

DECISION
of the First Board of Appeal
of 4 February 2026

In case R 1713/2025-1

APELLA GAMES LTD

Lordou Vyronos, 26

1096 Nicosia

Cyprus

EUTM Proprietor / Appellant

represented by Yana Raevskaya, Kyriakou Matsi 18 2nd floor, 2408 Nicosia / Engomi, Cyprus

v

Eagleline Limited

Junction business centre, 1st floor, sqaq

Lourdes

SWQ 3334 ST. JULIANS

Malta

Cancellation Applicant / Licensee/Defendant

represented by Jan Bárta, Kaprova 42/14, 11000 Praha 1, Czech Republic

APPEAL relating to Cancellation Proceedings No C 66 674 (European Union trade mark registration No 18 430 404)

THE FIRST BOARD OF APPEAL

composed of G. Humphreys Bacon (Chairperson and Rapporteur), A. González Fernández (Member) and M. Bra (Member)

Acting Registrar: K. Zajfert

gives the following

Decision

Summary of the facts

- 1 By an application filed on 17 March 2021, APELLA GAMES LTD (‘the EUTM proprietor’) sought to register the word mark

Apella Games

as a European Union trade mark (‘the contested EUTM’) for the following list of goods and services:

Class 9: Computer games; Computer games of chance; Computer programs for video and computer games; Computer software for entertainment; Downloadable computer games; Games software; Interactive entertainment software; Game programs for arcade video game machines; Electronic game software for handheld electronic devices; Downloadable interactive entertainment software for playing video games; Interactive game software; Virtual reality game software; Software for arcade video game machines; Simulation software [entertainment]; Programs for arcade video game machines; Video game programs; Software programs for video games; Electronic game software for mobile phones; Entertainment software; Augmented reality game software; Computer software; Computer software platforms; Software for smartphones; Software downloadable from the internet; Software for mobile phones; Communication, networking and social networking software; 3D computer graphics software; Computer application software featuring games and gaming; Mobile apps; Downloadable information relating to games and gaming; Electronic publications, downloadable, relating to games and gaming; Virtual and augmented reality software; Web application and server software; Computer programmes for data processing; Software related to handheld digital electronic devices; Platform software; Computer game software for use with on-line interactive games; Computer software for the administration of on-line games and gaming.

Class 35: Provision and rental of advertising space, time and media; Business marketing consultancy; Consultancy services in the Distribution of advertising, marketing and promotional material field of affiliate marketing; Consulting services in the field of Internet marketing; Advertising, marketing and promotional consultancy, advisory and assistance services; Advertising and marketing services provided via communications channels; Advertising and marketing services provided by means of social media; Advertising, including on-line advertising on a computer network; Advertising, promotional and public relations services; Advertising services provided via the internet; Affiliate marketing; Advertising services relating to esports events; Arranging and conducting of marketing events; Brand creation services; Graphic advertising services; Development of marketing strategies and concepts; Marketing services relating to esports events; On-line promotion of computer networks and websites; On-line advertising and marketing services; Product marketing; Production of video recordings for advertising purposes; Promotion services relating to esports events; Providing marketing information via websites; Business management and consultancy services; Administrative processing of purchase orders.

Class 38: *Providing Internet chatrooms and Internet forums; Access to content, websites and portals; Chatroom services for social networking; Computer aided transmission of messages, information and images; Distribution of data or audio visual images via a global computer network or the internet; Providing access to electronic communications networks; On-line transmission of electronic publications; Providing online forums for communication in the field of electronic games; Providing online forums; Providing online chatrooms for the transmission of messages, comments and multimedia content among users; Providing on-line chat rooms for social networking; Providing virtual facilities for real-time interaction among computer users; Transmission of audio and video content via computer networks; Transmission of data, audio, video and multimedia files, including downloadable files and files streamed over a global computer network; Transmission of interactive entertainment software; Transmission of multimedia content via the Internet.*

Class 41: *On-line computer games; Games services provided on-line from a computer network; Arcade game services; Conducting of live esports events; On-line gaming services; Video game services; Virtual reality arcade services; Provision of online information relating to game players; Provision of information relating to esports; Providing online information on computer and video game strategies; Providing interactive multi-player computer games via the internet and electronic communication networks; Providing esports facilities; Organization of esports competitions; Video game entertainment services; Conducting multiple player games of chance; Providing online entertainment in the nature of fantasy sports leagues; Hosting of fantasy sports leagues; Consultancy services in the field of entertainment provided via the Internet; Entertainment services in the nature of competitions; Game shows; Information and advisory services relating to entertainment; Providing information to game players about the ranking of their scores of games through the web sites; Providing online entertainment in the nature of game tournaments.*

Class 42: *Creating, designing and maintaining web sites; Design and development of new technology for others; Design and development of multimedia products; Design and development of networks; Design and graphic arts design for the creation of web sites; Design and maintenance of web sites for others; Software design; Video game software design; Design of virtual reality software; Design and development of computer software architecture; Research, development, design and upgrading of computer software; Consultancy relating to software design and development; Design and development of video game software; Design and development of computer software for others; Design and development of software in the field of mobile applications; Software as a service [SaaS]; Platforms for gaming as software as a service [SaaS]; Consulting services in the field of software as a service [SaaS].*

- 2 The application was published on 24 March 2021, and the mark was registered on 29 April 2024.
- 3 On 24 June 2024, Eagleline Limited ('the cancellation applicant'), filed an application for a declaration of invalidity for all the above goods and services.
- 4 The grounds of the application were those laid down in Article 60(1)(a) EUTMR in conjunction with Article 8(1)(a) and (b) EUTMR.
- 5 The application for a declaration of invalidity was based on the following earlier rights:

- European trade mark No 18 328 392 Apollo Play (word), filed on 30 October 2020 and registered on 25 May 2021 for goods and services in Classes 9, 28, 35, 37, 41 and 42 (earlier mark 1).
- European trade mark No 18 381 667 Apollo (word), filed on 22 January 2021 and registered on 21 May 2021 for goods and services in Classes 9, 28, 35, 37, 41 and 42 (earlier mark 2).
- European trade mark No 18 374 578 Apollo Line (word), filed on 13 January 2021 and registered on 20 May 2021 for goods and services in Classes 9, 28, 35, 37, 41 and 42 (earlier mark 3).



- European trade mark No 18 374 584 (figurative), filed on 13 January 2021 and registered on 21 May 2021 for goods and services in Classes 9, 28, 35, 37, 41 and 42 (earlier mark 4).



- European trade mark No 18 374 567 (figurative), filed on 13 January 2021 and registered on 21 May 2021 for goods and services in Classes 9, 28, 35, 37, 41 and 42 (earlier mark 5).
- European trade mark No 15 630 569 APOLLO GAMES (word), filed on 8 July 2016 and registered on 27 October 2016 for goods and services in Classes 9, 28, 35, 37, 41 and 42 (earlier mark 6).



- European trade mark No 15 630 619 (figurative), filed on 8 July 2016, registered on 27 October 2016 and duly renewed until 8 July 2026 for goods and services in Classes 9, 28, 35, 37, 41 and 42 (earlier mark 7).

- 6 By decision of 18 July 2025 ('the contested decision'), the Cancellation Division declared the invalidity of the contested EUTM in part and upheld the request for a declaration of invalidity for all the contested goods and services in Classes 9, 38, 41 and 42, but not for the contested services in Class 35.
- 7 The Cancellation Division found that there is a likelihood of confusion pursuant to Article 8(1)(b) EUTMR with earlier mark 6 with respect to the goods and services considered identical and similar. Each party was ordered to pay its own costs. The Cancellation Division essentially reasoned:

Comparison of the goods and services

Class 9

- The contested *computer games; computer games of chance; computer programs for video and computer games; computer software for entertainment; downloadable computer games; games software; interactive entertainment software; game programs for arcade video game machines; electronic game software for handheld electronic devices; downloadable interactive entertainment software for playing video games; interactive game software; virtual reality game software; software for arcade video game machines; simulation software [entertainment]; programs for arcade video game machines; video game programs; software programs for video games; electronic game software for mobile phones; entertainment software; augmented reality game software; computer software; computer software platforms; software for smartphones; software downloadable from the internet; software for mobile phones; communication, networking and social networking software; 3D computer graphics software; computer application software featuring games and gaming; mobile apps; virtual and augmented reality software; web application and server software; computer programmes for data processing; software related to handheld digital electronic devices; platform software; computer game software for use with on-line interactive games; computer software for the administration of on-line games and gaming, if not identical to the cancellation applicant's software; none of the aforesaid goods relating to audio software or audio hardware for audio emulation, audio producing, audio recording, audio manipulation or audio processing* because they include the cancellation applicant's goods or overlap with them, are otherwise at least highly similar to them.
- As regards similarity, the goods under comparison are all various types of software, either worded broadly or having more specific purposes, and as such they share the same nature (computer programs). They may be produced by the same undertakings, are distributed through the same channels (such as app stores or digital download platforms) and target the same relevant public. They are also likely to be in competition in certain cases.
- The contested *downloadable information relating to games and gaming; electronic publications, downloadable, relating to games and gaming goods* are digital content intended for download and consumption on electronic devices. In particular, downloadable information and electronic publications relating to games and gaming refer to digital files, such as guides, tutorials, rulebooks, reviews, or interactive manuals, which can be downloaded and used on computers, tablets, or gaming consoles.
- There exists a complementary relationship between these contested goods and the cancellation applicant's *software; none of the aforesaid goods relating to audio software or audio hardware for audio emulation, audio producing, audio recording, audio manipulation or audio processing*. Specifically, software is required for the use, access, and display of these downloadable publications, for example through dedicated applications (such as e-book readers or gaming platforms). Moreover, such digital content is often distributed via the same

channels as software applications, such as app stores or digital content platforms, and the goods under comparison target the same consumers interested in digital entertainment and gaming. It is also common for the same undertakings to produce both the software and the associated content, particularly within the gaming industry. Therefore, the goods under comparison are considered to be similar.

Class 35

- The contested services in Class 35 are dissimilar to the earlier goods and services.

Class 38

- The contested services in Class 38 are similar to the cancellation applicant's *computers and computer hardware; software; none of the aforesaid goods relating to audio software or audio hardware for audio emulation, audio producing, audio recording, audio manipulation or audio processing* in Class 9. Owing to rapid developments in the field of information technology, in particular the growing importance of the internet, the markets for communications equipment, IT hardware and software on the one hand, and telecommunications services on the other, have clearly become interlinked. Nowadays, computers are generally networked, and their autonomous use is actually the exception to the rule; the rule being that communications equipment, computers and software, insofar as they enable access to those services or provide the ability to perform them, renders them complementary.
- Therefore, such goods and services are similar, given their complementary character; although their nature is different, their purpose, consumers and distribution channels are the same. The contested services are all of such a general nature that they are not limited to any narrow or niche field that would rule out their potential connection with computers and software. On the contrary, they are typically used through or with computers and communication software (including apps, platforms and systems). Therefore, the goods and services under comparison are considered to be similar.

Class 41

- The contested services in Class 41 if not identical to the cancellation applicant's *gaming services* because they include, are included in or overlap with the cancellation applicant's services, are otherwise at least similar to them. As regards similarity, the services under comparison are all related to games and gaming, either involving active participation in games, or being passive entertainment in the form of televised or streamed games and competitions (e.g. in the case of the contested *game shows*) and as such have the same general purpose of entertainment. They may be offered by the same providers (e.g. a company offering gaming might also produce or sponsor game shows) through the same channels and are directed at the same public.

Class 42

- The contested *design and development of video game software; software as a service [SaaS]* are identically contained in the cancellation applicant's lists of services.
- The remaining contested services in Class 42 are or include various IT services. As such, they have some relevant points in common with the cancellation applicant's *software development, programming and implementation; none of the aforesaid goods relating to audio software or audio hardware for audio emulation, audio producing, audio recording, audio manipulation or audio processing*. The services under comparison have the same or a very similar nature and may target the same consumers; they are provided through the same distribution channels and are generally rendered by the same kind of undertakings (professionals in the IT field) that normally provide a wide spectrum of information technology solutions tailored to the needs of their customers. Therefore, these services are at least similar.

Relevant public

- In the present case, the goods and services found to be identical or similar (to varying degrees) target the public at large or professional customers with specific professional knowledge or expertise.
- The public's degree of attention varies from average to higher than average, depending on the price, specialised nature, or terms and conditions of the goods and services purchased.
- The comparison of the signs conducted hereunder will focus on the vast majority of the relevant public that will not attribute any meaning to the word 'APELLA'.

Comparison of the signs

- The word 'APOLLO' of earlier mark 6 will be associated by the relevant public across the European Union with the Apollo space missions (especially Apollo 11 and the first crewed moon landing in 1969), and/or with the god of light, poetry, music, healing, and prophecy in Greek and Roman mythology, because the name of the god is either the same or has similar equivalents in the different European Union languages (e.g. 'Apollo' in English, Italian, Dutch and Polish, 'Apolo' in Spanish and Portuguese, 'Apollon' / 'Apollón' in French, Danish, German and Czech, 'Apolon' / 'Apolón' in Croatian, Slovak and Slovenian, 'Аполон' (transliterated as 'Apolon') in Bulgarian, 'Απόλλων' (transliterated as 'Apóllon') in Greek, 'Apolonas' in Lithuanian) and as this is a well-known figure in classical mythology, taught widely in European education systems. In any case, the element 'APOLLO' has no relevant connection with any of the goods and services and is of normal distinctiveness.
- For the vast majority of the relevant public, the contested mark's verbal element 'Apella' does not convey any clear and specific meaning in relation to the relevant goods and services.

- As such, the verbal element ‘GAMES’ in the marks under comparison has a very low degree of distinctiveness, if any, since it refers to the nature or intended purpose of the goods and services concerned.
- Visually, the signs coincide in the sequence of letters ‘AP*LL*’; these letters are included in the element ‘APOLLO’ of earlier mark 6 and ‘Apella’ of the contested mark in the same positions. The signs differ in the third letters ‘O’ v ‘E’ of said verbal elements and the last letters ‘O’ v ‘A’. These differences appear towards the middle and the end of the words where they are more likely to go unnoticed by consumers who normally tend to focus on the beginning of a sign when they encounter a trade mark.
- The marks also coincide in their second word, ‘GAMES’, although this one being of very limited distinctiveness, if any, and thus of reduced impact. Nevertheless, the comparison should cover the signs in their entirety. The fact that an element is descriptive or otherwise non-distinctive is not on its own sufficient to conclude that that word is negligible in the overall impression produced by that mark.
- Therefore, taking into account the fact that the coinciding letters make up a large part of the distinctive elements ‘APOLLO’ and ‘Apella’ and the two differing letters are placed in less conspicuous positions, as well as the coincidence in the marks second words, albeit of very limited impact, leading to them having the same structure, it is considered that the commonalities are sufficient for the signs to be held visually similar to a higher than average degree.
- Aurally, the pronunciation of the signs coincides in the sounds of the letters ‘AP*LL*’ in the elements ‘APOLLO’ / ‘Apella’ and differs in the sounds of the vowels ‘O-O’ v ‘E-A’ in these words. The verbal elements at issue are composed of the same number of syllables and have the same length. The marks also coincide in the sound of their second elements ‘GAMES’, although they may not be pronounced by at least a part of the public due to them being of very limited distinctiveness, if any.
- Consequently, the marks are aurally similar to a higher than average degree.
- Conceptually, reference is made to the above assertions concerning the semantic content conveyed by the marks for the parts of the relevant public taken into consideration.
- The public under analysis will see a meaning in the distinctive element ‘APOLLO’ of earlier mark 6 but will not attribute any meaning to the contested mark’s word ‘Apella’.
- The second elements ‘GAMES’ of the marks under comparison are of very reduced distinctiveness, if any, for the goods and services at issue, and as such, they are not sufficient to establish any relevant conceptual similarity between the signs.
- Consequently, since one of the signs will not be associated with any relevant meaning, the signs are not conceptually similar.

Global assessment

- The inherent distinctiveness of earlier mark 6 must be seen as normal despite the presence of an element of very low distinctiveness, if any, in the mark.
- The signs do not have any relevant concept in common.
- However, contrary to the EUTM proprietor's assertions, it is considered that the so-called principle of 'neutralisation' whereby a conceptual difference may offset the visual and aural similarity between the signs is not applicable in this case. Not just any conceptual dissimilarity can lead to neutralisation, and it is possible that, owing to the strong visual and aural similarities between the signs, this conceptual difference will escape the attention of the relevant public
- Therefore, bearing in mind the strong visual and aural coincidences between the marks and their identical structure, the concept of the word 'APOLLO' of earlier mark 6 may not be remembered by consumers who may overlook the two-letter difference between the marks' first words.
- It follows from the above that the limited differences between the signs do not dispel a likelihood that the public taken into consideration, even displaying a higher than average degree of attention in relation to some goods or services, may confuse the signs and mistakenly believe that the goods and services marketed under these signs have the same commercial origin.
- As regards the EUTM proprietor's arguments that the contested mark will usually be used together with a figurative logo, it should be noted that the examination of the likelihood of confusion carried out by the Office is not a factual examination.
- For this reason, specific marketing strategies are not relevant. The Office must take the usual circumstances in which the goods covered by the marks are marketed as its benchmark, that is, those circumstances that are expected for the category of goods covered by the marks. The particular circumstances in which the goods covered by the marks are actually marketed have, as a matter of principle, no impact on the assessment of the likelihood of confusion because they may vary in time depending on the wishes of the proprietors of the trade marks
- Therefore, this argument of the EUTM proprietor must be dismissed.
- Furthermore, as regards the EUTM proprietor's claims that the cancellation applicant has not invoked and proven reputation of the earlier marks and that there is no evidence that the contested mark could cause harm to the cancellation applicant's reputation, it is noted that for the assessment of likelihood of confusion under Article 8(1)(b) EUTMR, reputation and injury to the earlier marks are not relevant factors. The cancellation applicant was under no obligation to prove reputation and harm for its earlier marks.
- The EUTM proprietor argues that the cancellation applicant failed to demonstrate that the contested mark and earlier mark 6 cannot coexist on the market. However, it is not for the cancellation applicant for cancellation to prove the impossibility of coexistence. Rather, the burden lies with the EUTM proprietor to demonstrate that

the marks have coexisted peacefully on the market in such a way as to dispel any likelihood of confusion.

- In this regard, the EUTM proprietor claims that the marks have coexisted for five years without any evidence of actual confusion.
 - In the present case, the EUTM proprietor has submitted extracts from the parties' websites containing references to the trade marks at issue. However, these extracts are insufficient to establish meaningful coexistence. They are undated and merely show that each mark appears on its respective website and do not contain any information on the duration, geographical extent, market reach, or consumer perception of such use. No evidence has been submitted to show that the marks have operated in the same market context, that they have been subject to consumer attention, or that their coexistence has occurred under conditions likely to give rise to confusion.
 - Moreover, the absence of documented instances of actual confusion is not, in itself, sufficient to rule out a likelihood of confusion. As established in case-law, a likelihood of confusion is to be assessed globally and hypothetically, and does not depend on actual evidence of confusion having occurred.
 - Therefore, in the absence of convincing arguments and evidence thereof, this argument of the EUTM proprietor must be rejected as unfounded.
 - Finally, the EUTM proprietor refers to a list of trade marks retrieved through different types of searches, including a 'fuzzy search', in TMView using the term 'APELLA', arguing that the earlier 'APOLLO' marks do not appear among the results and therefore the signs are not sufficiently similar to give rise to a likelihood of confusion. However, such search results have limited probative value in the context of a legal assessment under Article 8(1)(b) EUTMR.
 - TMView's search functionalities, including fuzzy searches, rely on automated algorithms based on unspecified technical criteria which are not publicly disclosed or necessarily aligned with the legal standards for assessing similarity between signs. The Office assesses the similarity of signs on the basis of visual, aural and conceptual comparison from the perspective of the relevant public, in accordance with established case-law. The fact that a particular mark does not appear in an automated search list does not preclude a finding of similarity under the relevant legal criteria. Accordingly, this argument must be set aside.
- 8 On 19 September 2025, the EUTM proprietor, filed an appeal requesting that the contested decision be set aside to the extent that application for a declaration of invalidity was upheld. The corresponding statement of grounds of the appeal was received on 19 September 2025.
- 9 In its response received on 10 November 2025, the cancellation applicant requested that the appeal be dismissed.

Submissions and arguments of the parties

- 10 The arguments raised in the statement of grounds may be summarised as follows:

- The signs’ verbal elements ‘APOLLO’ and ‘Apella’ differ significantly in phonetic structure: while ‘APOLLO’ is pronounced [uh-POL-oh], ‘Apella’ is pronounced [uh-PEL-uh].
- Although both share consonants (A-P-L-L), the vowel shift from ‘O’ to ‘E’ and ‘A’ alters rhythm, syllabic emphasis, and overall auditory impression. This difference is considered fundamental for spoken brand recognition, not merely superficial.
- The marks visually differ in their third and sixth letters (‘O’ vs ‘E/A’), breaking visual symmetry.
- The term ‘GAMES’ is descriptive and weak, so consumer’s focus rests on the verbal elements ‘Apella’ vs ‘APOLLO’.
- The parties use very different logos. The EUTM proprietor’s logo features a stylised ‘A’ within a segmented circle, Greek meander pattern, and warrior helmet, evoking ancient Greek heritage and strength. The cancellation applicant uses minimal, bold sans-serif typography, modern and geometric, without mythological imagery.
- This further reduces any likelihood of confusion in digital marketplaces.
- The Cancellation Division should have taken more into account the conceptual differences between the signs. The verbal element ‘APOLLO’ is immediately understood by the public as the Greek god of music/light or NASA missions.
- The verbal element ‘Apella’ lacks clear meaning for average consumers; only niche audiences may recognise its Spartan assembly reference.
- The strong conceptual meaning of ‘APOLLO’ neutralises any phonetic or visual similarities.
- The term ‘APOLLO’ is weak since it is used across industries (music, health, space), making the whole earlier marks weak with limited scope of protection.
- The goods and services covered by the contested mark targets video gamers (younger demographic), focusing on creativity and community via platforms like Steam.
- In contrast, the goods and services covered by earlier mark 6 serve gambling/casino operators, emphasising compliance and reliability.
- The parties have very different business models: the EUTM proprietor is a game developer/publisher, whilst the cancellation applicant provides B2B casino solutions.
- Video gaming and gambling are distinct sectors with different consumer expectations, despite broad categorisation under ‘gaming’.
- The Cancellation Division erred in applying broad generalisations to highly specialised sectors when comparing the goods and services. While the goods and

services may fall under the same general headings (e.g., ‘software’), their specific applications, target audiences, and commercial purposes are fundamentally different.

- The Cancellation Division relied too heavily on the fact that both parties operate with ‘software’ and ‘games’. Instead, the broad category of ‘software’ contains distinct sub-segments that do not necessarily compete or confuse consumers.
- The cancellation applicant’s goods and services relate to ‘computer games of chance’, ‘gambling/casino software’, and ‘electronic components for gambling machines’.
- The EUTM proprietor’s goods and services relate to ‘interactive video game programs’, ‘virtual/augmented reality software’ and ‘entertainment-based video games’.
- The conflicting goods and services target distinct user groups and utilise different distribution channels (e.g., regulated gambling networks vs. consumer platforms like Steam).
- The Cancellation Division erred in finding that there is a similarity between telecommunication services and computer hardware/software. Providing an Internet chatroom or forum (Class 38) is a service distinct from selling tangible hardware or software (Class 9).
- The Cancellation Division found ‘Software as a Service [SaaS]’ and ‘design and development of video game software’ to be similar because they are both IT services.
- However, this reasoning is too general. ‘Creating websites’ or ‘developing technology’ encompasses a vast array of non-competing activities.
- In the IT sector, companies are highly specialised. Therefore, it is incorrect to assume that the same kind of undertakings provide both gambling platform maintenance and video game creative development.
- Treating ‘gaming’ (video games) and ‘gambling’ (betting) as the same industry relies on outdated views.
- Video gaming involves skills, quests, fantasy worlds, and entertainment value (e.g., a mobile fantasy game). In contrast, gambling involves real-money betting, odds, and risk (e.g., an online sportsbook).
- Treating these sectors as identical creates unfair barriers for startups like the EUTM proprietor that have no intention of entering the regulated gambling market.
- Consumers in the online gaming and particularly the gambling sectors exercise a moderate to high degree of attention.
- Gambling involves financial transactions, strict account verification, and risk, leading to highly attentive consumers.

- Modern gamers are discerning, often engaging with community reviews and specific developer reputations before downloading.
- This heightened level of scrutiny means consumers are less likely to be confused by superficial similarities in goods, especially when the brands have distinct conceptual meanings (a god/space launch vs. an ancient assembly).
- Even if the goods are considered similar/identical, the differences in the signs, combined with the specialised nature of the goods and services – are sufficient to exclude a likelihood of confusion.

11 The arguments raised in response to the appeal may be summarised as follows:

- The marks share a dominant structure: both start with ‘A’, contain a double ‘L’, and feature a ‘P’ in the second syllable.
- Slight variations (like a two-letter difference) do not prevent confusion.
- The shared element ‘GAMES’ strengthens the signs’ similarity rather than distinguishing them.
- The branding strategies alleged by the EUTM proprietor are irrelevant. Indeed, marketing strategies and positioning change over time and are not permanent characteristics of a trade mark. The assessment must be based solely on the registered goods and services, not current commercial usage.
- The conceptual meaning of the verbal element ‘APOLLO’ does not neutralise the visual similarities between the signs.
- The digital entertainment and gaming sector targets a broad public with an average level of attention, which is not comparable to the professional diligence required when selecting pharmaceutical products as incorrectly argued by the EUTM proprietor.
- The conflicting goods and services are identical or highly similar.
- As for the goods and services in Classes 9 and 41, it is noted that even if one party focuses on gambling and the other on video games, both operate within the same technological environment.
- These goods and services share identical distribution channels (app stores, online platforms) and are accessed by overlapping consumer groups interested in interactive entertainment.
- As for the services Classes 38 and 42, it is noted that communication services and software maintenance are offered by the same types of undertakings.
- Video game software is essentially a subcategory of ‘Software as a Service (SaaS)’. Both rely on the same service models and infrastructure. Consequently, the EUTM proprietor’s attempt to distinguish specialised game development from general SaaS is invalid.

- When all factors are weighed together, specifically the high visual and phonetic similarity of the signs and the identical nature of the distribution channels, there is a clear likelihood of confusion.

Reasons

- 12 The appeal complies with Articles 66, 67 and Article 68(1) EUTMR. It is admissible but is only partially well founded. The Board’s reasons are outlined below.

Scope of the appeal

- 13 The EUTM proprietor’s appeal is directed against the part of the contested decision that declared the contested mark invalid for all goods and services registered in Classes 9, 38, 41, and 42.
- 14 Consequently, the Board’s examination of the present appeal is limited to these contested goods and services (‘the goods and services under appeal’), while the services in Class 35 remain outside the scope of this examination.

Article 60(1)(a) EUTMR in conjunction with Article 8(1)(b) EUTMR

- 15 According to Article 60(1)(a) EUTMR in conjunction with Article 8(1)(b) EUTMR, an EUTM shall be declared invalid on application to the Office by the proprietor of an earlier trade mark if, because of its identity with, or similarity to, the earlier trade mark and, cumulatively, the identity or similarity of the goods or services covered by the trade marks, there exists a likelihood of confusion on the part of the public in the territory in which the earlier trade mark is protected.
- 16 According to settled case-law, 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 that article (11/11/1997, C-251/95, Sabèl, EU:C:1997:528, § 16-18; 29/09/1998, C-39/97, Canon, EU:C:1998:442, § 29; 22/06/1999, C-342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 17).
- 17 For the purposes of applying Article 8(1)(b) EUTMR, a likelihood of confusion presupposes both that the marks at issue are identical or similar and that the goods or services which they cover are identical or similar. Those conditions are cumulative (22/01/2009, T-316/07, easyHotel, EU:T:2009:14, § 42).
- 18 In line with the approach adopted by the Cancellation Division, the Board also decides to begin its examination of the application for a declaration of invalidity by first considering earlier mark 6 covering the following goods and services on which the application has been based:

Class 9: Games software; Software programs for video games; Interactive video game programs; Games (cartridges for computer -) [software]; Games (cartridges for video -) [software]; Educational software; Application software; Community software; Computer telephony software; Interactive computer software; Communication software; Programs for computers; Software; Electronic components for gambling machines;

Games cartridges for use with electronic games apparatus; Automated teller machines [ATM]; Computers and computer hardware; Communications servers [computer hardware]; VPN [virtual private network] hardware; Network access server hardware; LAN [local operating network] hardware; Computer networking hardware; Computer hardware for use in computer-assisted software engineering; Coin-operated musical automata [juke boxes]; none of the aforesaid goods relating to audio software or audio hardware for audio emulation, audio producing, audio recording, audio manipulation or audio processing.

Class 28: Games; Sports games; Manipulative games; Mechanical games; Musical games; Electronic games; Parlor games; Board games; Quiz games; Apparatus for games; Arcade games; Skill and action games; Electronic hand-held game units; Handheld computer games; Lottery wheels; Lottery tickets; Slot machines [gaming machines]; Automatic gaming machines; Coin-operated amusement machines; Bill-operated gaming equipment; LCD game machines; Counters for games; Amusement apparatus for use in arcades; Arcade game machines.

Class 35: Retail services in relation to computer hardware; Wholesale services in relation to computer hardware; Wholesale services in relation to computer software; Retail services in relation to computer software; none of the aforesaid goods relating to audio software or audio hardware for audio emulation, audio producing, audio recording, audio manipulation or audio processing.

Class 37: Computer hardware and telecommunication apparatus installation, maintenance and repair; Maintenance services relating to computer hardware; none of the aforesaid services relating to audio hardware for audio emulation, audio producing, audio recording, audio manipulation or audio processing.

Class 41: Gambling; Operating lotteries; Prize draws [lotteries]; Organising and conducting lotteries; Games equipment rental; Casino services; Providing casino facilities; Leasing of casino games; Providing casino facilities [gambling]; Providing amusement arcade services; Video arcade services; Casino, gaming and gambling services; Provision of instruction relating to computer programming.

Class 42: Software as a service [SaaS]; Rental of software; Computer software design; Installation and maintenance of computer programs; Updating of computer software; Computer software research; Troubleshooting of computer hardware and software problems; Configuring computer hardware using software; Design and development of video game software; Platform as a Service [PaaS]; Design of computer hardware; Consultancy in the field of computers; Rental of computer hardware; Computer hardware development; Diagnosing computer hardware problems using software; Software development, programming and implementation; Providing information, advice and consultancy services in the field of computer software; Research in the field of computer hardware; Consultancy in the design and development of computer hardware; none of the aforesaid goods relating to audio software or audio hardware for audio emulation, audio producing, audio recording, audio manipulation or audio processing.

- 19 Of all earlier marks invoked by the cancellation applicant, this is the most similar to the contested mark, as it shares the same verbal element ‘GAMES’ and does not include any figurative element.

Relevant public and territory

- 20 In the global assessment of the likelihood of confusion, account should be taken of the average consumer of the category of products and services concerned, who is reasonably well informed and reasonably observant and circumspect. It should also 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 (22/06/1999, C-342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 26; 13/02/2007, T-256/04, Respicur, EU:T:2007:46, § 42).
- 21 Part of the goods and services covered by the marks in dispute targets the public at large and in, some cases, also professionals. Another part of the goods and services in question target only professional customers.
- 22 In particular, with respect to the latter, it is noted that part of the goods under appeal in Class 9, namely *game programs for arcade video game machines; software for arcade video game machines; programs for arcade video game machines; 3D computer graphics software; computer software for the administration of on-line games and gaming; server software* and part of the earlier goods in that class, namely *electronic components for gambling machines; automated teller machines [ATM]; communications servers [computer hardware]; computer hardware for use in computer-assisted software engineering; coin-operated musical automata [juke boxes]; none of the aforesaid goods relating to audio software or audio hardware for audio emulation, audio producing, audio recording, audio manipulation or audio processing* are mainly aimed at arcade owners, IT professionals, bar and café proprietors, artists, engineers, games developers and games houses all paying a high level of attention.
- 23 In view of the foregoing, it must be acknowledged that also the earlier *arcade games, lottery wheels, lottery tickets, slot machines [gaming machines], coin-operated amusement machines, bill-operated gaming equipment, and LCD game amusement apparatus for use in arcades* in Class 28 target professional customers, such as those operating in the amusement and gambling industries (e.g. operators of saloons and amusement rooms). The level of attention paid in respect of these services will be generally high.
- 24 Likewise, also part of the services under appeal in Class 41, namely *arcade game services; virtual reality arcade services; conducting multiple player games of chance; consultancy services in the field of entertainment provided via the internet; advisory services relating to entertainment* and part of the earlier services in that class, namely *providing casino facilities; leasing of casino games; providing casino facilities [gambling]; providing amusement arcade services; video arcade services; provision of instruction relating to computer programming* are aimed at the professional public paying a high level of attention.
- 25 Furthermore, the services under appeal in Class 42 *creating, designing and maintaining web sites; design and development of new technology for others; design and development of multimedia products; design and development of networks; design and graphic arts design for the creation of web sites; design and maintenance of web sites for others; software design; video game software design; design of virtual reality software; design and development of computer software architecture; research, development, design and upgrading of computer software; consultancy relating to software design and development; design and development of video game software; design and development*

of computer software for others; design and development of software in the field of mobile applications; consulting services in the field of software as a service [SaaS] primarily target the professional public. In this regard, the target business customer's level of attention will tend to be high in relation to these applicant's services due to their professional responsibilities (14/03/2017, T-276/15, e (fig.) / e (fig.), EU:T:2017:163, § 19). The same finding also applies with respect to the earlier computer software design; computer software research; design and development of video game software; design of computer hardware; computer hardware development; software development, programming and implementation; providing consultancy services in the field of computer software; research in the field of computer hardware; consultancy in the design and development of computer hardware; none of the aforesaid goods relating to audio software or audio hardware for audio emulation, audio producing, audio recording, audio manipulation or audio processing in Class 42.

- 26 The remaining goods and services at issue target primarily the public at large. The level of attention paid by that public varies from average to high depending on the price and degree of specialisation/sophistication of these goods and services.
- 27 Particularly, as for goods and services at issue which relate to the gambling industry such as, for instance, the EUTM proprietor's *conducting multiple player games of chance* in Class 41 and the majority of the earlier services also covered in that class, it should be recalled that the level of attention is heightened with respect to sophisticated apparatus, machines, or services connected to gambling (25/11/2020, T-874/19, *Flaming Forties / 40 FLAMING FRUITS* (fig.), EU:T:2020:563, § 30-31).
- 28 As regards the average consumer's level of attention with respect to the remaining goods and services relating to video gaming, which are largely covered by the contested mark, it is noted that they are electronic goods and services are used on a daily basis by the end consumer, are relatively inexpensive, have a relatively short lifespan and do not require any particular technical knowledge (see, to that effect and by analogy, 05/12/2017, T-893/16, *MI PAD*, EU:T:2017:868, § 25; 08/05/2024, T-91/23, *gamindo*, EU:T:2024:298, § 42). Therefore, the level of attention paid in relation to these types of goods is average.
- 29 It is true that the average consumer's level of attention varies from average to high, depending on the complexity and the price of the goods and services concerned. However, it is apparent from the case-law that, as regards the assessment of the likelihood of confusion, the public with the lowest level of attention must be taken into consideration (20/05/2014, T 247/12, *ARIS / ARISA ASSURANCES SA*, EU:T:2014:258, § 27, 2908/05/2024, T-91/23, *gamindo*, EU:T:2024:298, § 43). This principle applies also to those remaining goods and services aimed at public at large whose consumers will pay a level of attention which varies from average to high.
- 30 The protection of earlier mark 6 extends to the whole of the European Union, so it is necessary to take into account the perception of the marks at issue by the average consumer of the goods and services in question within that territory. However, for an EU trade mark to be refused registration, it is sufficient that a relative ground for refusal for the purposes of Article 8(1)(b) EUTMR exists in part of the European Union (18/09/2008, C-514/06 P, *Armafoam*, EU:C:2008:511, § 57; 14/12/2006, T-81/03, *VENADO/DEER'S HEAD*, EU:T:2006:397, § 76; 09/09/2019, T-680/18, *LUMIN8* (fig.) / *LUMI et al.*, EU:T:2019:565, § 60).

Comparison of the goods and services

- 31 Goods and services are identical when they appear with the same wording in both lists of goods and services or when they are included in a more general category designated by the other mark (13/09/2018, T-94/17, Tigha, EU:T:2018:539, § 46; 05/02/2020, T-44/19, TC Touring Club, EU:T:2020:31, § 91).
- 32 According to settled case-law, in order to assess the similarity of the goods and services in question, the two lists of goods and services must be compared as they appear in the application or in the Register, respectively, and not with regard to the goods and services actually marketed under those marks (16/06/2010, T-487/08, KREMEZIN / KRENOSIN, EU:T:2010:237, § 71; 17/01/2012, T-249/10, KICO (fig.) / Kika, EU:T:2012:7, § 23).
- 33 According to Article 33(7) EUTMR, goods or services may not be regarded as being similar to or dissimilar from each other on the ground that they appear in the same or different classes under the Nice Classification.
- 34 In assessing the similarity of goods or services, all the relevant factors pertaining to the relationship between those goods and services should be taken into account. Those factors include their nature, purpose and method of use, and whether they are in competition with, or complementary to, each other (29/09/1998, C-39/97, Canon, EU:C:1998:442, § 23). Other factors may also be taken into account, such as their distribution channels (11/07/2007, T-443/05, Pirañam, EU:T:2007:219, § 37). The reference point is whether the relevant public would perceive the relevant products as having a common commercial origin (04/11/2003, T-85/02, Castillo, EU:T:2003:288, § 38).
- 35 Complementary goods or services are those between which there is a close connection, in the sense that one is indispensable or important for the use of the other in such a way that consumers may think that the same undertaking is responsible for manufacturing those goods or for providing those services (19/12/2019, T-729/18, Lloyd, EU:T:2019:889, § 35).
- 36 The goods and services of the contested mark that are under appeal are the following:

Class 9: Computer games; Computer games of chance; Computer programs for video and computer games; Computer software for entertainment; Downloadable computer games; Games software; Interactive entertainment software; Game programs for arcade video game machines; Electronic game software for handheld electronic devices; Downloadable interactive entertainment software for playing video games; Interactive game software; Virtual reality game software; Software for arcade video game machines; Simulation software [entertainment]; Programs for arcade video game machines; Video game programs; Software programs for video games; Electronic game software for mobile phones; Entertainment software; Augmented reality game software; Computer software; Computer software platforms; Software for smartphones; Software downloadable from the internet; Software for mobile phones; Communication, networking and social networking software; 3D computer graphics software; Computer application software featuring games and gaming; Mobile apps; Downloadable information relating to games and gaming; Electronic publications, downloadable, relating to games and gaming; Virtual and augmented reality software; Web application

and server software; Computer programmes for data processing; Software related to handheld digital electronic devices; Platform software; Computer game software for use with on-line interactive games; Computer software for the administration of on-line games and gaming.

Class 38: Providing Internet chatrooms and Internet forums; Access to content, websites and portals; Chatroom services for social networking; Computer aided transmission of messages, information and images; Distribution of data or audio visual images via a global computer network or the internet; Providing access to electronic communications networks; On-line transmission of electronic publications; Providing online forums for communication in the field of electronic games; Providing online forums; Providing online chatrooms for the transmission of messages, comments and multimedia content among users; Providing on-line chat rooms for social networking; Providing virtual facilities for real-time interaction among computer users; Transmission of audio and video content via computer networks; Transmission of data, audio, video and multimedia files, including downloadable files and files streamed over a global computer network; Transmission of interactive entertainment software; Transmission of multimedia content via the Internet.

Class 41: On-line computer games; Games services provided on-line from a computer network; Arcade game services; Conducting of live esports events; On-line gaming services; Video game services; Virtual reality arcade services; Provision of online information relating to game players; Provision of information relating to esports; Providing online information on computer and video game strategies; Providing interactive multi-player computer games via the internet and electronic communication networks; Providing esports facilities; Organization of esports competitions; Video game entertainment services; Conducting multiple player games of chance; Providing online entertainment in the nature of fantasy sports leagues; Hosting of fantasy sports leagues; Consultancy services in the field of entertainment provided via the Internet; Entertainment services in the nature of competitions; Game shows; Information and advisory services relating to entertainment; Providing information to game players about the ranking of their scores of games through the web sites; Providing online entertainment in the nature of game tournaments.

Class 42: Creating, designing and maintaining web sites; Design and development of new technology for others; Design and development of multimedia products; Design and development of networks; Design and graphic arts design for the creation of web sites; Design and maintenance of web sites for others; Software design; Video game software design; Design of virtual reality software; Design and development of computer software architecture; Research, development, design and upgrading of computer software; Consultancy relating to software design and development; Design and development of video game software; Design and development of computer software for others; Design and development of software in the field of mobile applications; Software as a service [SaaS]; Platforms for gaming as software as a service [SaaS]; Consulting services in the field of software as a service [SaaS].

- 37 The EUTM proprietor's aforesaid goods and services must be compared with the goods and services covered by earlier mark 6 (see paragraph 18):

Class 9: Games software; Software programs for video games; Interactive video game programs; Games (cartridges for computer -) [software]; Games (cartridges for video -

) [software]; Educational software; Application software; Community software; Computer telephony software; Interactive computer software; Communication software; Programs for computers; Software; Electronic components for gambling machines; Games cartridges for use with electronic games apparatus; Automated teller machines [ATM]; Computers and computer hardware; Communications servers [computer hardware]; VPN [virtual private network] hardware; Network access server hardware; LAN [local operating network] hardware; Computer networking hardware; Computer hardware for use in computer-assisted software engineering; Coin-operated musical automata [juke boxes]; none of the aforesaid goods relating to audio software or audio hardware for audio emulation, audio producing, audio recording, audio manipulation or audio processing.

Class 28: Games; Sports games; Manipulative games; Mechanical games; Musical games; Electronic games; Parlor games; Board games; Quiz games; Apparatus for games; Arcade games; Skill and action games; Electronic hand-held game units; Handheld computer games; Lottery wheels; Lottery tickets; Slot machines [gaming machines]; Automatic gaming machines; Coin-operated amusement machines; Bill-operated gaming equipment; LCD game machines; Counters for games; Amusement apparatus for use in arcades; Arcade game machines.

Class 35: Retail services in relation to computer hardware; Wholesale services in relation to computer hardware; Wholesale services in relation to computer software; Retail services in relation to computer software; none of the aforesaid goods relating to audio software or audio hardware for audio emulation, audio producing, audio recording, audio manipulation or audio processing.

Class 37: Computer hardware and telecommunication apparatus installation, maintenance and repair; Maintenance services relating to computer hardware; none of the aforesaid services relating to audio hardware for audio emulation, audio producing, audio recording, audio manipulation or audio processing.

Class 41: Gambling; Operating lotteries; Prize draws [lotteries]; Organising and conducting lotteries; Games equipment rental; Casino services; Providing casino facilities; Leasing of casino games; Providing casino facilities [gambling]; Providing amusement arcade services; Video arcade services; Casino, gaming and gambling services; Provision of instruction relating to computer programming.

Class 42: Software as a service [SaaS]; Rental of software; Computer software design; Installation and maintenance of computer programs; Updating of computer software; Computer software research; Troubleshooting of computer hardware and software problems; Configuring computer hardware using software; Design and development of video game software; Platform as a Service [PaaS]; Design of computer hardware; Consultancy in the field of computers; Rental of computer hardware; Computer hardware development; Diagnosing computer hardware problems using software; Software development, programming and implementation; Providing information, advice and consultancy services in the field of computer software; Research in the field of computer hardware; Consultancy in the design and development of computer hardware; none of the aforesaid goods relating to audio software or audio hardware for audio emulation, audio producing, audio recording, audio manipulation or audio processing.

Goods under appeal in Class 9

- 38 The Board agrees with the Cancellation Division's finding that part of the goods under appeal in Class 9, namely *computer games; computer games of chance; computer programs for video and computer games; computer software for entertainment; downloadable computer games; games software; interactive entertainment software; game programs for arcade video game machines; electronic game software for handheld electronic devices; downloadable interactive entertainment software for playing video games; interactive game software; virtual reality game software; software for arcade video game machines; simulation software [entertainment]; programs for arcade video game machines; video game programs; software programs for video games; electronic game software for mobile phones; entertainment software; augmented reality game software; computer software; computer software platforms; software for smartphones; software downloadable from the internet; software for mobile phones; communication, networking and social networking software; 3D computer graphics software; computer application software featuring games and gaming; mobile apps; virtual and augmented reality software; web application and server software; computer programmes for data processing; software related to handheld digital electronic devices; platform software; computer game software for use with on-line interactive games; computer software for the administration of on-line games and gaming are identical or at least highly similar* to the earlier software, none of the aforesaid goods relating to audio software or audio hardware for audio emulation, audio producing, audio recording, audio manipulation or audio processing.
- 39 Indeed, the EUTM proprietor's computer games, computer software, mobile apps, and communication, networking and social networking software, fall within the broad category of the cancellation applicant's computer software.
- 40 Where the goods under appeal are broadly termed (e.g., computer software), they are identical to the cancellation applicant's goods, as the cancellation applicant's limitation does not exclude software generally, but only that dedicated to specific audio functions.
- 41 Where the goods under appeal are more specific (e.g., computer games, virtual reality game software, web application and server software), they are included within the broader category of the cancellation applicant's computer software. Even if some slight distinction could be drawn due to the specific limitation regarding audio processing, the goods in question are at least highly similar.
- 42 They share the same nature (digital code/programs), are intended for the same purpose (to operate hardware, provide entertainment, or process data), and are directed at the same relevant public (both the general public and professionals). Furthermore, they share the same distribution channels, as both the cancellation applicant's and the contested software are typically downloaded via the same digital platforms or purchased through the same IT retailers. Finally, they are often manufactured by the same software development companies.
- 43 As for the remaining goods under appeal in Class 9, namely *downloadable information relating to games and gaming; electronic publications, downloadable, relating to games and gaming*, they consist of digital content.

- 44 When compared with the cancellation applicant's *software, none of the aforesaid goods relating to audio software or audio hardware for audio emulation, audio producing, audio recording, audio manipulation or audio processing*, there is a clear complementary relationship between these goods.
- 45 Electronic publications and downloadable information files require specific software (such as PDF readers, e-book readers, or game client interfaces) to be accessed, displayed, and read. The software is indispensable for the consumption of the electronic publication.
- 46 Furthermore, these goods share the same distribution channels (online digital stores) and the same relevant public (consumers interested in gaming and digital media). It is also common practice in the industry for the same undertakings to develop the software (the game or the reading platform) and to publish the associated content (tutorials, strategy guides, or rulebooks).
- 47 Consequently, the Board upholds the Cancellation Division's finding that these goods in conflict are similar to a low degree.

Services under appeal in Class 38

- 48 The Board concurs with the Cancellation Division's finding that there is link of complementarity between the services under appeal in Class 38 and the earlier *computer hardware and software, none of the aforesaid goods relating to audio software or audio hardware for audio emulation, audio producing, audio recording, audio manipulation or audio processing* in Class 9. While their nature differs, the purpose is often identical: enabling communication and information exchange. The contested services are essential for the functioning of the cancellation applicant's communication software and networked hardware since, nowadays, one of the primary uses of computers, smartphones, and software is often their ability to connect to the internet and transmit data.
- 49 Furthermore, telecommunication services (such as providing access to forums, chatrooms, or transmitting data) cannot be utilised without the necessary hardware and software to act as the interface. In particular, telecommunications services are by nature associated with the information technology required for their provision.
- 50 Therefore, given the growing interdependence of the markets for computer hardware and software with telecommunications services, there was a relationship of complementarity and, thus, similarity between these services and the devices used for telecommunications purposes (15/10/2018, T-444/17, *life coins*, EU:T:2018:681, § 37).
- 51 These goods and services share the same distribution channels (telecom providers often sell phones and tablets; app stores distribute communication software) and target the same relevant public.
- 52 As a result, the goods and services at issue are similar to a low degree.

Services under appeal in Class 41

- 53 Part of the services under appeal in Class 41, namely *on-line computer games; games services provided on-line from a computer network; arcade game services; conducting of live esports events; on-line gaming services; video game services; virtual reality arcade services; provision of online information relating to game players; provision of information relating to esports; providing online information on computer and video game strategies; providing interactive multi-player computer games via the internet and electronic communication networks; providing esports facilities; organization of esports competitions; video game entertainment services; conducting multiple player games of chance; providing online entertainment in the nature of fantasy sports leagues; hosting of fantasy sports leagues; consultancy services in the field of entertainment provided via the internet; entertainment services in the nature of competitions; game shows; information and advisory services relating to entertainment; providing information to game players about the ranking of their scores of games through the web sites; providing online entertainment in the nature of game tournaments* are identical or highly similar to the cancellation applicant's *gaming services* in the same class.
- 54 This is because part of these services of the EUTM proprietor overlaps with those of the cancellation applicant, while another part falls within the broad category of the cancellation applicant's services.
- 55 The remaining services under appeal in that class, such as *providing information to game players, organization of esports competitions, game shows, and consultancy services in the field of entertainment*, are closely connected to the cancellation applicant's *gaming services*. They share the same purpose (entertainment and recreation), target the same relevant public (gamers and entertainment seekers), and are often provided by the same undertakings (gaming companies often organise tournaments, provide strategy guides, and host ranking boards). There is also a degree of complementarity, as participating in a tournament or accessing ranking information is intrinsic to the gaming experience.
- 56 Thus, these services in conflict are highly similar.

Services under appeal in Class 42

- 57 The services of the contested mark under appeal *design and development of video game software; software as a service [SaaS]* are also contained in the list of the earlier services in Class 42. Therefore, all these conflicting services are identical.

The remaining services of the contested mark under appeal in Class 42, *creating, designing and maintaining web sites; design and development of new technology for others; design and development of multimedia products; design and development of networks; design and graphic arts design for the creation of web sites; design and maintenance of web sites for others; software design; video game software design; design of virtual reality software; design and development of computer software architecture; research, development, design and upgrading of computer software; consultancy relating to software design and development; design and development of computer software for others; design and development of software in the field of mobile applications; platforms for gaming as software as a service [SaaS]; consulting services in the field of software as a service [SaaS]* and the earlier *software development*,

programming and implementation; none of the aforesaid goods relating to audio software or audio hardware for audio emulation, audio producing, audio recording, audio manipulation or audio processing also in Class 42 share the same nature (technical IT services), serve the same purpose (solving technical problems, creating digital infrastructure), and target the same relevant public (businesses and individuals requiring IT solutions). They are generally provided by the same undertakings (IT consultancy firms and software houses) and share the same distribution channels.

58 Consequently, these services in conflict are averagely similar.

Conclusion on the comparison of the goods and services

59 The Board endorses the Cancellation Division's conclusion that the goods and services under appeal part in part identical and in part similar to varying degree to part of the goods and services covered by earlier mark 6.

60 Finally, in response to the EUTM proprietor's arguments about the actual goods and services which the parties offer in the market and the relevant public at whom their goods and services are principally aimed at, the Board recalls that the Office may only take account of the wording indicated in the respective lists of goods and services as it appears in the contested trade mark and the earlier trade mark(s), subject to any amendments thereto and not the goods and services actually marketed under to those marks (13/04/2005, T-286/03, Right Guard Xtreme Sport, EU:T:2005:126, § 33; 22/03/2007, T-364/05, Pam Pluvial, EU:T:2007:96, § 89; 16/06/2010, T-487/08, Kremezin, EU:T:2010:237, § 71; 11/06/2014, T-62/13, Metabiomax, EU:T:2014:436, § 41; 24/10/2017, T-202/16, coffee inn (fig.) / coffee in (fig.) et al., EU:T:2017:750, § 145). The particular circumstances in which the goods or services covered by the marks are actually marketed have, as a matter of principle, no impact on the assessment of the likelihood of confusion because they may vary in time depending on the wishes of the proprietors of the trade marks (15/03/2007, C-171/06 P, Quantum, EU:C:2007:171, § 59; 22/03/2012, C-354/11 P, G, EU:C:2012:167, § 73; 21/06/2012, T-276/09, Yakut, EU:T:2012:313, § 58).

61 Therefore, the EUTM proprietor's claim that the parties' respective markets differ as the relevant public consists of gamers, on the one hand, and gamblers, on the other hand, is not determinant for the purpose of the present assessment.

Comparison of the signs

62 The assessment of the visual, phonetic or conceptual similarity of the marks in question must be based on the overall impression given by the marks, bearing in mind, in particular, their distinctive and dominant components. The average consumer normally perceives a mark as a whole and does not proceed to analyse its various details (11/11/1997, C-251/95, Sabèl, EU:C:1997:528, § 23; 06/10/2005, C-120/04, Thomson Life, EU:C:2005:594, § 28).

63 The signs have to be compared in the form in which they are registered or applied for, namely, by referring to the intrinsic qualities of the marks and not to the circumstances relating to the conduct of the person applying for the mark. The actual or possible use of the registered marks in another form is irrelevant when comparing signs (02/09/2010,

C-254/09 P, CK Creaciones Kenya, EU:C:2010:488, § 46; 09/04/2014, T-623/11, Milanówek cream fudge, EU:T:2014:199, § 38).

64 The signs to be compared are:

APOLLO GAMES	Apella Games
<i>Earlier mark 6</i>	<i>Contested mark</i>

65 Both signs are word marks consisting of the verbal elements ‘APOLLO GAMES’ and ‘Apella Games’, respectively.

66 Since both the marks in conflict only contain verbal elements, account must be taken of the fact that the words as such that are protected and not their written form (27/01/2010, T-331/08, Solfrutta, EU:T:2010:23, § 16). The use of upper- or lower-case letters or a specific typeface is, in principle, not taken into account when determining the scope of protection of a word mark (20/04/2005, T-211/03, Faber, EU:T:2005:135, § 33; 22/05/2008, T-254/06, RadioCom, EU:T:2008:165, § 43; 25/06/2013, T-505/11, dialdi, EU:T:2013:332, § 65).

67 Before comparing the signs from a visual, phonetic and conceptual perspective, the Board will carry out an assessment of their distinctive and dominant elements (12/11/2015, T-449/13, WISENT / ŻUBRÓWKA BISON BRAND VODKA, EU:T:2015:839, § 60-61).

68 For the purposes of evaluating the distinctive character of an element of a mark, an assessment must be made of the greater or lesser capacity of that element to identify the goods or services for which the mark was registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings. In making that assessment, it is necessary to take into account, in particular, the inherent characteristics of the element in question in the light of whether it is at all descriptive of the goods or services for which the mark has been registered (03/05/2018, T-234/17, DIAMOND ICE / DIAMOND CUT, EU:T:2018:259, § 38; 20/10/2021, T-559/20, PINAR Süzme Peynir (fig.) / Süzme Peynir (fig.), EU:T:2021:713, § 39). In addition, and secondarily, account may be taken of the relative positions of the various components in the arrangement of the composite mark (23/10/2002, T-6/01, Matratzen + Matratzenmarkt Concord (fig.), EU:T:2002:261, § 35; 08/02/2007, T-88/05, Nars, EU:T:2007:45, § 58; 20/10/2021, T-559/20, PINAR Süzme Peynir (fig.) / Süzme Peynir (fig.), EU:T:2021:713, § 40).

69 The Board considers that the earlier mark 6’s first verbal element ‘APOLLO’ will be understood by a significant part of the relevant public as a meaningful word, given that such term is cited (albeit sometimes in slightly varying forms) in all dictionaries of the languages of the European Union.

70 In that regard, the Board notes that the Cancellation Division rightly took into account that the name of the god Apollo – one of the most well-known figures in classical mythology – either remains the same or has quite closely related equivalents in various

European Union languages (e.g., *Apollo* in English, Italian, Dutch, and Polish; *Apolo* in Spanish and Portuguese; *Apollon* / *Apollón* in French, Danish, German, and Czech; *Apolon* / *Apolón* in Croatian, Slovak, and Slovenian; *Аполон* (transliterated as *Apolon*) in Bulgarian; *Απόλλων* (transliterated as *Apóllon*) in Greek; and *Apolonas* in Lithuanian). Furthermore, the Cancellation Division correctly considered that this figure from classical mythology is widely referred to in school education throughout the European Union, with the result that most of the European Union population is familiar with this name (at least in their respective mother-tongue) and its significance.

- 71 In addition, ‘APOLLO’ also refers to the various NASA spacecraft missions aimed at landing humans on the Moon and bringing them back safely. US spacecrafts that were sent to the Moon bore the name of ‘Apollo’ followed by a numeral. By way of example, Apollo 11 made the first moon landing in 1969 (see, for instance, a search performed on 13 January 2026 on <https://www.collinsdictionary.com/dictionary/english/apollo>).
- 72 Since these meanings do not display any connection with the goods and services in question, the verbal element ‘APOLLO’ in earlier mark 6 must be considered distinctive to a normal degree (02/12/2024, R 1980/2022-4, Apollo Pilot / APOLLO, § 89).
- 73 Turning to the first component in the contested mark, ‘Apella’, the Board finds that, in principle, it will be perceived as meaningless by the great majority of the relevant public.
- 74 In this respect, the Board agrees with the Cancellation Division’s finding that only a small portion of the relevant public consisting of Greek and Cypriot consumers as well as consumers who have studied ancient Greek history, in particular in relation to the city-state of Sparta, may perceive the term ‘Apella’ as a meaningful word referring to ‘an institution within the Spartan political system consisting of an ancient assembly, which corresponded to the *ekklesiá* of other Greek states’ (Annex A of the EUTM proprietor’s observations in reply to the application for a declaration of invalidity and 14/12/2023, R 857/2023-2, Apella Games / APPLE et al, § 61).
- 75 However, for the vast majority of the relevant public, the contested mark’s verbal element ‘Apella’ does not convey any clear and specific meaning in relation to the relevant goods and services (14/12/2023, R 857/2023-2, Apella Games / APPLE et al, § 61) or anything else. For those persons, it will be seen purely as a fantasy term.
- 76 The Cancellation Division was correct in holding that under both scenarios, the term ‘Apella’ bears an average degree of distinctiveness since it does not display any connection with the goods and services concerned (14/12/2023, R 857/2023-2, Apella Games / APPLE et al, § 62).
- 77 The verbal element ‘GAMES’ present in both signs is part of basic English vocabulary known throughout the EU and indicates, *inter alia*, an ‘entertaining activity or sport activity’ (search performed on 13 January 2026 on <https://dictionary.cambridge.org/dictionary/english/game>).
- 78 In that regard, the Board notes that the use of the term ‘games’ can include video games or games of chance.
- 79 Given that the goods and services at issue either expressly relate to gaming and gambling or may be used, among others, by software developers, app creators, entertainment

companies, and similar entities, the term ‘GAMES’ must be regarded as lacking distinctiveness in relation to all these goods and services.

- 80 According to the General Court, the weak distinctive character of an element that is found in both signs reduces the relative weight of that element in the comparison of those signs – including the visual and phonetic comparisons – even though its presence must be taken into account (13/09/2023, T-328/22, Est. Korres 1996 Hydra-Biome, EU:T:2023:533, § 75).
- 81 Considering that the term ‘GAMES’ has a very weak distinctive character, it must be recalled that consumers will focus their attention on the remaining distinctive elements of the signs (12/05/2021, T-70/20, MUSEUM OF ILLUSIONS (fig.) / MUSEUM OF ILLUSIONS (fig.), EU:T:2021:253, § 67; 10/11/2021, T-755/20, Vdl e-power / ePOWER (fig.) et al., EU:T:2021:769, § 40; 12/10/2022, T-222/21, Shoppi (fig.) / Shopify, EU:T:2022:633, § 60).
- 82 This is even truer when accounting for the fact that the beginning of a sign has a significant influence on the general impression made by a mark (25/03/2009, T-109/07, Spa Therapy, EU:T:2009:81, § 30; 15/12/2009, T-412/08, Trubion, EU:T:2009:507, § 40), since consumers generally tend to put their focus on that part, as they read from left to right.
- 83 While the Board acknowledges that the signs visually coincide in their second, non-distinctive verbal element, ‘GAMES’, that overlap is of extremely limited impact on the visual comparison.
- 84 Furthermore, the respective first elements of the signs, ‘APOLLO’ and ‘Apella’, are not quite as similar as assessed by the Cancellation Division.
- 85 While they share the same number of letters as well as the initial letters ‘A-P-’ and the double consonant ‘-L-L-’, these commonalities are to some extent mitigated by visual differences in the third and final letters: ‘O’ and ‘O’ in earlier mark 6 versus an ‘e’ and an ‘a’ in the contested mark.
- 86 Indeed, the first verbal element of earlier mark 6, ‘APOLLO’, contains a repetition of the circular vowel ‘O’, which is noticeable (because of its symmetry and repetition), especially to the more observant portion of the relevant public. By contrast, the contested mark’s first verbal element, ‘Apella’, does not contain any such repetition or symmetry but instead includes the vowels ‘e’ and ‘a’, which are letter shapes that – at least for the more observant portion of the relevant public – differ markedly from that of the letter ‘O’.
- 87 As a result, the signs are visually similar at most to a slightly above average degree.
- 88 Aurally, the Board refers to the above considerations regarding the extremely limited weight and impact of the common verbal element ‘GAMES’, which will be pronounced identically in both signs. Due to its non-distinctive character, it cannot significantly contribute to the phonetic similarity between the marks at issue (18/01/2023, T-443/21, YOGA ALLIANCE INDIA INTERNATIONAL / yoga ALLIANCE, EU:T:2023:7, § 92-93).

- 89 With regard to the signs' first verbal elements, 'APOLLO' and 'Apella', the Board notes that although they share the same number of syllables and the consonant sequence /p-l-l/, their phonetic impression is clearly distinguishable due to the decisive role of their vowels, which sound markedly different.
- 90 In particular, the pronunciation of the first element of earlier mark 6, 'APOLLO' (/ə-ˈpɒ-ləʊ/), is dominated by the repeated 'O' sounds. Conversely, the contested mark's first element, 'Apella' (/ə-ˈpɛ-lə/), relies on the stressed vowel 'e' (/ɛ/) and the final schwa (/ə/). These distinct vowel sounds will not go unnoticed by the relevant public, who will also perceive two different intonations.
- 91 Thus, in light of these differences in vowel sounds and the resulting intonation, as well as considering that consumers often completely omit the pronunciation of non-distinctive or weak verbal elements (30/11/2011, T-477/10, SE SPORTS EQUIPMENT (fig.) / SE et al., EU:T:2011:707, § 55; 04/02/2013, T-159/11, WALICHNOWY MARKO (fig.) / MAR-KO, EU:T:2013:56, § 44; 03/07/2013, T-206/12, LIBERTE american blend (fig.) / La LIBERTAD et al., EU:T:2013:342, § 43-44), the signs are aurally similar to a below-average degree.
- 92 Conceptually, the signs convey the same concept given by the verbal element 'GAMES'.
- 93 Even if this fact could formally lead to a very low degree of conceptual similarity, it will have a very low impact on the overall impression produced by the signs in question, as it stems from the coincidence in an element with a descriptive or weakly distinctive semantic content (14/07/2011, T-160/09, Oftal Cusi, EU:T:2011:379, § 87; 28/11/2019, T-644/18, DermoFaes Atopiderm / Dermowas, EU:T:2019:817, § 53; 05/10/2020, T-602/19, NATURANOVE / NATURALIUM ET AL., EU:T:2020:470, § 49-51; 06/11/2024, T-561/22, CCA CHARTERED CONTROLLER ANALYST CERTIFICATE (fig.) / CFA institute (fig.) et al., EU:T:2024:777, § 133, 138).
- 94 Moreover, the signs' respective first elements 'APOLLO' and 'Apella' indicate different notions (the head deity of the ancient Greek gods/certain NASA space missions of the 20th century versus a kind of assembly in ancient Sparta) from the perspective of the public who understands both terms under analysis. For those who only understand, APOLLO, the signs are also different.
- 95 As a result, the signs are conceptually different or, at the very most, similar to a very low degree.

Overall assessment of the likelihood of confusion

- 96 According to the case-law of the Court of Justice, 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. It follows from the very wording of Article 8(1)(b) EUTMR that the concept of a likelihood of association is not an alternative to that of a likelihood of confusion, but serves to define its scope (29/09/1998, C-39/97, Canon, EU:C:1998:442, § 29; 22/06/1999, C-342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 17).
- 97 A likelihood of confusion on the part of the public must be assessed globally. That global assessment implies some interdependence between the factors taken into account and in

particular similarity between the trade marks and between the goods or services covered. Accordingly, a lesser degree of similarity between these goods or services may be offset by a greater degree of similarity between the marks, and vice versa (29/09/1998, C-39/97, Canon, EU:C:1998:442, § 17; 22/06/1999, C-342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 19). The more distinctive the earlier mark, the greater the risk of confusion, and marks with a highly distinctive character, either per se or because of the reputation they possess on the market, enjoy broader protection than marks with a less distinctive character (29/09/1998, C-39/97, Canon, EU:C:1998:442, § 18).

- 98 In the present case, the cancellation applicant did not claim that its earlier marks enjoy enhanced distinctiveness due to recognition or reputation, nor did it assert that those marks constitute a family of marks. Accordingly, the assessment of the likelihood of confusion must be based on their inherent distinctiveness. In this respect, the Board finds that the inherent distinctive character of earlier mark 6 as a whole is normal from the perspective of the public under analysis. This holds true despite the presence of the weak element ‘GAMES’.
- 99 The Board endorses the Cancellation Division’s finding that the goods and services under appeal are partially identical and partially similar to varying degrees to those covered by earlier mark No. 6. These goods and services, found to be identical or similar, target in part the general public, which displays an average level of attention, and in part professional customers, who demonstrate a high level of attentiveness. Regarding the similarity of the conflicting signs, the Board concludes that they are visually similar to, at most, a slightly above-average degree, phonetically similar only to a below-average degree, and conceptually neutral for at least a non-negligible part of the relevant public.
- 100 The Board acknowledges that the signs exhibit both similarities and differences.
- 101 In the present case, part of the similarity between the signs lies in the common element ‘GAMES’, which is non-distinctive and weak. Furthermore, this element appears only after the distinctive components ‘APOLLO’ and ‘Apella’, thereby playing a subsidiary role in the overall impression conveyed by the marks.
- 102 In this respect, it must be recalled that where the earlier mark and the contested sign coincide in an element that is descriptive or weakly distinctive with regard to the goods or services at issue, the global assessment of the likelihood of confusion does not often lead to a finding that such likelihood exists (12/06/2019, C-705/17, ROSLAGSÖL, EU:C:2019:481, § 55; 18/06/2020, C-702/18 P, PRIMART Marek Łukasiewicz (fig.) / PRIMA et al., EU:C:2020:489, § 53). Indeed, it is apparent from the case-law that where the elements of similarity between two signs relate to the fact that they share a descriptive or weakly distinctive component, the impact of such elements of similarity in the global assessment of the likelihood of confusion is itself weak (22/02/2018, T-210/17, TRIPLE TURBO (fig.) / ZITRO TURBO 2 (fig.), EU:T:2018:91, § 73; 28/05/2020, T-506/19, Uma workspace / WORKSPACE (fig.) et al., EU:T:2020:220, § 58; 13/05/2020, T-381/19, City Mania / City Lights, EU:T:2020:190, § 60-62; 15/10/2020, T-349/19, athlon custom sportswear (fig.) / Decathlon, EU:T:2020:488, § 90; 12/10/2022, T-222/21, Shoppi (fig.) / Shopify, EU:T:2022:633, § 123).
- 103 Therefore, given that only the initial elements of the signs are distinctive, the relevant public will tend to focus primarily on these components.

- 104 In this regard, the Board considers that while the differences between the elements ‘APOLLO’ and ‘Apella’ may go unnoticed or be less perceptible to the general public paying an average degree of attention, they are more likely to be identified by professional customers who display a particularly high level of attention.
- 105 Indeed, professional customers will be more likely to readily notice and retain the visual, phonetic and conceptual differences between the signs. This remains true despite the principle of imperfect recollection, which, according to case-law, applies also to the professional public (21/11/2013, T-443/12, ancotel, EU:T:2013:605, § 54).
- 106 In this respect, the Board finds that the professional public will observe and remember the repetition of the vowel ‘O’ in the earlier mark, while also noting that the contested sign contains, in the same position, two letters—namely ‘e’ and ‘a’—which differ entirely from the letter ‘O’. These visual and phonetic differences in the first and sole distinctive components of the signs are sufficient to counterbalance the similarities from the perspective of an attentive professional public, who are far more likely to pick-up on them than the general public paying only an average degree of attention.
- 107 The conceptual difference generated by the word ‘APOLLO’ will also be more readily noticed and retained by the more attentive public, composed of professionals. This will enable them to distinguish the marks
- 108 Consequently, the Board concludes that the differences between the signs, combined with the high level of attention displayed by part of the relevant public, allow any likelihood of confusion within the meaning of Article 8(1)(b) EUTMR to be safely excluded for the following goods and services under appeal:

Class 9: Game programs for arcade video game machines; Software for arcade video game machines; Programs for arcade video game machines; 3D computer graphics software; Computer software for the administration of on-line games and gaming; Server software.

Class 41: Arcade game services; Virtual reality arcade services; Conducting multiple player games of chance; Consultancy services in the field of entertainment provided via the internet; Advisory services relating to entertainment.

Class 42: Creating, designing and maintaining web sites; Design and development of new technology for others; Design and development of multimedia products; Design and development of networks; Design and graphic arts design for the creation of web sites; Design and maintenance of web sites for others; Software design; Video game software design; Design of virtual reality software; Design and development of computer software architecture; Research, development, design and upgrading of computer software; Consultancy relating to software design and development; Design and development of video game software; Design and development of computer software for others; Design and development of software in the field of mobile applications; Consulting services in the field of software as a service [SaaS],

- 109 Hence, the professional customers – who constitute the sole segment of the relevant public targeted by the above-mentioned goods and services under appeal – will neither confuse the marks nor believe that these goods and services, although partially identical

and highly similar to those of the cancellation applicant, originate from the same undertaking or from economically linked companies.

- 110 On the other hand, the Board cannot exclude the existence of a likelihood of confusion within the meaning of Article 8(1)(b) EUTMR in relation to the remaining goods and services under appeal, which are directed at the general public, whose members display only an average level of attention.
- 111 In this context, the Board recalls that the average consumer rarely has the opportunity to directly compare different marks and must rely on the imperfect recollection of them retained in memory (22/06/1999, C-342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 26).
- 112 In the Board's view, there is a strong possibility that this latter segment of the relevant public will not focus on the visual and phonetic differences between the signs' first distinctive components, 'APOLLO' and 'Apella', because they may simply fail to notice them due to reading or hearing them while displaying only an average degree of attention. Consequently, for these consumers, the marks exhibit sufficient similarities to lead them to believe that the goods and services in question originate from the cancellation applicant or from an economically related undertaking.
- 113 The EUTM proprietor continues to rely on the so-called 'principle of conceptual neutralisation', arguing that it should exclude any likelihood of confusion under Article 8(1)(b) EUTMR despite the visual and aural similarities between the signs.
- 114 However, even if the entire relevant public is aware of the meaning of the word 'APOLLO', the Board concurs with the Cancellation Division's reasoning that not every conceptual dissimilarity is capable of neutralising visual and phonetic similarities. It is possible that such conceptual differences will escape the attention of the general public, which is less attentive and tends to overlook distinctions between the signs (13/04/2005, T-353/02, INTEA / INTESA, EU:T:2005:124, § 34), particularly when four out of the six letters of the first element of each sign coincide and are in the same sequence and the second, albeit non-distinctive elements, overlap.
- 115 As a consequence, the Board confirms the Cancellation Division's finding that between the contested mark and earlier mark 6 there is a likelihood of confusion pursuant to Article 8(1)(b) EUTMR in connection with the following goods and services under appeal:

Class 9: Computer games; Computer games of chance; Computer programs for video and computer games; Computer software for entertainment; Downloadable computer games; Games software; Interactive entertainment software; Electronic game software for handheld electronic devices; Downloadable interactive entertainment software for playing video games; Interactive game software; Virtual reality game software; Simulation software [entertainment]; Video game programs; Software programs for video games; Electronic game software for mobile phones; Entertainment software; Augmented reality game software; Computer software; Computer software platforms; Software for smartphones; Software downloadable from the internet; Software for mobile phones; Communication, networking and social networking software; Computer application software featuring games and gaming; Mobile apps; Downloadable information relating to games and gaming; Electronic publications, downloadable, relating to games and gaming; Virtual and augmented reality software; Web application;

Computer programmes for data processing; Software related to handheld digital electronic devices; Platform software; Computer game software for use with on-line interactive games.

Class 38: Providing Internet chatrooms and Internet forums; Access to content, websites and portals; Chatroom services for social networking; Computer aided transmission of messages, information and images; Distribution of data or audio visual images via a global computer network or the internet; Providing access to electronic communications networks; On-line transmission of electronic publications; Providing online forums for communication in the field of electronic games; Providing online forums; Providing online chatrooms for the transmission of messages, comments and multimedia content among users; Providing on-line chat rooms for social networking; Providing virtual facilities for real-time interaction among computer users; Transmission of audio and video content via computer networks; Transmission of data, audio, video and multimedia files, including downloadable files and files streamed over a global computer network; Transmission of interactive entertainment software; Transmission of multimedia content via the Internet.

Class 41: On-line computer games; Games services provided on-line from a computer network; Conducting of live esports events; On-line gaming services; Video game services; Provision of online information relating to game players; Provision of information relating to esports; Providing online information on computer and video game strategies; Providing interactive multi-player computer games via the internet and electronic communication networks; Providing esports facilities; Organization of esports competitions; Video game entertainment services; Providing online entertainment in the nature of fantasy sports leagues; Hosting of fantasy sports leagues; Entertainment services in the nature of competitions; Game shows; Information and Providing information to game players about the ranking of their scores of games through the web sites; Providing online entertainment in the nature of game tournaments.

Class 42: Software as a service [SaaS]; Platforms for gaming as software as a service [SaaS].

Conclusions of the application for a declaration of invalidity

- 116 For all these reasons, the application for a declaration of invalidity of the contested mark based on earlier mark 6 must be rejected in respect of the goods and services under appeal listed above in paragraph 108.
- 117 Instead, the application for a declaration of invalidity of the contested mark based on earlier mark 6 must be upheld in respect of the goods and services under appeal listed above in paragraph 115.
- 118 Such outcome would remain unaltered also when examining the application based on the remaining earlier marks. This is because they display even more differences with the contested mark and cover the same goods and services as those for which earlier mark 6 is registered.
- 119 Finally, the Board notes that the application was based also on Article 60(1)(a) EUTMR in conjunction with Article 8(1)(a) EUTMR.

- 120 In this regard, it suffices to note that none of the earlier marks is identical to the contested mark so that one of the essential conditions to apply this other provision invoked by the cancellation applicant, namely the identity of the signs, is not met. As a result, also that ground for invalidity must be rejected.

Conclusion

- 121 In view of all the foregoing reasons, the appeal is partially upheld, and the contested decision must be annulled to the extent that the contested EUTM was declared invalid in relation to the goods and services under appeal listed above in paragraph 108.

Costs

- 122 Pursuant to Article 109(3) EUTMR, where each party succeeds on some heads and fails on others, the Boards of Appeal shall decide a different apportionment of costs. As the appeal is successful in part, it is appropriate to order that each party bears its own costs in the appeal proceedings.
- 123 As to the cancellation proceedings, the Cancellation Division ordered each party to bear its own costs. This decision remains unaffected.

Order

On those grounds,

THE BOARD

hereby:

- 1. Upholds the appeal in part, namely to the extent that the contested EUTM was declared invalid in relation to the following goods and services:**

Class 9: Game programs for arcade video game machines; Software for arcade video game machines; Programs for arcade video game machines; 3D computer graphics software; Computer software for the administration of on-line games and gaming; Server software.

Class 41: Arcade game services; Virtual reality arcade services; Conducting multiple player games of chance; Consultancy services in the field of entertainment provided via the internet; Advisory services relating to entertainment.

Class 42: Creating, designing and maintaining web sites; Design and development of new technology for others; Design and development of multimedia products; Design and development of networks; Design and graphic arts design for the creation of web sites; Design and maintenance of web sites for others; Software design; Video game software design; Design of virtual reality software; Design and development of computer software architecture; Research, development, design and upgrading of computer software; Consultancy relating to software design and development; Design and development of video game software; Design and development of computer software for others; Design and development of software in the field of mobile applications; Consulting services in the field of software as a service [SaaS].

- 2. Dismisses the appeal in the remainder.**

3. Orders the parties to bear their own costs in the cancellation and appeal proceedings.

Signed

G. Humphreys Bacon

Signed

A. González Fernández

Signed

M. Bra

Acting Registrar:

Signed

K. Zajfert

