

O/0065/23

TRADE MARKS ACT 1994

IN THE MATTER OF

TRADE MARK APPLICATION NOS 3523500 & 3523497

IN THE NAME OF 4TH PARADIGM (BEIJING) TECHNOLOGY CO., LTD.

AND

OPPOSITION THERETO UNDER NOS 422820 & 422824

BY SAGE GLOBAL SERVICES LIMITED

Background and pleadings

1. These consolidated proceedings concern oppositions against two trade mark applications in the name of 4th Paradigm (Beijing) Technology Co., Ltd. (“the applicant”).

The contested trade marks are:

- (i) UK 3523500 “4Paradigm Sage” (“UK500”)

4Paradigm SageOne


2. Both of these trade marks were filed on 17 August 2020 (“the relevant date”). The specifications for which registration is sought are identical and read:

Class 9: Computer software platforms, recorded or downloadable; humanoid robots with artificial intelligence; data processing apparatus; computer programs, recorded; radios; precision measuring apparatus; computer memory devices; computer software, recorded; computer software applications, downloadable; computers.

Class 42: Technological research; information technology services provided on an outsourcing basis; computer technology consultancy; digitization of documents [scanning]; software as a service [SaaS]; off-site data backup; conversion of computer programs and data, other than physical conversion; cloud computing; computer system analysis; computer software design.




3. On 18 January 2021, Sage Global Services Limited (“the opponent”) filed notices of opposition against the applications. The grounds are based on ss. 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”). The same trade marks are relied upon for both

oppositions, to the same extent.¹ The marks relied upon under s. 5(2)(b) are shown below, with the specifications in full in the appendix to this decision:²

	Mark number & relevant dates	Trade mark	Specification relied upon	Proof of use?
1.	EU 18282651 ("the figurative mark") Filed 03.08.2020 Registered 18.12.2020		Goods and services in classes 9, 35, 36, 41 and 42.	No
2.	UK 3026298 Filed 15.10.2013 Registered 28.02.2014	SAGE	Goods and services in classes 9 and 42.	Yes
3.	UK 1360796 Filed 14.10.1988 Registered 23.08.1991	SAGE	Goods in class 9.	Yes
4.	EU 17336207 Filed 13.10.2017 Registered 24.07.2018	Sage Business Cloud	Goods and services in classes 9 and 42.	No

¹ Counsel for the opponent's skeleton argument suggested that there was a difference between the oppositions. However, amended forms TM7 were filed on 13 April 2021 with identical earlier marks in each. Similarly, counsel referred to the comparable marks (EU) but these were substituted for the originating EUTMs before the oppositions were admitted.

² See annex A of the opponent's skeleton argument.

5.	UK 3096426 Filed 26.02.2015 Registered 05.06.2015	SAGE ONE	Goods and services in classes 9 and 42.	Yes
6.	EU 17336181 Filed 13.10.2017 Registered 25.07.2018	Be Sage. Build On.	Goods and services in classes 9 and 42	No
7.	UK 2253504 ³ Filed 20.11.2000 Registered 29.08.2008	SAGE sage   sage 	Goods and services in classes 9 and 42.	Yes
8.	EU 13867585 Filed 23.03.2015 Registered 21.09.2015	BE SAGE	Goods and services in classes 9 and 42.	No


4. The opponent contends that all of the goods and services in the contested specifications, except for “radios” and “precision measuring apparatus” in class 9, are identical or similar to the goods and services of its own trade marks.⁴ It says that the contested marks are similar to the earlier marks and that there is a likelihood of confusion, including the likelihood of association. The opponent also claims that it has a “family” of

³ The mark description includes colour claims for the third and fourth marks in the series.

⁴ Opponent’s skeleton argument, p. 11, fn. 1.

trade marks all containing the word “SAGE”. Consequently, the opponent claims that the applications should be refused in part under s. 5(2)(b).

5. Under s. 5(3), all of the goods and services in the applications are opposed. The opponent claims that the following trade marks have a reputation:

Trade mark	Goods/services for which a reputation is claimed
EU18282651 	Goods in class 9, services in class 42.
UK3026298 SAGE	Goods in class 9, services in class 42.
UK1360796 SAGE	“Computer software” in class 9.
EU17336207 Sage Business Cloud	Goods in class 9, services in class 42.
UK3096426 SAGE ONE	Goods in class 9, services in class 42.

6. The goods and services for which a reputation is claimed are highlighted in bold in the appendix to this decision. The opponent asserts that its trade marks have a significant reputation, individually and as a family. It claims that the relevant public will believe that the marks are used by the same undertaking or that there is an economic connection between the users of the marks. Further, it says that use of the contested marks would create the impression of a collaboration or association with the opponent and give the applicant an unfair advantage. The opponent also says that the contested marks would gain an unfair advantage by benefiting from the effort and money put into the promotion of the earlier marks. In addition, the reputation of the earlier marks could be damaged by use of the contested marks for goods or services which do not meet the opponent’s high standards. The opponent also claims that there would be detriment to the distinctive character of the earlier marks because not only would the public be confused but the

opponent's business partners may believe that there is an economic connection between the opponent and applicant, contrary to agreements the opponent has made with other parties, causing disputes or discouraging potential business partners.

7. The applicant filed counterstatements in which it denies the grounds. It accepts that some of the goods and services are identical or similar (it does not specify which) but asserts that the trade marks are different and that there will be no confusion. The applicant put the opponent to proof of both use of the trade marks and of the claimed reputation. It denies the allegations of damage.

8. A hearing was requested and held before me, by videoconference, on 5 October 2022. The opponent was represented by Amanda Michaels of counsel, instructed by Wiggin LLP. The applicant was not represented at the hearing, nor did it file written submissions in lieu.

Evidence

9. Both parties filed evidence. The opponent's evidence consists of two witness statements, the second filed in reply to the applicant's evidence, from Christina Garrigues, who is the Senior Legal Counsel – IP for the opponent. Ms Garrigues' evidence concerns the use made of the earlier marks in the UK.

10. The applicant's evidence is provided by Qiao Shuangshuang, the director of the Intellectual Property Department at the applicant. Ms Shuangshuang gives evidence about the applicant's business and presence in the UK.

11. I have read all of the evidence. I do not intend to summarise it all but will refer to it, as appropriate, in the course of this decision.

Approach

12. At the hearing, Ms Michaels identified the opponent's best case against UK3523500 as being that under the first four marks in the table at paragraph 3, above (i.e. the figurative mark, the two "SAGE" word marks and the "Sage Business Cloud" mark). In

relation to the opposition against UK3523497, the same four marks, plus the “SAGE ONE” mark represent the opponent’s best case. Ms Michaels accepted that, if the oppositions based upon these four/five marks are unsuccessful, they will also fail based on the other trade marks relied upon by the opponent. This means that it is only necessary for me to consider the position based on the best marks as identified by the opponent.

Proof of use

13. The proof of use provisions are at s. 6A of the Act, which at the relevant date read:

“6A—(1) This section applies where

- (a) an application for registration of a trade mark has been published,
- (b) there is an earlier trade mark of a kind falling within section 6(1)(a), (b) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and
- (c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section “the relevant period” means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

(a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes –

(a) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5) In relation to a European Union trade mark or international trade mark (EC), any reference in subsection (3) or (4) to the United Kingdom shall be construed as a reference to the European Community.

(5A) In relation to an international trade mark (EC) the reference in subsection (1)(c) to the completion of the registration procedure is to be construed as a reference to the publication by the European Union Intellectual Property Office of the matters referred to in Article 190(2) of the European Union Trade Mark Regulation.

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.”

14. Section 100 of the Act is also relevant and states that:

“100. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

15. In *Walton International Ltd & Anor v Verweij Fashion BV* [2018] EWHC 1608 (Ch) Arnold J (as he then was) summarised the law relating to genuine use as follows:

“114. [...] The CJEU has considered what amounts to “genuine use” of a trade mark in a series of cases: Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, *La Mer* (cited above), Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundesvereinigug Kamaradschaft ‘Feldmarschall Radetsky’* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Marken BV v Hagelkruis Beheer BV* [EU:C:2012:816], [2013] ETMR 16, Case C-609/11 P *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], [2014] ETMR, Case C-141/13 P *Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089] and Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434], [2017] Bus LR 1795.

115. The principles established by these cases may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Leno* at [29]; *Centrotherm* at [71]; *Reber* at [29].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Leno* at [29]; *Centrotherm* at [71]. Accordingly, affixing of a trade mark on goods as a label of quality is not genuine use unless it guarantees, additionally and simultaneously, to

consumers that those goods come from a single undertaking under the control of which the goods are manufactured and which is responsible for their quality: *Gözze* at [43]-[51].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14] and [22]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71]; *Reber* at [29].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Leno* at [29]-[30], [56]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72] and [76]-[77]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32]”.⁵

16. In *Awareness Limited v Plymouth City Council*, BL O/236/13, Daniel Alexander Q.C., sitting as the Appointed Person, stated that:

“22. The burden lies on the registered proprietor to prove use [...]. However, it is not strictly necessary to exhibit any particular kind of documentation, but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public.”

⁵ Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to EU trade mark law.

He added:

“28. [...] I can understand the rationale for the evidence being as it was but suggest that, for the future, if a broad class, such as “tuition services”, is sought to be defended on the basis of narrow use within the category (such as for classes of a particular kind) the evidence should not state that the mark has been used in relation to “tuition services” even by compendious reference to the trade mark specification. The evidence should make it clear, with precision, what specific use there has been and explain why, if the use has only been narrow, why a broader category is nonetheless appropriate for the specification. Broad statements purporting to verify use over a wide range by reference to the wording of a trade mark specification when supportable only in respect of a much narrower range should be critically considered in any draft evidence proposed to be submitted.”

17. The relevant period is 18 August 2015 to 17 August 2020.

The opponent’s evidence of use

18. Sage was first formed in 1981 as a software business in Newcastle upon Tyne. It was floated on the London Stock Exchange in 1989 and has been on the FTSE 100 since 1999.⁶ The Sage Group PLC (“the Sage Group”), the opponent’s parent company, was, as of 2017, the UK’s second-largest technology company.⁷

19. The opponent is the global contracting company for the Sage Group and owner of the Group’s intellectual property; the “SAGE” marks are used by the entities within the Group with the consent of the opponent. Ms Garrigues says that the vast majority of the goods and services offered by the opponent and the Sage Group companies are under the “SAGE” mark.⁸ The “SAGE” mark has been used in relation to on-premises (downloadable) accounting, financial and business management computer software since 1981.⁹ The first product was record-keeping software, followed by estimating and

⁶ Garrigues 1, §6, exhibit CG1.

⁷ CG1, p. 6. See also Garrigues 1, §7; CG22.

⁸ Garrigues 1, §10.

⁹ Garrigues 1, §16.

accounting software.¹⁰ The opponent operates in the sector of software and technology for financial, operations and people management (among other things) for small and medium sized enterprises.¹¹

20. Total annual revenue for the Sage Group in the UK is given as follows:¹²

2015: £298,600,000

2016: £319,500,000

2017: £343,000,000

2018: £353,000,000

2019: £380,000,000

2020: £383,000,000

21. From 2018, more than half of the opponent's global revenue was made from subscriptions to cloud based Software as a Service ("SaaS") products.¹³ A sample of supporting invoices is included, for various "Sage" (e.g. "SAGE 200") and "Sage One" products.¹⁴ The invoices have the figurative mark in the header.

22. Archive prints dated in the relevant period from <http://www.sage.com/en/gb/products/> show the figurative mark alone at the top and bottom of the web pages and in combination (e.g. sage One; sage LIVE).¹⁵ There is also use of the plain word "Sage" in forms such as "Sage People" and "Sage X3". The software range covers accounting & finance, people & payroll, business management, and payments & banking including "Sage Pay" services. "Sage X3" is said to allow users to "take control of your business processes".¹⁶

¹⁰ CG1, p. 6.

¹¹ Garrigues 2, §15(b).

¹² Garrigues 1, §15. See also CG2 and CG3.

¹³ Garrigues 1, §18, CG6.

¹⁴ CG23.

¹⁵ CG8.

¹⁶ Documents from outside the relevant period call this product an "ERP" solution: CG28, CG29.

All of the goods and services include the indicator “Sage”. The pages have links to support and training pages, including the “Sage Advice Blog”. One of the prints is specific to “Sage Business Cloud”. Some of the software has secondary branding such as “CakeHR” and “Sage Intacct”.¹⁷ The product includes accounting, payroll, HR, business process and financial management software. These all appear to be cloud-based software. The product includes services such as “Sage HR Advice Director” and on-premises business management software. Certain payment “solutions” are offered, such as invoice payments. There is no real detail about these services, which do not appear to be cloud-based.

23. Prints from ask.sage.co.uk show available downloads for the Sage Payroll (Micropay) product.¹⁸ There are a number of versions available for the tax years 2007 to 2020; not all release dates are given but those visible are between 12 June 2018 and 15 January 2020. Similar pages show Sage 50 Accounts (2018-2020), Sage CRM (2018-2021) and Sage ERP X3 (the page was created in 2014, the last version of the product was published in April 2020).

24. Limited information about the “Sage CRM” (which I understand to mean “client relationship management”) product, is in evidence.¹⁹ It consists of the front and contents pages of an installation and upgrade guide dated April 2016, said to have been available on the opponent’s website, plus an invoice to a purchaser in Glasgow the same year. It is also visible in the prints from the opponent’s website in the relevant period, under the “business management” heading.

25. Extracts from the 2016 Annual Report state that Sage is the market leader for “integrated accounting, payroll and payment solutions”.²⁰ As well as “Sage” accounting and payroll software, “Sage One” is mentioned in the report. This is the format of the mark:

¹⁷ CG16 includes details of the acquisitions of brands such as Cake HR and Intacct.

¹⁸ CG4.

¹⁹ CG9.

²⁰ CG2.

26. The figurative mark is visible in the combinations “sage Live” and “sage X3”, which are cloud accounting and “business management cloud accounting” products.²¹ The report also refers to payment and Human Capital Management (“HCM”) software. It indicates that software is increasingly becoming a cloud-based service and that connected versions of Sage products are being offered, though there is the option of locally hosted/on-premises solutions.²²

27. “SAGE ONE” was the first specifically designed online software product.²³ Its release was reported in January 2011, with three versions available: “Sage One Cashbook”, “Sage One Accounts” and “Sage One Accountant Edition”.²⁴ Sage One includes 24-hour support by telephone, email or the internet.²⁵ A 2017 user guide describes the various product options available at that time, all of which are subscriptions to a Software as a Service (“SaaS”) product, such as “Sage One Accounting” and “Sage One Payroll”.²⁶ The guide is for the “Sage One Partner Edition”, which appears to be for accountancy professionals. Technical support is included for all Sage One web applications and online help in the form of email support as well as access to videos, tutorials and articles is available. Additional connected applications (e.g. “Sage Final Accounts Online”) are available to UK accountants. The “Sage Expenses & Invoicing” application for recording transactions was launched in November 2016.²⁷ Promotional material also from 2017 says that Sage One “sees enhancements” every two weeks.²⁸

28. “Sage Business Cloud” was launched in the UK in October 2017.²⁹ It includes accounting, financial management, enterprise management, people, payroll and payments & banking software. There is reference to the platform as using artificial

²¹ CG2, p. 35.

²² CG2, pp. 13, 18, 34-35.

²³ Garrigues 1, §17.

²⁴ CG5. See also CG2, e.g. p. 35.

²⁵ CG5, p. 3.

²⁶ CG7.

²⁷ CG7, pp. 34-36.

²⁸ CG23, p. 126.

²⁹ Garrigues 1, §17, CG1, p. 5, CG5, pp. 5-6 and CG7.

intelligence (“AI”) and machine learning to help businesses increase productivity and efficiency.

29. In 2019, superbrands.uk.com designated the Sage Group a “superbrand”.³⁰ The figurative mark is visible in the supporting web pages and there are references to the company as “Sage” throughout. Sage is said to “[help] organisations of all types manage everything from money to people with Sage Business Cloud”. It is described as the market leader in many of its markets, “with particular strength in cloud adoptive countries like the US, Canada, the UK [...]”. The article refers to both cloud connected solutions and cloud native solutions and says that “Sage Accountant Cloud” was launched in 2018.

30. A report dated March 2020 from MarketLine about the UK software market values the market in 2019 at £18.6 billion.³¹ It says that business process applications is the largest segment of the total market and accounts for 37.9% of the market’s total value. The report comments on the competitive landscape, saying “[the] UK software market is dominated by global players such as Microsoft, Oracle and SAP, and domestic firm Sage”. However, it acknowledges that the market is “still fairly unconsolidated, with a high number of smaller software companies present”. It also says that software companies often dominate particular areas of the market and that the largest companies offer a broad portfolio of products (e.g. IBM makes mainframe computers; Microsoft makes consumer electronics).³² Sage is described as a provider of services and business management software solutions to small and medium sized enterprises (SMEs), offering software and services for accounting and payroll, customer relationship management, enterprise resource planning and payments”.³³

31. The evidence shows other awards in the UK in 2017 and 2018, including awards for the opponent’s software and cloud products and “Accountancy Software Provider of the Year” at the 2018 British Small Business Awards.³⁴

³⁰ Garrigues 1, §28, CG13.

³¹ CG21.

³² CG21, p. 84.

³³ CG21, p. 102.

³⁴ CG15.

Conclusions on genuine use

32. Taking the two “SAGE” word-only marks first, I have no doubt that the word “sage” has been used for many years, including during the relevant period, to denote goods and services offered by the opponent. The use of “sage” as a primary brand runs through the evidence, both in the opponent’s own productions (e.g. its website and user guides) and in third-party commentary. There is both word-only use and use in a stylised form corresponding to the figurative mark. The law on use of variant forms was considered recently in *Lactalis McLelland Limited v Arla Foods AMBA*, BL O/265/22. The Appointed Person said:

“13. [...] While the law has developed since *Nirvana* [BL O/262/06], the recent case law still requires a comparison of the marks to identify elements of the mark added (or subtracted) which have led to the alteration of the mark (that is, the differences) (see for instance, T-598/18 *Grupo Textil Brownie v EU*IPO*, EU:T:2020:22, [63 and 64]).

14. The courts, and particularly the General Court, have developed certain principles which apply to assess whether a mark is an acceptable variant and the following appear relevant to this case.

15. First, when comparing the alterations between the mark as registered and used it is clear that the alteration or omission of a non-distinctive element does not alter the distinctive character of the mark as a whole: T-146/15 *Hypen v EUIPO*, EU:T:2016:469, [30]. Secondly, where a mark contains words and a figurative element the word element will usually be more distinctive: T-171/17 *M & K v EUIPO*, EU:T:2018:683, [41]. This suggests that changes in figurative elements are usually less likely to change the distinctive character than those related to the word elements.

16. Thirdly, where a trade mark comprises two (or more) distinctive elements (eg a house mark and a sub-brand) it is not sufficient to prove use of only one of those distinctive elements: T-297/20 *Fashioneast v AM.VI. Srl*, EU:T:2021:432, [40] (I

note that this case is only persuasive, but I see no reason to disagree with it). Fourthly, the addition of descriptive or suggestive words (or it is suppose figurative elements) is unlikely to change the distinctive character of the mark: compare, T-258/13 *Artkis*, EU:T:2015:207, [27] (ARKTIS registered and use of ARKTIS LINE sufficient) and T-209/09 *Alder*, EU:T:2011:169, [58] (HALDER registered and use of HALDER I, HALDER II etc sufficient) with R 89/2000-1 CAPTAIN (23 April 2001) (CAPTAIN registered and use of CAPTAIN BIRDS EYE insufficient).

17. It is also worth highlighting the recent case of T-615/20 *Mood Media v EUIPO*, EU:T:2022:109 where the General Court was considering whether the use of various marks amounted to the use of the registered mark MOOD MEDIA. It took the view that the omission of the word “MEDIA” would affect the distinctive character of the mark (see [61 and 62]) because MOOD and MEDIA were in combination weakly distinctive, and the word MOOD alone was less distinctive still”.

33. In my view, use of the figurative mark constitutes use of the word “SAGE” and vice versa. The stylisation of the letters in the figurative mark is minimal and the colour is also by far subordinate to the word. In terms of use alongside other matter, I am satisfied that the use of “Sage” in the various combinations in evidence (such as “Sage Business Cloud”, “Sage People” and “Sage X3”) are all acceptable uses of the mark. This is because the CJEU in *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12 acknowledged that both independent use of a trade mark and use in conjunction with or as part of another mark would be acceptable if the trade mark continues to be perceived as indicative of the origin of the product at issue. All of the examples of composite use in the evidence fall within that category: none of the combinations materially changes or impedes the ability of “Sage” to act as a badge of origin.

34. As regards the goods and services for which use has been shown, it is clear that the opponent had a very significant turnover during the relevant period but there is no breakdown as between the goods and services, or indeed the trade marks. However, as regards goods in class 9, there is evidence that software downloads were available for

payroll, accounting and business management software in the relevant period (Sage Payroll, Sage 50 Accounts, Sage CRM and Sage X3). Sage 50 P11D (“people & payroll”) is also on-premises software, whilst “Sage 50 cloud” (accounting/finance) and “Sage 200 cloud” (business management) are described as cloud-connected solutions, as distinct from the cloud native solutions also mentioned.³⁵ This suggests that “cloud connected” products can connect to the cloud but are not necessarily uniquely available in online form. The same article says that Sage Business Cloud Enterprise Management can be deployed both on the premises and in the cloud. Additionally, the 2016 annual report indicates that despite the increasing online trend, locally hosted/on-premises options remain available.³⁶ It appears that most payment software was not online and that only the salary and supplier payment software was available in the cloud in the relevant period.³⁷

35. The evidence regarding human resources software (i.e. in class 9) is more ambiguous. There is no evidence of, for example, software available for download on the website and the website prints which detail the “people” products do not distinguish between software and SaaS. Whilst there is mention of “Sage People” on the website prints, the evidence is that CakeHR was acquired to add cloud HR capability to Sage Business Cloud and was subsequently rebranded “Sage People”.³⁸ However, “Sage 50 HR” is also present in the three web prints and, in view of the fact that the other “Sage 50” products appear to be software, at least as an option, I am prepared to conclude that human resources software as a good was also available in the relevant period.

36. The evidence is that from 2018 more than half of global revenue was in relation to SaaS, suggesting that between 2015 and 2017 software (and potentially associated services such as training and technical advice) were the greater part. I recognise that the evidence regarding the software/SaaS split is not UK-specific and that the UK is described as a “cloud adoptive” country but even so, I find that the proportion of revenue relating to software in the UK was not trivial. Although the UK turnover is not broken down, it is large

³⁵ CG13.

³⁶ CG2, p. 35.

³⁷ CG8, p. 5.

³⁸ CG16, p. 5.

enough that, even if only a relatively small portion is attributable to each type of software, it is still likely to be well above the threshold for genuine use. That is particularly the case in light of the evidence that the opponent was, during the relevant period, regarded by third parties as a major player in the software market. I am satisfied that payroll, payment/payment processing, accounting, human resources and business management software were all offered under the trade mark “SAGE” on a scale sufficient to constitute genuine use during the relevant period.

37. In relation to the SaaS services in class 42, I am also satisfied that there has been genuine use of the “SAGE” word mark (UK3026298) in relation to the provision of online software services in the fields of accounting, financial management, payroll, payments, human resources and business management. As with the software considered above, although there is no breakdown of the figures, the turnover is substantial and is coupled with use over a period of years as well as third-party recognition of Sage as a leader in the field. In particular, the Sage Business Cloud platform appears to be a comprehensive product covering all of these areas and has been made available in the UK since 2017.

38. Turning to the “SAGE ONE” mark, there is ample use of the mark as registered. There is also use in a slightly stylised form. The stylisation of the typeface is limited and does not alter the distinctive character of the mark. I do not consider that the use of “SAGE” is use of the registered mark in an acceptable variant form. The two elements “SAGE” and “ONE” are equally prominent and while the word “SAGE” may be the more distinctive of the two, “ONE” is neither negligible nor banal. I consider that its omission alters the distinctive character of the mark.

39. The use of “SAGE ONE” as registered or in its stylised form relates to a cloud accounting and payroll product which includes a searchable transactions feature, along with data reporting and analysis.³⁹ The product also appears to have optional expenses and invoicing functionality. I cannot, however, see any use of “Sage One” in relation to any other goods or services.

³⁹ CG7.

40. Regarding a fair specification, in *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10, Geoffrey Hobbs Q.C., sitting as the Appointed Person, summed up the law as being:

“In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned.”

41. In *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch), Mr Justice Carr summed up the law relating to partial revocation as follows (at [47]):

“iii) Where the trade mark proprietor has made genuine use of the mark in respect of some goods or services covered by the general wording of the specification, and not others, it is necessary for the court to arrive at a fair specification in the circumstance, which may require amendment; *Thomas Pink Ltd v Victoria's Secret UK Ltd* [2014] EWHC 2631 (Ch) (“Thomas Pink”) at [52].

iv) In cases of partial revocation, pursuant to section 46(5) of the Trade Marks Act 1994, the question is how would the average consumer fairly describe the services in relation to which the trade mark has been used; *Thomas Pink* at [53].

v) It is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do. For example, in *Pan World Brands v Tripp Ltd* (Extreme Trade Mark) [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally; *Thomas Pink* at [53].

vi) A trade mark proprietor should not be allowed to monopolise the use of a trade mark in relation to a general category of goods or services simply because he has

used it in relation to a few. Conversely, a proprietor cannot reasonably be expected to use a mark in relation to all possible variations of the particular goods or services covered by the registration. *Maier v Asos Plc* [2015] EWCA Civ 220 ("Asos") at [56] and [60].

vii) In some cases, it may be possible to identify subcategories of goods or services within a general term which are capable of being viewed independently. In such cases, use in relation to only one subcategory will not constitute use in relation to all other subcategories. On the other hand, protection must not be cut down to those precise goods or services in relation to which the mark has been used. This would be to strip the proprietor of protection for all goods or services which the average consumer would consider to belong to the same group or category as those for which the mark has been used and which are not in substance different from them; *Mundipharma AG v OHIM* (Case T-256/04) ECR II-449; EU:T:2007:46."

42. As regards UK3026298, I consider that the specification in class 9 is already suitably limited to the categories of goods for which the mark has been used and that no further restriction is necessary. The first two terms in the specification in class 42, in contrast, cover services relating to all types of software. I do not consider it appropriate that the opponent may rely on such a wide specification, which would include provision of each and every type of software, when the opponent's area of interest is quite clearly in providing business software of various types. A similar point arises for the "computer software" relied upon under UK1360769. That term, in my view, covers too wide a range of goods, including those which have no relation at all to the opponent's area of business.

43. As regards the "SAGE ONE" mark, I consider that accounting and payroll software represent two distinct subcategories and that it is appropriate to limit the specification in class 42 accordingly.

44. Consequently, a fair specification is:

UK3026298 “SAGE”:

Class 9: Commercial business management software; accounting, financial management, payroll, payment processing, human resources and client relationship management software.

Class 42: Providing temporary use of non-downloadable commercial, accounting, financial management, payroll, payment, human resources and client relationship management software; provision of online commercial business management, accounting, financial management, payroll, payment, human resources and client relationship management software services from the Internet; provision of online software services in the fields of accountancy and business administration.

UK1360769 “SAGE”:

Class 9: Commercial business management software; accounting, financial management, payroll, payment, human resources and client relationship management software.

UK3096426 “SAGE ONE”

Class 42: Providing temporary use of non-downloadable software; provision of online software services from a computer database or the internet; provision of online software services; all in relation to accounting and payroll.

Section 5(2)(b)

45. 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”.

46. Section 5A is also relevant and reads:

“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”.

47. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, EU:C:1997:528, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, EU:C:1998:442, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, EU:C:1999:323, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, EU:C:2000:339, *Matratzen Concord GmbH v OHIM*, Case C-3/03, EU:C:2004:233, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, EU:C:2005:594, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P, EU:C:2007:333, and *Bimbo SA v OHIM*, Case C-591/12P, EU:C:2016:591:

(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.

Comparison of goods and services

48. In *Canon*, the CJEU 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.”

49. Guidance on this issue has also come from Jacob J. (as he then was) *British Sugar Plc v James Robertson & Sons Ltd* (the *Treat* case), [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

- (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.

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

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

51. The fair specification of UK1360769 covers the same goods but not the services covered by UK3026298. For reasons which will become apparent, I do not think that the software goods will be determinative of the outcome of this opposition where the opponent does not succeed under the services covered by UK3026298. Accordingly, I do not intend to carry out a comparison with the goods of UK1360769 where I think those goods are less similar than the services of UK3026298 to the contested goods and services.

Class 9

Computer software platforms, recorded or downloadable; computer programs, recorded; computer software, recorded; computer software applications, downloadable

52. These goods are identical on the basis of the principle in *Meric* to the different types of software in both the figurative mark’s specification (e.g. at least, “business management software” and “accounting software”) and the “Sage Business Cloud” specification.

53. These goods are also, on the basis outlined in *Meric*, identical to, at least, “commercial business management software” in the fair specifications of UK1360796 and UK3026298.

54. The goods are similar in purpose to the services covered by the “Sage One” mark but they differ in nature. They are, however, used by the same public, share channels of trade and are potentially competitive and complementary. They are highly similar.

Data processing apparatus; computers

55. These goods are different in nature from the software in the specifications for the figurative, “SAGE” word and “Sage Business Cloud” marks. Whilst both involve the processing of data in one form or another, the intended uses are different. The users will

be the same and the channels of trade may intersect. They are similar to a fairly low (i.e. between low and medium) degree.

56. In addition, the “Sage Business Cloud” mark covers “hardware (computers, modems, apparatus)”, sold in connection with the goods listed earlier in its specification. Given that a computer is data processing apparatus, these goods are identical.

57. The provision of non-downloadable or online software, covered by the “Sage One” mark, is different in nature and purpose from the above goods. However, the users are the same and the goods and services will be sold through the same channels. They are similar to a fairly low degree.

Humanoid robots with artificial intelligence

58. These goods are different in nature from the “computer software that includes artificial intelligence for business data processing” in the figurative mark. There are significant differences in the uses; while I acknowledge that the purpose of the artificial intelligence in the later mark is unrestricted, it seems very unlikely that a robot would be used to process business data. Any overlap in users is likely to be at a high level of generality and it is doubtful that the channels of trade will intersect. Nor is it obvious that there is either a competitive or complementary relationship. These goods are not similar. The same applies to the software goods in the “SAGE” word marks and to the specific types of software (e.g. business management software) in the “Sage Business Cloud” mark. Nor can I see any similarity between humanoid robots with artificial intelligence and any of the remaining goods or services in any of the earlier marks, apart from as discussed below.

59. The “Sage Business Cloud” mark is registered for “computer software” at large. Although different in nature and purpose, computer software is important to the functioning of robots and the manufacturer of the respective goods is likely to be perceived as the same. There is therefore a complementary relationship. Channels of trade may also overlap, as will users. Computer software is similar to a medium degree to the contested goods but only to the extent that computer software covers software for

robots. Other types of software, specifically those which appear to be of primary interest to the opponent, are dissimilar.

Computer memory devices

60. The various types of software in the earlier specifications are different in nature and purpose from memory devices. Users may be the same and channels of trade may overlap. There is no competition between these goods. However, at their broadest “computer memory devices” include goods such as CDs and DVDs, which may carry software of the types in the earlier marks’ specifications. There is therefore a complementary relationship. The goods and services are similar to a medium degree.

61. The “Sage Business Cloud” mark is also registered for “hardware (computers, modems, apparatus)”. “Computer memory devices” would include, for example, external hard drives which are a type of computer apparatus. These goods are identical.

62. The “Sage One” mark covers services relating to software. The goods and services differ in nature and purpose. They are unlikely to be used together. Whilst it is possible that they will be available through the same channels of trade, software subscriptions are unlikely to be in close proximity in, for example, retail premises. Users will overlap but this is not a strong point of similarity. They are similar to a low degree.

Class 42

Software as a service [SaaS]; cloud computing

63. These services have identical counterparts in the specification of both the figurative mark and the “Sage Business Cloud” mark. They are self-evidently identical. “Providing temporary use of non-downloadable software” is another way of describing SaaS and is included within cloud computing. The provision of the various types of non-downloadable software in the specification of UK3026298 and the “Sage One” mark are also identical to the contested services, at least on the basis outlined in *Meric*.

Technological research

64. The contested “technological research” is identical to “design, analysis, [...] development of computer software”, which are included in specifications of the figurative mark and the “Sage Business Cloud” mark. If that is not right, the services are highly similar, having significant overlap in nature, purpose, users, channels of trade and a potentially competitive relationship.

65. UK3026298’s provision of software services is different in nature and purpose from technological research services but they are complementary, share users and will likely reach the market through the same channels. They are similar to a medium degree. The same applies to the software services of the “Sage One” mark.

Off-site data backup

66. It appears to me that the earlier figurative and “Sage Business Cloud” marks’ “provision of a cloud platform” and/or “cloud computing” services will include the above services. They are accordingly identical on the basis outlined in *Meric*.

67. Off-site data backup services are different in nature and purpose from UK3026298’s “providing temporary use of non-downloadable commercial, accounting, financial payroll, payment processing, human resources and client relationship management software”, and the software services of the “Sage One” mark. However, the services share users and will be sold through the same channels. Further, the services are likely to be used together and will be considered to be the responsibility of the same undertakings: they are complementary. These services are similar to a medium degree.

Information technology services provided on an outsourcing basis

68. This is a wide term which includes any type of outsourced IT provision. I see no reason why the software design, installation and maintenance etc. services of the figurative and “Sage Business Cloud” marks would not potentially be offered in the same way, i.e. as outsourced services. The terms therefore cover the same services and are identical.

69. The provision of online/non-downloadable software in UK3026298 and the Sage One mark are different in nature and purpose from the contested services. The services will be used by the same relevant public and may be provided through the same channels. They are not competitive but there may be some complementarity, to the extent that outsourced IT services include data backup, which is commonly used with online software services. They are similar to a medium degree.

Computer technology consultancy

70. These services are identical to “consultancy services relating to design, analysis, installation, configuration, maintenance, upkeep, updating, development and provision of computer software” in the figurative mark’s specification.

71. They are also identical to “technical consultation on software” in the “Sage Business Cloud” mark.

72. As regards the “SAGE” word marks and the “Sage One” mark, although the various types of software and software as a service included in the specifications differ in nature and purpose, the goods and services will be used by the same consumers and will have the same channels of trade. There may also be a complementary relationship as the goods and services are important for one another’s use and are likely to be perceived as the responsibility of the same undertakings. There is a medium degree of similarity.

Computer system analysis

73. This term suggests the totality of the hardware and software which enables a computer to operate. Software, and in particular computer operating software, is an important part of that. The “analysis of [...] computer software” in the specifications for the figurative sign and the “Sage Business Cloud” sign is likely to form part of the contested “computer system analysis”. These services are identical under *Meric*.

74. The software goods covered by both “SAGE” word marks are focused software goods, which share users and channels of trade with computer system analysis. The goods and services are similar to a fairly low degree. The same points of similarity apply

to the software services covered by UK3026298 and the “Sage One” mark, also resulting in a fairly low degree of similarity.

Conversion of computer programs and data, other than physical conversion

75. The “Sage Business Cloud” specification includes “data conversion of computer programs and data (not physical conversion)”. These services are identical.

76. The figurative mark is registered for “design, analysis, installation, configuration, maintenance, upkeep, updating, development and provision of computer software”. The figurative mark, UK3026298 and the “SAGE ONE” mark are registered for software as a service, even though expressed differently. The respective services are similar in nature at a fairly high level, being information technology services in the same market sector, which are also likely to intersect in users, who will be business people and channels of trade will intersect. There is a fairly low degree of similarity.

77. I do not think that the goods of UK1360769 put the opponent in a stronger position and decline to consider them.

Digitization of documents [scanning]

78. The opponent relies upon “conversion of data or documents from physical to electronic media” in the “Sage Business Cloud” mark’s specification. These services are identical.

79. The figurative mark’s “design, analysis, installation, configuration, maintenance, upkeep, updating, development and provision of computer software”, and the software as a service covered by the figurative mark, UK3026298 and the “SAGE ONE” mark have a high-level similarity in nature, share channels of trade and users. They have a fairly low degree of similarity.

80. As above, UK1360769 does not offer a stronger case.



Computer software design

81. This term is identical to “design [...] of computer software” in the figurative and “Sage Business Cloud” specifications.

82. There is a medium degree of similarity between the above services and the software goods covered by UK3096426 and UK1360769. They share users and channels of trade and have a complementary relationship.

83. As regards the services covered by the “Sage One” mark, users and producers of the respective services will be the same and there is a likely overlap in distribution channels. There is a fairly low degree of similarity.

84. For convenience, my findings are summarised below:

Contested goods/services	Earlier marks’ goods/services	Level of similarity
Computer software platforms, recorded or downloadable; computer programs, recorded; computer software, recorded; computer software applications, downloadable		Identical
	UK1360769 SAGE: Commercial business management software	Identical
	UK3026298 SAGE: Commercial business management software	Identical
	EU17336207 Sage Business Cloud: All of the software goods, including at least “business management software” and “accounting software”	Identical
	UK3096426 SAGE ONE: All services in specification	Highly similar
Data processing apparatus; computers	EU18282651  : All of the software goods, including at least “business management software” and “accounting software”	Fairly low
	UK1360769 SAGE: All of the software goods, including at least “business management	Fairly low

	UK3026298 SAGE: All of the software goods, including at least “business management software” and “accounting software”	Fairly low
	EU17336207 Sage Business Cloud: All of the software goods, including at least “business management software” and “accounting software”	Fairly low
	Hardware (computers, modems, apparatus)	Identical
	UK3096426 SAGE ONE: Providing temporary use of non-downloadable software all in relation to accounting and payroll.	Fairly low
Humanoid robots with artificial intelligence	EU18282651 sage : All goods and services, in particular “computer software that includes artificial intelligence for business data processing”	Dissimilar
	UK1360769 SAGE: All software goods	Dissimilar
	UK3026298 SAGE: All software goods and services	Dissimilar
	EU17336207 Sage Business Cloud: Computer software	Medium
	UK3096426 SAGE ONE: All services	Dissimilar
Computer memory devices	EU18282651 sage : All the software goods, including at least “business management software” and “accounting software”	Medium
	UK1360769 SAGE: All software goods	Medium
	UK3026298 SAGE: All software goods	Medium
	EU17336207 Sage Business Cloud: All of the software goods, including at least “business management	Medium

	software” and “accounting software” Hardware (computers, modems, apparatus)	Identical
	UK3096426 SAGE ONE: Providing temporary use of non-downloadable software; provision of online software services from a computer database or the internet; provision of online software services in the fields of accountancy and business administration; all in relation to accounting and payroll.	Low
Software as a service [SaaS]; cloud computing	EU18282651 sage : Software as a Service; Cloud computing	Identical
	UK3026298 SAGE: Providing temporary use of non-downloadable commercial, accounting, financial payroll, payment processing, human resources and client relationship management software	Identical
	EU17336207 Sage Business Cloud: Software-as-as-Service [SaaS]; cloud computing	Identical
	UK3096426 SAGE ONE: Providing temporary use of non-downloadable software; provision of online software services from a computer database or the internet; provision of online software services in the fields of accountancy and business administration; all in relation to accounting and payroll.	Identical
Technological research	EU18282651 sage : design, analysis, [...] development of computer software	Identical; alternatively highly similar
	UK3026298 SAGE: Providing temporary use of non-downloadable commercial, accounting, financial payroll, payment processing, human resources and client relationship management software	Medium

	EU17336207 Sage Business Cloud: design, analysis, [...] development of computer software.	Identical; alternatively highly similar
	UK3096426 SAGE ONE: Providing temporary use of non-downloadable software; provision of online software services from a computer database or the internet; provision of online software services in the fields of accountancy and business administration; all in relation to accounting and payroll.	Medium
Off-site data backup	EU18282651 sage : Provision of a cloud platform/cloud computing	Identical
	UK3026298 SAGE: Providing temporary use of non-downloadable commercial, accounting, financial payroll, payment processing, human resources and client relationship management software	Medium
	EU17336207 Sage Business Cloud: provision of a cloud platform; cloud computing	Identical
	UK3096426 SAGE ONE: Providing temporary use of non-downloadable software; provision of online software services from a computer database or the internet; provision of online software services in the fields of accountancy and business administration; all in relation to accounting and payroll.	Medium
Information technology services provided on an outsourcing basis	EU18282651 sage : Design, analysis, installation, configuration, maintenance, upkeep, updating, development and provision of computer software	Identical
	UK3026298 SAGE: Providing temporary use of non-downloadable commercial, accounting, financial payroll, payment processing, human	Medium

	resources and client relationship management software,	
	EU17336207 Sage Business Cloud: Design, analysis, installation, configuration, maintenance, upkeep, updating, development and provision of computer software	Identical
	UK3096426 SAGE ONE: Providing temporary use of non-downloadable software; provision of online software services from a computer database or the internet; provision of online software services in the fields of accountancy and business administration; all in relation to accounting and payroll.	Medium
Computer technology consultancy	EU18282651 sage : Consultancy services relating to design, analysis, installation, configuration, maintenance, upkeep, updating, development and provision of computer software	Identical
	UK1360769 SAGE: Commercial business management software.	Medium
	UK3026298 SAGE: Commercial business management software Providing temporary use of non-downloadable commercial, accounting, financial payroll, payment processing, human resources and client relationship management software.	Medium Medium
	EU17336207 Sage Business Cloud: Technical consultation on software.	Identical
	UK3096426 SAGE ONE: Providing temporary use of non-downloadable software; provision of online software services from a computer database or the internet;	Medium

	provision of online software services in the fields of accountancy and business administration; all in relation to accounting and payroll.	
Computer system analysis	EU18282651 sage : Analysis of [...] computer software.	Identical
	UK1360769 SAGE: Commercial, accounting, financial payroll, payment processing, human resources and client relationship management software	Fairly low
	UK3026298 SAGE: Commercial, accounting, financial payroll, payment processing, human resources and client relationship management software.	Fairly low
	Providing temporary use of non-downloadable commercial, accounting, financial payroll, payment processing, human resources and client relationship management software.	Fairly low
	EU17336207 Sage Business Cloud: Analysis of [...] computer software.	Identical
	UK3096426 SAGE ONE: Providing temporary use of non-downloadable software; all in relation to accounting and payroll.	Fairly low
Conversion of computer programs and data, other than physical conversion	EU18282651 sage : SaaS; design, analysis, installation, configuration, maintenance, upkeep, updating, development and provision of computer software.	Fairly low
	UK3026298 SAGE: Providing temporary use of non-downloadable commercial, accounting, financial management, payroll, payment, human resources and client relationship management software.	Fairly low

	EU17336207 Sage Business Cloud: Data conversion of computer programs and data (not physical conversion)	Identical
	UK3096426 SAGE ONE: Providing temporary use of non-downloadable software; provision of online software services from a computer database or the internet; provision of online software services in the fields of accountancy and business administration; all in relation to accounting and payroll.	Fairly low
Digitization of documents [scanning]	EU18282651 sage Design, analysis, installation, configuration, maintenance, upkeep, updating, development and provision of computer software.	Fairly low
	UK3026298 SAGE: Providing temporary use of non-downloadable commercial, accounting, financial management, payroll, payment, human resources and client relationship management software.	Fairly low
	EU17336207 Sage Business Cloud: Conversion of data or documents from physical to electronic media.	Identical
	UK3096426 SAGE ONE: Providing temporary use of non-downloadable software; provision of online software services from a computer database or the internet; provision of online software services in the fields of accountancy and business administration; all in relation to accounting and payroll.	Fairly low
Computer software design	EU18282651 sage : Design of computer software.	Identical

	UK1360769 SAGE: All goods, including commercial business management software.	Medium
	UK3026298 SAGE: All goods, including commercial business management software.	Medium
	EU17336207 Sage Business Cloud: Design of [...] computer software.	Identical
	UK3096426 SAGE ONE: Providing temporary use of non-downloadable software; provision of online software services from a computer database or the internet; provision of online software services in the fields of accountancy and business administration; all in relation to accounting and payroll.	Fairly low

The average consumer and the nature of the purchasing act

85. The average consumer is a legal construct deemed to be reasonably well informed and reasonably circumspect: *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) at [60]. For the purposes of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods and services in question: *Lloyd Schuhfabrik*.

86. The contested specification and some of the services in the earlier marks' specifications are unlimited. The average consumer for these goods and services may be a member of the general public or a business consumer. I will return to the detail of this when considering the likelihood of confusion. Most of the opponent's goods and services, in particular those for which use has been shown, are directed at business users, though some of the broader terms may include the general public. The level of attention will vary across the groups of users. However, the member of the public will pay at least a medium degree of attention when selecting the goods and/or services, since the identical or similar

goods and services are not everyday purchases and some care will be taken to ensure that they will satisfy the consumer's requirements. The business user will tend to be more attentive, as the goods/services may play an important role in the management of the business and factors such as available support and ease of use may be of particular concern. Their level of attention will be reasonably high.

87. The selection for both groups of average consumer will be predominantly visual, with the goods and services typically chosen from the shelves of retail premises or their online equivalents, and from websites. There may be a more particular aural exposure for business customers, for whom oral recommendations may play a specific role, but I do not discount the possibility of an aural aspect to the purchase for either group.

Distinctive character of the earlier trade marks

88. In *Lloyd Schuhfabrik*, 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).”

89. All of the earlier marks contain the word “sage”. That word has no link to the goods and services for which the earlier marks are registered and is inherently distinctive to a medium degree. Some of the marks have additional matter, whether that be the stylisation of the figurative mark or the addition of other words (“Business Cloud”, “One”). However, none of these additions is more distinctive than the word “sage”, nor do they detract from the inherent distinctiveness of “Sage” to reduce the marks’ overall distinctiveness. All of the earlier marks are inherently distinctive to a medium degree.

90. There is evidence of substantial use, which I have referred to above, showing that the figurative mark was used in the relevant period on invoices and the opponent’s website, both as the company name and in individual product names. It also shows the opponent’s “Superbrand” status and its reputation as a major player in the UK software market. Further, the company has been using the name “sage” for many years prior to the relevant period.⁴⁰

91. Sponsorship has included £6m for the new Music Centre in Gateshead, which became known as the Sage Gateshead.⁴¹ The venue opened in 2004. In 2016-2018, the opponent sponsored the Invictus Games (Orlando, Toronto, Sydney).⁴² Although held overseas, I accept that these games will have achieved some exposure on UK television although not at the level of other more famous and longer-established sporting events like the Olympics. The figurative “sage” mark and the plain word “Sage” are visible on prints detailing sponsors on the games’ website.

92. The use of the figurative mark is qualifying use for acquired distinctiveness of the word marks, and vice versa, since by far the most dominant element of the figurative mark is the word “sage” itself and the stylisation does not substantially detract from the word. I have no doubt that the “SAGE” word marks, along with the figurative mark, had by virtue

⁴⁰ See, for example, CG10, which shows a YouTube account begun in 2009, with videos from or likely to have been uploaded in the relevant period.

⁴¹ CG1, p. 6; CG12.

⁴² Garrigues, §25; CG2, p. 42; CG11.

of use over a long period acquired a very substantial reputation for accounting and payroll software and that by the relevant date the mark was highly distinctive both of such goods and the equivalent software services.

93. Enterprise management software appears to have been available since 2014, with products relating to payments, financial management and HR software shown in evidence from 2016 or 2017. The comprehensive “Sage Business Cloud” product, which offers a suite of online software products in the same vein, was advertised on the “sage” website and was launched in 2017. Notwithstanding the absence of a breakdown of the turnover figures, such is their size that, bearing in mind the use over several years, it is likely that the figurative mark and the “Sage” word marks had acquired above average distinctiveness in relation to business management software (which I take as including client relationship and enterprise planning software), payment/payment processing software, financial management and HR software, and for cloud computing, SaaS, and design, analysis, installation, configuration, maintenance, upkeep, updating, development and provision of software, all in the same fields.


94. I should mention artificial intelligence goods. The Superbrands article described above says that Sage is an industry leader in AI, having launched a smart AI platform to help customers manage business functions called “Pegg” in 2016. It is also said to have developed a Roadmap for Ethical Business in 2018 for creating “an ethical AI economy” built with customers and government, and educational sessions for over 150 young people about careers in AI. The extent to which these activities relate to the UK is not entirely clear, however. Despite the Superbrands article saying that the opponent is an industry leader, I am not prepared to find that the opponent had a reputation for particular AI-related goods/services. This is because there is really only this article, and a brief mention in the 2016 annual report, to show what any reputation may have been. “Pegg” is described in the annual report as an “accountancy chatbot” and it says that customers can log expenses and income from messaging apps. It does not explain how AI features in the product, nor is there evidence of how “Pegg” was presented to customers, the precise nature of the services, how the earlier marks may have been used in such material or what the extent of use has been.

95. The “Sage Business Cloud” product is an online business management software product. I have no turnover figures specific to this trade mark or to the product. However, use has been shown since 2017. It also appears from the web prints that the mark is the umbrella brand for the opponent’s cloud offering, with various individual software products (e.g. accounting) shown under the mark. In view of this, and bearing in mind the turnover figures, I find that the mark enjoys an above average degree of distinctiveness for cloud computing/SaaS and design, analysis, installation, configuration, maintenance, upkeep, updating, development and provision of computer software in the field of accounting, payroll, payment, financial management, HR and business management software.

96. “Sage One” has been used in relation to the services in the fair specification since 2011. In view of the length of use and turnover, I am satisfied that this mark will also have acquired distinctiveness across the specification, resulting in at least an above average degree of distinctive character.

97. Although the opponent has sponsored important events and the Sage Gateshead, there is no evidence suggesting that its products have been the subject of particular promotion to the general public. There is very little from non-specialist publications to suggest that the marks are widely known among the public at large. Consequently, the enhanced distinctiveness for the above marks is likely to have been concentrated among business users. However, I accept that the software and software services offered may be used by the very smallest of businesses, encompassing anyone who trades and needs to keep an accounting record.

98. The earlier marks thus had acquired distinctiveness for the following goods and services by the relevant date:

Trade mark	Goods/services for which there is enhanced distinctiveness
EU18282651 	Class 9: Accounting and payroll software; business management, financial management, payment and HR management software. Class 42: Cloud computing; SaaS; and design, analysis, installation, configuration, maintenance, upkeep, updating, development and provision of software; all in

	relation to accounting and payroll, business management, payment, financial management and HR software.
UK3026298 SAGE	<p>Class 9: Commercial business management software; accounting, financial management, payroll, payment processing, human resources and client relationship management software.</p> <p>Class 42: Providing temporary use of non-downloadable commercial, accounting, financial management, payroll, payment, human resources and client relationship management software; provision of online commercial business management, accounting, financial management, payroll, payment, human resources and client relationship management software services from the Internet; provision of online software services in the fields of accountancy and business administration.</p>
UK1360796 SAGE	Class 9: Commercial business management software; accounting, financial management, payroll, payment, human resources and client relationship management software.
EU17336207 Sage Business Cloud	Class 42: Cloud computing/SaaS and design, analysis, installation, configuration, maintenance, upkeep, updating, development and provision of computer software in the fields of accounting, payroll, payment, financial management, HR and business management software.
UK3096426 SAGE ONE	Class 42: Providing temporary use of non-downloadable software; provision of online software services from a computer database or the internet; provision of online software services; all in relation to accounting and payroll.

Comparison of trade marks


99. The average consumer normally perceives a mark as a whole and does not proceed to analyse its various details: *Sabel* (particularly paragraph 23). *Sabel* 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*, 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”.

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

101. The trade marks to be compared are:

Applicant’s marks	Opponent’s marks
<p data-bbox="380 877 618 968">4Paradigm Sage (UK3523500)</p> <p data-bbox="285 1045 716 1161">4Paradigm SageOne (UK3523497)</p>	<p data-bbox="1073 877 1166 909">SAGE</p>  <p data-bbox="967 1157 1273 1188">Sage Business Cloud</p> <p data-bbox="1037 1241 1203 1272">SAGE ONE</p>

UK3523500

102. UK3523500 consists of the words “4Paradigm Sage”. No single element of the combination is dominant over the other parts of the mark. The average consumer will likely read “4Paradigm” as one element, and “Sage” as another, each of which contributes equally to the overall impression. These parts of the mark do not make a unit or logical phrase which has a meaning beyond the sum of its parts.

103. The overall impression of the “SAGE” word marks consists of the word “SAGE” alone. I consider that there is also a medium degree of visual and aural similarity between

UK3523500 and the plain word “SAGE”. They coincide in one element and differ because the later mark contains an additional element. Both elements of the later mark are likely to be verbalised. The average consumer is likely to know that a “paradigm” is a model or typical example of something but the combination “4Paradigm” has an unclear meaning, even if the numeral “4” is read as the word “for”. The word “sage” will be known as meaning a type of herb/plant or a wise person and this concept will be conveyed by both marks. There is a medium degree of conceptual similarity.

104. The overall impression of the figurative mark is dominated by the word “sage”. The colour and stylisation make fairly weak contributions to the overall impression. Although the figurative mark is stylised, the impact of the stylisation is limited. I consider that there is, in this case, also a medium degree of visual, aural and conceptual similarity between the respective marks for the same reasons given above.

105. The “Sage Business Cloud” mark is likely to be read as a phrase where “Sage” is the most distinctive element and “Business Cloud” conveys the meaning of a cloud for business. In the context of the mark as a whole, “Cloud” will be seen as a reference to the internet “cloud” rather than the meteorological phenomenon. Visually, the inclusion in the later mark of the string “4Paradigm” at the beginning of the mark, and the words “Business Cloud” at the end of the earlier mark, introduce significant differences. These elements are both longer than the common element. Overall, there is a fairly low degree of both visual and aural similarity. Conceptually, the words “Business Cloud” will be understood as indicating goods or services relating to the internet cloud for businesses. There is a fairly low degree of conceptual similarity.

UK3523497

106. This mark consists of the words “4Paradigm SageOne” in a stylised typeface. The stylisation is, however, not particularly remarkable and the overall impression is dominated by the words “4Paradigm SageOne”.

107. When compared to the “SAGE” word marks, there are a number of differences which have a visual impact. The most obvious are the words “4Paradigm” and “One” in the later

mark, which have no counterpart in the earlier marks, and the stylisation. Overall, there is a fairly low degree of visual similarity. All of the verbal elements of UK3523497 will be articulated, also resulting in a fairly low degree of aural similarity. The word “one” adds a certain conceptual distinction; my comments regarding the meaning of “4Paradigm” above are equally applicable here. There is a fairly low degree of conceptual similarity.

108. I find that the stylisation of the figurative mark does not result in a materially different analysis of similarity from the “SAGE” words marks. There is a fairly low degree of visual, aural and conceptual similarity, for the reasons given above.

109. The “Sage Business Cloud” mark differs in a number of significant respects from UK3523497. There are verbal elements in both marks which are not replicated in the other, namely “4Paradigm”, “One” and “Business Cloud”. The common element is the smaller part of the marks and in the middle of UK3523497. There is a low degree of both visual and aural similarity. Conceptually, in addition to the similarities and differences outlined above in respect of UK3523500, the word “One” adds another concept. There is a low degree of conceptual similarity.

110. In respect of UK3523497, the “SAGE ONE” mark is also relied upon. The overall impression of the “SAGE ONE” is contained in those two words. They do not hang together to form a unit and, as I indicated when considering variant use, both parts play a role though the distinctiveness is weighted somewhat in favour of “Sage”. There is a medium degree of visual similarity between the respective marks, notwithstanding the stylised typeface of UK3523497, because there is one different verbal element, “4Paradigm”, and one which is the same but for being conjoined, “SageOne”. Aurally, there is also a medium degree of similarity. Conceptually, any meaning attributed to “SageOne” is shared by the marks but there is a difference because the notion of a paradigm is raised by UK3523497. There is a medium degree of conceptual similarity.

Likelihood of confusion

111. In determining whether there is a likelihood of confusion, all of the above factors need to be borne in mind. They must be considered globally (*Sabel*), from the perspective

of the average consumer. In making my assessment, I must keep in mind 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 he has retained in his mind (*Lloyd Schuhfabrik*). The factors considered above have a degree of interdependency (*Canon*): for example, a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa.

112. The opponent claims that the confusion which affects the average consumer will, in this case, be indirect. Iain Purvis Q.C., sitting as the Appointed Person explained indirect confusion in *LA Sugar Limited v Back Beat Inc.*, BL O/375/10, where he said:

“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)."

113. 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.

114. Ms Michaels submitted that this is a case where the first category applies because the earlier marks are sufficiently distinctive for there to be confusion. She also submitted that there would potentially be confusion arising from a perception of a brand extension. In addition, it was said that there is a real likelihood that the consumer will think that the later marks are examples of co-branding and will suppose an economic link between the parties.⁴³

Conclusions on UK3523500

115. Where goods and services are not similar, there can be no confusion under s. 5(2)(b).⁴⁴ Insofar as both oppositions under this ground are based on dissimilar goods and services, they are dismissed.

116. Taking the opposition based on the figurative mark first, I consider that there is a likelihood of confusion in respect of the earlier figurative mark for all of the identical or

⁴³ *Liverpool Gin v Sazerac* at [12] is authority for co-branding as a type of indirect confusion.

⁴⁴ *Waterford Wedgwood plc v OHIM*, C-398/07 P.

similar goods and services. The enhanced distinctiveness of the earlier mark does not apply across the full specifications (e.g. it is not highly distinctive for all types of software) but the mark is inherently distinctive to an average degree and, for most of the goods and services in the comparison, there is enhanced distinctiveness for goods and services within the categories. Further, the contested specification is not limited and includes goods/services in the same fields as those of the earlier mark. Bearing all of that in mind, along with the similarity between the trade marks, I agree with Ms Michaels that the earlier mark is sufficiently distinctive that the average consumer will believe that UK3523500 must be economically connected to the opponent, even where that consumer is paying a reasonably high degree of attention. I also consider it likely that the average consumer would assume that there is an economic connection between the earlier mark and UK3523500 on the basis of co-branding. In particular, the enhanced distinctive character of the earlier mark, particularly its high level of acquired distinctiveness for accounting software and software services, will bridge the gap between the goods and services which are similar only to a fairly low degree. This means that the opposition based on the figurative mark succeeds for all of the goods and services except for “humanoid robots with artificial intelligence”.

117. For essentially the same reasons, the opposition also succeeds insofar as it is based on the “SAGE” word marks where there is identity or similarity between the goods and services. I recognise that the degree of similarity in respect of certain of the contested services is lower than for the figurative mark. However, where that is the case the enhanced distinctiveness of the earlier marks compensates for any lesser degree of similarity between the services.

118. The final mark in the opponent’s stated best case against this trade mark is the “Sage Business Cloud” mark. In view of my findings above, I need only consider the opposition in respect of “humanoid robots with artificial intelligence”. There is undeniably less similarity between this trade mark and UK3523500. There is a medium degree of similarity between the contested goods and the earlier mark’s “computer software” at large. However, although the earlier mark has acquired distinctiveness, it does not have enhanced distinctiveness for the software goods which are similar to humanoid robots: I

have already held the specific software goods for which the opponent has a reputation are not similar to the contested robots. I recognise that “Sage” is the more distinctive part of the earlier mark. However, the overall level of similarity between the marks is quite low and the evolution to the later mark does not represent a logical brand extension from the earlier mark. I think it unlikely that an average consumer would assume there to be an economic connection between the entities using these respective signs.

119. The result is that the opposition against this mark succeeds under s. 5(2)(b) for all of the contested goods and services apart from “humanoid robots with artificial intelligence”.

Conclusions on UK3523497

120. There is a lower degree of similarity between this trade mark and the earlier figurative mark. However, I consider that there is also a likelihood of confusion for all of the identical or similar goods and services. Where the goods and services are less than identical, this is compensated for by the enhanced distinctiveness of the earlier mark. Despite the inclusion of a number of different elements in UK3523497, the similarity between the marks is sufficient, when all of the other factors are borne in mind, to give rise to indirect confusion. The same reasoning and conclusions apply to the “SAGE” word marks. The opposition therefore succeeds for all of the identical or similar goods and services.

121. As regards the “SAGE ONE” mark, the marks themselves are obviously more similar, with both featuring the words “Sage One”, albeit conjoined in the later mark. There is a likelihood of indirect confusion for all of the identical or similar goods and services, as the average consumer will perceive the marks as variants used by the same undertaking or as co-branding. Where there is a limited degree of similarity between the goods and services, this is offset by the above average distinctive character of the earlier mark, notwithstanding a reasonably high level of attention on the part of the average consumer. The opposition therefore succeeds for all of the goods and services except “humanoid robots with artificial intelligence”.

122. Turning to the “Sage Business Cloud” mark, again it is only necessary to consider “humanoid robots with artificial intelligence”. Notwithstanding the medium level of similarity with “computer software” at large, there is too little similarity between the marks, when combined with the level of attention and the absence of enhanced distinctiveness, to give rise to an assumption of an economic connection.

123. The opposition succeeds against all of the contested goods and services, apart from “humanoid robots with artificial intelligence”.

Family of marks

124. The leading case on a “family” of trade marks is *Il Ponte Finanziaria SpA v OHIM* (“*Bainbridge*”), case C-234/06 P, EU:C:2007:514, where the CJEU said:

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

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

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

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

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

125. No submissions were made regarding the family of marks claim at the hearing or in Ms Michaels’ skeleton argument. In view of that, and my findings above, I will only consider the claim briefly and only in respect of “humanoid robots with artificial intelligence”.

126. There is no suggestion that any of the earlier marks had ceased to be present on the market prior to the relevant date. It follows from my findings regarding genuine use and acquired distinctiveness that the marks were present on the market to the extent indicated at paragraph 98, above. I do not consider that the evidence establishes use going wider than these categories of software and software services. As far as the size of the family goes, identical marks cannot count as different members of the family. I am doubtful that the difference between the figurative and “SAGE” word marks would register sufficiently with the average consumer. Nevertheless, I accept that there was a family of

marks featuring the common element “Sage”, constituting at least the “SAGE” word mark (or the figurative mark), “Sage Business Cloud” and “Sage One”.

127. Any opposition based upon s. 5(2)(b), whether based upon a “family” case or not, requires that there be some similarity between the respective goods and/or services. Only one of the earlier trade marks, the “Sage Business Cloud” mark, is registered for goods which have any similarity to “humanoid robots with artificial intelligence”. One mark does not a family make and the oppositions against “humanoid robots with artificial intelligence” based upon a family of marks must therefore be rejected.

Overall conclusions under s. 5(2)(b)

128. UK3523500 and UK3523497 will be refused under s. 5(2)(b) for all of the goods and services in their specifications, except for “humanoid robots with artificial intelligence” and the unopposed “radios; precision measuring apparatus”.

Section 5(3)

129. Section 5(3) states:

“(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.”

130. Section 5(3A) states:

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

131. The relevant case law can be found in the following judgments of the CJEU: *General Motors*, C-375/97, EU:C:1999:408; *Intel Corporation Inc. v CPM United Kingdom Ltd*, C-252/07, EU:C:2008:655; *Adidas-Salomon & Anor v Fitnessworld Trading Ltd*, C-408/01, EU:C:2003:582; *L’Oreal v Bellure*, C-487/07, EU:C:2009:378); and *Marks and Spencer v Interflora*, C-323/09, EU:C:2011:604. The law appears to be as follows:

- a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered: *General Motors*, paragraph 24;
- b) The trade mark for which protection is sought must be known by a significant part of that relevant public: *General Motors*, paragraph 26;
- c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind: *Adidas Saloman*, paragraph 29 and *Intel*, paragraph 63;
- d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark’s reputation and distinctiveness: *Intel*, paragraph 42;
- e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel*, paragraph 68; whether this is the case must also be assessed globally, taking account of all relevant factors: *Intel*, paragraph 79;
- f) 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;

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*).

132. As the oppositions under s. 5(2)(b) have succeeded against all of the opposed goods and services, apart from "humanoid robots with artificial intelligence" in class 9, I shall focus on the applicability of the s. 5(3) ground in relation to "humanoid robots with artificial intelligence" and "radios; precision measuring apparatus".

Reputation

133. In *General Motors*, the CJEU gave the following guidance for the assessment of a trade mark's reputation:


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

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

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

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

134. For the reasons given at paragraphs 90 to 98 above, and taking into account the reputation claimed in the opponent's skeleton argument, I am satisfied that the earlier trade marks had at the relevant date a reputation as follows:

Trade mark	Goods/services for which there is a reputation
EU18282651 	Class 9: Accounting and payroll software; business management, financial management and HR management software.

	<p>Class 42: Cloud computing; SaaS; and design, analysis, installation, configuration, maintenance, upkeep, updating, development and provision of software; all in relation to accounting and payroll, business management, payment, financial management and HR software.</p>
UK3026298 SAGE	<p>Class 9: Commercial business management software; accounting, financial management, payroll, payment processing, human resources and client relationship management software.</p> <p>Class 42: Providing temporary use of non-downloadable commercial, accounting, financial payroll, payment, human resources and client relationship management software; provision of online commercial business management, accounting, financial management, payroll, payment, human resources and client relationship management software services from the Internet; provision of online software services in the fields of accountancy and business administration.</p>
UK1360796 SAGE	<p>Class 9: Commercial business management software; accounting, financial management, payroll, payment, human resources and client relationship management software.</p>
EU17336207 Sage Business Cloud	<p>Class 42: Cloud computing/SaaS and design, analysis, installation, configuration, maintenance, upkeep, updating, development and provision of computer software in the fields of accounting, payroll, payment, financial management, HR and business management software.</p>
UK3096426 SAGE ONE	<p>Class 42: Providing temporary use of non-downloadable software; provision of online software</p>

	services from a computer database or the internet; provision of online software services; all in relation to accounting and payroll.
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Link

135. Whether the public will make the required mental 'link' between the marks must take account of all relevant factors. The factors identified in *Intel* are:

The degree of similarity between the conflicting marks

136. I compared the respective trade marks at paragraphs 102 to 110, above. There is a medium degree of visual, aural and conceptual similarity between UK3523500 and both the earlier figurative mark and the "SAGE" word marks. There is a fairly low degree of visual, aural and conceptual similarity between UK3523500 and the "Sage Business Cloud" mark.

137. There is a medium degree of similarity between the "SAGE ONE" mark and UK3523497. There is a fairly low degree of similarity between both the "SAGE" word marks and the earlier figurative mark on the one hand, and UK3523497 on the other. UK3523497 is visually, aurally and conceptually similar to the "Sage Business Cloud" mark only to a low degree.

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

138. The goods and services are all technical in nature. It is accepted that they are not similar. Nevertheless, similarity is a relative concept. The fields are not poles apart, such as would be the case for software and, say, baby food. However, humanoid robots are most likely to have application in scientific and research laboratories, or perhaps in manufacturing as parts of production lines, neither of which is close to the opponent's

area of business. Precision measuring apparatus covers goods which have application in computing, such as electronic sensors. However, these goods are not themselves computer hardware but are components in such goods. As such, they are in a distinct field from that of the opponent's business in software and software services. "Radios" are in an entirely different field from the opponent's business.

139. The relevant public for humanoid robots would be mainly industry professionals and individuals involved in scientific research. Precision measuring apparatus is likely to have a broader relevant public, because the term includes gauges of all types which may be used in trade as well as, in certain circumstances, the general public (for example, tyre pressure gauges). The relevant industry or business public buying these goods is likely to pay at least a reasonably high level of attention, taking care that the product will fulfil their requirements. Radios will be bought by the general public. Although not an everyday purchase, they are not especially expensive or complex products and the general public will be averagely attentive.

Strength of the earlier mark's reputation

140. The reputation is likely to be reasonable for all of the goods and services identified at paragraph 133 above, including as a family of marks, and is particularly strong in relation to accounting and payroll software and related software services. As I indicated above, however, the reputation is likely to be chiefly among business users, though this will include small business owners.

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

141. The earlier marks are inherently averagely distinctive and have acquired distinctiveness through use. They are highly distinctive for accounting and payroll products and distinctive to an above average degree for the remainder.

Whether there is a likelihood of confusion

142. I have already held that there is no likelihood of confusion for “humanoid robots with artificial intelligence”. Despite the strength of the reputation and the distinctiveness of the earlier marks, the average consumer is unlikely to think that there is a connection between the providers of the competing goods and services: it seems unlikely that a provider of business/accounting etc. software would have any role in the manufacture or bringing to market of radios or precision measuring apparatus. I therefore find that there is no likelihood of confusion.

143. Taking all of the above into account, I find that the strength and nature of the reputation of the earlier marks will not cause the relevant public to make the link between the respective marks, either individually or collectively, when the later marks are used in relation to goods which have no apparent or specific purpose or context relevant to the opponent’s business (i.e. in the fields of business management, accounting, payroll and HR). Consequently, the use of the contested marks will not take unfair advantage of, or be detrimental to, the reputation or distinctive character of the earlier marks.

144. I would add that even if I am wrong and consumers of the applicant’s goods, and/or consumers of the opponent’s goods and services, would call the other side’s mark to mind, the opposition under section 5(3) would still have failed. This is because:

- (i) The distance between the trades in the respective goods/services, coupled with their difference in nature, is such that it is difficult to see how the image of the earlier marks, or of the characteristics which they project, would attach to the goods/services covered by the contested marks;
- (ii) Without such a transfer of image, it does not seem very likely that the reputation of the earlier marks would have given the contested marks a commercially significant “free-ride” on the back of the opponent’s reputation for software and software services in a distinct field;

- (iii) In the absence of a likelihood of consumers expecting the users of the marks to be economically connected, the opponent's contention that the reputation of its marks may suffer if the contested marks are used in relation to lower quality goods/services (of entirely different kinds) is purely speculative;
- (iv) Therefore, without more, this does not pose a "serious risk" of future damage to the reputation of the earlier marks;
- (v) There is no evidence that use of the contested marks in relation to the goods/services covered by the earlier marks would be likely to change the economic behaviour of the opponent's existing or potential customers for business- and accounting/payroll-related software and software services, and there is no other reason to believe that this is a serious possibility.

145. The oppositions under s. 5(3) against "humanoid robots with artificial intelligence; radios; precision measuring apparatus" fail accordingly.

Overall conclusion

146. UK trade mark number 3523500 and UK trade mark number 3523497 are refused for all of the goods and services except for "humanoid robots with artificial intelligence; radios; precision measuring apparatus" in class 9.

Costs

147. The opponent has had the lion's share of the success and is entitled to an award of costs. These are sought on the scale contained in Tribunal Practice Notice 2/2016. I will reduce the award to reflect that the opposition has not been totally successful. I also note that the opponent initially relied upon twelve earlier rights and resisted the tribunal's request that no more than six earlier marks be relied upon, eventually nominating eight marks as its best case (all of which is documented on the official file). The futility of relying upon more than six earlier trade marks is shown by the opponent's position at the hearing, where four or five marks were deemed adequate for the oppositions. The failure to take a proportionate approach to its case until the last minute increased the costs to the

applicant, at least in reviewing the notice of opposition and considering an appropriate response in its counterstatement. It does not appear to me that the excessive reliance significantly increased the evidential or submissions burden, as the “Be Sage”/ “Be Sage. Build On” marks are barely present in the evidence, and the applicant filed no submissions. With all of this in mind, I award costs to the opponent as follows:

Official fees:	£400
Filing the notices of opposition and considering the counterstatements:	£100
Preparing evidence and considering the other party’s evidence:	£1100
Preparing for and attending the hearing:	£700
Total:	£2,300

148. I order 4th Paradigm (Beijing) Technology Co., Ltd to pay Sage Global Services Limited the sum of **£2,300**. This sum is to be paid within 21 days of the expiry of the appeal period or within 21 days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 20th day of January 2023

**Heather Harrison
For the Registrar
The Comptroller-General**

APPENDIX

EU18282651



Class 9: **Business management software; financial management software; accounting software; payroll software;** payment and banking software; treasury management software; **software for the management of financial transactions; software for the management of human resources;** enterprise resource planning software; customer relationship management software; client relationship management software; contact management software; software for management of sales, customer service, distribution, inventory, purchasing, order processing, manufacturing, and production management; **software for expense reporting; software for management of budgeting and planning; software for cashflow management;** software providing business intelligence and business predictive analytics; software for financial analytics; computer software that includes artificial intelligence for business data processing; computer software for data analytics and reporting; software for payment processing; software for financial transaction reconciliation; downloadable electronic newsletters; electronic publications.

Class 35: Business management; business management services provided through computer software, computer software for mobile phones, smart phones, smart watches and tablet computers; business administration services; accountancy services; payroll assistance and advisory services; customer relationship management services; human resource management services; business management and organisation consultancy; computerised file management; business management assistance; business expertise services; invoicing; compilation and systemisation of information into computer databases; data capture and processing; electronic shopping retail services connected with financial management software, business management software, information management software, and computer software; advertising; marketing; Advertising and

marketing services provided by means of social media; organization of events intended to raise awareness of and promote the needs and activities of non-profit associations; information, advisory and consultancy services relating to all of the aforesaid.

Class 36: Financial affairs, financial analysis, financial consultancy, financial evaluation; payment processing services; electronic payment processing services; banking transaction services; organization of collections; fund-raising; collections for charity; raising funds; collection and distribution of donations and funds; financial sponsorship; philanthropic services concerning monetary donations; funding studies and evaluations in the field of patronage; distribution of prizes, aids, and scholarships; information, advisory and consultancy services relating to all of the aforesaid.

Class 41: Education; electronic publications (not downloadable); Providing online electronic publications, not downloadable; providing online newsletters in the field of financial and business management; arranging and conducting training workshops, colloquiums, conferences, forums, congresses, seminars or symposia, trade shows and/or exhibitions; arranging and conducting training workshops, colloquiums, conferences, forums, congresses, seminars or symposia, trade shows and/or exhibitions for cultural and/or educational purposes; procuring voluntary support through education assistance (education); training, coaching, tutoring, and vocational guidance; consultancy, advisory and information services in relation to all of the aforesaid; all of the aforesaid relating to financial management, accounting, contacts management, office management, business administration, business management, human resource management, non-profit management, assets management, time management, customer relationship management, job costing management, payroll, tax and compliance services, credit card services, check processing services, and electronic record services.

Class 42: **Software-as-a-Service (SaaS); providing temporary use of non-downloadable software; software-as-a-service (SaaS) for business management; software-as-a-service (SaaS) for financial management; software-as-a-service (SaaS) for accounting; software-as-a-service (SaaS) for payroll;** software-as-a-

service (SaaS) for payment and banking; software-as-a-service (SaaS) for treasury management; software-as-a-service (SaaS) for the management of financial transactions; software-as-a-service (SaaS) for the management of human resources; software-as-a-service (SaaS) for enterprise resource planning; software-as-a-service (SaaS) for customer relationship management; software-as-a-service (SaaS) for client relationship management; software-as-a-service (SaaS) for contact management; software-as-a-service (SaaS) for management of sales, customer service, distribution, inventory, purchasing, order processing, manufacturing, and production management; software-as-a-service for expense reporting; software-as-a-service (SaaS) for management of budgeting and planning; software-as-a-service (SaaS) for cashflow management; software-as-a-service (SaaS) for providing business intelligence and business predictive analytics; software-as-a-service (SaaS) for financial analytics; software-as-a-service (SaaS) that includes artificial intelligence for business data processing; software-as-a-service (SaaS) for data analytics and reporting; software-as-a-service (SaaS) for payment processing; software-as-a-service (SaaS) for financial transaction reconciliation; software-as-a-service (SaaS) services featuring software platform for business messaging and execution of business processes; hosting platforms on the Internet; hosting online web facilities for others for sharing online content; hosting a website for businesses that enables collaboration, message control, and bots or virtual assistants, to provide a secure method for persons to communicate and share information with others; **cloud computing; design, analysis, installation, configuration, maintenance, upkeep, updating, development and provision of computer software;** design, analysis, installation, configuration, maintenance, upkeep, updating, development and provision of a cloud platform; computer software consultancy, design, programming and development relating to artificial intelligence for business data processing; providing temporary use of non-downloadable computer software in the nature of a platform for business intelligence and predictive analytics, and enabling business collective intelligence; providing temporary use of on-line non-downloadable computer software application development tools, data processing systems, databases, information systems; electronic storage of data, including files, documents, images and text; computerised analysis of data and information; technical consultation on software;

hosting platforms on the internet for customisation, extension, integration and testing of business development software; hosting platforms on the internet to enable the addition of technical functionalities or integration capabilities to business management software; development of computer platforms for customisation, extension, integration and testing of business development software; development of computer platforms to enable the addition of technical functionalities or integration capabilities to business management software; software-as-a-service (SaaS) featuring software platforms to enable the addition of technical functionalities or integration capabilities to business management software; providing temporary use of on-line non-downloadable software development tools; providing temporary use of on-line non-downloadable software development tools enabling the addition of technical functionalities or integration capabilities to business management software; providing temporary use of on-line non-downloadable software development tools for customisation, extension, integration and testing of business development software; information, advisory and consultancy services relating to the aforesaid.

UK3026298 "SAGE"

Class 9: Commercial business management software; commercial, accounting, financial payroll, payment processing, human resources and client relationship management software.

Class 42: Providing temporary use of non-downloadable software; provision of online software services from a computer database or the Internet; provision of online software services in the fields of accountancy and business administration.

UK1360769 "SAGE"

Class 9: Computer software.

EU17336207 "Sage Business Cloud"

Class 9: Business management software; financial management software; accounting software; payroll software; payment and banking software; software for the management of human resources; enterprise resource planning software; client relationship management software; contact management software; electronic commerce software; software for management of sales, customer service, distribution, inventory, manufacturing; computer software providing business intelligence and business predictive analytics and enabling business collective intelligence; business management software for mobile phones, smart phones, smart watches and tablet computers; computer software for providing a cloud platform offering business management software including, financial, accounting, payroll, payment, banking, human resources and enterprise resource planning software; computer software that provides real-time, integrated business management intelligence by combining information from various databases and presenting it in an easy-to-understand user interface; computer software; financial and business management software; computer software for integration into a variety of systems and applications, including social media platforms; character recognition software; voice recognition software; speech to text conversion software; global positioning software; computer software with character recognition, voice recognition, speech to text conversion, global positioning and travel directions provider capabilities to act as a virtual agent; computer software that include artificial intelligence for business data processing; computer software providing cloud environment platform for the design and development of computer software and mobile applications; computer software using blockchain technology; hardware (computers, modems, apparatus) sold in connection with aforementioned software.

Class 42: Computer programming; computer programming for mobile phones, smart phones, smart watches and tablet computers; providing temporary use of non-downloadable software; provision of software services from a computer database or the internet; provision of online software services; Software-as-a-Service (SAAS); software as a service (SAAS) services featuring software platform

for business messaging and execution of business processes; hosting platforms on the Internet; hosting online web facilities for others for sharing online content; hosting a website for businesses that enables collaboration, message control, and bots, to provide a secure method for persons to communicate and share information with others; cloud computing; design, analysis, installation, configuration, maintenance, upkeep, updating, development and provision of computer software; design, analysis, installation, configuration, maintenance, upkeep, updating, development and provision of computer software for mobile phones, smart phones, smart watches and tablet computers; design, analysis, installation, configuration, maintenance, upkeep, updating, development and provision of a cloud platform; computer software consultancy, design, programming and development relating to artificial intelligence for business data processing; providing temporary use of non-downloadable computer software in the nature of a platform for business intelligence and predictive analytics, and enabling business collective intelligence; providing temporary use of on-line non-downloadable computer software application development tools, data processing systems, databases, information systems; electronic storage of data, including files, documents, images and text; rental and leasing of computers, data processing apparatus, software, timesharing services; website hosting services; website maintenance; computerised analysis of data and information; research, consultancy and information services in relation to computer software, data processing systems, databases, information management, the internet, information technology and project management; data conversion of computer programs and data (not physical conversion); conversion of data or documents from physical to electronic media; computer systems analysis; recovery of computer data; duplication of computer programs; technical consultation on software; technical support to the detection of software defects and correction of said defects; support line namely technical support to the use, detection and correction of software defects; all of the aforementioned related to business management software.

UK3096426 "SAGE ONE"

Class 9: Commercial business management software; commercial, accounting, financial, payroll, payment processing, human resources and client relationship management software.

Class 42: Providing temporary use of non-downloadable software; provision of online software services from a computer database or the internet; provision of online software services in the fields of accountancy and business administration.

EU17336181 "Be Sage. Build On."

Class 9: Business management software; financial management software; accounting software; payroll software; payment and banking software; software for the management of human resources; enterprise resource planning software; client relationship management software; contact management software; electronic commerce software; software for management of sales, customer service, distribution, inventory, manufacturing; computer software providing business intelligence and business predictive analytics and enabling business collective intelligence; business management software for mobile phones, smart phones, smart watches and tablet computers; computer software for providing a cloud platform offering business management software including, financial, accounting, payroll, payment, banking, human resources and enterprise resource planning software; computer software that provides real-time, integrated business management intelligence by combining information from various databases and presenting it in an easy-to-understand user interface; computer software; financial and business management software; computer software for integration into a variety of systems and applications, including social media platforms; character recognition software; voice recognition software; speech to text conversion software; global positioning software; computer software with character recognition, voice recognition, speech to text conversion, global positioning and travel directions provider capabilities to act as a virtual agent; computer software that include artificial intelligence for business data processing; computer software providing cloud environment platform

for the design and development of computer software and mobile applications; computer software using blockchain technology; hardware (computers, modems, apparatus) sold in connection with aforementioned software.

Class 42: Provision of online software services.

UK2253504



Class 9: Computer software.

Class 42: Computer software services; providing access to and leasing access time to computer databases and to online computer services; rental and leasing of software.

EU13867585 “Be Sage”

Class 9: Commercial business management software; commercial, accounting, financial, payroll, payment processing, human resources and client relationship management software; hardware connected with the aforementioned software; computer software supplied from the internet.

Class 42: Computer programming; providing temporary use of non-downloadable software; provision of online software services from a computer database or the Internet; provision of online software services in the fields of accountancy and business administration; design, analysis, configuration, updating, development and provision of computer software, computer hardware, data processing systems, databases, information systems, telecommunications networks and information technology (IT) systems; installation, maintenance and upkeep of computer software and databases;

electronic storage of data, including files, documents, images and text; rental and leasing of computers, data processing apparatus, hardware, software, firmware and information technology; timesharing services; website design services; website hosting services; website maintenance; computerised analysis of data and information; research, consultancy and information services in relation to computer software, computer hardware, data processing systems, databases, information technology management, telecommunications networks, the internet, information technology and project management.