

BL O/0442/23

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION 3683436

BY

SHENZHEN MAKERFIRE TECHNOLOGY CO., LTD

TO REGISTER THE FOLLOWING TRADE MARK:

Crazepony

AND

OPPOSITION NO. 429385 THERETO

BY

CRAZE GmbH

Background and pleadings

1. On 19 August 2021, Shenzhen Makerfire Technology Co., Ltd. (the “Applicant”) applied to register the word only trade mark **Crazepony** for the following services:

Class 35 *Administration of the business affairs of franchises; Brand positioning services; Administration of foreign business affairs; Business management services relating to electronic commerce; Advertising services relating to the sale of goods; Retail services relating to furniture; Online retail services relating to toys; Retail services in relation to toys; Administration of the business affairs of retail stores; Retail services in relation to furniture; Retail services in relation to domestic electronic equipment; Negotiation and conclusion of commercial transactions for third parties via telecommunication systems; Agency services for arranging business introductions; Brokerage of name and address based lists; Arranging of business introductions; Provision of an on-line marketplace for buyers and sellers of goods and services.*

2. The contested application was accepted and published for opposition purposes in the Trade Marks Journal on 24 September 2021.

3. On 17 December 2021, Craze GmbH (“Opponent”) opposed the entirety of application under Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). For the purposes of this opposition, the Opponent relied only on the Class 35 services for which the following two earlier United Kingdom Trade Marks (UKTMs) are registered:

UKTM 916797342

CRAZE

Filing date: 2 June 2017

Registration date: 17 February 2018

Class 35 (**see Annex A**)



Registration date: 8 November 2018

Class 35 (see **Annex B**)

4. Since the filing dates of the earlier marks predate that of the contested application, the Opponent's marks are considered to be "earlier marks" in accordance with Section 6 of the Act. However, as neither of the marks have been registered for a period of five years or more before the filing date of the application, neither mark is subject to the use requirements specified within section 6A of the Act. As a consequence, the Opponent may rely upon any or all of the services for which the earlier marks are registered without having to show that it has used the marks at all.

5. In its statement of grounds, the Opponent submitted that the contested mark fully incorporates the earlier 'Craze' marks, while "...the word 'PONY' at the end adds little distinction and could easily be considered a brand extension or sub brand" of the earlier mark. The Opponent contended that the marks have an identical phonetic beginning and are conceptually similar. As for the contested services, the Opponent submitted that they directly conflict with the retail services of the earlier marks.

6. On 28 February 2022, the Applicant filed a counterstatement in which it denied each of the Opponent's allegations, save for the comparison of the respective services, whereby it admitted that they are either identical or similar.

7. On 28 April 2022, the Tribunal issued a preliminary indication, in which it found the opposition should be rejected on the basis that there is insufficient similarity between the marks.

8. On 28 May 2022, the Opponent filed Form TM53, confirming its intention to proceed to the evidence rounds, nonetheless.

Evidence and submissions

9. On 8 August 2022, the Opponent filed the witness statement of Naazneen Schmittzehe, Consultant Solicitor of the Opponent's appointed representative S.H. & Associates IP Limited. The witness statement included information pertaining to the origin of the Opponent company, and claimed that it is a "significant market provider" with an "impressive market sector position". The witness statement explained that the Opponent uses the earlier mark 'CRAZE' both independently and in combination with additional elements, such as 'HORSE RANCH', 'FLUFFY MELLOW', and 'MAGIC SLIME'. The witness statement argued that because of this pattern of use the relevant consumer would associate any mark that uses the word 'CRAZE' in conjunction with an additional element to the Opponent. The witness statement referred to the following two exhibits:

- NS1 –screenshots of the Amazon.de website, with images of the Opponent's products. Both of the earlier marks appear.
- NS2 –extracts from *Toy World Magazine*. Pages 2, 3 and 5 include images of a toy pony sold under a figurative 'Galupy' mark, along with the earlier figurative CRAZE mark. The witness statement claimed that because the earlier mark is used for toy pony products the contested mark 'Crazepony' would result in confusion.

10. On 22 December 2022, the Applicant filed submissions in the form of the witness statement of Guotao Yan, CEO of Shenzhen Makerfire Technology Co., Ltd. The witness statement explained that the Applicant has been using the contested mark in Amazon UK since 2018, initially on Wi-Fi Transceiver Modules (exhibit 1), followed by batteries and plugs (exhibit 3). The witness statement also referred to 175 pages of spreadsheets, intended to indicate turnover.

11. On 16 January 2023, the Opponent filed submissions in reply. The Opponent submitted that the Applicant had not addressed the issue of a likelihood of confusion and had instead provided irrelevant information pertaining to use and turnover. The Opponent submitted that although some consumers may pay a higher degree of attention to the services at issue, the assessment of confusion must nevertheless be

made by reference to the consumers who pay a very low degree of attention. The Opponent subsequently argued that the differences between the marks are insufficient to enable such a consumer to distinguish between them.

12. No hearing was requested by either of the parties and therefore this decision is taken following a careful perusal of the papers before me.

13. Both parties are professionally represented. The Applicant is represented by Gloria Qsing and the Opponent is represented by S.H. & Associated IP Ltd.

Procedural economy

14. It appears to me that the earlier mark UKTM 916797342 offers the Opponent its greatest chance of success under Section 5(2)(b). This is on the basis that it is a word only trade mark (as is the contested mark), and also because it is registered for a wider specification of services in Class 35 than the earlier figurative mark UKTM 916647951, the scope of which is limited to retail and wholesale services. If the earlier mark UKTM 916797342 is found to be dissimilar to the contested mark the Opponent will be in no better position under Section 5(2)(b) when relying on a mark with additional figurative elements and a narrower specification.

Decision

15. 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. That is why this decision continues to refer to EU trade mark law.

Section 5(2)(b)

16. Section 5(2)(b) of the Act is as follows:

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

(a) ...

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

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

(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 might believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.

Comparison of services

18. I note that in its counterstatement the Applicant conceded the contested services at issue are either similar or identical to those of the earlier mark. At first glance it certainly appears that some of the contested services are identical to the services on which the opposition is based, e.g., *Online retail services relating to toys*; and *Advertising services relating to the sale of goods*. For reasons of procedural economy, the Tribunal will not undertake a full comparison of the services at issue. The examination of the opposition will proceed on the basis that the contested services are identical to those covered by the earlier trade mark UKTM 916797342. If the opposition fails, even where the services are identical, it follows that the opposition will also fail where the services are only similar (or dissimilar).

Comparison of marks

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

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

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

21. The respective trade marks are shown below:

Earlier mark 916797342	Contested mark
CRAZE	Crazepony

22. The earlier mark consists exclusively of the uppercase English-language word ‘CRAZE’, which is presented in a plain, non-stylised font. The word ‘CRAZE’ is a noun, referring to something that is very popular or fashionable for a short period of time i.e., “x is the latest craze”. The overall impression of the earlier mark rests entirely in the concept of the word ‘CRAZE’.

23. The contested mark consists exclusively of the term ‘Crazepony’, which is presented in a plain, non-stylised font. The term has no apparent meaning in the

English language, and neither party has offered a definition for the term as a whole. Whilst the contested mark is not separated into two words by the use of a space or second uppercase letter, for example, it nevertheless seems to me most likely that 'Crazepony' will be perceived as the combination of English-language words 'Craze' and 'pony', with 'Craze' meaning short-lived fashion and 'pony' meaning small or young horse. I note that the Opponent also referred to the contested mark as consisting of two words in its submissions. Because both 'Craze' and 'pony' are nouns, their combination is an unusual and awkward semantical construction, with neither word affecting or qualifying the other. Of the two words, I consider 'pony' to be the slightly more distinctive as it does not have any apparent relationship to the services at issue, whereas it is possible that for certain number of consumers the word 'Craze' may be perceived as alluding to the services at issue being currently fashionable, for example. The overall impression resides in the two words.

Visual similarity

24. The marks are visually similar insofar as they share the five-letter word 'CRAZE'. The marks differ visually due to the inclusion of the four-letter word 'pony' in the contested mark, which has no counterpart in the earlier mark. Overall, the marks are considered to be visually similar to a medium degree.

Aural similarity

25. The marks are aurally similar insofar as they coincide in the sound created by the standard pronunciation of the English-language word 'Cray-z', which constitutes the entirety of the earlier mark and the first audible element of the contested mark. The marks differ aurally due to the inclusion of the two-syllable sound 'po-nee' at the end of the contested mark, which has no counterpart in the earlier mark. Overall, the marks are considered to be aurally similar to a medium degree.

Conceptual similarity

26. Despite the contested mark being the single term 'Crazepony', I agree with the Opponent that it will most likely be perceived by the consumer as consisting of the two conjoined words 'Craze' and 'pony'. The combination 'Craze' and 'pony' does not

naturally hang together in accordance with the rules of English grammar to create a unified concept, and therefore the individual concepts of 'Craze' and 'pony' will be perceived as separate from one another.

27. The marks are conceptually similar to the extent that they share the concept of a short-lived fashion. The marks differ conceptually due to the inclusion of the concept of a small or young horse in the contested mark, which has no counterpart in the earlier mark. Overall, the marks are conceptually similar to a medium degree.

Average consumer and the purchasing act

28. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question (see *Lloyd Schuhfabrik Meyer*, Case C-342/97).

29. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

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

30. The services at issue include both everyday services, i.e., services that are purchased and used on a daily basis by the average consumer, and more specialist services, i.e., services that are used for performing particular functions by a specialist consumer. Services that would fall into the first category include, for example, *Online retail services relating to toys*, whilst services that would fall into the second category include, for example, *Advertising services relating to the sale of goods*. The level of attention will be lower for the everyday services and higher for the more specialist

services. Considering the broad scope of services at issue, the degree of attention is considered to be medium overall.

31. Based on the nature of the services at issue, I consider the purchasing process to most likely be visually dominated. Whether the consumer is purchasing toys online or paying for advertising services, for example, the consumer will invariably be examining the visual aspect of the marks at issue and will therefore most likely be making a purchase decision based on the visual appearance of services. I do not entirely dismiss the possibility that the marks may be spoken, for instance over the telephone or in conversation, and as such there may be an aural element to the purchasing process.

Distinctive character of the earlier trade mark

32. Although the Opponent claimed to be a “significant market provider” with an “impressive market sector position” this has neither been established nor supported through evidence. Further, no evidence has been submitted that would indicate the earlier mark has acquired an enhanced degree of distinctive character. My assessment of the degree of distinctive character of the earlier mark is therefore to be made only on the basis of its inherent features.

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

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not

contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

34. The earlier mark consists of the plain word ‘CRAZE’ without any additional stylisation or figurative elements, and as such any inherent distinctive character rests exclusively in the meaning of the word ‘CRAZE’. Whilst neither party has argued that the word ‘CRAZE’ has a particular relationship with the services at issue, I consider it a possibility that the consumer may perceive the word to allude to the services at issue being the most fashionable version/form currently available, in which case the level of distinctive character would be low. However, there may be a certain number of consumers for whom the word is abstract and therefore distinctive to a medium degree.

Likelihood of confusion

35. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related.

36. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind (see *Sabel*, C-251/95, para 22). The first is the interdependency principle, whereby a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services, and vice versa (see *Canon*, C-39/97, para 17). Further factors to keep in mind include the distinctive character of the Opponent’s trade mark, the nature of the purchasing process, and the average consumer for the services. As regards the

average consumer, I must also be alive to the fact that the consumer rarely has the opportunity to make direct comparisons between trade marks, and must instead rely upon the imperfect picture of them that he has retained in his mind.

37. Whilst conducting a global assessment of the likelihood of confusion I must be aware of the fact that not all aspects of the respective marks will necessarily have the same impact. For example, the importance of the respective visual, aural and conceptual aspects will be dependent on factors such as the way the services at issue are marketed, and in which type of store/platform they are made available.¹ Having conducted a comparison of the marks at issue, I have determined that it is the visual consideration which is of primary importance due to the purchasing process of the respective services being visually dominated.² With this in mind, I refer to my finding that the marks are visually similar to a medium degree. It is important to reaffirm, however, that I did not rule out the possibility that the marks may be spoken in certain purchasing environments, in which case it is worth considering that I found the marks to be aurally similar to a medium degree, also.

38. In *El Corte Inglés*,³ the General Court noted that the beginnings of words tend to make more of a visual and aural impact than the end of words. The beginning of the contested mark is identical to the entirety of the earlier mark, which contributes to the finding that the marks are both visually and aurally similar to a medium degree overall. That having been said, I do not consider it likely that the word 'pony' will be overlooked in the contested mark despite it being at the end. In my opinion, when the consumer encounters the contested mark 'Crazepony' they will perceive it as consisting of the two words 'Craze' and 'pony', as argued by the Opponent, and will therefore see and (subsequently) enunciate each word separately. Considering that the word 'pony' has no counterpart in the earlier mark, it represents a significant visual and aural difference between the marks that would prevent the consumer from mistaking them.

39. In addition to representing a point of visual and aural difference, the word 'pony' in the contested mark represents a conceptual difference. I acknowledge the Opponent's submission that the word 'pony' makes no material difference between the marks,

¹ *New Look Limited v OHIM*, joined cases T-117/03 to T-119/03 and T-171/03

² *Quelle AG v OHIM*, Case T-88/05

³ *SA v OHIM*, Cases T-183/02 and T-184/02, paragraph 81-83

however, I respectfully disagree. The word 'pony' has no direct relationship to the services at issue, and it may even be perceived as the more distinctive of the two words in the contested mark by the consumer who views the word 'Craze' as alluding to the services being the most fashionable version/form currently available. In *Anncoco, Inc. v OHIM*, Case T-385/09, the GC found there to be no confusion between the contested mark *ANN TAYLOR LOFT* and the earlier mark *LOFT* because the earlier mark *LOFT* did not include the more distinctive element of the contested mark, i.e., *ANN TAYLOR*. For the consumer who considers the term 'pony' as the more distinctive element by virtue of perceiving the element 'Craze' to be allusive, the fact that it is not included in the earlier mark points away from confusion.

40. Marks that have conceptual differences may counteract any visual and aural similarities that the marks may have.⁴ With this in mind, I am of the opinion that the conceptual difference between the marks at issue, caused by the element 'pony' in the contested mark having no counterpart in the earlier mark, would counteract the visual and aural similarity between the marks caused by the sharing of the word 'Craze'. The conceptual difference would also prevent the consumer from mistaking the contested mark for the earlier mark. With all of the above in mind, I find there to be no likelihood of direct confusion.

41. Having found there to be no likelihood of direct confusion, any likelihood of confusion would now be dependent on a finding of indirect confusion. It should be borne in mind that finding a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion.⁵ In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis Q.C., (as he then was) as the Appointed Person, explained that:

"16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the

⁴ *The Picasso Estate v OHIM*, Case C-361/04 P

⁵ *Liverpool Gin Distillery Limited v Sazerac Brands LLC* [2021] EWCH Civ 2017, paragraph 13.

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)."

42. Whilst the categories above do not represent an exhaustive list, they nevertheless represent a fair reflection of instances where indirect confusion "tends to fall". In its submissions, the Opponent argued that the contested mark 'Crazepony' would be seen as a sub brand or brand extension of 'Craze' because the element 'pony' made no material difference. According to *L.A. Sugar*, in order for 'Crazepony' to be perceived as a brand extension of 'Craze' the word 'pony' would need to be perceived as non-distinctive. I have made it clear in my decision that I consider the word 'pony' to be inherently distinctive, and therefore I do not consider it likely that the average consumer would perceive the contested mark as a sub brand or brand extension.

Further, (and in particular for the consumer who perceives it to be allusive) I do not necessarily consider 'Craze' to be so strikingly distinctive that the consumer would assume that no-one else but the brand owner would be using it. I therefore do not agree with the Opponent's contention that in instances where 'Craze' is used with additional matter it would be associated with the Opponent.

43. In BL O/413/18, *Absurd Bird*, Mr Geoffrey Hobbs Q.C. (as he then was) found there is no rule or presumption that the concurrent use of a trade mark and one of its components for identical or similar goods or services will always or necessarily give rise to the perception that the goods or services concerned come from the same or economically linked undertakings. Further, he re-emphasized that although the average consumer is reasonably well informed, observant and circumspect, (s)he is not to be regarded as a person who normally engages in extended thought processes for the purpose of pairing and matching trade marks, or actively considering how they might be developed or appropriated for use as siblings of other marks. Considering that being confused is an instinctive reaction to precipitating factors, not the result of a detailed analysis of a mark's constituent parts, I find it unlikely that the consumer would believe 'Crazepony' comes from the same or economically linked undertaking as 'Craze' simply because they coincide in a component. With all of the above in mind, I find there to be no likelihood of indirect confusion.

44. I am aware of the interdependency principle, whereby a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the respective goods and services at issue, and vice versa. The medium degree of visual and aural similarity that I have found between the marks could therefore be offset by the finding of identity between some of the services at issue. However, in my opinion, finding a likelihood of confusion would be unlikely even in light of the identity of some of the services. The mere coincidence of the word 'Craze', which to some consumers is allusive, is not enough to cause the consumer to either directly or indirectly confuse 'Crazepony' for 'Craze'.

45. By conducting a global assessment, I have found the parties' marks to be visually and aurally similar to a medium degree based on the beginning of the contested mark containing the entirety of the earlier mark. I have also found the visual aspect to be more dominant in the purchasing process of the services at issue, which will be

conducted by both the average and specialist consumers. That having been said, I have identified the additional word 'pony' in the contested mark to not only create clear visual and aural differences, but to also represent a conceptual difference which has no counterpart in the earlier mark.

Conclusion

46. The opposition fails under Section 5(2)(b) based on the earlier mark. As previously identified, the Opponent will be in no better position if relying on the earlier mark UKTM 916647951, which has a narrower specification and more elements that are different from the contested mark.

47. Subject to an appeal, the contested application will proceed to registration.

Costs

48. As the opposition has failed, the Applicant has been successful and is entitled to a contribution to its costs. I bear in mind that the relevant scale is contained in Tribunal Practice Notice 2/2016. In the circumstances I award the Applicant the sum of £750 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Considering the notice of opposition and filing a counterstatement	£250
Preparing evidence and considering the other side's evidence	£500
Total	£750

49. I therefore order Craze GmbH to pay Shenzhen Makerfire Technology Co., Ltd the sum of £750. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 11th day of May 2023

**Dafydd Collins
For the Registrar
The Comptroller-General**

Annex A

Class 35: *Retailing and wholesaling in relation to hobby craft sets with paints, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, body cleaning and body care preparations, cosmetic preparations for baths and bath products, temporary tattoos for cosmetic purposes, plasters, materials for dressings, recording apparatus, magnetic data carriers, recording discs, compact discs, DVDs, digital recording media, cash registers, calculating machines; Retailing and wholesaling in relation to data processing equipment, computers, computer software; Retailing and wholesaling in relation to recorded and blank sound recording, image and data carriers of all kinds (other than unexposed films), in particular audio tapes, cassettes, compact discs, video discs, recording discs, DAT-tapes, audio and video discs, audio and video cassettes, audio and video films, and audio and video tapes, floppy disks, CD-ROMs, Digital Versatile Discs (DVDs) and other digital recording media, recorded data; Retailing and wholesaling in relation to apparatus for recording, transmission or reproduction of sound, images and data, recorded media, apps (software), namely applications for smartphones, tablet PCs, e-readers and other mobile or stationary IT apparatus (downloadable); Retailing and wholesaling in relation to electronic publications (downloadable), audio files, music files and image files for download, spectacles (optics), spectacle cases, animated cartoons; Retailing and wholesaling in relation to alloys of precious metal, jewellery, precious stones, clocks and watches, pearls, imitation pearls for crafts, beads for making jewelry, necklaces (jewellery) and bracelets, anklets, pendants, charms made from elastic bands, elastic bands for making jewellery, elastic bands for making charms; Retailing and wholesaling in relation to sets for making jewellery, namely sets consisting of elastic bands, a loom and a hook, sets for making jewellery consisting of plastic beads, threads and wire; Retailing and wholesaling in relation to iron-on beads; Retailing and wholesaling in relation to paper, cardboard, printed matter, comics, collector albums, bookbinding material, photographs, stationery, adhesives for stationery or household purposes, artists' materials, paint brushes, typewriters and office requisites (except furniture), instructional and teaching material (except apparatus); Retailing and wholesaling in relation to plastic materials for packaging, printers' type, printing blocks, temporary tattoos (transfers), temporary tattoos (decals) advent calendars, advent calendars filled with toys, disposable paper articles, namely tissues of paper for cosmetic*

purposes, hygienic paper, table linen of paper, tablecloths of paper, table napkins of paper, table mats of paper, table decorations of paper, table mats of paper, handkerchiefs of paper, place cards, cocktail umbrellas of paper, paper garlands, decoration and artistic materials and media, works of art and figurines of paper or cardboard; Retailing and wholesaling in relation to bags, pouches and goods of paper, cardboard or plastic for packaging, wrapping and storage purposes; Retailing and wholesaling in relation to sticker albums, stickers (stationery); Retailing and wholesaling in relation to calendars, posters, postcards, advertising signboards and transparencies and advertising materials of paper, flags of paper, craft materials of paper, trading cards, modelling compounds, modelling clay, modelling materials, modelling sand, colouring books; Retailing and wholesaling in relation to yarns and threads, for textile use, yarn and knitting sets, consisting of yarn and knitting patterns, hand knitting wools, hand knitting yarns, knitting threads made from artificial silk, silk, staple fibres and sewing thread, knitting yarns/wools (silk, linen, artificial silk, staple fibres, cotton), knitting yarns (silk, linen, artificial silk, staple fibres, cotton), knitting wool (silk, linen, artificial silk, staple fibres, cotton); Retailing and wholesaling in relation to carded yarns in wool for textile use, carded threads in wool for textile use, spun wool, woollen thread and yarn, wool-based mixed yarns and threads, threads (artificial silk, silk, staple fibres and sewing thread), knitting yarns; Retailing and wholesaling in relation to knitting yarns made from acrylic materials, knitting yarns made from nylon, knitting yarns made from wool, knitting yarns made from cotton or other materials, sewing yarn for textile use, sewing yarns, textiles and textile goods, not included in other classes; Retailing and wholesaling in relation to bed and table covers, washcloths, washing mitts, towels, clothing, footwear, headgear, lace and embroidery, ribbons and braid, buttons, hooks and eyes, pins and needles, artificial flowers, ribbons and braid, ribbons (haberdashery), cords for clothing, hair bands, hook and pile fastening tapes, prize ribbons; Retailing and wholesaling in relation to toys, games, playthings and novelties, electronic games, decorations for Christmas trees, miniatures for use in games, toy figurines, collectible toy figurines, toy beads, stringing beads (toys), iron-on beads (toys), picture beads (toys), stringing toys, toy jewellery, bubble-making wand and solution sets, jigsaw puzzles; Retailing and wholesaling in relation to coffee, tea, cocoa and artificial coffee, rice, tapioca and sago, flour and preparations made from cereals, bread, pastries and confectionery, edible ices, sugar, honey, treacle, yeast, baking-powder, salt, mustard, vinegar, sauces

(condiments), spices, ice, sweetmeats (candy), chocolate bars and chewing gum; Online retailing and wholesaling in relation to hobby craft sets with paints, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, body cleaning and body care preparations, cosmetic preparations for baths and bath products, temporary tattoos for cosmetic purposes, plasters, materials for dressings, recording apparatus, magnetic data carriers, recording discs, compact discs, DVDs, digital recording media, cash registers, calculating machines; Online retailing and wholesaling in relation to data processing equipment, computers, computer software; Online retailing and wholesaling in relation to recorded and blank sound recording, image and data carriers of all kinds (other than unexposed films), in particular audio tapes, cassettes, compact discs, video discs, recording discs, DAT-tapes, audio and video discs, audio and video cassettes, audio and video films, and audio and video tapes, floppy disks, CD-ROMs, Digital Versatile Discs (DVDs) and other digital recording media, recorded data; Online retailing and wholesaling in relation to apparatus for recording, transmission or reproduction of sound, images and data, recorded media, apps (software), namely applications for smartphones, tablet PCs, e-readers and other mobile or stationary IT apparatus (downloadable); Online retailing and wholesaling in relation to electronic publications (downloadable), audio files, music files and image files for download, spectacles (optics), spectacle cases, animated cartoons; Online retailing and wholesaling in relation to alloys of precious metal, jewellery, precious stones, clocks and watches, pearls, imitation pearls for crafts, beads for making jewelry, necklaces (jewellery) and bracelets, anklets, pendants, charms made from elastic bands, elastic bands for making jewellery, elastic bands for making charms; Online retailing and wholesaling in relation to sets for making jewellery, namely sets consisting of elastic bands, a loom and a hook, sets for making jewellery consisting of plastic beads, threads and wire; Online retailing and wholesaling in relation to iron-on beads; Online retailing and wholesaling in relation to paper, cardboard, printed matter, comics, collector albums, bookbinding material, photographs, stationery, adhesives for stationery or household purposes, artists' materials, paint brushes, typewriters and office requisites (except furniture), instructional and teaching material (except apparatus); Online retailing and wholesaling in relation to plastic materials for packaging, printers' type, printing blocks, temporary tattoos (transfers), temporary tattoos (decals) advent calendars, advent calendars filled with toys, disposable paper articles, namely tissues of paper for cosmetic purposes, hygienic paper, table linen of

paper, tablecloths of paper, table napkins of paper, table mats of paper, table decorations of paper, table mats of paper, handkerchiefs of paper, place cards, cocktail umbrellas of paper, paper garlands, decoration and artistic materials and media, works of art and figurines of paper or cardboard; Online retailing and wholesaling in relation to bags, pouches and goods of paper, cardboard or plastic for packaging, wrapping and storage purposes; Online retailing and wholesaling in relation to sticker albums, stickers (stationery); Online retailing and wholesaling in relation to calendars, posters, postcards, advertising signboards and transparencies and advertising materials of paper, flags of paper, craft materials of paper, trading cards, modelling compounds, modelling clay, modelling materials, modelling sand, colouring books; Online retailing and wholesaling in relation to yarns and threads, for textile use, yarn and knitting sets, consisting of yarn and knitting patterns, hand knitting wools, hand knitting yarns, knitting threads made from artificial silk, silk, staple fibres and sewing thread, knitting yarns/wools (silk, linen, artificial silk, staple fibres, cotton), knitting yarns (silk, linen, artificial silk, staple fibres, cotton), knitting wool (silk, linen, artificial silk, staple fibres, cotton); Online retailing and wholesaling in relation to carded yarns in wool for textile use, carded threads in wool for textile use, spun wool, woollen thread and yarn, wool-based mixed yarns and threads, threads (artificial silk, silk, staple fibres and sewing thread), knitting yarns; Online retailing and wholesaling in relation to knitting yarns made from acrylic materials, knitting yarns made from nylon, knitting yarns made from wool, knitting yarns made from cotton or other materials, sewing yarn for textile use, sewing yarns, textiles and textile goods, not included in other classes; Online retailing and wholesaling in relation to bed and table covers, washcloths, washing mitts, towels, clothing, footwear, headgear, lace and embroidery, ribbons and braid, buttons, hooks and eyes, pins and needles, artificial flowers, ribbons and braid, ribbons (haberdashery), cords for clothing, hair bands, hook and pile fastening tapes, prize ribbons; Online retailing and wholesaling in relation to toys, games, playthings and novelties, electronic games, decorations for Christmas trees, miniatures for use in games, toy figurines, collectible toy figurines, toy beads, stringing beads (toys), iron-on beads (toys), picture beads (toys), stringing toys, toy jewellery, bubble-making wand and solution sets, jigsaw puzzles; Online retailing and wholesaling in relation to coffee, tea, cocoa and artificial coffee, rice, tapioca and sago, flour and preparations made from cereals, bread, pastries and confectionery, edible ices, sugar, honey, treacle, yeast, baking-powder, salt, mustard, vinegar, sauces

*(condiments), spices, ice, sweetmeats (candy), chocolate bars and chewing gum;
Advertising; Marketing services; creation of marketing concepts; Sales promotion;
Sales promotion for others; Mediation of trade business for third parties.*

Annex B

Class 35: *Retailing and wholesaling in relation to hobby craft sets with paints, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, body cleaning and body care preparations, cosmetic preparations for baths and bath products, temporary tattoos for cosmetic purposes, plasters, materials for dressings, recording apparatus, magnetic data carriers, recording discs, compact discs, DVDs, digital recording media, cash registers, calculating machines; Retailing and wholesaling in relation to data processing equipment, computers, computer software; Retailing and wholesaling in relation to recorded and blank sound recording, image and data carriers of all kinds (other than unexposed films), in particular audio tapes, cassettes, compact discs, video discs, recording discs, DAT-tapes, audio and video discs, audio and video cassettes, audio and video films, and audio and video tapes, floppy disks, CD-ROMs, Digital Versatile Discs (DVDs) and other digital recording media, recorded data; Retailing and wholesaling in relation to apparatus for recording, transmission or reproduction of sound, images and data, recorded media, apps (software), namely applications for smartphones, tablet PCs, e-readers and other mobile or stationary IT apparatus (downloadable); Retailing and wholesaling in relation to electronic publications (downloadable), audio files, music files and image files for download, spectacles (optics), spectacle cases, animated cartoons; Retailing and wholesaling in relation to alloys of precious metal, jewellery, precious stones, clocks and watches, pearls, imitation pearls for crafts, beads for making jewelry, necklaces (jewellery) and bracelets, anklets, pendants, charms made from elastic bands, elastic bands for making jewellery, elastic bands for making charms; Retailing and wholesaling in relation to sets for making jewellery, namely sets consisting of elastic bands, a loom and a hook, sets for making jewellery consisting of plastic beads, threads and wire; Retailing and wholesaling in relation to iron-on beads; Retailing and wholesaling in relation to paper, cardboard, printed matter, comics, collector albums, bookbinding material, photographs, stationery, adhesives for stationery or household purposes, artists' materials, paint brushes, typewriters and office requisites (except furniture), instructional and teaching material (except apparatus); Retailing and wholesaling in relation to plastic materials for packaging, printers' type, printing blocks, temporary tattoos (transfers), temporary tattoos (decals) advent calendars, advent calendars filled with toys, disposable paper articles, namely tissues of paper for cosmetic*

purposes, hygienic paper, table linen of paper, tablecloths of paper, table napkins of paper, table mats of paper, table decorations of paper, table mats of paper, handkerchiefs of paper, place cards, cocktail umbrellas of paper, paper garlands, decoration and artistic materials and media, works of art and figurines of paper or cardboard; Retailing and wholesaling in relation to bags, pouches and goods of paper, cardboard or plastic for packaging, wrapping and storage purposes; Retailing and wholesaling in relation to sticker albums, stickers (stationery); Retailing and wholesaling in relation to calendars, posters, postcards, advertising signboards and transparencies and advertising materials of paper, flags of paper, craft materials of paper, trading cards, modelling compounds, modelling clay, modelling materials, modelling sand, colouring books; Retailing and wholesaling in relation to yarns and threads, for textile use, yarn and knitting sets, consisting of yarn and knitting patterns, hand knitting wools, hand knitting yarns, knitting threads made from artificial silk, silk, staple fibres and sewing thread, knitting yarns/wools (silk, linen, artificial silk, staple fibres, cotton), knitting yarns (silk, linen, artificial silk, staple fibres, cotton), knitting wool (silk, linen, artificial silk, staple fibres, cotton); Retailing and wholesaling in relation to carded yarns in wool for textile use, carded threads in wool for textile use, spun wool, woollen thread and yarn, wool-based mixed yarns and threads, threads (artificial silk, silk, staple fibres and sewing thread), knitting yarns; Retailing and wholesaling in relation to knitting yarns made from acrylic materials, knitting yarns made from nylon, knitting yarns made from wool, knitting yarns made from cotton or other materials, sewing yarn for textile use, sewing yarns, textiles and textile goods, not included in other classes; Retailing and wholesaling in relation to bed and table covers, washcloths, washing mitts, towels, clothing, footwear, headgear, lace and embroidery, ribbons and braid, buttons, hooks and eyes, pins and needles, artificial flowers, ribbons and braid, ribbons (haberdashery), cords for clothing, hair bands, hook and pile fastening tapes, prize ribbons; Retailing and wholesaling in relation to toys, games, playthings and novelties, electronic games, gymnastic articles, sporting articles, decorations for Christmas trees, miniatures for use in games, toy figures, collectible toy figures, toy beads, thread beads (toys), iron-on beads (toys), plug-on beads (toys), stringing toys, toy jewellery, soap bubble sets with rods and solutions, jigsaw puzzles; Online retailing and wholesaling in relation to hobby craft sets with paints, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, body cleaning and body care preparations, cosmetic preparations for baths and bath

products, temporary tattoos for cosmetic purposes, plasters, materials for dressings, recording apparatus, magnetic data carriers, recording discs, compact discs, DVDs, digital recording media, cash registers, calculating machines; Online retailing and wholesaling in relation to data processing equipment, computers, computer software; Online retailing and wholesaling in relation to recorded and blank sound recording, image and data carriers of all kinds (other than unexposed films), in particular audio tapes, cassettes, compact discs, video discs, recording discs, DAT-tapes, audio and video discs, audio and video cassettes, audio and video films, and audio and video tapes, floppy disks, CD-ROMs, Digital Versatile Discs (DVDs) and other digital recording media, recorded data; Online retailing and wholesaling in relation to apparatus for recording, transmission or reproduction of sound, images and data, recorded media, apps (software), namely applications for smartphones, tablet PCs, e-readers and other mobile or stationary IT apparatus (downloadable); Online retailing and wholesaling in relation to electronic publications (downloadable), audio files, music files and image files for download, spectacles (optics), spectacle cases, animated cartoons; Online retailing and wholesaling in relation to alloys of precious metal, jewellery, precious stones, clocks and watches, pearls, imitation pearls for crafts, beads for making jewelry, necklaces (jewellery) and bracelets, anklets, pendants, charms made from elastic bands, elastic bands for making jewellery, elastic bands for making charms; Online retailing and wholesaling in relation to sets for making jewellery, namely sets consisting of elastic bands, a loom and a hook, sets for making jewellery consisting of plastic beads, threads and wire; Online retailing and wholesaling in relation to iron-on beads; Online retailing and wholesaling in relation to paper, cardboard, printed matter, comics, collector albums, bookbinding material, photographs, stationery, adhesives for stationery or household purposes, artists' materials, paint brushes, typewriters and office requisites (except furniture), instructional and teaching material (except apparatus); Online retailing and wholesaling in relation to plastic materials for packaging, printers' type, printing blocks, temporary tattoos (transfers), temporary tattoos (decals) advent calendars, advent calendars filled with toys, disposable paper articles, namely tissues of paper for cosmetic purposes, hygienic paper, table linen of paper, tablecloths of paper, table napkins of paper, table mats of paper, table decorations of paper, table mats of paper, handkerchiefs of paper, place cards, cocktail umbrellas of paper, paper garlands, decoration and artistic materials and media, works of art and figurines of paper or

cardboard; Online retailing and wholesaling in relation to bags, pouches and goods of paper, cardboard or plastic for packaging, wrapping and storage purposes; Online retailing and wholesaling in relation to sticker albums, stickers (stationery); Online retailing and wholesaling in relation to calendars, posters, postcards, advertising signboards and transparencies and advertising materials of paper, flags of paper, craft materials of paper, trading cards, modelling compounds, modelling clay, modelling materials, modelling sand, colouring books; Online retailing and wholesaling in relation to yarns and threads, for textile use, yarn and knitting sets, consisting of yarn and knitting patterns, hand knitting wools, hand knitting yarns, knitting threads made from artificial silk, silk, staple fibres and sewing thread, knitting yarns/wools (silk, linen, artificial silk, staple fibres, cotton), knitting yarns (silk, linen, artificial silk, staple fibres, cotton), knitting wool (silk, linen, artificial silk, staple fibres, cotton); Online retailing and wholesaling in relation to carded yarns in wool for textile use, carded threads in wool for textile use, spun wool, woollen thread and yarn, wool-based mixed yarns and threads, threads (artificial silk, silk, staple fibres and sewing thread), knitting yarns; Online retailing and wholesaling in relation to knitting yarns made from acrylic materials, knitting yarns made from nylon, knitting yarns made from wool, knitting yarns made from cotton or other materials, sewing yarn for textile use, sewing yarns, textiles and textile goods, not included in other classes; Online retailing and wholesaling in relation to bed and table covers, washcloths, washing mitts, towels, clothing, footwear, headgear, lace and embroidery, ribbons and braid, buttons, hooks and eyes, pins and needles, artificial flowers, ribbons and braid, ribbons (haberdashery), cords for clothing, hair bands, hook and pile fastening tapes, prize ribbons; Online retailing and wholesaling in relation to toys, games, playthings and novelties, electronic games, gymnastic articles, sporting articles, decorations for Christmas trees, miniatures for use in games, toy figures, collectible toy figures, toy beads, thread beads (toys), iron-on beads (toys), plug-on beads (toys), stringing toys, toy jewellery, soap bubble sets with rods and solutions, jigsaw puzzles; Online retailing and wholesaling in relation to coffee, tea, cocoa and artificial coffee, rice, tapioca and sago, flour, confectionery, namely biscuits, cakes, tarts; Sugar, Honey, Theriac, Yeast, Baking powders, Salt, Mustard, Vinegar, Sauces (condiment), Spices, Ice.