

O/595/21

TRADE MARKS ACT 1994

IN THE MATTER OF  
TRADE MARK APPLICATION NO. 3502248  
BY PRINT AND SIGN WORLD LIMITED  
TO REGISTER AS A SERIES OF TRADE MARKS:

**eezeekleen**

**eezeecleen**

IN CLASSES 3, 21 & 35

AND

IN THE MATTER OF OPPOSITION THERETO  
UNDER NO. 421735  
BY UP GLOBAL SOURCING UK LIMITED

## **BACKGROUND AND PLEADINGS**

1. On 18 June 2020, Print and Sign World Limited (“the applicant”) applied to register the series of trade marks shown on the cover page of this decision, under number 3502248. As the only difference between the marks in the series is the letter ‘k’ in one and ‘c’ in the other, I will refer to them in the singular (i.e. “the contested mark”) unless it is necessary to distinguish between them. The details of the application were published for opposition purposes on 10 July 2020. Registration is sought for the following goods and services:

Class 3: Bleaching preparations and substances for laundry use; cleaning, polishing, scouring, abrasive preparations; soaps, perfumery, essential oils, cosmetics, hair lotions; dentifrices.

Class 21: Brushes, brooms, brush handles, mops, dustpans; carpet shampoo applicators, carpet sweepers, upholstery shampoo applicators; boot removers; food colanders and strainers; containers for household or kitchen use; denture baths; egg separators; cruets, tumblers, ice buckets, flour sifters; storage jars, spice jars; coasters, jugs, bowls, cutlery drainers, juice extractors, pestle and mortars; trays; toilet roll holders.

Class 35: Mail order services, retail services (including online) relating to food, stationery, jewelry, furniture, clothing, flowers, computer software, batteries, carpets, teas, pet products, hair products, heaters, footwear, lighting, cutlery, luggage, bags, toiletries, yarns, clothing, cookware, tableware, heating equipment, musical equipment, printed matter, sanitation equipment, wall coverings, fashion accessories, hair products, car accessories, bicycle accessories, gardening products, baking products, fragrance preparations, audiovisual equipment, home textiles, cleaning articles, lubricants, furniture, games, toys, smartphones, smartwatches, cosmetics, sporting goods, mobile phones, metal hardware, art materials, festive decorations, sewing articles, hearing protection devices, animal grooming preparations, cups and glasses, domestic electrical equipment and information technology equipment; Presentation of goods on communications media, for retail purposes.

2. On 12 October 2020, UP Global Sourcing UK Limited (“the opponent”) filed a notice of opposition. The opposition is brought under sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”) and is directed against all the applied-for goods and services.

3. Under sections 5(2)(b) and 5(3), the opponent relies upon the following trade marks:

**KLEENEZE**

EUTM no. 18100905

Filing date: 29 July 2019

Registration date: 22 May 2020

(“the first earlier mark”)

**KLEENEZE**

EUTM no. 17928921

Filing date: 11 July 2018

Registration date: 11 December 2018

(“the second earlier mark”)

**KLEENEZE**

EUTM no. 18128527

Filing date: 24 September 2019

Registration date: 15 February 2020

(“the third earlier mark”)

**KLEENEZE**

EUTM no. 217455

Filing date: 1 April 1996

Registration date: 3 July 2001

(“the fourth earlier mark”)

**KLEENEZE**

UKTM no. 2045540

Filing date: 20 November 1995

Registration date: 18 October 1996

("the fifth earlier mark")

**KLEENEZE**

UKTM no. 2247363A

Filing date: 3 October 2000

Registration date: 21 December 2001

("the sixth earlier mark")

4. The earlier marks are registered for a wide range of goods and services in classes 1, 3, 5, 6, 7, 8, 9, 11, 16, 18, 20, 21, 22, 26, 28, 35 and 41. These are shown in full in Annex A.

5. For the purposes of the opposition under section 5(2)(b), the opponent relies upon all the goods and services for which the earlier marks are registered. In its notice of opposition, the opponent contends that the competing trade marks are highly similar and that the respective goods and services are identical or similar, giving rise to a likelihood of confusion.

6. Under section 5(3), the opponent claims that the earlier marks have a reputation in respect of all the goods and services for which they are registered. The opponent submits that this reputation is such that use of the contested mark would give the applicant instant recognition on the market. It argues that the applicant would obtain an unfair commercial advantage as it will benefit from the opponent's investment in advertising. Further, the opponent contends that use of the contested mark will dilute the distinctive character of its earlier marks; according to the opponent, this is because the public would be less able to identify the earlier marks as exclusive indicators of origin and will mistakenly believe that the applicant's goods and services are connected with the opponent.

7. Turning to the 5(4)(a) claim, the opponent relies upon its alleged earlier rights in the sign **KLEENEZE** as well as the following figurative sign:



8. It claims that the signs have been used throughout the UK since 2018 in respect of the goods and services outlined in Annex B. The opponent claims to have acquired significant goodwill under the signs and submits that use of the contested mark would, therefore, be a misrepresentation to the public. The opponent argues that this would result in damage to its business.

9. The applicant filed a counterstatement denying the grounds of opposition. As these are the only comments I have from the applicant, they are reproduced in full, and as written, below:

THE APPLICANT DOES NOT ACCEPT THE CLAIMS  
RAISED BY THE OPPONENT. THE APPLICANT  
BELIEVES THAT ITS MARK IS SUFFICIENTLY  
DIFFERENT TO THAT OF THE OPPONENT,  
CONCEPTUALLY, VISUALLY AND IN SOUND.

10. The opponent's trade marks are earlier marks, in accordance with section 6 of the Act.<sup>1</sup> The first, second and third earlier marks had not completed their respective registration processes more than five years before the filing date of the application. The fourth, fifth and sixth earlier marks had completed their registration processes more than five years before this date and would, ordinarily, be subject to the proof of

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<sup>1</sup> Although the UK has left the EU and the transition period has now expired, EUTMs, and International Marks which have designated the EU for protection, are still relevant in these proceedings given the impact of the transitional provisions of the Trade Marks (Amendment etc.) (EU Exit) Regulations 2019. Tribunal Practice Notice 2/2020 refers.

use provisions contained in section 6A of the Act. However, the applicant has not sought to require the opponent to demonstrate proof of use.<sup>2</sup> Consequently, the opponent is entitled to rely upon all the goods and services of its earlier marks, without having to establish genuine use.

11. Both sides have been professionally represented throughout these proceedings; the opponent by Mathys & Squire LLP and the applicant by Francis McEntegart of McLegal (UK) Limited. Only the opponent filed evidence, which will be summarised to the extent that it is considered necessary. Both parties were given the option of an oral hearing, though neither asked to be heard on this matter. Neither filed written submissions in lieu of a hearing, though the opponent filed written submissions during the evidence rounds. I do not intend to summarise these but will refer to them throughout this decision, as and where necessary. This decision is taken following a careful perusal of the papers before me, keeping all submissions in mind.

12. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon in these proceedings are derived from an EU Directive and, therefore, this decision continues to refer to the trade mark case law of the EU courts.

## **EVIDENCE**

13. The opponent's evidence consists of the witness statement of Mr Andrew Gossage dated 3 March 2021, together with Exhibits AG1 to AG8. Mr Gossage confirms that he is the Managing Director of the opponent.

14. Mr Gossage explains that, since its incorporation in 1997, the opponent has grown from predominantly operating as a wholesaler to being a "brand focussed" company, delivering its own brands (alongside those of third parties) to its retail partners. As to the opponent's commercial interests, Mr Gossage provides prints from the opponent's

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<sup>2</sup> At section 7 of the Form TM8, the applicant indicated that it did not want the opponent to provide proof of use.

website at <http://upgs.com/>.<sup>3</sup> The first print contains the terms 'cookware', 'bakeware', 'food prep', 'kitchen electricals' and 'gadgets'. The webpage states the opponent operates "both in the UK and around the globe" and provides "well-known retailers with the latest progressive and innovating products". A photograph of 'Beldray' and 'SALTER' displays can be seen. The fourth print contains a photograph of multiple product displays, including those of 'Beldray' and 'Hoover'. However, I note that there is no use of the earlier marks or unregistered signs. There is also no indication as to where the photographs were taken. The figurative 'Kleeneze' sign is displayed in the fifth print. Categories including 'electricals', 'cleaning', 'storage' and 'laundry' are given for the brand. The final two prints show multiple categories of products including, inter alia, 'cookware', 'cleaning' and 'glassware'. There is no use of the earlier marks or unregistered signs. I note that the prints are all undated.

15. Mr Gossage outlines that the opponent is a manufacturer, retailer and wholesaler of homeware and home appliances under a number of brands, including 'KLEENEZE'. He says that the brand was established in 1923 and is a household name in the UK. Prints from the 'Kleeneze' website at <https://www.kleeneze.com> are exhibited.<sup>4</sup> According to Mr Gossage, the website shows various homeware and home appliances available for purchase and delivery in the UK and EU. I note that the figurative earlier sign is visible in the prints. Moreover, the word 'Kleeneze', presented as both a plain word and in a stylised font, is visible in the prints. Under the 'electrical' category on the website, the products displayed for purchase include heated blankets, vacuum cleaners, air coolers, electric heaters, and steam irons. The figurative earlier sign can be seen on the packaging of some of these products, as well as the products themselves. Products displayed for purchase under the 'laundry' category include airers, laundry baskets, ironing boards, cloths, buckets, dish drainers, bowls, mops, drier balls, washing lines and peg baskets. As for the 'cleaning' products, the website shows sponges, mops, buckets, dustpans, brushes, window cleaners, stepladders, spray bottles and scourers. Although the prints are from the 'Kleeneze' global website, the price of the goods is available in pound sterling and euros, suggesting that

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<sup>3</sup> Exhibit AG1

<sup>4</sup> Exhibit AG3

consumers in the UK and EU have been targeted. However, I note that the prints provided are all undated.

16. A trade catalogue is also exhibited.<sup>5</sup> Whilst the catalogue is undated, Mr Gossage explains that it shows various products sold under the 'KLEENEZE' marks from 2016 to 2021. The figurative earlier sign and the word 'Kleeneze' appear throughout. Listed under the 'Laundry Range' are floor cleaning products, mop and bucket sets, ironing and laundry products, 'collapsibles', step ladders and stools, drying products, kitchen accessories, sponges and cloths. As for the 'Electrical Range', vacuums, steam irons and garment steamers are listed. Products listed under the 'Heating and Cooling Range' are heated airers, cooling fans, heated blankets and portable heaters. The figurative earlier sign can be seen on the packaging of some of the foregoing products, as well as the products themselves. According to Mr Gossage, these products are sold to consumers through over 100 different retailers in the UK. A list of 122 such outlets has been provided.<sup>6</sup> The list includes, inter alia, Amazon, Groupon, eBay, Sports Direct, Aldi, Tesco and Asda.

17. Mr Gossage says that 409,316 'KLEENEZE' branded products were sold between 2016 and 2021, generating a total revenue of £1,968,444. A "printout" which confirms these sales figures for the period between 2 February 2016 and 1 February 2021 is evidenced.<sup>7</sup>

18. According to Mr Gossage, the opponent has invested heavily in the advertising and promotion of 'KLEENEZE' products and trade marks. In this regard, he provides an advertorial feature which appeared in Progressive Houseware Magazine in 2019.<sup>8</sup> The article discusses the history of the 'Kleeneze' brand and the acquisition of the same by the opponent in June 2018. Mentioned in the article are "cleaning and laundry items, steam cleaners, vacuum cleaners", "heating and cooling products" and "household electricals". Pictured in the article are steam irons, ironing boards, laundry baskets, peg baskets and clothes hangers. I also note that the article promoted the

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<sup>5</sup> Exhibit AG4

<sup>6</sup> Exhibit AG5

<sup>7</sup> Exhibit AG6

<sup>8</sup> Exhibit AG7



showcasing of 'Kleeneze' products at a trade fair in Birmingham which was due to take place in September 2019. Mr Gossage says that the opponent also invests in the promotion and advertising of 'KLEENEZE' products and trade marks on the internet, particularly through online retailers such as Amazon. In respect of Amazon, a printout of campaign information relating to the 'Kleeneze' brand since 21 June 2019 is evidenced.<sup>9</sup> This confirms that, since this date, the opponent has spent £15,491.76 on promoting 'Kleeneze' products, generating £91,956.90 in sales from 5,227 orders. The campaigns have made 13,285,979 impressions. There is a graph in the evidence which suggests significantly lower figures for marketing spend, turnover and impressions. Mr Gossage does not provide any reason for this difference. There is also no indication as to whether these figures relate to the Amazon UK website, or its global site.

## **DECISION**

### **Section 5(2)(b)**

#### **Legislation and case law**

19. Sections 5(2)(b) and 5A of the Act read 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,

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

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<sup>9</sup> Exhibit AG8

“5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

20. 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 might 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**

21. In *Canon Kabushiki Kaisha v Metro Goldwyn Mayer Inc*, Case C-39/97, the Court of Justice of the European Union (“CJEU”) 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”.

22. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

(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.

23. Furthermore, 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 OHIM*, Case T-325/06, the General Court (“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”.

24. In *Sanco SA v OHIM*, Case T-249/11, the GC 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. 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 O/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.”

25. In *Gérard Meric v OHIM*, 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 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”.

26. In *Oakley, Inc v OHIM*, Case T-116/06, at paragraphs 46-57, the GC held that, although retail services are different in nature, purpose and method of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree.

27. In *Tony Van Gulck v Wasabi Frog Ltd*, Case BL O/391/14, Mr Geoffrey Hobbs Q.C. as the Appointed Person reviewed the law concerning retail services v goods. He said (at paragraph 9 of his judgment) that:

“9. The position with regard to the question of conflict between use of BOO! for handbags in Class 18 and shoes for women in Class 25 and use of MissBoo for the Listed Services is considerably more complex. There are four main reasons for that: (i) selling and offering to sell goods does not, in itself, amount to providing retail services in Class 35; (ii) an application for registration of a trade mark for retail services in Class 35 can validly describe the retail services for which protection is requested in general terms; (iii) for the purpose of determining whether such an application is objectionable under Section 5(2)(b), it is necessary to ascertain whether there is a likelihood of confusion with the opponent’s earlier trade mark in all the circumstances in which the trade mark applied for might be used if it were to be registered; (iv) the criteria for determining whether, when and to what degree services are ‘similar’ to goods are not clear cut.”

28. However, on the basis of the European courts’ judgments in *Sanco SA v OHIM*,<sup>10</sup> and *Assembled Investments (Proprietary) Ltd v. OHIM*,<sup>11</sup> upheld on appeal in *Waterford Wedgwood Plc v. Assembled Investments (Proprietary) Ltd*,<sup>12</sup> Mr Hobbs 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

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<sup>10</sup> Case C-411/13P

<sup>11</sup> Case T-105/05, paragraphs 30 to 35

<sup>12</sup> Case C-398/07P

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 GC'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).

29. The applied-for goods and services are outlined at paragraph 1 above, whereas those of the earlier marks are set out at Annex A.

30. As the earlier marks are all identical, I will assess the specifications globally and conduct my comparison on the basis of what I consider to be the goods and services of the earlier marks which are closest to those of the application.

### Class 3

31. The terms '*bleaching preparations and substances for laundry use; cleaning, polishing, scouring, abrasive preparations; perfumery, essential oils*' have direct counterparts in class 3 of the first earlier mark. These goods are self-evidently identical.

32. '*Cosmetics*' has a direct counterpart in class 3 of the fourth earlier mark. These goods are identical.

33. '*Non-medicated soaps*' in class 3 of the first earlier mark fall within the scope of the broader category '*soaps*' in the applicant's specification. As such, these goods are identical under the principle outlined in *Meric*.

34. *'Dentifrices'* refer to pastes or powders for cleaning the teeth. To my mind, these goods fall within the ambit of *'cleaning preparations for personal use'* in class 3 of the fourth earlier mark. Accordingly, these goods are identical under *Meric*.

35. *'Cleaning preparations for personal use'* in class 3 of the fourth earlier mark would include such preparations for use on the hair, such as, for instance, shampoo. As such, in my view, there is an overlap in nature, method of use and intended purpose with the applicant's *'hair lotions'* since the respective goods can both be used for haircare. The respective goods also share users. Further, they reach the market through the same trade channels; the respective goods are both found in supermarkets and other retail establishments, whereby they are likely to be located on the same shelves, or at least in the same section of those outlets. There is no meaningful competition between the respective goods. However, they are important to the use of one another and are often produced by the same undertakings. Therefore, they are complementary. Overall, I find that the goods under consideration are similar to between a medium and high degree.

#### Class 21

36. The terms *'brooms; egg separators; coasters; jugs; bowls'* have direct counterparts in class 21 of the second earlier mark. These goods are plainly identical.

37. Although the applicant's *'containers for household or kitchen use'* is worded slightly differently to *'household and kitchen containers'* in class 21 of the second earlier mark, these terms describe the same goods. They are identical.

38. *'Brushes'* and *'brushes (except paintbrushes)'* in class 21 of the second earlier mark describe the same goods. They are identical.

39. The terms *'brush handles, mops, dustpans; carpet shampoo applicators, carpet sweepers, upholstery shampoo applicators'* in the application all refer to goods that are used for cleaning. In my view, they are encompassed by the broader category *'articles for cleaning purposes'* in class 21 of the second earlier mark. Therefore, these goods are identical under *Meric*.



40. The applicant's *'storage jars, spice jars'* fall within the scope of the opponent's broader term *'jars'* in class 21 of the second earlier mark. These goods are identical under *Meric*.

41. *'Tumblers'* are a kind of drinking glass, typically with straight sides and no handle or stem. They are encompassed by *'glasses'* in class 21 of the second earlier mark and *'glassware'* in class 21 of the fourth earlier mark. These goods are identical under *Meric*.

42. *'Trays'* encompass *'meal trays'* in class 21 of the second earlier mark. As such, these goods are identical under the principle outlined in *Meric*.

43. *'Cruets'* describe small containers – or sets thereof – for salt, pepper, oil, or vinegar for use at a dining table. They are considered identical under *Meric* to *'tableware'* in class 21 of the second earlier mark.

44. *'Ice buckets'* refer to cylindrical containers which are used for holding ice. To my mind, they are encompassed by *'buckets'* in class 21 of the second earlier mark, rendering these goods identical under *Meric*.

45. *'Kitchen utensils'* in class 21 of the second earlier mark refer to small tools that are typically used in food preparation. I am of the view that *'food colanders and strainers; flour sifters; juice extractors; pestle and mortars'* in the applicant's specification are particular examples of kitchen utensils. As such, these goods are identical under *Meric*. If I am wrong in this finding, it remains the case that the respective goods overlap in intended purpose, method of use, user and trade channels, rendering them highly similar.

46. *'Cutlery drainers'* refer to holders in which washed cutlery is placed as it dries. They share intended purpose with *'dish drainers'* in class 21 of the second earlier mark as both are used for drying, the only difference being the precise subject of the drying (i.e. cutlery, rather than dishes). The respective goods are both used in washing up and, therefore, have the same use and method of use. They can both be purchased

in retail establishments, wherein they are typically found on the same shelves or in very close proximity to one another. As such, the respective goods reach the market through shared trade channels. Furthermore, it is not uncommon for the respective goods to be produced by the same undertakings and they may be used and/or sold together as parts of a matching set. Therefore, they are complementary. Despite there being no meaningful competition between them and a slight difference in nature (one typically being a container, rather than a rack), I find that the respective goods are highly similar.

47. While *'toilet roll holders'* can include those which are wall-mounted, they also encompass free-standing apparatus for storing toilet roll. Although the precise subject of the storage will differ (namely, toilet rolls rather than lavatory brushes), there is an overlap in the nature, intended purpose and method of use of these goods and *'lavatory brush stands'* in class 21 of the second earlier mark. This is because the respective goods can both comprise stands that are used for holding bathroom items and will be used by placing the items on, or removing them from, the stand. Moreover, the respective goods are likely to reach the market through shared channels of trade as they are both typically found in supermarkets and other retail establishments, wherein they are likely to be located in the same section of those outlets. There is no competition between them. Nonetheless, it is not uncommon for these goods to be produced by the same undertakings and they may be sold as parts of a matching set. They are, therefore, complementary. In light of the above, I consider that the goods under comparison are similar to a medium degree.

48. *'Boot removers'* refer to small tools that aid the removal of boots by gripping the heel of the shoe. *'Shoe caddies'* in class 18 of the fifth earlier mark describe small storage containers for shoes. As the respective goods may both be used in the process of removing and storing footwear after it is worn, there is a degree of overlap in use and intended purpose. Moreover, the respective goods are both typically sold in retail environments, wherein they will be self-selected by the consumer. Although they may not be located on the same shelves, they are likely to be found in close proximity to one another. As such, the respective goods reach the market through shared trade channels. They may also be produced by the same undertakings. Overall, I find that there is between a low and medium degree of similarity between these goods.

49. I understand *'denture baths'* to be small containers that are used for cleaning and storing dentures. There is an overlap in the nature of these goods and *'cases for toiletry articles'* in class 21 of the second earlier mark in that they are both containers. Moreover, there is a degree of overlap in the intended purpose and method of use of the respective goods insofar as items will be placed into them for storage. However, it is considered that the applicant's goods also serve a hygienic purpose that is not shared by the opponent's goods. Although the respective goods may both be found in retail establishments and pharmacies, they are not ordinarily found on the same shelves and are likely to be in different sections of those outlets. Consequently, they do not reach the market through shared channels of trade. Despite both being types of containers, I can see no reason why a consumer seeking to purchase a denture bath would, instead, purchase a case for toiletry items, or vice versa. Therefore, there is no competition between them. Neither are these goods important or indispensable for the use of one another, such that they are not complementary. Balancing the similarities against the differences, I find that the goods under consideration are similar to a low degree.

#### Class 35

50. Although they are worded slightly differently, *'mail order services, retail services (including online) relating to [...] stationery, jewelry, furniture, [...] carpets, [...] heaters, [...] lighting, cutlery, luggage, bags, [...] cookware, tableware, heating equipment, [...] wall coverings, [...] fragrance preparations, [...] cleaning articles, [...] games, toys, [...] cups and glasses'* in the application are self-evidently identical to *'retail, online retail, mail order [...] services in connection with [...] cutlery, [...] apparatus for lighting, heating, [...] heaters, [...] jewellery, [...] stationery, [...] articles of luggage, [...] bags, [...] furniture, [...] articles for cleaning purposes, [...] cookware, [...] glasses, [...] cups, [...] tableware, [...] games, [...] toys, [...] carpets, [...] wall coverings, [...] fragrance preparations'* in class 35 of the first earlier mark.

51. In my view, *'mail order services, retail services (including online) relating to food, [...] pet products, hair products, [...] toiletries, yarns, [...] fashion accessories, [...] car accessories, bicycle accessories, [...] baking products, [...] audiovisual equipment,*

*home textiles, [...] smartwatches, [...] metal hardware, art materials, festive decorations, sewing articles, [...] domestic electrical equipment*’ in the application all encompass, or are encompassed by, at least *‘retail, online retail, mail order [...] services in connection with [...] metal brackets, nuts, bolts and fasteners of metal, [...] electric steam cleaning machines, [...] electric vacuum cleaners, [...] hair cutters, [...] televisions, electric hair straighteners, [...] electric cookers, [...] textile sewing equipment, [...] electric fires, [...] electric heaters, [...] electric fans, [...] electric towel warmers, [...] covers for car seats, [...] watches, [...] paint brushes, [...] handbags, [...] bedding, [...] portable beds for pets, [...] bakeware, [...] textiles and textile goods, [...] duvets, covers for pillows, cushions or duvets, [...] decorations for Christmas trees, [...] prepared meals, [...] non-medicated soaps, [...] bicycle [...] cleaning preparations*’ in class 35 of the first earlier mark. Therefore, these services are identical under the principle outlined in *Meric*.

52. ‘Stationery’ describes writing and other office materials.<sup>13</sup> It would include certain items of printed matter. As such, *‘mail order services, retail services (including online) relating to [...] printed matter*’ encompasses *‘retail, online retail, mail order [...] services in connection with stationery*’ in class 35 of the first earlier mark. Applying the principle outlined in *Meric*, these services are identical.

53. ‘Sanitation’ refers to conditions relating to public health, especially the provision of clean drinking water and adequate sewage disposal.<sup>14</sup> In view of the same, *‘mail order services, retail services (including online) relating to [...] sanitation equipment*’ incorporates *‘retail, online retail, mail order [...] services in connection with [...] water tanks of metal, [...] water filters, water purifiers*’ in class 35 of the first earlier mark. I find that these services are identical under *Meric*.

54. I understand the *‘presentation of goods on communications media, for retail purposes*’ to be describing a service of placing goods on communication media for others to view or potentially purchase them. I consider this to be a kind of advertising. Applying the principle outlined in *Meric*, I find that this term and *‘advertising*’ in class

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<sup>13</sup> <https://www.lexico.com/definition/stationery>

<sup>14</sup> <https://www.lexico.com/definition/sanitation>

35 of the first earlier mark are identical. If I am wrong in this finding, it remains the case that there will be an overlap in user, use and purpose, since they are both aimed at providing others with assistance in the sale of their goods. Moreover, the respective services will reach the market through overlapping trade channels and may be offered by the same undertakings. If these services are not identical, they are similar to at least a medium degree.

55. There is an overlap in nature, method of use and intended purpose between *'mail order services, retail services (including online) relating to [...] flowers'* and *'retail, online retail, mail order [...] services in connection with [...] artificial plants made from plastic'* in class 35 of the first earlier mark. Moreover, while the respective services are not complementary, there is a degree of competition between them. Furthermore, they coincide in trade channels and are sometimes offered by the same undertakings. In light of the foregoing, I find that the respective services are similar to between a medium and high degree.

56. *'Mail order services, retail services (including online) relating to [...] clothing, [...] footwear'* has a similar nature, intended purpose and method of use to *'retail, online retail, mail order [...] services in connection with [...] handbags'* in class 35 of the first earlier mark. The respective services are not complementary and there is no direct competition between them. However, they reach the market through shared trade channels. In my view, they are similar to between a medium and high degree.

57. There is an overlap in nature, method of use and intended purpose between *'mail order services, retail services (including online) relating to [...] teas'* and *'retail, online retail, mail order [...] services in connection with [...] chocolate beverages'* in class 35 of the first earlier mark, the latter including such services relating to hot chocolate. These services are not complementary and there is no meaningful competition between them. They do, however, coincide in trade channels. In light of the foregoing, I find that the respective services are similar to between a medium and high degree.

58. *'Mail order services, retail services (including online) relating to [...] lubricants'* and *'retail, online retail, mail order [...] services in connection with [...] bicycle [...] cleaning preparations'* in class 35 of the first earlier mark, have a similar nature, intended

purpose and method of use. These services are not complementary and there is no competition between them. Nonetheless, they may both be provided by the same undertakings (such as, for example, bicycle shops) and may reach the market through the same trade channels. Overall, I find that the services under consideration are similar to between a medium and high degree.

59. *'Mail order services, retail services (including online) relating to [...] animal grooming preparations'* and *'retail, online retail, mail order [...] services in connection with [...] metal cages for animals, [...] beds for animals, portable beds for pets, [...] pet food, [...] pet stain removers'* in class 35 of the first earlier mark have a similar nature, method of use and intended purpose. They are neither complementary nor in competition, though the respective services reach the market through shared trade channels. Overall, I find that the respective services are similar to between a medium and high degree.

60. Although, *'mail order services, retail services (including online) relating to [...] cosmetics'* are different in nature, intended purpose and method of use to *'cosmetics'* in class 3 of the fourth earlier mark, the respective goods and services reach the market through shared trade channels and it is not uncommon for them to be offered by the same undertakings. They are also complementary: the opponent's goods are important to the operation of the applicant's services in such a way that consumers will assume that the responsibility for them lies with the same undertaking. In light of the above, I find that these goods and services are similar to a medium degree.

61. *'Telephones'* in class 9 of the fifth earlier mark covers all forms of telephones, including smartphones and mobile phones. As such, while they differ from *'mail order services, retail services (including online) relating to [...] smartphones, [...] mobile phones'* in nature, intended purpose and method of use, these goods and services reach the market through shared channels of trade. As the opponent's goods are important to the operation of the applicant's services in such a way that consumers will assume that they are provided by the same undertaking, they are also complementary. I find that the respective goods and services are similar to a medium degree.

62. Likewise, there is no overlap in nature, intended purpose or method of use between *'mail order services, retail services (including online) relating to [...] batteries'* and *'batteries and battery chargers'* in class 9 of the fifth earlier mark. However, these goods and services reach the market through the same trade channels. They are also complementary, since the opponent's goods are important to the operation of the applicant's services in such a way that consumers will assume that they are provided by the same undertaking. In my view, the goods and services under consideration are similar to a medium degree.

63. To my mind, 'sporting goods' and 'sporting articles' describe the same goods. As such, while *'mail order services, retail services (including online) relating to [...] sporting goods'* have a different nature, intended purpose and method of use to *'gymnastic and sporting articles'* in class 28 of the fifth earlier mark, these goods and services are complementary. The opponent's goods are important to the operation of the applicant's retail services in such a way that consumers will assume that the responsibility for them lies with the same undertaking. The respective goods and services will also reach the market through the same trade channels. Overall, there is a medium degree of similarity between them.

64. 'Gardening products' is a broad term which includes tools and implements for use in the garden. In light of this, *'mail order services, retail services (including online) relating to [...] gardening products'* incorporates such services relating to *'garden tools and implements'* in class 8 of the fifth earlier mark. Accordingly, the respective goods and services have a different nature, method of use and intended purpose, though they are complementary. The opponent's goods are important to the operation of the applicant's services in such a way that consumers will assume that the responsibility for them lies with the same undertaking. The respective goods and services will also reach the market through the same trade channels and may be provided by the same undertakings. I find that there is a medium degree of similarity between them.

65. It is my view that 'hearing protection devices' encompass goods such as 'earplugs'. Therefore, although there is no overlap in nature, method of use or intended purpose between *'mail order services, retail services (including online) relating to [...] hearing protection devices'* and *'earplugs'* in class 9 of the fifth earlier mark, they are

complementary: the opponent's goods are important to the applicant's services in such a way that consumers would assume that responsibility lies with the same undertaking. These goods and services also reach the market through overlapping trade channels and may be provided by the same undertakings. Overall, I find that the respective goods and services are similar to a medium degree.

66. 'Musical equipment' includes 'apparatus and instruments for the purpose of sound reproduction'. *'Mail order services, retail services (including online) relating to [...] musical equipment'* and *'apparatus and instruments for the purpose of sound reproduction'* in class 9 of the fifth earlier mark are, therefore, complementary as the opponent's goods are important to the applicant's services in such a way that consumers may assume that responsibility for them lies with the same undertaking. Further, the respective goods and services will reach the market through overlapping trade channels and may be provided by the same undertakings. Overall, I find that there is a medium degree of similarity between them.

67. To my mind, *'mail order services, retail services (including online) relating to [...] information technology equipment'* includes such services relating to computers and data processing equipment. Therefore, while the nature, method of use and intended purpose of these services is different from that of *'computers and data processing apparatus'* in class 9 of the fifth earlier mark, the opponent's goods are important to the applicant's services such that consumers will assume that they originate from the same undertaking. Accordingly, they are complementary. Moreover, the respective goods and services reach the market through shared trade channels and it is not uncommon for them to be offered by the same undertakings. I find that the goods and services under consideration are similar to a medium degree.

68. While *'mail order services, retail services (including online) relating to [...] computer software'* may not include such services relating to *'computers and data processing apparatus'* in class 9 of the fifth earlier mark, these goods and services reach the market through the same channels of trade and may be provided by the same undertakings. As such, I find that there is between a low and medium degree of similarity between them.



## The average consumer and the nature of the purchasing act

69. The average consumer is deemed to be reasonably well informed, observant and circumspect. For the purpose 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 goods or services in question.<sup>15</sup>

70. 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.”

71. The average consumer of the majority of the goods and services at issue in these proceedings will be the general public. However, some of the goods and services, such as ‘*mail order services, retail services (including online) relating to [...] sanitation equipment*’, ‘*presentation of goods on communications media, for retail purposes*’ and ‘*advertising*’, for example, are likely to be purchased by members of the business community.

72. In respect of the general public, the frequency with which the goods and services are purchased is likely to vary, though, overall, they will be purchased relatively frequently for the purposes of, for example, personal care, cleaning or maintaining a household. While some of the goods and services will attract a greater outlay and others a lesser outlay, overall, they are relatively inexpensive. The importance of selection will range from more casual purchases of products such as brushes, to the

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<sup>15</sup> *Lloyd Schuhfabrik Meyer*, Case C-342/97

more careful selection of retail services relating to technological products. The average consumer will consider factors such as ingredients and suitability for the skin or household surfaces when purchasing goods in class 3. When purchasing goods in class 21, the average consumer will consider factors such as durability and functionality. When selecting the services in class 35, the average consumer will consider factors such as range of goods on offer and the quality of the service. Taking the above factors into account, although the level of attention is likely to vary somewhat, overall, I find that the average consumer would demonstrate a medium level of attention.

73. As for business users, the goods and services are likely to be purchased relatively frequently for the ongoing needs of the business. The cost of the goods and services will vary though, overall, they are not inexpensive purchases. The selection of the goods and services would be relatively important as members of the business community will consider return for their investment, the requirements and reputation of the business and the reputation of the provider. Taking these factors into account, it is considered that business users will demonstrate an above average level of attention.

74. The goods are typically sold in brick-and-mortar retail establishments or their online equivalents, where they are likely to be purchased after perusing the shelves or viewing information on the internet. In these circumstances, the purchasing process will be predominantly visual in nature, though I do not exclude aural considerations entirely as consumers may receive word of mouth recommendations or discuss the products with sales assistants. The retail and mail order services are typically available from physical retail outlets and their online equivalents. The purchasing process for these services is likely to be dominated by visual considerations, as consumers will select the services following an inspection of the premises' frontage on the high street, after viewing information on websites or printed catalogues. Nevertheless, given that word of mouth recommendations may also play a part and that orders could be placed over the telephone, I do not discount that there will be an aural component to the selection of the services. *'Presentation of goods on communications media, for retail purposes'* and *'advertising'* are likely to be purchased after viewing information on the internet, in business prospectuses or brochures. Overall, I am of the view that the

purchasing process would be predominantly visual in nature. However, I do not discount aural considerations as it is possible that the purchasing of these services would incorporate verbal consultations or word of mouth recommendations.

### **Distinctive character of the earlier mark**

75. 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).”

76. Registered trade marks possess varying degrees of inherent distinctive character. These range from the very low, such as those which are suggestive or allusive of the goods or services, to those with high inherent distinctive character, such as invented words. Dictionary words which do not allude to the goods or services will be somewhere in the middle. The degree of distinctiveness is an important factor as it

directly relates to whether there is a likelihood of confusion; the more distinctive the earlier mark, the greater the likelihood of confusion. The distinctive character of a mark may be enhanced as a result of it having been used in the market.

77. The opponent has argued that the earlier marks possess a high level of inherent distinctive character. Moreover, it has claimed that this has been further enhanced through the use made of them on the market. I have no submissions from the applicant as to the distinctiveness of the earlier marks.

78. The earlier marks are in word-only format and consist of the word 'KLEENEZE'. Although it is an invented word with no dictionary definition, it is my view that it will be perceived as a portmanteau of misspellings of the dictionary words 'clean' and 'easy'. It is considered that the distinctive character of the earlier marks lies in the combination of the words, i.e. the marks as wholes. For certain goods that are commonly used in cleaning, such as *'bleaching preparations and substances for laundry use'* and *'articles for cleaning purposes'*, for example, the marks are descriptive of products which make the task of cleaning easier. In respect of others that typically require routine cleaning, such as *'kitchen utensils'* and *'tableware'*, for example, the marks describe products that can be cleaned easily. In relation to these goods, I find that the earlier marks have a low level of inherent distinctive character. For some of the services in class 35, such as *'retail, online retail, mail order [...] services in connection with [...] furniture, [...] articles for cleaning purposes, [...] cookware'*, for example, the marks cannot be said to be directly descriptive. However, the marks have such a clear message that they strongly allude to a characteristic of the goods offered under those services. As such, I find that the earlier marks have a relatively low level of inherent distinctive character in respect of these services. For other goods and services, whilst the message of the marks will undoubtedly be understood by consumers, its connection to those goods and services is less direct. Therefore, I find that the earlier marks have a medium level of inherent distinctive character for those goods and services.

79. The evidence filed by the opponent has been summarised above and I am now required to assess whether the opponent has demonstrated that the earlier marks had an enhanced degree of distinctive character, at the relevant date of 18 June 2020.

80. No details have been provided by the opponent to indicate the size of the relevant markets, nor its share of those respective markets; neither is there any evidence before me to that effect. The evidence suggests that the 'KLEENEZE' brand was established in 1923. Mr Gossage gives undisputed evidence that over 400,000 'KLEENEZE' branded products were sold between 2016 and 2021, generating a total revenue of £1.9 million. Although these figures are not insignificant, no explanation has been provided as to what proportion relates to particular goods or services. Even without such information, the opponent's turnover is considered modest in the context of what I understand to be a number of remarkably large markets. The exhibited prints from the opponent's corporate website suggest that its commercial interests are in cookware, bakeware and food preparation products, amongst others. These prints also suggest that the opponent operates in the UK. However, many of the prints do not show any use of the earlier mark. There is use of the earlier marks on the 'Kleeneze' global website; the prints provided show a variety of electrical, laundry and cleaning products offered for sale under the marks. Nevertheless, the prints are all undated and, therefore, cannot go to the position at the relevant date. I acknowledge that a trade catalogue which, according to Mr Gossage, was in circulation between 2016 and 2021 has been provided. The earlier mark appears throughout in connection with a range of different household, kitchen, cleaning, laundry, heating and cooling products. Mr Gossage gives evidence that these products have been sold to over 100 retailers in the UK; some – such as Tesco, Asda and Aldi – are large organisations with a nationwide customer reach. I note that there is no documentary evidence to support Mr Gossage's claim such as, for example, sample invoices. I also accept that some promotion of the earlier mark has been carried out. This is clear from the Progressive Houseware Magazine advertorial in which the 'KLEENEZE' brand was featured. However, no details of the readership or circulation of this publication have been provided and, as such, I am unable to form a view as to how many consumers in the UK were exposed to the article. Moreover, since 21 June 2019 the opponent has advertised 'KLEENEZE' branded products on Amazon. It has spent over £15,000 to this end, generating over £90,000 in sales from over 5,000 orders. The evidence also shows that these campaigns generated over 13 million impressions. Nevertheless, there is no clear indication as to which goods featured in these campaigns. Further, I am unable to ascertain whether these campaigns were conducted on Amazon's global or UK site and Mr Gossage has not confirmed how

much of this advertising spend concerned activities in the UK. In any event, the figures provided suggest a modest advertising spend for only a short period of time prior to the relevant date. In fact, the evidence seems to suggest that a proportion of these figures were accrued after the relevant date. Overall, I find that the evidence before me is insufficient to conclude that the inherent distinctiveness of the earlier mark has been enhanced through use.

### **Comparison of trade marks**

81. 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 the marks, 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.”

82. Therefore, it would be wrong to dissect the trade marks artificially, though 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 hence contribute to the overall impressions created by the marks.

83. The competing trade marks are as follows:

The earlier mark	The contested mark
KLEENEZE	eezeekleen eezeecleen

84. I have lengthy submissions from the opponent in relation to the comparison of the marks. I do not intend to summarise these here, though have taken them all into account. For the applicant's part, it has simply contended that its marks are sufficiently different from the earlier marks "conceptually, visually and in sound".

#### Overall impressions

85. The earlier marks are in word-only format and comprise the word 'KLEENEZE'. As this is the only element of the marks, the overall impression is dominated by the word.

86. The contested mark is a series of two word-only marks. The first mark of the series consists of the word 'eezeekleen', whereas the second mark of the series consists of the word 'eezeecleen'. Given that these words are the only element of the marks, their overall impressions are dominated by the respective words.

#### Visual comparison

87. Visually, the earlier marks and the first mark of the contested series are similar as they share two strings of letters, namely, 'K-L-E-E-N' and 'E-Z-E', in the same order. I do not consider the distinction in letter case to be a point of significant difference between the marks. This is because the registration of word-only marks provides protection for the word itself, irrespective of whether it is presented in upper or lower case. The competing marks differ from a visual perspective in that these strings appear in different positions in the respective marks. Moreover, the contested mark contains an additional letter 'E' before and after 'E-Z-E'; these additional letters are lacking from

the earlier mark. I acknowledge that the second mark of the contested series has a letter 'C' in place of the letter 'K', which is not replicated in the earlier marks. However, as these letters are somewhat interchangeable – especially in the context of misspellings – and appear in the middle of the contested mark, I do not consider this to be a point of significant difference between the marks. Bearing in mind my assessment of the overall impressions, I consider there to be between a low and medium degree of visual similarity between the marks.

#### Aural comparison

88. It is possible that some consumers will pronounce the earlier marks as (“KLEEN-EEZ”). However, I am of the view that at least a significant proportion of consumers will pronounce the earlier marks in the same way as the dictionary words ‘clean’ and ‘easy’, namely (“KLEEN-EE-ZEE”). The contested mark also consists of three syllables and will be articulated in the same way as these dictionary words, but in reverse order, i.e. (“EE-ZEE-KLEEN”). Taking into account my assessment of the overall impressions, I find that there is a medium degree of aural similarity between the marks for this section of average consumers.

#### Conceptual comparison

89. Although the competing marks are invented words and consumers normally perceive a trade mark as a whole, it has been established that the average consumer will break signs down into elements which suggest a concrete meaning or which resemble words with which they are familiar.<sup>16</sup> For this reason, it is likely that the earlier marks will be perceived as misspellings of the dictionary words ‘clean’ and ‘easy’ in combination; the earlier marks will, therefore, evoke the meanings associated with these words. The contested mark will also be perceived as conjoined misspellings of these words, albeit in reverse order. As the contested mark will convey the same meaning as the earlier marks, the competing marks are conceptually identical. However, for many of the goods and services at issue in these proceedings, this is not a distinctive similarity.

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<sup>16</sup> *Usinor SA v OHIM*, Case T-189/05, paragraph 62



## **Likelihood of confusion**

90. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. One such factor 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 necessary for me to keep in mind the distinctive character of the earlier trade marks, the average consumer for the goods and services and the nature of the purchasing process. In doing so, I must be alive to 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 that they have retained in their mind.

91. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis Q.C., sitting 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.

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

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

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

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

92. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, Mr James Mellor Q.C. (as he then was), sitting 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. That is mere association, not indirect confusion.

93. I also bear in mind the comments of Mr Purvis, again as the Appointed Person, in *Kurt Geiger v A-List Corporate Limited*, BL O/075/13. He 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, saying:

“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”.

94. 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 the distinctive character of the earlier mark lies. Only after that has been done can a proper assessment of the likelihood of confusion be carried out.

95. Earlier in this decision, I concluded that:

- Where not identical, the goods in class 3 of the application are similar to those of the earlier marks to between a medium and high degree;
- Where not identical, the goods in class 21 of the application are similar to those of the earlier marks to at least a low degree;
- Where not identical, the services in class 35 of the application are similar to the goods and services of the earlier marks to at least between a low and medium degree;
- Average consumers of the goods and services at issue are likely to include the general public and members of the business community;
- The general public would demonstrate a medium level of attention during the purchasing act, while business users would demonstrate an above average level of attention;

- The purchasing process for the goods and services will be primarily visual in nature, though aural considerations have not been discounted;
- The earlier marks have a low, or relatively low, level of inherent distinctive character in relation to some goods and services, whereas they possess a medium level of inherent distinctive character in respect of others;
- The overall impression of the earlier marks is dominated by the word 'KLEENEZE, being the only element of the marks;
- The overall impression of the contested mark is dominated by the word 'eezeekleen/eezeeleen', being the only element of the mark;
- The competing marks are visually similar to between a low and medium degree and aurally similar to a medium degree;
- The competing marks are and conceptually identical, though for some goods this is not a distinctive similarity.

96. Where the earlier marks are distinctive to a medium degree, i.e. in relation to those for which they are not descriptive or highly allusive, taking into account the overall similarity between the competing marks, I am of the view that the differences between the competing marks are likely to be insufficient to distinguish the parties' goods and services, even for those that are not identical. Although I acknowledge that the misspellings for 'easy' and 'clean' appear in reverse order in the competing marks and that 'eezee' has two additional letters than 'EZE', the marks convey the same meaning and consumers are well accustomed to different misspellings of the word 'easy'. Accounting for imperfect recollection, the average consumer (including both the general public and business users) may not recall the respective marks with sufficient accuracy to differentiate between them; consumers may misremember one for the other, assuming they are one and the same. To my mind, it is highly likely that the average consumer may recall the clear message of the marks, though misremember

the order in which the words appear. Consequently, I consider there to be a likelihood of direct confusion in relation to the following goods and services:

Class 3: Perfumery, essential oils.

Class 35: Mail order services, retail services (including online) relating to food, stationery, [...] flowers, computer software, [...] teas, [...] yarns, [...] printed matter, [...] sewing articles, [...]; Presentation of goods on communications media, for retail purposes.

97. This finding, however, does not extend to circumstances where the earlier marks are distinctive to only a low, or relatively low, level. The marks are descriptive or highly allusive of certain goods and services, and their distinctive character lies in the marks as a whole. Therefore, when factoring in the interdependency principle, it is my view that the average consumer, demonstrating at least a medium degree of attention, will be less prone to the effects of imperfect recollection and is likely to notice the aforementioned differences between the competing marks, even for goods and services that are identical. Furthermore, the competing marks coincide in the use of misspellings for the 'easy' and 'clean' and their descriptive, or highly allusive, meanings. As such, I do not believe that consumers will assume that the parties are economically linked undertakings on the basis of the competing trade marks, even for goods and services that are identical; I am unconvinced that consumers would assume a commercial association or licensing arrangement between the parties, or sponsorship on the part of the opponent, merely because of this shared descriptive, or highly allusive, meaning. To my mind, consumers are likely to assume that that the use of variant misspellings of these words is a coincidence due to their descriptive or highly allusive nature and not an indication that there is a connection between the undertakings responsible for the marks. Taking all of the above factors into account, I do not consider there to be a likelihood of direct or indirect confusion in respect of the following goods and services:

Class 3: Bleaching preparations and substances for laundry use; cleaning, polishing, scouring, abrasive preparations; soaps, [...] cosmetics, hair lotions; dentifrices.

Class 21: Brushes, brooms, brush handles, mops, dustpans; carpet shampoo applicators, carpet sweepers, upholstery shampoo applicators; boot removers; food colanders and strainers; containers for household or kitchen use; denture baths; egg separators; cruets, tumblers, ice buckets, flour sifters; storage jars, spice jars; coasters, jugs, bowls, cutlery drainers, juice extractors, pestle and mortars; trays; toilet roll holders.

Class 35: Mail order services, retail services (including online) relating to [...] jewelry, furniture, clothing, [...] batteries, carpets, [...] pet products, hair products, heaters, footwear, lighting, cutlery, luggage, bags, toiletries, [...] clothing, cookware, tableware, heating equipment, musical equipment, [...] sanitation equipment, wall coverings, fashion accessories, hair products, car accessories, bicycle accessories, gardening products, baking products, fragrance preparations, audiovisual equipment, home textiles, cleaning articles, lubricants, furniture, games, toys, smartphones, smartwatches, cosmetics, sporting goods, mobile phones, metal hardware, art materials, festive decorations, [...] hearing protection devices, animal grooming preparations, cups and glasses, domestic electrical equipment and information technology equipment.

98. My conclusion under section 5(2)(b) of the Act is, therefore, that the opposition succeeds in relation to the services outlined at paragraph 96 but fails for the remaining goods and services. I shall proceed to consider the opposition under sections 5(3) and 5(4)(a) in respect of the latter.

### **Section 5(3)**

#### **Legislation and case law**

99. At the commencement of these proceedings, section 5(3) of the Act stated:

“(3) A trade mark which-

(a) is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.”

100. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, Case 252/07, *Intel*, Case C-408/01, *Adidas-Salomon*, Case C-487/07, *L'Oréal v Bellure* and Case C-323/09, *Marks and Spencer v Interflora* and Case C383/12P, *Environmental Manufacturing LLP v OHIM*. The law appears to be as follows:

a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas-Salomon*, paragraph 29 and *Intel*, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel*, paragraph 42.

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel*, paragraph

68; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel, paragraph 79*.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel, paragraphs 76 and 77* and *Environmental Manufacturing, paragraph 34*.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel, paragraph 74*.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oréal v Bellure NV, paragraph 40*.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora, paragraph 74* and the court's answer to question 1 in *L'Oréal v Bellure*).



101. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that its earlier marks have achieved a level of knowledge, or reputation, amongst a significant part of the public. Secondly, the opponent must establish that the public will make a link between the marks, in the sense of the earlier marks being brought to mind by the later mark. Thirdly, assuming the first and second conditions have been met, section 5(3) requires that one or more of three types of damage claimed by the opponent will occur. It is not necessary for the purposes of section 5(3) that the goods or services are similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

102. The relevant date for the assessment under section 5(3) is the filing date of the contested application, namely, 18 June 2020.

## **Reputation**

103. In *General Motors*, Case C-375/97, the CJEU held that:

“25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.

26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation ‘in the Member State’. In the absence of any definition of the Community provision in this respect, a trade mark cannot

be required to have a reputation ‘throughout’ the territory of the Member State. It is sufficient for it to exist in a substantial part of it.”

104. The first, second, third and fourth earlier marks are EUTMs, in respect of which the opponent must establish a reputation in a substantial part of the EU. The fifth and sixth earlier marks are UK registrations, for which the opponent must demonstrate a reputation in the UK.

105. There is nothing before me which would enable me to determine the size of the relevant markets, either in the UK or EU. Further, the opponent has not provided any information as to its share in those markets. However, it is my perception that at least several of the relevant markets would be remarkably large, numbering in the millions, if not billions, of pounds/euros per annum. In this context, I consider the number of products sold and associated turnover figures to be suggestive of a very small market share. I also note that no explanation has been provided as to what proportion of the figures relate to particular goods or services. In addition, the prints of the opponent’s corporate website and the global ‘Kleeneze’ website are all undated and cannot go to the position at the relevant date. The evidence demonstrates that ‘Kleeneze’ branded products were available from a trade catalogue between 2016 and 2021 and, as I have already outlined, these products have been sold to some large retailers with outlets throughout the UK. However, the figures provided by Mr Gossage do not indicate that ‘KLEENEZE’ products have been sold via these outlets on a significant scale. I acknowledge that there has been some promotional activity in connection with the earlier marks. Nevertheless, the evidence shows that the size of the investment for this purpose was small. There is no indication as to how much of this investment related to the UK or EU. It is also apparent that promotion of the earlier marks was only undertaken for a short period of time before the relevant date. The ‘Kleeneze’ brand was featured in a magazine in 2019, though there is no evidence as to how widely circulated or read this publication was. Overall, I am not satisfied that the opponent’s evidence has established that they were known by a significant part of either relevant public in relation to any particular goods or services at the relevant date. If I am wrong in my finding that the opponent has not demonstrated that the earlier marks have a qualifying reputation in the UK or EU, the section 5(3) ground would still be rejected. My reasons follow.

## Link

106. As noted above, my assessment of whether the public will make the required mental 'link' between the marks must take into account of all relevant factors. The factors identified in *Intel* are:

### The degree of similarity between the conflicting marks

I have found the marks to be visually similar to between a low and medium degree and aurally similar to a medium degree. The competing marks are conceptually identical, though this is not a distinctive similarity.

### The nature of the goods or services for which the conflicting marks are registered, or proposed to be registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public

The average consumers of the goods and services have been discussed above at paragraphs 71 to 74. I have found that the applicant's goods in class 3 and the opponent's goods are identical or similar to between a medium and high degree. I have found that the applicant's goods in class 21 and the opponent's goods are identical or similar to at least a low degree. I have found that the applicant's class 35 services and the opponent's goods and services are identical or similar to between a low and medium degree, at least.

### The strength of the earlier mark's reputation

If the earlier marks possess qualifying reputations in the UK and EU, they will be modest at best.

The degree of the earlier mark's distinctive character, whether inherent or acquired through use

In respect of the goods and services under consideration, I have found that the earlier marks possess a low, or relatively low, level of inherent distinctive character. I have found that the distinctiveness of the earlier marks has not been enhanced above their inherent characteristics.

Whether there is a likelihood of confusion

I have found there to be no likelihood of direct or indirect confusion in relation to these goods and services.

107. Taking all of the above factors into account, I do not consider that the earlier marks will be brought to mind. Whilst I accept that the competing marks both contain combined misspellings for the words 'clean' and 'easy', they have a relatively low level of distinctive character and the common element is descriptive or highly allusive. This, in my view, is fatal, particularly when considered alongside what is, at best, a modest reputation. There are also differences in spelling and presentation, which point consumers away from, rather than towards, a link. Therefore, notwithstanding the closeness between some of the respective goods and services, I find that the relevant public in the UK is unlikely to make a link between the competing marks. Even if I am wrong that there will be no link at all in relation to these goods and services, it is my view that any bringing to mind of the earlier marks would be no more than a fleeting reminder that there is another mark which uses misspellings of the words 'clean' and 'ease' to describe goods that make the task of cleaning easier or are easy to clean, or to strongly allude to such goods offered under retail and mail order services.

108. As my findings for reputation and link both go in the applicant's favour, I do not consider it necessary to go on to consider whether there is any potential for damage.

109. I conclude that the opposition under section 5(3) does not take the opponent's case any further than that based upon section 5(2)(b).

## **Section 5(4)(a)**

### **Legislation and case law**

110. Section 5(4)(a) of the Act reads as follows:

“(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented-

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

(aa) [...]

(b) [...]

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an “earlier right” in relation to the trade mark.”

111. Subsection (4A) of section 5 of the Act states:

“(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application.”

112. In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

“55. The elements necessary to reach a finding of passing off are the ‘classical trinity’ of that tort as described by Lord Oliver in the *Jif Lemon* case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely

goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56. In relation to deception, the court must assess whether "*a substantial number*" of the Claimants' customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21)."

113. Halsbury's Laws of England Vol. 97A (2012 reissue) provides further guidance with regard to establishing the likelihood of deception. In paragraph 309 it is noted (with footnotes omitted) that:

"To establish a likelihood of deception or confusion in an action for passing off where there has been no direct misrepresentation generally requires the presence of two factual elements:

(1) that a name, mark or other distinctive feature used by the plaintiff has acquired a reputation among a relevant class of persons; and

(2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other feature which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as successive hurdles which the plaintiff must surmount, consideration of these two aspects cannot be completely separated from each other, as whether deception or confusion is likely is ultimately a single question of fact.

In arriving at the conclusion of fact as to whether deception or confusion is likely, the court will have regard to:

- (a) the nature and extent of the reputation relied upon;
- (b) the closeness or otherwise of the respective fields of activity in which the plaintiff and the defendant carry on business;
- (c) the similarity of the mark, name etc. used by the defendant to that of the plaintiff;
- (d) the manner in which the defendant makes use of the name, mark etc. complained of and collateral factors; and
- (e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.”

In assessing whether confusion or deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action.”

### **Relevant date**

114. In *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O/410/11, Mr Daniel Alexander Q.C., sitting as the Appointed Person, endorsed the Registrar’s assessment of the relevant date for the purposes of section 5(4)(a) of the Act, as follows:

“43. In *SWORDERS TM O-212-06* Mr Alan James acting for the Registrar well summarised the position in s.5(4)(a) proceedings as follows:

‘Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the applicant has used the mark before the date of the application it is

necessary to consider what the position would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made.”

115. There has been no claim by the applicant that the contested mark had been used prior to the earliest claimed use of the opponent’s alleged earlier signs. Moreover, no such evidence has been adduced by the applicant. Therefore, the relevant date for the assessment of the opponent’s claim under section 5(4)(a) is the filing date of the application, that being 18 June 2020.

### **Goodwill**

116. The first hurdle for the opponent is to show that it had the necessary goodwill in the alleged earlier signs at the relevant date. Goodwill was described in *Inland Revenue Commissioners v Muller & Co’s Margarine Ltd* [1901] AC 217 (HOL), in the following terms:

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start.”

117. In *South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)* [2002] RPC 19 (HC), Pumfrey J. stated:

“27. There is one major problem in assessing a passing of claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent’s reputation extends to the goods comprised in the applicant’s specification of goods. The requirements of the objection itself are considerably more stringent than the



enquiry under s.11 of the 1938 Act (see *Smith Hayden & Co. Ltd's Application (OVAX) (1946) 63 R.P.C. 97* as qualified by *BALI Trade Mark [1969] R.P.C. 472*). Thus the evidence will include evidence from the trade as to reputation; evidence as to the manner in which the goods are traded or the services supplied; and so on.

28. Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed to the relevant date. Once raised, the applicant must rebut the prima facie case. Obviously, he does not need to show that passing off will not occur, but he must produce sufficient cogent evidence to satisfy the hearing officer that it is not shown on the balance of probabilities that passing off will occur.”

118. However, in *Minimax GmbH & Co KG v Chubb Fire Limited* [2008] EWHC 1960 (Pat), Floyd J. (as he then was) stated that:

“[The above] observations are obviously intended as helpful guidelines as to the way in which a person relying on section 5(4)(a) can raise a case to be answered of passing off. I do not understand Pumfrey J to be laying down any absolute requirements as to the nature of evidence which needs to be filed in every case. The essential is that the evidence should show, at least prima facie, that the opponent's reputation extends to the goods comprised in the application in the applicant's specification of goods. It must also do so as of the relevant date, which is, at least in the first instance, the date of application.”

119. In *Office Cleaning Services Limited v Westminster Window & General Cleaners Limited* [1946] 63 RPC 39, Lord Simonds stated that:

“Where a trader adopts words in common use for his trade name, some risk of confusion is inevitable. But that risk must be run unless the first user is allowed unfairly to monopolise the words. The court will accept comparatively small differences as sufficient to avert confusion. A greater degree of discrimination may fairly be expected from the public where a trade name consists wholly or

in part of words descriptive of the articles to be sold or the services to be rendered.”

120. Goodwill arises as a result of trading activities. I am satisfied that the opponent had been trading prior to the relevant date. This is clear from the sales figures provided, the trade catalogue and the number of outlets across the UK stocking the opponent’s goods. The advertorial feature also suggests that the opponent had been trading before the relevant date. Although the brand appears to have been founded in 1923, the evidence only demonstrates that the opponent had been trading in the UK under the earlier signs since 2016.<sup>17</sup> Therefore, use of the signs has not been particularly longstanding. Moreover, based upon the evidence before me, I am unable to determine how intensive or regularly the signs have been used. Nevertheless, on balance, I am prepared to accept that the opponent has a modest, though not trivial, degree of goodwill in the UK in relation to its business in ‘*steam cleaners, steam cleaning machines, electric steam cleaning machines, multipurpose steam cleaners, steam cleaners for household purposes, vacuum cleaners, hand held vacuum cleaners, scrub sponges, scrubbing pads, brushes (except paintbrushes), articles for cleaning purposes, mops, wringer mops, mop pails, buckets incorporating mop wringers, ironing board covers, cleaning pads, brushes for cleaning, dustpans, electric irons, electric steam irons, fans, cooling fans, room fans, electric fans, air conditioning fans, air conditioning apparatus, ironing boards, clothes airers for use with radiators, clothes airers, laundry baskets and clothes-pegs*’ as well as ‘*retail, online retail, mail order and wholesale services in connection with steam cleaners, steam cleaning machines, steam cleaners for household purposes, vacuum cleaners, hand held vacuum cleaners, cleaning appliances utilising steam, steam mops, articles for cleaning purposes, mops, wringer mops, mop pails, buckets incorporating mop wringers, ironing board covers, brushes for cleaning, dustpans, ironing machines for clothing, fanning machines, electric irons, electric steam irons, air conditioning apparatus, room fans, ventilating fans, electric fans, electric cooling fans, clothes dryers, clothes drying installations, air coolers, ironing boards, clothes airers, laundry baskets and clothes-pegs*’.

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<sup>17</sup> Although, I note that the opponent’s pleaded case was that the earlier signs have been used in the UK since 2018.

121. I am satisfied that the signs relied upon were distinctive of that goodwill at the relevant date. The evidence does not, however, support a finding that the opponent's business at the relevant date extended to any other goods or services. While a small number of other goods (and associated services) appear in the evidence, these exhibits are undated and, therefore, cannot go to the position at the relevant date. Furthermore, there is simply no evidence of a large proportion of the goods and services identified by the opponent in its pleadings.

### **Misrepresentation and damage**

122. In *Neutrogena Corporation and Another v Golden Limited and Another* [1996] RPC 473, Morritt L.J. stated that:

“There is no dispute as to what the correct legal principle is. As stated by *Lord Oliver of Aylmerton in Reckitt & Colman Products Ltd. v. Borden Inc.* [1990] R.P.C. 341 at page 407 the question on the issue of deception or confusion is

“is it, on a balance of probabilities, likely that, if the appellants are not restrained as they have been, a substantial number of members of the public will be misled into purchasing the defendants' [product] in the belief that it is the respondents' [product]”

The same proposition is stated in Halsbury's Laws of England 4th Edition Vol.48 para 148. The necessity for a substantial number is brought out also in *Saville Perfumery Ltd. v. June Perfect Ltd.* (1941) 58 R.P.C. 147 at page 175; and *Re Smith Hayden's Application* (1945) 63 R.P.C. 97 at page 101.”

And later in the same judgment:

“[...] for my part, I think that references, in this context, to “more than *de minimis*” and “above a trivial level” are best avoided notwithstanding this court's reference to the former in *University of London v. American University of London* (unreported 12 November 1993) . It seems to me that such expressions

are open to misinterpretation for they do not necessarily connote the opposite of substantial and their use may be thought to reverse the proper emphasis and concentrate on the quantitative to the exclusion of the qualitative aspect of confusion.”

123. Given that the word ‘KLEENEZE’ will be perceived as combined misspellings of the words ‘clean’ and ‘easy’, the earlier signs are descriptive or highly allusive of the goods and services for which the opponent has demonstrated goodwill. I acknowledge that the figurative earlier sign contains other elements, namely, a representation of a Union Jack and the words ‘Staying Houseproud SINCE 1923’. However, these are non-distinctive. I recognise that the test for misrepresentation is different from that for likelihood of confusion in that it entails ‘deception of a substantial number of members of the public’ rather than ‘confusion of the average consumer’. Nonetheless, as recognised by Lewison L.J. in *Marks and Spencer PLC v Interflora*, [2012] EWCA (Civ) 1501, it is doubtful whether the difference between the legal tests will produce different outcomes. Certainly, I believe that to be the case here. Considering the nature of the earlier signs and the modest degree of goodwill they have accrued, it is my view that consumers are likely to notice the differences between the competing marks and believe that the use of misspellings of the words ‘clean’ and ‘easy’ is a coincidence due to their descriptive or highly allusive nature. To my mind, this will avoid consumers purchasing the applicant’s goods and services in the mistaken belief that they are those of the opponent.

124. Consequently, the claim under section 5(4)(a) does not take the opponent any further than that under section 5(2)(b).

## **CONCLUSION**

125. The opposition under section 5(2)(b), 5(3) and 5(4)(a) has been partially successful. Subject to any successful appeal against my decision, the application will be refused in respect of the following good and services:

Class 3: Perfumery, essential oils.

Class 35: Mail order services, retail services (including online) relating to food, stationery, [...] flowers, computer software, [...] teas, [...] yarns, [...] printed matter, [...] sewing articles, [...]; Presentation of goods on communications media, for retail purposes.

126. The applications will proceed to registration for the following goods and services, against which the opposition has failed:

Class 3: Bleaching preparations and substances for laundry use; cleaning, polishing, scouring, abrasive preparations; soaps, [...] cosmetics, hair lotions; dentifrices.

Class 21: Brushes, brooms, brush handles, mops, dustpans; carpet shampoo applicators, carpet sweepers, upholstery shampoo applicators; boot removers; food colanders and strainers; containers for household or kitchen use; denture baths; egg separators; cruets, tumblers, ice buckets, flour sifters; storage jars, spice jars; coasters, jugs, bowls, cutlery drainers, juice extractors, pestle and mortars; trays; toilet roll holders.

Class 35: Mail order services, retail services (including online) relating to [...] jewelry, furniture, clothing, [...] batteries, carpets, [...] pet products, hair products, heaters, footwear, lighting, cutlery, luggage, bags, toiletries, [...] clothing, cookware, tableware, heating equipment, musical equipment, [...] sanitation equipment, wall coverings, fashion accessories, hair products, car accessories, bicycle accessories, gardening products, baking products, fragrance preparations, audiovisual equipment, home textiles, cleaning articles, lubricants, furniture, games, toys, smartphones, smartwatches, cosmetics, sporting goods, mobile phones, metal hardware, art materials, festive decorations, [...] hearing protection devices, animal grooming preparations, cups and glasses, domestic electrical equipment and information technology equipment.

## **COSTS**

127. Both parties have been partially successful. However, the applicant has enjoyed the greater degree of success. As such, it is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 2/2016, with an appropriate reduction to reflect the opponent's degree of success. In the circumstances, I award the applicant the sum of **£1,000** as a contribution towards the cost of the proceedings. This sum is calculated as follows:

Considering the opponent's statement and preparing a counterstatement	£400
Considering the opponent's evidence	£600
<b>Total</b>	<b>£1,000</b>

128. I therefore order UP Global Sourcing UK Limited to pay Print and Sign World Limited the sum of **£1,000**. This sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings (subject to any order made by the appellate tribunal).

**Dated this 11th day of August 2021**

**James Hopkins**  
**For the Registrar**  
**The Comptroller-General**

## ANNEX A

Earlier mark	Goods and services relied upon under sections 5(2)(b) and 5(3)
<p>EUTM no. 18100905</p> <p><b>KLEENEZE</b></p> <p>("the first earlier mark")</p>	<p>Class 1: Detergents for industrial use; detergents for use in manufacture and industry; chemical preparations to prevent mildew; mould release preparations; chemical substances for use in the manufacture of scented toiletries; water softeners [preparations]; chemical freezing agents; aerosol chemical spray for the solidification and hardening of animal waste.</p> <p>Class 3: Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; non-medicated soaps; perfumery, essential oils; polish remover preparations; carpet shampoos; pot-pourri; fragrances; fragrance preparations; household fragrances; cleaning preparations for household use; cleaning preparations for cookware, tableware and household utensils; fridge and microwave cleaning preparations; bathroom cleaning preparations; floor cleaning preparations; essential oils for use in air fresheners; window cleaners; polish; floor polish; furniture polish; detergents; household detergents; dishwashing detergents; laundry detergents; degreasers other than for use in manufacturing processes; preparations for unblocking sinks or drains; descaling preparations for household purposes; mould removing preparations; cleaning preparations for use on tiles; scented toilet waters; stain removers; laundry starch; anti-static preparations for household purposes; anti-static spray; fragrances in powder form; fragrances for carpet cleaning; cleaning preparations for leather; pet stain removers; glue removers; label removers; preparations for removing glue, gum, adhesives and labels; vehicle, wheelchair, automobile, bicycle, mobility scooter, motorcycle and scooter cleaning preparations; shoe sprays; shoe protector sprays; none of the aforesaid including disposable household, commercial or industrial cloths or wipes for cleaning, wiping or dusting.</p> <p>Class 5: Chemical preparations for treating mildew; air freshening and air purifying preparations and substances; perfumed and unperfumed disinfectants; air fresheners; air freshener refills; air freshener sprays; germicidal preparations having cleaning properties; fabric deodorisers; animal repellents; insect repellents; spider repellents; mosquito repellents; disinfectants; preparations for destroying vermin.</p>

	<p>Class 35: Retail, online retail, mail order and wholesale services in connection with paints, common metals and their alloys, metallic bins, metal ladders, step ladders made of metal, step stools of metal, locks, latches, bolts, gates, safety gates for child safety, padlocks, child safety barriers, extensions for the aforesaid gates and barriers, cable clips, keys, fasteners, knobs and catches, food and beverage processing and preparation machines and apparatus, pulp making machines; retail, online retail, mail order and wholesale services in connection with metal containers for storage or transport, safes, adhesive wall decorations of common metal or bronze, basin plugs of metal, fittings of metal for beds, brackets of metal for hanging televisions and window draperies, cables, wire and chains of metal, caps formed from metal, cat/dog flaps of metal, casters of metal, cupboard fittings of metal, drawer gliders, handles, knobs, runners of metal, fireplace mantels of metal; retail, online retail, mail order and wholesale services in connection with fittings of metal for furniture, foot scrapers of metal, furnace fire guards and screens, grab bars of metal, hooks of metal, hinges of metal, letter boxes of metal, locks and keys of metal, metal brackets, nuts, bolts and fasteners of metal, plugs of metal, shoe pegs of metal, blinds of metal, door bells of metal, door chains of metal, door and window hardware, fittings and furniture of metal, door knockers; retail, online retail, mail order and wholesale services in connection with fences of metal, gazebos [metal structures], frames of metal, metal guardrails, monuments of metal, ornamental figurines of common metal, sculptures of metal, statues of metal, works of art of common metal, metal cages for animals, metal baskets, chests and boxes of metal, crates of metal, dispensers of metal, metal decorative boxes, preserve tins, tinfoil, tin cans, tool boxes of metal, water tanks of metal; retail, online retail, mail order and wholesale services in connection with wine casks of metal, blenders, mixers [machines], beating machines, electric can openers, electric kitchen mixers, electric mixers for household purposes, electric juicers; retail, online retail, mail order and wholesale services in connection with steam cleaners, steam cleaning machines, electric steam cleaning machines, multi purpose steam cleaners, steam cleaners for household purposes, vacuum cleaners, vacuum cleaner bags, wet vacuum cleaners, electric vacuum cleaners; retail, online retail, mail order and wholesale services in connection with hand held vacuum cleaners, electric carpet vacuum cleaners, floor cleaning machines, carpet cleaning machines, vacuum cleaners for the cleaning</p>
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	<p>of surfaces, sewing machines, machines for cleaning surfaces using high pressure water, electric brooms, machines and apparatus for aerating water and beverages, cutting and slicing machines and apparatus, electric knives, peeling machines; retail, online retail, mail order and wholesale services in connection with ironing machines for clothing, food grinding machines, electric kitchen utensils, juice extractors (machines), fanning machines, knife grinding and sharpening machines, hand tools and hand operated implements, flat irons, electric irons, electric steam irons, fireplace pokers, fire tongs, fireplace bellows, fireplace shovels, fireplace tool sets, hair styling appliances; retail, online retail, mail order and wholesale services in connection with apple corers, barbecue tongs, ice tongs, nutcrackers, meat tongs, ladles for wine, vegetable spiralizers, can and tin openers, cutlery, bread knives, carving knives, cake cutters, cheese slicers, kitchen knives, pizza cutters, electric razors, hair cutters; retail, online retail, mail order and wholesale services in connection with measuring jugs, measuring spoons, measuring glassware, scales, kitchen and bathroom scales, televisions, electric hair straighteners, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying and ventilating, air conditioning apparatus, electric kettles, gas and electric cookers; retail, online retail, mail order and wholesale services in connection with apparatus for dispensing beverages, textile sewing equipment, laundry presses, cleaning appliances utilising steam, electric sweepers, electric carpet shampooers, fabric steamers, steam mops, electric fires, fires; retail, online retail, mail order and wholesale services in connection with fireplaces, gas fires, oil fired heaters, oil filled radiators, heaters, storage heaters, electric heaters, convector heaters, gas fired heaters, portable heaters, room fans, ventilating fans, electric fans, electric cooling fans, sanitising apparatus, heated towel rails, electric towel warmers, heated towel drying rails, clothes dryers, clothes drying installations, hot water bottles, air coolers, electric stoves; retail, online retail, mail order and wholesale services in connection with electric blankets, toilet seats, toilet seat lids, sanitary covers for toilet seats, bread makers, slow cookers, sandwich presses, coffee makers, water filters, water purifiers, coffee filters, wine coolers, toasters, coffee roasters, percolators; retail, online retail, mail order and wholesale services in connection with domestic, household and electrical appliances for heating, cooking and refrigerating food and drink, household and electrical appliances for heating, cooking and refrigerating food and drink for use in connection with parties; retail, online retail, mail order and wholesale services in</p>
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	<p>connection with machines for making popcorn, machines for making candy floss, fondue and chocolate fondue cooking apparatus, chocolate fountain machines, electric pressure cookers, electric bread toasters, deep fat fryers, electric sandwich toasters, electric bread makers; retail, online retail, mail order and wholesale services in connection with electric ice cream makers, electric food steamers, electric cooking pots, ice makers, waffle irons, electric pans, egg cookers, food defrosting trays and platters, food warming and defrosting devices, oil-free electric fryers, electric egg poachers, electric soup makers, electric panini makers, pancake makers, spas, foot spas, spa devices for baths, hairdryers, ovens, cookers, grills, vehicle lights, microwaves; retail, online retail, mail order and wholesale services in connection with doughnut makers, drinks fountains, fondue, being cooking apparatus, covers for car seats, protective covers, car safety seats, seat belt converters, safety harnesses for children, safety mirrors for fitting inside vehicles, safety nets for fitting inside vehicles, wheelbarrows, clocks, watches, jewellery, artificial jewellery, bracelets, chains; retail, online retail, mail order and wholesale services in connection with stationery, adhesives for stationery, artists' materials, paint brushes, paint boxes for children, canvases, pencils, coloured chalk, crayons, easels, leads, collars and harnesses, articles of luggage, trunks, travelling cases, suitcases, valises, bags, travelling bags, sports bags; retail, online retail, mail order and wholesale services in connection with briefcases, executive cases, vanity cases, handbags, rucksacks, backpacks, children's bags, overnight bags, school bags, wallets, purses, shopping bags and beach bags, umbrellas, parasols, non-metallic gates, furniture, mirrors, picture frames, garden furniture, pillows, cushions, non-metal bins, clothes hangers, non-metallic ladders, non-metallic step ladders, stools, step stools, not of metal; retail, online retail, mail order and wholesale services in connection with decorative stones made of plastic, broom handles, mattresses, bedding, mattress toppers, mattress pads, foam mattresses, beds for animals, portable beds for pets, artificial plants made from plastic, baskets, cat trees, car guards, fish tanks, wooden hutches, non-metallic locks, keys, fasteners, knobs, latches, bolts, safety gates for child safety, cots, containers; retail, online retail, mail order and wholesale services in connection with ornaments, statues, plastic bath rings, cable clips, neck cushions, trays, fireguards, plastic covers for plugs, switches, and sockets, edge guards, kettle guards, household or kitchen utensils and containers, articles for cleaning purposes, glassware, porcelain and earthenware, cookware,</p>
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	<p>bakeware, non-stick bakeware, mixing bowls, baking trays, pans, pans (Frying -), baking dishes; retail, online retail, mail order and wholesale services in connection with non-stick baking trays, mops, mop heads, wringer mops, mop pails, buckets incorporating mop wringers, litter bins, plastic bins, ironing boards, wireware comprising trivets, baskets, iron stands, trays and clothes airers for use with radiators, ironing board covers, clothes airers, clothes horses, combs and sponges, pedal bins; retail, online retail, mail order and wholesale services in connection with chopping boards for kitchen use, kitchen moulds, egg separators [kitchen utensils], kitchen boards for chopping, coasters, meal trays, dispensers for liquid soap, household gloves, cases for toiletry articles, lavatory brush stands, flat-iron stands, trouser presses, tie presses, egg poachers, cleaning pads, abrasive pads, towel racks, laundry baskets, brushes for cleaning, dustpans, feather-dusters; retail, online retail, mail order and wholesale services in connection with carpet sweepers, brooms, buckets, dish drainers, clothes-pegs, cool boxes, bowls, dishes, glasses, plates, egg cups, saucers, mugs, cups, travel mugs, gravy boats, crockery, plastic coasters, serving dishes, serving trays, tableware, cool bags, ceramics for household purposes, ramekins, spice racks, food containers, swizzle sticks, skewers, place mats of plastic and cork, place mats (other than paper or linen); retail, online retail, mail order and wholesale services in connection with textiles and textile goods, bed and table covers, duvets, covers for pillows, cushions or duvets, place mats and coasters made of textile, vinyl place mats and coasters, blankets, seat covers, rugs, games and playthings, decorations for Christmas trees, toys; retail, online retail, mail order and wholesale services in connection with party snack foods, prepared meals, instant meals, nuts, crisps, dairy products, dessert puddings, chocolate, chocolate beverages, chocolate based products, confectionery, pet food, carpets, rugs, mats and matting, linoleum and other materials for covering existing floors, wall hangings [non-textile], bath mats, bathroom rugs and mats, car mats, beach mats, carpet backing, carpet runners, carpet tiles; retail, online retail, mail order and wholesale services in connection with cork mats, cloth wall coverings, door mats, fur rugs, gymnastic mats, mats, matting, yoga mats, wallpapers, wall coverings, shower mats, rugs for animals, rubber mats, play mats; retail, online retail, mail order and wholesale services in connection with detergents for industrial use, detergents for use in manufacture and industry, chemical preparations to prevent mildew, mould release preparations, chemical substances for use in the</p>
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	<p>manufacture of scented toiletries, water softeners [preparations], chemical freezing agents, aerosol chemical spray for the solidification and hardening of animal waste; retail, online retail, mail order and wholesale services in connection with bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, non-medicated soaps, perfumery, essential oils, polish remover preparations, carpet shampoos, pot-pourri, fragrances, fragrance preparations, household fragrances, cleaning preparations for household use; retail, online retail, mail order and wholesale services in connection with cleaning preparations for cookware, tableware and household utensils, fridge and microwave cleaning preparations, bathroom cleaning preparations, floor cleaning preparations, essential oils for use in air fresheners, window cleaners, polish, floor polish, furniture polish; retail, online retail, mail order and wholesale services in connection with detergents, household detergents, dishwashing detergents, laundry detergents, degreasers other than for use in manufacturing processes, preparations for unblocking sinks or drains, descaling preparations for household purposes, mould removing preparations; retail, online retail, mail order and wholesale services in connection with cleaning preparations for use on tiles, scented toilet waters, stain removers, preparations for use in ironing, anti-static preparations for household purposes, anti-static spray, fragrances in powder form, fragrances for carpet cleaning, cleaning preparations for leather; retail, online retail, mail order and wholesale services in connection with pet stain removers, glue removers, label removers, preparations for removing glue, gum, adhesives and labels, vehicle, wheelchair, automobile, bicycle, mobility scooter, motorcycle and scooter cleaning preparations, shoe sprays, shoe protector sprays, chemical preparations for treating mildew; retail, online retail, mail order and wholesale services in connection with air freshening and air purifying preparations and substances, perfumed and unperfumed disinfectants, air fresheners, air freshener refills, air freshener sprays, germicidal preparations having cleaning properties, fabric deodorisers; retail, online retail, mail order and wholesale services in connection with animal repellents, insect repellents, spider repellents, mosquito repellents, disinfectants, preparations for destroying vermin; import and export services; advertising; organisation of trade fairs; information, advisory and consultancy services in relation to the foregoing; none of the aforesaid including disposable household, commercial or industrial cloths or wipes for cleaning, wiping or dusting.</p>
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<p>EUTM no. 17928921</p> <p><b>KLEENEZE</b></p> <p>("the second earlier mark")</p>	<p>Class 7: Food and beverage processing and preparation machines and apparatus; pulp making machines; blenders; mixers [machines]; beating machines; electric can openers; electric kitchen mixers, electric mixers for household purposes; electric juicers; steam cleaners; steam cleaning machines; electric steam cleaning machines; multi purpose steam cleaners; steam cleaners for household purposes; vacuum cleaners; vacuum cleaner bags; wet vacuum cleaners; electric vacuum cleaners; hand held vacuum cleaners; electric carpet vacuum cleaners; automatic floor scrubbers; floor scrubbing machines; floor cleaning machines; carpet cleaning machines; vacuum cleaners for the cleaning of surfaces; sewing machines; machines for cleaning surfaces using high pressure water; electric brooms; electric grinders for use in households; parts, fittings and accessories for the aforesaid goods.</p> <p>Class 21: Household and kitchen utensils and containers; jars; jugs; whisks; sweet jars; bread bins; salt shakers; pepper shakers; combs and sponges; scrub sponges; scrubbing pads; scrubbing brushes; brushes (except paintbrushes); cookware; bakeware; non-stick bakeware; mixing bowls; baking trays; pans; saucepans; pans (frying - ); baking dishes; non-stick baking trays; articles for cleaning purposes; mops; mop heads; wringer mops; mop pails; buckets incorporating mop wringers; litter bins; plastic bins; ironing boards; wireware, comprising trivets, baskets, iron stands, trays and clothes airers for use with radiators; ironing board covers; clothes airers; clothes horses; pedal bins; chopping boards for kitchen use; kitchen moulds; egg separators [kitchen utensils]; kitchen boards for chopping; coasters; meal trays; dispensers for liquid soap; household gloves; cases for toiletry articles; lavatory brush stands; flat-iron stands; trouser presses; tie presses; egg poachers; cleaning pads; abrasive pads; towel racks; laundry baskets; brushes for cleaning; dustpans; dusters; feather-dusters; carpet sweepers; brooms; buckets; dish drainers; clothes-pegs; cool boxes; bowls; dishes; glasses; plates; egg cups; saucers; mugs; cups; travel mugs; gravy boats; crockery; plastic coasters; serving dishes; serving trays; tableware; cool bags; parts, fittings and accessories for the aforesaid goods; none of the aforesaid including limited life household, commercial or industrial cloths or wipes for cleaning, wiping or dusting.</p>
<p>EUTM no. 18128527</p> <p><b>KLEENEZE</b></p> <p>("the third earlier mark")</p>	<p>Class 6: Metal step ladders; metal containers for storage or transport; basin plugs of metal; brackets of metal for hanging televisions and window draperies; fittings of metal for furniture; foot scrapers of metal; furnace fire guards and screens; hooks of metal; hinges of metal; letter</p>

	<p>boxes of metal; locks and keys of metal; metal brackets; plugs of metal; shoe pegs of metal; blinds of metal; door bells of metal; door chains of metal; door and window hardware, fittings and furniture of metal; door knockers; ladders of metal; metal guardrails; chests and boxes of metal; crates of metal; dispensers of metal; metal bins; metal decorative boxes; preserve tins; tinfoil; tin cans; tool boxes of metal; water tanks of metal; wine casks of metal.</p> <p>Class 8: Hand tools and implements (hand-operated); cutlery; electric irons; electric steam irons.</p> <p>Class 9: Weighing and measuring apparatus; weighing scales; kitchen scales; electronic scales; bathroom scales; digital bathroom scales; calculating machines.</p> <p>Class 11: Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes; fans; electric blankets; ventilating fans; cooling fans; electric heating fans; room fans; electric fans; air conditioning fans; air conditioning apparatus; combined heating and air conditioning apparatus; heating fans; electric fires.</p> <p>Class 20: Furniture, mirrors, picture frames; ladders and moveable steps, non-metallic; step ladders not of metal.</p> <p>Class 21: Rotary washing lines; lint removers, electric or non-electric.</p> <p>Class 22: Ropes and string; washing lines.</p>
<p>EUTM no. 217455 <b>KLEENEZE</b> ("the fourth earlier mark")</p>	<p>Class 3: Soaps and cleaning preparations, all for personal or household use; bleaching preparations and other substances for laundry use; polishing, scouring and abrasive preparations; polish remover preparations; carpet shampoos; cosmetics; perfumery; essential oils; pot-pourri.</p> <p>Class 16: Printed publications, books, manuals and catalogues; stationery, paper, envelopes, sticky tape; writing implements and pens; crayons and chalk; playing cards; stickers; paint, paint boxes, paint brushes, and artists' materials; stencils; packaging materials, gift wrapping paper, paper ribbons and bows; cards, gift tags, greeting cards and card holders; all included in Class 16.</p>

	<p>Class 21: Brushes, handles; connectors and extensions for all the aforesaid goods; apparatus and instruments, all for dispensing cleaning or washing preparations; gloves for domestic, cleaning or household purposes; dustpans; refuse bags; household and kitchen utensils and containers; baskets for domestic use; crockery; glassware, porcelain and earthenware; coasters and place mats; clothes racks and clothes horses; all included in Class 21; none of the aforesaid including limited life household, commercial or industrial cloths or wipes for cleaning, wiping or dusting.</p>
<p>UKTM no. 2045540 <b>KLEENEZE</b> ("the fifth earlier mark")</p>	<p>Class 8: Hand operated tools; garden tools and implements; insecticide sprayers; cutlery; knives; nutcrackers; scissors; razors; manicure and pedicure sets; beard clippers; needle threaders.</p> <p>Class 9: Optical apparatus and instruments; binoculars, telescopes, spectacles, contact lenses, sunglasses, anti-dazzle shades, anti-glare visors, anti-glare glasses; alarms, security alarms and anti-theft warning devices; smoke detectors; extinguishers; thermostats; protective clothing; earplugs; teeth protectors; photographic apparatus and instruments; electrically heated hair curlers, apparatus and instruments for the purpose of sound reproduction, record players, CD players, radios, cassette players, electric shoe polishers, clocks and time recording apparatus; vacuum cleaners, electric dust removing apparatus; wax polishing machines; welding apparatus, televisions and video recorders, telephones and answering machines, facsimile machines, weighing machines; CDs, records, tapes and discs; electrical connections; wires, switch boxes, fuse wire, connections for electric lines, plugs, sockets and other contacts; batteries and battery chargers; computers and data processing apparatus; apparatus and instruments for fermentation; life saving apparatus and instruments; cleaning apparatus for CDs, records, tapes and discs; parts and fittings for all the aforesaid goods.</p> <p>Class 11: Apparatus for lighting, heating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes; parts and fittings for all the aforesaid goods.</p> <p>Class 18: Bags, boxes, cases, suitcases, trunks, travel bags, satchels, ruck sacks, purses, wallets, key cases, net bags and wash bags; luggage straps; walking sticks; umbrellas and parasols; belts; collars</p>

	<p>and harnesses for animals; slings for carrying infants; tool bags; suit and dress covers; shoe caddies.</p> <p>Class 26: Haberdashery; buttons, hooks and eyes, fastenings for clothing; buckles, brooches, feathers; ornaments for hats; false hems; false hair and beards, toupees; tea cosies; hair ornaments, hair bands, hair curlers, hair curling pins, hair grips, hair slides, hair nets, hair pins, hair combs, snoods; pins, needles, bodkins, knitting needles and pin cushions; artificial flowers and fruits.</p> <p>Class 28: Games and playthings; toys and soft toys; dolls; gymnastic and sporting articles; exercisers and chest expanders; Christmas trees of synthetic materials; decorations for Christmas trees, Christmas crackers; novelties.</p>
<p>UKTM no. 2247363A <b>KLEENEZE</b> ("the sixth earlier mark")</p>	<p>Class 35: The bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods (including through the medium of distributors) from a catalogue by mail order or by means of telecommunications via the Internet, both of the afore-stated media specialising in general merchandise.</p> <p>Class 41: On-line publications; on-line publications providing information to distributors relating to mail order and electronic shopping.</p>



## ANNEX B

Alleged earlier signs	Goods and services in respect of which the opponent claims to have goodwill under section 5(4)(a)
<p data-bbox="204 398 352 427"><b>KLEENEZE</b></p> 	<p data-bbox="587 398 1393 656">Class 1: Detergents for industrial use; detergents for use in manufacture and industry; chemical preparations to prevent mildew; mould release preparations; chemical substances for use in the manufacture of scented toiletries; water softeners [preparations]; chemical freezing agents; aerosol chemical spray for the solidification and hardening of animal waste.</p> <p data-bbox="587 719 1393 1760">Class 3: Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; non-medicated soaps; perfumery, essential oils; polish remover preparations; carpet shampoos; pot-pourri; fragrances; fragrance preparations; household fragrances; cleaning preparations for household use; cleaning preparations for cookware, tableware and household utensils; fridge and microwave cleaning preparations; bathroom cleaning preparations; floor cleaning preparations; essential oils for use in air fresheners; window cleaners; polish; floor polish; furniture polish; detergents; household detergents; dishwashing detergents; laundry detergents; degreasers other than for use in manufacturing processes; preparations for unblocking sinks or drains; descaling preparations for household purposes; mould removing preparations; cleaning preparations for use on tiles; scented toilet waters; stain removers; laundry starch; anti-static preparations for household purposes; anti-static spray; fragrances in powder form; fragrances for carpet cleaning; cleaning preparations for leather; pet stain removers; glue removers; label removers; preparations for removing glue, gum, adhesives and labels; vehicle, wheelchair, automobile, bicycle, mobility scooter, motorcycle and scooter cleaning preparations; shoe sprays; shoe protector sprays; none of the aforesaid including disposable household, commercial or industrial cloths or wipes for cleaning, wiping or dusting.</p> <p data-bbox="587 1823 1393 1995">Class 5: Chemical preparations for treating mildew; air freshening and air purifying preparations and substances; perfumed and unperfumed disinfectants; air fresheners; air freshener refills; air freshener sprays; germicidal preparations having cleaning</p>

	<p>properties; fabric deodorisers; animal repellents; insect repellents; spider repellents; mosquito repellents; disinfectants; preparations for destroying vermin.</p> <p>Class 6: Metal step ladders; metal containers for storage or transport; basin plugs of metal; brackets of metal for hanging televisions and window draperies; fittings of metal for furniture; foot scrapers of metal; furnace fire guards and screens; hooks of metal; hinges of metal; letter boxes of metal; locks and keys of metal; metal brackets; plugs of metal; shoe pegs of metal; blinds of metal; door bells of metal; door chains of metal; door and window hardware, fittings and furniture of metal; door knockers; ladders of metal; metal guardrails; chests and boxes of metal; crates of metal; dispensers of metal; metal bins; metal decorative boxes; preserve tins; tinfoil; tin cans; tool boxes of metal; water tanks of metal; wine casks of metal.</p> <p>Class 7: Food and beverage processing and preparation machines and apparatus; pulp making machines; blenders; mixers [machines]; beating machines; electric can openers; electric kitchen mixers, electric mixers for household purposes; electric juicers; steam cleaners; steam cleaning machines; electric steam cleaning machines; multi purpose steam cleaners; steam cleaners for household purposes; vacuum cleaners; vacuum cleaner bags; wet vacuum cleaners; electric vacuum cleaners; hand held vacuum cleaners; electric carpet vacuum cleaners; automatic floor scrubbers; floor scrubbing machines; floor cleaning machines; carpet cleaning machines; vacuum cleaners for the cleaning of surfaces; sewing machines; machines for cleaning surfaces using high pressure water; electric brooms; electric grinders for use in households; parts, fittings and accessories for the aforesaid goods.</p> <p>Class 8: Hand tools and implements (hand-operated); cutlery; electric irons; electric steam irons.</p> <p>Class 9: Weighing and measuring apparatus; weighing scales; kitchen scales; electronic scales; bathroom scales; digital bathroom scales; calculating machines.</p> <p>Class 11: Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes;</p>
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	<p>fans; electric blankets; ventilating fans; cooling fans; electric heating fans; room fans; electric fans; air conditioning fans; air conditioning apparatus; combined heating and air conditioning apparatus; heating fans; electric fires.</p> <p>Class 20: Furniture, mirrors, picture frames; ladders and moveable steps, non-metallic; step ladders not of metal.</p> <p>Class 21: Household and kitchen utensils and containers; jars; jugs; whisks; sweet jars; bread bins; salt shakers; pepper shakers; combs and sponges; scrub sponges; scrubbing pads; scrubbing brushes; brushes (except paintbrushes); cookware; bakeware; non-stick bakeware; mixing bowls; baking trays; pans; saucepans; pans (frying -); baking dishes; non-stick baking trays; articles for cleaning purposes; mops; mop heads; wringer mops; mop pails; buckets incorporating mop wringers; litter bins; plastic bins; ironing boards; wireware, comprising trivets, baskets, iron stands, trays and clothes airers for use with radiators; ironing board covers; clothes airers; clothes horses; pedal bins; chopping boards for kitchen use; kitchen moulds; egg separators [kitchen utensils]; kitchen boards for chopping; coasters; meal trays; dispensers for liquid soap; household gloves; cases for toiletry articles; lavatory brush stands; flat-iron stands; trouser presses; tie presses; egg poachers; cleaning pads; abrasive pads; towel racks; laundry baskets; brushes for cleaning; dustpans; dusters; feather-dusters; carpet sweepers; brooms; buckets; dish drainers; clothes-pegs; cool boxes; bowls; dishes; glasses; plates; egg cups; saucers; mugs; cups; travel mugs; gravy boats; crockery; plastic coasters; serving dishes; serving trays; tableware; cool bags; parts, fittings and accessories for the aforesaid goods; none of the aforesaid including limited life household, commercial or industrial cloths or wipes for cleaning, wiping or dusting; rotary washing lines; lint removers, electric or non-electric.</p> <p>Class 22: Ropes and string; washing lines.</p> <p>Class 35: The bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods (including through the medium of distributors) from a catalogue by mail order or by means of telecommunications via the Internet, both of the afore-stated media specialising in general</p>
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	<p>merchandise; Retail, online retail, mail order and wholesale services in connection with paints, common metals and their alloys, metallic bins, metal ladders, step ladders made of metal, step stools of metal, locks, latches, bolts, gates, safety gates for child safety, padlocks, child safety barriers, extensions for the aforesaid gates and barriers, cable clips, keys, fasteners, knobs and catches, food and beverage processing and preparation machines and apparatus, pulp making machines; retail, online retail, mail order and wholesale services in connection with metal containers for storage or transport, safes, adhesive wall decorations of common metal or bronze, basin plugs of metal, fittings of metal for beds, brackets of metal for hanging televisions and window draperies, cables, wire and chains of metal, caps formed from metal, cat/dog flaps of metal, casters of metal, cupboard fittings of metal, drawer gliders, handles, knobs, runners of metal, fireplace mantels of metal; retail, online retail, mail order and wholesale services in connection with fittings of metal for furniture, foot scrapers of metal, furnace fire guards and screens, grab bars of metal, hooks of metal, hinges of metal, letter boxes of metal, locks and keys of metal, metal brackets, nuts, bolts and fasteners of metal, plugs of metal, shoe pegs of metal, blinds of metal, door bells of metal, door chains of metal, door and window hardware, fittings and furniture of metal, door knockers; retail, online retail, mail order and wholesale services in connection with fences of metal, gazebos [metal structures], frames of metal, metal guardrails, monuments of metal, ornamental figurines of common metal, sculptures of metal, statues of metal, works of art of common metal, metal cages for animals, metal baskets, chests and boxes of metal, crates of metal, dispensers of metal, metal decorative boxes, preserve tins, tinfoil, tin cans, tool boxes of metal, water tanks of metal; retail, online retail, mail order and wholesale services in connection with wine casks of metal, blenders, mixers [machines], beating machines, electric can openers, electric kitchen mixers, electric mixers for household purposes, electric juicers; retail, online retail, mail order and wholesale services in connection with steam cleaners, steam cleaning machines, electric steam cleaning machines, multi purpose steam cleaners, steam cleaners for household purposes, vacuum cleaners, vacuum cleaner bags, wet vacuum cleaners, electric vacuum cleaners; retail, online retail, mail order and wholesale services in connection with hand held vacuum cleaners, electric carpet vacuum cleaners, floor cleaning machines,</p>
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	<p>carpet cleaning machines, vacuum cleaners for the cleaning of surfaces, sewing machines, machines for cleaning surfaces using high pressure water, electric brooms, machines and apparatus for aerating water and beverages, cutting and slicing machines and apparatus, electric knives, peeling machines; retail, online retail, mail order and wholesale services in connection with ironing machines for clothing, food grinding machines, electric kitchen utensils, juice extractors (machines), fanning machines, knife grinding and sharpening machines, hand tools and hand operated implements, flat irons, electric irons, electric steam irons, fireplace pokers, fire tongs, fireplace bellows, fireplace shovels, fireplace tool sets, hair styling appliances; retail, online retail, mail order and wholesale services in connection with apple corers, barbecue tongs, ice tongs, nutcrackers, meat tongs, ladles for wine, vegetable spiralizers, can and tin openers, cutlery, bread knives, carving knives, cake cutters, cheese slicers, kitchen knives, pizza cutters, electric razors, hair cutters; retail, online retail, mail order and wholesale services in connection with measuring jugs, measuring spoons, measuring glassware, scales, kitchen and bathroom scales, televisions, electric hair straighteners, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying and ventilating, air conditioning apparatus, electric kettles, gas and electric cookers; retail, online retail, mail order and wholesale services in connection with apparatus for dispensing beverages, textile sewing equipment, laundry presses, cleaning appliances utilising steam, electric sweepers, electric carpet shampooers, fabric steamers, steam mops, electric fires, fires; retail, online retail, mail order and wholesale services in connection with fireplaces, gas fires, oil fired heaters, oil filled radiators, heaters, storage heaters, electric heaters, convector heaters, gas fired heaters, portable heaters, room fans, ventilating fans, electric fans, electric cooling fans, sanitising apparatus, heated towel rails, electric towel warmers, heated towel drying rails, clothes dryers, clothes drying installations, hot water bottles, air coolers, electric stoves; retail, online retail, mail order and wholesale services in connection with electric blankets, toilet seats, toilet seat lids, sanitary covers for toilet seats, bread makers, slow cookers, sandwich presses, coffee makers, water filters, water purifiers, coffee filters, wine coolers, toasters, coffee roasters, percolators; retail, online retail, mail order and wholesale services in connection with domestic, household and electrical appliances for</p>
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	<p>heating, cooking and refrigerating food and drink, household and electrical appliances for heating, cooking and refrigerating food and drink for use in connection with parties; retail, online retail, mail order and wholesale services in connection with machines for making popcorn, machines for making candy floss, fondue and chocolate fondue cooking apparatus, chocolate fountain machines, electric pressure cookers, electric bread toasters, deep fat fryers, electric sandwich toasters, electric bread makers; retail, online retail, mail order and wholesale services in connection with electric ice cream makers, electric food steamers, electric cooking pots, ice makers, waffle irons, electric pans, egg cookers, food defrosting trays and platters, food warming and defrosting devices, oil-free electric fryers, electric egg poachers, electric soup makers, electric panini makers, pancake makers, spas, foot spas, spa devices for baths, hairdryers, ovens, cookers, grills, vehicle lights, microwaves; retail, online retail, mail order and wholesale services in connection with doughnut makers, drinks fountains, fondue, being cooking apparatus, covers for car seats, protective covers, car safety seats, seat belt converters, safety harnesses for children, safety mirrors for fitting inside vehicles, safety nets for fitting inside vehicles, wheelbarrows, clocks, watches, jewellery, artificial jewellery, bracelets, chains; retail, online retail, mail order and wholesale services in connection with stationery, adhesives for stationery, artists' materials, paint brushes, paint boxes for children, canvases, pencils, coloured chalk, crayons, easels, leads, collars and harnesses, articles of luggage, trunks, travelling cases, suitcases, valises, bags, travelling bags, sports bags; retail, online retail, mail order and wholesale services in connection with briefcases, executive cases, vanity cases, handbags, rucksacks, backpacks, children's bags, overnight bags, school bags, wallets, purses, shopping bags and beach bags, umbrellas, parasols, non-metallic gates, furniture, mirrors, picture frames, garden furniture, pillows, cushions, non-metal bins, clothes hangers, non-metallic ladders, non-metallic step ladders, stools, step stools, not of metal; retail, online retail, mail order and wholesale services in connection with decorative stones made of plastic, broom handles, mattresses, bedding, mattress toppers, mattress pads, foam mattresses, beds for animals, portable beds for pets, artificial plants made from plastic, baskets, cat trees, car guards, fish tanks, wooden hutches, non-metallic locks, keys, fasteners, knobs, latches, bolts, safety gates for child safety, cots,</p>
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	<p>containers; retail, online retail, mail order and wholesale services in connection with ornaments, statues, plastic bath rings, cable clips, neck cushions, trays, fireguards, plastic covers for plugs, switches, and sockets, edge guards, kettle guards, household or kitchen utensils and containers, articles for cleaning purposes, glassware, porcelain and earthenware, cookware, bakeware, non-stick bakeware, mixing bowls, baking trays, pans, pans (Frying -), baking dishes; retail, online retail, mail order and wholesale services in connection with non-stick baking trays, mops, mop heads, wringer mops, mop pails, buckets incorporating mop wringers, litter bins, plastic bins, ironing boards, wireware comprising trivets, baskets, iron stands, trays and clothes airers for use with radiators, ironing board covers, clothes airers, clothes horses, combs and sponges, pedal bins; retail, online retail, mail order and wholesale services in connection with chopping boards for kitchen use, kitchen moulds, egg separators [kitchen utensils], kitchen boards for chopping, coasters, meal trays, dispensers for liquid soap, household gloves, cases for toiletry articles, lavatory brush stands, flat-iron stands, trouser presses, tie presses, egg poachers, cleaning pads, abrasive pads, towel racks, laundry baskets, brushes for cleaning, dustpans, featherdusters; retail, online retail, mail order and wholesale services in connection with carpet sweepers, brooms, buckets, dish drainers, clothes-pegs, cool boxes, bowls, dishes, glasses, plates, egg cups, saucers, mugs, cups, travel mugs, gravy boats, crockery, plastic coasters, serving dishes, serving trays, tableware, cool bags, ceramics for household purposes, ramekins, spice racks, food containers, swizzle sticks, skewers, place mats of plastic and cork, place mats (other than paper or linen); retail, online retail, mail order and wholesale services in connection with textiles and textile goods, bed and table covers, duvets, covers for pillows, cushions or duvets, place mats and coasters made of textile, vinyl place mats and coasters, blankets, seat covers, rugs, games and playthings, decorations for Christmas trees, toys; retail, online retail, mail order and wholesale services in connection with party snack foods, prepared meals, instant meals, nuts, crisps, dairy products, dessert puddings, chocolate, chocolate beverages, chocolate based products, confectionery, pet food, carpets, rugs, mats and matting, linoleum and other materials for covering existing floors, wall hangings [non-textile], bath mats, bathroom rugs and mats, car mats, beach mats, carpet backing, carpet runners, carpet tiles; retail,</p>
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	<p>online retail, mail order and wholesale services in connection with cork mats, cloth wall coverings, door mats, fur rugs, gymnastic mats, mats, matting, yoga mats, wallpapers, wall coverings, shower mats, rugs for animals, rubber mats, play mats; retail, online retail, mail order and wholesale services in connection with detergents for industrial use, detergents for use in manufacture and industry, chemical preparations to prevent mildew, mould release preparations, chemical substances for use in the manufacture of scented toiletries, water softeners [preparations], chemical freezing agents, aerosol chemical spray for the solidification and hardening of animal waste; retail, online retail, mail order and wholesale services in connection with bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, non-medicated soaps, perfumery, essential oils, polish remover preparations, carpet shampoos, pot-pourri, fragrances, fragrance preparations, household fragrances, cleaning preparations for household use; retail, online retail, mail order and wholesale services in connection with cleaning preparations for cookware, tableware and household utensils, fridge and microwave cleaning preparations, bathroom cleaning preparations, floor cleaning preparations, essential oils for use in air fresheners, window cleaners, polish, floor polish, furniture polish; retail, online retail, mail order and wholesale services in connection with detergents, household detergents, dishwashing detergents, laundry detergents, degreasers other than for use in manufacturing processes, preparations for unblocking sinks or drains, descaling preparations for household purposes, mould removing preparations; retail, online retail, mail order and wholesale services in connection with cleaning preparations for use on tiles, scented toilet waters, stain removers, preparations for use in ironing, anti-static preparations for household purposes, anti-static spray, fragrances in powder form, fragrances for carpet cleaning, cleaning preparations for leather; retail, online retail, mail order and wholesale services in connection with pet stain removers, glue removers, label removers, preparations for removing glue, gum, adhesives and labels, vehicle, wheelchair, automobile, bicycle, mobility scooter, motorcycle and scooter cleaning preparations, shoe sprays, shoe protector sprays, chemical preparations for treating mildew; retail, online retail, mail order and wholesale services in connection with air freshening and air purifying preparations and substances, perfumed and</p>
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	<p>unperfumed disinfectants, air fresheners, air freshener refills, air freshener sprays, germicidal preparations having cleaning properties, fabric deodorisers; retail, online retail, mail order and wholesale services in connection with animal repellents, insect repellents, spider repellents, mosquito repellents, disinfectants, preparations for destroying vermin; import and export services; advertising; organisation of trade fairs; information, advisory and consultancy services in relation to the foregoing; none of the aforesaid including disposable household, commercial or industrial cloths or wipes for cleaning, wiping or dusting.</p>
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