O/0961/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 4256901
IN THE NAME OF SNAPSELLL LIMITED
TO REGISTER THE FOLLOWING TRADE MARK:



IN CLASSES 9, 35, AND 42

AND

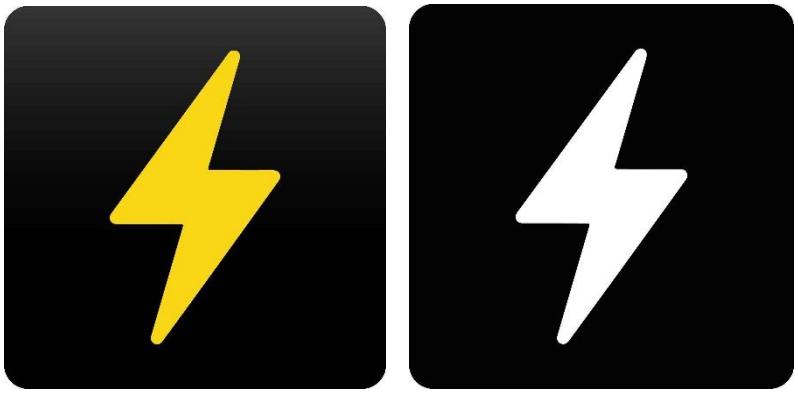
IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 600003851
BY FILM FINDER LTD

Background and pleadings

1. SnapSelll Limited ("the applicant") applied to register the trade mark shown on the front cover of this decision in the UK on 30 August 2025, under number 4256901. It was accepted and published in the Trade Marks Journal on 19 September 2025 in respect of the following goods and services:

> *Class 9: Downloadable mobile applications; Downloadable applications for use with mobile devices; Mobile application software; Application software for mobile phones; Smartphone software applications, downloadable; Downloadable computer software applications; Downloadable software applications for mobile phones; Downloadable software in the nature of a mobile application; Application software for mobile devices; Computer software applications, downloadable; Computer application software for mobile phones; Software for mobile phones.*
>
> *Class 35: Provision of an online marketplace for buyers and sellers of goods and services; Providing online marketplaces for sellers of goods and or services; Advertising and promotional services; Marketing, advertising and promotion services.*
>
> *Class 42: Software as a service [SaaS]; Providing online non-downloadable computer software.*

2. On 23 October 2025, FILM FINDER LTD ("the opponent") opposed the trade mark by way of the fast-track procedure. The opposition is brought under section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opposition is directed at the class 9 goods and class 35 services only. The opponent relies upon its series of two UK trade marks, number 3737434:



3. Since the marks in the series only differ in the colour of the central figurative device, for ease of reference I will refer to them as "the opponent's mark" unless it becomes necessary for me to distinguish between them. The opponent's mark was filed on 28 December 2021 and became registered on 1 April 2022. It stands registered for a range of goods and services in classes 9, 35, and 41 shown in Annex A at the bottom of this decision. For opposition purposes, the opponent relies on the class 9 goods and class 35 services only.

4. As the filing date of the opponent's mark is earlier than the filing date of the applicant's mark, the opponent's mark constitutes an earlier mark in accordance with section 6 of the Act. However, as it had not been registered for five years or more at the filing date of the application, it is not subject to the proof of use requirements specified within section 6A of the Act. As a consequence, the opponent may rely upon all of the goods and services identified without having to establish genuine use.

5. In its statement of grounds, the opponent argues that the competing marks are similar, and that the parties' goods are identical or similar. On this basis, the opponent submits that there is a likelihood of confusion.

6. The applicant filed a counterstatement denying the ground of opposition.

7. Neither party is professionally represented.

8. Rule 62(5) (as amended) states that arguments in fast-track proceedings shall be heard only if (i) the Office requests it, or (ii) either party to the proceedings requests it and the Registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken. A hearing was neither requested nor considered necessary. Only the opponent filed written

submissions. This decision is taken following careful consideration of all the papers before me. I have not summarised the submissions in full, but they will be referenced within this decision to the extent that is necessary.

Relevance of EU law

9. 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[1] 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.

Section 5(2)(b)

10. Section 5(2)(b) of the Act reads 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."

11. Section 5A states: […] "Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only."

12. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor:*[2]

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

[1] As amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023
[2] [2025] UKSC 25

(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;

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

Comparison of goods and services

13. In *Canon,*[3] the Court of Justice of the European Union ("CJEU") stated, at paragraph 23 of its judgment, that when considering whether goods and services are similar, all the relevant factors relating to the goods and services should be taken into account. The CJEU stated that those factors include their nature, intended purpose, method of use and whether they are in competition with each other or are complementary.

14. The relevant factors identified by Jacob J. (as he then was) in *Treat*[4] 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

[3] Case C-39/97
[4] [1996] R.P.C. 281

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

15. In *Kurt Hesse v OHIM,*[5] the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods and services. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM),*[6] the General Court ("GC") stated that "complementary" means:

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

16. In *Gérard Meric v OHIM,*[7] the GC confirmed that even if goods and services are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

> *"*"29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut fur 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."

17. The goods and services to be compared are as follows:

The opponent's goods and services	**The applicant's goods and services**
Class 9: Mobile software; Mobile app's; Mobile apps; Application development software; Application software for mobile devices; Application software;	*Class 9: Downloadable mobile applications; Downloadable applications for use with mobile devices; Mobile application software; Application*

[5] Case C-50/15 P
[6] Case T-325/06
[7] Case T- 133/05

Application software for mobile phones; Application software for smart TV; Application software for smart phones; Application software for social networking services via internet; Computer application software for TV; Computer application software; Computer application software for mobile phones; Computer application software for mobile telephones; Computer application software for streaming audio-visual media content via the internet; Computer software; Computer software applications; Computer software applications, downloadable; Computer application software for use with wearable computer devices; Downloadable application software; Downloadable application software for smart phones; Downloadable applications; Downloadable applications for mobile devices; Downloadable computer software applications; Downloadable mobile applications; Downloadable smart phone applications (software); Downloadable smart phone application software; Downloadable software applications for mobile phones; Downloadable software applications; Downloadable software in the nature of a mobile application for playing games; Downloadable software in the nature of	*software for mobile phones; Smartphone software applications, downloadable; Downloadable computer software applications; Downloadable software applications for mobile phones; Downloadable software in the nature of a mobile application; Application software for mobile devices; Computer software applications, downloadable; Computer application software for mobile phones; Software for mobile phones.* *<u>Class 35:</u> Provision of an online marketplace for buyers and sellers of goods and services; Providing online marketplaces for sellers of goods and or services; Advertising and promotional services; Marketing, advertising and promotion services.*

a mobile application; Downloadable software in the nature of a mobile application for food delivery and ordering; In Car Entertainment [ICE] systems; In-car entertainment systems; In-car audiovisual entertainment systems; Mobile computers; Mobile telephones; Mobile phones; Mobile application software; Software; Software and applications for mobile devices; Software applications for mobile devices; Software applications; Software applications for use with mobile devices; Downloadable applications for use with mobile devices; Downloadable mobile applications for use with wearable computer devices; Web application software. *Class 35: Advertising and marketing; Advertising and advertisement services; Advertising; Online advertising; Advertising agencies; Online advertisements; Advertising analysis; Advertising services; Online advertising services; Advertising services provided for others; Advertising services relating to the sale of goods; Advertising the goods and services of online vendors via a searchable online guide; Arranging subscriptions of the online publications of others; Cinema advertising; Advertising of cinemas; Compilation of online business directories; Newspaper*	

advertising; Online ordering services; Online retail store services relating to clothing; Product sales information; Promoting the artwork of others by means of providing online portfolios via a website; Promoting the designs of others by means of providing online portfolios via a website; Promoting the goods and services of others through advertisements on Internet websites; Promoting the music of others by means of providing online portfolios via a website; Providing a directory of third party web sites to facilitate business transactions; Providing a searchable online advertising guide featuring the goods and services of other on-line vendors on the internet; Providing an on-line commercial information directory on the internet; Providing business information directory services, via a global computer network; Providing commercial directory information via the Internet; Providing consumer product recommendations; Providing marketing information via websites; Providing online commercial directory information services; Providing recommendations of goods to consumers for commercial purposes; Radio advertising; Radio advertising and commercials; Retail of third-party pre-paid cards for the purchase of entertainment services;	

Retail services for computer software; Retail services in relation to computer software; Retail services in relation to smartphones; Television advertising; Radio and television advertising.	

18. In its submissions in lieu, the opponent submits that the applicant's goods and services "include digital products, software, and business or promotional services which are identical or highly similar" to the opponent's goods and services. Although the applicant does not make any specific arguments in relation to the goods and services, in its counterstatement, the applicant states that it "denies each and every ground of opposition raised by the Opponent". I have therefore interpreted this as including a denial that the goods and services are similar or identical.

19. For the purposes of comparing goods and services, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons.[8] I have therefore assessed the applicant's goods and services by dividing the terms into groups as per below.

Class 9:

Downloadable mobile applications; Downloadable applications for use with mobile devices; Mobile application software; Application software for mobile phones; Smartphone software applications, downloadable; Downloadable computer software applications; Downloadable software applications for mobile phones; Downloadable software in the nature of a mobile application; Application software for mobile devices; Computer software applications, downloadable; Computer application software for mobile phones; Software for mobile phones.

20. It is my view that these goods are included in the opponent's wider terms *mobile apps* or *software.* As such, the parties' goods are identical under the principle set out in *Meric.*

[8] *Separode Trade Mark* (BL O/399/10) and *BVBA Management, Training en Consultancy v. Benelux-Merkenbureau* [2007] ETMR 35 at paragraphs 30 to 38

Class 35:

Provision of an online marketplace for buyers and sellers of goods and services; Providing online marketplaces for sellers of goods and or services.

21. It is my view that these services are similar to the opponent's *providing a searchable online advertising guide featuring the goods and services of other on-line vendors on the internet*. The services' nature and purpose broadly overlap, because they all relate to the facilitation of selling and buying goods online. However, they differ in that the applicant's services relate to an online marketplace where transactions take place, whereas the opponent's services relate to a guide which leads to third-party websites to make transactions. They may be distributed through similar trade channels at times, such as when consumers are searching for goods online and may find that search engines suggest multiple channels (such as online advertising guides or online marketplaces) from which they can view potential goods and services to purchase. They are not complementary as one is not essential to the other, and they are not in competition with each other. Taking these factors into account, I find that there is a medium degree of similarity between the services.

Advertising and promotional services; Marketing, advertising and promotion services.

22. The advertising and marketing aspects of the applicant's services are self-evidently identical to the opponent's *advertising and marketing.* I am also of the view that the promotion/promotional aspect also falls within the wider concept of the opponent's *advertising and marketing.* However, if I am wrong in this finding, then it is my view nonetheless that the promotion/promotional aspect within the applicant's services includes the opponent's narrower *promoting the goods and services of others through advertisements on Internet websites*. On this basis, the parties' services are identical under the principle in *Meric.*

Average consumer and the purchasing act

23. In *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*,[9] the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)*,[10] where he pointed out that*:*

(a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;

(b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;

(c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;

(d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by and enabling 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.

[9] [2025] UKSC 25
[10] [2024] EWCA Civ 262

24. The average consumer for the class 9 goods will be members of the general public, as well as trade customers. The cost of purchase and frequency of purchase will vary depending on the type of goods, with some (such as mobile applications) being available for free or for a small charge, whereas more sophisticated types of software will be more expensive. Several factors may influence the average consumer when purchasing the goods, such as useability, technical function, and the compatibility of the software and applications with existing systems. Based on these factors, I find that the average consumer will pay around a medium degree of attention, although this may be higher in the case of trade professionals. I bear in mind that in relation to the assessment of the likelihood of confusion, it is the group of consumers with the lowest level of attention which must be taken into consideration.[11] The goods will be selected from specialist stores, general retailers (such as supermarkets who sell software), or online. The customer will self-select the goods from the display shelves, or by selecting the image of their desired product if purchasing online. The visual component will therefore dominate the purchasing process, but I do not discount aural considerations, such as word-of-mouth recommendations, or placing telephone orders.

25. The average consumer for the class 35 services will be the public at large, as well as trade customers. The cost of purchase is likely to vary greatly for the retail of the goods above depending on the type of products being sold. Several factors may influence consumers, such as the range of goods available, delivery times, and postage costs. I find that, based on these factors, the average consumer is likely to pay a medium degree of attention, although this may be higher for trade customers (in that ensuring that the goods meet the requirements of their consumers has a direct impact on the success of their businesses). As stated previously, it is the group of consumers with the lowest level of attention which must be taken into consideration.[12] The consumer will choose the services after seeing the mark online or on the website. They may also select the services after seeing advertisements or reviews in printed publications or online via websites and/or social media. The visual component is therefore likely to dominate the selection process, but I also do not discount the role

[11] See Case T-247/12, *Argo Group International Holdings Ltd. v OHIM* and *Idem* T -356/14 [25]-[26]
[12] See Case T-247/12, *Argo Group International Holdings Ltd. v OHIM* and *Idem* T -356/14 [25]-[26]

that aural selection may play, especially when receiving word-of-mouth recommendations and when discussing the services with others via the telephone.

Comparison of marks

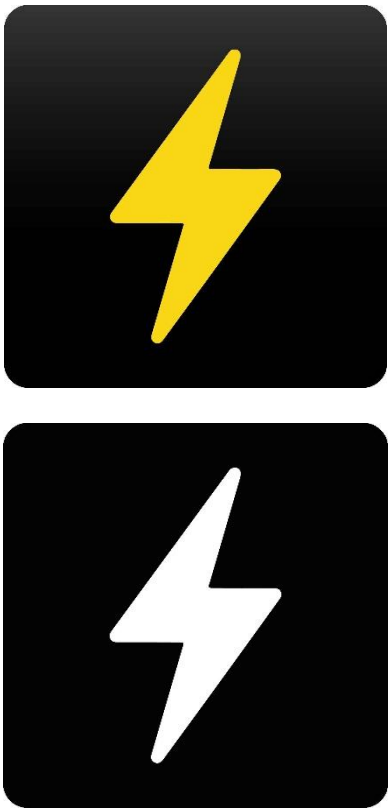
26. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in *Bimbo SA v OHIM*[13] 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."

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

28. The respective trade marks are shown below:

[13] Case C-591/12P

The opponent's series of two marks	The applicant's mark
	

29. In its submissions in lieu, the opponent submits that the "yellow lightning bolt device is the dominant and distinctive element in both marks". In its counterstatement, the applicant states that "[t]he distinctiveness of the Applicant's mark lies not in the concept of a bolt, but in its specific stylised "gold patch" execution".

30. The opponent's marks are a set of two marks. The first is a yellow lightning bolt on a black background, and the second is a white lightning bolt on a black background. As the background colour is not distinctive, it is my view that the opponent's marks' overall impressions are dominated by the lightning bolt devices.

31. The applicant's mark is a yellow lightning bolt on a white background. Whilst the applicant has suggested that it is the stylisation of the bolt device that is the most distinctive element of the mark, it is my view that consumers would notice the overall shape of the bolt device as the dominant and distinctive element of the mark. Moreover, the elements of stylisation merely reinforce the lightning bolt device rather than form a separate dominant element. With no other elements within the mark, it is

my view that the opponent's mark's overall impression is dominated by the lightning bolt device.

My approach

32. As the opponent's marks only differ as one being black and yellow and the other being black and white, for ease of reference, I will focus my assessment on the black and yellow mark in the series of two. However, for the avoidance of doubt, the same findings will also apply to the opponent's other black and white mark. This is because the Court of Appeal has stated on two occasions following the CJEU's judgment in *Specsavers*, (see paragraph 5 of the judgment of the Court of Appeal in *Specsavers* [2014] EWCA Civ 1294 and *J.W. Spear & Sons Ltd v Zynga, Inc*. [2015] EWCA Civ 290, at paragraph 47) that registration of a trade mark in black and white covers use of the mark in colour. This is because colour is an implicit component of a trade mark registered in black and white (as opposed to extraneous matter). The registration of a mark in black/white allows it to be notionally used in any (non-complex) colour. On this basis, the difference between the colours used within the marks is not significant.

Visual comparison

33. In its submissions in lieu, the opponent submits that the competing marks are highly similar on the basis that, "[w]hile the Applicant's mark may incorporate minor stylistic variations, including a textured or "embroidered" visual effect and a slight outline, these are superficial design elements". It argues that "[t]he average consumer is unlikely to notice or recall fine graphical details such as texture, stitching effects, or outlining". . In its counterstatement, the applicant argues that the competing marks are visually dissimilar on the basis that its mark "differs entirely in texture, colour, finish, proportions and visual impression". It submits that its mark "conveys the impression of a physical gold badge or embroidered patch, whereas the Opponents mark conveys the impression of a generic fiat icon", and therefore the marks' "overall visual impressions… are clearly different."

34. The competing marks are visually similar as they both depict a yellow lightning bolt. The device in the opponent's mark is set against a black background, and the device in the applicant's mark is set against a white background. However, as stated previously, the difference in the competing marks' background colour is not significant,

as the registration of a mark in black/white allows it to be notionally used in any (non-complex) colour, and therefore the difference in the background colour between the competing marks does not constitute a significant visual difference.[14]

35. The competing marks differ visually as the yellow lightning bolt in the opponent's mark is presented as a flat or two-dimensional manner, whereas the yellow lightning bolt in the applicant's mark is presented as a more three-dimensional manner with an inner border that runs parallel to the outside of the lightning bolt shape.

36. Bearing in mind my analysis of the marks' overall impressions, I am of the view that the marks are visually similar to a high degree.

Aural comparison

37. As the competing marks are both figurative marks with no verbal elements, an aural comparison is not possible.

Conceptual comparison

38. In its submissions in lieu, the opponent submits that "[b]oth marks convey the same concept of a yellow lightning bolt, evoking ideas of electricity, energy, speed, or power" and therefore there is "conceptual identity between the marks". In its counterstatement, the applicant submits that "[c]onceptually, both marks depict a lightning bolt". However, it argues that "[n]o conceptual confusion can… arise from the shared use of a commonplace symbol".

39. The competing marks are conceptually similar as they both contain a yellow lightning bolt. Whilst the opponent's device appears to be two-dimensional, whereas the applicant's device appears more three-dimensional, it is my view that this does not alter the overall conceptual impression that both marks contain lightning bolts, albeit presented with minor stylistic differences. Consequently, I am of the view that the marks are conceptually identical.

[14] As per *Specsavers* [2014] EWCA Civ 1294 and *J.W. Spear & Sons Ltd v Zynga, Inc.* [2015] EWCA Civ 290

Distinctive character of the earlier mark

40. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV,*[15] the CJEU stated that:

> "22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* v *Huber and Attenberger* [1999] ECR I-0000, paragraph 49).
>
> 23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51)."

41. Registered trade marks possess various degrees of inherent distinctive character; marks which are suggestive or allusive of a characteristic of the goods and services tend to be at the lower end of the scale, whereas invented words with no allusive qualities tend to be at the higher end of the scale. A range of marks will fall in between, such as dictionary words with no obvious connection to the goods and services.

42. Although the distinctiveness of a mark can be enhanced by virtue of the use made of it, the opponent has not filed any evidence of use. As such, I have only the inherent position to consider.

[15] Case C-342/97

43. The opponent does not specify the level of distinctiveness of its mark. In its counterstatement, the applicant submits that “in the context of the relevant goods and services, this symbol is commonplace and inherently weak. It is widely used to denote power, speed, charging or energy in the technology, software and digital application sectors”. It also refers to the symbol as “inherently weak and descriptive in nature”.

44. Whilst I note the applicant’s comments in relation to this symbol being widely used “in technology, software and digital application sectors”, it does not submit any evidence to demonstrate this. Moreover, although the applicant claims that the lightning bolt is used to denote “power, speed, charging or energy”, it does not offer why this would be “descriptive in nature” for software and applications.

45. As stated previously, the opponent’s mark will be understood as depicting a lightning bolt. It is my view that the applicant has not demonstrated that a significant proportion of consumers would understand the image of a lightning bolt as describing software or application goods, or how it even alludes to the class 9 goods at issue. Furthermore, it is my view that a significant proportion of consumers will understand the device as abstract in relation to the class 35 services, as there is no obvious link between the concept of lightening and those services. Overall, I find that the opponent’s mark in totality has a medium level of inherent distinctive character.

Global assessment – conclusions on likelihood of confusion

46. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. There is no set formula for establishing a likelihood of confusion between marks; it is a global assessment where a number of factors need to be borne in mind.

47. One such factor is the interdependency principle, i.e. a lesser degree of similarity between the competing marks may be offset by a greater degree of similarity between the respective goods and services, and vice versa. As mentioned above, it is necessary for me to keep in mind the distinctive character of the applicant’s mark, the average consumer for the goods and services, and the nature of the purchasing

process. In doing so, I must be mindful that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

48. In its submissions, the opponent submits that "the average consumer is likely to believe that the Applicant's mark represents a variant, sub-brand, or extension of the Opponent's mark, or that the respective goods and services originate from economically linked undertakings". In its counterstatement, the applicant "denies that there is a likelihood of confusion or association between the Appliant's mark and the Opponent's mark".

49. Earlier in this decision I found that the parties' class 9 goods are identical, and the parties' class 35 services are either similar to a medium degree or are identical. The average consumer of the class 9 goods and the class 35 services will be the general public and trade customers. The average consumer is likely to pay a medium degree of attention when selecting the goods and services, although this will be higher in respect of trade professionals. The goods and services will primarily be selected through visual means, although I do not discount an aural element to the selection process. I have found the marks to be visually similar to a high degree and conceptually identical to one another (and an aural comparison is not possible due to the marks being purely figurative). The earlier mark has a medium level of inherent distinctive character.

50. It is my view that, particularly when accounting for imperfect recollection, the average consumer, even when paying a medium degree of attention or higher, is likely to misremember or inaccurately recall the competing marks for one another. I am of the view that, whilst the yellow lightning bolt device in the applicant's mark contains a degree of stylisation that is not present on the device in the opponent's mark, the average consumer is likely to overlook or forget these minor visual differences. The high degree of visual similarity, the conceptual identity, and the identity or medium level of similarity of the goods and services are all factors which support this finding. Consequently, I find that there exists the likelihood of direct confusion.

Conclusion

51. The opposition under section 5(2)(b) has been successful in its entirety. Subject to any successful appeal, the application will be refused registration for the class 9 goods and class 35 services. It shall proceed to registration for the class 42 services which were not opposed.

Costs

52. As the opposition has been successful, ordinarily the opponent would be entitled to an award of costs. However, as it has not instructed professional representatives, it was invited by the Tribunal to indicate whether it intended to make a request for an award of costs, including accurate estimates of the number of hours spent on a range of given activities relating to defending the proceedings. It was made clear by letter dated 4 May 2026 that, if the pro-forma was not completed by 2 June 2026, costs may not be awarded (other than official fees). The opponent did not return a completed pro-forma to the Tribunal and, on this basis, no costs are awarded other than official fees. The sum is therefore calculated as follows:

Official fees £100

53. I therefore order SnapSelll Limited to pay FILM FINDER LTD the sum of £100. 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 26th day of October 2026

K LEWIS

For the Registrar

ANNEX A

Class 9: Mobile software; Mobile app's; Mobile apps; Application development software; Application software for mobile devices; Application software; Application software for mobile phones; Application software for smart TV; Application software for smart phones; Application software for social networking services via internet; Computer application software for TV; Computer application software; Computer application software for mobile phones; Computer application software for mobile telephones; Computer application software for streaming audio-visual media content via the internet; Computer software; Computer software applications; Computer software applications, downloadable; Computer application software for use with wearable computer devices; Downloadable application software; Downloadable application software for smart phones; Downloadable applications; Downloadable applications for mobile devices; Downloadable computer software applications; Downloadable mobile applications; Downloadable smart phone applications (software); Downloadable smart phone application software; Downloadable software applications for mobile phones; Downloadable software applications; Downloadable software in the nature of a mobile application for playing games; Downloadable software in the nature of a mobile application; Downloadable software in the nature of a mobile application for food delivery and ordering; In Car Entertainment [ICE] systems; In-car entertainment systems; In-car audiovisual entertainment systems; Mobile computers; Mobile telephones; Mobile phones; Mobile application software; Software; Software and applications for mobile devices; Software applications for mobile devices; Software applications; Software applications for use with mobile devices; Downloadable applications for use with mobile devices; Downloadable mobile applications for use with wearable computer devices; Web application software.

Class 35: Advertising and marketing; Advertising and advertisement services; Advertising; Online advertising; Advertising agencies; Online advertisements; Advertising analysis; Advertising services; Online advertising services; Advertising services provided for others; Advertising services relating to the sale of goods; Advertising the goods and services of online vendors via a searchable online guide; Arranging subscriptions of the online publications of others; Cinema advertising;

Advertising of cinemas; Compilation of online business directories; Newspaper advertising; Online ordering services; Online retail store services relating to clothing; Product sales information; Promoting the artwork of others by means of providing online portfolios via a website; Promoting the designs of others by means of providing online portfolios via a website; Promoting the goods and services of others through advertisements on Internet websites; Promoting the music of others by means of providing online portfolios via a website; Providing a directory of third party web sites to facilitate business transactions; Providing a searchable online advertising guide featuring the goods and services of other on-line vendors on the internet; Providing an on-line commercial information directory on the internet; Providing business information directory services, via a global computer network; Providing commercial directory information via the Internet; Providing consumer product recommendations; Providing marketing information via websites; Providing online commercial directory information services; Providing recommendations of goods to consumers for commercial purposes; Radio advertising; Radio advertising and commercials; Retail of third-party pre-paid cards for the purchase of entertainment services; Retail services for computer software; Retail services in relation to computer software; Retail services in relation to smartphones; Television advertising; Radio and television advertising.

Class 41: Entertainment by IP-TV; Entertainment; Entertainment services; Online entertainment services; Online interactive entertainment; Provision of entertainment; Advisory services relating to entertainment; Animated musical entertainment services; Education, entertainment and sport services; Arranging of entertainment shows; Arranging of musical entertainment; Arranging of seminars relating to entertainment; Arranging of visual entertainment; Audio entertainment services; Booking agencies for entertainment; Booking of entertainment; Booking of entertainment halls; Cabaret entertainment services; Entertainment by film; Certification in relation to educational awards; Children's entertainment services; Cinema entertainment; Cinema theaters; Cinematographic entertainment services; Conducting of entertainment activities; Conducting of entertainment events; Conducting of live entertainment events; Competitions (Organising of entertainment -); Corporate entertainment services; Club entertainment services; Club services [entertainment]; Corporate hospitality (entertainment); Cruise ship entertainment services; Education, entertainment and sports; Entertainer services; Entertainment agency services; Entertainment booking

services; Entertainment by means of concerts; Entertainment by means of roadshows; Entertainment by means of radio; Entertainment club services; Entertainment provided by videotext systems; Entertainment information; Entertainment provided via the internet; Entertainment relating to wine tasting; Entertainment information services; Entertainment party planning; Entertainment services featuring fictional characters; Entertainment services for children; Entertainment services provided for children; Entertainment services in the nature of arranging social entertainment events; Entertainment services in the nature of organizing social entertainment events; Entertainment services performed by musicians; Entertainer services provided by musicians; Entertainment services performed by singers; Entertainment services provided at discotheques; Entertainment services provided at nightclubs; Entertainment services provided by hotels; Entertainment services provided by radio; Entertainment services provided by telephone; Entertainment provided by telephone; Entertainment services provided by television; Entertainment services relating to competitions; Entertainment services relating to sport; Entertainment services relating to esports; Entertainment services relating to quizzes; Entertainment services relating to sporting events; Entertainment, sporting and cultural activities; Fan club services (entertainment); Entertainment ticket agency services; Film production for entertainment purposes; Gaming machine entertainment services; Escape room [entertainment] / Escape game [entertainment]; Gaming services for entertainment purposes; Holiday camp services [entertainment]; Holiday centre entertainment services; Hospitality services (entertainment); Information (Entertainment -); Information and advisory services relating to entertainment; Information services relating to entertainment; Interactive entertainment; Interactive entertainment services; Internet radio entertainment services; Jazz music entertainment services; Laser show services [entertainment]; Lighting productions for entertainment purposes; Live demonstrations for entertainment; Live entertainment; Live entertainment services; Live entertainment production services; Musical entertainment; Musical entertainment services; Music entertainment services; Musical group entertainment services; Night club services [entertainment]; Nightclub services [entertainment]; On-line entertainment; Organisation of conferences related to entertainment; Organisation of entertainment events; Organisation of entertainment competitions; Organising of entertainment competitions; Organisation of entertainment services; Organisation of musical entertainment; Organising events for entertainment purposes; Organising of

entertainment; Organization of cosplay entertainment events; Organization of entertainment competitions; Party planning [entertainment]; Planning (Party -) [entertainment]; Play schemes [entertainment/education]; Popular entertainment services; Production of audio entertainment; Organization of entertainment events; Production of live entertainment; Production of live entertainment events; Production of live entertainment features; Production of television entertainment features; Providing entertainment information; Providing facilities for entertainment; Providing facilities for recreation; Provision of entertainment facilities; Providing recreational facilities; Provision of entertainment information; Provision of information relating to entertainment; Provision of live entertainment; Provision of musical entertainment; Provision of rooms for entertainment; Publication of books relating to entertainment; Television and radio entertainment services; Radio and television entertainment services; Radio and television entertainment; Radio entertainment services; Radio entertainment; Radio entertainment production; Rental of entertainment halls; Rental of recorded entertainment; Road shows being entertainment services; Showing of prerecorded entertainment; Sports entertainment services; Staged light entertainment services; Television and radio entertainment; Television entertainment; Television entertainment services; Theatre entertainment; Symposiums relating to entertainment; Ticket agency services [entertainment]; Tv entertainment services; Video entertainment services; Video game entertainment services; Wine tastings [entertainment services]; escape room [entertainment] / escape game [entertainment]; organization of entertainment events; Advisory services relating to education.