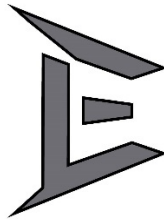


O-155-20

**TRADE MARKS ACT 1994
IN THE MATTER OF APPLICATION No. 3360251
BY SPORTICA INC. LTD
TO REGISTER IN CLASSES 5, 6, 9, 10, 18, 24, 25, 28, 35, 39 & 41
THE SERIES OF TWO TRADE MARKS**



AND



AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER No. 415823
BY
EVERLAST WORLD'S BOXING HEADQUARTERS CORPORATION**

BACKGROUND

1) On 12 December 2018, Sportica Inc. Ltd (hereinafter the applicant) applied to register the series of two trade marks shown on the front page of this decision, in respect of the following goods and services:

In Class 5: Fabric deodorizers; Shoe deodorizers.

In Class 6: Metal swivels for boxing, Martial arts, taekwondo, judo, Mixed Martial Arts and combat sports apparatus; metal swivels for speed bags or punch bags; metal key rings; parts and fittings for all the aforesaid goods.

In Class 9: Protective and safety equipment relating to sport; protective clothing, protective headgear; protective helmets, mouth guards, sports helmets, protective masks, protective gloves; protective helmets, sports helmets and protective gloves all for use in relation to boxing, Mixed Martial Arts, Martial Arts, Taekwondo and combat sports; Knee-pads for workers; Mouth protectors [gum shields].

In Class 10: Knee bandages [supportive]; Knee guards in the nature of supports [other than sports articles]; Knee supports for medical use; Elasticated supports for the knee; Medical knee braces; Elasticated supports for the ankle; Elasticated supports for the elbow; Elasticated supports for the wrist; Elasticated bandages for supportive use; Wrist supports for medical use; Foot bandages [supportive]; Ankle supports for medical use; Socks (Elasticated -) for medical purposes; Compression socks for medical or therapeutic use.

In Class 18: Bags, sports bags, holdalls, equipment bags, travelling bags, luggage, rucksacks, knapsacks, belt pouches, bum bags, gym bags, school bags, boot bags, purses, travel purses, wallets; parts and fittings for all the aforesaid goods; All purpose sport bags; All-purpose athletic bags; All-purpose carrying bags; All-purpose leather straps; Athletic bags; Bags for sports; Bags for sports clothing; Bags made of imitation leather; Bags made of leather; Kit bags; Leather and imitations of leather; Leather luggage straps; Leather straps; Rucksacks; Shoe bags.

In Class 24: Labels and tags, towels, washcloths.

In Class 25: Clothing; Footwear; Headgear.

In Class 28: Games and playthings, gymnastic and sporting articles; sporting equipment and apparatus; apparatus, articles and equipment for use in relation to boxing, martial arts, MMA, Taekwondo, bodybuilding, weight-training and Combat sports; sporting articles (padding) for protective purposes for use in relation to boxing, martial arts, MMA and Taekwondo; shaped padding for protecting parts of the body (specifically made for use in sporting activities); shields for use in Boxing, MMA, martial arts and Taekwondo; punch bags, punching balls, boxing pads; sporting hand guards; boxing hand guards; martial arts hand guards; boxing pads; hand protecting wraps; knuckle guards, body protectors, groin protectors, abdominal protectors, rib protectors, sports gloves, boxing gloves, skipping ropes, gym balls; Taekwondo mitts; Abdomen protectors for Taekwondo; Chest protectors adapted for playing the sport of taekwondo; Protective paddings for Taekwondo; Martial arts training equipment; Abdomen protectors for athletic use; Chest protectors for athletic use; Arm pads adapted for use in sporting activities; Arm guards for sports use ; Karate target pads ; Hand grip strengthener rings; Sparring gloves; Weight lifting belts; Weight lifting gloves; Lifting grips for weight lifting; Chest protectors for sports use; Body training apparatus [exercise];Gloves for sports; Shin guards; Shin guards [sports articles];Shin pads; Shin pads [sports articles];Karate shin pads; Pads for use in sports; Medicine balls; Back supports [belts] for weightlifters; Exercise bands; tension resistance cords; exercise mats; elbow pads.

In Class 35: Retail services, online retail services and wholesale services all connected with the sale of clothing, footwear, headgear, sporting equipment and apparatus, articles and equipment for use in relation to boxing, martial arts, mixed martial arts, body-building, weight-training and combat sports, sporting articles (padding) for protective purposes for use in relation to boxing, mixed martial arts, Taekwondo, martial arts and combat sports, shaped padding for protecting parts of the body (specifically made for use in sporting activities), shields for use in martial arts, punch bags, punching balls, boxing pads, sporting hand guards, boxing hand guards, martial arts hand guards, boxing pads, hands wraps, knuckle guards, body protectors, groin protectors, abdominal protectors, rib protectors, sports gloves, mouth guards, boxing gloves, boxing shoes, gym bags, skipping ropes, gym balls, weight lifting gloves, Weightlifting Belts, Exercise bands, Sports helmets, Mouth guards; Sponsoring of sports competitions.


In Class 39: Packaging of goods; Packaging of products.

In Class 41: Entertainment services, namely, arranging, organizing and conducting an array of athletic and sports activities, events, competitions and tournaments; encouraging and developing sports talent



by organizing and conducting athletic programs and activities; providing training in the fields of sports and fitness.

2) The application was examined and accepted, and subsequently published for opposition purposes on 21 December 2018 in Trade Marks Journal No. 2018/051.



3) On 21 March 2019 Everlast World's Boxing Headquarters Corporation (hereinafter the opponent) filed notice of opposition. The opponent in these proceedings is the proprietor of the following trade marks:

Mark	Number	Dates of filing & registration	Class	Specification relied upon
	EU 013903381	02.04.15 06.09.18	3	Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery; essential oils; cosmetics excluding artificial eyelashes, means for fastening and removing artificial eyelashes and cosmetics for the eyes including make-up and make-up powder for the eyes as well as decorative cosmetics including bronzing powder and lipsticks; hair lotions; dentifrices; toiletries; make-up pencils; facial masks; tissues and wipes incorporating cleaning preparations; hair care preparations; hair cleansing preparations; hair styling and hair colouring products and preparations; skin care and skin cleansing products and preparations; shaving products and preparations; depilatory products and preparations; nail grooming and nail care products and preparations; tanning products and preparations; oral hygiene products and preparations; deodorants; anti-perspirants; toothpaste; anti-bacterial soap; anti-bacterial face washes (non-medicated); hand cleaning preparations; vehicle cleaning preparations; floor cleaning preparations; glass cleaning preparations; carpet cleaning preparations; shoe cleaners (preparations); cleansing foam; masks; cream; gels; lotions; wipes incorporating cleaning preparations.
			5	Pharmaceutical and veterinary preparations; sanitary preparations for medical purposes; dietetic food and substances adapted for medical or veterinary use, food for babies; dietary supplements for humans and animals; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides; kits containing medical preparations; filled first aid boxes and kits; pharmaceutical preparations and substances; medicinal preparations and substances; drugs for medical purposes; cold creams for the treatment of sporting injuries; naturopathic and homeopathic preparations and substances; antiseptic preparations; analgesics; vitamins; mineral and protein preparations and substances; protein supplements; mineral drinks (medicated); waters (beverages) for medical purposes; vitamin drinks; drinks predominantly of minerals or vitamins; vitamin and dietary supplements; preparations for dietary use; dietetic substances adapted for medical use; nutritional supplements; food supplements; carbohydrates in liquid form; plant compounds and extracts for use as dietary supplements; bandages and dressings; disinfectants for hygiene purposes; medicated foods for sports persons (vitamins or minerals); protein foods for human consumption (adapted for medical purposes).
			14	Precious metals; precious stones; precious metal alloys; chains of precious metal; jewellery; fake jewellery or imitations; key rings; horological and chronometric instruments; watches; stop watches; sports watches; watch straps; watch bands; clocks; alarm clocks; clocks incorporating radios; medals; trophies; badges; cases for clock and watch-making; cases for watches; cases for jewellery; cufflinks; tie clips; tie pins; ornaments of precious metals; trinkets; bracelets; watches and bracelets incorporating functions for monitoring and reporting fitness, training, and activity data, namely, time, distance, pace, body rate, weight management, calories burned, and cumulative activity level; watches and bracelets that communicate data to



				personal digital assistants, smart phones, and personal computers through internet websites and other computer and electronic communication networks; key fobs made of leather incorporating key rings; parts, fitting and components for all the aforesaid goods.
			18	Leather and imitations of leather; animal skins; hides; leather thongs and straps; clothing, covers, collars, leashes and leads for animals; trunks and travelling bags; luggage; suitcases; luggage tags; luggage straps; haversacks; backpacks; rucksacks; knapsacks; cases; bags; portfolios; wallets; purses; pouches; card holders; leather shoulder belts and straps; umbrellas; umbrella seats; parasols; walking sticks; canes; whips; harness, saddlery, horse tack; baby and child carriers; frames for handbags; straps for skates; bandoliers; boxes made of leather or imitation leather; furniture coverings of leather; handles for suitcases and walking sticks; gym bags; parts and fittings for all the aforesaid goods.
			25	Clothing; footwear; headgear; aprons (clothing); ascots; babies pants (clothing); bandanas (neckerchiefs); bath robes; bath sandals; bath slippers; bathing caps; bathing drawers; bathing suits; bathing trunks; beach clothes; beach shoes; belts (clothing); berets; bibs not of paper; boas (necklets); bodices (lingerie); boot uppers; boots for sports other than ski; braces for clothing (suspenders); brassieres; breeches for wear; camisoles; cap peaks; caps (headwear); chasubles; clothing for gymnastics; clothing of imitations of leather; clothing of leather; coats; collar protectors; collars (clothing); combinations (clothing); corselets; corsets (underclothing); cuffs; cyclists clothing; detachable collars; drawers (clothing); dress shields; dresses; dressing gowns; ear muffs (clothing); esparto shoes or sandals; fishing vests; fittings of metal for footwear; football boots; football shoes; footmuffs not electronically heated; fur stoles; furs (clothing); gabardines (clothing); gaiter straps; gaiters; galoshes; garters; girdles; gloves (clothing); galoshes; gymnastic shoes; half-boots; hat frames (skeletons); hats; headbands (clothing); headgear for wear; heelpieces for footwear; heelpieces for stockings; heels; hoods (clothing); hosiery; inner soles; jackets (clothing); jackets (Stuff-) (clothing); jerseys (clothing); jumper dresses; jumpers (pullovers); knitwear (clothing); lace boots; layettes (clothing); leg warmers; leggings (trousers); linen (Body-) (garments); liveries; maniples; mantillas; masquerade costumes; miters (hats); mittens; money belts (clothing); motorists clothing; muffs (clothing); neckties; non-slipping devices for footwear; outerclothing; overalls; overcoats; pants; paper clothing; paper hats (clothing); parkas; pelerines; pelisses; petticoats; pinafore dresses; pocket squares; pockets for clothing; ponchos; pullovers; pyjamas; ready-made clothing; ready-made linings (parts of clothing); sandals; saris; sarongs; sashes for wear; scarfs; scarves; shawls; shirt fronts; shirt yokes; shirts; shoes; short-sleeve shirts; shoulder wraps; shower caps; singlets; ski boots; ski gloves; skirts; skorts; skull caps; sleep masks; slippers; slips (undergarments); smocks; sock suspenders; socks; soles for footwear; spats; sports jerseys; sports shoes; stocking suspenders; stockings; stockings (Sweat-absorbent-); studs for football boots; stuff jackets (clothing); suits; sun visors; suspenders; sweat-absorbent underclothing (underwear); sweaters; swimsuits; teddies (undergarments); tee-shirts; tights; tips for footwear; togas; top hats; topcoats; trouser straps; trousers; turbans; underclothing; underclothing (Anti-sweat-); underpants; underwear; underwear (Anti-sweat-); uniforms; veils (clothing); vests; visors (hatmaking); waistcoats; waterproof clothing; welts for footwear; wet suits for water-skiing; wimples; wooden shoes; wristbands (clothing); casual wear; sports clothing; outdoor and camping clothing; formal wear.
			28	Games and playthings; gymnastic and sporting articles, equipment and apparatus not included in other classes; exercise and fitness apparatus and equipment; supporters, protectors, guards and pads for sports, athletics and fitness; mouth guards; playground apparatus and equipment; decorations for Christmas trees; playing cards; ear and eyebrow protectors for boxers; boxing masks; boxing gloves; hand tapes and wraps for boxing and MMA use; punch mitts and gloves; punch and kick boards; grappling gloves; sparring gloves; gloves for sports; gloves for use in boxing and MMA; striking bags; strike shields; target paddles; punching bags; freestanding bags; training dummies; striking-bag platforms; dumbbells; rowing machines; chest weights; spring exercisers; grip developers; medicine balls; head guards; punching bags; training bags; skipping ropes; shoe guards; boxing and wrestling rings; gymnasium horses, parallel bars, weight benches; step machines; weightlifting gloves; trampolines; exercise equipment; weight lifting equipment; weight lifting belts; free weights; aerobic equipment; aerobic fitness belts; stationery cycles; elastic exercise bands; ankle weights; wrist weights; treadmills; exercise bikes;

				stationery bikes; elliptical machines; martial arts equipment; kicks; shin guards; body shields; Dumb-bells; kettle bells; free weights; medicine balls; gym balls; gym bars; sit up benches; exercise bikes; stationary bikes; elliptical machines; treadmills; weight benches; weight towers; trampolines; Aerobic equipment; aerobic fitness belts, stationery cycles, elastic exercise bands, ankle weights, wrist weights, treadmills; hurdles; javelins; shot puts; discus; poles for used in athletic jumps; vaulting poles; nets; hammers for throws; starting blocks; dumb-bells; kettle bells; free weights; medicine balls; gym balls; gym bars; sit up benches; exercise bikes; elliptical machines; weight benches; weight towers; trampolines; parts, accessories and fittings for all the aforesaid goods.
			32	Beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages; non-alcoholic beverages enriched with added vitamins, minerals or added trace elements; isotonic drinks [not for medical purposes]; energy drinks; cordials; seltzers [beverages]; sorbets [beverages]; preparations in the form of powder for making drinks; beverages for use as aids to slimming.
 Colours Claimed /Indication: Yellow.	EU 013903307	02.04.15 14.08.15	3	Identical to class 3 in EU 13903381
			5	Identical to class 5 in EU 13903381
			14	Identical to class 14 in EU 13903381
			18	Identical to class 18 in EU 13903381
			25	Identical to class 25 in EU 13903381
			28	Identical to class 28 in EU 13903381
			32	Identical to class 32 in EU 13903381
	EU 013906888	02.04.15 10.02.17	3	Identical to class 3 in EU 13903381 except for the addition of "beauty masks, body masks, cleansing masks".
			9	Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers; recording discs; compact discs, DVDs and other digital recording media; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment, computers; computer software; fire-extinguishing apparatus; headphones; timers; pedometers; binoculars; eyewear; spectacles; sunglasses; sports goggles and eyewear; swimming goggles; frames, lenses, chains, cords and cases for eyewear; knee, elbow, leg, arm, body, face and eye pads, shields and protectors; protective helmets; protective eyewear; protective clothing, headgear and footwear; protective accessories, respectively knee, wrist, ankle, leg, hand, neck, shin, body, groin, elbow, face and head protectors or mouth guards; mouth protectors (gum shields); life belts, jackets and buoys; ear plugs for divers; snorkels; electronic display apparatus for use with exercise equipment; diving equipment and apparatus; electronic games software; MP3 players and portable and handheld digital electronic devices for recording, organising, transmitting, manipulating, and reviewing text, data, audio and video files and cases for these devices; cases for mobile telephones; helmets; parts and fittings for all the aforesaid goods.
			12	Vehicles for locomotion by land/air/water or rail; apparatus for locomotion by land, air or water; bicycles; motorcycles; air pumps of two-wheeled motor vehicles or bicycles; tyre protection chains for motor cars; tyre protection chains for bicycles; anti-skid chains; air pumps (vehicle accessories); bicycle pumps; motorcycle pumps; saddlebags adapted for bicycles; rear-view mirrors; spoke clips for wheels; reflective straps for use in cycling (accessories for cycles); bells for bicycles; bells for cycles; horns for vehicles; horns for bicycles; luggage carriers for vehicles; luggage carriers for bicycles; hubs for vehicle wheels; saddles for bicycles/cycles or motorcycles; saddle covers for bicycles or motorcycles; bicycle seats; bicycle seat covers; bicycle racks [carriers]; stabilisers for bicycles; tyres; bottle cages for bicycles; fittings for bicycles for carrying beverages; brakes for vehicles; braking apparatus for bicycles; braking installations for

				bicycles; carrying racks for bicycles; children's bicycles [for transport]; derailleurs for bicycles; direction signals for bicycles; fittings for bicycles for carrying food; fittings for bicycles for carrying luggage; baskets adapted for cycles; handlebars; handlebar warmers; motorised bicycles; inner tubes for bicycles/cycles; bicycle tubes; pedals for bicycles; mountain bikes; non-motorised tricycles; pedals for cycles; covers for pedals on cycles; puncture repair kits for inner tubes; bicycle tyre levers; splash guards for bicycles; mudguards; mud flaps for automobiles; suspension forks for bicycles; suspension shock absorbers for vehicles; vehicle wheel spokes; cycle stands; bicycle stands; cranks for cycles; toe straps for use on bicycles; toe clips for use on bicycles; tubeless tyres for bicycles; grips for bicycle; valve caps for vehicle tires; bike streamers; twist grips for bicycles; vehicle wheels; rims for vehicle wheels; chains for motor cars; bicycle chains; chain guards for bicycle; safety pads for bicycle; grips for handlebars for bicycle; covers for handgrips of cycles; frames for cycles; gears for cycles; warning systems (audible-) for cycles; parts and fittings for bicycles; parts and fittings for cycles; parts and fittings for automobiles.
			14	Identical to class 14 in EU 13903381 except for the addition of "clocks".
			16	Paper; cardboard; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); printers' type; printing blocks; shopping (carrier) bags of plastic; gift vouchers; stickers and transfers (decalcomanias); removable tattoos.
			18	Identical to class 18 in EU 13903381
			21	Household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steelwool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes; mugs; tankards.
			24	Textiles and textile goods, not included in other classes; bed and table linen; bed covers; bed sheets; blankets; table covers; towels; flannels; face towels; canvas; boxing ring canvas.
			25	Identical to class 25 in EU 13903381
			28	Identical to class 28 in EU 13903381 except for the addition of "sports mats".
			29	Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; milk and milk products; edible oils and fats; protein bars, power bars, food supplement bars to support physical exercise; protein milk; whipped cream; pate.
			30	Class30: Coffee, tea, cocoa and artificial coffee; Rice; Tapioca and sago; Flour and preparations made from cereals; Bread, pastry and confectionery; Edible ices; Sugar, honey, treacle; Yeast, baking-powder; Salt; Mustard; Vinegar; sauces (condiments); Spices; Ice; Popcorn; husked oats; oat flakes; oat based food; muesli; cereal preparations; corn flakes; corn flour; corn meal; maize flakes; maize flour; maize meal; flour milling products; gluten for food; potato flour for food; soya flour; biscuits; malt biscuits; petit-beurre biscuits; cookies; edible decorations for cakes; cakes; tarts; petit fours; macaroons; bread; leaven ginger bread; bread rolls; buns; pastry; pastries; waffles; pancakes; pizzas; pastilles; pasta; ravioli; ribbon vermicelli; noodle vermicelli; spaghetti; macaroni; chocolate; chocolate based beverages; chocolate beverages with milk; cocoa; cocoa based beverages; coffee beverages with milk; coffee flavourings; confectionery; fondants; confectionery for decorating Christmas trees; almond confectionery; peanut confectionery; sugar confectionery; stick liquorice; liquorice; lozenges; candy caramels; candy for food; maltose; gum sweets; pralines; peppermint sweets; sugar; natural sweeteners; spices; allspice; curry ginger; cinnamon; cloves; seasonings; condiments; cooking salt; celery salt; salt for preserving foodstuffs; pepper; seasoning peppers; mustard; aniseed; saffron; vanilla substitute; vanillin; almond paste; essences for foodstuffs; starch for food; ice cream; edible ices; ice sherbets; ice sorbets; ice for refreshment; natural or artificial ice; glucose for food; golden syrup; honey; rice; sago; semolina; tapioca for food; turmeric for food; preparations for stiffening whipped cream; yeast; pies; meat pies; farinaceous foods; farinaceous foods pastes; groats for human food; puddings; sandwiches; sauces; ketchup; non-medical infusions; vinegar; beer

				vinegar; salad dressings; mayonnaise; non-medicated additives for beverages: aerated beverages with a coffee, cocoa or chocolate base; beverages made from cereals; flavourings (other than essential oils) for beverages; whiteners (non-dairy) for beverages; tea beverages; corn starch derivatives in powder form for making into drinks; preparations for use as dietetic additives for consumption by sports persons; protein cereal bars.
			32	Identical to class 32 in EU 13903381 except for the addition of "beverages containing soya; powder for making beverages; instant powder for making flavoured drinks".
 <p>Colours Claimed / Indication: Grey, Yellow.</p>	EU 013925086	09.04.15 03.03.17	3	Identical to class 3 in EU 13903381 except for the addition of "beauty masks, body masks, cleansing masks".
			9	Identical to class 9 in EU 013906888
			12	Identical to class 12 in EU 013906888
			14	Identical to class 14 in EU 13903381 except for the addition of "clocks".
			16	Identical to class 16 in EU 013906888
			18	Identical to class 18 in EU 13903381
			21	Identical to class 21 in EU 013906888
			24	Identical to class 24 in EU 013906888
			25	Identical to class 25 in EU 13903381
			28	Identical to class 28 in EU 13903381 except for the addition of "sports mats".
			29	Identical to class 28 in EU 013906888
			30	Identical to class 30 in EU 013906888
 <p>Mark Description The color(s) grey and yellow is/are claimed as a feature of the mark. The mark consists of the word "EVERLAST" in grey with the letter "E" below it in yellow, slanted to the left. Colours Claimed / Indication: Grey; Yellow.</p>	EU 016370561	16.02.17 24.11.17	10	Blood pressure monitors; blood pressure measuring apparatus; blood pressure testing apparatus; blood pressure recorders; body fat monitors; body fat measuring apparatus; pulse rate monitors; pulse rate measuring apparatus; respiration monitors; respiration measuring apparatus; medical wearing apparel, namely, scrub pants, scrub tops, scrub jackets and shoes; garments for use in medical examination and treatment; surgical gowns; surgical scrub suits; surgical shoe covers; face masks for use by health care providers; gloves for medical purposes; textile headgear specially adapted for use with medical ventilator mask interfaces; human face protectors, namely, transparent face shields for use in the medical and dental fields; compression socks for medical or therapeutic use.
			35	Advertising; business management; business administration; office functions; provision of space on websites for advertising goods and services; business advisory services, promotional services and business information services; setting up, organisation, administration, operation and supervision of customer loyalty, sales, incentives and promotional activity schemes and advice, consultancy and information services relating to such services; business management, including assistance and advising for the establishment and management of retail stores; direct mail advertising; distribution of samples and promotional items; marketing services; business advisory and information services provided online from a computer database or the internet; retail and online retail services connected with the sale of sports wear and equipment, sports and leisure accessories, sports goods including those associated with swimming and water sports, cricket, triathlon, hockey, racket sports, golf, boxing, MMA, clothing, headgear, footwear, sports bags, swimming training aids, sports training aids, swimming training materials, towels and bathrobes; retail services and online retail services of a retailer selling furniture, garden furniture, garden equipment and accessories, toiletries, nutritional products, DIY products and tools, glasses, watches, jewellery, car accessories, car seats, pet accessories and equipment, hair accessories, luggage, medical products, stationary, sweets, travel accessories, towels, clothing, footwear, headgear and toys, printed

			<p>materials, party accessories, umbrellas, trophies; retail services and online retail services of a retailer selling candles, vitamins, small items of metal hardware, eyewear, lighting and lighting apparatus, fireworks, jewellery and costume jewellery, textiles, games and playthings, gymnastic and sporting articles, Christmas decorations, non-alcoholic beverages, telecommunication products and their accessories, telephones and their accessories, phone cards; the bringing together, for the benefit of others, of a variety of sports wear and equipment, sports and leisure accessories, sports goods including those associated with water sports, sports and golf, enabling customers to conveniently view and purchase those goods in a department store, wholesale outlet, supermarket, discount retail park, retail shop and/or concession, via a television shopping channel or from a catalogue by mail order or by means of telecommunications or from an Internet website; the bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods in a store specialising in outdoor clothing, swimming and water sports, sports clothing and equipment, leisure wear, cricket, hockey, racket sports, triathlon, golf, boxing, MMA from a general merchandise store, online or by mail/telephone order; the bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods in a store specialising in selling furniture, garden furniture, toiletries, nutritional products, glasses, watches, jewellery, car accessories, car seats, pet accessories and equipment, stationary, towels, clothing, footwear, headgear, gifts and toys, from a general merchandise store, online or by mail/telephone order; the bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods in a store specialising in selling umbrellas, trophies, candles, vitamins, small items of metal hardware, eyewear, lighting and lighting apparatus, fireworks, games and playthings, telephones and their accessories, phone cards from a general merchandise store, online or by mail/telephone order; the bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods in a store specialising in selling garden equipment and accessories, printed materials, party accessories, Christmas decorations, non-alcoholic beverages, textiles and textile goods, gymnastic and sporting articles, from a general merchandise store, online or by mail/telephone order; the bringing together, for the benefit of others, of a variety of clothing, headgear, footwear, sports bags, sports training aids, DIY products and tools enabling customers to conveniently view and purchase those goods in a department store, wholesale outlet, supermarket, discount retail park, retail shop and/or concession, via a television shopping channel or from a catalogue by mail order or by means of telecommunications or from an Internet website; the bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods in a store specialising in selling telecommunication products and their accessories, jewellery and costume jewellery, sweets, travel accessories, hair accessories, luggage, medical products, from a general merchandise store, online or by mail/telephone order; retailing and wholesaling services, including retailing and wholesaling online or by mail order, connected with the sale of sports wear and equipment, sports and leisure accessories, swimwear, sports goods including those associated with swimming and water sports, cricket, triathlon, hockey, racket sports, golf, boxing and MMA, clothing, headgear, footwear, sports bags, swimming training aids, sports training aids, swimming training materials, towels and bathrobes; retailing and wholesaling services, including retailing and wholesaling online or by mail order, connected with the sale of furniture, garden furniture, garden equipment and accessories, toiletries, nutritional products, DIY products and tools, glasses, watches, jewellery, car accessories, car seats, pet accessories and equipment, hair accessories, luggage, medical products, stationary, sweets, travel accessories, towels, clothing, footwear, headgear; retailing and wholesaling services, including retailing and wholesaling online or by mail order, connected with the sale of candles, vitamins, small items of metal hardware, eyewear, lighting and lighting apparatus, fireworks, jewellery and costume jewellery, textiles, games and playthings, gymnastic and sporting articles, Christmas decorations, non-alcoholic beverages; retailing and wholesaling services, including retailing and wholesaling online or by mail order, connected with the sale of sports and leisure goods, telecommunication products and their accessories, telephones and their accessories, phone cards, gifts and toys, printed materials, party accessories, umbrellas, trophies; provision of information to customers</p>
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				and advice and assistance in the selection of goods; providing a searchable online advertising guide featuring goods available for sale; retail services and online retail services of a retailer selling cooking utensils, tableware, cameras, headphones, earphones, MP3 players, hi-fi sound systems, global positioning system (GPS) devices, televisions, laptops [computers], tablet computers, electronic display apparatus for use with exercise equipment, leather and imitations of leather, household textiles; the bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods in a store specialising in the sale of clothing, footwear, headgear, bags, backpacks, mobile phone cases, bracelets, watches, jewellery, wallets, keyrings, cooking utensils, tableware, cameras, headphones, earphones, MP3 players, hi-fi sound systems, global positioning system (GPS) devices, televisions, laptops [computers], tablet computers, electronic display apparatus for use with exercise equipment, keyrings, leather and imitations of leather , from a general merchandise store, online or by mail/telephone order.
			41	Sports club services, namely, boxing club services; leisure centre, health club, fitness centre and gymnasium services, namely, providing instruction and equipment in the field of physical exercise; provision of swimming pools; provision of discotheque services; provision of recreational facilities; provision of gym facilities; provision of facilities relating to gymnastics, weight training, body building, aerobics, boxing and physical exercise; instructional and training services relating to sports, gymnastics, weight training, body building, aerobics, physical exercise, physical rehabilitation, diet, nutrition, health and beauty; physical fitness advisory services; entertainment services, namely, providing sporting and cultural activities, namely, boxing exhibitions, fitness exhibitions.
	UK 3107419	06.05.15 07.08.15	41	Identical to class 41 in EU 16370561 except for the addition of "Education; Providing of training; Entertainment; Sporting and cultural activities".
	UK 3113077	12.06.15 01.04.16	35	Advertising; business management; business administration; office functions; provision of space on websites for advertising goods and services; business advisory services, promotional services and business information services; setting up, organisation, administration, operation and supervision of customer loyalty, sales, incentives and promotional activity schemes and advice, consultancy and information services relating to such services; business management, including assistance and advising for the establishment and management of retail stores; direct mail advertising; distribution of samples and promotional items; marketing services; business advisory and information services provided online from a computer database or the internet; retail and online retail services connected with the sale of sports wear and equipment, sports goods including those associated with water sports, sports and golf, enabling customers to conveniently view and purchase those goods in a department store, wholesale outlet, supermarket, discount retail park, retail shop and/or concession, via a television shopping channel or from a catalogue by mail order or by means of telecommunications or from an Internet website; the bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods in a store specialising in outdoor clothing and equipment, swimming and water sports, sports clothing and equipment, leisure wear, cricket, hockey, racket sports, triathlon, golf, boxing, MMA, furniture, housewares, garden furniture, electronics, toiletries, nutritional products, glasses, watches, jewellery, car accessories namely stickers, car air fresheners, car charger cables, car seats, pet accessories and equipment, souvenirs, stationery, towels, clothing, footwear, headgear, gifts and toys, umbrellas, trophies, candles, vitamins, small items of metal hardware, eyewear, lighting and lighting apparatus, fireworks, bags made from leather and/or imitation leather, games and playthings, telephones and their accessories, phone cards, garden equipment and accessories, printed materials, party accessories namely paper hats, paper table cloths, room decorations made from paper, disposable plates, cutlery and cups, Christmas decorations, non-alcoholic beverages, textiles and textile goods namely bed linens, table cloths, towels, curtains and cushion covers, gymnastic and sporting articles, clothing, headgear, footwear, sports bags, sports training aids, DIY products, telecommunication products and their accessories, jewellery and costume jewellery, sweets, hair accessories, luggage, medical products, Watches, Wearable and non-wearable stand alone fitness tracking devices (which includes heart rate monitors, pedometers, GPS Devices, timers, timing, stop watches,

				<p>distance travelled, calories burned, sleep monitors, etc) Which may or may not be blue tooth enabled, High-Vis LED and Reflective Accessories including armbands, wristbands, waist belts, heel spurs, strobe lights, headbands, shoelaces, hand held lights, vests with reflective and/or LED qualities for night time activity, Emergency Information wrist bands, Hydration Accessories including Water bottles, waist packs, sling packs that hold a water bottle, from a general merchandise store, online or by mail/telephone order; retailing and wholesaling services, including retailing and wholesaling online or by mail order, connected with the sale of sports wear and equipment, swimwear, sports goods including those associated with swimming and water sports, cricket, triathlon, hockey, racket sports, golf, boxing and MMA, clothing, headgear, footwear, sports bags, swimming training aids, sports training aids, swimming training materials, towels and bathrobes, furniture, housewares, garden furniture, garden equipment and accessories, electronics, toiletries, nutritional products, DIY products and tools, glasses, watches, jewellery, car accessories namely stickers, car air freshners, car charger cables, car seats, pet accessories and equipment, hair accessories, luggage, medical products, souvenirs, stationery, sweets, towels, clothing, footwear, headgear, candles, vitamins, small items of metal hardware, eyewear, lighting and lighting apparatus, fireworks, jewellery and costume jewellery, bags made from leather and/or imitation leather, textiles and textile goods namely bed linens, table cloths, towels, curtains and cushion covers, games and playthings, gymnastic and sporting articles, Christmas decorations, non-alcoholic beverages, sports and leisure goods, outdoor goods, telecommunication products and their accessories, telephones and their accessories, phone cards, gifts and toys, printed materials, party accessories namely paper hats, paper table cloths, room decorations made from paper, disposable plates, cutlery and cups, umbrellas, trophies, watches, wearable and non-wearable stand alone fitness tracking devices (which includes heart rate monitors, pedometers, GPS Devices, timers, timing, stop watches, distance travelled, calories burned, sleep monitors, etc) Which may or may not be blue tooth enabled, High-Vis LED and Reflective Accessories including armbands, wristbands, waist belts, heel spurs, strobe lights, headbands, shoelaces, hand held lights, vests with reflective and/or LED qualities for night time activity, Emergency Information wrist bands, Hydration Accessories including Water bottles, waist packs, sling packs that hold a water bottle; provision of information to customers and advice and assistance in the selection of goods; providing a searchable online advertising guide featuring goods available for sale.</p>
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4) The opponent relies upon the goods and services shown above for which its marks are registered. The opponent contends that the goods and services applied for are identical and/or similar to the goods and services for which the earlier marks are registered. The opponent also contends that the mark in suit “is comprised of the letter “E” only which appears in a slightly stylised form”. It contends that there is conceptual and phonetic identity with some of its marks. It also contends that visually the mark in suit and its marks are similar as the “stylisation of the respective marks both include the elongation of the three outward lines within the letter “e” and the final line in the E is the most elongated of the three. Furthermore, the first line in the E is downward facing and curving in on itself, further increasing the visual similarity between the respective marks. The opponent contends that the visual similarity between the marks is also heightened when the subject mark is titled and displayed at a similar angle to the opponent’s marks”. As such the mark in suit offends against Section 5(2)(b) of the Act.

5) On 30 September 2019 the applicant filed a counterstatement basically denying all the grounds of opposition. The applicant contends that the opponent's mark will be seen as the letter "w", also it did not put the opponent to proof of use.

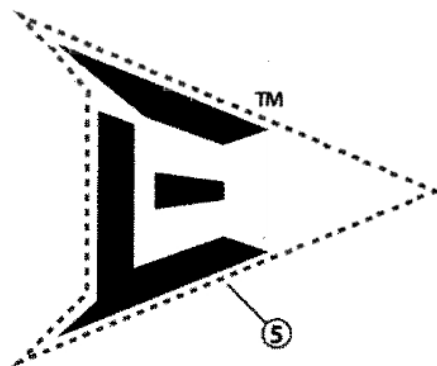
6) Only the applicant filed evidence, but both seek an award of costs in their favour. The matter came to be heard on 26 February 2020 when the applicant was represented by Mr Akhtar a director of the applicant company; the opponent was represented by Mr Harris of Messrs Lane IP Ltd.

APPLICANT'S EVIDENCE

7) The applicant filed a witness statement dated, 27 September 2019, by Mr Akhtar a director of the applicant company. At paragraph 4 of his statement he contends:

"Applicant device marks design:- The Applicant device marks consists of different individual *independent* elements with **top and bottom prolong of applicant device marks are equal in size** and both starting **from behind the middle part of the device marks** which is positioned at **90 degree**. The top and bottom prolong both has a **sharp slant at back** and **finishes as a soft slant in the front**. The bottom prolong joins into the middle part of the device mark which is angled at **90 degree** and has a **soft slant on the top**, the middle prolong of the device mark is an **independent symmetrical box** which is broader on the left and narrower on the right and is placed almost to the front of the device mark. Overall the applicant device marks are making a shape of an arrow. The applicant other mark in the series also has a **grey infill** and a **black border line.**"

8) He also provides evidence of other parties who have registered "e" marks. He also claims that the mark shows an arrow and provides the following image of the mark:



9) That concludes my summary of the evidence filed, insofar as I consider it necessary.

DECISION

10) The only ground of opposition is under section 5(2)(b) which reads:

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

(a)

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

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

11) An “earlier trade mark” is defined in section 6, the relevant part of which states:

“6.-(1) In this Act an “earlier trade mark” means -

(a) a registered trade mark, international trade mark (UK) or Community trade mark which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks.”

12) The opponent is relying upon its trade marks listed in paragraph 3 above which are clearly earlier trade marks having been applied for prior to the applicant’s mark. The mark in suit was published on 21 December 2018 at which point none of the opponent’s marks had been registered for over five years and the proof of use provisions therefore do not apply.

13) When considering the issue under section 5(2)(b) I take into account the following principles which 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

14) In the judgment of the Court of Justice of the European Union (CJEU) in *Canon*, Case C-39/97, the court stated at paragraph 23 of its judgment that:

“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”.

15) In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the 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 für 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”.

16) In *YouView TV Ltd v Total Ltd* ,[2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that: “... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it

was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which 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."

17) In *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another*, [2000] F.S.R. 267 (HC), Neuberger J. (as he then was) stated that:

"I should add that I see no reason to give the word "cosmetics" and "toilet preparations" anything other than their natural meaning, subject, of course, to the normal and necessary principle that the words must be construed by reference to their context."

18) 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. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the General Court 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".

19) In *Sanco SA v OHIM*, Case T-249/11, the General Court indicated that goods and services may be regarded as 'complementary' and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. *chicken* against *transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited* BL-0-255-13:

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes.”

Whilst on the other hand:

“.....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.”

20) I also note that if the similarity between the goods is not self-evident, it may be necessary to adduce evidence of similarity even if the marks are identical. In *Commercy AG, v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-316/07, the General Court pointed out that:

“43. Consequently, for the purposes of applying Article 8(1)(b) of Regulation No 40/94, it is still necessary, even where the two marks are identical, to adduce evidence of similarity between the goods or services covered by them (see, to that effect, order of 9 March 2007 in Case C-196/06 P *Alecansan v OHIM*, not published in the ECR, paragraph 24; and Case T-150/04 *Mülhens v OHIM – Minoronzoni(TOSCA BLU)* [2007] ECR II-2353, paragraph 27).”

21) Thus, where the similarity between the respective goods / services is not self-evident, the opponent must show how, and in which respects, they are similar.

22) At the hearing the opponent agreed that its strongest case, for most of the goods and services was under its mark EU 013903381. I shall therefore compare the applicant’s specification to the goods and services for which the opponent’s mark EU 013903381 is registered, unless otherwise stated.

23) The applicant’s goods in Class 5 are: “Fabric deodorizers; Shoe deodorizers”. Deodorizers both mask the smell and kill the bacteria and/or germs that create the smell. These are therefore encompassed by the opponent’s goods in class 5 “sanitary preparations for medical purposes; disinfectants; fungicides, medicinal preparations and substances; antiseptic preparations; disinfectants for hygiene purposes”. It is common for disinfectants to be perfumed and so these goods are **identical**.

24) Moving onto the applicant's goods in class 6: "Metal swivels for boxing, Martial arts, taekwondo, judo, Mixed Martial Arts and combat sports apparatus; metal swivels for speed bags or punch bags; metal key rings; parts and fittings for all the aforesaid goods". The metal swivels would be included in the actual items which they are designed for and so the opponent's specification in class 28 of "gymnastic and sporting articles, equipment and apparatus not included in other classes; exercise and fitness apparatus and equipment; striking bags; punching bags; striking-bag platforms; training bags; boxing and wrestling rings; exercise equipment; martial arts equipment; parts, accessories and fittings for all the aforesaid goods" encompass such swivels, whilst the registration of "key rings" in the opponent's class 14 goods means that these must be regarded as **highly similar**.

25) Clearly the applicant's class 9 specification breaks down into those goods which are sports related and those of a more general description, but which would include sports equipment. In my opinion the sports related goods are as follows: "Protective and safety equipment relating to sport; sports helmets, sports helmets and protective gloves all for use in relation to boxing, Mixed Martial Arts, Martial Arts, Taekwondo and combat sports". Those which would cover items such as welding gloves and masks, but also sports equipment are "protective clothing, protective headgear; protective helmets, mouth guards, protective masks, protective gloves; protective helmets, Knee-pads for workers; Mouth protectors [gum shields]". The opponent does not have class 9 goods registration in respect of mark EU 013903381, but it does have goods in class 28 registered. The goods which are, to my mind, **highly similar** to the sports related goods listed earlier in this paragraph are: "Class 28: supporters, protectors, guards and pads for sports, athletics and fitness; mouth guards; ear and eyebrow protectors for boxers; boxing masks; boxing gloves; hand tapes and wraps for boxing and MMA use; punch mitts and gloves; grappling gloves; sparring gloves; gloves for sports; gloves for use in boxing and MMA; head guards; shoe guards; weightlifting gloves; weight lifting belts; martial arts equipment; shin guards; body shields; Aerobic equipment; nets; parts, accessories and fittings for all the aforesaid goods". Turning to the applicant's more general goods in this class these are, to my mind, at least **similar to a medium degree** to the opponent's goods in class 28 as they are similar in their nature, their intended purpose and their method of use.

26) I next turn to the applicant's goods in class 10 which are "Knee bandages [supportive]; Knee guards in the nature of supports [other than sports articles]; Knee supports for medical use; Elasticated supports for the knee; Medical knee braces; Elasticated supports for the ankle; Elasticated supports for the elbow; Elasticated supports for the wrist; Elasticated bandages for supportive use;

Wrist supports for medical use; Foot bandages [supportive]; Ankle supports for medical use; Socks (Elasticated -) for medical purposes; Compression socks for medical or therapeutic use". In my opinion, these are all goods to support / protect various parts of the human body. The opponent's class 5 goods of "bandages and dressings" carry out the same function, have the same intended purpose and nature and are in competition with each other, also many of the applicant's goods are in fact bandages. To my mind, the opponent's class 5 specification encompasses most of the applicant's specification such as "Knee bandages [supportive]; Knee supports for medical use; Elasticated supports for the knee; Elasticated supports for the ankle; Elasticated supports for the elbow; Elasticated supports for the wrist; Elasticated bandages for supportive use; Wrist supports for medical use; Foot bandages [supportive]; Ankle supports for medical use; Socks (Elasticated -) for medical purposes" as such these goods must be regarded as **highly similar**. Turning to some of the other items in the applicant's specification, specifically "Knee guards in the nature of supports [other than sports articles]; Medical knee braces;" At the hearing, Mr Akhtar contended that his goods had metal supports, however so do a number of similar supports aimed at the sports market, which is one of the reasons why I believe that the opponent's goods in class 28, namely, "supporters, protectors, guards and pads for sports, athletics and fitness" must be regarded as **highly similar** as they have the same purpose, are similar in nature, used by the same people for the same reason and they would be in competition with each other. Lastly, I come to the applicant's last item in class 10 "Compression socks for medical or therapeutic use". These are **highly similar** to compression bandages and have the same purpose, are used by the same people for the same reasons, they have similar methods of use and they are in competition.

27) Moving onto the applicant's goods in class 18 which are "Bags, sports bags, holdalls, equipment bags, travelling bags, luggage, rucksacks, knapsacks, belt pouches, bum bags, gym bags, school bags, boot bags, purses, travel purses, wallets; parts and fittings for all the aforesaid goods; All purpose sport bags; All-purpose athletic bags; All-purpose carrying bags; All-purpose leather straps; Athletic bags; Bags for sports; Bags for sports clothing; Bags made of imitation leather; Bags made of leather; Kit bags; Leather and imitations of leather; Leather luggage straps; Leather straps; Rucksacks; Shoe bags". Most of the same terms are used in the opponent's specification in the same class, "bags; trunks and travelling bags; luggage; suitcases; luggage tags; haversacks; backpacks; knapsacks; cases; portfolios; leather shoulder belts and straps; wallets; purses; pouches; card holders; parts and fittings for all the aforesaid goods. boxes made of leather or imitation leather; gym bags; Leather and imitations of leather; leather thongs and straps; luggage straps; Rucksacks". Those

terms which do not appear such as “shoe bags” these terms are encompassed by wide ranging terms such as “bags” in the opponent’s specification. The goods in class 18 are **identical**.

28) I next turn to the applicant’s class 24 goods which are “Labels and tags, towels, washcloths”. The opponent contends that these are similar to its class 25 goods of “bath robes, dressing gowns”. The opponent contended that the goods could be made of the same towelling material, would be used in bathrooms, and would be found alongside each other in department stores. On the basis of being made of the same material aluminium ships and drinks cans would be similar. The uses of these goods are completely dissimilar, I do not accept that they are sold alongside each other in department stores and no evidence was filed showing that this is the case. I therefore find the goods of the two parties **not similar**.

29) The opponent does have registered under its Mark EU13906888 goods in class 24 “Textiles and textile goods, not included in other classes; towels; flannels; face towels”. These goods encompass the applicant’s goods and so these would be regarded as **identical**.

30) Moving onto the goods in class 25, both parties have the same terms of “Clothing; Footwear; Headgear” in their specifications and so these are **identical**.

31) The last class of goods applied for by the applicant are in class 28. To my mind, identical wording or wording encompassing the entirety of the applicant’s specification can be found in the opponent’s class 28 goods. The table below sets out what are, in my opinion, **identical goods**:

Applicant’s goods	Opponent’s goods
Games and playthings	Games and playthings;
gymnastic and sporting articles; sporting equipment and apparatus; exercise mats; apparatus, articles and equipment for use in relation to boxing, martial arts, MMA, Taekwondo, bodybuilding, weight-training and Combat sports; Lifting grips for weight lifting;	gymnastic and sporting articles, equipment and apparatus not included in other classes; exercise and fitness apparatus and equipment; martial arts equipment; strike shields; target paddles; freestanding bags; training dummies; striking-bag platforms; dumbbells; chest weights; weight benches; weight lifting equipment; free weights; ankle weights; wrist weights; free weights; weight benches; weight towers; kettle bells;

	parts, accessories and fittings for all the aforesaid goods.
sporting articles (padding) for protective purposes for use in relation to boxing, martial arts, MMA and Taekwondo; shaped padding for protecting parts of the body (specifically made for use in sporting activities); knuckle guards, body protectors, groin protectors, abdominal protectors, rib protectors, sports gloves, boxing gloves, skipping ropes, Abdomen protectors for Taekwondo; Chest protectors adapted for playing the sport of taekwondo; Protective paddings for Taekwondo; Martial arts training equipment; shields for use in Boxing, MMA, martial arts and Taekwondo; Abdomen protectors for athletic use; Chest protectors for athletic use; Arm pads adapted for use in sporting activities; Arm guards for sports use; Chest protectors for sports use; Shin guards; Shin guards [sports articles];Shin pads; Shin pads [sports articles];Karate shin pads; Pads for use in sports; elbow pads.	supporters, protectors, guards and pads for sports, athletics and fitness; mouth guards; ear and eyebrow protectors for boxers; boxing masks; martial arts equipment; head guards; shoe guards; shin guards; body shields; martial arts equipment; skipping ropes;
punch bags, punching balls, boxing pads; Karate target pads ;	punch and kick boards; striking bags; punching bags; guards and pads for sports; strike shields; target paddles; freestanding bags; training dummies; striking-bag platforms;
Taekwondo mitts; Sparring gloves; boxing hand guards; hand protecting wraps; martial arts hand guards; sporting hand guards; Weight lifting gloves; Gloves for sports;	punch mitts and gloves; ; boxing gloves;; hand tapes and wraps for boxing and MMA use; grappling gloves; sparring gloves; gloves for sports; gloves for use in boxing and MMA; martial arts equipment; weightlifting gloves;
Body training apparatus [exercise]; Hand grip strengthener rings;	rowing machines; grip developers; step machines;; exercise equipment; aerobic

	equipment; stationery cycles; elastic exercise bands; treadmills; exercise bikes;
Medicine balls; gym balls;	medicine balls; gym balls;
Weight lifting belts; Back supports [belts] for weightlifters;	weight lifting belts;
Exercise bands; tension resistance cords;	elastic exercise bands; aerobic fitness belts;

32) With regard to the services sought to be registered by the applicant the opponent cannot rely upon its trade mark EU 013903381 as this mark has no services in its registered specification. Instead it must rely upon its other marks such as 16370561 and 3107419 which are identical marks save for the colour claims in the former mark. The applicant is seeking to register the following in class 35: "Retail services, online retail services and wholesale services all connected with the sale of clothing, footwear, headgear, sporting equipment and apparatus, articles and equipment for use in relation to boxing, martial arts, mixed martial arts, body-building, weight-training and combat sports, sporting articles (padding) for protective purposes for use in relation to boxing, mixed martial arts, Taekwondo, martial arts and combat sports, shaped padding for protecting parts of the body (specifically made for use in sporting activities), shields for use in martial arts, punch bags, punching balls, boxing pads, sporting hand guards, boxing hand guards, martial arts hand guards, boxing pads, hands wraps, knuckle guards, body protectors, groin protectors, abdominal protectors, rib protectors, sports gloves, mouth guards, boxing gloves, boxing shoes, gym bags, skipping ropes, gym balls, weight lifting gloves, Weightlifting Belts, Exercise bands, Sports helmets, Mouth guards; Sponsoring of sports competitions". To my mind, the whole of this specification (with the exception of Sponsoring of sports competitions) is encompassed within the first few lines of the opponent's 16370561 specification of "retail and online retail services connected with the sale of sports wear and equipment, sports and leisure accessories, sports goods including those associated with swimming and water sports, cricket, triathlon, hockey, racket sports, golf, boxing, MMA, clothing, headgear, footwear, sports bags". These services must therefore be regarded as **identical**.

33) The exception mentioned in the previous paragraph (Sponsoring of sports competitions) is encompassed within the class 41 services of the opponent's mark 3107419 within the terms "Sporting and cultural activities". These services must be regarded as **highly similar**.

34) Turning to the applicant's class 39 services of "Packaging of goods; Packaging of products", it was the opponent's contention that these services would be complementary, and thus similar to, the goods covered by the Opponent's goods and retail etc services. I do not accept this view. To my mind, the opponent's services in this class are highly specialised in that it offers a service of packaging goods for manufacturers such as putting tennis balls into pressurised containers, or eggs into egg cartons. None of the opponent's goods or services comes near to offering this service and the opponent has provided no evidence why I should find to the contrary. These services are **not similar** to any of the opponent's specification.

35) Lastly, I turn to the class 41 services applied for by the applicant which are: "In Class 41: Entertainment services, namely, arranging, organizing and conducting an array of athletic and sports activities, events, competitions and tournaments; encouraging and developing sports talent by organizing and conducting athletic programs and activities; providing training in the fields of sports and fitness". To my mind, the services registered in class 41 of the opponent's mark 3107419 encompass the entirety of the applicant's specification in the terms "Education; Providing of training; Entertainment; Sporting and cultural activities". These services must therefore be regarded as **identical**.

The average consumer and the nature of the purchasing decision

36) As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods and services. I must then determine the manner in which these goods and services are likely to be selected by the average consumer in the course of trade. 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."

37) The goods and services sought to be registered cover a vast array of items. These goods and services will be purchased by the public at large including businesses. To my mind, goods such as those in classes 5, 6, 9, 10, 18, 24, 25 & 28 will typically be offered for sale in retail outlets, in brochures and catalogues as well as on the internet. The initial selection is therefore primarily visual. I accept that such goods may be researched or discussed with a member of staff. Therefore, aural considerations must also be taken into account. To my mind, when selecting such goods the average consumer will pay attention to the item to ensure that it is compatible to their requirements and the correct size for the intended user. Some items such as deodorizer will be purchased with only a low degree of attention other items, such as training equipment will be afforded a higher level of attention given the particular requirements they need to address. Businesses will pay much the same level of attention as the public on such items. In my opinion, a low to average level of attention will be paid to selecting goods in classes 5, 18, 24 and 25, whereas goods in classes 6, 9, 10, and 28 will command a slightly higher level of attention.

38) The class 35 services sought to be registered are, broadly speaking, retail services in relation to sports equipment. Such services will be used by the public at large including businesses and will typically be advertised in brochures and magazines, on the internet and of course on the shop front. The initial selection is therefore primarily visual. I accept that such services may be researched or discussed with a member of staff and word of mouth recommendations also come into play. Therefore, aural considerations must be considered. To my mind, when selecting a retail service the average consumer will pay an average degree of attention to who the provider of the service is, if only to ensure the veracity of the goods and the credibility of the provider.

39) Turning to the question of the services in class 39 (packaging services) these are most likely to be used by manufacturers, who will pay a higher level of attention to the selection as their reputation will depend upon the quality of the packaging surrounding their goods. Such services are likely to be advertised in magazines, on the internet and at trade shows so whilst the initial selection is likely to be visual, aural considerations such as discussions at trade shows and word of mouth must be taken into account.

40) Turning to the class 41 services, which are broadly speaking arranging sporting events, the average consumer will be the general public including businesses. When selecting a sporting event to attend the average consumer is likely to pay a high degree of attention as they would want to attend a sporting event that they are interested in. Such events are likely to be advertised in the media, on the internet, by posters and flyers and on the internet. Selection will be primarily visual although word of mouth recommendations and mentions on the radio etc mean that aural considerations must also be taken into account.

Comparison of trade marks



41) The opponent is relying upon the following three marks:

EU 013903381	EU 16370561	UK 3107419
	 <p>The color(s) grey and yellow is/are claimed as a feature of the mark. The mark consists of the word "EVERLAST" in grey with the letter "E" below it in yellow, slanted to the left. Colours Claimed/Indication: Grey; Yellow.</p>	

42) Whilst I refer to marks 13906888 and 013925086 in this decision as these are, in my opinion, effectively identical to 3107419 and 16370561 respectively) there is no need to carry out additional comparisons. I will therefore carry out a comparison only on the above marks. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by them, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

43) It would be wrong, therefore, to dissect the trade marks artificially, although it is necessary to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by them. I will first compare the mark in suit to the opponent’s mark EU 013903381.

Opponent’s trade mark EU 013903381	Applicant’s trade mark
	

44) Whilst the applicant’s mark is a series of two the only difference is that one is slightly lighter than the other and neither is subject to a colour claim. Therefore, they can both be used in black and white of varying shades and so only one mark needs to be compared for the purposes of this decision. The applicant gave a detailed description of the mark in suit as follows:



“The Applicant device marks consists of different individual *independent* elements with **top and bottom prolong of applicant device marks are equal in size** and both starting **from behind the middle part of the device marks** which is positioned at **90 degree**. The top and bottom prolong both has a **sharp slant at back** and **finishes as a soft slant in the front**. The bottom prolong joins into the middle part of the device mark which is angled at **90 degree** and has a **soft slant on the top**, the middle prolong of the device mark is an **independent symmetrical box** which is broader on the left and narrower on the right and is placed almost to the front of the device mark. Overall the applicant device marks are making a shape of an arrow. The applicant other mark in the series also has a **grey infill** and a **black border line**.”

45) The applicant also contends that its mark will be seen as an arrow as detailed in paragraph eight above. The applicant also described the opponent's EU 013903381 mark as follows:

“The opponent mark is laying down at a less than 30 degree angle. The top 2 prolongs of the mark are very close to each other, thicker at start and curving downwards in a sharp point at the end and making a shape of a curved beak. The 3rd prolong is double the size of the top 2 prolongs and thicker at the start and curving downwards in a sharp point at the end.”

46) The applicant has made quite a decent attempt to describe both marks, and I do not disagree with the description in its broadest sense, but do not accept that the applicant's mark forms an arrow shape as this requires the average consumer to add a number of lines, as shown in paragraph 8 in order to make the new shape. The applicant does not explain why the average consumer would take it upon themselves to add such lines as there is no hint of an arrow about the mark. The average consumer does not consider marks in this kind of technical detail but takes a more rounded or broad-brush approach to viewing marks. To my mind, the marks of both parties will be seen as being highly stylised, pointy letter “E”s. Visually there are obvious differences, but also some similarities. Aurally both would, in my view be pronounced as “E”. Conceptually both would be seen and remembered as a pointy letter “E”. **Overall, the marks are similar at least to a medium to high degree.**

47) I next turn to compare the mark in suit with the opponent's UK 3107419 mark. For ease of reference the marks are:

Opponent's mark UK 3107419	Applicant's trade mark
	



48) The applicant described the opponent's mark UK 3107419 thus:

“The opponent mark consists of a word “Everlast” in a 3rd round effect that is larger from both edges and smaller from the middle and is a dominant part of the mark. The other part of the device mark which is beneath the middle of the word Everlast is laying down at a less than 30 degree angle. The top 2 prolongs of the mark are very close to each other, thicker at start and

curving downwards in a sharp point at the end and making a shape of a curved beak. The 3rd prolong is double the size of the top 2 prolongs and thicker at the start and curving downwards in a sharp point at the end.”

49) Clearly, the dominant element of the opponent’s mark is the term EVERLAST. Visually the marks have a degree of similarity, although this is quite low, equally they have a low degree of aural similarity. Conceptually the opponent’s device element will be seen as a repeat of the initial letter of its word element and so the device will play a much smaller role in the conceptual element. **The marks are, in my opinion, similar to a low degree.**

50) Turning to the opponent’s mark EU 16370561, the marks are:

Opponent’s trade mark EU 16370561	Applicant’s trade mark
 <p data-bbox="180 1026 797 1203">The color(s) grey and yellow is/are claimed as a feature of the mark. The mark consists of the word "EVERLAST" in grey with the letter "E" below it in yellow, slanted to the left. Colours Claimed/Indication: Grey; Yellow.</p>	

51) The applicant described the opponent’s mark EU 16370561 thus:

“The opponent has claimed colour grey and yellow on it. The opponent mark consists of a word “Everlast” in grey in a 3rd round effect that is larger from both edges and smaller from the middle and is a dominant part of the mark. The other part of the device mark which is beneath the middle of the word Everlast in yellow colour is laying down at a less than 30 degree angle. The top 2 prolongs of the mark are very close to each other, thicker at start and curving downwards in a sharp point at the end and making a shape of a curved beak. The 3rd prolong is double the size of the top 2 prolongs and thicker at the start and curving downwards in a sharp point at the end.”

52) My view on the marks are as stated in paragraph 49 above. The only difference between this mark and UK 3107419 is the colour element which to my mind will make little or no difference between the marks. **The marks are, in my opinion, similar to a low degree.**

Distinctive character of the earlier trade mark

53) 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).”

54) The opponent’s marks consist of a simple device of a highly stylised letter “E”, and the same device shown underneath the word EVERLAST. The word could be taken as an indication of the quality of the goods in that they will have longevity. To my mind, the earlier marks all **have an average degree of inherent distinctiveness**. The opponent has shown no use of the marks in terms of turnover and advertising figures and it does not comment on its market share in any sector. **As such it cannot benefit from an enhanced degree of distinctiveness through use in relation to the goods and services for which it is registered.**

Likelihood of confusion

55) In determining whether there is a likelihood of confusion, a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is also necessary for me to keep in mind the distinctive character of the opponent's trade mark as the more distinctive the trade mark is, the greater the likelihood of confusion. I must also keep in mind the average consumer for the goods and services, the nature of the purchasing process and the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he has retained in his mind. Earlier in this decision, I concluded that:

- the average consumer for the goods and services is a member of the general public including businesses who will select the goods and services by predominantly visual means, although I do not discount aural considerations and that they are likely to pay a low to average degree of attention to the selection of the goods in classes 5, 18, 24 and 25 whereas goods in classes 6, 9, 10, and 28 will command a slightly higher level of attention. In selecting services in class 35 the average consumer will pay an average degree of attention, whilst class 39 services will command a higher level of attention to the selection. Lastly, class 41 services will be given a high degree of attention.
- the opponent's mark EU 013903381 is similar to the mark in suit to at least to a medium to high degree. Whilst both the opponent's marks UK 3107419 and EU 16370561 (and by extension 13906888 and 013925086) are similar to the mark in suit to a low degree.
- the opponent's marks have an average degree of inherent distinctiveness and none can benefit from an enhanced distinctiveness through use in relation to the goods and services upon which they rely.
- The similarity of the goods and services of the two parties is shown below:

Applicants specification	EU 013903381
In Class 5:	Identical
In Class 6:	Highly similar

Class9	Highly similar
Class 10	Highly similar and similar to a medium degree.
In Class 18:	identical
In Class 24:	NOT similar. But identical to class 24 under EU 13906888 and 13925086
In Class 25:	identical
In Class 28:	identical
In Class 35:	Most are identical to mark 16370561 Part is highly similar class 41 services of 3107419
In Class 39:	NOT similar
Class 41	Identical to 3107419.

56) In *Kurt Geiger v A-List Corporate Limited*, BL O-075-13, Mr Iain Purvis Q.C. as the Appointed Person pointed out that the level of ‘distinctive character’ is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar. He said:

“38. The Hearing Officer cited *Sabel v Puma* at paragraph 50 of her decision for the proposition that ‘the more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion’. This is indeed what was said in *Sabel*. However, it is a far from complete statement which can lead to error if applied simplistically.

39. It is always important to bear in mind what it is about the earlier mark which gives it distinctive character. In particular, if distinctiveness is provided by an aspect of the mark which has no counterpart in the mark alleged to be confusingly similar, then the distinctiveness will not increase the likelihood of confusion at all. If anything it will reduce it.”

57) In other words, simply considering the level of distinctive character possessed by the earlier mark is not enough. It is important to ask ‘in what does the distinctive character of the earlier mark lie?’ Only after that has been done can a proper assessment of the likelihood of confusion be carried out.

58) I also consider the issue of indirect confusion, and take into account the case of *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

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

59) I also note that in *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, Mr James Mellor Q.C., as the Appointed Person, stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark. This is mere association not indirect confusion.

60) It is accepted that a degree of similarity of goods or services is essential for there to be a finding of a likelihood of confusion. I look to *Waterford Wedgwood plc v OHIM* – C-398/07 P (CJEU); and also *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, where Lady Justice Arden stated that:

“49..... I do not find any threshold condition in the jurisprudence of the Court of Justice cited to us. Moreover I consider that no useful purpose is served by holding that there is some minimum threshold level of similarity that has to be shown. If there is no similarity at all, there is no likelihood of confusion to be considered. If there is some similarity, then the likelihood of confusion has to be considered but it is unnecessary to interpose a need to find a minimum level of similarity.

61) In view of all of the above, and allowing for the concept of imperfect recollection, there is a likelihood of consumers being directly confused into believing that the goods in classes 5, 6, 9, 10, 18, 25 & 28 and provided by the applicant are those of the opponent or provided by an undertaking linked to it under its trade mark EU 013903381. Similarly, there is a likelihood of consumers being indirectly confused into believing that the goods in class 24 and services in classes 35 and 41 and provided by the applicant are those of the opponent or provided by an undertaking linked to it under either the opponent’s

3107419 or 16370561 mark, despite the higher level of attention paid to the selection of services in class 41 and the lower level of similarity of the marks. I believe that the mark in suit will be seen as merely a brand extension of these marks, as has been shown by the opponent's 013903381 registration. **The opposition under Section 5(2) (b) therefore succeeds in respect of the goods in classes 5, 6, 9, 10, 18, 24,25 & 28 and services in classes 35 & 41.**

62) Turning to the services in class 39, I found earlier that none of the opponent's goods or services were similar or complementary to these services and therefore, as set out in paragraph 60 above the **opposition under Section 5(2) (b) must fail in respect of the services in class 39.**

CONCLUSION

63) The opposition under section 5(2)(b) was successful in respect of all the goods and some of the services applied for but failed in respect of the services in class 39. The mark in suit will be registered for the services in class 39.

COSTS

64) As the opponent has been mostly successful it is entitled to a contribution towards its costs. I note that the opponent was professionally represented.

Preparing a statement and considering the other side's statement	£200
Expenses	£200
Filing of evidence and considering the other sides evidence	£800
Attendance at Hearing	£800
TOTAL	£2,000

65) I order Sportica Inc. Ltd to pay Everlast World's Boxing Headquarters Corporation the sum of £2,000. This sum to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 11th day of March 2020

George W Salthouse
For the Registrar,
the Comptroller-General