

O-138-19

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NOS
3260165 AND 3260178
BY KALITA AL SWAIDI**

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NOS 411357 AND 411358
BY CALIDA AG**

Background and pleadings

1. The first matter is trade mark application number 3260165 for the following series of three trade marks:

KALITA
Kalita
K A L I T A

As nothing turns on the differences between these marks, I will refer to them in the singular.

2. The second trade mark at issue is trade mark application number 3260178 (“the 178 mark”) for the following figurative trade mark:

K A L I T A

Both applications stand in the name of Kalita Al Swaidi (“the applicant”). They were filed registration process more than 5 years before the publication date of the application in suit, it is not subject to the proof of use provisions contained in s. 6A of the Act and the opponent may rely upon all of the goods for which the mark is registered, without showing any evidence of use.

5. The opponent claims that the contested trade marks are highly similar to the earlier mark and that the goods and services are identical or similar. That will, the opponent claims, result in a likelihood of confusion, with the consumer believing that the goods and services come from the same or economically linked undertakings.

6. The applicant filed a counterstatement denying the grounds of opposition. It claims that the marks are visually, aurally and conceptually dissimilar. It admits that some of the contested goods in classes 3 and 25 are identical or similar to the earlier specifications but argues that the remaining goods in those classes and the goods and

services in classes 9, 35 and 42 are not similar or similar only to a very low degree to the earlier goods. Accordingly, it claims that there is no likelihood of confusion. Further, the applicant claims that there has been honest concurrent use of the contested marks since 2001/2002 in respect of lingerie and since 2016 in respect of various other items of clothing.

7. Only the applicant filed evidence. A hearing was held before me on 14 February 2019, at which the applicant was represented by Ashton Chantrielle of counsel, instructed by Briffa & Co. The opponent elected not to attend the hearing or file submissions in lieu. It has been represented throughout by Wildbore & Gibbons.

Preliminary issue

8. On 8 February 2019, the applicant filed a further witness statement and exhibit which it requested be admitted into proceedings. The email enclosing the evidence was copied to the opponent at the time of filing. The opponent has made no comments regarding the late evidence.

9. Ms Chantrielle explained that the very late filing of the evidence was because the applicant had expected the opponent to file evidence of its own use of the mark. She submitted that the evidence was material to the applicant's defence of honest concurrent use and that there was no obvious prejudice to the opponent in admitting the evidence, as there would be no need for it to file evidence in response.

10. In *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors*, Carr J outlined the following factors to be taken into account when determining whether late evidence should be admitted:¹

¹ [2016] EWHC 3103 (Ch).

“34. In my judgment, the Registrar should primarily consider the following factors when deciding on the admissibility of late evidence, although the weight to be attached to each of them will vary from case to case:

i) The materiality of the evidence in question to the issues that the Registrar has to determine;

ii) The justice and fairness of subjecting the opposite party to the burden of the evidence in question at the stage that the registry proceedings have reached, including the reasons why the evidence was not filed earlier;

iii) Whether the admission of the further evidence would prejudice the opposite party in ways that cannot be compensated for in costs (e.g. excessive delays); and

iv) The fairness to the applicant of excluding the evidence in question, including prejudice to the applicant if it is unable to rely on such evidence”.

11. I do not consider that it is proper for a professionally represented applicant either to expect the opposing party to make good the applicant’s defence or to wait until a matter of days before the hearing to request permission to file further evidence, having known for over three months that the opponent did not intend to file evidence in reply. Nevertheless, whilst I had reservations about whether the evidence was determinative, it does go to the issue of the opponent’s use of the mark. The opponent had sufficient time to make representations to the tribunal if it considered that the admission of the evidence would be prejudicial in any way. It did not. Nor did the admission of the evidence appear to me to present any real prejudice to the opponent. Weighing all of the above factors, I admitted the evidence.

Evidence

12. This consists of the witness statement of Kalita Al Swaidi and, admitted at the hearing, the witness statement of Debra Goldwyn. The key points are summarised below.

Ms Al Swaidi's evidence

13. Ms Al Swaidi states that she is a fashion designer and runs “my eponymous luxury fashion label ‘Kalita’”.²

14. Ms Al Swaidi explains that her company developed after she was approached by a boutique owner in London in 2002 and she began to sell knickers under the brand “Kalita” at that boutique (Musa).³ Later that year, she transferred sale of her goods to a different boutique, Coco Ribbon, also in London, where her goods continued to be sold until 2006.⁴ Other retailers, such as www.notonthehighstreet.com, are said to have stocked Ms Al Swaidi's goods between 2005 and 2008.⁵ From 2008, it appears that the only retailer stocking Ms Al Swaidi's products was a further London boutique (Austique), which closed in 2014.⁶ Ms Al Swaidi states that she offered bespoke items to the public from 2005 to 2015 and continues to offer the service to personal contacts.⁷ Her website, kalita.co.uk, was set up in 2004, and continued to operate until 2018.⁸ Prints taken from the WayBack Machine are provided, which appear to show the home page with the word “Kalita” in stylised script until 2014 and in capitals from 2015.⁹

² § 1.

³ §§4-5.

⁴ §§9-10.

⁵ §12.

⁶ §§17-18 and KAS9.

⁷ §§16, 18.

⁸ §11.

⁹ KAS6.

15. Articles are provided which mention Ms Al Swaidi's goods, including a number of national newspapers and magazines.¹⁰ The articles are said to be dated between 2002 and 2014; those on which there is a visible date correspond to this period. The goods are referred to throughout by the name "Kalita". Up until 2007, the goods are exclusively knickers. I note a 2005 reference to "camis" in a piece on Ms Al Swaidi but there is no evidence before this date of any other goods in the range or of how any such goods might have been offered to the public.¹¹ Ms Al Swaidi states that she developed and sold a boxer short range for about a year from late 2006/early 2007, an example of which is in an article at KAS2.¹²

16. Ms Al Swaidi states that she began selling her "resort" range in 2015, which was stocked in a number of retailers.¹³ Press articles are provided showing Ms Al Swaidi's products from 2015 to 2018, including national publications such as *Grazia* and *Glamour UK Online*.¹⁴ Not all of the articles are legible but the goods appear to be mainly dresses.

17. Various documents are provided at KAS10 which record sales and orders. Many are not relevant, as they appear to be orders from Ms Al Swaidi to the manufacturer in Dubai and/or the UK embroiderer. I note that there is a price list from 2002 showing the mark "Kalita", which offers knickers. A "price list for media product placement" for 2006 is provided, along with a client price list for 2007, both of which mention knickers and bras. A further price list for 2010 is also in evidence. There are a handful of invoices and purchase orders from 2002-2003 and 2006-2007 which clearly identify the purchaser as in the UK (including Austique). The quantities are small throughout.

Ms Goldwyn's evidence

¹⁰ KAS2.

¹¹ KAS2, p. 30.

¹² §15 and KAS2, p. 60. See also KAS7, p. 4

¹³ See also KAS12.

¹⁴ KAS11.

18. The witness statement of Ms Goldwyn is accompanied by one exhibit (DG1). Ms Goldwyn is a solicitor at the applicant's firm of professional representatives.

19. Four articles are exhibited regarding the "Calida" brand, all dated 2014-2015 and which include reference to the brand's return to the UK market following an absence of nearly twenty years.¹⁵ It is described variously as an underwear and sleepwear or bodywear brand.¹⁶

20. There is a print from www.calida.com dated June 2016, indicating swimwear and beachwear are available under the brand "CALIDA".¹⁷ However, although the text is in English, I am unable to determine whether this page was directed at the UK market; given the evidence at pp. 416-420 that CALIDA did not open its UK web shop until 2016, it seems unlikely. There is one web print from www.improdigies.co.uk which shows that one style of "Calida" knickers was available on the site from November 2016. It is priced in sterling.

21. That concludes my summary of the evidence, to the extent I consider necessary.

Section 5(2)(b)

22. Section 5(2)(b) of the Act reads as follows:

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

[...]

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

¹⁵ pp. 407-412.

¹⁶ *Ibid.*

¹⁷ p. 413.

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

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

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

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

24. When making the comparison, all relevant factors relating to the goods and services in the specification should be taken into account. In *Canon*, the Court of Justice of the European Union (“CJEU”) stated at paragraph 23 of its judgment:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary”.

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

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

26. It is permissible to group terms together in making the comparison, if the considerations are similar: *Separode Trade Mark* BL O/399/10.

27. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court (“GC”) stated that:

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut fur Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

28. In *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. (as he then was) stated that:

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase”.

29. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods and services. 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”.

30. I also bear in mind the comments of Daniel Alexander Q.C., sitting as the Appointed Person, in *Sandra Amelia Mary Elliot v LRC Holdings Limited*, BL O/255/13, where he warned against applying too rigid a test when considering complementarity:

“20. In my judgment, the reference to “legal definition” suggests almost that the guidance in Boston is providing an alternative quasi-statutory approach to evaluating similarity, which I do not consider to be warranted. It is undoubtedly right to stress the importance of the fact that customers may think that responsibility for the goods lies with the same undertaking. However, it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together. I therefore think that in this respect, the Hearing Officer was taking too rigid an approach to Boston”.

Class 3

Perfumery, essential oils; perfume; toiletries.

31. “Perfumery”, “perfumes” and “essential oils” appear in both specifications and are self-evidently identical. “Cosmetics” is defined in the *Oxford Dictionary of English* as “a preparation applied to the body, especially the face, to improve its appearance”.¹⁸ On that basis, both “toiletries” in the contested specifications and “cosmetics” in the earlier specification include goods such as skin lotions. They are, therefore, different ways of describing the same goods, which are identical.

Non-medicated cosmetics; non-medicated soaps; flower perfumes; liquid perfumes; cologne; eau de parfum; eau de toilette; scents; fragrances; fragrance preparations; extracts of perfumes; oils for perfumes and scents; natural perfumery; perfumes in solid form; aromatics; aromatics for perfumes.

32. The earlier specification contains the terms “cosmetics”, “soaps”, “perfumery” and “perfumes”. All of those terms are broader categories into which the above goods fall. These goods are identical on the principle outlined in *Meric*.

Non-medicated hair lotions.

33. The earlier specification contains “shampoos”. The primary purpose of a shampoo is to clean hair, whilst that of a hair lotion is more likely to be to condition or to treat, for example, a scalp condition. There remains, however, potential for an overlap, as a hair lotion may also cleanse. There is likely to be some similarity in the nature of the goods, both being viscous liquids, and their method of use is likely to be the same. Channels of trade will overlap, as will users. The goods may be in competition (a dandruff shampoo may be chosen instead of a hair lotion for the same condition). There may be a

¹⁸http://www.oxfordreference.com/view/10.1093/acref/9780199571123.001.0001/m_en_gb0182380?rskey=9ecxf6&result=1 [accessed 7 March 2019].

complementary relationship between the goods, with shampoos and hair lotions designed to be used together and provided by the same undertakings. These goods are similar to a high degree.

Parts, fittings and accessories for all of the aforesaid goods.

34. I have no submissions from the parties as to what these goods may be. However, the applicant has admitted that the goods at issue in class 3 are identical or highly similar.¹⁹ I will, therefore, proceed on the basis that the goods are highly similar.

Class 9

Software; mobile software; mobile software applications; downloadable software; e-commerce software; downloadable applications for use with mobile devices; downloadable software to enable the transmission of information; parts, fittings and accessories for all of the aforesaid goods.

35. The closest term in the earlier specification to the above goods is “optical apparatus and instruments”. The nature, purpose and method of use are different, and they are not in competition. I acknowledge that software is essential to the operation of many goods nowadays (for example, cameras). It does not, however, follow that software is similar to those goods. It may be important for their operation but it is unlikely that a consumer would believe the goods to be the product of the same undertaking. The overlap in users is too superficial to engage overall similarity and channels of trade do not coincide. The goods are not similar.

¹⁹ Skeleton argument, §28.1.

Electronic publications; downloadable electronic publications; e-books; e-magazines; parts, fittings and accessories for all of the aforesaid goods.

36. I can see no goods in the earlier specification which have any similarity with the above goods. There is no overlap in purpose, nature, method of use or channels of trade, no competition and no complementarity. The users will coincide but at a very high level of generality, insufficient to create overall similarity between the goods. They are not similar.

Class 25

Clothing, footwear, headgear; ready-made clothing; articles of outer clothing; articles of underclothing; leisurewear; resortwear; holiday wear; loungewear; lounge pants; lounging robes; beachwear; beach cover-ups; beach robes; beach wraps; sarongs; swimming costumes; swimsuits; bikinis; tops [clothing]; crop tops; bralettes [tops]; tank tops [clothing]; halter tops; cropped tops; kaftans; tunics; shirts; short-sleeve shirts; long-sleeve shirts; blouses; vests [tops]; t-shirts; camisoles; chemise tops; halter neck tops; racer tops; jackets [clothing]; blouson jackets; smocks; bottoms [clothing]; trousers; pantaloons; slacks [pants]; yoga pants; harem pants; yoga bottoms; shorts; bermuda shorts; culottes; skirts; maxi skirts; tiered skirts; mini skirts; midi skirts; culottes skirts; dresses; gowns; bridal gowns; kimonos; maxi dresses; tunic dresses; kaftan dresses; sundresses; halter dresses; pinafore dresses; halter neck dresses; plunge dresses; slipover dresses; formal evening wear; suits; one-piece suits; dungarees; jumpsuits; boiler suits; sunsuits; playsuits [clothing]; romper suits; robes; togas; knitwear [clothing]; cardigans; jumpers [pullovers]; sweaters; shawls; scarves; stoles; neckties; neckerchiefs; headscarves; belts [clothing]; belts and bows for clothing; belts and bows made out of cloth; belts and bows of textile; waist cinchers; waist belts; sash bands (obi); underwear; underclothing; lingerie; knickers; briefs [underwear]; French knickers; bloomers; petti-pants; brassieres; bras; bodices [lingerie]; bustiers; bodies [underclothing]; body linen [garments, nightwear, underwear]; peignoirs; negligees;

petticoats; slips [undergarments]; teddies [undergarments]; nightslips; parts, fittings and accessories for all of the aforesaid goods.

37. Ms Chantrielle submitted at the hearing that the word “particularly” in the earlier specification should be read as limiting the goods for which the earlier mark is protected. I reject that submission. “Particularly” may reflect the goods of most interest to the applicant, at least at the time of filing, but it has no limiting effect on the specification. Consequently, the earlier mark is to be treated as registered for “clothing”, “footwear” and “headgear” at large. Ms Chantrielle accepted that, if the earlier mark did cover clothing at large, there would be some similarity. With the exception of the underlined goods, all of the above goods fall within the three broad categories covered by the earlier registration and the goods are, as a result, identical on the principle outlined in *Meric*. I have no submissions on what “parts, fittings and accessories” for the above goods may be. Whilst it would, in some cases, reasonably include belts and scarves, there are goods such as belts themselves and bras, for which it is not immediately apparent to me what the parts, fittings and accessories may be. They are, however, clearly related goods and where not identical because they describe items which are themselves items covered by the earlier specification (e.g. belts), they are likely to have a complementary relationship. Given Ms Chantrielle’s acceptance of some similarity, I will proceed on the basis that the parts, fittings and accessories have a fairly low degree of similarity (at least) to the opponent’s “clothing”, “footwear” and “headgear”.

Class 35

Wholesale and retail services relating to perfumery, essential oils, non-medicated cosmetics, non-medicated hair lotions, non-medicated soaps, perfume, flower perfumes, liquid perfumes, cologne, eau de parfum, eau de toilette, scents, fragrances, fragrance preparations, extracts of perfumes, oils for perfumes and scents, natural perfumery, perfumes in solid form, toiletries, aromatics, aromatics for perfumes, clothing, footwear, headgear, ready-made clothing, articles of outer clothing, articles of

underclothing, leisurewear, resortwear, holiday wear, loungewear, lounge pants, lounging robes, beachwear, beach cover-ups, beach robes, beach wraps, sarongs, swimming costumes, swimsuits, bikinis, tops [clothing], crop tops, bralettes [tops], tank tops [clothing], halter tops, cropped tops, kaftans, tunics, shirts, short-sleeve shirts, long-sleeve shirts, blouses, vests [tops], t-shirts, camisoles, chemise tops, halter neck tops, racer tops, corsets, jackets [clothing], blouson jackets, smocks, bottoms [clothing], trousers, pantaloons, slacks [pants], yoga pants, harem pants, yoga bottoms, shorts, bermuda shorts, culottes, skirts, maxi skirts, tiered skirts, mini skirts, midi skirts, culottes skirts, dresses, gowns, bridal gowns, kimonos, maxi dresses, tunic dresses, kaftan dresses, sundresses, halter dresses, pinafore dresses, halter neck dresses, plunge dresses, slipover dresses, formal evening wear, suits, one-piece suits, dungarees, jumpsuits, boiler suits, sunsuits, playsuits [clothing], romper suits, robes, togas, knitwear [clothing], cardigans, jumpers [pullovers], sweaters, shawls, scarves, stoles, neckties, neckerchiefs, headscarves, belts [clothing], belts and bows for clothing, belts and bows made out of cloth, belts and bows of textile, waist cinchers, waist belts, sash bands (obi), underwear, underclothing, lingerie, knickers, briefs [underwear], French knickers, bloomers, petti-pants, brassieres, bras, bodices [lingerie], bustiers, bodies [underclothing], body linen [garments, nightwear, underwear], peignoirs, negligees, petticoats, slips [undergarments], teddies [undergarments], nightslips.

38. Ms Chantrielle argued at the hearing that these services have no more than a low degree of similarity with the earlier goods. I accept that there will always be a difference between the nature, purpose and method of use between goods on the one hand and services on the other but it is settled law that there may be a complementary relationship and shared channels of trade between retail services for particular goods and the goods themselves.²⁰ Geoffrey Hobbs QC, sitting as the Appointed Person, pointed out, however, that selling and offering to sell goods does not amount to a retail service and the degree of similarity between goods and services is not clear cut.²¹ On the basis of the European courts' judgments in *Sanco SA v OHIM* and *Assembled*

²⁰ *Oakley, Inc. v OHIM*, Case T-116/06, at [46]-[57]

²¹ *Tony Van Gulck v Wasabi Frog Ltd*, Case BL O/391/14

Investments (Proprietary) Ltd v. OHIM, upheld on appeal in *Waterford Wedgewood Plc v. Assembled Investments (Proprietary) Ltd*,²² he concluded that:

i) Goods and services are not similar on the basis that they are complementary if the complementarity between them is insufficiently pronounced that, from the consumer's point of view, they are unlikely to be offered by one and the same undertaking;

ii) In making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it is necessary to envisage the retail services normally associated with the opponent's goods and then to compare the opponent's goods with the retail services covered by the applicant's trade mark;

iii) It is not permissible to treat a mark registered for 'retail services for goods X' as though the mark was registered for goods X;

iv) The General Court's findings in *Oakley* did not mean that goods could only be regarded as similar to retail services where the retail services related to exactly the same goods as those for which the other party's trade mark was registered (or proposed to be registered).

39. The above wholesale and retail services all concern goods which I have held to be identical to goods in the earlier specification. The goods in the earlier specification will all share channels of trade with the corresponding services for retail and wholesale of those goods. I also consider that, in this case, the relationship is sufficiently close for there to be a complementary relationship. Overall, I consider that there is a medium degree of similarity.

²² Case C-411/13P, Case T-105/05, at paragraphs [30] to [35] of the judgment, Case C-398/07P.

Wholesale and retail services relating to parts, fittings and accessories for perfumery, essential oils, non-medicated cosmetics, non-medicated hair lotions, non-medicated soaps, perfume, flower perfumes, liquid perfumes, cologne, eau de parfum, eau de toilette, scents, fragrances, fragrance preparations, extracts of perfumes, oils for perfumes and scents, natural perfumery, perfumes in solid form, toilettries, aromatics, aromatics for perfumes, clothing, footwear, headgear, ready-made clothing, articles of outer clothing, articles of underclothing, leisurewear, resortwear, holiday wear, loungewear, lounge pants, lounging robes, beachwear, beach cover-ups, beach robes, beach wraps, sarongs, swimming costumes, swimsuits, bikinis, tops [clothing], crop tops, bralettes [tops], tank tops [clothing], halter tops, cropped tops, kaftans, tunics, shirts, short-sleeve shirts, long-sleeve shirts, blouses, vests [tops], t-shirts, camisoles, chemise tops, halter neck tops, racer tops, corsets, jackets [clothing], blouson jackets, smocks, bottoms [clothing], trousers, pantaloons, slacks [pants], yoga pants, harem pants, yoga bottoms, shorts, bermuda shorts, culottes, skirts, maxi skirts, tiered skirts, mini skirts, midi skirts, culottes skirts, dresses, gowns, bridal gowns, kimonos, maxi dresses, tunic dresses, kaftan dresses, sundresses, halter dresses, pinafore dresses, halter neck dresses, plunge dresses, slipover dresses, formal evening wear, suits, one-piece suits, dungarees, jumpsuits, boiler suits, sunsuits, playsuits [clothing], romper suits, robes, togas, knitwear [clothing], cardigans, jumpers [pullovers], sweaters, shawls, scarves, stoles, neckties, neckerchiefs, headscarves, belts [clothing], belts and bows for clothing, belts and bows made out of cloth, belts and bows of textile, waist cinchers, waist belts, sash bands (obi), underwear, underclothing, lingerie, knickers, briefs [underwear], French knickers, bloomers, petti-pants, brassieres, bras, bodices [lingerie], bustiers, bodies [underclothing], body linen [garments, nightwear, underwear], peignoirs, negligees, petticoats, slips [undergarments], teddies [undergarments], nightslips

40. The wholesale and retail of the above parts and fittings is a step removed from the wholesale and retail of the identical or similar goods. However, it seems to me that there is likely to be some overlap in channels of trade, as a retailer or wholesaler stocking the goods in the earlier specification is also likely to offer parts, fittings and accessories for

those goods, though I accept that there is a greater likelihood that they will be in different sections of the same outlet and that there is no real complementarity as between the earlier goods and the contested services. The goods and services are similar to a low degree.

Advice, information and consultancy services relating to all of the aforesaid services [i.e. retail and wholesale of the similar/identical goods in classes 3 and 25]

41. The nature, purpose and method of use of these services are different from those of the goods covered by the earlier specification. As the provision of advice etc. regarding a retail service is not important or essential to the provision of the goods themselves, there is no complementarity as defined in the case law. There may be a degree of overlap in channels of trade and users. The services are similar to a very low degree.

Wholesale and retail services relating to software, mobile software, mobile software applications, downloadable software, e-commerce software, downloadable applications for use with mobile devices, downloadable software to enable the transmission of information, electronic publications, downloadable electronic publications, e-books, e-magazines, and relating to parts, fittings and accessories for software, mobile software, mobile software applications, downloadable software, e-commerce software, downloadable applications for use with mobile devices, downloadable software to enable the transmission of information, electronic publications, downloadable electronic publications, e-books, e-magazines; advice, information and consultancy services relating to all of the aforesaid services

42. I found, above, that the goods the subject of the above wholesale and retail services are not similar to any of the goods in the earlier specification. I can see no reason why, in the absence of any meaningful connection between the goods, the retail or wholesale services listed above would have any similarity to the goods in the earlier specification. The goods are so far removed that the type of wholesale or retail offering is likely to be completely different, with no overlap in any meaningful respect. There is no similarity. I

can also see no similarity between advice, information and consultancy services relating to these wholesale and retail services: there is no coincidence in any of the relevant factors apart from a very superficial overlap in users.

Class 42

Designing; design services; fashion design; design of clothing, footwear and headgear; design of clothing accessories; custom design services; providing information about fashion design services; advice, information and consultancy services relating to all of the aforesaid services

43. All of the above services include the design of clothing, footwear, headgear and accessories or the provision of advice/consultancy about those services. They are different in nature, purpose and method of use from the goods in the earlier specification but I do not accept Ms Chantrielle's submission that the goods and services are dissimilar: there is clearly a close relationship between these services and the earlier class 25 goods. Moreover, it is commonplace for fashion designers to produce their own goods, so the relevant consumer is likely to believe that the goods and services are the responsibility of the same economic undertaking. Channels of trade may intersect and users are the same. These goods and services are similar to a medium degree.

Graphic design services; advice, information and consultancy services relating to all of the aforesaid services.

44. To my mind, graphic design services are concerned with the design and compilation of images and words in matter such as advertisements and magazines. Whilst clothing may feature images considered to be works of graphic design, the method of use, channels of trade and purpose all differ. There is unlikely to be any meaningful overlap in users. There is no competition and no complementarity. These goods and services are not similar.

The average consumer and the nature of the purchasing act

45. It is necessary for me to determine who the average consumer is for the respective parties' goods and services. I must then decide the manner in which these goods and services are likely to be selected by the average consumer in the course of trade. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purposes of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of services in question: *Lloyd Schuhfabrik*.

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

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

47. Given my findings, above, the relevant goods and services are those in classes 3, 25, 35 and 42 for which I have found similarity or identity. I have no submissions from the opponent on this point. The applicant submitted that the average consumer will be a member of the general public who will pay a high degree of attention, though this appears to be focused on cosmetics, clothing and fashion accessories.²³

48. The goods in classes 3 and 25 will vary across the category but, in the main, are items which will be purchased by members of the public with some frequency and

²³ Counterstatements, §§21 and 20, respectively.

attention to factors such as suitability for a particular skin type or condition for goods in class 3, or considerations such as size, fit and colour in class 25. It is also possible that business consumers such as wholesalers and retailers will be purchasing the goods. These consumers are likely to pay a reasonably high level of attention, as quantities are likely to be larger, repeat contracts at issue and the consequences of errors more serious.

49. In *New Look Limited v OHIM*, joined cases T-117/03 to T-119/03 and T-171/03, the GC stated that:

“50. [...] Generally in clothes shops customers can themselves either choose the clothes they wish to buy or be assisted by the sales staff. Whilst oral communication in respect of the product and the trade mark is not excluded, the choice of the item of clothing is generally made visually. Therefore, the visual perception of the marks in question will generally take place prior to purchase. Accordingly the visual aspect plays a greater role in the global assessment of the likelihood of confusion”.

50. I consider that all of the goods at issue are likely to be subject to selection by the consumer from shelves or pages of websites; exposure to the marks may also result from advertising in print or online. The purchase will be predominantly visual, though I do not discount an aural aspect to the purchase.

51. The services at issue are also likely to have two groups of consumer, both members of the public and businesses, though there is likely to be a greater preponderance of business users for the wholesale services in class 35 and the services in class 42, with members of the public being the principal consumer of retail services in class 35. All of the services are likely to be selected following inspection of the marks on premises or in written publicity matter, whether in print or online. There may be an aural component but the purchase will be mainly visual. A member of the public selecting the services in class 35 is likely to pay a medium level of attention, paying attention to factors such as

the range of goods on offer. A business consumer of the class 35 services is likely to pay a reasonably high level of attention, with attention to factors such as stock levels, potential customer reach and levels of service.

52. The consumer engaging the services in class 42 will wish to ensure that the provider is suitable for the task, that the design can be delivered to specification and on time; aspects of the working relationship may also be important. These services are likely to be purchased with a reasonably high level of attention by both groups of consumer.

Comparison of trade marks

53. It is clear from *Sabel* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in *Bimbo*, that:

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

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

Earlier mark	Contested marks (all)
CALIDA	KALITA Kalita K A L I T A K A L I T A

55. The opponent submits that the marks at issue are highly similar. The applicant submits that the marks are visually and aurally similar to a moderate degree, and that there is no conceptual similarity.

56. The earlier mark consists of the word “CALIDA”. It has no other elements and its distinctiveness and overall impression rest in that word.

57. All of the earlier marks consist of the word “KALITA”. Three are presented in capital letters, whilst one is in title case. The third mark in the series and the 178 mark have a slightly more widely spaced presentation. It is noticeable when viewed alongside the other marks but I doubt that this will be noticed by the consumer. If it is, it will play a very weak part in the overall impression. The overall impression of the marks is contained in or very heavily dominated by the word “KALITA”/“Kalita”.

58. Visually, there is a difference at the beginning of the marks because of the different letters “K” and “C”. I bear in mind that differences at the beginnings of marks tend to have more impact on the consumer. There is another difference because the penultimate letters are “D” and “T”, respectively. As both earlier and contested marks could be used in title, lower or upper case, nothing turns on the difference in casing between the various marks. I do not consider that the particular presentation of the last

mark in the series and the 178 mark makes a material difference to the assessment. The contested marks are visually similar to the earlier mark to a fairly low degree.

59. The different letters “K” and “C” will, in this instance be pronounced identically. The earlier mark will be articulated as “KA-LEE-DA” and the later marks as “KA-LEE-TA”. The difference between the letters “T” and “D” is small. The marks have a high degree of aural similarity.

60. Conceptually, neither mark has a meaning which will be known to the UK consumer and both are likely to be perceived as invented words. They are neither similar nor dissimilar: the conceptual position is neutral.

Distinctive character of the earlier trade marks

61. The distinctive character of a trade mark can be appraised only, first, by reference to the goods and services in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In determining the distinctive character of a trade mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the trade mark to identify the services for which it has been registered as coming from a particular undertaking and thus to distinguish those goods and services from those of other undertakings - *Windsurfing Chiemsee v Huber and Attenberger* Joined Cases C-108/97 and C-109/97 [1999] ETMR 585. In *Lloyd Schuhfabrik*, the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in

Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, 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)".

62. As no evidence has been filed by the opponent to support a claim of enhanced distinctiveness, here is only the inherent position to consider. The earlier mark will, as I indicated above, be perceived as an invented word. As a consequence, it is inherently distinctive to a high degree.

Likelihood of confusion

63. Where there is no similarity between the goods and services, there can be no confusion.²⁴ The oppositions against the dissimilar goods and services are hereby dismissed. Turning to the remaining goods and services, the factors considered above have a degree of interdependency and must be weighed against one another in a global assessment (*Canon* at [17]; *Sabel* at [22]), considering the various factors from the perspective of the average consumer and deciding whether the average consumer is likely to be confused. In making my assessment, I must keep in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks

²⁴ See, for example, *Waterford Wedgwood plc v OHIM* – C-398/07 P (CJEU)

and must instead rely upon the imperfect picture of them he has retained in his mind (*Lloyd Schuhfabrik* at [26]).

64. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other. Indirect confusion is where the consumer notices the differences between the marks but concludes that the later mark is another brand of the owner of the earlier mark or a related undertaking.

65. I can see no logical step which would induce the consumer to be indirectly confused: in this case, the issue is whether there will be direct confusion. In making my decision, I bear in mind that the consumer does not make a side-by-side comparison of the marks. In such circumstances, there is potential for the marks to be misremembered and, therefore, confused. The fact that neither of the marks at issue has a conceptual meaning makes direct confusion more likely, as the absence of a conceptual hook means that it is more difficult to distinguish between the marks. I also have to take into account the highly distinctive character of the earlier mark, again a factor in favour of the opponent. In the applicant's favour is that, despite the very high degree of aural similarity, the purchasing process for all of the goods and services will be mainly visual. That means that the level of visual similarity carries the greater weight. The level of visual similarity between the marks is fairly low. Taking all of the above into account, and first considering the best position for the opponent (a medium degree of attention and identical goods), my view is that the differences between the marks are sufficient for the consumer to distinguish between the marks and for a likelihood of confusion to be avoided. The consumer may not be able to remember with precision what the other mark was but s/he will, when paying a medium level of attention, know that it was a different mark. It follows that where the level of attention is higher and/or where the level of similarity between the goods and services is lower, there is even less likelihood of confusion. There is no likelihood of confusion.

Honest concurrent use

66. Given my findings, above, there is, strictly speaking, no need for me to consider the applicant's defence of honest concurrent use. The matter can be shortly dealt with. The evidence filed is, in my view, a very long way from sufficient to make good the defence. The leading cases clearly indicate that a long period of co-existence is required.²⁵ That is because the function of the trade mark in such a case is not impaired, because that mark does not denote one party alone. In the instant case, the evidence before me shows that the opponent resumed trading in the UK no earlier than October 2014, having been absent for twenty years. In the period 2008 to 2015, the applicant appears to have supplied only one boutique in London and taken bespoke orders on her website, relaunching her business with a different focus in 2015. The applicant's evidence of sales is extremely modest, though I note the claims that other websites stocked the products and that there was a certain degree of press coverage. I am doubtful that the relevant date for the assessment is the opposition filing dates, as suggested by Ms Chantrielle, but even at that date the parties had both been operative in the UK market for, at best, a little over three years. There is nothing in the evidence regarding the opponent's commercial success or to show that the consumer would have been exposed to both marks, still less on the scale required to show that there was a parallel trade sufficient to establish a defence of honest concurrent use. Had I found that there would be a likelihood of confusion, the defence would have failed.

Conclusion

67. The oppositions have failed. Subject to appeal, the applications will proceed to registration.

²⁵ *Budejovicky Budvar NP v Anheuser-Busch Inc*, Case C-482/09, *Victoria Plum Ltd v Victorian Plumbing Ltd* [2016] EWHC 2911 (Ch)

Costs

68. The applicant has been successful and is entitled to an award of costs. The opponent filed no evidence and no submissions, which I take into account when making the award. It is also my view that the applicant's late evidence could and should have been filed much earlier in proceedings. Its filing a matter of days before the hearing will have necessitated review by the opponent and the applicant's award is reduced accordingly. The hearing itself only last around an hour and a half. Bearing that in mind, along with the relevant Tribunal Practice Notice (2/2016), I award costs to the applicant as follows:

Considering the notice of opposition and preparing a counterstatement (x 2):	£400
Preparing and filing evidence:	£400
Preparing for and attending a hearing:	£600
Total:	£1,400

69. I order Calida AG to pay Kalita Al Swaidi the sum of **£1,400**. This sum is 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.

14th March 2019

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

APPENDIX

UK trade mark numbers 3260165 and 3260178

Class 3: Perfumery, essential oils, non-medicated cosmetics, non-medicated hair lotions; non-medicated soaps; perfume; flower perfumes; liquid perfumes; cologne; eau de parfum; eau de toilette; scents; fragrances; fragrance preparations; extracts of perfumes; oils for perfumes and scents; natural perfumery; perfumes in solid form; toiletries; aromatics; aromatics for perfumes; parts, fittings and accessories for all of the aforesaid goods.

Class 9: Software; mobile software; mobile software applications; downloadable software; e-commerce software; downloadable applications for use with mobile devices; downloadable software to enable the transmission of information; electronic publications; downloadable electronic publications; e-books; e-magazines; parts, fittings and accessories for all of the aforesaid goods.

Class 25: Clothing, footwear, headgear; ready-made clothing; articles of outer clothing; articles of underclothing; leisurewear; resortwear; holiday wear; loungewear; lounge pants; lounging robes; beachwear; beach cover-ups; beach robes; beach wraps; sarongs; swimming costumes; swimsuits; bikinis; tops [clothing]; crop tops; bralettes [tops]; tank tops [clothing]; halter tops; cropped tops; kaftans; tunics; shirts; short-sleeve shirts; long-sleeve shirts; blouses; vests [tops]; t-shirts; camisoles; chemise tops; halter neck tops; racer tops; jackets [clothing]; blouson jackets; smocks; bottoms [clothing]; trousers; pantaloons; slacks [pants]; yoga pants; harem pants; yoga bottoms; shorts; bermuda shorts; culottes; skirts; maxi skirts; tiered skirts; mini skirts; midi skirts; culottes skirts; dresses; gowns; bridal gowns; kimonos; maxi dresses; tunic dresses; kaftan dresses; sundresses; halter dresses; pinafore dresses; halter neck dresses; plunge dresses; slipover dresses; formal evening wear; suits; one-piece suits; dungarees; jumpsuits; boiler suits; sunsuits; playsuits [clothing]; romper suits; robes; togas; knitwear [clothing]; cardigans; jumpers [pullovers]; sweaters; shawls; scarves; stoles; neckties; neckerchiefs; headscarves; belts [clothing]; belts and bows for clothing; belts and bows made out of cloth; belts and bows of textile; waist cinchers; waist belts; sash bands (obi); underwear; underclothing; lingerie; knickers; briefs [underwear]; French knickers; bloomers; petti-pants; brassieres; bras; bodices [lingerie]; bustiers; bodies [underclothing]; body linen [garments, nightwear, underwear]; peignoirs; negligees; petticoats; slips [undergarments]; teddies [undergarments]; nightslips; parts, fittings and accessories for all of the aforesaid goods.

Class 35: Wholesale and retail services relating to perfumery, essential oils, non-medicated cosmetics, non-medicated hair lotions, non-medicated soaps, perfume, flower perfumes, liquid perfumes, cologne, eau de parfum, eau de toilette, scents, fragrances, fragrance preparations, extracts of perfumes, oils for perfumes and scents, natural perfumery, perfumes in solid form, toiletries, aromatics, aromatics for perfumes, software, mobile software, mobile software applications, downloadable software, e-

commerce software, downloadable applications for use with mobile devices, downloadable software to enable the transmission of information, electronic publications, downloadable electronic publications, e-books, e-magazines, clothing, footwear, headgear, ready-made clothing, articles of outer clothing, articles of underclothing, leisurewear, resortwear, holiday wear, loungewear, lounge pants, lounging robes, beachwear, beach cover-ups, beach robes, beach wraps, sarongs, swimming costumes, swimsuits, bikinis, tops [clothing], crop tops, bralettes [tops], tank tops [clothing], halter tops, cropped tops, kaftans, tunics, shirts, short-sleeve shirts, long-sleeve shirts, blouses, vests [tops], t-shirts, camisoles, chemise tops, halter neck tops, racer tops, corsets, jackets [clothing], blouson jackets, smocks, bottoms [clothing], trousers, pantaloons, slacks [pants], yoga pants, harem pants, yoga bottoms, shorts, bermuda shorts, culottes, skirts, maxi skirts, tiered skirts, mini skirts, midi skirts, culottes skirts, dresses, gowns, bridal gowns, kimonos, maxi dresses, tunic dresses, kaftan dresses, sundresses, halter dresses, pinafore dresses, halter neck dresses, plunge dresses, slipover dresses, formal evening wear, suits, one-piece suits, dungarees, jumpsuits, boiler suits, sunsuits, playsuits [clothing], romper suits, robes, togas, knitwear [clothing], cardigans, jumpers [pullovers], sweaters, shawls, scarves, stoles, neckties, neckerchiefs, headscarves, belts [clothing], belts and bows for clothing, belts and bows made out of cloth, belts and bows of textile, waist cinchers, waist belts, sash bands (obi), underwear, underclothing, lingerie, knickers, briefs [underwear], French knickers, bloomers, petti-pants, brassieres, bras, bodices [lingerie], bustiers, bodies [underclothing], body linen [garments, nightwear, underwear], peignoirs, negligees, petticoats, slips [undergarments], teddies [undergarments], nightslips, and relating to parts, fittings and accessories for perfumery, essential oils, non-medicated cosmetics, non-medicated hair lotions, non-medicated soaps, perfume, flower perfumes, liquid perfumes, cologne, eau de parfum, eau de toilette, scents, fragrances, fragrance preparations, extracts of perfumes, oils for perfumes and scents, natural perfumery, perfumes in solid form, toilettries, aromatics, aromatics for perfumes, software, mobile software, mobile software applications, downloadable software, e-commerce software, downloadable applications for use with mobile devices, downloadable software to enable the transmission of information, electronic publications, downloadable electronic publications, e-books, e-magazines, clothing, footwear, headgear, ready-made clothing, articles of outer clothing, articles of underclothing, leisurewear, resortwear, holiday wear, loungewear, lounge pants, lounging robes, beachwear, beach cover-ups, beach robes, beach wraps, sarongs, swimming costumes, swimsuits, bikinis, tops [clothing], crop tops, bralettes [tops], tank tops [clothing], halter tops, cropped tops, kaftans, tunics, shirts, short-sleeve shirts, long-sleeve shirts, blouses, vests [tops], t-shirts, camisoles, chemise tops, halter neck tops, racer tops, corsets, jackets [clothing], blouson jackets, smocks, bottoms [clothing], trousers, pantaloons, slacks [pants], yoga pants, harem pants, yoga bottoms, shorts, bermuda shorts, culottes, skirts, maxi skirts, tiered skirts, mini skirts, midi skirts, culottes skirts, dresses, gowns, bridal gowns, kimonos, maxi dresses, tunic dresses, kaftan dresses, sundresses, halter dresses, pinafore dresses, halter neck dresses, plunge dresses, slipover dresses, formal evening wear, suits, one-piece suits, dungarees, jumpsuits, boiler suits, sunsuits, playsuits [clothing], romper suits, robes, togas, knitwear [clothing], cardigans, jumpers [pullovers], sweaters, shawls, scarves, stoles, neckties, neckerchiefs, headscarves, belts [clothing], belts and bows for

clothing, belts and bows made out of cloth, belts and bows of textile, waist cinchers, waist belts, sash bands (obi), underwear, underclothing, lingerie, knickers, briefs [underwear], French knickers, bloomers, petti-pants, brassieres, bras, bodices [lingerie], bustiers, bodies [underclothing], body linen [garments, nightwear, underwear], peignoirs, negligees, petticoats, slips [undergarments], teddies [undergarments], nightslips, advice, information and consultancy services relating to all of the aforesaid services.

Class 42: Designing; design services; fashion design; design of clothing, footwear and headgear; design of clothing accessories; custom design services; graphic design services; providing information about fashion design services; advice, information and consultancy services relating to all of the aforesaid services.

IR(EU) 1305892

Class 3: Soaps; perfumery, particularly deodorants, perfumes; cosmetics, particularly essential oils; cosmetics, particularly skin creams, skin lotions for cosmetic use, bronzing cream, cosmetic preparations for eyelashes, cosmetic preparations for eyebrows, lipsticks, nail polish, nail polish removers, shampoos, body lotions, make-up products, powder, cosmetics and make-up products.

Class 9: Optical apparatus and instruments, particularly spectacles, sunglasses.

Class 14: Precious metals and their alloys and goods made of these materials or coated therewith not included in other classes; jewelry, precious stones; timepieces and chronometric instruments.

Class 18: Leather and imitation leather, goods made of these materials not included in other classes; leather bags; leather handbags; beauty cases; trunks and suitcases; umbrellas and parasols.

Class 24: Fabrics and textiles; cloths for removing make-up or of textile; baby blankets; bath towels; bath linen except clothing; hooded towels; bed covers; duvet covers; bed linen; covers for cushions; shower curtains; flags, not of paper; terry towels; flannel (fabric); tenugui (Japanese cotton towels); upholstery fabrics; beach towels; table covers.

Class 25: Clothing, particularly underwear, briefs, brassieres, spaghetti straps, underpants, harem pants, jackets, tops, leggings, skirts, g-strings, thongs, bustiers, teddies, tee-shirts, bodysuits, tights, pajamas, bath robes, kimonos, shorts, one-size t-shirts, nightgowns, boxer shorts, shorties, sports shirts, bermuda shorts, bikini tops, bikini bottoms, tankinis, bathing suits, capri pants, pareos, tunics, dresses, bathing suits, socks, stockings, pantyhose, suspenders; clothing for yoga; footwear, particularly footwear for women and men, high heels, flip-flops, beach shoes, headgear for wear, particularly hats, caps, night caps, swimming caps, beach hats.