

BL O/0799/26

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF UK APPLICATION NO. 3891494

IN THE NAME OF ChainGPT LLC

IN RESPECT OF THE FOLLOWING TRADE MARK

ChainGPT

IN CLASSES 9 AND 42

AND

OPPOSITION THERETO UNDER NUMBER 441737

BY OpenAI OpCo, LLC

AND

IN THE MATTER OF UK REGISTRATION NOS. 3878459 AND WO0001719941

IN THE NAME OF OpenAI OpCo, LLC

IN RESPECT OF THE FOLLOWING TRADE MARKS

GPT AND CHATGPT

IN CLASSES 9 AND 42

AND

APPLICATIONS FOR INVALIDATION THERETO UNDER NUMBERS 507587 AND

507588

BY ChainGPT LLC

Background and pleadings

1. ChainGPT LLC (“Party B”) applied to register the trade mark “ChainGPT” in the UK on 21 March 2023. It was accepted and published in the Trade Marks Journal on 31 March 2023 in respect of the following goods and services:

Class 9: *Computer software, recorded; Computer software applications, downloadable; Computer software platforms, recorded or downloadable; Downloadable computer software for managing crypto asset transactions using blockchain technology; Artificial intelligence and machine learning software; Software for the integration of artificial intelligence and machine learning in the field of Big Data; Artificial intelligence software for analysis; Computer chatbot software for simulating conversations.*

Class 42: *Research in the field of artificial intelligence technology; Software as a service [SaaS] featuring computer software platforms for artificial intelligence; Software as a service [SaaS] featuring software for machine learning; Platforms for artificial intelligence as software as a service [SaaS]; Development of computer platforms; Information technology [IT] support services [troubleshooting of software].*

2. OpenAI OpCo, LLC (“Party A”) opposes the trade mark on the basis of Sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). The section 5(2)(b) and section 5(3) grounds are on the basis of the following four earlier marks:

(i) 3878459

GPT

Filing date: 15 February 2023

Priority date: 27 December 2022

Registration date: 19 May 2023

(ii) 3888938

GPT-4

Filing date: 14 March 2023

Priority date: 1 February 2023

Registration date: 9 June 2023

These two marks are registered in respect of the following identical list of goods and services:

Class 9: *Downloadable computer programs and downloadable computer software for using language models; downloadable computer programs and downloadable computer software for the artificial production of human speech and text; downloadable computer programs and downloadable computer software for natural language processing, generation, understanding and analysis; downloadable computer programs and downloadable computer software for machine-learning based language and speech processing software; downloadable computer programs and downloadable computer software for the translation of text or speech from one language to another; downloadable computer programs and downloadable computer software for sharing datasets for the purpose of machine learning, predictive analytics, and building language models; downloadable computer programs and downloadable computer software for conversion of audio data files into text; downloadable computer programs and downloadable computer software for voice and speech recognition; downloadable computer programs and downloadable computer software for creating and generating text; downloadable computer programs and downloadable computer software for developing, running and analyzing algorithms that are able to learn to analyze, classify, and take actions in response to exposure to data; downloadable computer programs and downloadable computer software for developing and implementing artificial neural networks.*

Class 42: *Software as a service (SaaS) services, namely, providing online non-downloadable software for using language models; providing online non-downloadable software for the artificial production of human speech and text; providing online non-downloadable software for natural language processing, generation, understanding and analysis; providing online non-downloadable software for machine-learning based language and speech processing software; providing online non-downloadable software for the translation text or speech from one language to another; providing online non-downloadable software for sharing datasets for the purpose of machine learning, predictive analytics, and building language models; providing online non-downloadable software for conversion of audio data files into text; providing online non-downloadable software for software for voice and speech recognition; providing online non-downloadable software for creating and generating text; providing online non-downloadable software for developing, running and analyzing algorithms that are able to learn to analyze, classify, and take actions in response to exposure to data; providing online non-downloadable software for developing and implementing artificial neural networks; application service provider featuring application programming interface (API) software; research and development services in the field of artificial intelligence; research, design and development of computer programs and software.*

(iii) WO0000001719941

CHATGPT

Date of designation of the UK: 10 February 2023

Priority date: 27 December 2022

Date of protection in UK: 8 June 2023

Class 9: *Downloadable computer programs and downloadable computer software for the artificial production of human speech and text; downloadable computer programs and downloadable computer software for natural language processing, generation, understanding and analysis; downloadable computer programs and downloadable computer software for machine-learning based language and speech processing software; downloadable computer chatbot software for simulating conversations; downloadable computer programs and downloadable computer software for creating and generating text.*

Class 42: *Providing online non-downloadable software for the artificial production of human speech and text; providing online non-downloadable software for natural language processing, generation, understanding and analysis; providing online non-downloadable software for machine-learning based language and speech processing software; providing online non-downloadable chatbot software for simulating conversations; providing online non-downloadable software for creating and generating text; research and development services in the field of artificial intelligence; research, design and development of computer programs and software.*

(iv) WO0000001585550

GPT-3

Date of designation of the UK: 31 January 2021

Priority date: 4 August 2020

Date of protection in UK: 11 November 2021

Class 42: *Software as a service (SaaS) services, namely, providing online non-downloadable software for using language models; providing online non-downloadable software for the artificial production of human speech; providing online non-downloadable software for natural language processing; providing online non-downloadable software for machine-learning based language and speech processing software; providing online non-downloadable software for the translation text or speech from one language to another; providing online non-downloadable software for sharing datasets for the purpose of machine learning, predictive analytics, and building language models;*

providing online non-downloadable software for conversion of audio data files into text; providing online non-downloadable software for software for voice and speech recognition.

3. In respect of the section 5(2)(b) ground, Party A asserts that the respective marks are similar, that the respective goods and services are identical or similar and that this will result in a likelihood of confusion.

4. In respect of the section 5(3) ground, Party A submits that it enjoys a reputation throughout the UK in respect of all its goods and services and that, if Party B's mark was allowed to proceed to registration, use of the mark would, without due cause, take unfair advantage or, or be detrimental to, the distinctive character and/or the repute of the earlier marks. It claims that, for example, use of Party B's mark would take unfair advantage of its reputation as it would have the benefit of Party A's reputation without making the significant investment made by Party A.

5. Additionally, or in the alternative, Party A also claims that:

- Detriment to the repute of its mark is likely to result from the use of Party B's mark because the goods and services must adhere to strict consumer protection regulations but will not have been subject to Party A's quality control;
- Detriment to the distinctive character of Party A's mark is likely to result in a change to the economic behaviour of the average consumer. It provides the example of use of Party B's mark affecting the ability of Party A's mark to identify the source of Party A's goods and services.

6. In respect of the ground based upon section 5(4)(a), Party A claims that use of Party B's mark would be liable to be prevented by virtue of the law of passing off. It claims that, as of the relevant date of 21 March 2023, it enjoyed goodwill in three signs all claimed to be used throughout the UK since first use in September 2020. The first of these signs is CHATGPT with claimed use in respect of the following list of goods and services:

Downloadable computer programs and downloadable computer software for using language models; downloadable computer programs and downloadable computer software for the artificial production of human speech and text; downloadable computer programs and downloadable computer software for natural language processing, generation, understanding and analysis; downloadable computer programs and downloadable computer software for machine-learning based language and speech processing software; downloadable computer programs and downloadable computer software for the translation of text or speech from one language to another; downloadable computer programs and downloadable computer software for sharing datasets for the purpose of machine learning, predictive analytics, and building language models; downloadable computer programs and downloadable computer software for conversion of audio data files into text; downloadable computer programs and downloadable computer software for voice and speech recognition; downloadable computer programs and downloadable computer software for creating and generating text; downloadable computer programs and downloadable computer software for developing, running and analyzing algorithms that are able to learn to analyze, classify, and take actions in response to exposure to data; downloadable computer programs and downloadable computer software for developing and implementing artificial neural networks.

Software as a service (SaaS) services, namely, providing online non-downloadable software for using language models; providing online non-downloadable software for the artificial production of human speech and text; providing online non-downloadable software for natural language processing, generation, understanding and analysis; providing online non-downloadable software for machine-learning based language and speech processing software; providing online non-downloadable software for the translation text or speech from one language to another; providing online non-downloadable software for sharing datasets for the purpose of machine learning, predictive analytics, and building language models; providing online non-downloadable software for conversion of audio data files into text; providing online non-downloadable software for software for voice and speech recognition; providing online non-downloadable software for creating and generating text; providing online non-downloadable software for developing, running and analyzing algorithms that are able to learn to analyze, classify, and take actions in response to exposure to data; providing online non-downloadable software for developing and implementing artificial neural networks; application service provider featuring application programming interface (API) software; research and development services in the field of artificial intelligence; research, design and development of computer programs and software.

7. The second and third signs are GPT and GPT-3 and use is claimed in respect of the following identical list of goods and services:

Software; computer software; downloadable software; downloadable computer programs and downloadable computer software for the artificial production of human speech and text; downloadable computer programs and downloadable computer software for natural language processing, generation, understanding and analysis; downloadable computer programs and downloadable computer software for machine-learning based language and speech processing software; artificial intelligence software.

Software as a service (SaaS) services; Software as a service (SaaS) services, namely, providing online non-downloadable software for using language models; providing online non-downloadable software for the artificial production of human speech and text; providing online non-downloadable software for natural language processing, generation, understanding and analysis; research and development services in the field of artificial intelligence; research, design and development of computer programs and software; artificial intelligence consultancy; Research and development in the field of computer programs and software.

8. Party A submits that use of Party B's mark would result in misrepresentation and damage because the high level of similarity between the respective mark and signs will lead consumers to assume that the goods and services originate from or are connected to Party A when that is not the case.

9. Party B filed a counterstatement denying the claims made and expresses the view that the parties are not in competition with each other. It submits that consumers will have a higher degree of care and attention during the purchasing process because the parties' goods and services are technical in nature. It also asserts that "GPT" should not be considered as a distinctive sign in relation to the respective goods and services because it will be understood as meaning "Generative Pre-trained Transformers" being a type of language model and framework for generative artificial intelligence. In respect to this point, it urges consideration of EU and US decisions that support its arguments.

10. Party B also relies on the differences between the respective marks and the claim that Party A's specifications are more general in nature than its own, more specific terms that it lists in its list of goods and services.

11. Party B subsequently filed applications to invalidate Party A's "GPT" UK trade mark (no. 3878459) and "CHATGPT" International trade mark (no. WO0000001719941) based on grounds under section 3(1)(b) and section 3(1)(c) of the Act. It claims that "GPT" immediately informs the relevant public that the goods and services are based on some type of generative pre-trained transformer. It claims that the relevant public understands the term "GPT" as a meaningful descriptive abbreviation for "generative pre-trained transformer." As a result, it claims that both marks should be invalidated under section 3(1)(b) and section 3(1)(c) because the marks are non-distinctive and designate a characteristic of the goods and services.

12. Party A filed counterstatements denying the claims. It draws attention to the priority date of 27 December 2022 as being the correct date for assessing descriptiveness and distinctiveness in both applications for invalidation. Further, or in the alternative, it submits that its marks have acquired distinctive character in the UK because of the use made of the marks.

13. The proceedings were subsequently consolidated.

14. The parties both filed evidence and written submissions. They also filed further written submissions in lieu of a hearing. I will refer to the evidence to the extent that I consider it necessary and I will keep the written submissions in mind. As no hearing was requested, I make the decision following a careful consideration of the papers.

15. Party A are represented by Trama Legal s.r.o. and Party B are represented by Morgan, Lewis & Bockius UK LLP.

16. 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.

Evidence

17. Party B's evidence takes the form of the two witness statements of Adrianna Magdalena Zatonska, an independent contractor at Trama Legal s.r.o. The first of these witness statements, dated 10 December 2024, is accompanied by Exhibits AMZ1 – AMZ9 and the second, dated 4 April 2025, is accompanied by Exhibits AMZ1 – AMZ4. The purpose of both witness statements is solely to introduce the exhibits and they do not include narrative evidence.

18. Party A's evidence consists of the following:

- (i) First witness statement of Gideon Myles, Associate General Counsel, Patents and Trademarks for Party A, dated 16 February 2024 and accompanied by Exhibits GM1 – GM21. The purpose of this witness statement is to attempt to show regular and substantial use of Party A's GPT mark since June 2020 and its GPT-3 mark since November 2022 and the claimed resultant reputation of these marks and also the mark CHATGPT as of the relevant date of 21 March 2023.

(ii) Second witness statement of Gideon Myles, dated 24 January 2025 and accompanied by Exhibits GM1 – GM18. It is provided in support of invalidation no. 507587 and the stated purpose of this evidence is the same as for his first witness statement.

(iii) Third witness statement of Gideon Myles, dated 24 January 2025 and accompanied by Exhibits GM1 – GM18. It is provided in support of invalidation no. 507588 and is identical in all material aspects to his second witness statement.

(iv) Witness statement, dated 4 March 2025, of Alberto Gruber Behal, a provider of professional translation services, based in Spain. He has been contracted by TransPerfect Translations International Inc. and provides an English translation of a document originally in Spanish. The original Spanish version is provided at Exhibit AGB1 and the English translation at Exhibit AGB2.

(v) Witness statement, dated 4 March 2025 of Claire Gordon-Bouvier, who is also a translator contracted by TransPerfect Translations International Inc., and provides an original German language document (at Exhibit CGB1) and an English language translation of the document (at Exhibit CGB2)

(vi) Fourth witness statement of Gideon Myles, dated 4 April 2025, introduces further exhibits GM1 – GM3 regarding use in other jurisdictions and evidence illustrating that A.I. companies do not use names that contain “GPT.”

PARTY B’S INVALIDATIONS

19. As Party B’s applications for invalidation have the potential to impact upon the scope of two of Party A’s earlier marks in its opposition, I will consider these first.

20. Section 3(1) reads:

“3.— Absolute grounds for refusal of registration

1. The following shall not be registered—

a. ...

- b. trade marks which are devoid of any distinctive character.
- c. trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services,
- d. ...

Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.”.

21. Section 3 is relevant in invalidation proceedings by virtue of the following parts of section 47:

“47. (1) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 3 or any of the provisions referred to in that section (absolute grounds for refusal of registration). Where the trade mark was registered in breach of subsection (1)(b), (c) or (d) of that section, it shall not be declared invalid if, in consequence of the use which has been made of it, it has after registration acquired a distinctive character in relation to the goods or services for which it is registered.

[...]

(5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

[...]

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made.

Provided that this shall not affect transactions past and closed.”

22. In *SAT.1 SatellitenFernsehen GmbH v OHIM*, Case C-329/02 P, the Court of Justice of the European Union stated that:

“25. Thirdly, it is important to observe that each of the grounds for refusal to register listed in Article 7(1) of the regulation is independent of the others and requires separate examination. Moreover, it is appropriate to interpret those grounds for refusal in the light of the general interest which underlies each of them. The general interest to be taken into consideration when examining each of those grounds for refusal may or even must reflect different considerations according to the ground for refusal in question (Joined Cases C-456/01 P and C-457/01 P *Henkel v OHIM* [2004] ECR I-0000, paragraphs 45 and 46).”

23. Party B’s case is based upon a claim that Party A’s marks are descriptive (i.e. because the abbreviation “GPT” will be understood as meaning “generative pre-trained transformer” and “CHAT” is descriptive based upon its ordinary dictionary meaning. It asserts that, consequently, they are both descriptive and non-distinctive. There is no other pleaded case regarding, or independent reason why, the marks should be invalidated under section 3(1)(b). Therefore, only if the section 3(1)(c) ground is made out will Party B succeed under section 3(1)(b). Consequently, I will begin by considering Party A case under section 3(1)(c). Any success for Party A under section 3(1)(b) will be the same as the level of success under section 3(1)(c).

Section 3(1)(c)

24. The case law under section 3(1)(c) (corresponding to article 7(1)(c) of the EUTM Regulation, formerly article 7(1)(c) of the CTM Regulation) was set out by Arnold J. (as he then was) in *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2012] EWHC 3074 (Ch) as follows:

“91. The principles to be applied under art.7(1)(c) of the CTM Regulation were conveniently summarised by the CJEU in *Agencja Wydawnicza Technopol sp. z o.o. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-51/10 P) [2011] E.T.M.R. 34 as follows:

“33. A sign which, in relation to the goods or services for which its registration as a mark is applied for, has descriptive character for the purposes of Article 7(1)(c) of Regulation No 40/94 is – save where Article 7(3) applies – devoid of any distinctive character as regards those goods or services (as regards Article 3 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1), see, by analogy, [2004] ECR I-1699, paragraph 19; as regards Article 7 of Regulation No 40/94, see *Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) v Wm Wrigley Jr Co* (C-191/01 P) [2004] 1 W.L.R. 1728 [2003] E.C.R. I-12447; [2004] E.T.M.R. 9; [2004] R.P.C. 18, paragraph 30, and the order in *Streamserve v OHIM* (C-150/02 P) [2004] E.C.R. I-1461, paragraph 24).

36. ... due account must be taken of the objective pursued by Article 7(1)(c) of Regulation No 40/94. Each of the grounds for refusal listed in Article 7(1) must be interpreted in the light of the general interest underlying it (see, inter alia, *Henkel KGaA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-456/01 P) [2004] E.C.R. I-5089; [2005] E.T.M.R. 44, paragraph 45, and *Lego Juris v OHIM* (C-48/09 P), paragraph 43).

37. The general interest underlying Article 7(1)(c) of Regulation No 40/94 is that of ensuring that descriptive signs relating to one or more characteristics of the goods or services in respect of which registration as a mark is sought may be freely used by all traders offering such goods or services (see, to that effect, *OHIM v Wrigley*, paragraph 31 and the case-law cited).

38. With a view to ensuring that that objective of free use is fully met, the Court has stated that, in order for OHIM to refuse to register a sign on the basis of Article 7(1)(c) of Regulation No 40/94, it is not necessary that the sign in question actually be in use at the time of the application for registration in a way that is descriptive. It is sufficient that the sign could be used for such purposes (*OHIM v Wrigley*, paragraph

32; *Campina Melkunie*, paragraph 38; and the order of 5 February 2010 in *Mergel and Others v OHIM* (C-80/09 P), paragraph 37).

39. By the same token, the Court has stated that the application of that ground for refusal does not depend on there being a real, current or serious need to leave a sign or indication free and that it is therefore of no relevance to know the number of competitors who have an interest, or who might have an interest, in using the sign in question (Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* [1999] ECR I-2779, paragraph 35, and Case C-363/99 *Koninklijke KPN Nederland* [2004] ECR I-1619, paragraph 38). It is, furthermore, irrelevant whether there are other, more usual, signs than that at issue for designating the same characteristics of the goods or services referred to in the application for registration (*Koninklijke KPN Nederland*, paragraph 57).

And

46. As was pointed out in paragraph 33 above, the descriptive signs referred to in Article 7(1)(c) of Regulation No 40/94 are also devoid of any distinctive character for the purposes of Article 7(1)(b) of that regulation. Conversely, a sign may be devoid of distinctive character for the purposes of Article 7(1)(b) for reasons other than the fact that it may be descriptive (see, with regard to the identical provision laid down in Article 3 of Directive 89/104, *Koninklijke KPN Nederland*, paragraph 86, and *Campina Melkunie*, paragraph 19).

47. There is therefore a measure of overlap between the scope of Article 7(1)(b) of Regulation No 40/94 and the scope of Article 7(1)(c) of that regulation (see, by analogy, *Koninklijke KPN Nederland*, paragraph 67), Article 7(1)(b) being distinguished from Article 7(1)(c) in that it covers all the circumstances in which a sign is not capable of distinguishing the goods or services of one undertaking from those of other undertakings.

48. In those circumstances, it is important for the correct application of Article 7(1) of Regulation No 40/94 to ensure that the ground for refusal set out in Article 7(1)(c) of that regulation duly continues to be applied only to the situations specifically covered by that ground for refusal.

49. The situations specifically covered by Article 7(1)(c) of Regulation No.40/94 are those in which the sign in respect of which registration as a mark is sought is capable of designating a 'characteristic' of the goods or services referred to in the application. By using, in Article 7(1)(c) of Regulation No 40/94, the terms 'the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service', the legislature made it clear, first, that the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service must all be regarded as characteristics of goods or services and, secondly, that that list is not exhaustive, since any other characteristics of goods or services may also be taken into account.

50. The fact that the legislature chose to use the word 'characteristic' highlights the fact that the signs referred to in Article 7(1)(c) of Regulation No 40/94 are merely those which serve to designate a property, easily recognisable by the relevant class of persons, of the goods or the services in respect of which registration is sought. As the Court has pointed out, a sign can be refused registration on the basis of Article 7(1)(c) of Regulation No 40/94 only if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of those characteristics (see, by analogy, as regards the identical provision laid down in Article 3 of Directive 89/104, *Windsurfing Chiemsee*, paragraph 31, and *Koninklijke KPN Nederland*, paragraph 56)."

92 In addition, a sign is caught by the exclusion from registration in art.7(1)(c) if at least one of its possible meanings designates a characteristic of the goods or services concerned: see *OHIM v Wrigley* [2003] E.C.R. I-12447 at [32]

and *Koninklijke KPN Nederland NV v Benelux-Merkenbureau* (C-363/99 [2004] E.C.R. I-1619; [2004] E.T.M.R. 57 at [97].”

25. In *Matratzen Concord AG v Hukla Germany SA*, Case C-421/04, the Court of Justice held that:

“24. In fact, to assess whether a national trade mark is devoid of distinctive character or is descriptive of the goods or services in respect of which its registration is sought, it is necessary to take into account the perception of the relevant parties, that is to say in trade and or amongst average consumers of the said goods or services, reasonably well-informed and reasonably observant and circumspect, in the territory in respect of which registration is applied for (see Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* [1999] ECR I-2779, paragraph 29; Case C-363/99 *Koninklijke KPN Nederland* [2004] ECR I-1619, paragraph 77; and Case C-218/01 *Henkel* [2004] ECR I-1725, paragraph 50).”

26. In *Exalation v OHIM*, Case T-85/08, the General Court confirmed that, at least where technical terms are concerned, it is appropriate to take account of meanings known to those in the trade. The court stated that:

“38. In paragraph 18 of the contested decision, the Board of Appeal stated that the applicant had not submitted any substantiated evidence to invalidate the examiner’s observations to the effect that the element ‘lycopin’ (lycopene) designated a carotenoid with antioxidant properties.

39 For the first time at the hearing, the applicant challenged the Board of Appeal’s assessment that the term ‘lycopin’ is descriptive. The Court observes that the applicant has not given any details to support its claims and there is thus no need to consider whether such an argument may be raised at this stage in the proceedings. In particular, the applicant has put forward no argument capable of calling into question the meaning attributed to the term ‘lycopin’ by the Board of Appeal. In those circumstances, the Court must find that the applicant has not succeeded in challenging the meaning attributed to the element ‘lycopin’ by the examiner and by the Board of Appeal.

40 First, that technical term designates a food supplement necessarily known by some of the relevant public, in particular professionals dealing with dietetic, pharmaceutical and veterinary preparations.

41 Secondly, the Board of Appeal established in the contested decision that the meaning of the term 'lycopin' was easily accessible to consumers of all the goods covered by the application for registration. The meaning of the term 'lycopin' does in fact appear in dictionaries and on web sites. It is probable therefore that the substance designated by that term is also known by some of the consumers of all the goods listed in paragraph 3 above.

42 Thirdly, consumers of pharmaceutical, veterinary, dietetic and sanitary preparations for medical use who are not aware of the meaning of the term 'lycopin' will often tend to seek advice from the informed section of the relevant public, namely doctors, pharmacists, dieticians and other traders in the goods concerned. Thus, by means of the advice received from those who prescribe it or through information from various media, the less well informed section of the relevant public is likely to become aware of the meaning of the term 'lycopin'.

43 The relevant public must therefore be regarded as being aware of the meaning of the term 'lycopin', or at least it is reasonable to envisage that the relevant public will become aware of it in the future (see paragraphs 25 and 26 above)."

27. I consider the following of Party B's evidence to be relevant to its claims under section 3 of the Act:

- The following definitions are provided:¹
 - The user authored wikipedia.org definition of "generative pre-trained transformer" is that it is "a type of large language model (LLM) and a prominent framework for generative artificial intelligence. It is an artificial neural network that is used in natural language processing of

¹ Ms Zatonska's first witness statement at [5] and Exhibit AMZ3

machines ... As of 2023, most LLMs had these characteristics and are sometimes referred to broadly as GPTs.” It goes on to acknowledge that the “first GPT was introduced in 2018 by OpenAI.”

- “GPT” is defined at <https://dictionary.cambridge.org/dictionary/english/gpt> as an abbreviation for “Generative Pretrained Transformer: a complex mathematical representation of text or other types of media that allows a computer to perform some tasks, such as interpreting and producing language, recognizing or creating images, and solving problems, in a way that seems similar to the way a human brain works.” The same page is also obtained from web.archive.org showing that, as at 22 January 2024, the same definition was listed.
- “Generative pre-trained transformer” defined at dictionary.com as “a type of machine learning algorithm that uses deep learning and a large database of training text in order to generate new text in response to a user’s prompt.” The same page is also obtained from web.archive.org showing that, as at 6 September 2023, the same definition was listed.
- “GPT” is defined at <https://dictionary.reverso.net> as an acronym for generative pretrained transformer referring to “AI that creates text using learned patterns.”
- “Chat” is defined at www.collinsdictionary.com as at 2 May 2021 (obtained from web.archive.org) as a verb meaning to “talk to each other in an informal and friendly way” and to “exchange short written messages on the internet or on their phones.” An extract from the same website, dated 2 May 2021, and obtained from web.archive.org also gives the following meanings:

chat

Word Frequency ●●●●●

in British English

(tʃæt )

NOUN

1. informal conversation or talk conducted in an easy familiar manner
2. the exchange of messages in an internet or other network chatroom
3. any Old World songbird of the subfamily *Turdinae* (thrushes, etc) having a harsh chattering cry See also stonechat, whinchat
4. any of various North American warblers, such as *Icteria virens* (**yellow-breasted chat**)
5. any of various Australian wrens (family *Muscicapidae*) of the genus *Ephthianura* and other genera

VERB

Word forms: chats, chatting or chatted

(*intransitive*)

6. to talk in an easy familiar way
7. to exchange messages in a chatroom

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- A further definition is provided² from the website www.acronymfinder.com where one of the three definitions for “GPT” is “Generative Pre-Trained Transformer (language processing)”. A further copy of the same page is shown, dated 19 January 2023 and obtained from web.archive.org;
- Extracts from twenty two scientific articles are provided.³ These articles all reference “generative pre-trained transformer”. The following articles were published around the time, or before the relevant date in these proceedings:

“Accurate Quantization for Generative Pre-trained Transformers” and the Abstract begins with the sentence “Generative Pre-trained Transformer models, known as GPT or OPT,” (published 1 February 2023)

“Bailando: 3D Dance Generation by Actor-Critic GPT With Choreographic Memory”. The abstract identifies “two powerful components”, one of which is “an actor-critic Generative Pre-trained Transformer (GPT) ...” (published in 2022)

² At Ms Zatonska's first witness statement at [7] and Exhibit AMZ5

³ At Exhibit AMZ6

“BioGPT: Generative Pre-trained Transformer for Biomedical Text Generation and Mining” (the original version of which was submitted for publication on 19 October 2022, but finally published on 3 April 2023)

“ProtGPT2 is a deep unsupervised language model for protein design”
(Published 27 July 2022)

“Generative Pre-Trained Transformer for Design Concept Generation: An Exploration”. In the introduction, the letters “GPT” are introduced as an acronym for “generative pre-trained transformer”. (Published 26 May 2022)

- In addition, there are five further articles exhibited that were published later in 2023 and all using “GPT” as an acronym for “generative pre-trained transformers;”
- The following landing page of the following media articles and web discussions are also provided:⁴
 - An article published on the Newsweek website (www.newsweek.com), on 9 June 2023, entitled “Harnessing the Power of GPT and AI: Transforming the Future of Business” and uses the acronym “GPT” as a general descriptor for generative pre-trained transformer technologies (but does identify Party A’s GPT-3 as an example);
 - An article published on 4 May 2023 on the website www.pcworld.com, entitled “Slack GPT will bring AI chatbots to your conversations;”
 - An article published on 16 February 2023 on the website www.medium.com entitled “What are Generative Pre-trained Transformers (GPTs)?”;

⁴ Ms Zatonska’s first witness statement at [9] and [10] and Exhibit AMZ7 and Exhibit AMZ8

- An article published on 30 November 2022 on the website www.analyticsindiamag.com entitled “Meet GPT – JT – The Open Source Alternative to GPT-3.”
- An article published on 20 July 2023 on the website www.fortune.com entitled “Apple added \$71 billion to its market value after news that its been secretly building an ‘Apple GPT’ to rival OpenAI”;
- A blog on the website of an organisation called “bmc” with a blog, dated 17 March 2023, that includes the following: “We are very excited about recent developments in GPT models ... We have been using a GPT model to explain ... as part of BMC HelixGPT ...”

28. I also note that “GPT” is described as “a natural language processing software model” in Party A’s evidence;⁵

Consideration of Party A’s GPT mark

29. The relevant date for considering the case against this mark is its priority date of 27 December 2022.

30. Party B submits that I should take note of the USPTO’s strong hesitation to register “GPT” in respect of Class 9 goods and Class 42 services and that it refused US application 97733259 because it was descriptive and potentially generic. The extract exhibited⁶ records that the USPTO stated that the evidence provided in that case “establishes that “GPT” is a widely used acronym which means “generative pre-trained transformers” and concluded that “...GPT will immediately convey to relevant consumers that applicant’s software goods and services feature A.I. based software that have the function of generating responses based on a set of pre-existing data it is trained with in advance, wherein the software transforms inputted information into

⁵ Mr Myles witness statement of 16 February 2024 (“WS1”) at [10] (and also at [10] in both his statements of 24 January 2025)

⁶ Ms Zatonska’s first witness statement at [11] and Exhibit AMZ9

conversational responses or transforms data into text, images, or other languages in response to a user questions or request.”

31. As Party B recognises, I am not bound by the findings of the USPTO. Party A also points out that that the decision remains subject to appeal.

32. Whilst Party A claims that it has used its mark “GPT” since June 2018,⁷ it has not disclosed what it stands for, or why the letters were chosen. It describes it merely as “a natural language processing software model.” It is stated that the original paper on Party A’s GPT large language model was written by an employee of Party A and other colleagues and published on its website on 11 June 2018.⁸ This paper is entitled “Improving Language Understanding by Generative Pre-Training.” Whilst the paper mentions a “transformer”, there is no mention of “GPT” or “Generative pre-training transformers.” Therefore, whilst this paper may be Party A’s the first on the concept, it falls short of demonstrating that it coined the phrase “Generative pre-trained transformers” or its acronym “GPT” at this time. Even if I am wrong on this point, and it was the first to coin the phrase and acronym, it appears to me that it, nevertheless is a description of a specific architecture used in providing A.I. goods and services and not an indicator of trade origin. Being first to develop a product does not make its description a trade mark that can be monopolised by the developer or anyone else. The term “Generative pre-trained transformers” and its acronym “GPT” are clearly used to designate A.I. products that creates text using learned patterns (to borrow one of the more succinct definitions identified by Party B).

33. With this in mind, I dismiss Party A’s claim that it was the first to use GPT as a brand and that consumers associate the GPT mark with it and no other undertaking, as not being persuasive. I keep in mind that descriptiveness must be assessed through the perception of all the relevant parties and that this includes those in the trade.⁹ Where technical terms are concerned, it is appropriate to take account of meanings known to those in the trade.¹⁰ The primary perception of “GPT” in the minds of the trade (i.e. I.T. specialists) is that of an acronym that refers to the descriptive term

⁷ Mr Myles’ second and third witness statements of 16 February 2024 (“WS2/WS3”) at [6]

⁸ WS1 at [19] and Exhibit GM6 and WS2/WS3 at [17] and Exhibit GM5

⁹ *Matratzen Concord* at [24]

¹⁰ *Exalation* at [38] – [43]

“Generative pre-trained transformer” as demonstrated by the scientific papers where “GPT” is used solely as a description. Insofar as the evidence from dictionaries and further scientific papers that post-dates the relevant date, they assist because they illustrate that “GPT” continued to be used as a descriptive term after the relevant date and lends further legitimacy to the evidence of descriptive use prior to the relevant date.

34. Party A also points to the mark being registered in numerous jurisdictions and provides translated copies of a Spanish decision and Swiss decision.¹¹

35. In respect of the Spanish Patents and Trade Mark Office decision, it relates to Party A’s challenge to the mark “ChatGPTree” in respect to identical or similar goods and services. A likelihood of confusion was found to both Party A’s ChatGPT mark and its GPT mark. However, it does not appear that the Spanish office had to deal with a claim that GPT was descriptive. Certainly, its decision makes no reference to this. I conclude that the decision does not assist me in my considerations of the claim under section 3(1)(c).

36. In respect of the Swiss Federal Institute of Intellectual Property decision that considered Party A’s opposition to the mark PRiVATEGPT, again relying on earlier marks ChatGPT and GPT. I note that the decision found (as I have) that the acronym GPT stands for “generative post-trained transformer” and the “significance of the acronym is likely to be prominent or known, at least for the specialist groups ... in connection with the disputed goods and services ...”. It went on to find that it can be assumed that the average consumers are not aware of the importance of GPT as the acronym for “generative post-trained transformer” and, after noting other meanings associated with the acronym “GPT”, concluded that the letters are without a clear meaning. This appears to be a departure from the EU derived authorities (*Matratzen* and *Exalation*) that states that it is permissible to assess distinctiveness of a technical term from the perspective of the trade. I have concluded differently, based on the evidence before me, and found that the specialist consumer (i.e. the trade) is a relevant consumer for the purposes of assessing whether a mark designates a

¹¹ See the witness statement of Mr Behal and Exhibits AGB1 and AGB2 and the witness statement of Ms Gordon-Bouvier and Exhibits CGB1 and CBG2

characteristic of goods and services. With this in mind, I have found that this group will understand the meaning of GPT.

37. Finally, Party A claims that the vast majority of developers of transformer-based large language models including Microsoft, Meta, Google, X and Anthropic do not use names that contain GPT for their transformer based large language models or to describe their models' technology.¹² I note this, but it is by no means decisive. The decision to not use the description may be made for commercial reasons rather than a belief that the term is not descriptive. I must consider the position taking account of what the evidence illustrates in respect of the meaning of "GPT".

38. Despite Party A's claims that GPT is not descriptive, I consider that the evidence provided by Party B demonstrates otherwise and that the acronym GPT and the term "Generative Pre-trained Transformer" are both terms used to describe the technology. This is evident from the scientific papers exhibited by Party B and the dictionary definitions (even if I ignore the user generated definition provided on Wikipedia)

39. Even if Party A are the first to develop technology using a generative pre-trained transformer and coin the term to describe it, this is not a persuasive defence. By analogy, the Supreme Court's comments in *McCain International v Country Fair Foods* [1981] RPC 69 are brought to mind. In that case a new product called "oven chips" was brought to market as "McCain Oven Chips". Subsequently, two further entities wished to market "oven chips" under the names "County Fair oven chips" and "Birds Eye oven chips" respectively. The term "oven chips" was found to be the apt term to describe what was then a new product to market and that the entity behind the original product and marketed as "McCain oven chips" was unable to prevent use of "Country Fair oven chips" and "Birds Eye oven chips" by virtue of its alleged claim over "oven chips". Although the case was decided in the context of passing off, there are parallels with the current case in that "Generative Pre-trained Transformer" and its acronym "GPT" also appear to be an apt description for a technology claimed to be first developed by Party A, albeit in a more specialist field. Any trader using the same A.I.

¹² Mr Myles' fourth witness statement and Exhibit GM03

technology should be free to refer to the description of that technology, therefore, there is a public interest in keeping the term and acronym free for other traders to use.

40. Taking into account all the evidence before me, I conclude that it demonstrates that at the relevant date of 27 December 2022, the acronym GPT was being used to refer to “generative pre-trained transformer.” A number of scientific papers relating to GPTs pre-date the relevant dates. It is not clear to me from this evidence that anyone other than specialists in the IT industry or academics in the field would understand and be familiar with this meaning, however, the trade is a relevant group of persons for assessing descriptiveness. I note that Party A states that its “CHATGPT chatbot software” primarily targets software developers but is a consumer facing service.¹³ I consider that IT specialists are likely to be involved in the purchase of A.I. products (such as those described as GPT) on behalf of commercial entities.

41. I keep in mind that in *Exalation*, the General Court confirmed that where technical terms are concerned, it is appropriate to take account of meanings known to those in the trade. In this case it appears that the trade (i.e. I.T. specialists) would, at of the relevant date, perceive the letters “GPT” as being a descriptive acronym referring to “generative pre-trained transformer”. The mark, therefore, designates a characteristic of Party A’s goods and services and should remain free to use for any trader who wishes to use the term to designate the same characteristic of its goods or services. Party A’s position is that the letters GPT are its brand. It appears clear to me that the evidence discussed is sufficient to support a successful section 3(1)(c) claim against all of Party A’s goods and services because they all appear to relate to A.I. systems and where a generative pre-trained transformer may be an integral part of such a system. Even if I am wrong that GPT had a descriptive meaning known to I.T. specialists at the relevant date, I consider that the English language scientific papers that pre-date the relevant date are sufficient to illustrate that it was foreseeable that GPT would become a descriptor that should be kept free for others to use and is sufficient to sustain the claim under section 3(1)(c).

42. As was pointed out in paragraph 33 of *Agencja Wydawnicza Technopol sp. z o.o. v OHIM*, a descriptive sign is also devoid of any distinctive character for the

¹³ WS1 at [11]

purposes of section 3(1)(b) of that regulation. Therefore, Party B also succeeds in respect of its section 3(1)(b) ground, against all of Party A's goods and services.

43. Finally, I comment briefly on Party A's claim that its use of GPT as a brand has resulted in it being a sign that has acquired distinctive character and that it is an indicator of origin for its goods and services. The Court of Justice of the European Union provided guidance in *Windsurfing Chiemsee*, Joined cases C-108 & C-109/97, about the correct approach with regard to the assessment of the acquisition of distinctive character through use. The guidance is as follows:

"51. In assessing the distinctive character of a mark in respect of which registration has been applied for, the following may also be taken into account: 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 class of persons who, because of the mark, identify goods as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations.

52. If, on the basis of those factors, the competent authority finds that the relevant class of persons, or at least a significant proportion thereof, identify goods as originating from a particular undertaking because of the trade mark, it must hold that the requirement for registering the mark laid down in Article 3(3) of the Directive is satisfied. However, the circumstances in which that requirement may be regarded as satisfied cannot be shown to exist solely by reference to general, abstract data such as predetermined percentages.

53. As regards the method to be used to assess the distinctive character of a mark in respect of which registration is applied for, Community law does not preclude the competent authority, where it has particular difficulty in that connection, from having recourse, under the conditions laid down by its own national law, to an opinion poll as guidance for its judgment (see, to that effect, Case C-210/96 *Gut Springenheide and Tusky* [1998] ECR I-4657, paragraph 37)."

44. It is clear from my previous comments, I consider that GPT is an acronym for the descriptive term “Generative pre-trained transformer”. In respect of goods and services where the letters GPT will be perceived as this descriptive acronym (i.e. all of Party A’s goods and services), there is a very high hurdle to demonstrate that, in the face of such a descriptive meaning, it has achieved a secondary meaning as a badge of origin. I consider the evidence does not demonstrate this. As I have already acknowledged, Party A may have been the first to develop a GPT, but it always appears to be used in conjunction with the goods and services, for which the acronym is descriptive. In such circumstances I cannot find that the letters will have anything more than a descriptive meaning in the minds of the trade (I.T. professionals), even in circumstances where they may believe that Party A were the first to develop a generative pre-trained transformer.

45. There is very little, if any, evidence of Party A’s use of the sign “GPT” alone. There is evidence of it using “GPT-3”, namely:

- The GPT-3 mark has been used throughout the UK since at least July 2020 (approximately 2 years and 5 months prior to the relevant date of 27 December 2022) in respect of service as a software and large language model software;¹⁴
- A free trial version of GPT-3 has been available to the public since June 2020, available at <http://platform.open.ai.com/playground>. It is now considered a legacy module and is no longer being updated, but users can still experiment with the model;¹⁵
- Pay-as-you-go subscribers of GPT-3 had access to more advanced level of software. Pricing plans made “the GPT-3 model” accessible for small, medium and large sized companies and paying users were upgraded to newer GPT models on 4 January 2024;¹⁶

¹⁴ WS1 at [26]

¹⁵ WS1 at [27]

¹⁶ WS1 at [28]

- A wide variety of UK based companies have used the GPT-3 software model. These companies include:
 - A startup called PolyAI, based in London, used GPT-3 to build and deploy voice assistants for automating customer services and dates back to September 2021;¹⁷
 - Futr AI, also based in London, used GPT-3 from 16 December 2022 to “supercharge” its chat platform;¹⁸
- Party A provides a number of press articles that discuss the capabilities of its GPT-3 product, namely, in The Guardian, The Times, Financial Times, New Scientist, PC Mag, Wired UK and The Telegraph.¹⁹ These articles are dated between September 2020 and December 2022. Party A states that this is just a selection “as there are a huge number in total.”²⁰
- Readership figures for these publications are provided.²¹ It is sufficient that I record these to be in the millions.
- GPT-3 was promoted through three blog posts on its website (dated in 2021 and 2022), videos on its YouTube channel (published in December 2022 and viewed over 191k times) and several academic papers on the GPT-3 language model have been published by the University of Cambridge.²²
- Party A has partnered with Microsoft, announced in July 2019, where it has offered GPT-3 and future models to Microsoft for use in its own products and services.²³

46. Firstly, this evidence relates to the sign “GPT-3” and not “GPT”. This is of relevance because I have found that GPT is an acronym that serves to designate a characteristic of the goods and services. The use shown is in respect of a different

¹⁷ WS1 at [29] and Exhibit GM10 being a post, dated 8 September 2021, on an unidentified website

¹⁸ WS1 at [29] and Exhibit GM11 being an announcement of commencing use of GPT-3 on the UK Tech News page of an unidentified website

¹⁹ WS1 at [30] and Exhibit GM12

²⁰ Ibid

²¹ At [31] of WS1

²² WS1 at [32], [33] and [34] and Exhibits GM14, GM15 and GM16

²³ WS1 at [35]

mark and my view is such use cannot be assumed to equate to illustrating that GPT alone has acquired distinctive character. Even if I am wrong, the use of the mark GPT-3 was over a relatively short time and there is an absence of evidence indicating how much was invested in developing the product and how intensive was the use (that could be illustrated by, for example, turnover relating to the product).

47. In summary, I find that Party A's GPT mark has not acquired distinctive character through use.

48. Party B has, therefore, been successful in respect of its application to invalidate Party A's GPT mark.

Consideration of Party A's CHATGPT mark

49. Firstly, I need to consider whether, at the relevant date of 27 December 2022, the inherent characteristics of Party A's WO0000001719941 CHATGPT mark are such as to not engage section 3(1)(c). I observe that the mark is likely to be split in the minds of consumers into the recognisable dictionary word CHAT and the acronym GPT. No other logical split is obvious. I have already found that GPT designates a characteristic of all of Party A's goods and services. In respect of the word "chat", it is a common word with well understood meanings (of an informal conversation) and to exchange messages in an Internet or other network chatroom. Party A refers to its goods and services as using a "chatbot". In this context, the "chat" will not be with a real person, but with a (ro)bot or similar online automated response provider. Clearly, one such response provider could be an A.I. system operating a generative pre-trained transformer. I keep this context in mind when considering Party B's claim, set out in its Form TM26(I), that the mark ...

"... immediately informs the relevant public, ... that the goods and services at issue use some type of machine learning algorithm that uses deep learning and a large database of training text in order to generate new text in response to a user's prompt for the purpose of a discussion that involves sending messages over the Internet. The relevant public understands the term 'GPT' as meaningful descriptive abbreviation for 'generative pre-trained transformer'. Addition of the descriptive term 'Chat' does not render [Party A's]

Trade Mark distinctive. The sign describes the kind and intended purpose of the [goods and services].”

50. Only marks that designate characteristics of the goods and services are debarred from registration under section 3(1)(c) of the Act. Marks that are simply allusive or suggestive may generally be vested with a lower level of distinctive character but are not debarred. In the current case, both the word CHAT and the acronym GPT designate characteristics of A.I. systems. The word “chat” is already in descriptive use in the IT industry and by users of the Internet with terms such as “chatbot” and “chatroom” (see the definition of “Chat” provided by Party B). I consider that this illustrates that the word “Chat” when used in the IT industry will be understood by specialists and general end-users of systems as a reference to the exchange of messages online. As illustrated by the existence of chatbots, it is clear that such chats are not limited to messages between real people but also between a person and an automated response system and the latter includes a response system where answers are generated by a generative pre-trained transformer. Consequently, the word CHAT and the acronym GPT, when used together, will be immediately understood in the trade as designating a generative pre-trained transformer that operates using an online chat facility i.e. a chat GPT.

51. Taking the above into account, I conclude that the mark CHATGPT is not endowed with inherent distinctive character.

52. I now turn to consider whether the mark has acquired a secondary meaning and distinctiveness as a trade mark because of the use made of it prior to the relevant date of 27 December 2022. The evidence must be sufficient to prove that the mark has acquired the necessary level of distinctiveness in order to be accepted for registration.

53. Party A launched its CHATGPT chatbot software on 30 November 2022.²⁴ This is a mere 28 days prior to the relevant date. It is stated that media outlets surmised that the CHATGPT chatbot was accessed by more than one million users within the five

²⁴ [11] of WS1 and also Mr Myles’ witness statements of 24 January 2025 (“WS2/WS3”)

days of its launch²⁵ and was used by tens of millions of users within the first month.²⁶ In December 2022, Party A's records show that 2,220,461 UK based visitors accessed its openai.com website. The CHATGPT chatbot is available through this website.²⁷

54. These figures are striking, but they do not, without more, establish that the mark had acquired distinctive character in the UK by the relevant date. No market share is provided, and there is no evidence from which I can assess the proportion of the relevant market in the UK, or of the relevant class of persons, reached by the use relied upon. Nor is there a breakdown showing the extent to which the UK visits were visits to the CHATGPT chatbot itself, as opposed to the openai.com website more generally, or whether those visits involved repeat users rather than a broader spread of UK consumers. In addition, there is no turnover or other equivalent commercial metric specifically attributed to the mark and to the goods and services relied upon, and no evidence showing that the mark had been repeatedly exposed to the relevant public across the full breadth of the specification.

55. Further, whilst the evidence indicates very rapid interest in the goods and service following launch, it does not demonstrate that, by 27 December 2022, a significant proportion of the relevant public perceived CHATGPT as denoting trade origin rather than describing a newly released chatbot employing GPT technology. There is no evidence of advertising expenditure directed to the UK, no evidence from trade or professional bodies, and no sufficiently detailed exhibits showing how the mark was presented to UK consumers during this short period. The goods and services are technical in nature and include goods and services directed at specialists, who are likely to be aware of the descriptive significance of GPT. In those circumstances, considering the use in the contest of the *Windsurfing Chiemsee* guidance, the evidence of intense but very short-lived use is insufficient to overcome the descriptive character of the mark CHATGPT and to establish that it had acquired distinctive character for any of the goods or services at issue by the relevant date.

²⁵ [12] of WS1, WS2/WS3 and Exhibits GM2 and GM3 of all three witness statements being a BBC article, dated 7 December 2022, on the launch of CHATGPT

²⁶ [12] of WS1, WS2/WS3

²⁷ [14] of WS1, WS2/WS3

56. In summary, I find that Party A's CHATGPT mark has not acquired distinctive character through use.

57. Again, and as was pointed out in paragraph 33 of *Agencja Wydawnicza Technopol sp. z o.o. v OHIM*, a descriptive sign is also devoid of any distinctive character for the purposes of section 3(1)(b) of that regulation. Therefore, Party B also succeeds in respect of its section 3(1)(b) ground, against all of Party A's goods and services.

58. Party B has, therefore, been successful in respect of its application to invalidate Party A's CHATGPT mark.

Summary

59. Party B has been successful in its applications to invalidate both of Party A's GPT mark and its CHATGPT mark.

PARTY A's OPPOSITION

60. As a consequence of my findings, Party A is unable to rely upon its GPT and CHATGPT marks as earlier marks in its opposition to Party B's mark. I will proceed by considering its opposition based only upon its earlier GPT-3 and GPT-4 marks.

Section 5(2)(b)

61. Section 5(2)(b) of the Act is 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”.

62. 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 Paris 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 marks

63. It is clear from *Sabel* that the average consumer normally perceives a trade 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 impression created by the marks, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union (“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.”

64. It would be wrong, therefore, to dissect the 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.

65. The respective marks are shown below:

Party A's marks	Party B's mark
GPT-3	ChainGPT
GPT-4	

66. Party B's mark consists of the word "Chain", conjoined with the letters "GPT". The overall impression of the mark lies in the combination of these elements.

67. The first of Party A's marks consists of the letters "GPT" a hyphen and the numeral "3". The second is identical in the first two respects, but the numeral element is different being "4". I do not consider the difference of numeral will bring about any material difference in the outcome. To the extent that the "GPT-4" mark may present a better case by virtue of having a broader list of goods and services will be considered, if necessary, later. Therefore, I will restrict my considerations to a comparison of Party B's "GPT-3" mark to Party B's mark. The letter combination "GPT" plays a greater role in the overall impression of Party A's mark compared to the hyphen and number that, in combination, are likely to be recognised as representing a product or edition number.

68. From a visual perspective, the respective marks coincide in the last three letters of Party B's mark are also the first three letters of Party A's mark. The word "Chain" at the beginning of Party B's mark and the hyphen and numeral "3" at the end of Party A's mark are points of difference. I find the respective marks to be visually similar to between a low and medium degree.

69. The word "Chain" in Party B's mark is likely to be given its ordinary English pronunciation and is a point of aural difference between the marks. As submitted by

Party A, the letters “GPT”, are likely to be pronounced individually “gee”, “pee” and “tee” and will be identical in both marks. The numeral “3” is a further point of aural difference, but I do not consider that the hyphen will be articulated. Taking all of this together, I find the respective marks to be aurally similar to between a low and medium degree.

70. Conceptually, consistent with my findings in Party B’s invalidation, I have found that the letters “GPT” is an acronym for “generative pre-trained transformer” and this is likely to be known by I.T. specialists. I consider that this group of consumers form a significant proportion of the average consumer because many commercial consumers will involve or use an I.T. specialist to assess and obtain the necessary permissions (such as licences) for that business to use such goods and services. Therefore, this is the point of conceptual similarity between the respective marks. The other elements of the respective marks are points of conceptual difference with “Chain” being a concept absent from Party A’s mark and the hyphen and numeral “3” that is likely to be perceived as representing a product or edition number, is absent in Party B’s mark. Taking all of this together, I find that there is some conceptual similarity between the respective marks but it is only low or slightly higher, but not as high as medium. I also keep in mind that I have found the common element in the respective marks is not distinctive.

Similarity of goods and services

71. In the judgment of the Court of Justice of the European Union in *Canon*, Case C-39/97, the court stated at paragraph 23 of its judgment that:

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

72. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 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.

73. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court stated that:

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

74. I will proceed on the basis that many of the respective terms self-evidently cover identical or highly similar goods and services.

The average consumer and the nature of the purchasing act

75. 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 or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

76. In *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25, 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 enabling 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.

77. The average consumer for the goods and services will include members of the general public and specialist users. The goods and services (as listed in the specifications) are likely to vary in price and frequency of purchase. However, factors such as functionality, ease of use and reliability will be taken into account for the goods and services. I find that the average consumer is likely to pay a medium degree of attention when purchasing the goods and services, although there may be a slightly higher level of attention where purchases are being made for the user's business, if there is a particularly high cost involved, and where the goods and services are targeted at specialist users.

78. The goods and services are likely to be selected online from a website and also possibly on physical media purchased from physical premises. Consequently, I consider that visual considerations will dominate the purchasing process, but I keep in mind that aural considerations may be relevant where the purchaser is engaged with retail assistants or where word-of-mouth recommendations are sought.

Distinctive character of the earlier mark

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

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C 108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, 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)."

80. Registered marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods/services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it.

81. I begin by considering the inherent distinctive character of Party A's mark. I have found that the letters "GPT" are an acronym for "generative pre-trained transformer." As such, it is possessed with no distinctive character in respect of Party A's list of goods and services. I have also found that the addition of the hyphen and the numeral "3" is likely to be perceived as representing a product or edition number. Under section 72 of the Act, registration of a mark is deemed to be prima facie evidence of validity of a mark. In the absence of a challenge to that validity, I must proceed on the basis that the mark has at least the minimum level of distinctive character for registration, however, I am unable to put the level any higher.

82. Party A claims that its mark has an enhanced level of distinctive character through use. This must be assessed as of the relevant date, namely the filing date of the contested mark, being 21 March 2023. A summary of the relevant evidence is provided at paragraph 45, above.

83. This evidence is of some assistance in indicating the existence of use of the mark GPT-3 and clearly shows that there was widespread interest in the technology being developed and labelled GPT-3. Use appears to have been over period of 2 years 8 months prior to the relevant date. However, there is no indication of the number of customers in the UK who have purchased, licenced or used the GPT-3 product, nor any turnover figures and promotional spend relating to the product. This limits the evidence's ability to illustrate how intensive and geographically widespread (the two examples provided are both London based) the use was. I accept that the evidence

does illustrate that the product known as GPT-3 generated a good level of press interest and that a good number of consumers both in the general public and in the trade would have encountered it at least in terms of press coverage. However, this is not use by Party A and does not contribute in any meaningful way to the mark acquiring any enhanced distinctive character through use made of the mark.

Likelihood of confusion

84. 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 them and the goods and services down to the responsible undertaking being the same or related. There is no scientific formula to apply in determining the likelihood of confusion, rather it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the goods and services may be offset by a greater degree of similarity between the marks, and vice versa. As I mentioned above, 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 act. In doing so, I must be alive to the fact that the average consumer rarely has an opportunity to make direct comparisons between marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

85. I have found that:

- a. the respective marks are visually and aurally similar to between a low and medium degree and conceptually similar to a low or slightly higher degree.
- b. the average consumer includes members of the general public and specialist users, who will pay a medium degree of attention during the purchasing process, or slightly higher than medium where purchases are made on behalf of a business, if high costs are involved or where the goods and services are targeted at specialist users.

c. the purchasing process is predominantly visual, although I do not discount an aural component.

d. Party A's mark has the minimum level of inherent distinctive character for registration and this has not been enhanced by any meaningful extent through the use made of it before the relevant date.

86. I have also proceeded on an assumption that many of the respective goods and services are highly similar or identical.

87. I recognise the similarities between the marks created by the common occurrence of the letters "GPT" and the identity or high similarity of the goods and services. I nevertheless do not consider that there is a likelihood of direct confusion. The common element "GPT" will be perceived by one substantial proportion of the relevant public (i.e. the I.T. specialist), as the descriptive acronym for "generative pre-trained transformer" and, consequently, in respect of these consumers, it is not an element which is likely to be relied upon as indicating trade origin. Further, in Party A's mark, the hyphen and numeral "3" is likely to be perceived as indicating a product or edition number, rather than as materially altering the descriptive significance of "GPT". By contrast, Party B's mark begins with the word "Chain", which is absent from Party A's mark and which gives the mark a different visual, aural and conceptual impression when considered as a whole. Even allowing for imperfect recollection and the fact that identical goods and services are involved, the differences between "GPT-3" and "ChainGPT" are sufficient to avoid this group of average consumer mistaking one mark for the other.

88. As I have recognised earlier in the decision ordinary non-specialist consumers who may also be customers of the parties goods and services are not likely to understand the letters "GPT" as being descriptive, however, taking account of the differences between the marks identified above, I conclude that the differences between the respective marks and their different structures are such that this group of average consumer will not confuse one mark with the other.

89. I conclude that there is no likelihood of direct confusion.

90. Turning now to a likelihood of indirect confusion. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis Q.C., 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).”

91. Applying this guidance, I do not consider that there is a likelihood of indirect confusion. I have found that the common element between the marks i.e. “GPT” will be perceived by a substantial proportion of the relevant public (IT specialists), as a descriptive acronym for “generative pre-trained transformer” and it is, therefore, not sufficiently distinctive that the average consumer would assume that no one else other than Party A would use it as a trade mark. Further, it is not a case where Party B’s mark simply adds a non-distinctive element to Party A’s mark in a manner consistent with a sub-brand or brand extension. “ChainGPT” does not reproduce “GPT-3” and add a commonplace qualifier; rather, it omits the hyphen and numeral “3”, which in Party A’s mark is likely to be perceived as denoting a product or edition number, and instead introduces the word “Chain” at the beginning of the mark. That alteration is not a logical or natural development of “GPT-3”, nor does it suggest another product in the same numbered series. In respect of general members of the public, whilst they may not attach any descriptive message to the “GPT” elements of the parties’ marks, all of my other observations still apply. Taking both marks as a whole and notwithstanding the identity or high similarity of the goods and services, I find that the average consumers (IT specialists and general members of the public) would not conclude that the respective goods and services come from the same or economically linked undertakings. There is therefore no likelihood of indirect confusion.

92. I add that, even if I had found that Party A’s marks benefitted from a level of enhanced distinctive character through use, it would not have impacted my conclusions. Some level of enhanced distinctive character of GPT-3 would not undermine my finding that the differences between the marks are sufficient for a finding of no likelihood of confusion, either direct or indirect.

93. In respect of Party A’s GPT-4 mark, I consider that it offers no advantage of GPT-3 and, therefore, you do not need to address it any further.

94. In summary, Party A’s opposition fails, insofar as it relies upon section 5(2)(b).

Section 5(4)(a)

95. I recognise that the test for misrepresentation is different to that for likelihood of confusion, namely, that misrepresentation requires “a substantial number of members

of the public are deceived” rather than whether the “average consumer are confused”. However, as recognised by Lewinson L.J. in *Marks and Spencer PLC v Interflora*, [2012] EWCA (Civ) 1501, it is doubtful whether the difference between the legal tests will produce different outcomes. Certainly, I believe that this is the case here and I find that members of the public are not likely to be misled into purchasing the applicant’s services in the belief that they are the opponent’s goods and services. In reaching this conclusion, I have kept in mind that most of the parties’ lists of goods and services include products that are in the same field of activity.

Section 5(3)

96. Section 5(3) states:

(3) A trade mark which –

(a) is identical with or similar to an earlier trade mark,

(b) *Repealed*

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.

97. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, Case C-252/07, *Intel*, Case C-408/01, *Adidas-Salomon*, Case C-487/07, *L’Oreal v Bellure* and Case C-323/09, *Marks and Spencer v Interflora* and Case C-383/12P, *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 Saloman*, 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) the more immediately and strongly the earlier mark is brought to mind by the later mark, the greater the likelihood that use of the latter will take unfair advantage of, or will be detrimental to, the distinctive character or the repute of the earlier mark; *L'Oreal v Bellure NV*, paragraph 44.

(g) 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.

(h) 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.

(i) 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'Oreal v Bellure NV*, paragraph 40. The stronger the reputation of the earlier mark, the easier it will be to prove that detriment has been caused to it; *L'Oreal v Bellure NV*, paragraph 44.

(j) 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'Oreal v Bellure*).

Reputation

98. The requirements under section 5(3), namely, that the earlier mark has a reputation, that there is a link between the respective marks and that use of the applicant's mark leads to an unfair advantage or detriment, are cumulative and the applicant can only succeed under this ground if its first demonstrates that it has the requisite reputation. For the purposes of my considerations, I will proceed on the basis that Party A's has sufficient reputation attached to its GPT-3 and GPT-4 marks.

Link

99. It is necessary for the relevant public, when confronted with the later mark, to make a link with the earlier reputed marks and this includes the bringing to mind the earlier marks. Whether such a link exists must be assessed globally taking account of all relevant factors. These factors include:

Degree of similarity between the respective marks

100. Earlier, I found that the parties' marks share a low to medium degree of visual and aural similarity and a low (or slightly higher) degree of conceptual similarity.

Degree of similarity between the goods/services

101. I proceeded earlier on the basis that many of the respective goods are self-evidently identical or highly similar.

The extent of the overlap between the relevant consumers for those goods/services

102. In light of my finding regarding the similarity of the respective goods and services, it follows that there will be significant overlap in the relevant consumers.

The strength of the earlier mark's reputation and distinctiveness

103. I have concluded that Party A's earlier marks must be attributed at least the minimum level of distinctive character for registration, however, I have been unable to put the level any higher. I have found that the distinctive character of its earlier marks is not enhanced through use, but for the purposes of this decision, I have assumed that they have the requisite reputation.

104. I recognise that the relevant date in this opposition is 21 March 2023 being nearly 4 months later than the relevant date in Party B's invalidation actions, but in respect of Party A's surviving earlier marks (i.e. GPT-3 and GPT-4) this has no

impact on my conclusions noted above and I consider my comments at paragraph 91, above, apply equally to the strength of reputation as it does to acquired distinctiveness.

105. I keep all these findings in mind, together with the fact that to make a link with the earlier reputed mark, the bringing to mind of the earlier marks is sufficient. This is a lower threshold than when considering a likelihood of confusion, nevertheless, I consider that the differences between the respective marks are sufficient that the required link will not be made. The visual and aural differences between the marks, highlighted earlier, combined with the descriptive meaning associated with the common element “GPT” results in the requisite link not being established. As a consequence, the existence of common occurrence of “GPT” in the parties’ marks is more likely to be put down to its descriptive meaning rather than creating any link between the marks. I find that the requisite link between the respective marks is not established.

106. In the absence of the requisite link, the grounds based upon section 5(3) fail in their entirety.

Summary

107. The opposition has failed in respect of all grounds and Party B’s mark may proceed to registration.

COSTS

108. Party B has been successful in both its applications to invalidate Party A’s GPT and CHATGPT marks and also in defending Party A’s opposition to its ChainGPT mark. As a result, it is entitled to a contribution towards its costs based upon Tribunal Practice Notice 1/2023. In the circumstances I award Party B a contribution towards the cost of the proceedings, calculated as follows:

Official fees (Form TM26(I)) x 2:

£400

Preparing and filing Form TM26(I) x 2, considering other side's counterstatements and preparing counterstatement in opposition: £900

Preparing and filing evidence and considering other side's evidence £1000

Preparing and filing written submissions: £450

Total: £2750

109. I therefore order OpenAI OpCo, LLC to pay ChainGPT LLC the sum of £2750. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 3rd day of September 2026

Mark Bryant

For the Registrar,

The Comptroller-General