

BL O/1069/22

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION 3753436

BY

NAIA LIMITED

TO REGISTER THE FOLLOWING TRADE MARK:



AND

OPPOSITION NO. 60002337 THERETO

BY

NAYA SKINCARE LIMITED

Background and pleadings

1. On 10 February 2022, NAIA LIMITED (the “Applicant”) applied to register the figurative trade mark as shown on the cover of this decision. The contested application was accepted, and published for opposition purposes in the Trade Marks Journal on 25 February 2022. Registration of the mark is sought in respect of the following goods:

Class 3 *Nail polish; Nail polish remover; Nail polish top coat; Nail polish removers [cosmetics]; Nail polish base coat; Polish; Polishes; Varnish (Nail -); Nail gel; Nail cosmetics; Cosmetic nail preparations; Gel nail removers; Nail buffing preparations.*

Class 8 *Nail files: Nail buffers.*

Class 11 *Nail lamps.*

2. On 25 April 2022, Naya Skincare Limited (the “Opponent”) filed a Fast Track opposition, opposing the application under Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) on the basis of its two earlier United Kingdom Trade Marks (UKTMs):

UKTM No. 3284045 (series of two)

NAYA

Naya

Filing date: 20 January 2018

Registration date: 27 April 2018

and

UKTM 918040347

NAYA

Filing date: 24 March 2019

Receiving date: 1 January 2021

Registration date: 16 December 2020

3. For the purposes of this Fast Track opposition, the Opponent relied upon all of the goods and services for which the earlier marks are registered in Classes 3 and 44 (see Annex A).

4. Since the filing dates of the earlier marks predate that of the contested application, the Opponent's marks are considered to be "earlier marks" in accordance with section 6 of the Act.¹ However, as the marks had not been registered for a period of five years or more before the filing date of the application, they are not subject to the use requirements specified within section 6A of the Act. As a consequence, the Opponent may rely upon any or all of the goods and services for which the earlier marks are registered without having to show that it has used the marks at all.

5. Considering that this is a Fast Track opposition, it is necessary to highlight Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 2235, which disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but provides that Rule 20 (4) shall continue to apply. Rule 20 (4) states that:

"(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit."

6. The net effect of these changes is to require the parties to seek leave in order to file evidence in Fast Track oppositions. No leave was sought to file any evidence in respect of these proceedings by either party.

7. Rule 62 (5) (as amended) states that arguments in Fast Track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings

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.

requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken.

8. The opposition is aimed against all of the goods in the contested application, which the Opponent claimed are identical or similar to those registered in the earlier marks. The Opponent argued that the word element NAYA/Naya of the earlier marks is closely similar to the word element Naía in the contested mark. The Opponent argued that the element LONDON in the contested mark is a secondary element that is descriptive. In light of the above, the Opponent claimed that there exists a likelihood of confusion on the part of the relevant public that includes a likelihood of association.

9. On 2 August 2022, the Applicant filed a counterstatement. The Applicant argued that the element NAYA/Naya of the earlier marks is not in any way similar to the word element Naía in the contested mark. The Applicant submitted that the contested mark had been used for a number of years with no evidence of confusion, and “Given that there are many other marks already on the market place which co-exist there should be no likelihood of confusion on the part of the relevant public, which includes the likelihood of association with the earlier mark.” The Applicant submitted that it completely disagreed with the Opponent’s position regarding the similarity of the goods and services of each respective mark. The Applicant contended that the Opponent’s mark is used exclusively for personal beauty treatment services, whilst the contested mark is used in relation to vegan nail polish “and goods of that nature”.

10. No Hearing was requested and only the Opponent filed submissions in lieu of a Hearing.

11. In its submissions of 3 October 2022, the Opponent gave a brief introduction as to the background of its company. The Opponent submitted that the Applicant is a direct competitor by virtue of it being in the field of beauty, cosmetic and personal care. The Opponent reiterated its previous submission that the contested goods are identical or similar to those of the earlier mark, as both are related to beauty products and services, and argued that the goods and services at issue are competitive and complementary. The Opponent argued that Naía is the sole distinctive element of the Applicant’s mark, and is closely similar to the element NAYA/Naya of the earlier marks insofar as they are each four letters long, with the only difference being the use of the letter ‘i’ in the

contested mark instead of the letter 'Y/y' in the earlier marks. The Opponent argued that the stylisation of the contested mark is minimal, and the average consumer would more easily refer to the product by its name, with the word element having a greater impact than the stylised figurative element. The Opponent contended that the marks are both two syllables long, with the difference of the letter 'Y/y' and 'i' producing similar sounds. As for the conceptual aspect, the Opponent submitted that because neither NAYA/Naya nor Naía have a conceptual meaning, the conceptual aspect does not affect the assessment of similarity. The Opponent submitted that the relevant public is the public at large, which is considered reasonably well-informed and reasonably observant and circumspect, with a low to average degree of attention. Finally, the Opponent argued that considering the principle of interdependency, there is likely to be either a direct or indirect likelihood of confusion.

12. In its submissions, the Opponent also provided information pertaining to the products it sells online and included screenshots from websites. I refer to Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, (cited in paragraph 5 above), the effect of which is that in order for evidence to be included in Fast Track proceedings permission must be expressly sought. The Opponent did not previously request permission, and therefore any information that I consider to constitute evidence has not been summarised.

13. Both parties are professionally represented. The Applicant is represented by LawBriefs Limited, and the Opponent is represented by Trademark Tonic Limited.

Decision

14. 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.

Section 5(2)(b)

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

“(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”.

16. 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.

Procedural economy

17. Both of the Opponent's earlier marks consist exclusively of the word NAYA. Whilst the earlier mark UKTM No. 3284045 is registered for two representations of the same word, the difference between the upper-case and lower-case representations is negligible. This is because it is well established in case law that the protection offered by the registration of a word mark applies to the word stated in the application for registration, and not to the individual graphic or stylistic characteristics which that mark might possess.² There is therefore no perceptible greater chance of success for the Opponent in choosing UKTM 3284045 over UKTM 918040347 in order to cover two

² *Radio Regenbogen Hörfunk in Baden v OHIM (RadioCom)*, T-254/06, paragraph 43.

types of representation. Although UKTM 3284045 is registered for a larger number of goods and services than UKTM 918040347, it is the specification of UKTM 918040347 which seems to have more similarity to the contested goods. It appears to me, therefore, that earlier UKTM 918040347 offers the Opponent its greater chance of success under Section 5(2)(b). If this earlier mark is found to be dissimilar to the contested mark, the Opponent will be in no better position under Section 5(2)(b) if it were to rely on a mark with a specification that is less similar to the contested mark.

Comparison of goods and services

18. Whilst it is noted that both parties have provided submissions in relation to the respective goods and services at issue, the degree of similarity or identity of the specifications, 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 goods and services. I shall refer to the submissions of each party if and when I consider them to provide assistance and clarity.

Earlier mark UKTM 918040347	Application
<p><i>Class 3: Cosmetics; Skincare cosmetics; Skincare preparations; Anti-aging skincare preparations; Beauty serums; Anti-ageing serum; Serums for cosmetic purposes; Facial serum for cosmetic use; Face oils; Skin cleansers; Facial cleansers [cosmetic]; Skin cleansers [cosmetic]; Moisturiser; Moisturisers; Skin moisturiser; Body moisturisers; Cosmetic moisturisers; Hair moisturisers; Anti-ageing moisturiser; Facial moisturisers [cosmetic]; Suncare lotions; Suntan lotions; Sun care lotions; After-sun lotions; Nail polish; Skin moisturisers; Nail polish remover; Nail polish removers [cosmetics]; Make-up; Make up foundations; Facial gels [cosmetics]; Body and facial gels [cosmetics]; Cosmetics in the form of creams; Gel eye masks; Facial masks; Facial masks [cosmetic]; Cosmetic facial</i></p>	<p><i>Class 3: Nail polish; Nail polish remover; Nail polish top coat; Nail polish removers [cosmetics]; Nail polish base coat; Polish; Polishes; Varnish (Nail -); Nail gel; Nail cosmetics; Cosmetic nail preparations; Gel nail removers; Nail buffing preparations.</i></p>

<p><i>masks; Facial beauty masks; Blended essential oils; Essential oils; Aromatic essential oils; Lip balm; Lip balms; Cosmetics all for sale in kit form; Glitter in spray form for use as a cosmetics; Cosmetics containing hyaluronic acid; Antiperspirants [toiletries]; Body deodorants; Personal deodorants; Anti-perspirant deodorants; Eye cosmetics; Eyebrow cosmetics; Cosmetics for eye-lashes; Cosmetics for eye-brows; Eye make-up; Decorative cosmetics; Cosmetics in the form of milks; Cosmetics in the form of oils; Cosmetics in the form of powders; Cosmetics in the form of lotions; Cosmetics in the form of gels; Make-up bases in the form of pastes; Eau de parfum; Skin creams; Skin creams [cosmetic]; Moisturising skin creams [cosmetic]; Skin care creams [cosmetic]; Skin recovery creams [cosmetics]; Skin lotions; Lotions for the skin; Moisturising skin lotions [cosmetic]; Skin care lotions [cosmetic]; Skin cleaning and freshening sprays; Topical skin sprays for cosmetic purposes; Lip gloss; Cleansing mousse; Shaving mousse; Hair mousse; Exfoliants for the care of the skin; Hair oil; Exfoliating creams; Make-up pads of cotton wool.</i></p>	
	Class 8: <i>Nail files; Nail buffers.</i>
	Class 11: <i>Nail lamps.</i>
Class 44: <i>Spas; Spa services; Beauty spa services; Beauty treatment; Beauty treatment services; Facial beauty treatment services; Beauty consultancy</i>	

<p><i>services; Consultancy services relating to beauty; Make-up services; Cosmetic make-up services; On-line make-up consultation services; Make-up consultation and application services; Cosmetics consultancy services; Consultation services in the field of make-up; Cosmetic facial and body treatment services; Cosmetic treatment services for the body, face and hair</i></p>	
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19. 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”.

20. 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.

21. It has also been established by the General Court (“GC”) 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”.

22. 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”.

23. 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 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.

Class 3

24. The earlier mark is registered for *cosmetics*. This is a broad term that includes all types and forms of preparations for the purposes of beautification. The contested goods in Class 3 consist of preparations that would be used in order to beautify one's appearance, most specifically, the user's nails. The contested goods all fall within the more general category of the earlier mark's *cosmetics* and are therefore considered to be identical in accordance with the *Meric* principle.

Class 8

25. The contested *Nail files; Nail buffers* are goods that are used to improve the appearance of, and make more attractive, the user's nails. Whilst the action of filing and buffing nails could be undertaken in order to simply make them more manageable, less sharp or shorter, in the majority of instances a nail file or buffer is used to make the nail more consistent and shiny. In other words, the intended purpose of the goods is to improve the nail's appearance. In this regard they have the same intended purpose as the Class 3 *cosmetics* of the earlier mark. In addition, the users and trade channels are the same, and they are likely to be sold close to or on the same shelf in a shop, for example. The contested *nail files* and *nail buffers* are therefore considered to be similar to a medium degree.

Class 11

26. The intended purpose of a *nail lamp* is to dry nail gel or polish. The process of drying nails is part of a beautification process, and is therefore similar in many facets to *cosmetics* of the earlier mark. It is possible that the end user, trade channels and retail outlets are the same. They are therefore similar to at least a medium degree.

27. In the alternative, *nail lamps* are complementary to the services in Class 44 of the earlier mark. Although nail lamps are available to purchase for home use, they are used predominantly in a nail salon or beauty spa as part of a cosmetic make up service. The earlier mark is registered in Class 44 for a number of beauty and cosmetic specific services, including *beauty spa services* and *cosmetic make-up services*. It is my opinion that a *nail lamp* is frequently used in beauty and cosmetic services, and that there is therefore a close connection between them. Accordingly, I find the contested *nail lamp* to be complementary to several of the Class 44 services of the earlier mark.

Comparison of the marks

28. 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.”

29. 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.

30. The respective trade marks are shown below:

Earlier mark UKTM 918040347	Contested Application
 The earlier mark consists of the word "NAYA" in a bold, black, sans-serif typeface.	 The contested application consists of the word "Naía." in a light green, serif typeface, with a small accent over the 'i'. Below it, the word "LONDON" is written in a smaller, light green, sans-serif typeface.

31. The earlier mark is presented in a standard typeface and consists of the term NAYA, which is where the overall impression and any distinctiveness must lie. NAYA is not an English-language word. It does not appear in any dictionary, and neither party has provided a meaning of the term.

32. The overall impression of the contested mark derives from two elements. The first element is the slightly stylised term Naía. The letter 'i' will either be perceived to be using an unusual tittle, or will be perceived as an accent indicator such as those used in several Latin-origin languages, including Spanish, Italian or French, etc. The second element of the contested mark is the word LONDON, which is noticeably smaller than the term Naía, and occupies a central position below it within the width of the letters 'a' and 'i'. Both elements are in the same light green colour. Due to the term Naía being larger and stacked above the word LONDON, I consider it to be both the more eye-catching and the more dominant element. I also find the term Naía to be the distinctive aspect of the mark. This is because the word 'LONDON' is primarily recognised as the name of the capital city of England, and will therefore be perceived by the consumer as referencing the geographical location of the production/manufacture/provision of the contested goods, rather than being perceived as an element that indicates trade origin.

Visual similarity

33. The dominant element of the contested mark is the term Naía. By comparing this dominant element with the earlier mark, the marks are considered to be similar insofar as they coincide in the first two letters 'NA/Na', and the fourth and respective final letters 'A/a'. This is the limit to the visual similarity. The dominant element of the contested mark differs from the earlier mark in relation to the third letter being an 'i' with a stylised tittle or accent, instead of a letter 'Y'. In addition, the marks differ visually due to the inclusion of the word element LONDON in the contested mark, which has no counterpart in the earlier mark. Despite the smaller size of the word LONDON, I do not believe that it will be missed from a visual perspective. That having been said, its smaller size nevertheless means that it is undoubtedly less dominant than the element Naía. The fact that it will most likely be perceived as a descriptive element also makes it less distinctive than the element Naía. In my opinion, the average consumer will most likely perceive LONDON as being a secondary or merely descriptive element. A further visual difference is the fact that the contested mark is in colour and a slightly stylised font, whilst the earlier mark is plain text.

34. The marks are considered to be visually similar to a medium degree.

Aural similarity

35. The earlier mark contains two syllables. The first syllable NA could be pronounced either as the combination is sounded in NA-IL or as the combination is sounded in NA-P. The second syllable YA will most likely be pronounced as the combination is sounded in YA-NKEE.

36. The first syllable Na of the element Naía in the contested mark will also be pronounced in either of the two sounds already identified. As to the second syllable, its pronunciation will differ dependant on whether the consumer has a familiarity with, and understanding of, the use of accents over vowels. This in turn would affect the pronunciation of the third syllable. For example, a Spanish speaker living in the UK would recognise that the accent over the letter 'i' will affect the pronunciation into the two syllables Yee-ah ('a' as in apple) sound. The totality of the word would therefore be pronounced as the three syllables Na-yee-ah. However, in the vast majority of

instances, and because the English language does not use accents, the combination 'ia' would most likely be pronounced as if the letter 'i' is the standard English-language vowel, and therefore sounded ee-ah ('a' as in apple). The totality of the word would therefore be pronounced as the three syllables Na-ee-ah

37. In relation to the dominant element of the contested mark, and the only element of earlier mark, the marks are aurally similar insofar as their respective first syllables will be pronounced identically, either as the sound in NA-il or NA-p. The second syllable of the earlier mark and second/third syllables of the contested mark will differ, but only very slightly, and the difference will be limited to the difference in sound of YA and ee-ah. Notably, the final sound of each word will be the same 'ah' as in apple.

38. The second element in the contested mark is the term LONDON, which will be pronounced in the standard way. This second element has no counterpart in the earlier mark. It is possible that a certain number of consumers may not pronounce the element LONDON at all, as they will perceive it to be secondary and purely descriptive. However, as identified by Mr Philip Harris acting as the Appointed Person in *Purity Wellness Group Ltd v Stockroom (Kent) Ltd*, BL O/115/22, the descriptiveness of a word does not in and of itself render it negligible or aurally invisible. Therefore, the element LONDON should be considered to have some aural impact.

39. The marks are considered to be aurally similar to at least a medium degree for the consumer who enunciates the word LONDON, and similar to a high degree for the consumer who does not.

Conceptual similarity

40. Neither party has provided submissions as to the concept of the term NAYA, and it is therefore assumed to be a seemingly invented term.

41. The contested mark also contains a term that is seemingly invented, as neither party has provided submissions as to the meaning of Naía. The second element is the word LONDON, which has the concept of the capital city of England. Since it is not uncommon for trade marks to include a city such as London to indicate the origin or location of the respective goods, the conceptual impact of this element within the contested mark is considered minimal.

42. Due to the fact that the earlier mark has no obvious conceptual meaning, there can be no conceptual comparison.

Average consumer and the purchasing act

43. 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.³ 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.”

44. The goods at issue all relate to the cosmetic and beautification world. The contested goods are specifically all intended to “improve” the appearance of the end-user’s nails. The majority of the goods are everyday products, insofar as they are bought and used frequently, e.g., *nail polish*, *nail polish remover* and *nail files*. Such goods tend to fall within a generally affordable price range of inexpensive items. The contested *nail lamps* would undoubtedly be used every day at a spa, beauty/nail salon etc. The *nail lamps* would also be used at home by a consumer, although probably less frequently than those that are used in salons. The price of *nail lamps* would likely vary depending on the quality of the product, but in general terms they are not considered to be a particularly expensive item, and neither party has provided information to suggest otherwise. Accordingly, they too are considered to fall within a generally affordable price range. The relevant consumer will therefore include both the average consumer as well as the nail-professional, and so the level of attention will

³ *Lloyd Schuhfabrik Meyer*, Case C-342/97

range from between low for the items such as *nail polish* etc., and medium/high for the *nail lamps*.

45. Based on the nature of the goods at issue, I consider it most likely that the purchase process will be visually dominated. Whether the consumer is buying *nail polish*, a *nail file* or even a *nail lamp* etc., the consumer would predominantly be perusing goods in a self-service store or magazine or on the internet using their eyes, and would therefore most likely be making a purchase decision based on the visual appearance of the product. In addition, when using the *nail lamp* in a nail salon, for example, it is the visual aspect of the mark that would be noticed first. That having been said, I do not entirely discount the possibility that the marks may be spoken, for instance when engaging a sales assistant in conversation or asking them if they have 'x' in stock, or when chatting to the technician/operator in charge of controlling the *nail lamp*. As such, I accept that there would likely be an aural element to the purchasing process.

Distinctive character of the earlier trade marks

46. The Opponent has not made a direct claim that either of its earlier marks have acquired an enhanced degree of distinctive character, nor has the Opponent filed any evidence of use that may indicate such a position. My assessment of the degree of distinctive character of the earlier marks is therefore to be made only on the basis of their inherent features. With this in mind, if the earlier UKTM 918040347 is found to be unsuccessful, the Opponent will be in no better position relying upon UKTM 3284045 which does not enjoy any more enhanced degree of distinctive character than UKTM 918040347.

47. 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).”

48. In *Kurt Geiger v A-List Corporate Limited* BL O-075-13, Mr Iain Purvis K.C., acting 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.”

49. 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.

50. The earlier marks have no obvious meaning in the English language, and therefore have no apparent link to the goods and services at issue. As a seemingly invented word, NAYA can be said to be inherently distinctive to a high degree.

Likelihood of confusion

51. 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.

52. 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.

53. Having conducted a thorough analysis of the marks at issue, I have indicated that I consider a certain number of average consumers will perceive the element LONDON in the contested mark to be entirely descriptive, and that it will most likely be perceived as less dominant/distinctive and secondary to the element Naía (see *Lloyd Schuhfabrik Meyer* paragraph 23). I have also indicated that a certain number of average consumers would quite possibly refrain from enunciating the term altogether when referring to the mark. I am aware of the comments of Mr Philip Harris in *Purity Wellness Group*, whereby he said in paragraph 31 that "Descriptiveness does not of

itself render an element negligible or aurally invisible". I am also aware of the finding in the judgment T-412/08, *Trubion*:

35 Assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark. On the contrary, the comparison must be made by examining each of the marks in question as a whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be dominated by one or more of its components (see *OHIM v Shaker*, paragraph 41 and the case-law cited).

36 It is only if all the other components of the mark are negligible that the assessment of the similarity can be carried out solely on the basis of the dominant element (*OHIM v Shaker*, paragraph 42, and judgment of 20 September 2007 in Case C 193/06 *P Nestlé v OHIM*, not published in the ECR, paragraph 42). That could be the case, in particular, where that component is capable alone of dominating the image of that mark which members of the relevant public keep in their minds, so that all the other components are negligible in the overall impression created by that mark. In addition, the fact that an element is not negligible does not mean that it is dominant, and by the same token the fact that an element is not dominant in no way means that it is negligible (*Nestlé v OHIM*, paragraphs 43 and 44).

54. Whilst the element LONDON is not necessarily *aurally* negligible and may indeed be articulated, this does not mean that it cannot nevertheless be perceived to be *conceptually* negligible in the overall impression of the mark. This is due not only to its smaller size, but also as a result of its comparison to the more dominant and distinctive element Naía. In my opinion the term LONDON will also be perceived as secondary and descriptive (and arguably, therefore, conceptually negligible) due to the habit of trade marks, particularly in the field of cosmetics and beauty products etc., including/referring to the location where they are produced, e.g., Milan, Paris, New York and London. Considering this, I believe that it is the element Naía which dominates the contested mark and is the element which the "relevant public will keep in their minds" (see *Trubion* para 36). The effect of all this is that the comparison of the marks can be carried out solely on the basis of the earlier mark against the

dominant and certainly non-negligible element of the contested mark, i.e., NAYA vs Naía.

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

“49. However, it should be noted that in the global assessment of the likelihood of confusion, the visual, aural or conceptual aspects of the opposing signs do not always have the same weight. It is appropriate to examine the objective conditions under which the marks may be present on the market (*BUDMEN*, paragraph 57). The extent of the similarity or difference between the signs may depend, in particular, on the inherent qualities of the signs or the conditions under which the goods or services covered by the opposing signs are marketed. If the goods covered by the mark in question are usually sold in self-service stores where consumer 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 aural similarity between the signs.”

56. In *Quelle AG v OHIM*, Case T-88/05, the GC found that visual similarity (and difference) is most important in the case of goods that are self-selected or where the consumer sees the mark when purchasing the goods. The Court stated that:

“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)... 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.”

57. Following my comparison of the marks at issue, I have determined that it is the visual considerations which are of primary importance in the assessment of a likelihood of confusion, due to the purchasing process of the respective goods and services being visually dominated. With this in mind, it is important to reaffirm that I have found the marks to be visually similar to a medium degree. It is also important to reaffirm that I did not rule out a part of the relevant public paying more attention to the aural aspect of the marks during the purchasing process. In fact, I made it clear that conversations with sales assistants or lamp technicians/operators could be prevalent. As such, I consider the finding of a degree of aural similarity that is high for the consumer who does not enunciate the term LONDON, and at least medium for the consumer who does enunciate the term LONDON, to be of significance also.

58. 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.

59. The marks at issue share the first two letters. Whilst this might not appear significant in and of itself, it should be kept in mind that the earlier mark and the dominant element of the contested mark are only four letters long. They also coincide in their respective last letter, which reinforces the visual similarity (see *El Corte Inglés* para 81) and signifies that they share three out of four letters.

60. In the instances where it is required to conduct a comparison of marks which are particularly short, it has previously been considered that changes between short marks are more noticeable and substantial than changes in longer marks. I refer to the finding of Iain Purvis QC, acting as the Appointed Person in BL O/277/12, who stated:

"In considering visual similarity, it was clearly right to take into account the shortness of the marks, since a change of one letter in a mark which is only 4 letters long is clearly more significant than such a change in a longer mark".

Such wording would suggest that the difference of one letter between the marks at issue (ignoring for the moment the additional descriptive element LONDON) is more significant than it would be in marks that are longer. This is not disputed. However, the comments above must be taken in context. Before making this comment, Mr Purvis had referred to the GC judgment T-112/06 *Inter-Ikea Systems BV v OHIM*. In this judgment, the GC erroneously summarised a finding in paragraph 54 of *Ruiz Picasso and Others v OHIM – DaimlerChrysler (PICARO)* [2004] ECR11 -1739, whereby it stated that if word marks that are relatively short differ by no more than a single consonant it cannot be found that there is a high degree of visual similarity. Mr Purvis identified that in this instance the GC mis-characterized the *Ruis Picasso* decision, and identified what the decision at paragraph 54 actually stated:

‘As regards visual and phonetic similarity, the applicants rightly point out that the signs at issue each consist of three syllables, contain the same vowels in corresponding positions and in the same order, and, apart from the letters ‘ss’ and ‘r’ respectively, also contain the same consonants, which moreover occur in corresponding positions. Finally, the fact that the first two syllables and the final letters are identical are of particular importance. On the other hand, the pronunciation of the double consonant ‘ss’ is quite different from that of the consonant ‘r’. It follows that the two signs are visually and phonetically similar, but the degree of similarity in the latter respect is low.’

61. Mr Purvis went on to state that “there could be no basis for laying down some arbitrary rule that ‘short marks differing in only one letter cannot have a high degree of visual similarity’”. The fact that Mr Purvis said it was clearly right to take into account the “shortness of marks, since a change of one letter in a mark which is only 4 letters long is clearly more significant than such a change in a longer mark” was not, in my opinion, intended to create a hard and fast rule. Rather, it was an acknowledgment that a change of one letter *could* have more impact in a short mark than it *may* in a longer mark. This should be weighed against his finding that it is not a rule that will apply in all cases, and should not be followed as a formulaic conclusion. The reality is an assessment in relation to a likelihood of confusion is global.

62. Having considered carefully the finding of Mr Purvis, it is my opinion that the marks before me constitute one of those instances whereby the change of one letter does *not* fall into the category of a significant change. Despite the change of one letter, the marks are still visually similar to a medium degree. In addition, the change of one letter is virtually aurally silent, with the marks being pronounced with a high degree of similarity (NA-YA vs Na-ee-ah). It must be remembered that the average consumer 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. I find it entirely possible that an average consumer who is not paying a particularly high degree of attention when purchasing e.g., a *nail file* under the trade mark Naía will mistake it for the trade mark NAYA they had seen previously on the identical goods, on the same shelf, in the same shop, and due to their imperfect recollection directly confuse the two marks.

63. One of the factors in the global assessment of comparing trade marks includes the interdependency principle, whereby 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. Having found the goods and services at issue to be either identical, similar to a medium degree, or at least complementary, a hypothetical lower degree of similarity between the marks could still offset a finding of confusion. It is therefore indeed likely that the levels of similarity between the goods and services at issue would certainly create confusion between marks which have been found to have a medium degree of visual similarity and between a medium and high degree of aural similarity.

64. In light of the above, I consider there to be a likelihood of direct confusion in relation to all of the contested goods.

65. I shall briefly deal with the Applicant's argument that many other marks co-exist on the market place without a likelihood of confusion. In *The European Limited v The Economist Newspaper Ltd* [1998] FSR 283 Millett L.J. stated that:

"Absence of evidence of actual confusion is rarely significant, especially in a trade mark case where it may be due to differences extraneous to the plaintiff's registered trade mark."

It is not necessary that actual confusion be proven, rather that the marks could be confused which, in my opinion, they directly would be.

Conclusion

66. The opposition is successful in its entirety under Section 5(2)(b). Subject to an appeal, the contested application will be refused.

Costs

67. The Opponent has been successful and is entitled to a contribution towards its costs. I bear in mind that the relevant scale is contained in Tribunal Practice Notice 2/2015 which governs costs in Fast Track proceedings issued after 1 October 2015. In the circumstances I award the Opponent the sum of £250 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Filing a notice of opposition and	
considering the counterstatement	£150
Filing written submissions	£100
Total	£250

68. I therefore order NAIA LIMITED to pay Naya Skincare Limited the sum of £250. 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 6th day of December 2022

Dafydd Collins

For the Registrar

Annex A

UKTM 3284045

Class 3

Anti-ageing creams [for cosmetic use];Anti-ageing serum;Anti-aging creams [for cosmetic use];Anti-aging moisturizers used as cosmetics;Anti-aging skincare preparations;Anti-perspirant deodorants;Anti-perspirant preparations;Antiperspirant soap;Antiperspirants;Anti-perspirants;Antiperspirants for personal use;Anti-perspirants for personal use;Anti-perspirants in the form of sprays;Antiperspirants [toiletries];Anti-wrinkle cream [for cosmetic use];Anti-wrinkle creams [for cosmetic use];Aromatherapy creams;Aromatherapy lotions;Aromatherapy oils;Aromatherapy pillows comprising potpourri in fabric containers;Aromatherapy preparations;Aromatic essential oils;Aromatic oils;Aromatic oils for the bath;Aromatic plant extracts;Aromatic potpourris;Aromatics [essential oils];Aromatics for fragrances;Babies' creams [non-medicated];Baby bath mousse;Baby body milks;Baby care products (Non-medicated -);Baby lotion;Baby oils;Baby shampoo;Bath and shower foam;Bath and shower oils [non-medicated];Bath and shower preparations;Bath cream;Bath gels (Non-medicated -);Bath herbs;Bath oil;Bath oils for cosmetic purposes;Bath preparations;Bath salts;Bath soak for cosmetic use;Bath soaps;Baths (Cosmetic preparations for -);Beard balm;Beard oil;Beauty balm creams;Beauty care cosmetics;Beauty care preparations;Beauty creams;Beauty lotions;Beauty masks;Beauty milks;Beauty serums;Beauty serums with anti-ageing properties;Beauty soap;Beauty tonics for application to the body;Beauty tonics for application to the face;Biological laundry detergents;Blemish balm creams;Blended essential oils;Body and facial butters;Body and facial creams [cosmetics];Body and facial gels [cosmetics];Body care cosmetics;Body cleaning and beauty care preparations;Body cleansing foams;Body creams [cosmetics];Body deodorants;Body emulsions for cosmetic use;Body gels [cosmetics];Body lotion;Body mask cream;Body mask lotion;Body mask powder;Body masks;Body massage oils;Body milk;Body mist;Body moisturisers;Body oils [for cosmetic use];Body polish;Body shampoos;Body soap;Body sprays [non-medicated];Body wash;Cocoa butter for cosmetic purposes;Cold cream, other than for medical use;Cosmetic body scrubs;Cosmetic creams and lotions;Cosmetic creams for firming skin around eyes;Cosmetic creams for the skin;Cosmetic eye gels;Cosmetic facial lotions;Cosmetic facial masks;Cosmetic facial packs;Cosmetic hair care preparations;Cosmetic hair lotions;Cosmetic hand creams;Cosmetic kits;Cosmetic masks;Cosmetic massage creams;Cosmetic moisturisers;Cosmetic nourishing creams;Cosmetic oils;Cosmetic oils for the epidermis;Cosmetic powder;Cosmetic preparations;Cosmetic preparations for bath and shower;Cosmetic preparations for body care;Cosmetic preparations for skin care;Cosmetic preparations for skin firming;Cosmetic preparations for skin renewal;Cosmetic preparations for the care of mouth and teeth;Cosmetic preparations for the hair and scalp;Cosmetic products for the shower;Cosmetic products in the form of aerosols for skincare;Cosmetic skin

fresheners;Cosmetics;Cosmetics all for sale in kit form;Cosmetics and cosmetic preparations;Cosmetics for children;Cosmetics for personal use;Cosmetics for the treatment of dry skin;Cosmetics for the use on the hair;Cosmetics for use in the treatment of wrinkled skin;Cosmetics for use on the skin;Cosmetics in the form of creams;Cosmetics in the form of gels;Cosmetics in the form of lotions;Cosmetics in the form of milks;Cosmetics in the form of oils;Cosmetics in the form of powders;Cosmetics preparations;Cream foundation;Creams (Cosmetic -);Creams for firming the skin;Creams for the skin;Creamy foundation;Day cream;Day lotion;Decorative cosmetics;Deodorant for personal use;Deodorant preparations for personal use;Deodorant soap;Deodorants and antiperspirants;Deodorants for body care;Deodorants for human beings;Deodorants for personal use;Deodorants, for personal use in the form of sticks;Emulsified essential oils;Essences for skin care;Essential oils;Essential oils and aromatic extracts;Essential oils as perfume for laundry purposes;Essential oils for aromatherapy;Essential oils for cosmetic purposes;Essential oils for personal use;Essential oils for soothing the nerves;Essential oils for the care of the skin;Exfoliants;Exfoliants for the care of the skin;Exfoliants for the cleansing of the skin;Exfoliating scrubs for cosmetic purposes;Extracts of flowers;Eye cosmetics;Eye cream;Eye creams;Eye gel;Eye gels;Eye liner;Eye lotions;Eye make up remover;Eye makeup;Eye makeup remover;Eye make-up removers;Eye wrinkle lotions;Face and body creams;Face and body lotions;Face and body masks;Face blusher;Face creams for cosmetic use;Face dusting powders;Face gels;Face masks;Face oils;Face packs [cosmetic];Face powder;Face powder [for cosmetic use];Face powder in the form of powder-coated paper;Face powders;Face powders [for cosmetic use];Face scrub;Face wash [cosmetic];Facial beauty masks;Facial butters;Facial care preparations;Facial cleansers [cosmetic];Facial cleansing milk;Facial concealer;Facial conditioning preparations;Facial creams [cosmetics];Facial emulsions;Facial gels [cosmetics];Facial lotions [cosmetic];Facial makeup;Facial masks [cosmetic];Facial massage oils;Facial moisturisers [cosmetic];Facial oil;Facial packs [cosmetic];Facial packs for toilet purposes;Facial peel preparations for cosmetic use;Facial preparations;Facial scrubs [cosmetic];Facial serum for cosmetic use;Facial soaps;Facial toners [cosmetic];Facial washes [cosmetic];Facial wipes impregnated with cosmetics;Foot balms (Non-medicated -);Gel eye masks;Gels for cosmetic purposes;Gels for cosmetic use;Hair and body wash;Hair balms;Hair care agents;Hair care creams [for cosmetic use];Hair care lotions [for cosmetic use];Hair care masks;Hair care preparations;Hair care preparations, not for medical purposes;Hair care serum;Hair cleaning preparations;Hair conditioners;Hair conditioners for babies;Hair cosmetics;Hair desiccating treatments for cosmetic use;Hair emollients;Hair fixing oil;Hair gels;Hair grooming preparations;Hair liquid;Hair masks;Hair moisturisers;Hair moisturising conditioners;Hair moisturizers;Hair mousses;Hair nourishers;Hair oil;Hair oils;Hair permanent treatments;Hair pomades;Hair preparations and treatments;Hair preservation treatments for cosmetic use;Hair protection lotions;Hair rinses [for cosmetic use];Hair serums;Hair shampoo;Hair shampoos;Hair sprays;Hair strengthening treatment lotions;Hair styling

gels;Hair styling lotions;Hair styling preparations;Hair styling spray;Hand and body butter;Hand cleaner;Hand cleansers;Hand cream;Hand creams;Hand gels;Hand lotions;Hand masks for skin care;Hand milks;Hand oils (Non-medicated -);Hand scrubs;Hand soap;Hand soaps;Hand washes;Hydrating masks;Kits (Cosmetic -);Lip balms [non-medicated];Lip care preparations;Lip coatings [cosmetic];Lip cosmetics;Lip cream;Lip gloss;Lip glosses;Lip protectors [cosmetic];Loose face powder;Lotions for beards;Lotions for cosmetic purposes;Lotions for face and body care;Lotions for the skin;Lotions (Tissues impregnated with cosmetic -);Make up foundations;Make up removing preparations;Make-up for the face;Make-up foundation;Make-up foundations;Make-up remover;Make-up removers;Masks (Beauty -);Massage candles for cosmetic purposes;Massage creams, not medicated;Massage oil;Massage oils;Massage oils and lotions;Moisturisers [cosmetics];Moisturising body lotion [cosmetic];Moisturising concentrates [cosmetic];Moisturising creams, lotions and gels;Moisturising gels [cosmetic];Moisturising preparations;Moisturising skin creams [cosmetic];Moisturising skin lotions [cosmetic];Moisturizing body lotions;Moisturizing milk;Moisturizing preparations for the skin;Mouthwash;Natural perfumery;Night cream;Night creams;Night creams [cosmetics];Nutritional creams (Non-medicated -);Oil baths for hair care;Oils for cosmetic purposes;Oils for the skin;Ointments for cosmetic use;Potpourri;Pot-pourri;Potpourri sachets for incorporating in aromatherapy pillows;Potpourris;Powder compact refills [cosmetics];Preparations for the bath;Preparations for the bath and shower;Preparations for the care of the body;Preparations for the conditioning of the body;Preparations for the shower;Preparations for use after shaving;Refill packs for body cleansing product dispensers;Refill packs for cosmetics dispensers;Refill packs for hand soap dispensers;Refill packs for shampoo dispensers;Refill packs for shower gel dispensers;Refill packs for skin care cream dispensers;Retinol cream for cosmetic purposes;Roll-on deodorants [toiletries];Scented body creams;Scented body lotions;Scented body lotions and creams;Scented body spray;Shampoo;Shampoo-conditioners;Shampoos;Shampoos for babies;Shampoos for personal use;Shower and bath foam;Shower and bath gel;Shower and bath preparations;Shower cream;Shower creams;Shower foams;Shower gel;Shower gels;Shower oils;Shower preparations;Shower salts not for medical purposes;Shower soap;Skin balms [cosmetic];Skin care (Cosmetic preparations for -);Skin care creams [cosmetic];Skin care lotions [cosmetic];Skin care mousse;Skin care oils [cosmetic];Skin care preparations;Skin care products for animals;Skin clarifiers;Skin cleansers [cosmetic];Skin cleansing foams;Skin cleansing lotion;Skin conditioners;Skin conditioning creams for cosmetic purposes;Skin creams [cosmetic];Skin emollients;Skin, eye and nail care preparations;Skin foundation;Skin fresheners [cosmetics];Skin hydrators;Skin lotion;Skin lotions;Skin make-up;Skin masks [cosmetics];Skin moisturiser;Skin moisturisers;Skin moisturizer;Skin moisturizer masks;Skin moisturizers;Skin moisturizers used as cosmetics;Skin polishing rice bran (arai-nuka);Skin soap;Skin texturizers;Skin toner;Skin toners;Skin toners [cosmetic];Skincare cosmetics;Skincare preparations;Soap;Soap (Antiperspirant -

); Soap (Deodorant -); Soaps; Wrinkle removing skin care preparations; Wrinkle resistant cream; Wrinkle resistant creams [for cosmetic use]; Wrinkle-minimizing cosmetic preparations for topical facial use; Tissues impregnated with a skin cleanser; Tissues impregnated with cosmetic lotions; Tissues impregnated with cosmetics; Tissues impregnated with essential oils, for cosmetic use; Tissues impregnated with make-up removing preparations; Tissues impregnated with preparations for cleaning; Toners for cosmetic use; Tonics [cosmetic]; Toning creams [cosmetic]; Toning lotion, for the face, body and hands; Toning spritz; Face oils; Facial oil; Facial oils.

Class 44

Beautician services; Beauticians (Services of -); Beauty advisory services; Beauty care; Beauty care for human beings; Beauty care services; Beauty care services provided by a health spa; Beauty consultancy; Beauty consultancy services; Beauty consultation; Beauty consultation services; Beauty counselling; Beauty information services; Beauty salon services; Beauty salons; Beauty therapy services; Beauty therapy treatments; Beauty treatment; Beauty treatment services; Salon services (Beauty -); Spa services; Spas; Facial beauty treatment services; Aromatherapy services.

UKTM 918040347

Class 3

Cosmetics; Skincare cosmetics; Skincare preparations; Anti-aging skincare preparations; Beauty serums; Anti-ageing serum; Serums for cosmetic purposes; Facial serum for cosmetic use; Face oils; Skin cleansers; Facial cleansers [cosmetic]; Skin cleansers [cosmetic]; Moisturiser; Moisturisers; Skin moisturiser; Body moisturisers; Cosmetic moisturisers; Hair moisturisers; Anti-ageing moisturiser; Facial moisturisers [cosmetic]; Suncare lotions; Suntan lotions; Sun care lotions; After-sun lotions; Nail polish; Skin moisturisers; Nail polish remover; Nail polish removers [cosmetics]; Make-up; Make up foundations; Facial gels [cosmetics]; Body and facial gels [cosmetics]; Cosmetics in the form of creams; Gel eye masks; Facial masks; Facial masks [cosmetic]; Cosmetic facial masks; Facial beauty masks; Blended essential oils; Essential oils; Aromatic essential oils; Lip balm; Lip balms; Cosmetics all for sale in kit form; Glitter in spray form for use as a cosmetics; Cosmetics containing hyaluronic acid; Antiperspirants [toiletries]; Body deodorants; Personal deodorants; Anti-perspirant deodorants; Eye cosmetics; Eyebrow cosmetics; Cosmetics for eye-lashes; Cosmetics for eye-brows; Eye make-up; Decorative cosmetics; Cosmetics in the form of milks; Cosmetics in the form of oils; Cosmetics in the form of powders; Cosmetics in the form of lotions; Cosmetics in the form of gels; Make-up bases in the form of pastes; Eau de parfum; Skin creams; Skin creams [cosmetic]; Moisturising skin creams [cosmetic]; Skin care creams [cosmetic]; Skin recovery creams [cosmetics]; Skin lotions; Lotions for the skin; Moisturising skin

lotions [cosmetic]; Skin care lotions [cosmetic]; Skin cleaning and freshening sprays; Topical skin sprays for cosmetic purposes; Lip gloss; Cleansing mousse; Shaving mousse; Hair mousse; Exfoliants for the care of the skin; Hair oil; Exfoliating creams; Make-up pads of cotton wool.

Class 44

Spas; Spa services; Beauty spa services; Beauty treatment; Beauty treatment services; Facial beauty treatment services; Beauty consultancy services; Consultancy services relating to beauty; Make-up services; Cosmetic make-up services; On-line make-up consultation services; Make-up consultation and application services; Cosmetics consultancy services; Consultation services in the field of make-up; Cosmetic facial and body treatment services; Cosmetic treatment services for the body, face and hair.