

O/0789/26

TRADE MARKS ACT 1994

IN THE MATTER OF UK TRADE MARK APPLICATION NUMBER 4149906

BY DIGITAL IP HOLDINGS LIMITED
TO REGISTER

THE FOLLOWING SERIES OF THREE TRADE MARKS:



IN CLASS 9 AND 41

AND

IN THE OPPOSITION THERETO UNDER NUMBER 454934

BY ADP MERKUR GMBH

BACKGROUND & PLEADINGS

1. On 20 January 2025, Digital IP Holdings Limited (“the applicant”) applied to register the series of three trade marks shown on the cover page of this decision in the UK (“the contested marks”). The contested marks were published for opposition purposes in the Trade Marks Journal on 28 March 2025 in respect of the following goods and services:

Class 9:

Computer programs and computer software, including software downloadable from the Internet; mobile applications for cell phones, tablets and other handheld devices; interactive computer systems, all relating to or featuring gambling or betting, amusement and entertainment services, games, card games, bingo games, casino games and sports betting.

Class 41:

Entertainment; sporting and cultural activities; online gaming, gambling and betting services; gambling and gaming services for the operation of computerised bingo, online bingo networks, virtual slot machines and other instant win games; sports betting and raffles and online sports-book services; providing casino games including roulette games, slot machines, bingo games, blackjack, keno, baccarat, scratch cards, poker games and sports betting; providing a poker game that may be accessed network-wide by network users; providing multi-player card games that may be accessed network-wide by network users; organisation, production and presentation of tournaments, competitions, games and events; entertainment and interactive entertainment services; organisation of entertainment, amusement, competitions, gaming, gambling, betting, card games, sports betting and raffles; including the provision of all the aforesaid services by means of various technological platforms, including without limitation by telephony, mobile or handheld devices or provided online from a computer database or via the internet; assistance and advisory services and provision of information relating to all the aforesaid services.

2. On 27 June 2025, the application was opposed in its entirety by adp Merkur GmbH (“the opponent”). The opposition is brought under Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”).
3. The opponent relies upon the following trade mark (“the earlier mark”):
 - (i) Trade mark number: UK00918248597¹
Filing date: 3 June 2020
Registration date: 15 October 2020
Relying on the goods listed in Annex 1 of this decision.
Representation:
Triple Spin To Win
4. Given its earlier filing date, the trade mark upon which the opponent relies qualifies as an earlier trade mark pursuant to section 6 of the Act. As the earlier mark had not completed its registration process more than 5 years prior to the date of the application for registration of the contested marks, it is not subject to the use provisions in section 6A of the Act. Consequently, the opponent can rely upon the full breadth of the earlier mark’s specification.
5. The opponent claims that the goods and services in issue are “either identical or highly similar”, and that “there is a high degree of similarity between the respective marks owing to their shared verbal, aural and conceptual elements”. Consequently, the opponent submits that “there is a risk that the average consumer would be led to believe that the relevant goods and services originate from the same or economically linked undertakings and accordingly a likelihood of confusion exists on the part of the public.”

¹ The earlier mark is a comparable mark deriving from an EUTM. On 1 January 2021, the UK left the EU. Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UKIPO created comparable UK trade marks for all right holders with an existing EUTM. As a result, the earlier mark was automatically converted to a comparable UK trade mark. It is now recorded on the UK trade mark register and has the same legal status as if it had been applied for and registered under UK law, and the original filing date remains.

6. The applicant filed a counterstatement admitting that there is “identity and similarity” between some of the class 9 goods in issue. However, the applicant submits that the remainder of the goods and services in issue are dissimilar, and that, in any event, any identity or similarity between the class 9 goods in issue is “offset by the clear dissimilarity between the marks themselves”. Specifically, the applicant submits that the marks in issue are not visually similar, are phonetically dissimilar, and differ significantly conceptually from one another. Consequently, the applicant submits that there is, therefore, no likelihood of confusion between the marks in issue, and requests that the opposition should be dismissed in its entirety, and that an award of costs be made in its favour.
7. The opponent is represented by Abel & Imray LLP, and the applicant is represented by Kosnahan Law. No hearing was requested, but both parties filed written submissions in lieu of a hearing. The opponent filed a witness statement signed by Olivia Vanstone in her capacity as Chartered Trade Mark Attorney at Abel & Imray LLP, and the applicant filed a witness statement signed by Jason Kelly in his capacity as Director for the applicant. This decision is taken following a careful consideration of all of the papers and evidence that have been filed by the parties, which will not be summarised but will be referred to as and where appropriate during this decision.
8. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK’s withdrawal from the EU.

DECISION

Preliminary Issues

9. It is noted that the applicant has requested proof of use of the earlier mark from the opponent.² However, for the reason outlined in paragraph 4 above, the opponent is not required to evidence its proof of use of the earlier mark for the purpose of this opposition. Having said that, it is noted that the opponent has filed evidence which appears to relate to its use of the earlier mark in the witness statement signed by Olivia Vanstone dated 26 November 2025, and in its accompanying exhibits. Whilst this evidence is not strictly required for the purpose of this opposition, such evidence (depending on its content) may be used to evidence that the distinctive character of the earlier mark has been enhanced through use. Accordingly, I will only be considering this evidence when carrying out my assessment of the level of distinctive character attributable to the earlier mark below.
10. As discussed above, the applicant has also filed evidence in the form of a witness statement signed by Jason Kelly dated 26 January 2026. At paragraph 26 of that witness statement Mr Kelly queries whether the opposition has been brought in “good faith”. The intention behind the opponent’s pursuing of the opposition was also questioned in the applicant’s counterstatement. Specifically, the applicant submitted the following:

“[...] had the Opponent been genuinely concerned around the wording “Spin2Win” contained in the Applicant’s brand, the Opponent would have objected to earlier applications made by the Applicant, which it did not do at any time [...] The fact that the Opponent never objected to those filings, but instead chose to object to a figurative series application, further demonstrated this Opposition has been brought without merit for a mark which couldn’t be further away from the actual mark by which the

² This request was made in the Form TM8 filed on 11 September 2025, and the evidence that was filed by the opponent was subsequently challenged in the witness statement by Jason Kelly (the applicant’s Director) dated 26 January 2026 as being insufficient “to allow this Opposition to proceed”.

Opponent seeks to rely on. Instead, the Applicant believes there is nothing more than an intention to disrupt the legitimate interest of the Applicant in filing a frivolous Opposition, when looking at the marks as a whole.”

11. However, as outlined above, this opposition has only been brought under section 5(2)(b) of the Act. My decision as to whether the opposition should succeed or fail will therefore be limited to a consideration of whether the marks in issue are similar, whether the goods and services for which they have been applied for/registered against are identical or similar and, consequently, whether there is a likelihood of confusion on the part of the public, which includes the likelihood of association. The intention behind the opponent’s decision to bring these opposition proceedings will therefore have no bearing on my decision, unless the opponent’s behaviour in pursuing this opposition was so unreasonable that it should be penalised in a costs order, and there is nothing within the evidence or submissions provided that would suggest that such action is necessary in this instance.
12. It is also noted that within his witness statement Mr Kelly asserts that the words “Triple”, “Spin” and “Win” are common place alone, or in combination, within the UK online and land based gambling industry. This assertion is made based on his “previous knowledge of the relevant sector”. Evidence that third parties use similar signs may reduce distinctiveness of a trade mark. Accordingly, I will also consider the content of Mr Kelly’s witness statement (and its corresponding exhibits) when determining the distinctive character of the opponent’s earlier mark.

Section 5(2)(b)

13. The opposition is based upon section 5(2)(b) of the Act which stipulates the following:

“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”.

14. Section 5A of the Act stipulates that 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.”
15. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, [2025] UKSC 25:
 - 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, in certain circumstances, be dominated by one or more of its components;
- f. and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- g. a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;
- h. there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- i. mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- j. the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; and
- k. if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.

Comparison of Goods and Services

- 16. The competing goods and services are outlined in Annex 2 of this decision.
- 17. The opponent submits that the applicant's class 9 goods are identical to its class 9 goods because they are either encompassed by the opponent's unqualified

“software” goods, or they are physical hardware goods, which are included in both parties’ specifications. The opponent further submits that the applicant’s class 41 services are highly similar to the opponent’s class 9 and 28 goods given that the opponent’s compared goods are all “apparatus, machines and software for the purposes of entertainment gaming and gambling”. The opponent also submits that the applicant’s class 41 services and the opponent’s class 9 and 28 goods are complementary, and, specifically in respect of the opponent’s various types of “entertainment” services, there is an overlap in end user, purpose, a potential overlap in method of use, and that they are competitive and complementary, “depending on the precise nature of the entertainment services in question”.

18. As a preliminary point, whilst the opponent has compared the level of similarity between each class of goods and services in issue at a general level, it has failed to identify which of the earlier mark’s specific goods and services it considers to be the closest comparator to each of the applicant’s goods and services. In the circumstances, I do not consider that it would be reasonable or fair for me to undertake a comparison of each potential combination of goods and services which could have been relied upon by the opponent.³ Instead, I consider that a reasonable approach would be for me to identify what I consider to be the closest term in the opponent’s specification, and to carry out a comparison on that basis.⁴
19. The applicant denies that there is similarity between the majority of the goods and services in issue, save for some of the class 9 goods. Whilst it is noted that the applicant admits (again generally) that there is identity or similarity between all of the applicant’s class 9 goods and some of the opponent’s class 9 goods, the applicant fails to identify which of those goods it considers to be identical, which of those goods it considers to be similar, or the extent to which it considers those goods to be similar. Accordingly, whilst, as a minimum, I will accept the applicant’s admission of similarity, I will still need to undertake my own

³ See comments of Iain Purvis KC, in his capacity as Appointed Person, in paragraph 28 of *SmartX - O/0911/24*

⁴ On this point, I also refer to the case of *MontyPay* (BL O/0924/24)

comparison of these goods in order to determine the extent to which they are similar or identical.

20. It should be noted that section 60A of the Act provides that goods are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification⁵, or dissimilar on the ground that they appear in different classes under the Nice Classification.”
21. In *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.*,⁶ the Court of Justice of the European Union (“CJEU”) stated (at paragraph 23) that, when making the comparison, “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”.
22. In *Kurt Hesse v OHIM*,⁷ the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*,⁸ the General Court (“GC”) stated that “complementary” means:

“...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking.”
23. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case⁹, for assessing similarity were:

⁵ “Nice Classification” means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957.

⁶ Case C-39/97

⁷ Case C-50/15 P

⁸ Case T-325/06

⁹ [1996] R.P.C. 281

- a. The uses of the respective goods and services;
 - b. The users of the respective goods and services;
 - c. The physical nature of the goods and services;
 - d. The respective trade channels through which the goods 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 and 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 in the same or different sectors.
24. As per the case of *Separode*,¹⁰ I also bear in mind that it is permissible to group the goods together, for the purpose of comparison, where they are sufficiently comparable to be assessable in essentially the same way for the same reasons.
25. The GC confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market*,¹¹ that, even if goods are not worded identically, they can still be considered identical if one term falls within the scope of another or (vice versa):

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

¹⁰ BL O/399/10, Mr Geoffrey Hobbs QC, sitting as the Appointed Person

¹¹ Case T- 133/05

paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

Class 9

Computer programs and computer software, including software downloadable from the Internet.

26. I consider that all of the applicant’s above referenced terms would fall within the general class 9 term “software”, which is included in the earlier mark’s specification. Accordingly, I find these compared goods to be identical in line with the principle established in *Meric*.

Mobile applications for cell phones, tablets and other handheld devices

27. I note that the earlier mark’s specification contains the terms “computer software in the form of an app for mobile devices and computers”, and I consider these terms to be identical

Interactive computer systems, all relating to or featuring gambling or betting, amusement and entertainment services, games, card games, bingo games, casino games and sports betting.

28. I compare the applicant’s above referenced term with the opponent’s class 9 term “Online games (software), in particular for online betting games, online prize games, online gambling games, online games of skill and online casino games.” It is my understanding that the term interactive computer systems is a broad term which would include computer software. The opponent’s compared term is limited to online game software for online betting, prize, gambling and casino games, as well as online games of skill. The applicant’s term is also limited to those relating to or featuring (amongst other things) gambling or betting, and casino and sports betting games. Accordingly, I consider the applicant’s above referenced term to be wide enough to incorporate the opponent’s compared

term. Consequently, I consider these goods to be identical in line with the principle established in *Meric*.

29. However, if I am wrong in that determination, I consider these compared goods to be similar to a high degree. In my view, both terms concern software/computer technology used to provide gaming, gambling, betting and casino-related functionality, and they therefore overlap in nature. The compared goods also overlap in purpose (that being to enable users to participate in gaming, gambling, betting, casino and related activities) and method of use (given that they both utilise electronic/computerised interfaces to access gaming and gambling content). I also consider there to be an overlap in user (that being, for example, the licenced betting companies) and trade channels (that being, specialist gaming technology/software companies).

Class 41

Entertainment; Sporting and cultural activities; [...] including the provision of all the aforesaid services by means of various technological platforms, including without limitation by telephony, mobile or handheld devices or provided online from a computer database or via the internet; assistance and advisory services and provision of information relating to all the aforesaid services

30. I compare the applicant's above referenced services with the opponent's class 9 term "Computer games, leisure and recreational software". I consider all of the applicant's above referenced services to be broad enough to include services relating to the arranging and holding of competitions, tournaments, exhibitions, conferences and similar public events for computer games, and it is in this context that I undertake a comparison of these terms.
31. Given that this is a comparison of goods against services, they clearly differ in nature and method of use. Having said that, there is an overlap in purpose insofar as the compared goods and services are all intended for the enjoyment and amusement of the user. I also consider there to be a degree of complementarity as the computer games software is essential to the applicant's above referenced

services, and it would be reasonable for consumers to believe that the goods and the services relating to those goods were provided by the same or connected undertakings. Trade channels would overlap to the extent that they may be produced by the same company. However, the goods and services would generally be sold in different ways. The goods would be sold by, for example, video game, electronic retailers or supermarkets (or their online equivalents), whereas the services would most likely be purchased through event companies or entertainment providers. Users would also be the same, that being members of the general public. Overall, I find that the goods and services are similar to a low degree.

Online gaming, gambling and betting services; gambling and gaming services for the operation of computerised bingo, online bingo networks, virtual slot machines and other instant win games; sports betting and raffles and online sports-book services; providing casino games including roulette games, slot machines, bingo games, blackjack, keno, baccarat, scratch cards, poker games and sports betting; providing a poker game that may be accessed network-wide by network users; providing multi-player card games that may be accessed network-wide by network users;

32. I am of the view that all of the applicant's above referenced services would include services relating to the provision of gaming or gambling. It is in this context that I compare the above referenced services to the opponent's class 9 term "Online games (software), in particular for online betting games, online prize games, online gambling games, online games of skill and online casino games".
33. By virtue of this being a comparison of goods and services, they differ in nature and method of use. I also see no basis for finding that you would utilise the opponent's goods in the place of the applicant's services. They are not therefore competitive. Having said that, there is an overlap in purpose given that they all enable users to participate in gaming, gambling and casino activities. The opponent's software is also important to/indispensable from the provision of the applicant's compared services, and I am of the view that consumers would believe that the undertaking responsible for providing the service was also responsible for the software being utilised to provide that service. I do therefore

consider there to be complementarity between these compared goods and services. I also consider the opponent's term to be broad and to include, for example, downloadable applications which can be purchased from online gambling platforms to allow you to access betting, gambling or casino games. On this basis, I do consider there to be an overlap in trade channels between the applicant's above referenced services and the opponent's compared goods (that being licensed online gambling platforms).

34. Noting all of the above, I consider the applicant's above referenced services to be similar to a medium degree to the opponent's compared goods.

Organisation, production and presentation of tournaments, competitions, games and events; entertainment and interactive entertainment services; organisation of entertainment, amusement, competitions, gaming, gambling, betting, card games, sports betting and raffles; including the provision of all the aforesaid services by means of various technological platforms, including without limitation by telephony, mobile or handheld devices or provided online from a computer database or via the internet; assistance and advisory services and provision of information relating to all the aforesaid services.

35. I also compare the applicant's above referenced services with the opponent's class 9 term "Online games (software), in particular for online betting games, online prize games, online gambling games, online games of skill and online casino games". Once again, these goods and services differ in nature and method of use, and I see no basis for finding these compared goods and services to be competitive. There is, however, an overlap in purpose, that being to enable gaming, gambling, betting and entertainment experiences. The opponent's compared goods are important to/indispensable from the provision of the applicant's above referenced services, and consumers of these goods and services are likely to believe that they derive from the same undertaking. Consequently, I consider these compared goods and services to be complementary. There is an overlap in user and, for the same reasons outlined in paragraph 33 above, I also consider there to be an overlap in trade channels between these compared goods and services.

36. Overall, I find these compared goods and services to be similar to a medium degree.

Average consumer and the purchasing act

37. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. 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 and services in question (see *Lloyd Schuhfabrik Meyer*¹²).
38. In *Iconix Luxembourg Holdings* (cited above), the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:
- a. Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;
 - b. The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;
 - c. The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;
 - d. Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by and enabling

¹² Case C-342/97

courts and tribunals to determine such issues so far as possible without the need for evidence;

- e. The average consumer's level of attention varies according to the category of goods or services in question; and
 - f. the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.
39. The goods and services for which I have found identity or similarity are broad in nature. As a consequence, I consider that there will be two types of average consumer, that being business users (such as licenced gambling companies) and members of the general public, albeit it will be limited to adult members of the general public for the gambling and betting related goods and services in issue.
40. Generally, the goods and services in issue will be purchased/engaged visually, with consumers considering visual advertising and websites. The selection process will, therefore, likely be predominantly a visual one. However, I note that there may also be verbal recommendations, and that the aural component of the selection process cannot therefore be ignored.
41. Given their broad nature, the cost and frequency of purchase of the goods and services in issue is likely to vary considerably. Some of the computer systems and software that would be purchased by business users may be relatively expensive and will be purchased as a one-time purchase, as will some of the entertainment/sporting and cultural activities services, depending on the scale of the event. However, by contrast, some of the software will be relatively inexpensive for members of the general public to purchase (such as betting mobile applications). Having said that, overall, I consider that a medium degree of attention will be paid by the general public when selecting both the goods and services. Business users are also likely to pay at least a medium degree of attention. However, the assessment of a possible likelihood of confusion must

ultimately be based on the actual perception of the average consumer with a lower degree of attention, which, in this case, is medium.¹³

Comparison of marks

42. 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 *Bimbo SA v OHIM*,¹⁴ 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.”

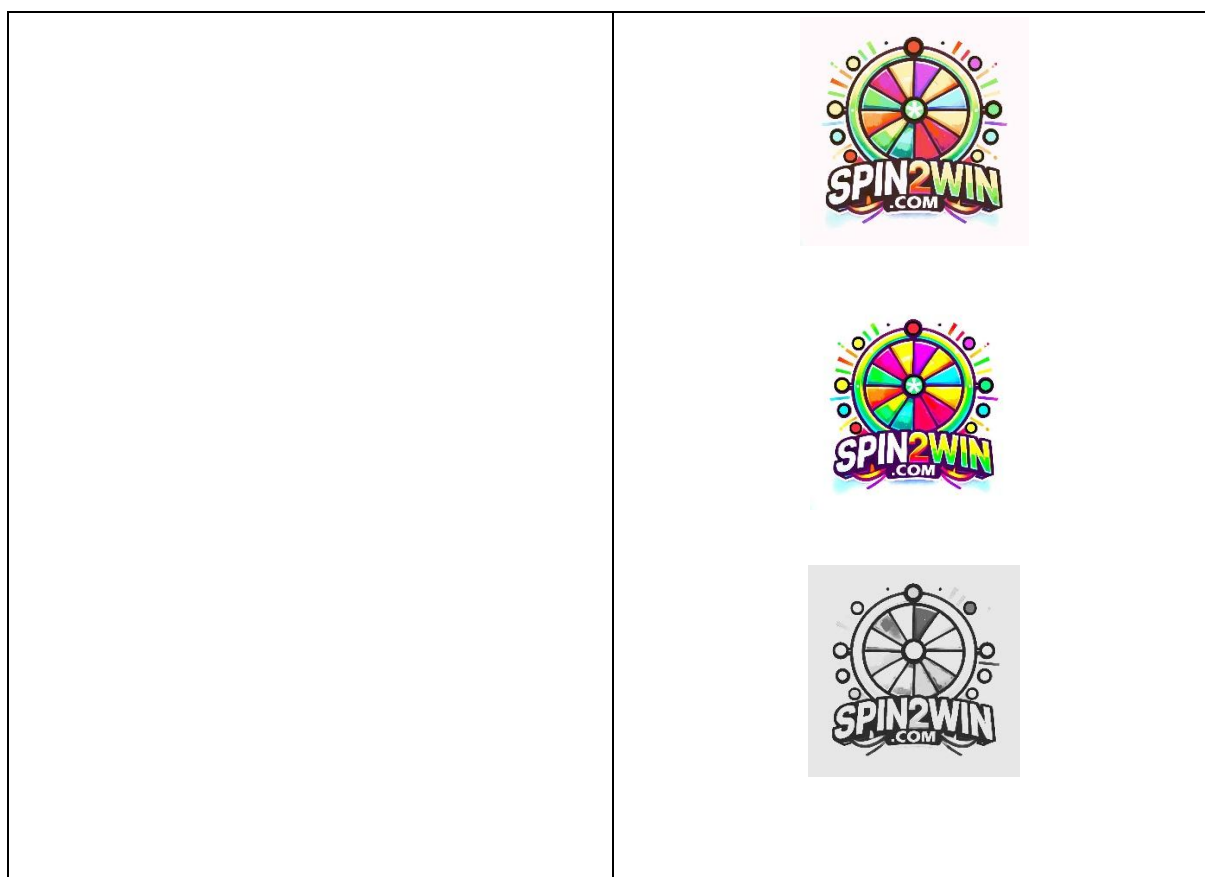
43. It would be wrong, therefore, to dissect the trade marks artificially, although it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created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

44. The respective trade marks are shown below:

Earlier mark	Contested Marks
Triple Spin To Win	

¹³ Case T-356/14, *CareAbout v OHIM - Florido Rodríguez (Kerashot)*, paragraph 25

¹⁴ Case C-591/12P



45. As discussed above, the opponent submits that the dominant and distinctive element of the earlier mark is “Spin To Win” and the dominant and distinctive element of all of the contested marks is “Spin2Win”. Consequently, the opponent submits that the marks in issue are highly visually similar, and aurally and conceptually identical.
46. By contrast the applicant submits that the earlier mark is not visually, phonetically or conceptually similar to the contested marks. Specifically, the applicant challenges the opponent’s submissions as to the dominant and distinctive elements of the marks in issue and submits that the opponent has “clearly sought to artificially dissect the mark it is relying on in order to strengthen its position”. The applicant further submits that the word “TRIPLE” plays a vital role in the [earlier] mark as a whole” and that “it is an accepted principle of trade mark law that consumers perceive the first parts of trade marks first”.

Overall Impression

47. The earlier mark is a word only mark comprising of the words “Triple Spin To Win”. There are no other elements to the mark, so the overall impression lies in the words themselves. Whilst I note the opponent’s submission that the word “Triple” in the earlier mark “merely qualifies the “Spin To Win” and does little more to inform the average consumer’s overall impression of the mark, I do not agree with this submission. It is my view that all of the words in the earlier mark hang together to create a unitary meaning. Consequently, it is my view that the overall impression resides in the combination of all of the words in the earlier mark, with no individual word playing a dominant role.
48. All of the contested marks comprise the word/number combination “SPIN2WIN” in an uppercase bold font. Immediately below “SPIN2WIN” in all of the contested marks is the domain suffix “.com” in a much smaller uppercase bold font. Above the word elements of the contested mark is, what appears to me to be, a device reminiscent of a spin wheel.
49. The first two contested marks are presented identically, with the spin wheel device presented in multicolours, the word “SPIN” and the “.COM” suffix presented in white, the “2” presented in a yellow and red ombre font, and the word “WIN” presented in a yellow and green ombre font. Save for the fact that the third contested mark is presented in black and white, it is stylised identically to the first two contested marks.
50. Given its size, and because I consider that this will simply be seen by the average consumer as a referenced to the applicant’s website, I consider the “.com” element will play a very limited role in the contested marks’ overall impression.
51. I consider the word/number combination “SPIN2WIN” will be read by the average consumer as “Spin to win”, as I agree with the opponent that it is commonplace in the English language for the word two to be replaced with the number “2” for abbreviation/stylisation purposes. Noting this, I consider the word/combination “SPIN2WIN” to be allusive for the applicant’s goods and services given that they

will all include goods and services relating to gaming or gambling. The “spin wheel” device is the largest element of each of the contested marks. However, this device simply reinforces the “SPIN2WIN” element of the contested marks and is also weakly distinctive for the applicant’s goods and services. Given the weakly distinctive nature of the “SPIN2WIN” element, I consider that the overall impression of all of the contested marks lies in a combination of the verbal, figurative and stylistic elements (namely the typeface used and, in respect of the first two marks, the colouring used).

Visual Comparison

52. Visually, all of the marks overlap in their use of the words “SPIN” and “WIN”. However, the earlier mark also contains the word “Triple” as its first word, which is not present in any of the contested marks. The earlier mark also contains the word “to” in between the words “Spin” and “Win”, whereas the contested marks contain the number “2”. The contested marks also contain the spin wheel device element and the “.com” suffix, and none of these elements are present in the earlier mark.
53. Further, the first two contested marks are also presented in multi-colour. Whilst the earlier mark is a word mark, and therefore its protection covers use of the registered word in any normal font. I do consider the colouring used in the first two contested marks to be too complex to be considered a “normal font”. The colour presentation of the first two contested marks also, therefore, amounts to a visual point of difference to that of the earlier mark.
54. Noting all of the above, as well as my finding in respect of the dominant element of the marks in issue, and that the beginnings of marks tend to have more visual impact and this is where one of the points of difference between the marks lies,¹⁵ I find the earlier mark and the first two contested marks to be visually similar to a low to medium degree, and the third contested mark to be visually similar to the earlier mark to a medium degree.

¹⁵ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

Aural Comparison

55. I consider that all elements of the earlier mark will be pronounced by the average consumer. However, I am of the view that the only element of the contested marks that is likely to be pronounced is the “SPIN2WIN” element. This is because the only other elements of the contested marks are the device element (which will not therefore be pronounced), and the word “.com”, which I have found will simply be viewed by the average consumer as a reference to the applicant’s website and, in my view, will not therefore be recalled out loud by the average consumer when the marks are pronounced.
56. As discussed above, the marks therefore overlap verbally in their use of the words “SPIN” and “WIN”. I note that the number “2” and the word “to” will be pronounced identically. The earlier mark will, therefore, be pronounced by the average consumer as “Triple Spin to Win” and the contested marks will all be pronounced as “Spin to Win”. Accordingly, the only verbal difference between the marks is the word “Triple” at the beginning of the earlier mark, which is not present in the contested marks.
57. Weighing up all of the above, whilst also noting that the beginnings of marks tend to have more aural impact and that this is where the point of aural difference between the marks lies,¹⁶ I find the marks to be aurally similar to a medium to high degree.

Conceptual Comparison

58. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU, including *Ruiz Picasso v OHIM*.¹⁷ The assessment must, therefore, be made from the point of view of the average consumer.

¹⁶ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

¹⁷ [2006] ECR I-643; [2006] E.T.M.R

59. As outlined above, the earlier mark contains the words “Triple Spin to Win”, which are all standard English dictionary words. In my view, this combination of words in the earlier mark will be understood by the average consumer as having three opportunities to spin something to win something.
60. The contested marks all contain the word/number combination “SPIN2WIN”. Having said that, for the reasons discussed in paragraph 51 above, I am of the view that the average consumer would read this element of the contested mark as “spin to win” and therefore understand it as needing to spin something to win something.
61. As discussed above, I am also of the view that the device element of the contested marks would be perceived by the average consumer as a spin wheel, and this element does not, therefore, particularly alter the meaning that the average consumer would already attribute to the contested marks from the contested marks’ “SPIN2WIN” element beyond contextualising that it will be a spin wheel that is to be spun to win.
62. Further, I consider the “.com” element of the contested marks would be perceived by the average consumer as a reference to the applicant’s website, and I do not consider that any of the presentational elements of the contested marks (i.e. the font and colouring), alter or provide any additional conceptual meaning.
63. Overall, I find the shared concept of spin to win will be considerable, but the addition of the word “Triple” in the earlier mark, and the spin wheel device and the domain prefix “.com” in the contested marks act as slight points of conceptual difference, as they have no counterpart in the other compared marks. Overall, I therefore consider the compared marks to be conceptually similar to a medium to high degree.

Distinctive character of the earlier trade mark

64. In *Lloyd Schuhfabrik Meyer* 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 C108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49)

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

65. Distinctiveness is a scale along which marks of various types sit. A mark which is allusive of the goods will have less distinctive character than one that is not; dictionary words will also be less distinctive than words which are entirely fanciful. However, all will turn on the particular facts. For example, there are “invented” words which are really just composites of two allusive words and only distinctive as a result, and dictionary words which are more or less common than others.
66. The words “Triple Spin to Win” are all ordinary dictionary words and, for the reasons outlined in paragraph 59 above, I consider that the meaning the average consumer will attribute to the combination of these words is to be given three opportunities to spin something to win something. Given that all of the opponent’s goods and services for which I have found similarity relate to gaming/gambling, I consider the words “Triple Spin to Win” to be allusive and therefore weakly distinctive.

67. That being said, I am required to attribute at least some distinctiveness to the earlier mark by virtue of it being registered.¹⁸ Accordingly, I find the earlier mark to be inherently distinctive to a low degree.
68. The distinctiveness of a mark may also be enhanced as a result of it having been used in the market by the proprietor, or it may be reduced as a result of it being commonly used by third parties in the relevant market place.
69. As discussed above, both parties filed evidence relating to the use of the earlier mark or use of marks containing the words “spin”, “to” and “win” in the relevant market. Firstly, I will address the evidence filed by the applicant. As confirmed previously, it was asserted in the witness statement of Jason Kelly dated 26 January 2026 that the words “Triple”, “Spin”, “to” and “Win” alone (or in combination in part or whole with each other) are commonly used within the UK gambling industry.
70. In *Lifestyle Equities CV & Ors v Royal County of Berkshire Polo Club Ltd & Ors*,¹⁹ Arnold LJ stipulated that “experience shows that third party use of similar signs does tend to diminish the distinctiveness of a trade mark. In a crowded market it is harder for one mark to stand out”. However, it is not sufficient to just show that there are marks registered for goods in the relevant field, evidence of use of those marks in the relevant field is necessary.
71. In support of his assertion that the words “Triple”, “Spin”, “to” and “win” alone (or in any combination) are commonly used in the UK gambling industry, Jason Kelly filed 49 exhibits, albeit not all of them provide evidence relating to this assertion. Having reviewed all of the evidence filed by the applicant, I note that it includes screenshots of searches taken from the UKTM register. The first, at exhibit JK3, is a search against the words “spin to win” and shows that there are 3 active marks containing these words which are registered against goods in class 9, 28 and 41, one of which is the earlier mark.²⁰ The second, at exhibit JK20, is a

¹⁸ See section 72 of the Act.

¹⁹ [2024] EWCA Civ 814

²⁰ It is also noted that the results show that there are 2 other “DEAD” marks containing those words on the UKTM register. I do not therefore consider these to be relevant for the purpose of these proceedings.

screenshot from the UKTM register against any combination of the words “spin”, “to” and “win”. This search showed 10 marks registered utilising any combination of these words. However, 3 of those marks were not registered against any of the classes of goods and services in issue in these proceedings, and I do not therefore consider them to be relevant.²¹

72. I do not consider 7 marks registered containing the words “spin”, “to” or “win” in class 9,28 or 41 (i.e., in any of the class of goods and services in issue) to be a particularly significant number. However, as discussed above, even if it was, this evidence is not sufficient by itself in any event. The applicant would also need to evidence use of these marks in the relevant field, and it has not done so here.
73. It is noted that the applicant has also filed evidence of screenshots from google searches against the words “spin”, “to” and “win”, or in any combination, as well as screenshots from various companies’ webpages showing various games that appear to utilise the words “spin”, “to” and “win”. However, none of the screenshots provided are dated, and I am unable to determine whether these were being utilised in the UK at the date the opposition was brought, which I consider to be the relevant date for the purpose of determining whether the distinctiveness of these words in relation to relevant goods and services has been weakened as a result of their use. I do not therefore consider this evidence to be sufficient for the purpose of making such a determination.
74. Further, the applicant has also filed a list of domain names licenced by the UK Gambling Commission (UKGC) containing the words “spin”, “to” and “win”, or any combination of those words, and a list of businesses registered with the UKGC trading using the word “Spin” as part of their business name, trading name or domain name. However, this does not evidence whether those domain names were in use or whether those businesses were actively trading in the United Kingdom when the opposition was brought, which, as discussed above, I consider to be the relevant date for the purpose of determining whether the

²¹ It is noted that the applicant has also filed screenshots showing search results from the WIPO Global Brand Database. However, these are not specific to the United Kingdom, which is the relevant territory for these proceedings, and I do therefore consider these to be relevant.

distinctiveness of these words in relation to relevant goods and services has been weakened as a result of their use.

75. Overall, I do not consider the evidence filed by the applicant to be sufficient to evidence that the distinctive character of the words “triple”, “spin”, “to” or “win” together, or in any combination, has been weakened as a result of their common use in the relevant market. Having said that, in any event, I note that I have only found the earlier mark to have a low level of inherent distinctive character.
76. I will now, therefore, consider whether the earlier mark’s distinctive character has been enhanced as a result of its use in the market place. As discussed above, the opponent filed evidence in the form of a witness statement signed by Olivia Vanstone, in her capacity as a Chartered Trade Mark Attorney acting for the opponent. This witness evidence was filed alongside 10 exhibits, namely exhibits OV1 to OV10. This evidence can be summarised as follows:
- a. Exhibit OV1 contains screenshots from the opponent’s website. These screenshots confirm that the opponent has “almost 15,000 employees worldwide” and an “annual turnover in 2022 of over three billion euros”. However, these figures are not broken down to reflect the number of employees or annual turnover in the United Kingdom.
 - b. Exhibit OV2 contains a screenshot of the Merkur Group’s Wikipedia page which confirms the group company’s revenue for 2020 of €2.56 billion, and 13,846 employees in 2020.
 - c. Exhibit OV3, OV4 and OV5 contain undated screenshots for the websites of Blueprint Gaming Ltd, Merkur Gaming and Regal Amusement Machine Sales Ltd, which Olivia Vanstone confirms are subsidiaries of the opponent.
 - d. Exhibit OV6 contains a screenshot from the website of Blueprint Operations Limited, which Olivia Vanstone confirms is also a subsidiary of the opponent. These screenshots confirm that in early

2025 Blueprint Operations Limited sold over 40,000 machines in the UK. However, there is no evidence of the earlier mark being utilised on these screenshots.

- e. Exhibits OV7, OV8 and OV9 also contain undated screenshots from International Game Technology PLC's webpage, the Wikipedia page for International Game Technology PLC, and the website of Inspired Gaming (UK) Limited. However, it is my understanding that this evidence has not been filed to evidence use of the mark, rather these were filed to evidence that "its is very common in the gaming and casino industries for the same commercial entities to produce software and hardware goods, alongside products integrating the two". Accordingly, I do not consider these exhibits to be relevant to my consideration of whether there has been sufficient use of the earlier mark to enhance its distinctive character.

77. As a preliminary point, it should be noted that the relevant date for consideration of whether there has been enhanced distinctive character as a result of the use of a mark is also the date the opposition is brought (namely, 27 June 2025). The relevant territory for establishing use will also be the United Kingdom. Having fully considered the evidence filed by the opponent, I note that most of the evidence provided is either undated or, if there is any information within the evidence relating to the opponent's trading prior to the relevant date, this evidence is not specific to the United Kingdom. Overall, I do not consider the evidence filed by the opponent to be sufficient to establish that the earlier mark's distinctive character has been enhanced as a result of its use in the marketplace.

Likelihood Of Confusion

78. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, whilst 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 down to the responsible undertakings being the same or related.

79. 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 (see *Sabel*²²). The first is the interdependency principle i.e., a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa (see *Canon*²³). It is necessary for me to keep in mind the distinctive character of the earlier 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 he has retained in his mind.
80. I have found the parties' goods and services in issue to be identical or similar to between a low and high degree. I have also found the marks to be visually similar to either a low to medium degree,²⁴ or a medium degree,²⁵ and aurally and conceptually similar to between a medium and high degree, and that the earlier mark has a low level of inherent distinctive character.
81. I have identified that the average consumer of the goods and services in issue will be members of the general public or business consumers who will pay at least a medium degree of attention during the purchasing process, and that the purchasing process for all of the goods and services in issue would be primarily visual in nature, although I do not discount aural considerations.
82. Weighing up all of the above and notwithstanding the principle of imperfect recollection, I consider that there are sufficient differences between the marks to avoid them being mistakenly recalled as each other, particularly given that I have determined that at least a medium level of attention will be paid by the average consumer during the purchasing process. I appreciate that I found a higher level of aural and conceptual similarities between the marks (albeit, I have only found

²² C-251/95, para 22

²³ C-39/97, para 17

²⁴ In respect of the first two contested marks.

²⁵ In respect of the third contested mark.

them to be aurally and conceptually similar to between a medium and high degree). However, the purchase is mainly visual, and I am of the view that the stylisation of the contested marks (which is not present in the earlier mark, and which I have determined to be the dominant element of the contested marks) will enable the average consumer to differentiate between them. As the common words Spin2Win/Spin to Win are weakly distinctive, the presentational differences between the marks will take on greater significance for the average consumer than they otherwise might,²⁶ and the presentational/stylisation elements of the marks are entirely different. I also consider that the presence of the word “Triple” in the earlier mark (which is not present in the contested marks and is at the beginning of the earlier mark, where marks tend to have more visual impact) will prevent the marks from being mistakenly recalled as each other.

83. For the avoidance of doubt, I consider this to be the case even in respect of the goods and services which I have found to be identical. This is because I consider that the differences between the marks will offset the identity/similarity between the goods and services in issue in accordance with the interdependency principle.
84. In the light of the above, I do not consider there to be a likelihood of direct confusion.
85. Accordingly, I will go on now to consider whether the average consumer, having recognised that the marks are different, considers the common element of both marks (the “Spin2Win” or “Spin to Win” elements) and determines, through a mental process, that the marks are related and originate from the same, or an economically linked undertaking.
86. Indirect confusion was described in the following terms by Iain Purvis QC (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*:²⁷

²⁶ See the decision of Dr Brian Whitehead, sitting as the Appointed Person in *ECO CABLE*, BL O/0564/25

²⁷ BL O/375/10

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

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

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

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

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

87. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors*,²⁸ Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria*,²⁹ where he said at [16] that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Arnold LJ agreed, pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.
88. During the course of this decision, I have explained that the common element “Spin2Win”/“Spin to Win” makes the marks conceptually similar to a medium to high degree, but that the conceptual message conveyed is non-distinctive. Further, I have found that the earlier mark has only a low degree of inherent distinctive character. In *Face2FaceHR Partners Limited v Peninsula Business Services Limited*, O/0368/23, Emma Himsworth K.C., sitting as the Appointed Person, reviewed the case law in *Whyte and Mackay v Origin* [2015] EWHC 1271 (Ch) and *Nicoventures Holdings Limited v The London Vape Co Ltd* [2017] EHC 3303 (Ch), as well as guidance in the Common Communication on the Common Practice of Relative Grounds of Refusal - Likelihood of Confusion (impact of non-distinctive/weak components) dated 2 October 2014, which is referred to in the case law. Miss Himsworth summarised the correct approach when assessing the likelihood of confusion where the only common element between the marks in issue has no or low distinctiveness as follows, at paragraph 44:
- “(1) The distinctiveness of the mark as a whole must be assessed, taking into account that a minimum degree of distinctiveness must be acknowledged.
- (2) The distinctiveness of each of the components of both marks must be assessed with priority being given to the coinciding elements.

²⁸ [2021] EWCA Civ 1207

²⁹ O/219/16

(3) The focus of the assessment of the likelihood of confusion should be on the impact of the non-coinciding components on the overall impression of the mark.

(4) Account must be taken of the similarities/differences in the non-coinciding elements of the marks.

(5) A coincidence of an element with a low level of distinctiveness will not usually lead to a likelihood of confusion.

(6) There may be a finding of a likelihood of confusion if (a) the non-coinciding elements of the mark are of lower (or equally low) degree of distinctiveness or are of insignificant visual impact and the overall impression is similar; or (b) the overall impression of the marks is highly similar or identical.”

89. For the reason outlined above, I consider that the words “Spin2Win”/“Spin to Win” would be understood by the average consumer to hold meaning in relation to the goods and services in issue. Thus, it is far more likely that it will be seen as a coincidence that two entities incorporate these words in their marks: it is not so strikingly distinctive that consumers would assume that the contested marks are a variant of the earlier mark. I also 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.³⁰ The overall visual appearances of the marks in terms of the devices/stylisation are different. The differences between the marks are enough, in my view, for the consumer not to be confused, and for the average consumer to determine that the applicant is simply another undertaking using “Spin2Win” or “Spin to Win”, unrelated to the opponent. I do not therefore consider that there is a likelihood of indirect confusion.

³⁰ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

CONCLUSION

90. The opposition fails in its entirety and, subject to any successful appeal of my decision, the application may proceed to registration for all goods and services.

COSTS

91. As the applicant has been successful it is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Note 1/2023. In the circumstances, I award the applicant the sum of £1,000 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Preparing a Counterstatement and considering the Notice of Opposition:	£250
Preparing submissions-in-lieu of a hearing:	£350
Preparing evidence and considering the other side's evidence:	£400 ³¹
<u>Total:</u>	<u>£1,000</u>

92. I therefore order adp Merkur GmbH to pay Digital IP Holdings Limited the sum of £1,000. The above sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 30th day of August 2026

B Hartland

For the Registrar

³¹ Whilst it is noted that this is below the range stipulated in the scale published in TPN1/2023, for the reasons outlined in detail earlier in this decision, I did not consider that much of the evidence filed by the applicant to be necessary to these proceedings, and I have therefore made what I consider to be an appropriate costs deduction.

Annex 1

Class 9

Software; Coin-operated mechanisms; Computer and video game software; Games software, in particular for use with computer-aided platforms of all kinds, including entertainment electronics and games consoles; Games programs for computers; Video games (software); Computer games provided through a global computer network or supplied by means of multi-media electronic broadcast or through telecommunications or electronic transmission or via the Internet; Computer games, leisure and recreational software, video games and computer software, all being provided in the form of storage media; Operating programs for electric and electronic apparatus for games, entertainment and/or amusement purposes; automatic lottery machines; computer software for computer games on the Internet; Online games (software), in particular for online betting games, online prize games, online gambling games, online games of skill and online casino games; computer software in the form of an app for mobile devices and computers; Calculating apparatus in coin-operated machines and parts for the aforesaid goods; Electric, electronic, optical or automatic apparatus, for identifying data carriers, identity cards and credit cards, bank notes and coins; Computer software, in particular games for use in casinos and/or amusement arcades, arcade game machines and/or coin-operated apparatus with or without a cash payout function; Gaming software that generates or displays the outcomes of bets made on gaming machines; Software for operating computer games; Computer software for games administration (games compilation); Video game collections.

Class 28

Games; Toys; Gaming apparatus (including coin-operated apparatus); Coin-operated arcade games (machines); Arcade games (included in class 28); Coin-operated arcade video game machines; Video games adapted for use with external screens or monitors only; Casino fittings, namely roulette tables, roulette wheels; Coin-operated automatic gaming machines and gaming machines, in particular for gaming arcades, with or without a prize payout; Electronic or electrotechnical gaming apparatus, automatic gaming machines, gaming machines, slot machines operated by coins, tokens, banknotes, tickets or by means of electronic, magnetic or biometric storage media, in particular for commercial use in casinos and amusement arcades, with or

without a prize payout; Automatic gaming machines and gaming machines, in particular for commercial use in casinos and gaming arcades, with or without a prize payout; Coin-operated and/or electronic slot machines (gaming machines) and gaming machines for gambling, with or without a payout function; Housings adapted for gaming machines, gaming apparatus and automatic gaming machines, operated by means of coins, tokens, tickets or by means of electronic, magnetic or biometric storage media, in particular for commercial use in casinos and gaming arcades, with or without a prize payout; Electronic games; Electronic game entertainment apparatus and accessories; Arcade video game machines; Drawing apparatus for prize games and lotteries, draws or raffles; Housings of metal, plastic and/or wood for coin-operated automatic machines; Apparatus for games (including video games), other than adapted for use with external screens or monitors only; Electro-pneumatic and electric draw machines (games machines); Gaming tables, in particular for table football, billiards, sliding games; Flying discs (toys) and darts; Electric, electronic or electromechanical apparatus for bingo games, lotteries or video lottery games and for betting offices, networked or unnetworked; LCD games consoles; Automated gaming machines; Including all the aforesaid automatic machines, machines and apparatus operating in networks; Apparatus and devices for accepting and storing money, being fittings for the aforesaid automatic machines, included in class 28; gaming machines, namely devices which accept a wager.

Annex 2

Earlier Mark	Contested Marks
Class 9 Software; Coin-operated mechanisms; Computer and video game software; Games software, in particular for use with computer-aided platforms of all kinds, including entertainment electronics and games consoles; Games programs for computers; Video games (software); Computer games provided through a global computer network or supplied by means of multi-media electronic broadcast or through telecommunications or electronic transmission or via the Internet; Computer games, leisure and recreational software, video games and computer software, all being provided in the form of storage media; Operating programs for electric and electronic apparatus for games, entertainment and/or amusement purposes; automatic lottery machines; computer software for computer games on the Internet; Online games (software), in particular for online betting games, online prize games, online gambling games, online games of skill and online casino games; computer software in the form of an app for mobile devices and computers; Calculating apparatus in coin-operated machines	Class 9 Computer programs and computer software, including software downloadable from the Internet; mobile applications for cell phones, tablets and other handheld devices; interactive computer systems, all relating to or featuring gambling or betting, amusement and entertainment services, games, card games, bingo games, casino games and sports betting. Class 41 Entertainment; sporting and cultural activities; online gaming, gambling and betting services; gambling and gaming services for the operation of computerised bingo, online bingo networks, virtual slot machines and other instant win games; sports betting and raffles and online sports-book services; providing casino games including roulette games, slot machines, bingo games, blackjack, keno, baccarat, scratch cards, poker games and sports betting; providing a poker game that may be accessed network-wide by network users; providing multi-player card games that may be accessed network-wide by network users; organisation, production

and parts for the aforesaid goods; Electric, electronic, optical or automatic apparatus, for identifying data carriers, identity cards and credit cards, bank notes and coins; Computer software, in particular games for use in casinos and/or amusement arcades, arcade game machines and/or coin-operated apparatus with or without a cash payout function; Gaming software that generates or displays the outcomes of bets made on gaming machines; Software for operating computer games; Computer software for games administration (games compilation); Video game collections.

Class 28

Games; Toys; Gaming apparatus (including coin-operated apparatus); Coin-operated arcade games (machines); Arcade games (included in class 28); Coin-operated arcade video game machines; Video games adapted for use with external screens or monitors only; Casino fittings, namely roulette tables, roulette wheels; Coin-operated automatic gaming machines and gaming machines, in particular for gaming arcades, with or without a prize payout; Electronic or electrotechnical gaming apparatus, automatic gaming machines, gaming machines, slot machines

and presentation of tournaments, competitions, games and events; entertainment and interactive entertainment services; organisation of entertainment, amusement, competitions, gaming, gambling, betting, card games, sports betting and raffles; including the provision of all the aforesaid services by means of various technological platforms, including without limitation by telephony, mobile or handheld devices or provided online from a computer database or via the internet; assistance and advisory services and provision of information relating to all the aforesaid services.

operated by coins, tokens, banknotes, tickets or by means of electronic, magnetic or biometric storage media, in particular for commercial use in casinos and amusement arcades, with or without a prize payout; Automatic gaming machines and gaming machines, in particular for commercial use in casinos and gaming arcades, with or without a prize payout; Coin-operated and/or electronic slot machines (gaming machines) and gaming machines for gambling, with or without a payout function; Housings adapted for gaming machines, gaming apparatus and automatic gaming machines, operated by means of coins, tokens, tickets or by means of electronic, magnetic or biometric storage media, in particular for commercial use in casinos and gaming arcades, with or without a prize payout; Electronic games; Electronic game entertainment apparatus and accessories; Arcade video game machines; Drawing apparatus for prize games and lotteries, draws or raffles; Housings of metal, plastic and/or wood for coin-operated automatic machines; Apparatus for games (including video games), other than adapted for use with external screens or monitors only; Electro-pneumatic and electric draw machines (games machines); Gaming	
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tables, in particular for table football, billiards, sliding games; Flying discs (toys) and darts; Electric, electronic or electromechanical apparatus for bingo games, lotteries or video lottery games and for betting offices, networked or unnetworked; LCD games consoles; Automated gaming machines; Including all the aforesaid automatic machines, machines and apparatus operating in networks; Apparatus and devices for accepting and storing money, being fittings for the aforesaid automatic machines, included in class 28; gaming machines, namely devices which accept a wager.	
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