhibit 21

⁵⁴ Rahman, §22; Exhibit 24

⁵⁵ Exhibits 22 and 25

74. Printouts from the opponent's social media accounts have been provided.⁵⁶ From these, I note that the opponent's global YouTube channel has 37.4k subscribers and one video from 2021 had 6k views; its global LinkedIn page has 3.9m followers; its global Facebook page has over 800k likes/followers; its global Twitter page, which was created in April 2008, has 25k tweets and 441k followers; and its 'InfosysEurope' Twitter page, which was created in November 2019, has 1k followers. Further printouts, obtained using the Wayback Machine, have also been exhibited.⁵⁷ From these, I note that, on 24 September 2018, the opponent's YouTube channel had nearly 14k subscribers; on 23 April 2018, its Facebook page had over 800k likes/followers; and, on 11 February 2018, its global Twitter page had 256k followers.

75. Finally, between 1994 and 2021, the opponent won numerous awards for excellence, including the third best regarded company in the world (Forbes, 2019).⁵⁸ Many relate to the opponent as an employer and how the company is run, though some relate to its work in the IT industry. A Tweet from the opponent, dated 9 February 2019, and a printout from the Sport Industry Group website also suggest that it was shortlisted for a BT Sport award for the best use of analytics, data or research for reinventing the tennis experience.⁵⁹

76. The evidence suggests that the opponent is a very large company in India and in the top 500 largest public companies in the world. It has a significant market capitalisation, globally, and Mr Rahman says that it has used the third earlier mark in the UK for nearly three decades. There is evidence which suggests that the opponent is a key player in the consulting and IT services markets in the UK and EU. Mr Rahman and the annual reports indicate that the opponent has generated a very large turnover over a number of years, and that a significant proportion of this has been from activities in Europe and the UK. Commercial alliances have been entered into with a number of companies, many of which are household names. The opponent has spent significant amounts on marketing in Europe and the UK; Mr Rahman has given some information regarding marketing activities, such as running exhibitor stands in various industry

⁵⁶ Exhibit 28

⁵⁷ Exhibits 29 to 31

⁵⁸ Rahman, §§11 and 14; Exhibits 13 and 14

⁵⁹ Exhibit 23

events. I also note that the opponent sponsored Roland Garros prior to the relevant date and has been an official partner of the ATP for several years. The evidence demonstrates that the third earlier mark (or the word 'Infosys' in word-only format) has featured on the Roland Garros and ATP websites, on the Roland Garros and ATP Tour Twitter accounts and on advertising boards and banners in tennis matches. These tennis matches had a significant viewership and at least one of the tournaments enjoyed significant digital interaction. The opponent has also received awards and some of these appear to have related to activities within the IT industry.

77. Nevertheless, whilst I do not discount any of the above, it is my view that the overall evidential picture is vague and far too general. Evidence of the third earlier mark in use in relation to the goods and services for which a reputation is claimed is extremely limited and the opponent has not sufficiently tethered its evidence to any particular goods or services. Mr Rahman describes the opponent as an IT company and that it provides digital/IT services and consulting. The annual reports in evidence predominantly suggest that the opponent's income has been generated in connection with software services and products. The investor's report says that the opponent provides end-to-end business solutions that use technology. According to Gartner, the opponent delivers tech-powered solutions. The opponent's alliances have also been characterised using terminology such as, for example, business transformation, digital transformation, platform solutions, streamlining of processes, process design, solutions and digital services. None of these terms has been defined and no information has been provided as to what the opponent's commercial activities specifically entail. Further, it is neither clear nor explained whether references to software "solutions" in the evidence should be taken to mean computer software as products, or as part of a service. These high-level references and broad claims as to use are unhelpful, since they could refer to an extremely diverse range of goods or services, i.e. they do not establish what actual goods or services have been provided. The generality of the narrative of Mr Rahman's statement, when read in conjunction with the exhibits, does not provide cogent proof of what goods or services the third earlier mark has been used for.⁶⁰

⁶⁰ *Palmerwheeler Ltd v Prnnet*, Case BL O/484/13

78. I acknowledge that some parts of the evidence appear a degree more specific. For instance, the investor presentation refers to digital banking services and insurance application services, while Gartner also described the opponent as a cloud engagement partner. The evidence indicates that the opponent has provided data analysis services for the ATP's tournaments and match statistics for Roland Garros. The evidence suggests that the 'Infosys' sub-brands (aside from those which simply relate to "IT solutions") are connected with cloud-related services, solutions and platforms, an AI platform for business purposes, software for analysing data, software for accessing content, an idea management platform and a digital banking platform. The evidence regarding the opponent's alliances also refer to engineering, operations management, cloud migration, managing IT and infrastructure platforms, business consulting, systems integration, and application management and design. However, some of these activities would not fall within the scope of any of the goods or services identified by the opponent. For example, the opponent has not claimed a reputation in respect of business consulting, operations management or providing statistics. Even where the goods or services provided in connection with the third earlier mark are somewhat palpable and could fall within the scope of a good or service claimed by the opponent, such as, for example, engineering or maintaining computer software, the evidence of use is extremely limited. It is the case that the evidence in relation to each of these potential goods or services is not sufficient to establish that the third earlier mark had a reputation in the EU or UK at the relevant date. The turnover figures, as significant as they might be, have not been broken down or attributed to any particular goods or services. They are derived from the annual reports in evidence; as noted above, the reports indicate that the turnover has been generated in connection with software products and services which, as previously explained, is not helpful in determining with any degree of precision the goods or services for which the earlier mark has been used. Although Mr Rahman has attempted to demonstrate use in connection with specific goods and services covered by the third earlier mark,⁶¹ the exhibited information consists of hyperlinks to other websites. As such, I cannot take it into account.⁶² I also note the lack of specificity regarding the particular territories in

⁶¹ Exhibit 39

⁶² The opponent was informed by letter from the Registry dated 4 July 2022 that "[...] references to weblinks are not sufficient as the Hearing Officer will not undertake any independent research. Any evidence filed must be in durable form, such as a print-out, a hard disk etc; if it is not, it will be disregarded in accordance with rules 62(2) and (3) [of the Trade Marks Rules 2008]". The opponent

which the opponent has been commercially active. References in the evidence are generally to Europe and the UK, or the EU and UK; due to the use of such terminology, I am unable to ascertain what proportion of use, sales or promotional activities relates to the UK or other particular territories.

79. It is important to remember that the burden of establishing a reputation falls on the proprietor of the earlier mark.⁶³ Evidence must be sufficiently solid and specific to enable a proper and fair evaluation of what it is intended to show.⁶⁴ Although I do not doubt that the opponent was commercially active in the EU and UK prior to the relevant date, I am unable to conclude that the third earlier mark had a qualifying reputation due to the generality of the evidence.

Conclusion

80. The ground of opposition under section 5(3) is dismissed.

Section 5(4)(a)

The law

81. 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) [...]

was invited to clearly set out any evidential material it wished to be considered in, *inter alia*, an exhibit to a witness statement. Despite this, the opponent elected not to do so.

⁶³ *Sacentro – Cinericio de Texteis SA v Michael Codd*, Case BL O/360/20

⁶⁴ *Awareness Limited v Plymouth City Council*, Case BL O/236/13

(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.”

82. Subsection (4A) of section 5 states:

“(4A) 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.”

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

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

84. 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).”

85. Halsbury’s Laws of England Vol. 97A (2021 reissue) provides further guidance with regard to establishing the likelihood of deception. In paragraph 636 it is noted (with footnotes omitted) that:

“Establishing a likelihood of deception generally requires the presence of two factual elements:

(1) that a name, mark or other distinctive indicium used by the claimant has acquired a reputation¹ among a relevant class of persons; and

(2) that members of that class will mistakenly infer from the defendant’s use of a name, mark or other indicium which is the same or sufficiently similar that the defendant’s goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as two successive hurdles which the claimant must surmount, consideration of these two aspects cannot be completely separated from each other.

The question whether deception is likely is one for the court, which will have regard to:

(a) the nature and extent of the reputation relied upon,

(b) the closeness or otherwise of the respective fields of activity in which the claimant and the defendant carry on business;

(c) the similarity of the mark, name etc used by the defendant to that of the claimant;

(d) the manner in which the defendant makes use of the name, mark etc complained of and collateral factors; and

(e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.

In assessing whether deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action”.

Relevant date

86. In *Advanced Perimeter Systems Limited v Multisys Computers Limited*, Case BL O/410/11, Mr Daniel Alexander QC, as the Appointed Person, endorsed the Registrar’s assessment of the relevant date for the purposes of section 5(4)(a) of the Act, as follows:

“43. In *SWORDERS TM* O-212-06 Mr Alan James acting for the Registrar well summarised the position in s.5(4)(a) proceedings as follows:

‘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.’”

87. There has been no claim by the applicant that the contested mark had been used prior to the earliest claimed use of the opponent’s alleged earlier sign. Moreover, no evidence has been adduced by the applicant. Therefore, the relevant date for

assessing the opponent's claim under section 5(4)(a) is the filing date of the contested mark, that being 8 April 2021.

Goodwill

88. The first hurdle for the opponent is to show that it had the necessary goodwill resulting from the trading activity relied on under the earlier sign at the relevant date. Goodwill was described in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 (HOL), 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.”

89. 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.”

90. 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.”

91. Goodwill arises as a result of trading activities. The evidence certainly suggests that there have been some trading activities connected with the alleged earlier sign. Moreover, I appreciate that the test for assessing a reputation is not identical to that for assessing whether goodwill has been accrued in a business. However, I note that the goods and services in respect of which the opponent's alleged earlier sign is said to have been used are identical to those in relation to which the opponent claimed a reputation. Further, the relevant date for the assessment of goodwill is the same as that for reputation, that being the filing date of the contested mark. Therefore, for the same reasons as outlined at paragraphs 77 to 79, I find that the opponent has not sufficiently demonstrated that goodwill has been generated through the use of the alleged earlier sign in relation to any particular goods or services. Accordingly, the opponent's claim under this ground fails at the first hurdle. I should add that, whilst I appreciate that the alleged earlier sign is the plain word 'INFOSYS' and the third earlier mark consists of the word 'Infosys' in a slightly stylised font, I do not consider that the differences materially alter my assessment of goodwill or this outcome. This is because the use of a different letter case and slightly stylised font does not affect the

distinctive character of the alleged earlier sign, and occurrences of 'INFOSYS' in ordinary/standardised font have already been taken into account in my assessment of the evidence under section 5(3).

92. If I am wrong to conclude that the opponent has not established a protectable goodwill in respect of any of the goods and services identified, it remains the case that its claim under this ground does not take its case any further than its claim under 5(2)(b). Firstly, I have already found there to be a likelihood of confusion between the first earlier mark and the contested mark. Secondly, In *Comic Enterprises Ltd v Twentieth Century Fox Film Corporation* [2016] EWCA Civ 41, Kitchin LJ considered the role of the average consumer in the assessment of a likelihood of confusion. Kitchin LJ concluded:

“[...] if, having regard to the perceptions and expectations of the average consumer, the court concludes that a significant proportion of the relevant public is likely to be confused such as to warrant the intervention of the court then it may properly find infringement.”

93. Although this was an infringement case, the principles apply equally under section 5(2).⁶⁵ In *Marks and Spencer PLC v Interflora* [2012] EWCA (Civ) 1501, Lewison LJ had previously cast doubt on whether the test for misrepresentation for passing off purposes came to the same thing as the test for a likelihood of confusion under trade mark law. He pointed out that it is sufficient for passing off purposes that “a substantial number” of the relevant public are deceived, which might not mean that the average consumer is confused. However, in light of the Court of Appeal’s later judgment in *Comic Enterprises*, it seems doubtful whether the difference between the legal tests will (all other factors being equal) produce different outcomes. This is because they are both normative tests intended to exclude the particularly careless or careful, rather than quantitative assessments.

⁶⁵ *Soulcycle Inc v Matalan Ltd* [2017] EWHC 496 (Ch)

Conclusion

94. The ground of opposition under section 5(4)(a) is dismissed.

Overall outcomes

95. Whilst the opposition under sections 5(3) and 5(4)(a) has failed, the opposition under section 5(2)(b) has succeeded in full. Subject to any successful appeal, the application will be refused.

Costs

96. As the opponent has been successful, it is entitled to a contribution towards its costs. Based upon the scale in Tribunal Practice Notice 2/2016, I award the opponent the sum of **£1,600** as a contribution towards the cost of the proceedings. This sum is calculated as follows:

Preparing a statement and considering the applicant's counterstatement	£300
Preparing evidence	£700
Preparing written submissions	£400
Official fee	£200
Total	£1,600

97. I order Edge Infosys Ltd to pay Infosys Limited the sum of **£1,600**. 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 the proceedings if any appeal against this decision is unsuccessful.

Dated this 16th day of February 2023

James Hopkins
For the Registrar

Annex A

Goods and services relied upon under section 5(2)(b)

The first earlier mark

Class 42: Platform as a service (PAAS) featuring cloud-based software platforms for leveraging cloud solution blueprints and cloud assets to accelerate cloud-powered enterprise transformation and increase business value; platform as a service (PAAS) featuring cloud-based software platforms to help businesses leverage the cloud ecosystem to accelerate speed to market; software as a service (SAAS) services featuring cloud solution blueprints and cloud assets to accelerate cloud-powered enterprise transformation and increase business value; cloud computing software and services, namely, providing cloud-based software for project management, business management, and operations management; consulting services in the field of cloud computing; computer software consulting; software design and development.

The second earlier mark

Class 9: Computer software, namely, knowledge-based artificial intelligence platforms, data analytics platforms, and automation platforms that leverage open source technology and combine machine learning and organizational knowledge to drive automation and innovation; computer software, namely, knowledge-based artificial intelligence platforms, data analytics platforms, and automation platforms that leverage open source technology and optimize information technology processes, improve productivity of information technology service personnel, and streamline information technology operations for enterprise lines of business; computer software, namely, knowledge-based artificial intelligence platforms, data analytics platforms, and automation platforms that leverage open source technology and monitor the entire information technology infrastructure of an enterprise to detect real-time anomalies and develop a fault diagnosis; computer software, namely, knowledge-based artificial intelligence platforms, data analytics platforms, and automation platforms that analyze information technology operations data and processes to build statistical models to optimize, eliminate, or automate information technology service management;

computer software, namely, artificial intelligence platforms, data analytics platforms, and automation platforms that yield actionable business process insights for enterprises; computer software, namely, artificial intelligence platforms, data analytics platforms, and automation platforms that model complex systems and capture, formalize and process knowledge across multiple generations of people and connected systems; computer software, namely, artificial intelligence platforms, data analytics platforms, and automation platforms that automate the execution of system and business processes while continuously learning predictions, resolution processes and diagnosis logic to build a knowledge base that grows and adapts to changes in the underlying systems; computer software, namely, knowledge-based artificial intelligence platforms, data analytics platforms, and automation platforms that combine artificial intelligence technologies, machine learning, cognitive automation, and organizational knowledge to improve business and information technology processes; computer software, namely, knowledge-based artificial intelligence platforms, data analytics platforms, and automation platforms that collect, aggregate, and transform organizational information and capture know-how across people, processes, and legacy systems.

Class 35: Business process consulting services; business consulting services in the field of knowledge-based artificial intelligence platforms, data analytics platforms, and automation platforms; business consulting services in the field of knowledge management and business process optimization.

Class 42: Platform as a service (PAAS) featuring knowledge-based artificial intelligence computer software platforms, data analytics software platforms, and automation software platforms that combine machine learning and organizational knowledge to drive automation and innovation; platform as a service (PAAS) featuring knowledge-based artificial intelligence computer software platforms, data analytics software platforms, and automation software platforms that optimize information technology processes, improve productivity of information technology service personnel, and streamline information technology operations for enterprise lines of business; platform as a service (PAAS) featuring knowledge-based artificial intelligence computer software platforms, data analytics software platforms, and automation software platforms that monitor the entire information technology

infrastructure of an enterprise to detect real-time anomalies and develop a fault diagnosis; platform as a service (PAAS) featuring knowledge-based artificial intelligence computer software platforms, data analytics software platforms, and automation software platforms that analyze information technology operations data and processes to build statistical models to optimize, eliminate, or automate information technology service management; platform as a service (PAAS) featuring knowledge-based artificial intelligence computer software platforms, data analytics software platforms, and automation software platforms that yield actionable business process insights for enterprises; platform as a service (PAAS) featuring knowledge-based artificial intelligence computer software platforms, data analytics software platforms, and automation software platforms that model complex systems and capture, formalize and process knowledge across multiple generations of people and connected systems; platform as a service (PAAS) featuring knowledge-based artificial intelligence computer software platforms, data analytics software platforms, and automation software platforms that automate the execution of system and business processes while continuously learning predictions, resolution processes and diagnosis logic to build a knowledge base that grows and adapts to changes in the underlying systems; platform as a service (PAAS) featuring knowledge-based artificial intelligence computer software platforms, data analytics software platforms, and automation software platforms that combine artificial intelligence technologies, machine learning, cognitive automation, and organizational knowledge to improve business and information technology processes; platform as a service (PAAS) featuring knowledge-based artificial intelligence computer software platforms, data analytics software platforms, and automation software platforms that collect, aggregate, and transform organizational information and capture know-how across people, processes, and legacy systems.

The third earlier mark

Class 9: Computer software, computer peripheral devices and software for the electronic transmission of messages, images, speech, sound, documents and data via a global network; computers and computer programs; computer software for use with a local area network (LAN), a wide area network (WAN) and/or a global computer communications network, namely retrieving, gathering, indexing and organising

information, providing communication security; electronic mail (e-mail) and promoting communication between workgroups; computer software for retrieving, gathering, indexing and organising information in individual workstations or personal computers; media for indexing computer software, data carriers and data memories that are machine readable and machine programmable with programs of all kinds; telecommunication software; computer software for development and implementation of interactive computer applications; computer software for embedding interactive computer applications and real-time data in analogue and digital transmissions; computer software for facilitating analogue and digital transmission.

Class 42: Maintaining computer programs; computer systems analysis services; installing and updating computer software; consultancy relating to the aforesaid services; computer programming; information and consultancy relating to all the aforesaid services; design; computer programming; design and development of products; think-tanks; group discussions with a view to finding new ideas (brainstorming); design, drawing and commissioned writing for the compilation of web pages on the Internet; design and maintenance of websites; design of computer software and implementation, for others, of computer software used for computerised sales management via a global computer network; design and development of computer software for websites and applications on the Internet; development and updating of database applications; installing and maintaining computer software; research, analysis and projects for computer software and computer systems; engineering, technical research; technical-project research; research and development for new products; consultancy in the field of computer hardware and software, computer networks and computer-aided research; development and application of online electronic business solutions for buying and selling various goods and services via the Internet for and/or to customers, consultancy in the field of the Internet; designing websites; technical management of websites and Internet services.

Annex B

Goods and services relied upon under sections 5(3) and 5(4)(a)

Class 9: Computer software, computer peripheral devices and software for the electronic transmission of messages, images, speech, sound, documents and data via a global network; computers and computer programs; computer software for use with a local area network (LAN), a wide area network (WAN) and/or a global computer communications network, namely retrieving, gathering, indexing and organising information, providing communication security; electronic mail (e-mail) and promoting communication between workgroups; computer software for retrieving, gathering, indexing and organising information in individual workstations or personal computers; media for indexing computer software, data carriers and data memories that are machine readable and machine programmable with programs of all kinds; telecommunication software; computer software for development and implementation of interactive computer applications; computer software for embedding interactive computer applications and real-time data in analogue and digital transmissions; computer software for facilitating analogue and digital transmission.

Class 42: Maintaining computer programs; computer systems analysis services; installing and updating computer software; consultancy relating to the aforesaid services; computer programming; information and consultancy relating to all the aforesaid services; design; computer programming; design and development of products; think-tanks; group discussions with a view to finding new ideas (brainstorming); design, drawing and commissioned writing for the compilation of web pages on the Internet; design and maintenance of websites; design of computer software and implementation, for others, of computer software used for computerised sales management via a global computer network; design and development of computer software for websites and applications on the Internet; development and updating of database applications; installing and maintaining computer software; research, analysis and projects for computer software and computer systems; engineering, technical research; technical-project research; research and development for new products; consultancy in the field of computer hardware and software, computer networks and computer-aided research; development and

application of online electronic business solutions for buying and selling various goods and services via the Internet for and/or to customers, consultancy in the field of the Internet; designing websites; technical management of websites and Internet services.