



PROTOCOLE DE MADRID

**NOTIFICATION DE REFUS PROVISOIRE DE PROTECTION FONDE SUR UNE
OPPOSITION
Règle 17.1)**

Référence : 00015/2020/OAPI/DG/DGA/DMSD/DAJ/SCG/NNG/Madrid

I.	Office qui émet la notification : OAPI
II.	Numéro et date de l'enregistrement international : 1128501 du 26 juin 2019
III.	Nom du titulaire (ou autre indication permettant de confirmer l'identité de l'enregistrement international) : Comité International Olympique Château de Vidy CH – 1007 Lausanne, Switzerland
IV.	☒ Refus provisoire fondé sur une opposition¹
V.	☒ Refus provisoire pour certains produits et services de l'enregistrement International
VI.	Motifs de refus [(le cas échéant, voir la rubrique VII)] : Violation des droits rattachés à la marque de l'opposant, notamment par la similarité des signes « OLYMPIC » et « OLYMPIC » pour désigner les produits et services identiques ou similaires des classes 9, 35, 36, 38 et 42.
VII.	Informations relatives à la publication de la marque : i.) Date de l'opposition : 10 juin 2020 ii.) Référence de la publication : BOPI n° 11 MQ/2019 du 13 décembre 2019

¹ Le nom et l'adresse de l'opposant doivent aussi être indiqués.

VIII. Renseignements relatifs à une marque antérieure² :

- i) Date et numéro de dépôt et, le cas échéant, date de priorité :
- ii) Date et numéro d'enregistrement (s'ils sont disponibles) :

N° 805722 du 1^{er} décembre 2017

- iii) Nom et adresse du titulaire :

ERI BANCAIRE LUXEMBOURG S.A

Agent: SCP AFRIC'INTEL CONSULTING

BP : 8451 Yaoundé - Cameroun, Tél. : +237 678 60 77 08/243 38 43 73

E-mail : africintelconsulting@yahoo.com

- iv) Reproduction de la marque : (Prévoir un cadre 8/8 cm).



- v) Liste d'une partie des produits/services de la marque :

CL. 35: Services de conseils, de renseignements et d'informations pour la conduite des affaires avec utilisation de techniques informatiques; aide aux entreprises industrielles ou commerciales, aide aux particuliers dans la conduite de leurs affaires; travaux statistiques et mécanographiques; traitement de données; mise à jour de fichiers; traitement informatique de données bancaires et financières; services relatifs au traitement et au télétraitement de données, de signaux et d'informations traités par ordinateur et par calculateur; mise à disposition de personnel informatique ou utilisant l'informatique; mise à disposition de fichiers; sélection par procédés psychotechniques de personnel informatique ou utilisant l'informatique.

CL. 36 : Activités bancaires et financières; consultations professionnelles dans le domaine financier (sans rapport avec la direction des affaires).

Cl. 42 : Services de programmation; conseils en informatique destinés au secteur des finances; études relatives à l'informatique; programmation électronique; conception de systèmes informatiques et de systèmes de télécommunication;

² Lorsque les motifs sur lesquels se fonde le refus provisoire ont trait à une marque antérieure, comme cela aura été indiqué à la rubrique VI. On pourra fournir les renseignements demandés dans cette rubrique en annexant un extrait imprimé du registre ou de la base de données.

consultations professionnelles dans le domaine informatique (sans rapport avec la direction des affaires); services de conseils et d'études dans le domaine de l'analyse de systèmes, de la programmation et de l'informatique; conception et préparation (à l'exception de la rédaction de textes) de manuels de formation et d'instruction relatifs à l'exploitation et à la maintenance de matériel informatique; conception et préparation de programmes d'ordinateur et de calculateur; assistance et conseils techniques en informatique; location de matériel informatique, notamment d'ordinateurs et de périphériques d'ordinateurs; installation et maintenance de programmes informatiques; mise à disposition (location) de logiciels pour la gestion et l'information; mise à jour et mise à disposition de programmes d'ordinateurs; services informatiques relatifs à la surveillance de données, de signaux et d'informations traités par ordinateur et par calculateur.

IX. Délai pour désigner un mandataire local

A dater de la communication de la présente notification au Bureau International, le titulaire de l'enregistrement international est tenu de désigner un mandataire local dans un délai de 2 mois (voir liste des mandataires agréés sur le site internet de l'OAPI : www.oapi.int).

A défaut, l'OAPI rend sa décision par laquelle elle refuse la protection de l'enregistrement international.

X. Dispositions essentielles correspondantes de la loi applicable [(voir le texte à la rubrique XIV)]

XI. Informations relatives à la suite de la procédure :

- i) Délai pour présenter un recours suite à l'opposition :
3 mois à compter de la réception par l'intéressé de la notification de la décision faisant suite à l'opposition.
- ii) Autorité auprès de laquelle le recours doit être déposé :
Commission Supérieure de Recours de l'OAPI.
- iii) Assistance d'un mandataire local obligatoire :
(Voir liste des mandataires agréés sur le site internet de l'OAPI : www.oapi.int).

XII. Date de la notification de refus provisoire : **29 juin 2020**

XIII. Signature ou sceau officiel de l'Office qui émet la notification :

P. Le Directeur Général

Le Directeur des marques et autres signes distinctifs

Issoufou KABORE

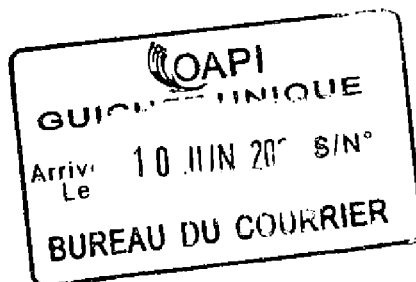


XIV. Dispositions essentielles correspondantes la loi applicable :

Article 18, Annexe III, Accord de Bangui : Opposition

- 1) Tout intéressé peut faire opposition à l'enregistrement d'une marque en adressant à l'OAPI dans un délai de 6 mois, à compter de la publication de l'enregistrement querellé, un avis écrit exposant les motifs d'opposition, lesquels doivent avoir pour fondement une violation des dispositions des articles 2 ou 3 de la présente Annexe ou d'un droit enregistré antérieur appartenant à l'opposant.
- 2) L'OAPI envoie une copie de l'avis d'opposition au déposant ou à son mandataire qui peut répondre à cet avis en motivant sa réponse, dans un délai de 3 mois renouvelable une fois. Cette réponse est communiquée à l'opposant ou à son mandataire. Si sa réponse ne parvient pas dans le délai prescrit, le déposant est réputé avoir retiré sa demande d'enregistrement et cet enregistrement est radié.
- 3) Avant de statuer sur l'opposition, l'OAPI entend les parties ou l'une d'elles, ou leur mandataire, si la demande lui en est faite.
- 4) La décision de l'OAPI sur l'opposition est susceptible de recours auprès de la Commission supérieure de recours pendant un délai de 3 mois à compter de la réception de la notification de cette décision aux intéressés.
- 5) La décision définitive de radiation est publiée au Bulletin officiel de l'OAPI.





The General Director of OAPI
Yaoundé, June 8th, 2020

Object : Opposition against the international mark designating OAPI "OLYMPIC" No 1128501 in classes 1, 2, 3, 5, 7, 9, 10, 11, 12, 14, 16, 17, 18, 19, 21, 25, 28, 32, 35, 36, 37, 38, 39, 40, 41, 42 and 44 in the name of the Comité International Olympique.

CA20 - 00715

Dear Mr. Director,

Our Client, the company **ERI BANCAIRE LUXEMBOURG S.A.**, is the owner of the following international trademark designating OAPI:



- **OLYMPIC**, International trademark n° 805722 designating the OAPI by subsequent designation of December 1st, 2017 in classes 35 and 42.

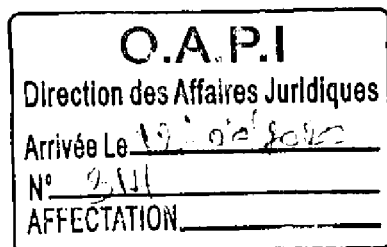
Pursuant to Article 7, paragraph 2 of Resolution 54/21 of the Regulations Concerning the International Registration of Trademarks at the OAPI, our client's trademark is enforceable in OAPI since December 1, 2017 as the refusal period has expired, and no objection from the Office or opposition from third parties has been filed.

ERI BANCAIRE LUXEMBOURG S.A., has detected the registration of the following trademark:

- **OLYMPIC**, International Trademark No. 1128501, designating OAPI through subsequent designation on June 26, 2019, in classes 1, 2, 3, 4, 5, 7, 9, 10, 11, 12, 14, 16, 17, 18, 19, 21, 25, 28, 29, 30, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44 in the name of the **Comité International Olympique**.

Due to the high similarities between the marks in conflict, our Client is contesting the registration of this trademark in relation with the classes 9, 35, 36, 38 and 42.

Please find below our detailed grounds demonstrating the existence of a likelihood of confusion between the conflicting marks.



Yours sincerely,
Corinne KASSE

OPPOSITION À L'ENREGISTREMENT D'UNE MARQUE

CADRE RÉSERVÉ À L'OAPI		 GUICHET UNIQUE Arriv. Le 10 JUN 2017 SIN°	
Référence opposition : Date de l'opposition :		BUREAU DU COURRIER Personne morale ☒	
1. OPPOSANT: Personne physique ☐ Personne morale ☒			
Nom et Prénom ou dénomination sociale : ERI BANCAIRE LUXEMBOURG S.A.			
Adresse : 21, rue Eugène Ruppert L-2453 Luxembourg (LU)			
Adresse pour la correspondance : (Voir champ mandataire)			
Pays de résidence : LUXEMBOURG			
Téléphone :		Télécopie :	
		E-mail :	
2. MANDATAIRE (le cas échéant) : Personne physique ☐ Personne morale ☒			
Nom et Prénom ou dénomination sociale : AFRIC'INTEL CONSULTING			
Téléphone :		Télécopie :	
		E-mail : contact@africintel.com	
3. BASE DE L'OPPOSITION			
3.1. Droit enregistré antérieur			
<i>Nature du droit :</i> Marque ☒ Nom commercial ☐ Dessin ou modèle industriel ☐ Indication géographique ☐ Dénomination variétale ☐		violation des dispositions de l'annexe III, Accord de Bangui : Art. 3a) Absence du caractère distinctif : ☐ Art. 3c) contraire à ordre public, bonnes mœurs et lois ☐ Art. 3b) identité ou similitude avec la marque d'un autre titulaire ☒ Art. 3d) induit en erreur le public... ☐ Art. 3e) reproduit, imite ou contient armoiries, emblèmes, etc. ☐	
3.2. Référence des droits antérieurs :			
Nom et Prénom ou dénomination sociale du déposant : ERI BANCAIRE LUXEMBOURG S.A.			
Désignation du signe (ou reproduction de signe complexe en annexe) : OLYMPIC BANKING SYSTEM (voir la reproduction en annexe)			
Date de dépôt : 01.12.2017 (Désignation postérieure pour l'OAPI)			
N° d'enregistrement : 805722			
N° de la ou des classes, le cas échéant : 35, 42			
Date de Publication de l'enregistrement et N° BOPI : 08.02.2018			
Date du renouvellement			
Nature de la marque : Marque Régionale ☐ Marque internationale ☒		☒	
Joindre la liste des produits et ou services / le genre d'activités (nom commercial) en annexe			☒
Voir copie de la marque en annexe			
(utiliser l'imprimé (PS) et cocher la case) ☒			

4. ENREGISTREMENT DE MARQUE CONTESTÉ

Désignation de la marque (ou reproduction en annexe) : OLYMPIC (Voir reproduction en annexe)

N° d'enregistrement international, le cas échéant : 1128501

Date de dépôt de la marque et N° d'enregistrement OAPI : Désignation subséquente du 26 Juillet 2019 au n° 110370

N° de la ou des classes de produits et ou services 1, 2, 3, 4, 5, 7, 9, 10, 11, 12, 14, 16, 17, 18, 19, 21, 25, 28, 29, 30, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43 et 44.

N° du BOPI et date de parution : Bulletin Officiel de la Propriété Intellectuelle (BOPI) 11/19

Joindre la liste des produits et ou services en annexe ☒

Titulaire de droit (Nom(s) et Prénom(s)/ Dénomination sociale) :

Comité International Olympique

Adresse du titulaire : Château de Vidy CH-1007 Lausanne SUISSE

Mandataire (le cas échéant):

Adresse du mandataire :

5. ETENDUE DE L'OPPOSITION

Opposition à tous les produits et ou services couverts par l'enregistrement ☐

Opposition à une partie des produits et ou services couverts par l'enregistrement ☒

Préciser dans la rubrique suivante ☐

5.1. Enumérer les produits et ou services visés par l'opposition :

N° classe(s)	Produit(s) et ou service(s)
9 35 36 38 42	Voir copie de la marque en annexe
(utiliser l'imprimé (PS) si nécessaire et cocher la case) ☒	

6. EXPOSÉ DES MOTIFS DE L'OPPOSITION

1) Sur la comparaison des signes

Le risque de confusion entre les marques en conflit est élevé pour les raisons suivantes :

- Les marques partagent le terme dominant et distinctif «OLYMPIC»;
- Les éléments verbaux «BANKING SYSTEM» sont purement descriptifs et apparaissent en position secondaire au sein de la marque contestée;
- La couleur et la stylisation de la marque antérieure seront perçues comme des éléments de décor et ne seront pas suffisants pour exclure tout risque de confusion.

Notre exposé approfondi suivra.

(utiliser l'imprimé (PS) si nécessaire et cocher la case) ☒

2) Sur la comparaison des produits/services

Les produits et services couverts par les marques en conflit sont identiques et similaires pour les raisons suivantes :

- les deux marques couvrent des services identiques et similaires en classes 35 et 42 ;
- les produits et services relevant des classes 9, 38, 36 sont similaires par complémentarité;
- les produits désignés dans ces classes sont généralement commercialisés en association avec les services correspondants et vendus ensemble ;

Notre exposé approfondi suivra.

(utiliser l'imprimé (PS) si nécessaire et cocher la case)



3) Sur les autres moyens de l'opposition

(utiliser l'imprimé (PS) si nécessaire et cocher la case)



7.

MONTANT TAXE PAYÉE en Fcfa :

150.000



MOYEN DE PAIEMENT :

Versement espèces



Chèque



Virement bancaire



8. PIÈCES JOINTES :

I. Justificatif paiement taxe d'opposition



II. Pouvoir du mandataire, le cas échéant



III. Reproduction de signe(s) antérieur(s) invoqué(s)



IV. Reproduction de la marque contestée



V. Autres (à préciser)

Annexes descriptive des produits et services

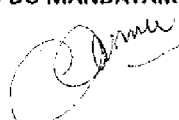


9.

**NOM ET QUALITÉ
DU SIGNATAIRE**

Corine
KASSE

**SIGNATURE DE L'OPPOSANT
OU DU MANDATAIRE :**



Fait à, Yaounde

Le 02 Juin 2020

OPPOSITION BRIEF

The Opponent:

ERI BANCAIRE LUXEMBOURG S.A.
21, rue Eugène Ruppert L-2453 Luxembourg (LU)
LUXEMBOURG

(hereinafter referred to as "the Opponent")

Represented by:

AFRIC'INTEL CONSULTING
ESSOS, Immeuble MAH DONG Véronique,
B.P. 8451 Yaoundé
CAMEROUN

Against

The Applicant :

COMITE INTERNATIONAL OLYMPIQUE,
Château de Vidy CH-1007 Lausanne
SUISSE

(Hereinafter referred to as "the Applicant")

I. Concerning the registration of the term "OLYMPIC" by the Applicant:

First of all, we would like to highlight that the international legal instrument (Nairobi Treaty) protects the Olympic symbol only.

Indeed, and as shown below, the Nairobi Treaty on the Protection of the Olympic Symbol obliges each state that has ratified it to refuse or invalidate the registration as a mark and to prohibit the use for commercial purposes of any sign consisting of or containing **the Olympic symbol**:

1st Article:

*"Any State party to this Treaty shall be obliged, subject to Articles 2 and 3, to refuse or invalidate registration as a mark and to prohibit, by appropriate measures, the use as a mark or other sign, for commercial purposes, of any sign consisting of or containing **the Olympic symbol**, as defined in the Charter of the International Olympic Committee, except with the authorization of the International Olympic Committee. **The said definition and the graphic representation of the said symbol are set out in the Annex.**"*

Annex :

*"The Olympic symbol consists of five intertwined rings: blue, yellow, black, green and red, placed in that order from left to right. **It consists of the Olympic rings used alone, in one or more colours.**"*

Therefore, the registration of the term "**OLYMPIC**" does not benefit of any special protection, **especially when it is registered in relation with classes that are NOT related to the organization of Olympic games.**

Consequently, the registration of the word term "**OLYMPIC**" must not benefit of any special treatment.

Indeed, the Applicant's trademark "**OLYMPIC**" has already been rejected by other Trademark Offices, such as the EUIPO and Madagascar, due to the existence of similar prior marks: (Annex 1) :

- **EUIPO** (European Union Intellectual Property Office): the application has been refused due to the existence of the prior mark  **OLYMPIC** in class 2;
- **Madagascar**: the application has been refused due to the existence of the prior mark **OLYMPIC** in class 34.

In addition to the above:

We bring to the attention of the Organization that our Client has already received the two following positive decisions issued by the EU Trademark Office against the adverse party's trademarks.

- Opposition against trademark  **OLYMPIC**  targeting some of the services in Classes 37 and all the goods and services in Classes 9, 35, 36, 38 and 42: the adverse party's application has been refused as

the EU Examiner confirmed the existence of likelihood of confusion with our client's prior mark "OLYMPIC BANKING SYSTEM" (see Annex 2)



- Cancellation action against trademark **OLYMPIC GAMES** targeting all the goods and services filed in Classes 1, 2, 3, 5, 7, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 21, 25, 28, 32, 35, 36, 37, 38, 39, 40, 41, 42. The adverse party has not be able to demonstrate a serious and continuous use of its trademark in relation with all the products and services claimed. Therefore, the adverse party's trademark has been partially cancelled for all the goods and services claimed in class 1, 2, 3, 5, 7, 9, 10, 11, 12, 13, 15, 17, 18, 19, 21, 25, 28, 32, 35, 36, 37, 38, 39 and 40 and some products and services in classes 14, 16, 41 and 42.

According to this second decision, the EUIPO trademark office stated in page 19 that a **legitimate interest to register the mark in all 45 classes is NOT recognized** and that even if there was such a legitimate interest that **would not be a reason for non-use**. (see Annex 3)

Therefore, we ask the OAPI to apply the same reasoning by considering our opposition and confirming the likelihood of confusion between the conflicting marks, as demonstrated below.

II. Similarities between Goods and Services:

The services covered by the prior mark in classes 35 and 42 are similar to those covered by the contested mark in classes 9, 35, 36, 38 and 42.

Indeed:

- The services covered in classes 35 and 42 are identical and similar to those covered by the prior mark in same classes;
- The products and services covered in classes 9 and 38 are similar to those covered by the prior mark in class 42;
- The services covered in class 36 are similar to those covered by the prior mark in class 35.

The following comparative tables will permit to highlight the similarities between the specification of goods and services covered by the marks in conflict.

a) **Identical and similar services in Classes 35 and 42:**

Both trademarks in conflict are filed in classes 35 and 42:

- Class 35 :

Prior trademark	Contested trademark
<i>Consultancy, inquiry and information services in connection with business operations facilitated by the use of computer technology; assistance to industrial or commercial companies, assistance to individuals in business activities; statistical and mechanical data processing tasks; data processing; updating of files; computer processing of banking and financial data; calculator or computer data, signal and information processing or remote processing services; providing computer technicians or computer staff; provision of files; selection by psychological tests of computer technicians or computer staff.</i>	<i>Publicity; dissemination of advertisements by all media, in particular in the form of thematic messages centered on human values; sponsorship advertising; business management; business administration; office functions; promotion of the products and services of third parties, by means of contractual agreements, in particular partnership (sponsorship) and licenses, offering them an increase in notoriety and / or image and / or a surge of sympathy derived from notoriety and / or the image of cultural and sporting events, in particular international ones, and / or the outburst of sympathy provoked by them; promotion of the products and services of third parties by the so-called initial factor of interest, leading the public to consider, among a multitude of competitors, products or services presented to them with signs, emblems or messages capable of capturing their attention; promoting the products and services of others by means of image transfer; rental of advertising spaces of all kinds and on any medium, digital or not; commercial administration of the participation of national teams in an international athletic competition, and promotion to the public and interested circles of support for said teams; inventory management services; advice relating to inventory control services; direct marketing advertising for others consisting of database marketing; direct marketing advertising advice for others consisting of database marketing;</i>

	business reorganization consultancy services; truck and car fleet management services, namely invoicing via a global computer network; truck and automobile fleet management services consultancy; business administration consultancy services; management of power plants of others; consultancy relating to the management of power stations; business services, namely administration of repair and overhaul contracts; supply chain management services and advisory services relating to the procurement and supply of chemicals and services; supply management and product inventory, cost limitation; advice, marketing, price and cost analysis relating to electrochemical purification devices for liquids for industrial use; administrative, commercial and technical management of computer files; data entry and processing services; IT management consultancy; management of computer servers and value-added data transmission networks (multimedia systems, interactive videography, global telecommunications computer networks); retail services for electrical and electronic machinery and apparatus (bringing together, for others, a series of products to enable customers to view and purchase these products at ease in a retail store electrical items); information relating to the sale of raw materials; business information, business information agencies; rental of photocopiers; promoting the sale of products and services of third parties including through advertisements, promotional contests, discounts and bonuses in the form of promotional lotteries, discounts, reduction points, and value-added offers made in connection with the use of payment cards; promotion of sports competitions and events for the use of others; promoting concerts and cultural events of others; organization of exhibitions for commercial or advertising purposes; provision of documentation, namely direct mail, distribution of advertising material, distribution of samples; reproduction of documents; advertisements relating to the promotion of commercial sales of goods and services at the retail level; provision of information relating to electronic commerce and electronic retail sale; provision of information relating to the purchase of goods and services online via the Internet and other computer networks; tourist documentation services, namely advertising relating to transport, travel, hotels, accommodation, food and meals, sports, entertainment and tourist visits, of tourist agency services; maintenance of computerized databases.
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The services claimed by these two marks in Class 35 must be considered similar due to the following reasons:

- They belong to the same class;
- They are of the same nature: administrative and consulting services.

Therefore, these services are similar.

- Class 42 :

Prior trademark	Contested trademark
Computer programming services; information technology consulting for the finance sector; studies in connection with information technology; electronic programming; computer and telecommunication system design; professional consulting in connection with information technology (not in connection with business management); consultancy and studies in connection with systems analysis, programming and information technology; design and preparation (except text drafting) of training and teaching manuals relating to the use and maintenance of computer hardware; design and development of computer and calculator programs; computer systems support and technical consultancy; leasing of computer hardware, particularly of computers and computer peripheral equipment; installation and maintenance of computer programs; provision (rental) of software for management and information purposes; updating and provision of computer programs; data processing services in connection with monitoring of data, signals and information processed by computers and calculators.	Scientific and technological services and research and design relating thereto; industrial analysis and research services; carrying out laboratory analyses; design and development of computers and software; services relating to wind and wind energy, namely professional consultancy and engineering services; design for others in connection with wind energy; industrial design services; design of equipment and installations for generating energy, wind energy and electricity; engineering services, technical consultancy and research for the gas and oil industries; exploration services relating to oil and gas; geophysical drilling for the gas and oil industries; gas and oil field analysis; gas and oil prospecting, namely locating and testing of wells; gas and oil well testing; gas and oil pipeline inspection; remote monitoring and diagnosis services in connection with compressors, pumps, turbo-expanders, fuel pumps and fuel distribution equipment, CNG refuelling equipment, gas turbines, steam turbines, air-cooled heat exchangers, steam condensers, thick-wall reactors and tubular reactors; information technology solution services in the field of railway and transit industries on a global scale; research, consultancy and assistance services in connection with engineering, design and development problems encountered by governments, individuals and companies whether industrial or commercial and by public institutions; computer programming services for others; software design and analysis services for others; information technology consultancy services; maintenance and updating of computer software for others; installation of computer software; design and analysis of computer systems for others; consultancy services relating to chemical research; consultancy services in connection with the discovery and evaluation of medicines and components with diagnostic, prophylactic and/or therapeutically properties; consultancy services concerning diagnostic methods by means of optical laser systems; tests for high data rate analysis for producing medicines; customer analysis and synthesis services; biotechnological services; technical assistance in connection with factory automation software, namely maintenance of software and periodical updating of software; customized design of security access systems; design and consultancy services relating to configuration of systems used in fiber-optic technology applications; technical assistance services, namely resolution of problems in connection with computer hardware, video and electronic communication and computer software; technical consultancy services relating to information technology and software in the field of security and access systems; technical consultancy services relating to surveillance cameras; customized design of security systems, access systems and systems for checking inventories and property for others; laboratory and testing services for liquid separation and membrane testing; engineering and consultancy services regarding water treatment, water supply systems, cooling water circuits, industrial boiler water systems, systems for water supply and industrial processes, industrial fuel treatment systems, pulp and paper making systems, systems for treating plastics and metals; engineering and technical assistance services concerning the design and configuration of systems comprising computer hardware and software for use in treatment of water supply systems and pulp and paper making systems, oil and petrochemical product treatment systems and metal and plastic finishing operations; consultancy services in all the aforesaid fields;

	chemical testing concerning supply of chemical treatment products via industrial water systems; programming for information processing machines, particularly programming services in the field of electronic money; development of computer programs for securing data transfers; industrial development and research services in the field of information technology; all technical consultancy in the field of information technology; development of computerized databases and computer programs; development of software concerning machines, apparatus and instruments; rental of data processing apparatus; computer engineering services; consultancy regarding computer programming and data processing, particularly in connection with financial transactions; hosting of computer sites [Web sites]; maintenance of computer software; provision of search engines for the Internet; quality control; computer data recovery; research and development of new products (for others); technical project studies; surveying; updating of software; maintenance of software, engineering, testing and research concerning electric machines, apparatus and instruments, computer rental; recovery of data, images, documents and of audio and video data, including texts, cards, letters, messages, mail, animations and electronic mail, via global or local communication networks, including the Internet, intranets, extranets, television, mobile communication networks, cellular networks and satellite networks; identification and testing of microbiological organisms.
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The services claimed by these two marks in Class 42 must be considered similar due to the following reasons:

- They belong to the same class;
- These services are the same nature: research services, computer engineering and programming services;

Therefore, these services are similar.

b) Similar goods and services in classes 9, 36 and 38:

The goods and services covered by the contested mark in Classes 9, 36 and 38 are similar to those covered by the earlier mark in Classes 35 and 42.

- **Similarity of goods and services in Classes 9 and 42:**

We consider that the goods covered by the applicant's class 9 and the services covered by the opponent's class 42 are similar.

Indeed, Class 9 mainly includes *apparatus and instruments for science or research, data processing equipment and computers; computer software; electronic, technologic and scientific apparatus* while Class 42 claimed by the prior mark notably covers the following services:

- *Computer programming services;*
- *Electronic programming; computer and telecommunication system design;*
- *Professional consulting in connection with information technology (not in connection with business management);*
- *Design and development of computer systems support and technical consultancy;*
- *Installation and maintenance of computer programs.*

Indeed, there is a functional complementarity between these services which, by their nature and/or function, belong to the same field of technology, IT and research.

- **Similarity of services in classes 35 and 36:**

The services covered by the contested trademark in class 36 refer to banking and financial services while the prior mark also covers banking and financial related services in class 35:

Prior trademark in class 35	Contested trademark in class 36
<i>Consultancy, inquiry and information services in connection with business operations facilitated by the use of computer technology; assistance to industrial or commercial companies, assistance to individuals in business activities; computer processing of banking and financial data; calculator or computer data, signal and information processing or remote processing services; providing computer technicians or computer staff; provision of files</i>	<i>Insurance underwriting; financial affairs; banking; monetary affairs; real estate affairs; credit card services; financing of sporting and cultural activities; rental of buildings and accessory buildings set up for corporate entertainment events; private mark and equity financing services; financial analysis and consultation; financial services in connection with credit cards; credit card services, namely granting credit to others; financial asset management for others; insurance and reinsurance services, namely underwriting of all types of insurance; equity capital investment services; insurance underwriting services in the field of bonds; financial security underwriting services; personal loan financing; lending against collateral; acquisition financing services; commercial financing services; commercial real-estate agency services; mutual funds; loan and private capital investments; information, assistance and advice in all the aforesaid fields; lease-purchasing of mobile and modular structures; insurance brokerage services; credit agency services in the field of commercial and consumer credit; financing of real estate loans and financial and banking services; monetary operations particularly by means of bank cards or customer loyalty cards; financial clearing services; issuing of checks and letters of credit; financial services; insurance services; financial operations; bill payment services; debit card services; payment card services; pre-payment card services; electronic transactions by credit and debit card; electronic transfer of funds; electronic money and smart card services; provision of liquidities; payment and credit card services replacing cash payments; electronic capital transfer services; check verification; check cashing services; safe deposit system and automated teller services; payment processing services; authentication and verification of transactions; provision of financial information via a global computer network; financial sponsoring of festivals and concerts; financial services for purchasing goods and services sold in retail at points-of-sale for promotion purposes; information services in the field of tourism, namely financial information; financial services for tourist assistance purposes; lease-purchasing of telephones, facsimile machines and other telecommunication equipment; lease-purchasing of transport containers.</i>

Therefore, and although they do not belong to the same class, these services should be considered similar due to the following reasons:

- They belong to the same category of services: services rendered in financial and banking affairs
- These services are offered through the same distribution channels (banks and financial institutions);
- They are provided by the same service providers.
- These services may be marketed under the same brand name (Example: the Société Générale Group, which offers bank data processing services and also financial information services via a worldwide IT network, <https://particuliers.societegenerale.fr/> ; *Annex 4*)

Therefore, these services should be considered similar.

• **Similarity of services in classes 38 and 42:**

We consider that the services covered by the contested mark in class 38 are similar to those covered by the prior mark in class 42.

Class 38 includes services which enable at least one third party to communicate with another as well as broadcasting and data transmission services, while Class 42 covers computer programming services which may also be used for communication. There is a functional complementarity between these services which, by their nature, belong to the same field of information technology. Furthermore, these services are aimed at the same public and use the same distribution channels.

They are therefore similar.

We therefore request the OAPI examiner to confirm the similarities between these products and services.

III. Similarities between the signs :

The conflicting marks consist of the following signs:

Prior Trademark	Contested Trademark
	

It should be borne in mind that the likelihood of confusion between two marks is assessed globally, taking account of all the factors relevant to the case. Those factors concern visual, phonetic and conceptual similarity based on the general impression produced by the conflicting marks.

The ground on which the opposition is based is the imitation of the earlier mark by the contested mark.

▪ Analysis of the prior trademark:

The earlier mark consists of the term "OLYMPIC" in first position in association with the terms "BANKING SYSTEM".

In this respect, the term "OLYMPIC" should be considered as the distinctive and dominant element of the contested mark for the following reasons:

- It has a dominant position due to its size and place;
- The terms "BANKING SYSTEM" are purely descriptive and appear in small characters;
- The term "OLYMPIC" is distinctive in relation with the products and services claimed.

▪ Analysis of the contested trademark:

The earlier mark consists of the term "OLYMPIC" only.

In light of the above, the two marks in conflict share the same dominant and distinctive term "OLYMPIC" creating therefore a risk of confusion between the marks at issue.

a) **Visual and phonetic similarities:**

The conflicting marks are highly similar due to the following reasons:

- They both share the identical term "OLYMPIC";
- The terms "BANKING SYSTEM" will be certainly not pronounced by the consumers due to its descriptive character and the fact that these terms appear in very small characters.

Indeed, the other verbal elements "BANKING SYSTEM" being displayed in a reduced font and therefore in a secondary position, they will not be sufficient to exclude the risk of confusion, moreover, these terms are purely descriptive and will not necessarily be read.

The colour and stylisation of the opponent's mark must be perceived as mere decoration and the emphasis must remain on the verbal elements.

In similar cases, the OAPI has already recognized similarity in similar cases (Annex 5):

- DECISION No.354/OAPI/DG/DGA/DAJ/SAJ **JACK DANIEL'S vs JACK DANIEL'S**
- DECISION No. 246/OAPI/DG/DGA/DAJ/SAJ **VITAL vs VITALINE**

We therefore ask the Organization to adopt the same reasoning and to recognize the visual and phonetic similarities between the conflicting marks.

b) Conceptual similarities:

Both marks consist of the single verbal element "OLYMPIC".

The terms therefore have the same meaning and are therefore conceptually identical.

CONCLUSION

The risk of confusion is the risk that leads the public to believe that the products originate from the same undertaking or, where appropriate, from economically related undertakings.

It must be assessed in a comprehensive manner, taking into account all factors relevant to the particular case.

Thus, it should be noted that the average consumers rarely have the opportunity to directly compare different trademarks but have to rely on the imperfect image they kept in mind.

The overall assessment of the likelihood of confusion implies a certain interdependence between the factors taken into account, in particular the similarity of the marks and the similarity of the goods or services designated. Thus, a low degree of similarity between the designated goods or services may be offset by a high degree of similarity between the marks, and vice versa.

In the present case, there is a real risk that consumers may associate the conflicting marks with each other and confuse their origin, especially since the contested mark reproduces identically the dominant and distinctive verbal element of the prior mark.

Consequently, the consumer will be led to believe that the goods in classes 9, 35, 36, 38 and 42 marketed under the trademark "**OLYMPIC**" are related to the opponent's earlier mark "**OLYMPIC**".

WE THEREFORE REQUEST:

Having regard to Articles 2, 3 and 18 of Annex III of the revised Bangui Agreement entitled "Trademarks and Service Marks".

That Mr. Director General of the OAPI,

- **Confirms the likelihood of confusion between the conflicting marks; and as a result**
- **Declares the partial cancellation of the contested mark OLYMPIC for Classes 9, 35, 36, 38 and 42 No 1128501.**

And it will be justice.

 Yaoundé, June 08th, 2020