

BL O/832/21

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION 3500813

BY

LANSERRING LTD

TO REGISTER THE FOLLOWING TRADE MARK:

LANSERRING

AND

OPPOSITION NO. 421667 THERETO

BY

LANSERHOF GMBH

Background and pleadings

1. On 15 June 2020, Lanserring Ltd (the “applicant”) applied to register the trade mark LANSERRING in the UK, under number 3500813. The contested mark was accepted and published for opposition purposes in the Trade Marks Journal on 3 July 2020. Registration of the mark is sought in respect of the goods and services found at Annex A.

2. On 5 October 2020, Lanserhof GmbH (the “opponent”) opposed the application under Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”), on the basis of its earlier European Union Trade Mark (EUTM):

LANSERHOF

EUTM no. 015319395

Registration date: 26 July 2016

3. The opponent relies upon only some of the goods and services for which the mark is registered. They are to be found at Annex B.

4. The opponent’s mark is earlier in accordance with section 6 of the Act.¹ However, as it had not been registered for five years or more before the filing date of the application, the opponent is not subject to the proof of use requirements specified within section 6A of the Act. As a consequence, the opponent may rely upon any or all of the services for which the earlier mark is registered without having to establish genuine use

5. In its notice of opposition, the opponent submitted that the respective goods and services are identical or highly similar.

6. The opponent contended that the marks are highly similar, due to the high degree of visual and aural similarity between the opponent’s earlier right and the contested mark. The opponent submitted that based on a global appreciation there is a likelihood

¹ 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.

of confusion between the contested mark and the earlier right on the part of the relevant public, with the likelihood of confusion being enhanced due to the strong inherent distinctiveness of the earlier mark. The opponent also submitted there was a likelihood of association. The opponent contended that such is the similarity between the two marks the relevant public will either believe that they are used by the same undertaking, or they will believe that there is an economic connection between the users of the two marks.

7. On 2 December 2020, the applicant filed a counterstatement denying the grounds of opposition, specifically submitting that it denied the marks are highly similar. The applicant submitted that the opponent had not particularised which of the many goods and services protected by its earlier right it consider to be identical or similar to those of the application. The applicant argued that the contested goods and services should not be regarded as identical or similar merely because they appear in the same class. Accordingly, the applicant neither admitted nor denied that the contested goods and services are identical or highly similar.

8. The applicant contended that the average consumer is deemed to be reasonably well informed and observant, although the level of attention attributed to the average consumer differs depending on the goods and services at issue. The applicant explained that it offers high value, and often personally designed, kitchen and lifestyle products. The applicant submitted that it operates in a niche, specialist market. The applicant claimed that the opponent also operates in a specialist market, that being one for holistic medicine, amongst other things. The applicant submitted that in the context of such specialist and luxury products, the average consumer is likely to be attributed a higher degree of attentiveness, and is likely to be knowledgeable about the goods and services in question. The applicant subsequently denied the likelihood of confusion.

9. The applicant contended that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The applicant submitted that the contested single word mark LANSERRING is distinct from the opponent's earlier right LANSERHOF. The applicant argued that any confusion on the part of the public must relate to the origin of the marks. The applicant argued that "it is not sufficient that on seeing the contested mark the earlier mark is called to mind if there

is no possibility of the consumer being under any disillusion as to the origin of the goods or services”.

10. The applicant denied that there is either a likelihood of confusion or a likelihood of association based on a global appreciation. The applicant further denied that the public would be confused as to the origin of the goods and services, or that they would believe the contested mark and earlier right are used by the same undertaking, or that there is an economic connection between the users of the marks.

11. The applicant denied that the opponent's earlier right has strong inherent distinctiveness, and further denied that any distinctiveness of the opponent's mark would enhance a likelihood of confusion.

12. Neither side filed evidence, but both sides filed written submissions.

13. In its written submissions, the opponent submitted that whilst it is well established that a mark should be considered in its entirety, it is the first part of the mark which ordinarily attracts the most attention and is therefore likely to be considered dominant. The opponent submitted that the application identically reproduces in the same dominant first part of the mark the element 'LANSER'.

14. The opponent contended that both the earlier right and the contested sign give the impression of a word comprised of two parts, that being 'LANSER' + 'HOF' in the earlier right and 'LANSER' + 'RING' in the contested sign. The opponent further contended that because 'RING' has a meaning in the English language, this will reinforce the understanding that 'LANSERRING' consists of two parts, i.e. 'LANSER' + 'RING'. The opponent argued that the element 'RING' in the application does not sufficiently differentiate it from the earlier right to the extent that it would overcome the identity of the respective dominant shared element 'LANSER'. The opponent further argued that because neither 'LANSER' nor indeed 'LANSERHOF' have any meaning in the mind of the relevant public, then both elements must be considered to be distinctive, which increases the likelihood of confusion between the two marks.

15. The opponent repeated its contentions from the notice of opposition, those being that the marks are highly similar on a visual and aural level resulting in the marks being found to be highly similar overall, that the contested goods and services are either

identical or highly similar to those covered by the earlier right, and that due to the above factors there is a likelihood of confusion including a likelihood of association on a global assessment, which will result in the relevant public either believing the marks are used by the same undertaking, or that there is an economic connection between the users of the marks.

16. The opponent included with its written submissions reference to the decision from the Opposition Division of the European Union Intellectual Property Office (EUIPO), Number B 3 005 926, whereby the opponent used the same earlier EUTM 015319395 to successfully oppose under Article 8(1)(b) of the European Union Trade Mark Regulations (EUTMR) an application by Lanserring Ltd. (the applicant in this matter), for the figurative sign EUTM 16 983 546:

LANSE[̄]RRING
LONDON

17. In its written submissions the applicant explained that it offers kitchens and associated lifestyle products that are expensive and are purchased infrequently, and which the average consumer would consider in depth, paying a high degree of attention to. The applicant submitted that the opponent operates in a market for specialist medical and spa goods and services, which the average consumer would have researched prior to making a considered purchase. The applicant contended that the average consumer of both the contested goods and services and those of the earlier right is likely to have a high degree of attentiveness and is likely to be knowledgeable about the goods and services in question. The applicant contended that a higher level of attention may reduce the risk of confusion. The applicant added that whilst the average consumer only rarely has the chance to make a direct comparison between different signs and must rely on an imperfect recollection, a high level of attention may lead to the conclusion that it will not confuse the marks.

18. As regards the visual similarity between the marks, the applicant contended that the application and earlier right clearly differ in their appearance. The applicant referred to the double 'R' of the application having the effect of elongating the word

'LANSERRING' and "drawing the eye along". The applicant submitted that the marks are not visually similar, or in the alternative, are only similar to a very low degree.

19. As to the aural similarity between the marks, the applicant contended that the application, taken as a whole, is phonetically different from the earlier right. The applicant submitted that the application possesses the three syllables 'LAN-SER-RING', and argued that the emphasis is on the second syllable. The applicant contended that although the earlier right also possesses three syllables ('LAN-SER-HOF'), the emphasis falls on the first and third syllable in that instance. The applicant argued that the application and earlier right sound differently when heard by the average consumer, and although they have letters in common, they exist as contrasting sounding components. The applicant submitted that due to the syllabic division of the first word element, the application contains a soft 'S' whereas the 'S' in the earlier right will sound as a 'Z'. Further, the soft 'G' at the end of the application sounds different to the hard 'F' at the end of the earlier right, which sounds abrupt. The applicant submitted that the marks are not aurally similar, or in the alternative, are only similar to a very low degree.

20. As to the conceptual similarity between the marks, the applicant submitted that neither mark has any natural meaning, and as a result there can be no conceptual similarity between the marks.

21. The applicant submitted that a likelihood of confusion must be assessed globally, with an interdependence between the relevant factors, in particular a similarity between the trade marks and the goods or services in question. The applicant submitted that it "is not sufficient that on seeing the mark at issue it brings to mind the earlier right if there is no possibility of the consumer being under any disillusion as to the origin of the goods or services". The applicant argued this to be the case as the opponent works in an entirely different industry. The applicant therefore contended that the consumer viewing the respective marks would not consider them to originate from the same, or economically linked, undertakings. The applicant argued that even if it was to be accepted that certain contested goods and services are considered identical or highly similar to those of the earlier right, the high level of attention of the average consumer making expensive and well-considered purchases of the goods

and services means there is no likelihood of confusion given the differences between the contested mark and earlier right.

22. No hearing was requested and so this decision is taken following a careful perusal of the papers.

23. 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. That is why this decision continues to refer to EU trade mark law.

24. Both parties are professionally represented. The applicant is represented by Allen & Overy LLP, and the opponent is represented by Hogan Lovells International LLP.

Decision

Section 5(2)(b)

25. Section 5(2)(b) of the Act is as follows:

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

(a) ...

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

Section 5A

26. Section 5A of the Act is as follows:

“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.”

27. 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

28. Whilst the opponent first contended in its notice of opposition that the entire list of contested goods and services are identical or highly similar to those of the earlier right, the applicant's initial position was simply to neither confirm nor deny the allegation, arguing instead that goods and services should not be regarded as identical or similar merely because they appear in the same class. Whilst each side's comments are noted, the degree of similarity or identity as the case may be is something which fundamentally contributes to whether there is a likelihood of confusion. I must therefore conduct my own full analysis of the services at issue.

29. The parties' respective specifications are:

Earlier mark	Application
<i>Class 3: Toiletries; Cleaning and fragrancng preparations; Tailors' and cobblers' wax; Animal grooming preparations; Body cleaning and beauty care preparations; Perfumery and</i>	<i>Class 3: Abrasives; Cleaning and fragrancng preparations; Essential oils and aromatic extracts; Tailors' and cobblers' wax; Toiletries.</i>

frangrances; Oral hygiene preparations; Sanitary preparations being toiletries; Cosmetics and cosmetic preparations; Hair preparations and treatments; Skin care preparations; Shower and bath gel; Shower and bath foam; Disposable wipes impregnated with cleansing compounds for use on the face; Colour cosmetics for the skin; Essential oils and aromatic extracts; Cosmetic preparations for use as aids to slimming; Mineral oils [cosmetic]; Slimming aids [cosmetic], other than for medical use; Cosmetics in the form of oils; Oils for toilet purposes; Cosmetic preparations for slimming purposes; Ointments for cosmetic use; Baby care products (Non-medicated -); Hair lotion; Dentifrice

Class 5: Dietary supplements and dietetic preparations; Hygienic preparations and articles; Medical and veterinary preparations and articles; Pest control preparations and articles; Dental preparations and articles; Infant formula; Dietary supplements for animals; Antioxidants; Anti-oxidant food supplements; Appetite stimulant preparations; Appetite suppressants; Appetite suppressants for medical purposes; Asthmatic tea; Dietary fiber; Dietary fiber to aid digestion; Bee pollen for use as a dietary food supplement; Dietetic infusions for medical use;

Dietetic preparations adapted for medical use; Dietetic beverages for babies adapted for medical purposes; Herbal dietary supplements for persons special dietary requirements; Dietetic food preparations adapted for medical use; Dietetic sugar substitutes for medical use; Dietetic beverages adapted for medical purposes; Dietetic substances adapted for medical use; Dietetic foods for use in clinical nutrition; Dietetic foods adapted for medical use; Liquid herbal supplements; Liquid vitamin supplements; Nutraceuticals for use as a dietary supplement; Medicinal drinks; Medicated food supplements; Preparations for use as additives to food for human consumption [medicated]; Medicinal tea; Mineral food supplements; Mineral dietary supplements for humans; Multi-vitamin preparations; Dietary supplemental drinks; Nutritional supplements; Probiotic supplements; Vitamin and mineral supplements; Vitamins and vitamin preparations; Vitamin drinks; Pharmaceuticals and natural remedies; Diagnostic preparations; Anti-rheumatism bracelets; Therapeutic preparations for the bath; Bath preparations for medical purposes; Bath salts for medical purposes; Chemical preparations for medical purposes;

<p><i>Biological preparations for medical purposes; Medical preparations; Preparations for use in naturopathy; Scrubs [preparations] for medical use; Pharmaceuticals; Medicinal herb infusions; Tisanes [medicated beverages].</i></p>	
<p><i>Class 8: Hygienic and beauty implements for humans and animals; Hand-operated tools and implements for treatment of materials, and for construction, repair and maintenance; Lifting Tools; Edged and blunt weapons; Food preparation implements, kitchen knives and cutlery; Cutlery.</i></p>	<p><i>Class 8: Cutlery, kitchen knives, and cutting implements for kitchen use; Hand-operated hygienic and beauty implements for humans and animals; Hand-operated tools and implements for treatment of materials, and for construction, repair and maintenance.</i></p>
<p><i>Class 18: Luggage, bags, wallets and other carriers; Sausage skins and imitations thereof; Umbrellas and parasols; Saddlery, whips and animal apparel; Worked or semi-worked hides and other leather; Sheets of imitation leather for use in manufacture; Curried skins; Leather cloth; Leather and imitation leather; Leather, unworked or semi-worked; Girths of leather.</i></p>	<p><i>Class 18: Luggage, bags, wallets and other carriers; Saddlery, whips and apparel for animals; Umbrellas and parasols; Walking sticks; Boxes made of leather; Boxes of leather or leatherboard; Card holders made of imitation leather; Card holders made of leather; Cases of leather or leatherboard; Furniture coverings of leather; Imitation leather; Imitation leather hat boxes; Leather for furniture; Leather and imitations of leather; Straps made of imitation leather; Toiletry bags sold empty; Trimmings of leather for furniture.</i></p>
<p><i>Class 20: Furniture and furnishings; Statues, figurines, works of art and</i></p>	<p><i>Class 20: Containers, and closures and holders therefor, non-metallic; Displays,</i></p>

<p><i>ornaments and decorations, made of materials such as wood, wax, plaster or plastic, included in the class; Animal housing and beds; Containers, and closures and holders therefor, non-metallic; Displays, stands and signage, non-metallic; Ladders and movable steps, non-metallic; Animal horns; Mother-of-pearl, unworked or semi-worked; Tortoiseshell; Whalebones; Ivory; Yellow amber; Meerschaum; Beds, bedding, mattresses, pillows and cushions; Clothes hangers and clothes hooks; Frames; Paper picture frames; Mirrors (silvered glass).</i></p>	<p><i>stands and signage, non-metallic; Furniture and furnishings; Ladders and movable steps, non-metallic; Statues, figurines, works of art and ornaments and decorations, made of materials such as wood, wax, plaster or plastic, included in the class; Door, gate and window fittings, non-metallic; Fasteners, non-metallic; Locks and keys, non-metallic; Bag hangers, not of metal; Basin plugs of non-metallic materials; Ceramic knobs; Ceramic pulls for cabinets; Ceramic pulls for cabinets, drawers and furniture; Curtain rings; Door stops of wood; Doorknobs, not of metal; Drawer pulls of glass; Drawer pulls of plastic; Drawer pulls of porcelain; Drawer pulls of wood; Drawer pulls, not of metal; Glass knobs; Hooks for towels (Non-metallic -); Hooks for wall hangings (Non-metallic -); Molds of plaster for casting ceramic materials; Mouldings made of plastics for picture frames; Mouldings made of substitutes of wood for picture frames; Porcelain doorknobs; Wood door handles; Wood doorknobs; Wood knobs.</i></p>
<p><i>Class 21: Brushes and brush-making articles; Tableware, cookware and containers; Cosmetic and toilet utensils and bathroom articles; Cleaning articles; Statues, figurines, plaques and works of art, made of materials such as porcelain, terra-cotta or glass, included in the class;</i></p>	<p><i>Class 21: Articles for the care of clothing and footwear; Cosmetic and toilet utensils; Household utensils for cleaning, brushes and brush-making materials; Statues, figurines, plaques and works of art, made of materials such as porcelain, terra-cotta or glass, included in the class;</i></p>

<p><i>Unworked and semi-worked glass, not specified for use; Household or kitchen utensils; Containers for household or kitchen use; Combs; Sponges; Containers for flowers; Holders for flowers and plants [flower arranging]; Glass, unworked or semi-worked, except building glass; Steelwool; Make-up brushes.</i></p>	<p><i>Tableware, cookware and containers; Flower vases; Vases; Decorative glass [not for building].</i></p>
<p><i>Class 24: Textiles and substitutes for textiles; Bed blankets; Table linen; Bath towels; Towels of textile.</i></p>	<p><i>Class 24: Fabrics; Textile goods, and substitutes for textile goods; Coverings for furniture; Linens; Wall hangings; Upholstery fabrics; Wall fabrics; Textiles for interior decorating; Bath linen; Bed linen and blankets; Kitchen and table linens; Bed clothes and blankets; Bed linen; Towels of textile.</i></p>
<p><i>Class 27: Wall and ceiling coverings; Floor coverings and artificial ground coverings; Area rugs; Artificial ground coverings; Floor coverings; Ceiling coverings made of paper; Tiles made of linoleum for fixing to existing walls; Hand made woollen carpets; Non-textile wallpaper.</i></p>	<p><i>Class 27: Floor coverings and artificial ground coverings; Wall and ceiling coverings; Carpets, rugs and mats.</i></p>
<p><i>Class 30: Baked goods, confectionery, chocolate and desserts; Ice, ice creams, frozen yogurts and sorbets; Coffee, teas and cocoa and substitutes therefor; Salts, seasonings, flavourings and condiments; Processed grains, starches,</i></p>	<p><i>Class 30: Coffee, teas and cocoa and substitutes therefor; Ice, ice creams, frozen yogurts and sorbets; Salts, seasonings, flavourings and condiments; Bread; Pastries, cakes, tarts and biscuits (cookies).</i></p>

<p><i>and goods made thereof, baking preparations and yeasts; Sugars, natural sweeteners, sweet coatings and fillings, bee products; Cereal-based snack food; Rice; Tapioca; Sago; Flour; Cereals; Bread; Vinegar.</i></p>	
<p><i>Class 33: Alcoholic beverages (except beer).</i></p>	<p><i>Class 33: Alcoholic beverages (except beer); Preparations for making alcoholic beverages; Alcoholic preparations for making beverages; Cider.</i></p>
<p><i>Class 37: Building, construction and demolition; Extermination, disinfection and pest control; Rental of tools, plant and equipment for construction and demolition; Vehicle service, repair, maintenance and refuelling; Building maintenance and repair; Plumbing installation, maintenance and repair; Alarm, lock and safe installation, maintenance and repair; Lift and elevator installation, maintenance and repair; Computer hardware and telecommunication apparatus installation, maintenance and repair; HVAC (Heating, ventilation and air conditioning) installation, maintenance and repair; Furniture maintenance and repair; Re-inking and refilling of toner cartridges; Cleaning and care of fabric, textile, leather, fur and goods made thereof; Clock repair; Glazing, installation, maintenance and repair of</i></p>	<p><i>Class 37: Building, construction and demolition; Building maintenance and repair; Furniture maintenance and repair; Advisory services relating to building refurbishment; Building construction and repair; Refurbishment of buildings; Providing information relating to the construction, repair and maintenance of buildings.</i></p>

<p><i>glass, windows and blinds; Rental of cleaning and washing machines and equipment; Tyre maintenance and repair; Construction services.</i></p>	
<p><i>Class 42: Design services; IT services; Testing, authentication and quality control; Science and technology services; Medical and pharmacological research services; Technical consultancy in relation to research services relating to foods and dietary supplements; Computer software design; Computer hardware development.</i></p>	<p><i>Class 42: Design services.</i></p>
<p><i>Class 43: Animal boarding; Rental of furniture, linens and table settings; Services for providing food and drink; Providing temporary accommodation; Consulting services in the field of culinary arts; Consultancy services relating to food; Consultancy services relating to food preparation; Provision of information relating to the preparation of food and drink; Providing reviews of restaurants and bars; Providing personalized meal planning services via a website; Providing drink services; Providing food and drink in restaurants and bars; Reservation services for booking meals; Hotel restaurant services; Services for the preparation of food and drink; Providing information in</i></p>	

<p><i>the nature of recipes for drinks; Hospitality services [food and drink]; Corporate hospitality (provision of food and drink); Personal chef services; Cookery advice; Serving food and drink for guests; Serving food and drinks; Takeaway services; Food preparation services; Providing food and drink for guests; Hotels, hostels and boarding houses, holiday and tourist accommodation; Hospitality services [accommodation]; Providing information about temporary accommodation services; Room hire services; Providing temporary housing accommodations.</i></p>	
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30. In the judgment of the Court of Justice of the European Union (CJEU) in *Canon*, Case C-39/97, the court stated at paragraph 23 of its judgment that:

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

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.

31. It has also been established by the General Court in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, that:

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

32. In *Les Éditions Albert René v OHIM*, Case T-336/03, the GC found that:

“61... The mere fact that a particular good is used as a part, element or component of another does not suffice in itself to show that the finished goods containing those components are similar since, in particular, their nature, intended purpose and the customers for those goods may be completely different.”

33. Class 3 - The contested *Cleaning and fragancing preparations; Essential oils and aromatic extracts; Tailors' and cobblers' wax; Toiletries* are identically present in the earlier right.

34. The intended purpose of the contested *abrasives* in Class 3 is to clean. The word *abrasive* derives from *abrasion*, which means to grate, scrape and scratch². In order to have such an effect, the surface of the abrasive must be rough. Such a tool is ordinarily used for the cleaning of surfaces or items, such as pots and pans, which have stuck-fast stains. The intended purpose of the goods in the earlier right is to clean, to groom, to perfume, to sanitise, to hydrate and to moisturise a human or animal. Although the average consumer will purchase both types of goods to either clean oneself or one's house, the intended purpose, nature and trade-channels are different.

35. However, ultimately I consider an abrasive to be complementary to a cleaning preparation. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the 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".

36. 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, i.e. *chicken* against *transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected

² <https://www.collinsdictionary.com/dictionary/english/abrasion>

undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited* BL-0-255-13:

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

Whilst on the other hand:

“.....it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.

37. The intended purpose of the contested *abrasives* is to clean. The earlier right contains *cleaning preparations*, which I consider most likely to be the creams, gels and soaps used in the process of cleaning, and which have not been limited in the specification of the earlier right to being for personal use. A cleaning preparation is indispensable or important in the use of an *abrasive* which has the intended purpose to clean, to the extent that customers may, or are liable to believe, that the responsibility for those goods lies with the same undertaking or with economically linked undertakings. The contested goods in Class 1 are therefore either identical or complementary.

38. Class 8 - all of the contested goods in Class 8 are identically present in the earlier right.

39. Class 18 – the contested *luggage, bags, wallets and other carriers; saddlery, whips and apparel for animals; umbrellas and parasols; leather and imitations of leather* are identically present in the earlier right.

40. The contested *toiletty bags sold empty* are a type of bag. The earlier right is registered in relation to *bags* at large. In accordance with *Meric*, the contested *toiletty bags sold empty* are therefore identical also.

41. A *walking stick* is designed to help a person walk by helping to maintain balance. The contested *walking sticks* have a different intended purpose/use and

consumer/user to all of the goods and services of the earlier right. *Walking sticks* are therefore considered to be dissimilar.

42. The contested *boxes made of leather; boxes of leather or leatherboard; card holders made of imitation leather; card holders made of leather; cases of leather or leatherboard; furniture coverings of leather; imitation leather hat boxes; leather for furniture; straps made of imitation leather* are not found to be similar to the earlier right's *leather cloth; leather and imitation leather; trimmings of leather for furniture* simply because the contested finished goods contain the earlier right's component material *leather*. In reality, the nature, intended purpose and customers of a "raw" material ("raw" insofar as although it has been treated it does not form a finished product, and is rather a material thereof) may be completely different from a customer wishing to buy a finished product³. For example, a dressmaker and a consumer wishing to buy a dress, or a tanner and consumer wishing to buy a leather hat box, are at opposite ends of the respective item's production process. However, I consider the contested *boxes made of leather; boxes of leather or leatherboard; card holders made of imitation leather; card holders made of leather; cases of leather or leatherboard; furniture coverings of leather; imitation leather hat boxes; leather for furniture; straps made of imitation leather* to be complementary to the *leather cloth; leather and imitation leather; trimmings of leather for furniture* of the earlier right. This is because *leather*, for example, is indispensable to the production a box, card holder, furniture covering etc. which has been particularised as being *made of leather*, in much the same way as *chickens* are indispensable to the *transport of chickens*⁴.

43. Class 20 – the contested *Containers, and closures and holders therefor, non-metallic; Displays, stands and signage, non-metallic; Furniture and furnishings; Ladders and movable steps, non-metallic; Statues, figurines, works of art and ornaments and decorations, made of materials such as wood, wax, plaster or plastic, included in the class*; are identically present in the earlier right.

44. The contested *door, gate and window fittings, non-metallic; fasteners, non-metallic* and *locks and keys, non-metallic* are designed to close, fasten and lock windows,

³ *Les Éditions Albert René v OHIM*

⁴ *Sanco SA v OHIM*

gates and doors. None of the goods on which the opposition is based have the same intended purpose, nature, user, trade channels etc. The above identified contested goods are therefore dissimilar.

45. The contested *Bag hangers, not of metal; Basin plugs of non-metallic materials; Ceramic knobs; Ceramic pulls for cabinets; Ceramic pulls for cabinets, drawers and furniture; Curtain rings; Door stops of wood; Doorknobs, not of metal; Drawer pulls of glass; Drawer pulls of plastic; Drawer pulls of porcelain; Drawer pulls of wood; Drawer pulls, not of metal; Glass knobs; Hooks for towels (Non-metallic -); Hooks for wall hangings (Non-metallic -) Porcelain doorknobs; Wood door handles; Wood doorknobs; Wood knobs* have a practical purpose. However, they are frequently used to adorn furniture and are sold in conjunction with *furnishings*, in the same type of retail establishment. The end user and trade channels are the same. Some of the above contested goods are more traditionally used as *furnishings* than others, but they are all still similar to the *furnishings* on which the opposition is based due to the end user and trade channels being the same. As such these goods are similar to at least a medium degree.

46. The contested goods in Class 20 include *mouldings made of plastic for picture frames; and mouldings made of substitutes of wood for picture frames*. The earlier right is registered for *frames; and paper picture frames*. Although mouldings for picture frames are clearly used in the process of making the end product of picture frames, the nature, intended purpose, end user and trade channels are distinct from one another. They are therefore dissimilar.

47. The contested *molds of plaster for casting ceramic materials* could be designed to mould anything and everything made from ceramic, and are certainly not specified as relating to picture frames, or any other type of good on which the opposition is based. The mold could be used for creating ceramic plates, for example. Because the end product of the mold is not specified, the same analysis from paragraph 43 does not apply. The nature, intended purpose, end user and trade channels are different, and *molds of plaster for casting ceramic materials* are therefore dissimilar.

48. Class 21 – the contested *cosmetic and toilet utensils; statues, figurines, plaques and works of art, made of materials such as porcelain, terra-cotta or glass, included in the class; tableware, cookware and containers* are identically present in the earlier right.

49. The contested *articles for the care of clothing and footwear* would fall within each of the three more general categories of *brushes and brush-making articles; cleaning articles* and *sponges* of the earlier right, and are therefore identical.

50. The *contested household utensils for cleaning, brushes and brush-making materials* fall within the earlier right's more general categories of both *cleaning articles; and household or kitchen utensils*, and are therefore identical.

51. Although worded differently, the contested *flower vases* are essentially identical to *containers for flowers*. The contested *vases* would fall within the more general category of the earlier right's *containers for flowers*, and is therefore effectively identical. Likewise, the contested *decorative glass [not for building]* would fall within the more general category of the earlier right's *glass, unworked or semi-worked, except building glass*, and is therefore effectively identical also.

52. Class 24 – The contested goods are either identically present in the earlier right, or are synonyms of the registered goods, or would fall within the general category of *textiles and substitutes for textiles*. These goods are identical.

53. Class 27 - the contested *floor coverings and artificial coverings; and wall and ceiling coverings* are identically present in the earlier right. The contested *carpets, rugs* and *mats* are general categories which would include the earlier right's *hand made woollen carpets; area rugs* and *floor coverings*, and are therefore identical.

54. Class 30 – the contested *Coffee, teas and cocoa and substitutes therefor; Ice, ice creams, frozen yogurts and sorbets; Salts, seasonings, flavourings and condiments; Bread* are identically present in the earlier right. The *contested pastries, cakes, tarts and biscuits (cookies)* fall within the general category of the *baked goods and desserts* of the earlier right, and are therefore identical.

55. Class 33 – the contested *alcoholic beverages (except beer)* are identically present in the earlier right. The contested *Preparations for making alcoholic beverages; Alcoholic preparations for making beverages; Cider*, would, in many instances, fall within the general category of the earlier right's *alcoholic beverages (except beer)*. The contested *preparations for making alcoholic beverages* are frequently used in the preparation of cocktails. As well as including types of *alcoholic beverages (except beer)*, this would likely include the additional non-alcoholic elements used for making cocktails, and are therefore indispensable and important, and are subsequently complementary.

56. Class 37 – the contested *building, construction and demolition; furniture maintenance and repair; building maintenance and repair* are identically present in the earlier right. Refurbishment and repair both have the same nature and intended purpose of restoring and improving, with both likely to have the same trade channels and users. The contested *refurbishment of buildings* is therefore considered highly similar to *building maintenance and repair*. The contested *Advisory services relating to building refurbishment* and *Providing information relating to the construction, repair and maintenance of buildings* are ancillary services, undoubtedly provided during the provision of the services of the earlier right, and are therefore identical.

57. Class 42 – the contested *design services* are identically present in the earlier right.

Comparison of marks

58. 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.”

59. It would be wrong, therefore, to dissect the trade marks artificially, although it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

60. The respective trade marks are shown below:

Earlier trade mark	Contested trade mark
LANSERHOF	LANSEERRING

61. The opponent’s mark consists of the single term ‘LANSERHOF’, which has no meaning in the English language, nor has it been claimed by either party to have a meaning in any other language. It is presented in a standard typeface. The overall impression lies in the perception of the single term, which is also where any distinctiveness lies.

62. The contested mark consists of the single term ‘LANSEERRING’, which has no meaning in the English language, nor has it been claimed by either party to have a meaning in any other language. It is presented in a standard typeface. The overall impression lies in the perception of the single term, which is also where any distinctiveness lies.

Visual similarity

63. Visually, the respective marks are similar in so far as they share the same six letters ‘L-A-N-S-E-R’, with the lettering in each mark being presented in a similar basic font. The marks differ in so far as the contested mark contains the additional four letters ‘R-I-N-G’, whereas the earlier right contains the additional three letters ‘H-O-F’.

64. In its written submissions, the applicant contended that the double ‘R’ in ‘LANSEERRING’ would have the effect of elongating the word, and “drawing the eye

along”, with the result being that the marks are either not at all visually similar, or are visually similar to only a low degree. I disagree. In *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, the GC noted that the beginnings of word tend to have more visual and aural impact than the ends. The court stated:

“81. It is clear that visually the similarities between the word marks MUNDICOLOR and the mark applied for, MUNDICOR, are very pronounced. As was pointed out by the Board of Appeal, the only visual difference between the signs is in the additional letters ‘lo’ which characterise the earlier marks and which are, however, preceded in those marks by six letters placed in the same position as in the mark MUNDICOR and followed by the letter ‘r’, which is also the final letter of the mark applied for. Given that, as the Opposition Division and the Board of Appeal rightly held, the consumer normally attaches more importance to the first part of words, the presence of the same root ‘mundico’ in the opposing signs gives rise to a strong visual similarity, which is, moreover, reinforced by the presence of the letter ‘r’ at the end of the two signs. Given those similarities, the applicant’s argument based on the difference in length of the opposing signs is insufficient to dispel the existence of a strong visual similarity.

82. As regards aural characteristics, it should be noted first that all eight letters of the mark MUNDICOR are included in the MUNDICOLOR marks.

83. Second, the first two syllables of the opposing signs forming the prefix ‘mundi’ are the same. In that respect, it should again be emphasised that the attention of the consumer is usually directed to the beginning of the word. Those features make the sound very similar.

65. The location of the identically presented letters is key. I would argue that the element ‘LANSER’ is the “root”⁵ of each mark. The element ‘LANSER’ comprises substantially more than half of each mark, reading from left to right. As identified in *El Corte Inglés*, it is the first part of a word (or term) where the consumer normally attaches more importance. Whilst the additional letters ‘R-I-N-G’ and ‘H-O-F’ of the

⁵ *El Corte Inglés* paragraph 81

respective marks are clearly visually different, I consider this to be of less significance as the differences appear at the end of the competing trade marks.

66. In my opinion, the marks are visually similar to at least a medium degree.

Aural similarity

67. Aurally, the respective marks are similar in so far as they share the same first two syllables 'LAN-SER'. Whilst a number of pronunciations are possible, in my opinion the syllable 'LAN' will most likely be enunciated in the same way as the syllable appears in 'Lan-guage', and 'SER' will most likely be enunciated in the same way as the syllable appears in 'Ser-vice'. The marks differ aurally in regard to their respective last syllables 'RING' and 'HOF', which will sound completely differently from one another. The fact that the aural differences appear at the end of the marks is less significant than if they had appeared at the beginning of the marks because, as is the case with the visual assessment, the attention of a consumer is directed to the beginning of the word.⁶

68. The applicant argued that an emphasis would be placed on the second syllable in the contested mark 'LANSERRING', i.e. 'SER', and the first and third syllables in the earlier right 'LANSERHOF', i.e. 'LAN' and 'HOF'. The applicant also argued that although the marks have letters in common, they exist as contrasting sound components, with the contested mark possessing a soft 'S' in contrast to the 'Z' sounding 'S' of the earlier right. The applicant also argued that the 'G' at the end of the contested mark would be soft, which is in contrast to the hard, abrupt sounding 'F' at the end of the earlier right. The applicant did not provide any explanation as to why this would be the case, and I see no justification for this contention. Neither term is an actual word from any language, so national pronunciations should not play a part. Further, neither mark uses an accent, or a tilde, or an umlaut, which would dictate where the spoken syllabic emphasis would appear. The term will be enunciated by an English-speaking consumer, in the form most obvious to them.

69. In my opinion, the marks are aurally similar to at least a medium degree.

⁶ *El Corte Inglés* paragraph 83.

Conceptual similarity

70. The applicant contended that neither mark has any natural meaning, and as a result there can be no conceptual similarity between the marks. The opponent contended that the element 'RING' of the contested mark does have meaning in English (although no definition was provided, this is not disputed), which reinforces the understanding that the mark consists of the two parts 'LANSER' + 'RING'. I interpret this submission by the opponent to be for the purpose of identifying that the element 'LANSER' will effectively be separated and therefore noticed by the consumer, which the opponent then subsequently contends has no actual meaning, and must therefore be considered distinctive. Simply because a coined term contains a combination of letters which, if seen in isolation, would have meaning in a certain language, does not mean the consumer will notice it as such. As I have mentioned before, it would be wrong to dissect a mark, and I must consider the conceptual impression created by the sign as a whole. In my opinion the marks at issue are invented or foreign words with no meaning in English and therefore carry no concept.

71. Due to the fact that neither sign conveys a conceptual message, there can be no conceptual comparison.

Average consumer and the purchasing act

72. The average consumer is deemed to be reasonably well informed and reasonably 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: Lloyd Schuhfabrik Meyer, Case C-342/97.

73. 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.”

74. The goods at issue vary greatly, from *essential oils* to *ladders*, and *carpets* to *cider*. Despite the varied nature of the goods at issue, which will have different uses, users, trade channels etc., the majority are, nevertheless, essentially everyday average consumer products, falling within a generally affordable price range of inexpensive goods. Some of the goods, such as *furniture* and *luggage*, will cost more than others, such as *bread* and *ice-cream*, and will therefore invariably be more scrutinised. The selection of the contested goods will, in the majority of instances, be visual, as the goods are tangible and can be examined in the store where they are sold. The goods will likely also be sold online using websites, which is also very much a visual process. I do not discount the possibility that the marks may be spoken over the telephone, for example in a conversation between a consumer and a retail representative, and therefore there may be an aural element to the purchase process. It is considered that the level of attention will therefore range from low to at least medium.

75. Some of the contested services at issue in Class 37 are equally ‘everyday’, in so far as they are the type of services which could frequently be required by an average consumer, who will inevitably be faced with such needs in the general course of their lifetime e.g. *furniture repair* and *building repair*. Although the repair will be carried out by a specialist tradesperson, and may cost more than the majority of the goods applied for, these details will not affect the definition of the relevant consumer, nor will they necessarily mean that the attention level will be high. In *Bang & Olufsen A/S v OHIM*, Case T-460/05, the GC stated that:

“According to the case-law, the price of the product concerned is also immaterial as regards the definition of the relevant public, since price will also not be the subject of the registration (Joined Cases T-324/01 and T-110/02 *Axions and Belce v OHIM* (Brown cigar shape and gold ingot shape) [2003] ECR II-1897, paragraph 36).”

76. There are degrees of speciality in relation to services. The contested services *furniture repair* and *building repair* are not aimed at a specialist consumer, rather they

are available to the average consumer who owns broken furniture or a house with a leak, etc. The selection of these services is not necessarily purely visual, as the purchase of services does not result in a tangible object that can be visually examined in the purchaser's hand. That having been said, I do not dismiss the fact that the services will invariably be made available and purchased online using websites, which is very much a visual process. I also do not discount the possibility that the marks may be spoken over the telephone, for example in a conversation between a consumer and the tradesperson/provider of such services, and therefore there may be an aural element to the purchase process.

77. It is considered that the level of attention will be at least medium.

78. The remaining services in Class 37 are also carried out by a specialist tradesperson, but due to the complexity of the service being provided, e.g. *building demolition*, the consumer would likely require a slightly higher degree of attention to ensure they have thoroughly searched for, and are happy with, the chosen tradesperson/provider. As with the other contested services in Class 37, the selection will invariably be visual, although again I do not discount the possibility of an aural element to the purchase process. Because the general category of contested services on offer could include a homeowner looking to add an extension to their property, or a supermarket chain looking to demolish an old store, the consumer will vary. Nevertheless, it is considered that in all instances the level of attention will be high.

79. The services in Class 42 will also likely receive a high level of attention. The term *Design services* will range from design of computer software to the design of home interiors, and will cover all manner of design services in between. As such services are often bespoke and task driven, the attention of the consumer will be high.

Distinctive character of the earlier trade mark

80. 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).”

81. Neither side has provided a definition for the earlier right ‘LANSERHOF’, and I will continue my assessment on the basis that it has none, and that is a coined term. It therefore follows that the earlier right ‘LANSERHOF’ has a high degree of distinctive character.

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

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

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

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

Likelihood of Confusion

84. 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.

85. 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 (see *Sabel*, C-251/95, para 22). The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa (see *Canon*, C-39/97, para 17). It is necessary for me to keep in mind the distinctive character of the opponent’s trade mark, the average consumer for the 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 he has retained in his mind.

86. I have found the marks to be visually and aurally similar to at least a medium degree. A conceptual comparison is not applicable as neither sign possesses a concept.

87. In relation to the contested goods, I have identified the relevant consumer to be the average consumer of everyday goods, who will invariably select the goods by visual means (although I do not discount the possibility that the marks may be selected over the telephone). In relation to the contested services, I have identified the relevant consumer to also be the average consumer for the majority of the services, whilst acknowledging the degree of attention will be slightly higher for a limited number of the more specialist contested services. In relation to such specialist services as *building demolition* and *design services*, for example, I accept that the consumer may include the professional who will display a higher than normal level of attention, as would be appropriate to their role. I have identified that this consumer will also invariably select the services by visual means, whilst I am again open to the possibility that they may be selected aurally.

88. I have found the contested *walking sticks* in Class 18 and *door, gate and window fittings, non-metallic; fasteners, non-metallic* and *locks and keys, non-metallic; molds of plaster for sating ceramic materials; and mouldings made of plastic for picture frames; and mouldings made of substitutes of wood for picture frames* in Class 20 to be dissimilar to the goods and services of the earlier right.

89. I have found the rest of the contested goods and services to be either identical, highly similar or at least complementary.

90. I have previously referred to the fact established in case law⁷ that the consumer normally attaches more importance to the first part of words, from both a visual and aural perspective. It is therefore a distinct possibility that a consumer will notice the visual similarities between the signs.

91. It is also established in case law that a visual comparison of marks is most important in the case of goods that are self selected, or where the consumer sees the mark when purchasing the goods, which is the scenario I have explained to be the most likely case in relation to a number of the contested goods and service. In *Quelle AG v OHIM*, Case T-88/05, the GC stated that:

⁷ *El Corte Inglés* paragraph 81-83

“68..... If the goods covered by the marks in question are usually sold in self-service stores where consumers choose the product themselves and must therefore rely primarily on the image of the trade mark applied to the product, the visual similarity between the signs will as a general rule be more important. If on the other hand the product covered is primarily sold orally, greater weight will usually be attributed to any phonetic similarity between the signs (*NLSPORT*, *NLJEANS*, *NLACTIVE* and *NLCollection*, paragraph 53 supra, paragraph 49).

69. Likewise, the degree of phonetic similarity between two marks is of less importance in the case of goods which are marketed in such a way that, when making a purchase, the relevant public usually perceives visually the mark designating those goods (*BASS*, paragraph 56 supra, paragraph 55, and Case T-301/03 *Canali Ireland v OHIM – Canal Jean (CANAL JEAN CO. NEW YORK)* [2005] ECR II-2479, paragraph 55). That is the case with respect to the goods at issue here. Although the applicant states that it is a mail order company, it does not submit that its goods are sold outside normal distribution channels for clothing and shoes (shops) or without a visual assessment of them by the relevant consumer. Moreover, while oral communication in respect of the product and the trade mark is not excluded, the choice of an item of clothing or a pair of shoes is generally made visually. Therefore, the visual perception of the marks in question will generally take place prior to purchase. Accordingly, the visual aspect plays a greater role in the global assessment of the likelihood of confusion (*NLSPORT*, *NLJEANS*, *NLACTIVE* and *NLCollection*, paragraph 53 supra, paragraph 50). The same is true of catalogue selling, which involves as much as does shop selling a visual assessment of the item purchased by the consumer, whether clothing or shoes, and does not generally allow him to obtain the help of a sales assistant. Where a sales discussion by telephone is possible, it takes place usually only after the consumer has consulted the catalogue and seen the goods. The fact that those products may, in some circumstances, be the subject of discussion between consumers is therefore irrelevant, since, at the time of purchase, the goods in question and, therefore, the marks which are affixed to them are visually perceived by consumers.”

92. I do not disregard the fact that the contested mark and earlier right differ as to the letters 'RING' and 'HOF' at the end of the respective marks. These letters create a visual and aural difference between the signs. However, the fact that the end of each mark is visually and aurally different is not enough, in my opinion, to neutralise the fact that the beginnings, and clear majority of each sign is visually and aurally identical.

93. Despite the fact that the marks do have certain aural and visual differences, I must consider the distinctive character of the earlier right, the majority of which forms the beginning of the contested sign, and acknowledge the visually dominant purchasing process of the contested goods and services. Although I believe that there is a possibility that the marks may be directly compared in a shop scenario, I must also consider the fact that this opportunity is rare, and generally the consumer relies upon an imperfect recollection of the earlier mark it has in its mind. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

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

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

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but

the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (“26 RED TESCO” would no doubt be such a case).

(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).”

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

95. Despite the level of similarity between the goods and services of the respective parties, ranging from identical to at least a medium degree (or in the alternative complementary for some of the goods and services), the differences in the visual and aural comparison of the marks prevent a finding of direct confusion. It is clearly apparent that the first six letters at the beginning of each mark are identical, and I am cogent to the fact that the consumer normally attaches more importance to the first part of words. However, I cannot dismiss the impact of the visual and aural differences caused by the different letters ‘R-I-N-G’ and ‘H-O-F’, simply because they fall at the end of the words. I consider these differences will not go unnoticed and would prevent the relevant consumer from mistaking one mark for the other. For this reason, I do not consider it likely that there will be any direct confusion.

96. Having found that there is no direct confusion between the marks, I must now consider the possibility of indirect confusion.

97. Given the high degree of inherent distinctive character of the earlier right I consider it likely that a consumer would appreciate that the contested mark is different from the

earlier right, but would nevertheless then go on to have an internal dialogue whereby they recognize that the contested mark has the “root”⁸ ‘LANSER’ in common with the earlier right, and would therefore conclude that the marks are being used by the same owner. The “root” ‘LANSER’, having no obvious meaning in the English language, can be said to be inherently highly distinctive, and comprises significantly more than half of each mark. Due to what I consider to be the striking distinctiveness of the common prefix/“root” ‘LANSER’, which for all intents and purposes is a unique collection of letters, it is my contention that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark.

98. This finding that the consumer would assume two separate trade marks containing an identical highly distinctive “root” are used by the same ownership goes beyond mere association, as the recognition of the shared root does more than merely call to mind the earlier mark.⁹ Rather, I believe that it will cause the consumer to conclude that the users of the marks are at least economically linked undertakings.

99. In addition, it must be borne in mind that 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 versa¹⁰. Considering the fact that the goods and services have been found to be either identical or highly similar (or in the alternative complementary), then the visual and aural differences between the marks would not be sufficient to overcome the likelihood of confusion, due to the differences occurring at the end of the marks. I therefore find there to be a likelihood of indirect confusion.

Conclusion

The opposition partially succeeds. Subject to appeal, the application may proceed to registration in respect of those contested goods found to be dissimilar, i.e.

Class 18 *walking sticks.*

⁸ *El Corte Inglés* paragraph 81

⁹ *Duebros Limited*

¹⁰ *Canon* paragraph 17

Class 20 *door, gate and window fittings, non-metallic; fasteners, non-metallic and locks and keys, non-metallic; molds of plaster for sating ceramic materials; mouldings made of plastic for picture frames; and mouldings made of substitutes of wood for picture frames.*

100. Subject to appeal, the application will be refused for all of the remaining goods and services.

COSTS

101. The opponent has been largely successful and is entitled to a contribution towards its costs. I bear in mind that the relevant scale is contained in Tribunal Practice Notice 2/2016. In the circumstances I award the opponent the sum of £650 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Preparing a notice of opposition and considering the counterstatement of the other side	£200
Preparing written submissions in lieu and considering the submissions of the applicant	£450
Total	£650

102. I therefore order Lanserring Ltd. to pay Lanserhof GmbH the sum of £650. The above 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.

Dated this 11th day of November 2021

Dafydd Collins
For the Registrar

Annex A

- Class 3: *Abrasives; Cleaning and fragrancng preparations; Essential oils and aromatic extracts; Tailors' and cobblers' wax; Toiletries.*
- Class 8: *Cutlery, kitchen knives, and cutting implements for kitchen use; Hand-operated hygienic and beauty implements for humans and animals; Hand-operated tools and implements for treatment of materials, and for construction, repair and maintenance.*
- Class 18: *Luggage, bags, wallets and other carriers; Saddlery, whips and apparel for animals; Umbrellas and parasols; Walking sticks; Boxes made of leather; Boxes of leather or leatherboard; Card holders made of imitation leather; Card holders made of leather; Cases of leather or leatherboard; Furniture coverings of leather; Imitation leather; Imitation leather hat boxes; Leather for furniture; Leather and imitations of leather; Straps made of imitation leather; Toiletry bags sold empty; Trimmings of leather for furniture.*
- Class 20: *Containers, and closures and holders therefor, non-metallic; Displays, stands and signage, non-metallic; Furniture and furnishings; Ladders and movable steps, non-metallic; Statues, figurines, works of art and ornaments and decorations, made of materials such as wood, wax, plaster or plastic, included in the class; Door, gate and window fittings, non-metallic; Fasteners, non-metallic; Locks and keys, non-metallic; Bag hangers, not of metal; Basin plugs of non-metallic materials; Ceramic knobs; Ceramic pulls for cabinets; Ceramic pulls for cabinets, drawers and furniture; Curtain rings; Door stops of wood; Doorknobs, not of metal; Drawer pulls of glass; Drawer pulls of plastic; Drawer pulls of porcelain; Drawer pulls of wood; Drawer pulls, not of metal; Glass knobs; Hooks for towels (Non-metallic -); Hooks for wall hangings (Non-metallic -); Molds of plaster for casting ceramic materials; Mouldings made of plastics for picture frames;*

Mouldings made of substitutes of wood for picture frames; Porcelain doorknobs; Wood door handles; Wood doorknobs; Wood knobs.

- Class 21: *Articles for the care of clothing and footwear; Cosmetic and toilet utensils; Household utensils for cleaning, brushes and brush-making materials; Statues, figurines, plaques and works of art, made of materials such as porcelain, terra-cotta or glass, included in the class; Tableware, cookware and containers; Flower vases; Vases; Decorative glass [not for building].*
- Class 24: *Fabrics; Textile goods, and substitutes for textile goods; Coverings for furniture; Linens; Wall hangings; Upholstery fabrics; Wall fabrics; Textiles for interior decorating; Bath linen; Bed linen and blankets; Kitchen and table linens; Bed clothes and blankets; Bed linen; Towels of textile.*
- Class 27: *Floor coverings and artificial ground coverings; Wall and ceiling coverings; Carpets, rugs and mats.*
- Class 30: *Coffee, teas and cocoa and substitutes therefor; Ice, ice creams, frozen yogurts and sorbets; Salts, seasonings, flavourings and condiments; Bread; Pastries, cakes, tarts and biscuits (cookies).*
- Class 33: *Alcoholic beverages (except beer); Preparations for making alcoholic beverages; Alcoholic preparations for making beverages; Cider.*
- Class 37: *Building, construction and demolition; Building maintenance and repair; Furniture maintenance and repair; Advisory services relating to building refurbishment; Building construction and repair; Refurbishment of buildings; Providing information relating to the construction, repair and maintenance of buildings.*
- Class 42: *Design services.*

Annex B

Class 3: *Toiletries; Cleaning and fragrancng preparations; Tailors' and cobblers' wax; Animal grooming preparations; Body cleaning and beauty care preparations; Perfumery and fragrances; Oral hygiene preparations; Sanitary preparations being toiletries; Cosmetics and cosmetic preparations; Hair preparations and treatments; Skin care preparations; Shower and bath gel; Shower and bath foam; Disposable wipes impregnated with cleansing compounds for use on the face; Colour cosmetics for the skin; Essential oils and aromatic extracts; Cosmetic preparations for use as aids to slimming; Mineral oils [cosmetic]; Slimming aids [cosmetic], other than for medical use; Cosmetics in the form of oils; Oils for toilet purposes; Cosmetic preparations for slimming purposes; Ointments for cosmetic use; Baby care products (Non-medicated -); Hair lotion; Dentifrice.*

Class 5: *Dietary supplements and dietetic preparations; Hygienic preparations and articles; Medical and veterinary preparations and articles; Pest control preparations and articles; Dental preparations and articles; Infant formula; Dietary supplements for animals; Antioxidants; Anti-oxidant food supplements; Appetite stimulant preparations; Appetite suppressants; Appetite suppressants for medical purposes; Asthmatic tea; Dietary fiber; Dietary fiber to aid digestion; Bee pollen for use as a dietary food supplement; Dietetic infusions for medical use; Dietetic preparations adapted for medical use; Dietetic beverages for babies adapted for medical purposes; Herbal dietary supplements for persons special dietary requirements; Dietetic food preparations adapted for medical use; Dietetic sugar substitutes for medical use; Dietetic beverages adapted for medical purposes; Dietetic substances adapted for medical use; Dietetic foods for use in clinical nutrition; Dietetic foods adapted for medical use; Liquid herbal supplements; Liquid vitamin supplements; Nutraceuticals for use as a dietary supplement; Medicinal drinks; Medicated food supplements; Preparations for use as additives to food for human consumption [medicated]; Medicinal tea; Mineral food*

supplements; Mineral dietary supplements for humans; Multi-vitamin preparations; Dietary supplemental drinks; Nutritional supplements; Probiotic supplements; Vitamin and mineral supplements; Vitamins and vitamin preparations; Vitamin drinks; Pharmaceuticals and natural remedies; Diagnostic preparations; Anti-rheumatism bracelets; Therapeutic preparations for the bath; Bath preparations for medical purposes; Bath salts for medical purposes; Chemical preparations for medical purposes; Biological preparations for medical purposes; Medical preparations; Preparations for use in naturopathy; Scrubs [preparations] for medical use; Pharmaceuticals; Medicinal herb infusions; Tisanes [medicated beverages].

Class 8: *Hygienic and beauty implements for humans and animals; Hand-operated tools and implements for treatment of materials, and for construction, repair and maintenance; Lifting Tools; Edged and blunt weapons; Food preparation implements, kitchen knives and cutlery; Cutlery.*

Class 18: *Luggage, bags, wallets and other carriers; Sausage skins and imitations thereof; Umbrellas and parasols; Saddlery, whips and animal apparel; Worked or semi-worked hides and other leather; Sheets of imitation leather for use in manufacture; Curried skins; Leather cloth; Leather and imitation leather; Leather, unworked or semi-worked; Girths of leather.*

Class 20: *Furniture and furnishings; Statues, figurines, works of art and ornaments and decorations, made of materials such as wood, wax, plaster or plastic, included in the class; Animal housing and beds; Containers, and closures and holders therefor, non-metallic; Displays, stands and signage, non-metallic; Ladders and movable steps, non-metallic; Animal horns; Mother-of-pearl, unworked or semi-worked; Tortoiseshell; Whalebones; Ivory; Yellow amber; Meerscham; Beds, bedding, mattresses, pillows and cushions; Clothes hangers and clothes hooks; Frames; Paper picture frames; Mirrors (silvered glass).*

- Class 21: *Brushes and brush-making articles; Tableware, cookware and containers; Cosmetic and toilet utensils and bathroom articles; Cleaning articles; Statues, figurines, plaques and works of art, made of materials such as porcelain, terra-cotta or glass, included in the class; Unworked and semi-worked glass, not specified for use; Household or kitchen utensils; Containers for household or kitchen use; Combs; Sponges; Containers for flowers; Holders for flowers and plants [flower arranging]; Glass, unworked or semi-worked, except building glass; Steelwool; Make-up brushes.*
- Class 24: *Textiles and substitutes for textiles; Bed blankets; Table linen; Bath towels; Towels of textile.*
- Class 27: *Wall and ceiling coverings; Floor coverings and artificial ground coverings; Area rugs; Artificial ground coverings; Floor coverings; Ceiling coverings made of paper; Tiles made of linoleum for fixing to existing walls; Hand made woollen carpets; Non-textile wallpaper.*
- Class 30: *Baked goods, confectionery, chocolate and desserts; Ice, ice creams, frozen yogurts and sorbets; Coffee, teas and cocoa and substitutes therefor; Salts, seasonings, flavourings and condiments; Processed grains, starches, and goods made thereof, baking preparations and yeasts; Sugars, natural sweeteners, sweet coatings and fillings, bee products; Cereal-based snack food; Rice; Tapioca; Sago; Flour; Cereals; Bread; Vinegar.*
- Class 33: *Alcoholic beverages (except beer).*
- Class 37: *Building, construction and demolition; Extermination, disinfection and pest control; Rental of tools, plant and equipment for construction and demolition; Vehicle service, repair, maintenance and refuelling; Building maintenance and repair; Plumbing installation, maintenance and repair; Alarm, lock and safe installation, maintenance and repair; Lift and elevator installation, maintenance and repair; Computer hardware and telecommunication apparatus installation, maintenance and repair;*

HVAC (Heating, ventilation and air conditioning) installation, maintenance and repair; Furniture maintenance and repair; Re-inking and refilling of toner cartridges; Cleaning and care of fabric, textile, leather, fur and goods made thereof; Clock repair; Glazing, installation, maintenance and repair of glass, windows and blinds; Rental of cleaning and washing machines and equipment; Tyre maintenance and repair; Construction services.

Class 42: Design services; IT services; Testing, authentication and quality control; Science and technology services; Medical and pharmacological research services; Technical consultancy in relation to research services relating to foods and dietary supplements; Computer software design; Computer hardware development.

Class 43: Animal boarding; Rental of furniture, linens and table settings; Services for providing food and drink; Providing temporary accommodation; Consulting services in the field of culinary arts; Consultancy services relating to food; Consultancy services relating to food preparation; Provision of information relating to the preparation of food and drink; Providing reviews of restaurants and bars; Providing personalized meal planning services via a website; Providing drink services; Providing food and drink in restaurants and bars; Reservation services for booking meals; Hotel restaurant services; Services for the preparation of food and drink; Providing information in the nature of recipes for drinks; Hospitality services [food and drink]; Corporate hospitality (provision of food and drink); Personal chef services; Cookery advice; Serving food and drink for guests; Serving food and drinks; Takeaway services; Food preparation services; Providing food and drink for guests; Hotels, hostels and boarding houses, holiday and tourist accommodation; Hospitality services [accommodation]; Providing information about temporary accommodation services; Room hire services; Providing temporary housing accommodations.