

O-573-17

TRADE MARKS ACT 1994

**IN THE MATTER OF AN APPLICATION UNDER NO. 3166321
BY NFL PROPERTIES (UK) LIMITED
TO REGISTER AS A TRADE MARK:**

SKINS

FOR GOODS IN CLASS 25 AND SERVICES IN CLASS 41

AND

**IN THE MATTER OF THE OPPOSITION THERETO
BY SKINS INTERNATIONAL TRADING AG
UNDER OPPOSITION NO. 407442**

BACKGROUND AND PLEADINGS

1. On 24 May 2016, NFL Properties (UK) Limited (“the Applicant”) applied to register the word SKINS as a trade mark in the UK for goods in class 25 and services in class 41. I note that in the course of these opposition proceedings, the Applicant amended its specifications to read as presented below.

Goods in Class 25 *Clothing; Footwear; Headgear; Fleece tops and bottoms; Caps; Knitted hats; T-shirts; Shirts; Turtlenecks; Sweatshirts; Shorts; Tank tops; Sweaters; Trousers; Jackets; Golf shirts; Jerseys; Wristbands; Scarves; Gloves; Ties; Cloth bibs; Sleepwear; Bathrobes; Pyjamas; Swimwear; Underwear; Socks; Sneakers and training shoes; all the aforementioned goods being merchandise for the promotion of an American football team and none being compression clothing.*

Services in Class 41 *Education and entertainment services in the nature of professional American football games and exhibitions relating thereto; Providing sports and entertainment information relating to American football via a global computer network or a commercial on-line computer service or by cable, satellite, television and radio; Arranging and conducting athletic competitions, namely professional American football games and exhibitions; American football fan club services; Production of radio and television programmes relating to American football; Live shows featuring American football games, Publication of texts concerning American football other than publicity texts; Organisation of a professional American football team.*

6. The application was published for opposition purposes in the Trade Marks Journal on 17 June 2016. It is opposed by Skins International Trading AG (“the Opponent”) on the basis of three EU trade marks, which I refer to in this decision as **Registrations A, B and C**. Relevant details of those registrations are set out in the following table:

Registration A (EUTM No. 5310511)

Date of application for registration: 13 September 2006



Registered as a trade mark in the EU on 14 February 2008
(claiming priority from 29 March 2006 on the basis of an
Australian registration)

For the purposes of this opposition the Opponent relies on Registration A only for goods in class 25 as follows:

Clothing, footwear, headgear; including clothing for men, women, children and babies; clothing for sports including football, gymnastics, cycling, golf and skiing; clothing for motorists and travellers; underwear including compression underwear; outerwear, overcoats, leisure clothing, jackets, jumpers, pullovers, sports jerseys, vests, shirts, t-shirts, pants, trousers, shorts, pyjamas, dressing gowns, bath robes; swimwear including bathing trunks and bathing suits; thermal clothing; wetsuits; waterproof clothing; wrist bands; shoes and boots including football shoes and boots, gymnastic shoes, other sports shoes and boots; socks, stockings, tights; bandannas and headbands; padded clothing, including padded clothing for men, women, children and babies; padded clothing for sport

(Registration A is also registered in respect goods and services in classes 10, 28 and 35, which for reference I have set out in an *annex* at the end of this decision, since those classes are mentioned in evidence.)

Registration B (EUTM No. 13737416)

Date of application for registration: 12 February 2015



Registered as a trade mark in the EU on 7 July 2015
(claiming priority from 28 January 2015 on the basis of an
Australian registration)

For the purposes of this opposition the Opponent relies on Registration B only for services in class 41 as follows:

Education services including educating consumers on the subjects of anti-corruption, anti-doping and anti-drugs in sport, the value of sportsmanship and the spirit of competition; sporting and cultural activities; entertainment; providing information, including online, about education, training, entertainment, sporting and cultural activities; organisation of sporting events; organising charitable fundraising events; production of sporting events; sporting information; web- (blogs); information services relating to sports; organising of promotion for sporting events; sports education services; health education in relation to sports; providing online electronic publications and videos (non-downloadable); training services.

REGISTRATION C (EUTM 10030922)

Date of application for registration: 8 June 2011

TEAM SKINS

Registered as a trade mark in the EU on 9 November 2011

For the purposes of this opposition the Opponent relies on Registration C only for goods in class 25 as follows:

Clothing, footwear, headgear; including clothing for men, women, children and babies; clothing for sports including cricket, cycling, football, golf, gymnastics, rugby and skiing; clothing for motorists and travellers; compression garments; underwear including compression underwear; outerwear, overcoats, leisure clothing; jackets; jumpers; pullovers; sports jerseys; vests; shirts; T-shirts; pants; padded clothing; including padded clothing for men, women, children and babies; padded clothing for sport; trousers; shorts; pyjamas; dressing gowns; bath robes; swimwear including bathing trunks and bathing suits; thermal clothing; wetsuits; waterproof clothing; wrist bands; shoes and boots including football shoes and boots, gymnastic shoes, other sports

shoes and boots; socks, stockings, tights, including, compression socks and stockings; bandannas and headbands.

(Registration C is also registered in respect of services in class 35 as set out in the annex to this decision.)

10. Section 6(1)(a) of the Trade Marks Act 1994 (“the Act”) defines an “earlier trade mark”, as including “a *European Union trade mark ... which has a date of application for registration earlier than that of the trade mark in question ...*”. Therefore, as will be clear from the table above, Registrations A, B and C are all earlier trade marks under the Act.
11. Since Registration A had been registered for five years or more when the Applicant’s mark was published for opposition, that earlier trade mark is subject to the proof of use provisions under section 6A of the Act. The Opponent relies only on its registration under that mark for goods in class 25 and the Opponent has duly provided a statement of use to that extent. The Applicant has requested that the Opponent provide proof of such use and the Opponent has filed evidence, which I summarise in this decision.
12. Since Registrations B and C had not been registered for five years or more when the Applicant’s mark was published for opposition, those earlier trade marks are not subject to the proof of use provisions under section 6A of the Act, which means that the Opponent is therefore able to rely on those registrations in this opposition without having to prove use.
13. The Opponent requests that the application should be refused in its entirety, and relies variously on its three registrations to oppose separate aspects of the application – namely using Registrations A and C to oppose the Applicant’s goods in class 25 and Registration B to oppose the Applicant’s services in class 41. The opposition is based on section 5(2)(b) of the Act, with the Opponent claiming that the mark applied for is similar to its earlier trade marks and that the respective goods or services are identical or similar, such that the relevant public will believe that they are used by the same undertaking or think that there is an economic connection between the users of the trade marks.
14. The Opponent also filed submissions in lieu of a hearing. I shall refer to the Opponent’s submitted points where appropriate in this decision.

15. The Applicant filed a notice of defence and counterstatement in which it argues that confusion under section 5(2)(b) will be unlikely and requests that the opposition be rejected in full and that the application be allowed to proceed to registration in respect of all goods and services applied for.

16. The Applicant explains that the Applicant is “*jointly responsible in the UK and EU for the trade mark merchandising and licensing activities of the internationally famous National Football League (‘NFL’) for the sport of American football and the various teams playing in the NFL. One such team is the Washington Redskins whose nickname, Redskins, is often contracted to simply, ‘Skins’.*” The counterstatement continues:

“... The sport of American football and the NFL are widely followed in the UK. Matches between NFL teams are played at Wembley Stadium each year in recent times and the matches played in the US are televised on UK terrestrial channels and reported on in mainstream media. The Washington Redskins team is a long established team in the NFL and is internationally famous, including in the UK. The nickname for that team is Redskins and this can be contracted to Skins. The Applicant argues that the familiarity of the relevant consumer in the UK with the contraction, SKINS, will render confusion with the Opponent’s Stylised Mark and the Opponent’s TEAM SKINS mark exceedingly unlikely in the UK market. It is most unlikely that the relevant public would assume any economic connection between the parties or that the origins of their respective goods/services would be confused.”

17. The Applicant’s counterstatement made further points relating to comparisons between the marks and between the goods and services at issue. It also provided submissions in lieu of a hearing. I note the Applicant’s points and refer to them where appropriate in this decision. The Applicant also filed evidence, which I summarise below.

18. White & Case LLP represent the Applicant in these proceedings; Couchmans LLP represent the Opponent. Neither party requested a hearing and I take this decision based on the papers received.

The Applicant's evidence

19. The Applicant submitted evidence that takes the form of a witness statement from Marcus Leonard Collins dated 15 May 2017, together with its Exhibit MLC 1. Marcus Leonard Collins is a solicitor with the law firm representing the Applicant in these proceedings. He states that the facts with his witness statement are within his own knowledge or have been ascertained through online inquiries.
20. The purpose of Mr Collins's witness statement is said "(i) to provide evidence that the *Washington Redskins* American football team sometimes has its nickname, *Redskins*, contracted to simply *Skins*; ii) to provide some information about the level of public recognition of the *Washington Redskins* team and the *National Football League* (the 'NFL') for the sport of American football in the United Kingdom; and iii) to provide details of a certain United Kingdom trade mark registration."
21. The witness statement explains the content of its Exhibit MLC 1 as follows:

"Page 1 of Exhibit MLC 1 is a screen grab from [www.cbssports.com] which comments about the wearing of NFL team shirts at American football games played at Wembley Stadium¹. The title states: "*NFL London game brings out bizarre array of jerseys (and this Skins fan)*" ... The reference to *Skins* is a contraction of *Redskins*.

Page 2 of Exhibit MLC 1 is a screen grab from http://www.fanatics.com/NFL/Washington_Redskins/partnerid/14301 concerning apparel merchandise for the *Washington Redskins* team. The rubric at the top of the page says: "*Show your love for the Skins runs deep by getting full coverage of Washington Redskins Gear from Fanatics.com.*" This again shows *Redskins* contracted to just *Skins*.

Page 3 of Exhibit MLC 1 is a screen grab from the official *Washington Redskins* online store at www.store.redskins.com. The screen grab shows an 'alpha dial' telephone number which uses the short form SKINS (key pad numbers 7-5-4-9- 7) for when dialling to order *Washington Redskins* merchandise.

¹ The article is shown as dated October 4 2015

Page 4 of Exhibit MLC 1 is a screen grab from the official *Washington Redskins* online store at *www.store.redskins.com*. The screen grab shows an advert for a T-shirt with the slogan, accompanied by the logo for the *Washington Redskins*. Once more, the name SKINS is used to refer to the team. *Hail to the SKINS*

Page 5 of Exhibit MLC 1 shows a screen grab from the *Evening Standard's* online website at *www.standard.co.uk*. The screen grab shows a headline from October 2016 noting the *Washington Redskins v Cincinnati Bengals* match played at Wembley Stadium. Clearly, the teams would have had a prior reputation in the United Kingdom to attract a Wembley crowd before that date.

Page 6 of Exhibit MLC 1 is a screen grab² from the *Evening Standard's* online website at *www.standard.co.uk* which comments on the record crowd of 84,448 who watched that game at Wembley (not mention many more who also watched on television in the United Kingdom). ...

Page 7 and of Exhibit MLC 1 show two pages from the Applicant's online website at *www.nfluk.com* which discusses match fixtures for the 2015 season of NFL games played at Wembley. This demonstrates the fan interest in the sport in the United Kingdom.”

The Opponent's evidence

22. Before I summarise the extensive evidence submitted by the Opponent as to its use of its own trade mark (under Registration A), it is convenient to set out first **the Opponent's evidence in reply** to the above evidence from the Applicant, where the Opponent makes the following observations and submissions.

“As a general comment, we believe that the evidence is very weak and of very limited value to the Applicant's case.

....

² The article is shown to be dated 30 October 2016.

All of the evidence disclosed by Mr Collins, with the exception of the CBS extract (page 1 of Exhibit MCL), and the Evening Standard piece (page 5 of Exhibit MCL), comes either from the Applicant's own website (i.e. the Washington Redskins official site) or from the Fanatics site - Fanatics is an apparel and merchandise licensee of the Applicant. It is our submission that all such evidence, lacking the quality of independence, should be afforded only a very low degree of significance in the Office's assessment of this matter.

Page 2 of Exhibit MCL 1 is, according to Mr Collins, from the Fanatics site. The whole webpage is not shown making it hard to assess how prominent, or otherwise, this part of the page was and there is no date shown. The word "Skins" appears only in the body text and is not used in any prominent way. Moreover, a visit to the actual page itself reveals that prices on the site are expressed only in US dollars. Excluding material demonstrating this may be the reason why the evidence has been "cropped" in the way it has. The Opponent can of course straightforwardly submit evidence to demonstrate this if the Applicant does not accept it. The clear conclusion is that the site is clearly targeted only at a US audience.

The same straightforward conclusion can be drawn directly from page 3 of Exhibit MLC 1 which is according to Mr Collins taken from the official Washington Redskins online store at www.store.redskins.com. This too is clearly targeted at a US audience, a fact underlined by the use of a US phone number. An individual based in the UK would need to dial 00 before the rest of the number in order to get through. For that reason, we submit that, as should be the case with page 2, only a very low degree of significance should be given to this piece of evidence.

Page 4 of Exhibit MCL 1 is, as with pages 2 and 3, only an extract of a webpage, shown in isolation from its context on that page and without any date reference. According to Mr Collins, this is another piece of evidence taken from the Washington Redskins official online store, which we have demonstrated is US-targeted. It is not good evidence of reputation in the UK.

In terms of the two "more independent" pieces of evidence, which are from media sources, each has its limitations. The CBS extract is clearly targeted at a US audience, with CBS being well known as a US media organisation. The other piece of media

evidence, i.e. the extract from the Evening Standard, does not even refer to or use the word "SKINS" and therefore carries very little weight. It is worth us highlighting then that the Applicant has not been able to adduce a single piece of evidence demonstrating that the Washington Redskins team is associated in the UK with the word "SKINS". This is because it is not.

[...]

We suppose that the Applicant's intention in submitting its evidence has been to try to demonstrate that its use of the sign SKINS has been such that it has generated sufficient goodwill and consumer recognition that members of the relevant public have come to associate the sign SKINS with the Applicant or with the Washington Redskins American football team and its merchandise (specifically apparel). The threshold the Applicant would need to attain in terms of breadth and depth of use in order to justify registration in the face of our client's own registrations would, in our view, be extremely high. We have highlighted in this letter both the paucity of that evidence and that there are a number of other serious flaws and weaknesses in it. We do not believe that the evidence reaches anywhere near the threshold that would be required in order to justify registration of the Application.

[...]”

23. **The Opponent’s evidence in chief** runs to 300 pages, and I give below an overview of how it explains to what extent the Opponent has, prior to 24 May 2016³, used the mark under Registration A,⁴ which is described in the witness statement as “the SKINS Trade Mark”.
24. The evidence presented comprises a witness statement by Benjamin Fitzmaurice, dated 6 February 2017, together with Annexures BF 1 – BF 77. The witness statement claims to show that the Opponent has built a strong reputation in the United Kingdom marketplace in relation to goods and services in classes 10, 25, 28, 35.⁵ Benjamin Fitzmaurice has held the position of General Counsel for the SKINS group of companies (“the company”) for around 7 years. He states that he is well versed in the business activities of the company,

³ (being the date on which the Applicant applied for its mark)

⁴ which is also of course the mark under Registration B

⁵ See Annex to this decision.

particularly the trade marks under which the company's goods and services are provided. He provides background context by explaining that the company stems from the determination in 1996 of an Australian physiologist and ski enthusiast to create a product to help him ski for longer periods.

"After consultation with a number of experts, including experts at NASA, the product was created. The products sold by my Company are known as compression garments. Compression garments are garments which are adapted to create a controlled gradient compressive force on the body of the wearer. The aim of the compression garment is to enhance blood circulation which in turn supplies more oxygen to muscles so that they work harder for a longer period of time. The process enhances recovery and enables the wearer of the compression product to recover faster."

25. Mr Fitzmaurice states that products bearing the SKINS trade mark were sold in Europe (including the United Kingdom) from 2002 and that the company "also sells sporting and athletic wear and base layer garments and supports for wear during sport and athletic activities as well as general use."
26. The witness statement notes that the Opponent has been asked to provide evidence of use in relation to Registration A.⁶ Since it relies on Registration A only in relation to class 25, it is only in relation to those goods that proof of use is required.
27. The exhibits show the mark under Registration A applied to packaging (Annexure BF-5). The context, date and contents of that packaging are not entirely clear, but other exhibits, such as the website printouts at Annexure BF-6⁷ show the mark applied prominently to clothing, including athletic tights and long-sleeved tops – and Annexure BF-6 is identifiably from the website of startfitness.co.uk and the printouts include the date 31 January 2013.
28. Other exhibits show a wider range of clothing under the mark including:
 - caps and visors (Annexure BF-7, where prices are given in Euros, but it is not clear whether the items are for sale within the relevant period);
 - men's and women's tights and socks on Amazon.co.uk (Annexure BF-17);

⁶ European Union Trade Mark Registration No. 005310511 for SKINS and S Device in Classes 10, 25, 28 and 35, filed on 13 September 2006 ("the SKINS Trade Mark")

⁷ See Annexures BF-6, BF-7 and BF-17.

- Annexure BF-19 shows a runner in a t-shirt that does not appear to be skin tight and which appears to bear the S SKINS mark. The photo appears to be on a print out of a web page from probikekit.co.uk and sits above a heading indicating SKINS Autumn Winter 2016 clothing collection;
 - Annexure BF-23, which is a printout from zalando.co.uk showing clothing items by SKINS including sports jackets and sports sleeves; and
 - Annexure BF-27, which is a printout from the.hut.com showing SKINS tops and vests, “women’s booty shorts” and sports bra/tops.
 - Annexure BF-25 shows the mark applied to a crop top and to half-tights for sale on the John Lewis website.
29. Products prominently featuring the SKINS trade mark are said to be sold in over 2700 retail stores in Europe and the annexures list details from www.skins.net of retailers who sell products under the mark in France, Germany, Spain, Italy and elsewhere. By way of example, the evidence identifies numerous specific outlets all across Germany.
30. The witness states that a significant reputation has been built in the United Kingdom in relation to Registration A for goods and services in classes 10, 25 and 35.⁸ The evidence refers to 636 retail stores in the UK that sell products under the mark, including stores across England, Scotland and Wales. Many examples are specified including well-known outlets such as Lillywhites, Run and Become, Sports Direct, JD Sports, Surf Dome and Rugby Heaven. There is much evidence⁹ to back up the solidity of the information on its retailer base, including printouts from various websites such as John Lewis and Amazon (co.uk) showing and naming the products, with prices in pounds sterling.
31. The witness statement includes sales figures for products bearing the mark under Registration A from. In the UK those figures range from just under three million pounds sterling to over four and half million pounds sterling; and in the rest of Europe, from nearly six million Australian dollars, to over nineteen million Australian dollars.
32. The witness statement states that the global marketing budget and spend is between 10%-15% of the company’s global revenue. It records the amount of money spent on advertising,

⁸ See Annex to this decision.

⁹ See Annexures BF-16 – BF-36

marketing and promoting the SKINS trade mark in the EU (including the UK) as ranging from nearly one million Australian dollars in 2008 to over two and a half million by 2016. Annexures give examples of advertisements used by the Opponent, including in the UK, where the relevant mark is clearly visible and in one instance appears in association with the team badge for Stoke City football club.

33. The witness explains that as part of its strategy to ensure its trade mark is made known to the consuming public the company has sponsored a number of teams and athletes in Europe, including, but not limited to Irish professional golfer Rory McIlroy; PGA UK (golf) and English cricketer Paul Collingwood. From 2010 – 2017 the Opponent has also been a “valued partner” of the Australian Rugby Union Team, the Wallabies, who compete in the Rugby World Cup and an annual European Spring Tour. Photos and other documents¹⁰ are included to verify such athletic endorsements.

34. The witness states that “the SKINS Trade Mark is also advertised on various social media sites around the world which contributes to its strong reputation ... Annexure BF-77 are print-outs of the SKINS Twitter Pages from Great Britain and Ireland.” I note that the printout shows the SKINSGB Twitter account was established in November 2009 and has 8614 followers. Annexure BF-76 consists of print-outs of reviews posted from consumers in the United Kingdom. I note that the positive reviews on scottishrugbyblog.co.uk are dated January 17 2015 and that they include the relevant trade mark.

35. The witness statement concludes:

“The SKINS Trade Mark is well-known in the United Kingdom marketplace and has a strong reputation in relation to sports and athletic clothing, compression garments and related sporting items. When consumers think of sports and athletic clothing, compression garments and related sporting items, they think of my Company and the related SKINS Companies. ... the evidence outlined above of the strong reputation of my Company's SKINS Trade Mark in the United Kingdom marketplace proves that consumers in the marketplace will be confused between the Applicant's SKINS trade mark and my Company's SKINS Trade Mark.”

¹⁰ See Annexures BF-44 – BF-70

PROOF OF USE

36. The Opponent must show that the earlier mark under Registration A has been put to genuine use in relation to the registered goods on which it relies during the 5 years up to the date when the Applicant's mark was published for opposition purposes. The 'relevant period' for proving use in this case is therefore 18 June 2010 to 17 June 2016.
37. Section 6A of the Act states that the use conditions are met if:
- “ ... (3) (a) within the period of five years ending with the date of publication of the application the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or
- (b) the earlier trade mark has not been so used, but there are proper reasons for non- use.
- (4) For these purposes -
- (a) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and
- (b)
- (5) In relation to a European Union trade mark or international trade mark (EC), any reference in subsection (3) or (4) to the United Kingdom shall be construed as a reference to the European Union.
- (6)”
38. Section 100 of the Act makes it clear that the burden of proof falls on the Opponent to show that it has used its mark. I must therefore determine whether the submitted evidence by the Opponent is sufficient to show that Registration A has been put to genuine use during the relevant period in relation to all of the registered goods on which the Opponent relies.
39. This determination must be made in light of the numerous principles established in relevant case law. The case law on genuine use of trade marks was summarised by Arnold J in *The*

London Taxi Corporation Limited v Frazer-Nash Research Limited & Anor, [2016] EWHC 52, who said as follows:

“217. In *Stichting BDO v BDO Unibank Inc* [2013] EWHC 418 (Ch), [2013] FSR 35 I set out at [51] a helpful summary by Anna Carboni sitting as the Appointed Person in *SANT AMBROEUS Trade Mark* [2010] RPC 28 at [42] of the jurisprudence of the Court of Justice of the European Union (CJEU) in Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159 and Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759 (to which I added references to Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237). I also referred at [52] to the judgment of the CJEU in Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], [2013] ETMR 16 on the question of the territorial extent of the use. Since then the CJEU has issued a reasoned Order in Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089] and that Order has been persuasively analysed by Professor Ruth Annand sitting as the Appointed Person in *SdS InvestCorp AG v Memory Opticians Ltd* (O/528/15).

[218] ...

219. I would now summarise the principles for the assessment of whether there has been genuine use of a trade mark established by the case law of the Court of Justice, which also includes Case C-442/07 *Verein Radetsky-Order v Bunderversammlung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I-9223 and Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], [2014] ETMR 7, as follows:

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

- (2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29].
- (3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29].
- (4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].
- (5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].
- (6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use:

Ansul at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56].

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

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

40. Since Registration A is a registered European Union Trade Mark, it is also necessary to bear in mind judicial comment in leading cases that have considered the geographic extent of the use required to be shown.

41. In *Leno Merken BV v Hagelkruis Beheer BV*, Case C-149/11, the Court of Justice of the European Union noted that:

“36. It should, however, be observed that the territorial scope of the use is not a separate condition for genuine use but one of the factors determining genuine use, which must be included in the overall analysis and examined at the same time as other such factors. In that regard, the phrase ‘in the Community’ is intended to define the geographical market serving as the reference point for all consideration of whether a Community trade mark ¹¹has been put to genuine use.”

And

¹¹ A Community trade mark is effectively the former name for a European Union Trade Mark.

“50. Whilst there is admittedly some justification for thinking that a Community trade mark should – because it enjoys more extensive territorial protection than a national trade mark – be used in a larger area than the territory of a single Member State in order for the use to be regarded as ‘genuine use’, it cannot be ruled out that, in certain circumstances, the market for the goods or services for which a Community trade mark has been registered is in fact restricted to the territory of a single Member State. In such a case, use of the Community trade mark on that territory might satisfy the conditions both for genuine use of a Community trade mark and for genuine use of a national trade mark.”

And

“55. Since the assessment of whether the use of the trade mark is genuine is carried out by reference to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark serves to create or maintain market shares for the goods or services for which it was registered, it is impossible to determine a priori, and in the abstract, what territorial scope should be chosen in order to determine whether the use of the mark is genuine or not. A *de minimis* rule, which would not allow the national court to appraise all the circumstances of the dispute before it, cannot therefore be laid down (see, by analogy, the order in *La Mer Technology*, paragraphs 25 and 27, and the judgment in *Sunrider v OHIM*, paragraphs 72 and 77).”

42. The Court in *Leno Merken* held that:

“Article 15(1) of Regulation No 207/2009 of 26 February 2009 on the Community trade mark must be interpreted as meaning that the territorial borders of the Member States should be disregarded in the assessment of whether a trade mark has been put to ‘genuine use in the Community’ within the meaning of that provision.

A Community trade mark is put to ‘genuine use’ within the meaning of Article 15(1) of Regulation No 207/2009 when it is used in accordance with its essential function and for the purpose of maintaining or creating market share within the European Community for the goods or services covered by it. It is for the referring court to assess whether the conditions are met in the main

proceedings, taking account of all the relevant facts and circumstances, including the characteristics of the market concerned, the nature of the goods or services protected by the trade mark and the territorial extent and the scale of the use as well as its frequency and regularity.”

43. In summary, therefore, whether the use shown is sufficient for this purpose will depend on whether there has been real commercial exploitation of the EUTM, in the course of trade, sufficient to create or maintain a market for the goods/services at issue in the Union¹² during the relevant five year period. And in making the required assessment I must consider all relevant factors, including:

- i) the scale and frequency of the use shown;
- ii) the nature of the use shown;
- iii) the goods and services for which use has been shown;
- iv) the nature of those goods/services and the market(s) for them;
- iv) the geographical extent of the use shown.

44. I also take account of judicial comment as to probative and evidential issues in such cases. In *Awareness Limited v Plymouth City Council*¹³, Mr Daniel Alexander Q.C. sitting as the Appointed Person stated that:

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

¹² I note too the review by Arnold J. of the case law since the *Leno* case in *The London Taxi Corporation Limited v Frazer-Nash Research Limited & Ecotive Limited*, [2016] EWHC 52

¹³ Case BL O/230/13

proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public.”

45. In *Dosenbach-Ochsner*¹⁴, Mr Geoffrey Hobbs Q.C., sitting as the Appointed Person stated that:

“22. When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can legitimately be maintained, the decision taker must form a view as to what the evidence does and just as importantly what it does not ‘show’ (per Section 100 of the Act) with regard to the actuality of use in relation to goods or services covered by the registration. The evidence in question can properly be assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use.”

46. I find that the Opponent’s evidence clearly shows actual use of the mark in respect of goods that are covered by its registration in class 25 in the EU, which is more than merely token and which is by way of real commercial exploitation of the mark on the market. There is a good deal of evidence in relation to its retail presence in many stores across numerous member states of the EU. The evidence easily satisfies issues of the geographical extent of use. The figures provided as to sales figures and marketing spend throughout the relevant period are reasonably substantial, notwithstanding that I saw no specific information as to market share. Although not all exhibits include dates that would enable ready identification that they show use within the relevant period, others do, and on balance I find that the evidence is sufficient to show genuine use of Registration A in the five years leading up to 17 June 2016.

47. My next step is to decide whether the Opponent’s use entitles it to rely on all of its claimed goods, or on only some of those goods. Where proof of use of an earlier mark is validly requested and the submitted evidence is sufficient only for part of the goods listed, the earlier mark is deemed registered for only those services and any analysis as part of an opposition is consequently restricted.

¹⁴ *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL O/404/13

48. In *Euro Gida*¹⁵, Mr Geoffrey Hobbs Q.C. sitting as the Appointed Person explained that “... *fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned.*”
49. *Euro Gida* was a case based on revocation, but its principles for shaping a fair specification for the purposes of genuine use apply also to opposition cases. Similarly, in *Titanic Spa*¹⁶ Mr Justice Carr summed up the law relating to partial revocation as follows.

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

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

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

vi) A trade mark proprietor should not be allowed to monopolise the use of a trade mark in relation to a general category of goods or services simply because he has used it in relation to a few. Conversely, a proprietor cannot reasonably be expected

¹⁵ *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10.

¹⁶ *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch)

to use a mark in relation to all possible variations of the particular goods or services covered by the registration. *Maier v Asos Plc* [2015] EWCA Civ 220 ("Asos") at [56] and [60].

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

50. I note the contention in the witness statement of Benjamin Fitzmaurice that the Opponent has a reputation in relation to sports and athletic clothing and compression garments. I find that the evidence demonstrates use in relation to goods of that description. Such items bearing the relevant mark appear prominently within many of the exhibits. The sales figures provided are not broken down against individual items, but I am satisfied on the evidence that the Opponent has used the mark under Registration A at least in relation to the following items of clothing: long and short tights (unisex and for men and women); long- and short-sleeved tops; socks, tight shorts and vest and crop tops/sports bras. Almost all appear to be compression garments, but the evidence includes jackets and t-shirts which do not appear to be compression garments.¹⁷ There is also evidence of use of the mark in relation to caps and visors.

51. I need to consider what a fair specification would be to reflect the use I have found to be proven. I note that in the *Thomas Pink* case¹⁸, Birss J expressed his judgment that “the term “clothing” is a sufficiently clear and precise category to justify its employment in the specification of goods.” He also made clear that the real question to be considered in these circumstances is whether “clothing” is a fair description having regard to the use actually

¹⁷ For example, Annexure BF-23 shows several garments on the zalando.co.uk described as sports jackets which do not appear to be compression garments. The jackets are labelled as being the Opponent’s goods and in one image the S SKINS mark is visible. Similarly, Annexure BF-77 includes an image on its Twitter account of a jacket that does not appear skin tight and which bears the SSKINS mark.

¹⁸ *Thomas Pink v Victoria’s Secret UK Limited* [2014] EWHC 2631 (Ch), paragraph 74

made of the EUTM by the Opponent. In the Thomas Pink case, Birss J stated at paragraph 76 that

“... The thrust of the defendant’s case is that in reality, apart from socks, the claimant’s use has been limited to shirts and a few other items worn on the upper body such as polo shirts, jumpers and cardigans. If indeed that was a fair way to characterise the goods which have been sold by the claimant then there would be more force in the defendant’s submission [that the term “clothing” would not be appropriate or fair]. However the claimant has used the mark on goods including trousers, dresses and skirts, which all cover at least part of the wearer’s legs. The claimant’s goods also include jackets and pyjamas, which are different kinds of garments from a shirt or jumper. The goods also include boxers/underwear, another different kind of garment. The goods include a range of accessories to be worn such as ties, scarves, handkerchiefs, gloves and belts. The goods include items which are casual as well as formal.

77 I find that the range of goods in relation to which the claimant has put the CTM to genuine use, both in terms of the range of kinds of item and range of styles (formal to casual) justifies a registration in Class 25 based on the description “clothing”. A narrower classification based on individual items would not be fair.”

52. Based on the evidence in the present case, and in the absence of specific submissions to the contrary, I find that a fair specification would be “sports and athletic clothing and compression garments.” I see no evidence in relation to footwear, with the possible exception of socks (which may anyway be considered as within the scope of “sports and athletic clothing and compression garments clothing”). In terms of headgear, there is some limited evidence of caps and visors being for sale under the mark, but nothing beyond those items.
53. Consequently, the Opponent may rely on Registration A as a basis of its claim under section 5(2)(b) of the Act in relation to the following goods in class 25: “sports and athletic clothing and compression garments, caps and visors.”

DECISION

54. The Opponent's claim is based on section 5(2)(b) of the Act, which states:

"... A trade mark shall not be registered if because-

... (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

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

55. The following decisions of the EU courts provide the principles to be borne in mind when considering section 5(2)(b) of the Act:

Sabel BV v Puma AG, Case C-251/95;

Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc, Case C-39/97;

Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V. Case C-342/97;

Marca Mode CV v Adidas AG & Adidas Benelux BV, Case C-425/98;

Matratzen Concord GmbH v OHIM, Case C-3/03;

Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH, Case C-120/04;

Shaker di L. Laudato & C. Sas v OHIM, Case C-334/05P; and

Bimbo SA v OHIM, Case C-591/12P.

56. The principles are that:

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

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect

picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of the goods and services

57. The Opponent relies on three earlier trade marks to oppose the Applicant's goods and services. Registration A is relied on to oppose the Applicant's goods in class 25 and proceeds on the basis of the fair specification that I set out above. Registration C is also relied on to oppose the Applicant's goods in class 25. Registration B is relied on to oppose the Applicant's services in class 41.

58. I shall first compare the parties' goods, which are set out below.

Applicant's goods in class 25
<i>Clothing; Footwear; Headgear; Fleece tops and bottoms; Caps; Knitted hats; T-shirts; Shirts; Turtlenecks; Sweatshirts; Shorts; Tank tops; Sweaters; Trousers; Jackets; Golf shirts; Jerseys; Wristbands; Scarves; Gloves; Ties; Cloth bibs; Sleepwear; Bathrobes; Pyjamas; Swimwear; Underwear; Socks; Sneakers and training shoes; all the aforementioned goods being merchandise for the promotion of an American football team and none being compression clothing.</i>
Opponent's goods under Registration A based on a fair specification in class 25
<i>Sports and athletic clothing and compression garments, caps and visors</i>
Opponent's goods under Registration C
<i>Clothing, footwear, headgear; including clothing for men, women, children and babies; clothing for sports including cricket, cycling, football, golf, gymnastics, rugby and skiing; clothing for motorists and travellers; compression garments; underwear including compression underwear; outerwear, overcoats, leisure clothing; jackets; jumpers; pullovers; sports jerseys; vests; shirts; T-shirts; pants; padded clothing; including padded clothing for men, women, children and babies; padded clothing for sport; trousers; shorts; pyjamas; dressing gowns; bath robes; swimwear including bathing trunks and bathing suits; thermal clothing; wetsuits; waterproof clothing; wrist bands;</i>

shoes and boots including football shoes and boots, gymnastic shoes, other sports shoes and boots; socks, stockings, tights, including, compression socks and stockings; bandannas and headbands.

59. I will begin my comparison analysis with the Opponent's fair specification of goods in relation to **Registration A**.
60. In *Gérard Meric v Office for Harmonisation in the Internal Market (OHIM)*, the General Court stated¹⁹ that goods can be considered as identical when the goods designated by the earlier mark are included in a more general category designated by the trade mark application, or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark.
61. I find that the Opponent's "*sports and athletic clothing*" falls within the more general category of "*Clothing*" in the Applicant's specification. Those items are therefore identical on the basis of the principle in *Meric*.
62. I find that the reference in the Applicant's (revised) specification, to "*all the aforementioned goods being merchandise for the promotion of an American football team*", has no effective limiting significance in this context.
63. The Applicant also stipulates that none of its goods are compression clothing. Had I found that the Opponent's evidence of use in respect of class 25 goods under Registration A only warranted a fair specification limited to compression clothing, the Applicant's stipulated exclusion would have more significance. However, since I have found that a fair specification extends to include sports and athletic clothing, the Applicant's exclusion of compression garments does not disrupt my finding that the Opponent's protection for sports and athletic clothing gives rise to identity with the Applicant's specification of "clothing."
64. The Applicant lists specific items of clothing, namely: "Fleece tops and bottoms; T-shirts; Shirts; Turtlenecks; Sweatshirts; Shorts; Tank tops; Sweaters; Trousers; Jackets; Golf shirts; Jerseys; Sleepwear; Bathrobes; Pyjamas; Swimwear; Underwear; Socks." Those

¹⁹ Case T- 133/05 at paragraph 29 of that judgment.

specific items are “clothing”, and I have already found identity between the goods on the basis of clothing. However, it cannot be said that all of those specified items of clothing could be considered identical to sports and athletic clothing, although many of them could be so considered. I find that sports and athletic clothing may be considered a more general category that could, in various sports and athletic contexts, include the following: “Fleece tops and bottoms; T-shirts; Shirts; Turtlenecks; Sweatshirts; Shorts; Tank tops; Sweaters; Trousers; Jackets; Golf shirts; Jerseys; Swimwear; Underwear; Socks.” However, sports and athletic clothing cannot be considered to include “Sleepwear; Bathrobes; Pyjamas”, so those items are not identical.

65. The Applicant’s specification includes “headgear”, which is a more general category that includes the Opponent’s protected goods “caps and visors”. Those goods are therefore identical. The Applicant also specifies caps, which are clearly identical.

66. The above account finds that the majority of items within the Applicant’s specification are identical with the Opponent’s protected goods under Registration A. The remaining goods to be assessed for similarity are: *Footwear; Wristbands; Scarves; Gloves; Ties; Cloth bibs; Sleepwear; Bathrobes; Pyjamas; Sneakers and training shoes.*

67. In Canon, Case C-39/97, the CJEU at paragraph 23 of its judgment states that:

“In assessing the similarity of the goods all the relevant factors relating to those goods .. themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary”.

68. And in *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the GC stated that “complementary” means:

“...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking.”

69. In the *Treat* case, [1996] R.P.C. 281 Jacob J. (as he then was) identified that relevant factors for assessing similarity include the respective users of the respective goods, the physical nature of the goods, the respective trade channels through which the goods reach the market and, in the case of self-serve consumer items, where in practice they are likely to be found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves.

Footwear; Sneakers and training shoes

70. I find some similarity between the Opponent's *sports and athletic clothing* and the Applicant's *sneakers and training shoes*, and since the latter items are a form of footwear I also find a degree of similarity with *footwear*. They share the same respective users in that those who wear sports and athletic clothing will usually also wear footwear, especially sneakers and training shoes. Since shops, such as sports shops and supermarkets, very often sell all such goods, there is commonality in the trade channels through which the goods reach the market. The goods also share some similarity in nature, purpose and method of use, in that they are all worn to cover the body, providing protection and comfort. I find that sports and athletic clothing are similar to *Sneakers and training shoes* to at least a medium degree. I find *footwear* to be similar to a low to medium degree.

Wristbands; Gloves

71. I find that *Wristbands; Gloves* are clothing accessories that share some similarity with *sports and athletic clothing*. They share the same respective users in that athletes and sports people often wear wristbands to wipe perspiration (e.g. tennis) or gloves for grip or warmth (e.g. golf or football). I also note that the evidence shows use in relation to "compression sleeves." Since sports shops tend to sell all such goods, there is commonality in the trade channels. The goods also share some similarity in nature and method of use in that they are all worn on the body. I find that sports and athletic clothing and *wristbands and gloves* are goods similar to at least a medium degree.

Scarves

72. Scarves are clothing accessories that are commonly worn or waved by fans at sporting events, and may be emblazoned in tribute to a particular team. However, I do not find any especial connection to athletes or sports participants, rather than with a sporting fan base. They have different users and I do not consider scarves to be in competition with sports and athletic clothing and nor do I consider those goods complementary. Sports shops may sell scarves, so there are shared channels of trade and since they are worn on the body, they are at a general level similar in nature, purpose and method of use. Overall, I find that scarves are similar to sports and athletic clothing to a low to medium degree.

Ties

73. Ties are clothing accessories, with no especial connection to athletes or sports people, rather are associated with formal or business wear. They are not in competition with sports and athletic clothing, nor are those goods complementary. They have different channels of trade and except at the very general level of being goods that are worn on the body, I find that they are not similar in nature, purpose or method of use. Overall, I find that ties are similar to sports and athletic clothing only to a very low degree.

Cloth bibs

74. *Oxforddictionaries.com* defines a bib as “a piece of cloth or plastic fastened round a child’s neck to keep its clothes clean while eating” and also as “a loose-fitting garment worn on the upper body for identification, especially by competitors and officials at sporting events.” On the basis of the latter definition I find that there is some similarity between cloth bibs and sports and athletic clothing, in that they are both used by athletes and sports people so the users are the same and, as they are all worn on the body, they have the same method of use. A cloth bib would presumably be worn over sports and athletic clothing, and I find that the latter is important for the use of the former in such a way that customers may think that the responsibility for those goods lies with the same undertaking. And since sports shops may sell all such goods, there is commonality in the trade channels. I find that sports and athletic clothing and *cloth bibs* are similar to at least a medium degree.

Sleepwear; Bathrobes; Pyjamas

75. *Sleepwear; bathrobes; pyjamas* have no particular connection to athletes or sports people or sporting or. They have different channels of trade, are not in competition with sports and athletic clothing, and nor are those goods complementary. There is some similarity at a very general level nature in terms of nature, purpose or method of use as they are all goods that are worn on the body, for comfort, warmth, decency etc. Overall, I find that *sleepwear; bathrobes; pyjamas* are similar to sports and athletic clothing only to a very low degree.
76. Since I have found some of the Opponent's goods protected on a fair specification to be similar only to a medium or lower degree, and in case there is any doubt as to the form in which I have framed a fair specification for Registration A based on the evidence of use, there is good reason to continue to a comparison analysis of goods in relation to **Registration C**. Since Registration C includes *Clothing, footwear, headgear; including clothing for men, women, children and babies* I find that those general categories, operating at large, achieve identity with all of the Applicant's goods.
77. Having compared the parties' goods, I turn now to compare the respective services.

Opponent's services in class 41 under Registration B

Education services including educating consumers on the subjects of anti-corruption, anti-doping and anti-drugs in sport, the value of sportsmanship and the spirit of competition; sporting and cultural activities; entertainment; providing information, including online, about education, training, entertainment, sporting and cultural activities; organisation of sporting events; organising charitable fundraising events; production of sporting events; sporting information; web- (blogs); information services relating to sports; organising of promotion for sporting events; sports education services; health education in relation to sports; providing online electronic publications and videos (non-downloadable); training services.

Applicant's services in class 41

Education and entertainment services in the nature of professional American football games and exhibitions relating thereto; Providing sports and entertainment information relating to American football via a global computer network or a commercial on-line computer service or by cable, satellite, television and radio; Arranging and conducting athletic competitions, namely professional American football games and exhibitions; American football fan club services; Production of radio and television programmes relating to American football; Live shows featuring American football games, Publication of texts concerning American football other than publicity texts; Organisation of a professional American football team.

78. In comparing the similarity of the respective services, I am mindful of the words of Floyd J. (as he then was) in *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), where he stated that:

"... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise ... Nevertheless the principle should not be taken too far ... a straining of the relevant language ... is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

This principle holds true for services as well as for goods.

79. I also bear in mind the principle from *Meric*, which also holds true for services as well as for goods. I find that the Opponent's specification for Registration B contains more general categories that include almost all of the services designated by the trade mark application, or else there are services within the Applicant's specification which include those in Registration B. Those respective services may therefore be considered identical. The table below illustrates how I find identity in this way, or else why there is similarity on other bases.

Applicant's services	Opponent's services under Registration B
<p><i>Education and entertainment services in the nature of professional American football games and exhibitions relating thereto;</i></p>	<p><i>Education services...; entertainment</i></p>
<p><i>Providing sports and entertainment information relating to American football via a global computer network or a commercial on-line computer service or by cable, satellite, television and radio;</i></p>	<p><i>providing information, including online, about education, training, entertainment, sporting and cultural activities;</i></p>
<p>Since the Opponent's information services about sporting and entertainment activities are not limited to online, they include other media, such as cable, satellite, television and radio.</p>	
<p><i>American football fan club services;</i></p>	<p><i>information services relating to sports; organising of promotion for sporting events; sporting and cultural activities</i></p>
<p><i>Information services relating to sports fall within the American football fan club services, so may be considered identical on the basis of Meric.</i></p>	
<p><i>Arranging and conducting athletic competitions, namely professional American football games and exhibitions;</i> <i>Live shows featuring American football games</i></p>	<p><i>organisation of sporting events; sporting and cultural activities information services relating to sports;</i></p>

<p>Organisation of a professional American football team</p>	<p>organisation of sporting events; sporting and cultural activities</p>
<p>Sporting activities is a very wide category, which I find may include <i>Organisation of a professional American football team</i>. I also find that <i>Organisation of a professional American football team</i> and <i>Sporting activities</i> and <i>organisation of sporting events</i> are complementary in the sense that they are mutually important so that customers may think that the same undertaking is responsible for both (for example a team playing an exhibition match). The nature and purpose of <i>Organisation of a professional American football team</i> also significantly overlap with <i>organisation of sporting events</i> and <i>sporting and cultural activities</i>. They therefore at least share a high degree of similarity.</p>	
<p><i>Production of radio and television programmes relating to American football</i></p>	<p><i>production of sporting events; information services relating to sports;</i></p>
<p>Sporting events are often packaged for television or radio, so production of sporting events may include the associated media coverage. Radio and television programmes are a common way of providing information services about sports, so the latter could include the former and vice versa. In any event similarity may be found between such services to at least a medium degree on the basis of complementarity in the Boston sense, and that they share the same purpose (information and entertainment).</p>	
<p>Publication of texts concerning American football other than publicity texts</p>	<p><i>providing online electronic publications; web- (blogs); sporting information; information services relating to sports;</i></p>

The average consumer and the purchasing process

80. It is necessary to determine who is the average consumer for the respective services and how the consumer is likely to select the services.

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

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect

... the relevant person is a legal construct and ... the test is to be applied objectively by the court from the point of view of that constructed person. The word “average” denotes that the person is typical....”

82. It must be borne in mind that the average consumer’s level of attention is likely to vary according to the category of goods or services in question (*Lloyd Schuhfabrik Meyer, Case C-342/97*).

83. I find that the average consumer for the parties’ goods will be a member of the general public. Clothing items are everyday goods and given the extent to which there is public engagement with physical exercise in myriad forms, this is also true of more specialised clothing like compression garments.


84. I find that the parties’ services will be used by various constituents. For example, the general public may engage with *sporting and cultural activities; entertainment; fan club services, sports education services* and may attend live shows or take part in athletic competitions. Other services will engage consumers in a professional capacity. For example: *Arranging and conducting athletic competitions and organising charitable fundraising events* may be services used by corporate sponsors or sporting bodies; and services such as *Production of radio and television programmes relating to American football; Providing sports and entertainment information relating to American football via a global computer network or a*

commercial on-line computer service or by cable, satellite, television and radio will likely be services used by media or communications professionals.

85. Overall, I find that the average consumer of the goods will pay no more than a reasonable level of attention when purchasing the goods at issue. The purchasing act will be visual as the mark will likely be seen on the items of clothing, or their packaging, websites or in advertising materials. Word of mouth recommendations may also play some part in the selection process, so the way the marks sound is also relevant.
86. I find that the average consumer of the services will pay at least a reasonable level of attention when choosing a provider. This is on the basis that where the consumer is a member of the general public they would almost by definition have a particular interest in the subject of the offered services bringing with it an elevated level of attention. And where the consumer is a professional accessing services one may expect at least a reasonable level of attention to arise out of professional due diligence and the greater costs of the sorts of services accessed. The purchasing act for the services will be visual as the mark will likely be seen on websites or in advertising materials. Word of mouth recommendations may also play some part in the selection process, so the way the marks sound is also relevant.

Comparison of the marks

87. Both parties made submissions relating to the similarity of the respective marks. The Opponent's submissions within its evidence in reply include the following points:

"We submit that the Sign and the  registrations [Registrations A and B] on which the Opposition is based are highly similar. The additional "S" element is simply a logo feature that picks out and highlights the first letter of the dominant part of the mark, the word "SKINS". Aurally and conceptually, the marks are identical - the "S" would not be sounded by an average consumer when asked to read the mark out. While the Sign is less similar to the TEAM SKINS mark, it is still similar and, we submit, still quite clearly leads to a likelihood of confusion, with the word "TEAM" being a more descriptive and less dominant part of the mark.

For its part, the Applicant argues that *“the Opponent’s stylised S SKINS mark [Registrations A and B] is significantly stylised with a repetition of the initial letter of its verbal content. The third letter of the verbal element of the Opponent’s Stylised Mark is not clearly a letter ‘K’ and it is ambiguous as to whether the verbal elements are ‘SS<INS’, or ‘SSKINS’ as claimed by the Opponent. In short words, small differences can significantly affect the overall impression given by the mark. The doubling of the initial letter has significant distinguishing effect.”*

“... Concerning the Opponent’s TEAM SKINS word mark, the presence of two words renders the earlier mark visually, phonetically and conceptually distinct from the Applicant’s mark. It is usually the case that the first element of a mark is the part that is most commonly remembered by a consumer suffering imperfect recollection.”

88. It is clear from *Sabel* that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union (CJEU) stated in *Bimbo* that: *“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”*
89. It would therefore be wrong to dissect the trade marks artificially, but it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features that are not negligible and therefore contribute to the overall impressions created by the marks. The marks to be compared are:



SKINS

TEAM SKINS

90. The overall impression of the Applicant's mark rests simply in the word SKINS, which is presented in upper case.
91. It is convenient to consider first the Opponent's mark under **Registrations A and B**. It is a figurative mark that comprises a stylised "S" tightly enclosed in a near complete circle, which device sits immediately to the left of what appears to be the word "skins", rendered in the same stylised font and same size font as the "s" in the device. Whether the word is in upper or lower case is not entirely clear: the letters are of uniform height; the letter "i / l" is not dotted; and the letter "n" is flat-topped and not rendered in conventional upper case. The first "s" of skins and the "k" are joined at their tops, and the "n" and the final "s" are joined at their bottoms. The lower half of the upright leg of the k is absent, but despite that absence and the conjoined letters I find that the mark clearly presents as the word "skins."
92. The circled "s" device is distinctive and not negligible, but I agree with the Opponent that *"the additional "S" element is simply a logo feature that picks out and highlights the first letter of the dominant part of the mark, the word "SKINS".* Since the word skins is easily read and since it occupies the great majority of the mark, I find that it plays the dominant role in the overall impression of the mark.

Visual similarity

93. The Applicant's mark is seen to comprise exclusively of the word "skins" and the same word is the more prominent aspect of the Opponent's mark under Registrations A and B. In the

Applicant's mark the word "skins" is plainly presented, whereas the word is significantly stylised in the Opponent's mark. The Opponent's mark includes a circled s logo that has no counterpart in the Applicant's mark. Given the common presence of the word skins, which I have found dominates the Opponent's mark and represents the whole of the overall impression of the Applicant's mark, I find that the respective marks are visually similar to a reasonably high degree.

Aural similarity

94. The Opponent submits that the respective marks are aurally identical because an average consumer, reading aloud the mark under Registrations A and B, would not sound the "S" device. I agree. Both marks would be pronounced simply as the word "skins" so the marks are aurally identical. If I am wrong about that and the average consumer were to vocalise "S" device, I find that the marks are aurally similar to a very high degree.

Conceptual similarity

95. The Opponent submits that the respective marks are conceptually identical. I agree. The word skins is an ordinary English word with a clear meaning, being the plural of skin, whose meanings include "the thin layer of tissue forming the natural outer covering of the body of a person or animal."²⁰ The word may carry other meanings or concepts: – for example, the Applicant has argued that the word is a contracted reference to the Washington Redskins American football team; others may perceive it as a slang word for cigarette papers, or the title of a recently popular teen drama; others may perceive a reference to the social tribe whose typical attire included Dr Martens boots, trouser braces and white shirt. Whatever concept the marks may evoke in the notional average consumer, I find it likely that the same meaning will be attributed to both marks. I find that the presence of the device in the Opponent's mark does not affect the conceptual impact, but if I am wrong about that, I find the marks are conceptually similar to a very high degree.
96. I turn now to the Opponent's mark under **Registration C**. It is a word mark that comprises the words TEAM SKINS in standard characters. Each of the words accounts for around half

²⁰ Oxforddictionaries.com

of the mark and each is more or less distinctive, but I find that the word skins plays a greater role in the overall impression of the mark. I find that this is so on the basis that the usage of the word TEAM within a short phrase such as this, sets up an expectation in the reader as to the nature of that team – in other words the second word is the pay off in the phrase – eg TEAM TRUMP, TEAM OBAMA, TEAM BIEBER etc. I find this to be an exception to the rough rule of thumb principle that the average consumer tends to pay more attention to the opening parts of trade marks.

Visual similarity

97. The word “skins” represents the whole of the overall impression of the Applicant’s mark and I have found that the same word represents the dominant part of the Opponent’s mark under Registration C. Despite the presence of the additional word “team” I find that the respective marks are visually similar to a reasonably high degree.

Aural similarity

98. Despite the presence of the additional word “team”, which the average consumer will voice ahead of the word “skins” in the Opponent’s mark under Registration C, I find that the respective marks are aurally similar to a medium degree.

Conceptual similarity

99. I find that the addition of the word “TEAM” has an effect on the concept discussed above (in relation to conceptual similarity Registrations A and B), by somewhat realigning the focus towards the “team” component – in other words suggesting a group of players forming one side in a competitive game or sport or more broadly a group of people unified in favour of something. Nonetheless, the shared presence of the word “skins” retains some conceptual similarity. Overall I find the Applicant’s mark to be conceptually similar to the mark under Registration C to a medium degree.

Distinctive character of earlier trade mark

100. The distinctive character of an earlier mark must be considered. The more distinctive the earlier mark, either by inherent nature or by use, the greater may be the likelihood of confusion (*Sabel BV v Puma AG*). In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

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

*23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”*

101. **Registrations A and B:** The word “skins” is the predominant component of the mark under the Opponent’s Registrations A and B. It is a word that I have recognised may carry a variety of concepts. I find that the average consumer would most commonly take its meaning to be the plural of the familiar and standard English word “skin” being the thin layer of tissue forming the natural outer covering of the body of a person or animal. Given the nature of the Opponent’s typical goods shown in evidence, I am sure that this is the concept behind the Opponent’s use of the term in relation to such goods, which tend to be close fitting to the body.

102. The Opponent's evidence explained the development of its product and there is a clear allusive reference in the word skins in relation to compression garments. That allusive quality has the effect of reducing the inherent distinctiveness in relation to compression garments. By contrast, in relation to the Opponent's other goods and its services, I find that the mark under Registrations A and B has at least a reasonable level of inherent distinctiveness as it does not contain an element descriptive of those goods or services.
103. The level of distinctiveness of a mark may be enhanced through use. I find the evidence submitted by the Opponent shows a wide usage of the mark in relation to sports and athletic clothing, particularly compression garments. For the purpose of assessing any possible enhancement of distinctiveness it is only evidence of use in the UK that is relevant. Overall, I find that the evidence of use in the UK – which includes sales figures over eight or more years, promotional expenditure and the extent of retail distribution – is sufficient to enhance the distinctiveness of the mark to a degree at least sufficient to offset the diminishing effect of the allusive reference. I therefore find that the mark under Registrations A and B has at least a reasonable level of distinctiveness for all its goods and services, including compression garments.
104. **Registration C:** I find that the mark TEAM SKINS is not directly descriptive of the *clothing, footwear, headgear* goods (at large) for which it is registered. Although the mark's specification includes *clothing for sports* I do not find that the "team" element is sufficiently descriptive to reduce distinctiveness for those goods. The specification also includes "*compression garments; stockings, tights, including, compression socks and stockings; underwear including compression underwear*" and it is possible that the mark could be seen to be at least allusive of those goods. Overall, I find the mark to have a reasonable level of inherent distinctiveness, except in relation to *compression garments; stockings, tights, including, compression socks and stockings; underwear including compression underwear* where I find that TEAM SKINS is distinctive to lower than average level. There is no evidence of use of the mark under Registration C, so there can be no enhancement of any inherent distinctiveness.

Conclusion as to likelihood of confusion

105. I now turn to reach a conclusion as to the likelihood of confusion between the marks if they were used in relation to the goods and services at issue.

106. Confusion can be direct (which in effect occurs when the average consumer mistakes one mark for the other) or indirect (where the average consumer realises the marks are not the same, but puts the similarity that exists between the marks/services down to the responsible undertakings being the same or related). Indirect confusion, was considered by Mr Iain Purvis QC, sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*,²¹ where he noted that:

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

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

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (“26 RED TESCO” would no doubt be such a case)

²¹ Case BL-O/375/10

(b) *where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as “LITE”, “EXPRESS”, “WORLDWIDE”, “MINI” etc.).*

(c) *where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (“FAT FACE” to “BRAT FACE” for example).”*

107. No likelihood of confusion arises where a later mark merely calls to mind the earlier mark (mere association). Sitting as the Appointed Person in *Eden Chocolat*²², James Mellor QC stated as follows:

“81.4 ... I think it is important to stress that a finding of indirect confusion should not be made merely because the two marks share a common element. When Mr Purvis was explaining²³ in more formal terms the sort of mental process involved at the end of his [16], he made it clear that the mental process did not depend on the common element alone: ‘Taking account of the common element in the context of the later mark as a whole.’ (my emphasis).”

108. I make a global assessment of likelihood of confusion that takes account of my findings set out in the foregoing sections of this decision and of the various principles from case law outlined in paragraphs 54 and 55 above.

109. I first give my findings as to a likelihood of confusion on the basis of the mark under **Registrations A and B.**

110. On the basis of a fair specification under Registration A, I have found the following goods to be identical or similar to the Applicant’s goods as summarised in the following table:

²² Case BL O-547-17 *Eden Chocolat be more chocstanza (word & device) v Heirler Cenovis GmbH* (27 October 2017)

²³ In *L.A. Sugar Limited v By Back Beat Inc* Case BL-O/375/10 –above.

Applicant's goods	Degree of similarity with fair specification for Registration A²⁴
<i>Clothing; Headgear; Fleece tops and bottoms; Caps; T-shirts; Shirts; Turtlenecks; Sweatshirts; Shorts; Tank tops; Sweaters; Trousers; Jackets; Golf shirts; Jerseys; Swimwear; Underwear; Socks</i>	Identical
<i>Sneakers and training shoes</i>	At least a medium degree
<i>Wristbands, Gloves</i>	At least a medium degree
<i>Footwear</i>	Less than medium degree
<i>Scarves</i>	Low to medium degree
<i>Ties</i>	Very low degree
<i>sleepwear; bathrobes; pyjamas</i>	Very low degree.

111. I have found identity or else a high degree of similarity between the services specified under the Applicant's mark and Registration B.

112. I have found that the relevant average consumer includes members of the public and professionals, and that the relevant average consumer would pay no more than a reasonable level of attention when purchasing the goods at issue, but at least a reasonable level of attention in relation to the services at issue. Visual considerations predominate in the purchasing process, but aural considerations are also relevant.

113. I have found that the Applicant's mark and the mark under Registration A and B are visually similar to a reasonably high degree, aurally and conceptually identical or else aurally and conceptually similar to a very high degree. I have found that the earlier mark under Registrations A and B has at level least a reasonable of distinctiveness for all its goods and services.

114. I note the contention of the Opponent that "*the familiarity of the relevant consumer in the UK with the contraction, SKINS, will render confusion with the Opponent's Stylised Mark and the Opponent's TEAM SKINS mark exceedingly unlikely in the UK market.*"

115. I accept that the Washington Redskins, may sometimes be contracted to "skins" – although more readily to "the Skins". However, I do not find that in the UK the average consumer of

24 Sports and athletic clothing, compression garments, caps and visors

clothing or the services in class 41 would perceive the word Skins as a reference to the Washington Redskins. I find the Applicant's evidence to be thin, and note that the evidence shows that references to "Skins" as a contracted form of the name of the NFL team are presented in particular contexts where the presence of the full form "Washington Redskins" and associated Washington Redskins logo operate to make clear the implication of "Skins".

116. Even if I am wrong about that, and a sufficiently significant constituent of the notional average consumer would make that association, such people may also perceive the Opponent's registrations as evoking the same association. In those circumstances, to allow the Applicant's marks to be registered as UK trade marks, would lead to a likelihood of confusion.
117. When I weigh in the balance all of the above factors to make a global assessment, including taking into account the interdependency principle whereby a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, I find in this case that there would be a likelihood of confusion on the part of the relevant UK public as to the origin of the services at issue and as to the origin of the majority of the goods at issue. **Consequently, the opposition succeeds on the basis of section 5(2)(b) to that extent.** However, since, in relation to certain goods under Registration A, I have assessed similarity as being to a less than medium degree, I find it necessary to assess the likelihood of confusion in relation to goods under Registration C.
118. I have found that **Registration C** achieves identity with all of the Applicant's goods. The relevant average consumer is a member of the general public who would pay no more than a reasonable level of attention when purchasing the goods at issue, where visual considerations predominate, but aural considerations are also relevant. I have found that the Applicant's mark and the mark under Registration C are visually similar to a reasonably high degree, and conceptually and aurally similar to a medium degree. Notwithstanding that I found that TEAM SKINS to have a lower than average level of distinctiveness, I find that assessed globally, taking into account the interdependency principle and the identity between the goods at issue, I find in this case that there would be a likelihood of indirect confusion on the part of the relevant UK public as to the origin of the goods at issue. **Consequently, the opposition succeeds on the basis of section 5(2)(b).**

Costs

119. The Opponent has been successful and is entitled to a contribution towards its costs, which I assess based on the guidance in Tribunal Practice Notice 2/2016. I award the Opponent the sum of £1900 (nineteen hundred pounds) as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Reimbursement of the official fee for Notice of Opposition and Statement of Grounds:	£100
Preparing a statement of grounds and considering the other side's statement:	£300
Preparing evidence and considering and commenting on the other side's evidence	£1200
Preparing submissions:	£300
Total:	£1900

120. I therefore order NFL Properties (UK) Limited to pay Skins International Trading AG the sum of £1900 to be paid within fourteen days of the expiry of the appeal period, or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 17th day of November 2017

Matthew Williams

For the Registrar, the Comptroller-General

Annex – full specifications for Registrations A and B

Registration A

In addition to the Class 25 goods discussed above, Registration A involves the following specification:

Class 10: Surgical and medical garments; compression garments for medical purposes; therapeutic compression garments; stockings for medical purposes; elastic supports, including elastic supports for stabilising injured areas of the body; all the aforementioned being goods in class 10.

Class 28: Sports guards including shin pads, knee pads and elbow pads.

Class 35: Retail, wholesale, mail order, e-commerce and sale of: surgical and medical garments, compression garments, therapeutic compression garments, stockings, elastic supports, including elastic supports for stabilising injured areas of the body, clothing, footwear, headgear, including clothing for men, women, children and babies, clothing for sports including football, gymnastics, cycling, golf and skiing, clothing for motorists and travellers, underwear including compression underwear, outerwear, overcoats, leisure clothing, jackets, jumpers, pullovers, sports jerseys, vests, shirts, t-shirts, pants, trousers, shorts, pyjamas, dressing gowns, bath robes, swimwear including bathing trunks and bathing suits, thermal clothing, wetsuits, waterproof clothing, wrist bands, shoes and boots including football shoes and boots, gymnastic shoes, other sports shoes and boots, socks, tights, bandannas and headbands, padded clothing, including padded clothing for men, women, children and babies, padded clothing for sport, sports guards including shin pads, knee pads and elbow pads.

Registration C

In addition to the Class 25 goods discussed above, Registration C includes registration in respect of the following services in class 35.

Retail, wholesale, mail order, e-commerce, sale and distribution and advisory services for: surgical and medical garments, compression garments, therapeutic compression garments, stockings, elastic supports, including elastic supports for stabilising injured areas of the body, bags, including bags of leather and imitation leather, beach bags, backpacks, handbags, hydration packs, knapsacks, luggage, purses, satchels, shoulder bags, sports bags including all-purpose sports bags, ball bags, bottle bags, boot bags, cricket bags, duffle bags, draw-string bags, football bags, gear bags, gym bags, holdalls, kit bags and team bags, travelling bags, wallets, textile and textile goods, bath linen, bed covers, bed sheets and bed clothes, cushion covers, pillowcases, rugs, sheets, sleeping bags, table covers and linen, towels including sports towels, beach towels and bath towels, clothing, footwear, headgear, including clothing for men, women, children and babies, clothing for sports including cricket, cycling, football, golf, gymnastics, rugby and skiing, clothing for motorists and travellers, compression garments, underwear including compression underwear, outerwear, overcoats, leisure clothing, jackets, jumpers, pullovers, sports jerseys, vests, shirts, T-shirts, pants, trousers, shorts, pyjamas, dressing gowns, bath robes, swimwear including bathing trunks and bathing suits, thermal clothing, wetsuits, waterproof clothing, wristbands, shoes and boots including football shoes and boots, gymnastic shoes, other sports shoes and boots, socks, stockings, tights, bandannas and headbands, padded clothing, including padded clothing for men, women, children and babies, padded clothing for sport, sports guards including chest protectors, shin pads, knee pads and elbow pads; advertising services; marketing services; promotional services; sponsorship services in the nature of marketing or promotional services; organising competitions