

O/1196/25

TRADE MARKS ACT 1994

IN THE MATTER OF

TRADE MARK APPLICATION NO. 3840630

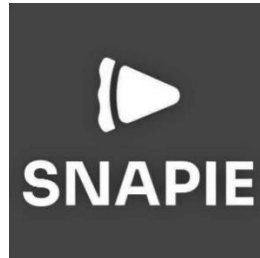
IN THE NAME OF UFUK ANIL KIRAL

TO REGISTER THE FOLLOWING SERIES OF TWO MARKS

IN CLASS 45:



&



AND

OPPOSITION THERETO (UNDER NO. 439124)

BY

SNAP INC.

BACKGROUND

1) On 19 October 2022, UFUK ANIL KIRAL ('the applicant') applied to register the series of two marks shown on the cover page of this decision. The application is made in respect of the following services:

Class 45: Social introduction agencies; social introduction agency services; online social networking services; online social networking information services; online social networking advisory services; internet-based social networking services; internet-based personal introduction services; dating services provided through social networking.

2) The application was published in the Trade Marks Journal on 11 November 2022 and a notice of opposition was later filed by Snap Inc. ('the opponent'). The opponent claims that the application offends under sections 5(2)(b) & 5(3) of the Trade Marks Act 1994 ('the Act').

3) In support of its opposition under section 5(2)(b) of the Act, the opponent relies upon the following three registrations and some of the services covered by the same, as shown below:

- **UKTM 917436411 ('411)**

SNAP

Class 45: Internet based social introduction and networking services; providing computer databases via the Internet in the fields of social networking and social introduction; licensing of intellectual property, namely, user created avatars, graphical icons, symbols, fanciful designs, comics, phrases, and graphical depictions of people, places and things; identification verification services, namely, providing authentication of personal identification information.

Filing date: 04 November 2017

Date of entry in register: 10 May 2018

- **UKTM 3268556 ('556)**

SNAP

Class 45: Internet based social introduction and networking services; provision of information regarding social networking and social introduction via a computer database; providing information and advice regarding secure electronic communication for use in the fields of social networking and social introduction; licensing of intellectual property, namely, user created avatars, graphical icons, symbols, fanciful designs, comics, phrases, and graphical depictions of people, places and things; identification verification services, namely, providing authentication of personal identification information.

Filing date: 06 November 2017

Date of entry in register: 16 March 2018

- **UKTM 912925971 ('971)**

SNAPCHAT

Class 45: Internet based social introduction and networking; providing online computer databases in the fields of social networking and social introduction.

Filing date: 30 May 2014

Date of entry in register: 22 October 2014

- **UKTM 917999184 ('184)**

SNAP KIT

Class 45: Identification verification services, namely, providing authentication of personal identification information.

Priority date: 14 June 2018 (USA)

Filing date: 11 December 2018

Date of entry in the register: 23 May 2019

- **UKTM 3404987 ('987)**

SNAP CODE

Class 45: Legal services; security services for the physical protection of tangible property and individuals; personal and social services rendered by others to meet the needs of individuals, namely, consulting in the field of personal relationships, crime prevention consultancy services, dating services provided through social networking, genealogical services, guardianship services, internet based dating, matchmaking and personal introduction services, internet-based social networking services, introduction and social networking services, preparation of personality profiles, private investigation; online social networking services; online social networking services accessible by means of downloadable mobile applications; information, advisory and consultancy services relating to the aforesaid.

Priority date: 07 December 2018 (EU)

Filing date: 06 June 2019

Date of entry in the register: 20 September 2019

4) It is claimed that the respective goods and services are either identical or similar and that the respective marks are similar, such that there exists a likelihood of confusion under section 5(2)(b) of the Act.

5) In support of its opposition under section 5(3) of the Act, the opponent relies upon marks '411, '556 and '971. It is claimed that each of those marks has a reputation in relation to the services in class 45 covered by them (as set out above). Additionally, it

is claimed that mark '971 has a reputation in relation to the goods and services in classes 09, 38, 41 and 42 of that registration.¹ Further, it is claimed that mark '411 has a reputation in relation to the services in class 42 of that registration.² The opponent claims that use of the contested mark will take unfair advantage of, or be detrimental to, the reputation and/or distinctive character of the earlier marks.

6) All of the trade marks relied upon by the opponent are earlier marks in accordance with section 6 of the Act.³ As mark '971 completed its registration procedure more than five years prior to the application date of the contested mark, it is, in principle, subject to the proof of use conditions, as per section 6A of the Act. The opponent made a statement of use in relation to all the goods and services relied upon for that mark.

7) The applicant filed a counterstatement denying the opponent's claims. It does not request proof of use.⁴

8) The opponent is represented by Stobbs IP Limited. The applicant is represented by MON IP Ltd. The applicant has filed nothing beyond the counterstatement. The opponent filed evidence consisting of a witness statement in the name of Matthew Stratton with Exhibits MS1 – MS9. Neither party requested a hearing; only the opponent filed written submissions in lieu.⁵ I now make this decision based on the papers before me.

THE OPPONENT'S EVIDENCE

9) Mr Stratton is Associate General Counsel and Director at Snap Inc. He provides the following most relevant narrative evidence and exhibits:

¹ See Annex for a list of the relevant goods/services

² See Annex for a list of the relevant services

³ Marks '411, '971 and '184 are comparable marks (EU). Following the end of the transition period of the UK's withdrawal from the EU, all EUTMs registered before 1 January 2021 were recorded as comparable trade marks in the UK trade mark register and as a consequence, have the same legal status as if they had been applied for and registered under UK law. A comparable trade mark (EU) retains the same filing date, priority date (if applicable) and registration date of the EUTM from which it derives.

⁴ As per the answer to Q7 on the Form TM8.

⁵ Dated 13 November 2023

Use of 'Snapchat'

- The Snapchat mobile app is among the top multimedia messaging and photo and video sharing applications in the world.
- 90% of the population aged between 13-24 years and 75% of the population aged between 13-34 years uses Snapchat in over 20 countries worldwide. As of October 2022, the same statistics applied to the UK.
- It was announced in 2019 by '9to5mac' that Snapchat was the fifth most downloaded app between 2010 and 2019 worldwide.
- Target markets of the Snapchat 'offering' are 'millennials' (people born between 1981 and 1994 or 1996 and 'Generation Z' (people born between 1997 and 2015).
- Some core features of the Snapchat app are, as follows: Messaging, video chat, 'Snaps' (short videos or photos which can be edited to include filters, text, drawings and images which usually disappear upon viewing after a specified length of time), photo, sound and video editing, augmented reality (which allows users to personalise their Snaps with augmented reality experiences, called LENSES).
- Examples of press coverage are provided,⁶ including the following:
 - An article from The Drum, dated 31 May 2016, is said to have stated that Snapchat had 10 million Active Daily Users in the UK at that time, making the UK the second largest market after the US.
 - An article from The Guardian, dated 27 August 2018, states that Snapchat is set to overtake Facebook as the digital choice of teens and twenty somethings in 2018. The article states: 'By the end of this year, Snapchat, which with its disappearing messages and funky photograph filters has already won over young teens, will also become the most popular social media platform in the UK for 18-to-24-year olds'.⁷
 - An article from The Guardian, dated 19 March 2018, states that "The seven-year-old phone app is hugely popular with younger users, many of whom have flocked from older social media platforms such as

⁶ Mr Stratton's witness statement at paragraph [16], the table therein and exhibit MS4

⁷ Page 29 of exhibit MS4

Facebook...' and that 'Snapchat is so popular in Britain that its advertising revenue will overtake Twitter's UK revenue in 2019, and revenue from consumer magazine and cinema advertising in two years'.⁸

- In 2021, the number of Daily Active Users in the EU for the Snapchat app was between 77 and 82 million per quarter.⁹
- The Snapchat 'audience size' in the UK as of October 2020 was 19.15 million.¹⁰
- Snapchat was ranked the 4th most downloaded app in the UK, on 23 May 2022, in the category 'Socials' on Google Play Store.¹¹
- The opponent's main revenue comes from advertising on its platform and it has some hugely successful campaigns with brands such as Adidas and Gucci. Total global revenue in 2019 was \$1,716,000,000.
- Sales and marketing global figures in 2019 to 2021 ranged from \$456 million to \$793 million.¹²

Use of 'Snap'

- In September 2016, Snapchat Inc changed its name to Snap Inc.
- Snap (an abbreviation of the company name, Snap Inc.) made its Initial Public Offering on 17 March 2017. Snap closed their first day of trading up 44% at USD 24.48, with over 200 million shares changing hands that day.
- Snap Inc is referred to in the evidence as a 'technology company'.¹³
- Articles from Snap's website are provided showing Snap being used, primarily, as a company name of the opponent, rather than as a trade mark for any relevant goods or services.¹⁴
- Articles from various UK and EU news outlets are provided referring to Snap as the company name of the opponent rather than as a trade mark for any relevant goods or services.¹⁵

⁸ Page 27 of exhibit MS4

⁹ Mr Stratton's witness statement at paragraph [21] and the table therein

¹⁰ Ibid, at paragraph [22] and the table therein

¹¹ Ibid, at paragraph [19] and the table therein (the paragraph numbering in the witness statement appears to have gone awry and the relevant paragraph should have read [24] given that the preceding paragraph is [23])

¹² Ibid, at paragraph [28] and the table therein

¹³ See, for example, exhibit MS2, page 3

¹⁴ Exhibit MS3

¹⁵ Exhibit MS4

- It is said that Snap has won many third-party awards, details of which are provided.¹⁶ However, all of the awards make reference to the trade mark ‘Snapchat’ rather than Snap.
- Details of the number of ‘Daily Active Users’ and ‘audience size’ of the opponent’s products make reference to the ‘Snapchat’ application, not Snap.¹⁷
- The details of the Apple and Google play rankings for the opponent’s application refer to the ‘Snapchat’ app, not to ‘Snap’.¹⁸
- The advertising and revenue figures provided are not broken down in any way. It is, therefore, not possible to tell what proportion of them, if any, relate, specifically, to any goods or services marketed under the trade mark, Snap.¹⁹

THE RELEVANCE OF EU LAW

10) 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.

SECTION 5(2)(b)

11) This section of the Act states:

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

(a)....

(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,

¹⁶ Exhibit MS5

¹⁷ Witness statement of Matthew Stratton, paragraphs [19] – [23]

¹⁸ Ibid, paragraph [19]

¹⁹ Ibid, paragraph [29] – [31] and exhibits MS7 - MS9

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

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

12) The leading authorities which guide me are from the Court of Justice of the European Union ('CJEU'): *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

The principles

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

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

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

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

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

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

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

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

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

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

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

Approach

13) I will begin by considering the likelihood of confusion between earlier marks '556 and '971 and the contested mark. I will return to consider the other earlier marks later.

Comparison of services

14) All relevant factors relating to the services should be taken into account when making the comparison. In *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* the CJEU, Case C-39/97, stated at paragraph 23 of its judgment:

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

15) Guidance on this issue has also come from Jacob J where, in *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281, the following factors were highlighted as being relevant:

- (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.

16) In terms of being complementary (one of the factors referred to in *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer*), this relates to close connections or relationships that are important or indispensable for the use of the other. In *Boston Scientific Ltd v OHIM* Case T- 325/06, it was stated:

“It is true that goods are complementary if 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..”

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

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

Whilst on the other hand:

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

17) The services to be compared are:

Opponent's services	Applicant's services
<p><u>Mark '556:</u></p> <p>Class 45: Internet based social introduction and networking services; provision of information regarding social networking and social introduction via a computer database; providing information and advice regarding secure electronic communication for use in the fields of social networking and social introduction; licensing of intellectual property, namely, user created avatars, graphical icons, symbols, fanciful designs, comics, phrases, and graphical depictions of people, places and things; identification verification services, namely, providing authentication of personal identification information.</p> <p><u>Mark '971:</u></p> <p>Class 45: Internet based social introduction and networking; providing online computer databases in the fields</p>	<p>Class 45: Social introduction agencies; social introduction agency services; online social networking services; online social networking information services; online social networking advisory services; internet-based social networking services; internet-based personal introduction services; dating services provided through social networking.</p>

of social networking and social introduction.	
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18) Both earlier marks cover the term 'Internet based social introduction and networking (services)'. I find these to be identical to the applicant's 'Social introduction agencies; social introduction agency services; online social networking services; internet-based social networking services; internet-based personal introduction services; dating services provided through social networking'.

19) That leaves the applicant's 'online social networking information services; online social networking advisory services'. I find these services to be highly similar to the opponent's 'Internet based social introduction and networking (services)' given the obvious overlap in users, trade channels, methods of use, purpose and nature.

Average consumer and the purchasing process

20) It is necessary to determine who the average consumer is for the respective services and the manner in which they are likely to be selected. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

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

21) The average consumer for the relevant services is the general public. The purchasing act will be primarily visual because the services will be selected after

perusal of Internet websites/applications. However, that is not to say that the aural aspect should be ignored since the services may sometimes be the subject of word-of-mouth recommendations, for example. The cost of the services is likely to vary. Regardless of where the services sit on the cost scale, the average consumer is likely to take into consideration various factors when selecting the services. I find that a medium degree of attention is likely to be paid during the purchase for the relevant services.

Comparison of marks

22) It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

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

23) The marks to be compared are as follows:

Overall impressions

25) Marks '556 and '971 both consist of plain words, absent any stylisation or embellishments. The overall impression of each earlier mark lies in the words themselves, 'SNAP' and 'SNAPCHAT'.

26) The applicant's mark consists of three elements. The first is the word 'SNAPIE'; the second is the triangular-shaped device element which the applicant describes as the 'pie logo' ('the device'); the third is the square background. I find that the word 'SNAPIE' dominates the overall impression of the mark owing to the proportion of the mark that it occupies and that it is the element which will be used to refer to the mark. The device plays a lesser role than the 'SNAPIE' element. The background plays an even lesser role, given that it serves as little more than a backdrop for other two elements.

Similarity between mark '556 and the applicant's mark

27) Visually, both marks contain the letters 'SNAP'. The applicant's mark contains an additional two letters, 'IE', at the end of 'SNAP' which are not present in the earlier mark. The device and background in the applicant's mark are also points of visual difference. I find an above-medium degree of visual similarity between the marks.

28) Aurally, the earlier mark will be pronounced as 'SN-AP'. The device and the background in the applicant's mark will not be vocalised. 'SNAPIE' may be pronounced in the same way as the word 'SNAPPY' (i.e. as 'SN-AP-EE') or, perhaps, as 'SN-AP-EYE'. The first syllable of the applicant's mark is therefore identical to the earlier mark. However, the applicant's mark contains an additional second syllable which is absent from the earlier mark. Bearing in mind that it is usually the beginning of words that have the greatest impact upon the ear, and that I consider that to be the case here, I find an above-medium degree of aural similarity between the marks.

29) Conceptually, I bear in mind that a conceptual message is only relevant if it is capable of immediate grasp. 'SNAP' can have various meanings. For example, it can describe the act of taking photographs quickly or to a photo that has been taken quickly

(which is not very skilful or artistic).²¹ Alternatively, it can refer to something which breaks suddenly (quickly) with a sharp sound, or to any action/decision taken suddenly (quickly) without careful thought.²² The average consumer is likely to perceive at least one of these meanings.

30) Turning to the applicant's mark, I find that a significant proportion of consumers are likely to perceive the word 'SNAPIE' as an invented meaningless word. However, another significant proportion is likely to perceive it as being evocative of the well-known word 'snappy' given its strong resemblance (particularly aurally) to that word.²³ The latter group of consumers are therefore likely to perceive the general concept associated with the word 'snappy' which is 'to do something quickly', as in, for example, the well-known phrase 'make it snappy'.²⁴ The applicant contends that the device in its mark is a 'pie'. I accept that some consumers may perceive the device as a slice of pie. However, I find that a significant proportion of average consumers are not likely to perceive any immediate and clear meaning from the device. The square background will not form part of the conceptual hook.

31) Bearing in mind all the above, I find that where the average consumer perceives the word 'SNAPIE' as meaningless, the respective marks are conceptually different because, whatever meaning is attributed to 'SNAP' in the earlier mark, it will be different to the meaning portrayed by the contested mark (this is the case whether or not the device is perceived as slice of pie or whether it is perceived as meaningless). However, where the average consumer perceives 'SNAPIE' as being evocative of the word 'snappy', there is a degree of similarity between the marks to the extent that both words in the respective marks refer to something being done quickly (again this is the case whether or not the device is perceived as a slice of pie or whether it is perceived as meaningless).

²¹ As per the definition provided by the applicant in its counterstatement, [11]

²² SNAP definition and meaning | Collins English Dictionary

²³ Even invented words are capable of evoking a concept if there are aspects of the word that resemble known word(s), as per *Usinor SA v OHIM* (Case T-189/05)

²⁴ MAKE IT SNAPPY definition and meaning | Collins English Dictionary

Similarity between mark '971 and the applicant's mark

32) Visually, both marks contain the letters 'SNAP'. The applicant's mark contains an additional two letters, 'IE', at the end of 'SNAP' whereas the earlier mark contains the letters 'CHAT' at the end. The device and background in the applicant's mark are also points of visual difference. I find a below-medium degree of visual similarity between the marks.

33) Aurally, the earlier mark will be pronounced as 'SN-AP-CH-AT'. The device and the background in the applicant's mark will not be vocalised. 'SNAPIE' may be pronounced in the same way as the word 'SNAPPY' (i.e. as 'SN-AP-EE') or, perhaps, as 'SN-AP-EYE'. The first syllable of the applicant's mark is therefore identical to the first syllable in the earlier mark. However, the respective second syllables in the respective marks differ. I find a medium degree of aural similarity between the marks.

34) Turning to the conceptual aspect, I bear in mind my earlier comments as regards how the applicant's mark is likely to be perceived. As regards the earlier mark, although presented as a single word, I would expect the average consumer to break the mark down into the two immediately identifiable and well-known words, 'SNAP' and 'CHAT'. The resulting concept of the mark is an allusive one, being suggestive of a quick chat/quick photo chat.

35) It follows that, where the average consumer perceives the word 'SNAPIE' as meaningless, the respective marks are conceptually different (this is the case whether or the device is perceived as piece of pie or whether it is perceived as meaningless). However, where the consumer perceives 'SNAPIE' as being evocative of the word 'snappy', there is a degree of similarity between the marks to the extent that both word elements in the respective marks may be perceived as referring to something being done quickly/suddenly (again this is the case whether or not the device is perceived as slice of pie or whether it is perceived as meaningless).

Distinctive character of the earlier mark

36) The distinctive character of each earlier mark must be considered. The more distinctive each is, either by inherent nature or by use, the greater the likelihood of confusion between each of them and the contested mark (*Sabel BV v Puma AG*). 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-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).”

37) I have already addressed the meaning of ‘SNAP’ and ‘SNAPCHAT’ earlier in this decision. The level of inherent distinctiveness of those marks must be considered in relation to the relevant earlier services, namely ‘Internet based social introduction and networking services’. The applicant contends that ‘SNAP’ has no distinctive character

for the earlier services.²⁵ However, as both of the earlier marks are registered, it is not open to me to find that either is devoid of any distinctiveness.²⁶ That said, I accept that the earlier services may involve the sharing of photographs and therefore, bearing in mind my earlier comments as regards how the word 'SNAP' is likely to be conceptualised, it has some allusive qualities in relation to the relevant earlier services. I find that its distinctiveness is below-medium for such services. The earlier services will also enable the average consumer to 'chat' with other users. It follows that, bearing in mind how 'SNAPCHAT' is likely to be conceptualised, the inherent distinctiveness of 'SNAPCHAT' is also below-medium.

38) I now turn to the question of whether the inherent distinctiveness of each earlier mark has been enhanced through use.

39) All of the evidence indicates that SNAP is used almost exclusively, if not entirely, as the company name of the opponent rather than as a trade mark designating any particular goods or services. Such use is not sufficient to show enhanced distinctiveness of SNAP as a trade mark.

40) Turning to use of SNAPCHAT, I find that there has been extensive use of that mark in the UK in relation to 'Internet based social networking services' in class 45. Such use has been through the opponent's social media messaging application which has clearly enjoyed enormous success consistently for many years in the UK (and indeed, globally) prior to the relevant date and the amounts spent on advertising have been significant. In respect of the aforementioned services, SNAPCHAT was, factually, highly distinctive in the UK at the relevant date.

Likelihood of confusion

41) I must now feed all of my earlier findings into the global assessment of the likelihood of confusion, keeping in mind the following factors: i) the interdependency principle, whereby a lesser degree of similarity between the services may be offset by

²⁵ As per the counterstatement, [11]

²⁶ In accordance with Section 72 of the Act.

a greater similarity between the marks, and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*); ii) the principle that the more distinctive the earlier mark is, the greater the likelihood of confusion (*Sabel BV v Puma AG*), and; iii) the factor of imperfect recollection i.e. that consumers rarely have the opportunity to compare marks side by side but must rather rely on the imperfect picture that they have kept in their mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.*).

Mark '556

42) The respective services are identical or at least highly similar. The marks are also visually and aurally similar to an above-medium degree. Conceptually, the marks are different to a significant proportion of average consumers but there is a degree of conceptual similarity for another significant proportion of average consumers. The earlier mark has a below-medium degree of distinctiveness. Weighing all these factors, I come to the view that an average consumer, paying a medium degree of attention during a mainly visual purchase, is likely to misremember the marks as being the same whether the marks are perceived as conceptually similar or not. There is a likelihood of direct confusion in respect of earlier mark '556.

43) Notwithstanding my finding above, I will also consider the likelihood of indirect confusion. In this connection, I bear in mind that in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10 (*L.A. Sugar*), Mr Iain Purvis Q.C. (as he then was), sitting as the Appointed Person, explained that:

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

common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark’.

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

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (‘26 RED TESCO’ would no doubt be such a case).
- (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as ‘LITE’, ‘EXPRESS’, ‘WORLDWIDE’, ‘MINI’ etc.).
- (c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (‘FAT FACE’ to ‘BRAT FACE’ for example)”.

44) I also keep in mind that in *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Arnold LJ agreed, pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion. Furthermore, it is not sufficient that a mark merely calls to mind another mark: *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17. This is mere association not indirect confusion.

45) I bear in mind that the categories listed above in *L.A. Sugar* are, of course, not an exhaustive list of all the ways in which indirect confusion can occur; they are merely examples of the way in which it tends to occur.

46) In the event that the average consumer notices that the marks are not the same, I consider it likely that they will, nevertheless, indirectly confuse the marks. Such confusion is likely to occur due to the respective words in the marks being imperfectly recalled as being the same and the addition of the device being perceived as a brand extension or variant. I come to this conclusion whether the marks are perceived as conceptually similar or not. There is a likelihood of indirect confusion in respect of earlier mark '556.

Mark '971

47) The respective services are identical or at least highly similar. There is a below-medium degree of visual similarity between the marks and a medium degree of aural similarity. Conceptually, the marks are different to a significant proportion of average consumers but there is a degree of conceptual similarity for another significant proportion of average consumers. Weighing all these factors, and notwithstanding the high degree of factual distinctiveness of the earlier mark gained through use, I come to the view that there is no likelihood of direct confusion on the part of an average consumer paying a medium degree of attention in respect of mark '971. I make this finding even where the marks may be perceived as having a degree of conceptual similarity.

48) I will now consider the likelihood of indirect confusion. In this connection, I bear in mind that in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10 (*L.A. Sugar*), Mr Iain Purvis Q.C. (as he then was), sitting as the Appointed Person, explained that:

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

earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark’.

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

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (‘26 RED TESCO’ would no doubt be such a case).
- (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as ‘LITE’, ‘EXPRESS’, ‘WORLDWIDE’, ‘MINI’ etc.).
- (c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (‘FAT FACE’ to ‘BRAT FACE’ for example)”.

49) I also keep in mind that in *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Arnold LJ agreed, pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion. Furthermore, it is not sufficient that a mark merely calls to mind another mark: *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17. This is mere association not indirect confusion.

50) I bear in mind that the categories listed above in *L.A. Sugar* are, of course, not an exhaustive list of all the ways in which indirect confusion can occur; they are merely examples of the way in which it tends to occur.

51) I can see no proper basis for concluding that, in circumstances where the consumer has recognised that the marks are not the same, they are nevertheless likely to believe that the respective services come from the same/linked undertaking(s). Neither mark appears to be an entirely logical brand extension of the other nor does the later mark simply add a non-distinctive element to the earlier mark. I also do not consider that Mr Purvis' category (a) is apt to cover the circumstances here and I cannot see any other basis for finding a likelihood of indirect confusion. Whilst the applicant's mark may bring the earlier mark to mind, that is mere association not confusion. There is no indirect confusion in respect of mark '971.

Other marks relied upon under Section 5(2)(b) of the Act

52) I can deal with the other marks relied upon relatively swiftly, for the following reasons:

- Mark '411 is identical to mark '556 for identical services. This mark therefore offers no greater prospect of success than mark '556.
- The services covered by mark '184 are 'Identification verification services, namely, providing authentication of personal identification information'. It is far from obvious to me that the respective services share any overlap in user, nature, purpose, method of use, trade channels or that they are in competition or complementary. In the absence of any submissions/evidence from the opponent explaining where the perceived similarity lies, I find that they are not similar to the applicant's services and therefore the 5(2)(b) claim based upon that mark must fail.
- As regards mark '987, this mark obviously offers the opponent no greater prospect of success than marks '556 or '971. Firstly, mark '987 covers the same identical/highly similar goods which were relied upon for the latter two marks. Secondly, the degree of visual, aural and conceptual similarity between mark '987 and the applicant's mark is obviously no greater than for earlier mark '971. Thirdly, earlier mark '987 is not particularly distinctive – it has, in my view, no more than a medium degree of inherent distinctiveness which has not, on the evidence before me, been enhanced to any greater

degree. Weighing all relevant factors, I also find no likelihood of confusion in respect of mark '987.

53) I add here that Mr Stratton refers to various marks in his evidence as constituting a 'family' of marks.²⁷ I note that the majority of the marks referred to by Mr Stratton have not been pleaded in the notice of opposition. Neither did the opponent state in its notice of opposition that it was claiming the existence of a 'family of marks' and the opponent has made no request to amend its pleadings to rely upon such a claim. Mr Stratton's evidence pertaining to a 'family of marks' is therefore not relevant to my considerations of whether there is a likelihood of confusion.

54) The opposition under section 5(2)(b) of the Act, based upon mark '556, succeeds.

SECTION 5(3)

55) Section 5(3) of the Act provides:

“(3) A trade mark which-

(a) is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) 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.”

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

²⁷ Mr Stratton's witness statement, paragraph [14]

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

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

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

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

Reputation

57) I have already touched upon the use that has been shown of the earlier marks in the evidence before me. Although enhanced distinctiveness and reputation are not the same thing, for similar reasons as expressed earlier, I find that the opponent's 'SNAP' marks do not have the requisite reputation. Without a reputation, the claim under this ground must fail in respect of the earlier 'SNAP' marks. However, the use and recognition of 'SNAPCHAT' is such that I have no hesitation in finding that it enjoyed a very strong reputation at the relevant date. That reputation is in relation to, at least, the following goods and services:

- 'Internet based social networking services' in class 45.
- 'downloadable computer software for modifying the appearance and enabling transmission of photographs' in class 9.

Link

58) Whether the public will make the required mental 'link' between the applicant's mark and the earlier 'SNAPCHAT' mark must take account of all relevant factors. The relevant factors identified in Case C-252/07, *Intel* [2009] ETMR 13 are:

i) *The degree of similarity between the conflicting marks*

I have already assessed this factor under section 5(2)(b). I remind myself of those findings which were as follows:

There is a below-medium degree of visual similarity and a medium degree of aural similarity between the marks. Conceptually, the marks are different to a significant proportion of average consumers but there is a degree of conceptual similarity for another significant proportion of average consumers.

ii) *The nature of the goods or services for which the conflicting marks are registered, or proposed to be registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public*

The applicant's services which are in the nature of 'social networking' are identical to the opponent's 'Internet based social networking services'. Further, the applicant's 'online social networking information services; online social networking advisory services' are highly similar to the same for reasons already given earlier in this decision.

The applicant's 'introduction' and 'dating' type services are also similar to the opponent's 'Internet based social networking services' to at least a medium degree given that they may share users, trade channels, methods of use and overlap in purpose and nature in the sense that all are concerned with forming/maintaining social relationships with others.

I also find that there is at least a medium degree of similarity between the earlier relevant goods in class 09 with the contested services. The opponent's goods in class 9 are ones which may share users and trade channels with the contested services and may also be complementary to the same.

iii) The strength of the earlier mark's reputation

'SNAPCHAT' had a very strong reputation at the relevant date.

iv) The degree of the earlier mark's distinctive character, whether inherent or acquired through use

Inherently, SNAPCHAT has a below-medium degree of inherent distinctiveness, for reasons already explained, in respect of the earlier services in class 45. I also find that its inherent distinctiveness is below-medium in respect of the relevant earlier services in class 9.

I have already found that the use before me is such as to have elevated the distinctiveness of 'SNAPCHAT' such that it is factually distinctive to a high level in relation to the earlier 'Internet based social networking services' in class 45. I also find that the use before me is sufficient to have elevated the inherent distinctiveness of the mark up to a high degree of factual distinctiveness in relation to the earlier goods in class 9 in which the opponent enjoys a reputation.

v) Whether there is a likelihood of confusion

I do not consider there to be a likelihood of confusion.

Conclusions on link

59) Bearing in mind the similarities between the marks, the degree of similarity/identity between the goods and services, the very strong reputation enjoyed by the earlier mark and its high degree of factual distinctiveness, I find that 'SNAPCHAT' is likely to be brought to mind by the relevant public when encountering the applicant's mark on the contested services. For the avoidance of doubt, I make this finding regardless of whether the relevant public perceives the marks as being conceptually similar or not. The requisite link is established.

Damage

Unfair advantage

60) In my view, the link that is made between the marks will result in the applicant gaining an unfair advantage. This is because the applicant's mark will appear instantly more familiar to the relevant public and thus the applicant will benefit from the opponent's extensive marketing efforts without incurring the same marketing costs itself.

61) Additionally, I also accept the opponent's claim that the image enjoyed by its mark appears to be one of being 'young, trendy, cool and high-tech'.²⁸ In this connection, it is clear from the evidence before me that the opponent's goods and services are enormously popular with the younger age group, in particular (under 35s), and include various 'funky'²⁹ high-tech features, such as disappearing messages and the ability to add filters. I find that there is, objectively, a non-hypothetical risk that the link that is made between the contested mark and the earlier mark will result in those positive characteristics associated with the earlier mark transferring to the applicant's mark. This association with the opponent's

²⁸ Statement of grounds, [7]

²⁹ See, for example, page 29 of exhibit MS4

reputed mark would make the applicant's mark more attractive to the relevant public and give the applicant more custom than it otherwise would have enjoyed and make its job of marketing its goods and services easier. As this would come without paying any compensation to the opponent, and without the applicant expending the money necessary to create a market for its own services in the UK, I find that this also constitutes unfair advantage.

Other heads of damage

62) I do not consider that either of the other heads of damage are made out. As regards detriment to the distinctive character of the earlier mark, it is difficult to see why that would occur in the absence of a likelihood of confusion. Further, as regards the claim of detriment to the reputation of the earlier marks, this is made on the basis that the applicant may provide poor quality services, leading to detriment to the earlier marks reputation. This amounts to nothing more than conjecture. There is no evidence to suggest that the applicant already has a negative reputation for providing poor quality services and there is nothing inherent in the services applied for that would cause any form of negative reaction.³⁰

63) The opposition under section 5(3) of the Act, based upon mark '971, succeeds.

OVERALL OUTCOME

64) The opposition succeeds.

COSTS

65) As the opponent has been successful, it is entitled to a contribution towards its costs. The instant proceedings were launched on 10th February 2023. Therefore, the relevant scale for assessing costs is that which is provided in Tribunal Practice

³⁰ See *Cristalino* case [2015] EWCH 2760 (Ch) [89-90]; *Unite The Union v The Unite Group Plc* (BL O/219/13) [46-47]

Notice 1/2023. Using that scale as guidance, I award costs to the opponent on the following basis:

Official fee (Form TM7)	£200
Preparing a statement and considering the other side's statement	£300
Filing evidence	£900
Filing submissions in lieu of a hearing	£400
Total:	£1800

66) I order UFUK ANIL KIRAL to pay Snap Inc. the sum of **£1800**. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 22nd day of December 2025

Beverley Hedley
For the Registrar

ANNEX

Services in class 42 covered by earlier mark '411:

Class 42: Providing information and advice regarding secure electronic communication.

Services in classes 9, 38, 41 & 42 covered by earlier mark '971:

Class 09: Downloadable computer software for modifying the appearance and enabling transmission of photographs; computer software for the collection, editing, organizing, modifying, transmission, storage and sharing of data and information; computer software for use as an application programming interface (API); computer software in the nature of an application programming interface (API) for computer software which facilitates online services for social networking, building social networking applications and for allowing data retrieval, upload, download, access and management; computer software to enable uploading, downloading, accessing, posting, displaying, tagging, streaming, linking, sharing or otherwise providing electronic media or information via computer and communication networks.

Class 38: Telecommunications services, namely, electronic transmission of data, messages, graphics, images and information; peer-to-peer photo sharing services, namely, electronic transmission of digital photo files among internet users; providing access to computer, electronic and online databases; providing online forums for communication, namely, transmission on topics of general interest; providing online chat rooms and electronic bulletin boards for transmission of messages among users in the field of general interest; broadcasting services over computer or other communication networks, namely, uploading, posting, displaying, tagging, and electronically transmitting data, information, messages, graphics, and images; telecommunications services, namely, electronic transmission of photos and videos.

Class 41: Providing computer, electronic and online databases in the field of entertainment; publication of electronic journals and web logs featuring user generated or specified content.

Class 42: Providing a web site that gives users the ability to upload photographs; computer services, namely, providing an interactive web site featuring technology that allows users to manage their online photograph and social networking accounts; providing use of online temporary non-downloadable software for modifying the appearance and enabling transmission of photographs; file sharing services, namely, providing a web site featuring technology enabling users to upload and download electronic files; hosting on-line web facilities for others for managing and sharing on-line content; providing information from searchable indexes and databases of information; providing search engines for obtaining data via communications networks; computer services, namely, creating virtual communities for registered users to participate in discussions and engage in social, business and community networking; computer services, namely, hosting online web facilities for others for organizing and conducting meetings, events and interactive discussions via communication networks; application service provider (ASP) services, namely, hosting computer software applications of others; application service provider (ASP) featuring software to enable or facilitate the uploading, downloading, streaming, posting, displaying, linking, sharing or otherwise providing electronic media or information over communication networks; providing a web site featuring technology that enables online users to create personal profiles featuring social networking information; providing information on topics of general interest from searchable indexes and databases of information, including text, electronic documents, databases, graphics and audio visual information, on computer and communication networks namely, provision of search engines for the Internet; providing temporary use of non-downloadable software applications for social networking, creating a virtual community, and transmission of audio, video, photographic images, text, graphics and data; computer services in the nature of customized web pages featuring user-defined or user-specified information, personal profiles, audio, video, photographic images, text, graphics and data.