

O-563-22

**TRADE MARKS ACT 1994
IN THE MATTER OF APPLICATION No. 3594111
BY HOFFMANN GMBH QUALITATSWERKZEUGE
TO REGISTER THE TRADE MARK
HOLEX
IN CLASSES 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 16, 17, 18, 20 & 25**

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER No. 426577 BY
MOLDEX-METRIC AG & CO. KG**

BACKGROUND

1) On 11 February 2021, Hoffmann GmbH Qualitatswerkzeuge (hereinafter the applicant) applied to register the trade mark “Holex” in respect of goods in classes 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 16, 17, 18, 20 & 25 (set out in detail at Annex 1).

2) The application was examined and accepted, and subsequently published for opposition purposes on 4 June 2021 in Trade Marks Journal No.2021/023.

3) On 6 September 2021 Moldex-Metric AG & Co. KG (hereinafter the opponent) filed a notice of opposition. The opponent is the proprietor of the following trade marks:

Mark	Number	Dates of filing & registration	Class	Specification relied upon
	904260527	28.01.05 02.05.06	9	Protective respiratory masks, ear plugs.

4) The grounds of opposition are in summary:

- a) The opponent contends that the marks of the two parties are highly similar and that some of the goods in classes 9 & 10 (listed below) are similar to those for which its mark is registered. The mark in suit therefore offends against Section 5(2)(b).
- b) The mark in suit and some of the goods for which it is sought to be registered (listed below) are similar such that the applicant will be able to free ride on the distinctive character of the opponent’s mark and it’s marketing, use of the mark in suit could tarnish the opponent’s mark if the quality were poor, and will also dilute the distinctiveness of the opponent’s mark. The mark in suit therefore offends against section 5(3).
- c) The opponent has used its mark since 2005 in the UK and has considerable reputation in its class 9 goods such that use of the mark in suit on the goods listed will cause misrepresentation given the similarity of the goods and marks. The mark in suit offends against section 5(4)(a).

Goods opposed under all three grounds:

Class 9: protective work clothing, in particular protective suits, in particular against fire and chemicals, protective shoes, safety shoes, protective gloves; head protection, in particular protective helmets; safety goggles; head mounts for protective visors; protective masks, in particular respiratory masks, welding masks; all the aforesaid goods for the safety of persons or for securing equipment; respiratory apparatus and respiratory masks, except for artificial respiration; visors for helmets.

Class 10: hearing protection means; hearing protection means, in particular protective earplugs, protective ear flanges, protective earmuffs (ear protection devices in the form of headphones)

5) On 14 October 2021 the applicant filed a counterstatement, in which it denies the grounds of opposition. The applicant puts the opponent to strict proof of use.

6) Both sides are professionally represented, both filed evidence and ask for an award of costs. Neither side wished to be heard. Both sides provided written submissions which I shall refer to as and when necessary in my decision.

7) 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.

DECISION

8) I shall first consider the ground under section 5(2)(b) which reads:

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

(a)

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

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

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

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

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

10) Section 6A reads:

“(1) This section applies where

- (a) an application for registration of a trade mark has been published,
- (b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and
- (c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section “the relevant period” means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

- (a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes -

(a) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.”

11) The opponent is relying upon its trade mark listed in paragraph 3 above which is clearly an earlier trade mark. The mark in suit was applied for on 11 February 2021 at which point the opponent’s mark had been registered for over five years. Therefore, the proof of use requirements bite.

12) Section 100 of the Act states that:

“100. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

13) In *Walton International Ltd & Anor v Verweij Fashion BV* [2018] EWHC 1608 (Ch)

Arnold J (as he then was) summarised the law relating to genuine use as follows:

“114.....The CJEU has considered what amounts to “genuine use” of a trade mark in a series of cases: Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, *La Mer* (cited above), Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundesvereinigung Kamaradschaft ‘Feldmarschall Radetsky’* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v*

Maselli-Strickmode GmbH [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], [2013] ETMR 16, Case C-609/11 P *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], [2014] ETMR, Case C-141/13 P *Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089] and Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434], [2017] Bus LR 1795.

115. The principles established by these cases may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Leno* at [29]; *Centrotherm* at [71]; *Reber* at [29].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Leno* at [29]; *Centrotherm* at [71]. Accordingly, affixing of a trade mark on goods as a label of quality is not genuine use unless it guarantees, additionally and simultaneously, to consumers that those goods come from a single undertaking under the control of which the goods are manufactured and which is responsible for their quality: *Gözze* at [43]-[51].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14] and [22]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter:

Silberquelle at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71]; *Reber* at [29].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Leno* at [29]-[30], [56]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72] and [76]-[77]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].”

14) In *Awareness Limited v Plymouth City Council*, Case BL O/236/13, Mr Daniel Alexander Q.C. as the Appointed Person stated that:

“22. The burden lies on the registered proprietor to prove use..... However, it is not strictly necessary to exhibit any particular kind of documentation, but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public.”

and further at paragraph 28:

“28. I can understand the rationale for the evidence being as it was but suggest that, for the future, if a broad class, such as “tuition services”, is sought to be defended on the basis of narrow use within the category (such as for classes of a particular kind) the evidence should not state that the mark has been used in relation to “tuition services” even by compendious reference to the trade mark specification. The evidence should make it clear, with precision, what specific use there has been and explain why, if the use has only been narrow, why a broader category is nonetheless appropriate for the specification. Broad statements purporting to verify use over a wide range by reference to the wording of a trade mark specification when supportable only in respect of a much narrower range should be critically considered in any draft evidence proposed to be submitted.”

15) In *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL 0/404/13, Mr Geoffrey Hobbs Q.C. as the Appointed Person stated that:

“21. The assessment of a witness statement for probative value necessarily focuses upon its sufficiency for the purpose of satisfying the decision taker with regard to whatever it is that falls to be determined, on the balance of probabilities, in the particular context of the case at hand. As Mann J. observed in *Matsushita Electric Industrial Co. v. Comptroller- General of Patents* [2008] EWHC 2071 (Pat); [2008] R.P.C. 35:

[24] As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is required depends on the nature of the inquiry and the nature and purpose of the decision which is to be made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or her age is, or what their date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no universal rule as to what level of evidence has to be provided in order to satisfy a decision-making body about that of which that body has to be satisfied.

22. When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can legitimately be maintained, the decision taker must form a view as to what the evidence does and just as importantly what it does not ‘show’ (per Section 100 of the Act) with regard to the actuality of use in relation to goods or services covered by the registration. The evidence in question can properly be assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use.”

16) The opponent filed a witness statement, dated 17 December 2021, by Roman Skov a Manager for the opponent. He provides invoices and brochures which show unequivocally that the opponent was offering and indeed selling ear plugs and respiratory masks. In its submissions the applicant took issue with the use of the term "Hearing Protection products" by the opponent and also claiming that the earplugs shown on invoices and in the brochures were sold under trade marks such as "mellows", "contours" and "spark plugs". I fully accept that this was the case and indeed the photographs in the sales brochures clearly show these being used on ear plugs. But these are sub-brands with the mark MOLDEX clearly shown on the ear plug dispenser as the "House" mark. I regard this as use of the mark MOLDEX on earplugs. As such the opponent has cleared the first hurdle in respect of proof of use and can rely upon the whole of its specification in the comparison test.

17) When considering the issue under section 5(2)(b) I take into account the following principles which are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

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

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

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

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

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

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

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

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

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

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

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

The average consumer and the nature of the purchasing decision

18) As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods. I must then determine the manner in which these goods are likely to be selected by the average consumer in the course of trade. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

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

19) The goods in question are, broadly speaking, items of protective equipment for the operator ranging from clothing, shoes, helmets to visors and hearing protection. These days most DIY equipment such as lawn mowers, hedge trimmers, grass strimmers, drills, impact drivers, angle grinders etc all recommend that the user wears a helmet, visor or goggles, gloves, work boots and so forth. In my opinion, the average consumer for the goods and services under consideration will be tradesmen and DIY enthusiasts, which covers a huge number of the UK population. Turning now to the level of attention the average consumer will display when selecting the goods. The user of such items is seeking protection against a particular hazard and so is, in my opinion, likely to pay an above average level of attention when choosing a product that the level of protection offered is adequate for what the user needs.

20) Goods such as those in question will be sold through a range of channels, including retail premises such as specialists stores, as well as in less specialised outlets such as garden centres and DIY outlets (where the goods are normally displayed on shelves and are obtained by self-selection). They will also be sold on-line and via catalogues. The initial

selection is therefore likely to be a visual one, although I accept that the consumer may enter into a discussion with staff, for instance to ensure the level of protection is adequate. Considered overall, the selection process is likely to be predominantly a visual one, although I accept that aural considerations will also play their part.

Comparison of goods

21) 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”.

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

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 Institut 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”.

23) In *YouView TV Ltd v Total Ltd* ,[2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that:

"... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case

C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

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

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

25) 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".

26) 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.”

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

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

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

29) The goods being opposed are:

Class 9: protective work clothing, in particular protective suits, in particular against fire and chemicals, protective shoes, safety shoes, protective gloves; head protection, in particular protective helmets; safety goggles; head mounts for protective visors; protective masks, in particular respiratory masks, welding masks; all the aforesaid goods for the safety of persons or for securing equipment; respiratory apparatus and respiratory masks, except for artificial respiration; visors for helmets.

Class 10: hearing protection means; hearing protection means, in particular protective earplugs, protective ear flanges, protective earmuffs (ear protection devices in the form of headphones).

30) Whilst the opponent's specification covers: "Protective respiratory masks, ear plugs".

31) The applicant accepts that the opponent's specification of "protective respiratory masks" is identical to "protective masks, in particular respiratory masks, all the aforesaid goods for the safety of persons or for securing equipment". However, it describes the remaining specification as dissimilar to that of the opponent. I must therefore compare:

Opponent's specification	Applicant's specification
Class 9: Protective respiratory masks, ear plugs	Class 9: protective work clothing, in particular protective suits, in particular against fire and chemicals, protective shoes, safety shoes, protective gloves; head protection, in particular protective helmets; safety goggles; head mounts for protective visors; welding masks; respiratory apparatus; visors for helmets. Class 10: hearing protection means; hearing protection means, in particular protective earplugs, protective ear flanges, protective earmuffs (ear protection devices in the form of headphones).

32) 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.

33) When considering the class 10 goods of the opponent, which all relate to hearing protection, it is obvious that the opponent's ear plugs have the same uses and users, they are likely to be made of similar materials and sold alongside each other. They are also likely to be in competition with each other. In my opinion, these are obviously highly similar goods.

34) Turning to the balance of the applicant's class 9 specification it is clear that some of these items can be highly specialist. For instance, protective work clothing, in particular "protective suits, in particular against fire and chemicals" could include full asbestos suits but also encompass standard overalls to protect one's clothing from light engineering oil. All of the opponent's goods are of a protective nature but will differ significantly in the level of protection required. The same can be said of the opponent's products, albeit these are limited to respiratory masks and ear plugs. The goods of both parties would appear on the same pages of catalogues, or in the same sections of a shop. They have a similar use and similar users. They are therefore similar to a medium degree.

35) In conclusion:

Opponent's specification	Applicant's specification	Result
Class 9: Protective respiratory masks, ear plugs	Class 9: protective masks, in particular respiratory masks, all the aforesaid goods for the safety of persons or for securing equipment	Identical

Class 9: Protective respiratory masks, ear plugs	Class 9: protective work clothing, in particular protective suits, in particular against fire and chemicals, protective shoes, safety shoes, protective gloves; head protection, in particular protective helmets; safety goggles; head mounts for protective visors; welding masks; respiratory apparatus; visors for helmets.	similar to a medium degree
Class 9 ear plugs	Class 10: hearing protection means; hearing protection means, in particular protective earplugs, protective ear flanges, protective earmuffs (ear protection devices in the form of headphones).	highly similar

Comparison of trade marks

36) It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by them, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

37) It would be wrong, therefore, to artificially dissect the trade marks, although it is necessary to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by them. The marks to be compared are, for ease of reference:

Applicant's mark	Opponent's mark
Holex	

38) The opponent contended:

“22. The respective marks are represented in unremarkable typefaces, and the fact that the earlier mark is registered in upper case and the contested mark is presented in lower case is not relevant since fair and notional use of a word mark allows it to be used in either.

23. Visually, the respective marks are identical in the sequence of the letters ‘*OL(*)EX’ and consequently are similar to a high degree. This similarity is not diminished by the difference in the initial letters M and H or the presence of the letter D in the contested mark.

24. Aurally, the syllables of the respective marks and their sequence are identical, and their pronunciation is not in any way altered or diminished by the presence of different consonants.

25. The respective marks are invented words and, conceptually, neither has any meaning for the average consumer.”

39) Whilst I agree with the views set out by the opponent in its first paragraph, I take a different view on the other points raised. Firstly, the opponent’s mark has six letters, the mark in suit five letters. The two marks do not have the same sequence of letters as suggested. The opponent’s mark has the sequence “OLDEX” whereas the mark in suit has the sequence “OLEX” I would agree that both have the letters “OL” and “EX” as sequences, but there is a world of difference in the first letters of each mark and the letter “D” is not silent, but is very clearly pronounced. To my mind, the opponent’s mark has two syllables “MOLE” and “DEX” whilst the mark in suit is also two syllables but “HOLE” and “X”. Overall there are some visual and aural similarities but also differences. Conceptually the opponent’s mark suggests the items have been cast or moulded, whereas the first thing

that comes to mind with the mark in suit is that it conjures up an unfortunate image that the goods have holes in them which is completely unsuitable for an item supposed to be offering protection. The marks have significantly different conceptual meanings.

Distinctive character of the earlier trade mark

40) 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).”

41) The opponent’s mark has no meaning for the goods involved in this action and is, to the best of my knowledge an invented word. As such it has a high degree of inherent distinctiveness. The opponent has not sought to persuade me that its mark has any enhanced distinctiveness through use, perhaps wisely in the light of the evidence filed.

Likelihood of confusion

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

- the average consumer for the goods is a tradesman or DIY enthusiast which covers much of the general public, who will select the goods by predominantly visual means, although I do not discount aural considerations and that they are likely to pay an above average degree of attention to the selection of the goods.
- the opponent's mark has visual and aural similarities and differences to the mark in suit which balance out, but they are significantly different conceptually.
- the opponent's mark has a high degree of inherent distinctiveness but cannot benefit from an enhanced distinctiveness through use in relation to any of the goods relied upon.
- My findings regarding the goods and services of the two parties are as follows:

Opponent's specification	Applicant's specification	Result
Class 9: Protective respiratory masks, ear plugs	Class 9: protective masks, in particular respiratory masks, all the aforesaid goods for the safety of persons or for securing equipment	Identical

Class 9: Protective respiratory masks, ear plugs	Class 9: protective work clothing, in particular protective suits, in particular against fire and chemicals, protective shoes, safety shoes, protective gloves; head protection, in particular protective helmets; safety goggles; head mounts for protective visors; welding masks; respiratory apparatus; visors for helmets.	similar to a medium degree
Class 9 ear plugs	Class 10: hearing protection means; hearing protection means, in particular protective earplugs, protective ear flanges, protective earmuffs (ear protection devices in the form of headphones).	highly similar

43) I take into account the views in *The Picasso Estate v OHIM*, Case C-361/04 P, the Court of Justice of the European Union found that:

“20. By stating in paragraph 56 of the judgment under appeal that, where the meaning of at least one of the two signs at issue is clear and specific so that it can be grasped immediately by the relevant public, the conceptual differences observed between those signs may counteract the visual and phonetic similarities between them, and by subsequently holding that that applies in the present case, the Court of First Instance did not in any way err in law.”

44) I also take into account the views expressed in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, where 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).”

45) I note that in *Sutaria v. Cheeky Italian Ltd* (O/219/16), the Appointed Person expanded on the decision in *L.A. Sugar* at 16, noting:

“16.1. First, a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion. It should be kept in mind that the differences which mean that one mark would not be mistaken for the other might well dispel indirect confusion as well.

16.2. Second, if (as here) the differences between the marks are such that there is no likelihood of direct confusion, one needs a reasonably special set of circumstances for a finding of a likelihood of indirect confusion. This is what Mr Purvis was pointing out in those paragraphs in *LA Sugar* .

16.3. Third, when making a finding of a likelihood of indirect confusion, in my view it is necessary to be specific as to the mental process involved on the

part of the average consumer. Whilst the categories of case where indirect confusion may be found is not closed, Mr Purvis' three categories are distinct, each reflecting a slightly different thought process on the part of the average consumer.”

46) 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.

47) In view of all of the above, and allowing for the concept of imperfect recollection, despite the identity of some of the goods the differences between the trade marks of the two parties are such that there is no likelihood of consumers being indirectly or directly confused into believing that the goods provided by the applicant are those of the opponent or provided by an undertaking linked to it. **The opposition under Section 5(2) (b) therefore fails.**

48) I next turn to the ground of opposition under section 5(3) which reads:

“5. (3) A trade mark which-

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

49) The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, [1999] ETMR 950, Case 252/07, *Intel*, [2009] ETMR 13, Case C-408/01, *Adidas-Salomon*, [2004] ETMR 10 and C-487/07, *L’Oreal v Bellure* [2009] ETMR 55 and Case C-323/09, *Marks and Spencer v Interflora*. The law appears to be as follows:

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

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

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

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

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel, paragraph 68*; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel, paragraph 79*.

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

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

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

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

50) I must first determine, if at the relevant date for the opposition (11 February 2021) the opponent had a reputation in relation to its mark MOLDEX and if so in what goods. The test for 'reputation' was set out by the CJEU in *General Motors*. The earlier mark must be known by 'a significant part' of the relevant public. The evidence provided by the opponent was scant to put it mildly. However, it is clear that between 2015 and 2020 they sold an average of 2.8million respiratory protection masks per annum in the UK and during the same period an average of 18.7 million hearing protection products. No turnover figures or market share figures were provided. No details were given regarding the advertising of these products or where they were sold in the UK. Despite this I am willing to accept that they just about scrape over the first hurdle of reputation.

51) I must now turn to consider whether the consumer would make a link between the activities of the two parties. In deciding this issue I take into account the comments of Mr Geoffrey Hobbs Q.C. (sitting as a Deputy Judge) in *Electrocoin Automatics Limited and Coinworld Limited and Others* [2005] FSR 7:

“102. I think it is clear that in order to be productive of advantage or detriment of the kind prescribed, ‘the link’ established in the minds of people in the market place needs to have an effect on their economic behaviour. The presence in the market place of marks and signs which call each other to mind is not, of itself, sufficient for that purpose.”

52) I also look to the case of *Intel Corporation Inc v CPM United Kingdom Ltd* [2006] EWCH 1878 where Patten J said at para 28:

“But the first step to the exploitation of the distinctive character of the earlier mark is necessarily the making of the association or link between the two marks and all that Neuberger J is, I think, saying in this passage [Premier Brands at p. 789] is that the existence of a later mark which calls to mind the earlier established mark is not sufficient to ground an objection under s.5(3) or s.10(3) unless it has one or other of the consequences specified by those provisions. It must be right that the making of the association is not necessarily to be treated as a detriment or the taking of an unfair advantage in itself and in cases of unfair advantage it is likely to be necessary to show that the making of the link between the marks had economic consequences beneficial to the user of the later mark. But in relation to detriment the position is more complicated. The association between two marks and therefore potentially between the products or services to which they relate may be detrimental to the strength and reputation of the earlier mark if it tarnishes it by association or makes it less distinctive. This is likely to take place as a consequence of the same mental process which links the two marks in the minds of consumers and is essentially a negative reaction and effect.”

53) Under this ground of opposition it is not necessary that the reputation of the opponent is in goods which are similar to those sought to be registered by the applicant. However, in the instant case the goods opposed were found earlier in this decision to be similar to the goods for which the opponent has a reputation, respiratory masks and earplugs. This similarity is merely one of the factors to be taken into account. Earlier in this decision I determined that the opponents' mark has visual and aural similarities and differences to the mark in suit which balance out, but they are significantly different conceptually. To my mind the mark in suit will not form a link even when used on goods which are identical to those for which the opponent has reputation. This provides an outcome identical to that under section 5(2)(b). The ground under section 5(3) therefore fails.

54) Lastly, I turn to the ground of opposition under section 5(4)(a). In respect of section 5(4)(a) Halsbury's Laws of England (4th Edition) Vol. 48 (1995 reissue) at paragraph 165 provides the following analysis of the law of passing off. The analysis is based on guidance given in the speeches in the House of Lords in *Reckitt & Colman Products Ltd v. Borden Inc.* [1990] R.P.C. 341 and *Erven Warnink BV v. J. Townend & Sons (Hull) Ltd* [1979] AC 731. It is (with footnotes omitted) as follows:

"The necessary elements of the action for passing off have been restated by the House of Lords as being three in number:

- (1) that the plaintiff's goods or services have acquired a goodwill or reputation in the market and are known by some distinguishing feature;
- (2) that there is a misrepresentation by the defendant (whether or not intentional) leading or likely to lead the public to believe that the goods or services offered by the defendant are goods or services of the plaintiff; and
- (3) that the plaintiff has suffered or is likely to suffer damage as a result of the erroneous belief engendered by the defendant's misrepresentation.

The restatement of the elements of passing off in the form of this classical trinity has been preferred as providing greater assistance in analysis and decision than the

formulation of the elements of the action previously expressed by the House. This latest statement, like the House's previous statement, should not, however, be treated as akin to a statutory definition or as if the words used by the House constitute an exhaustive, literal definition of passing off, and in particular should not be used to exclude from the ambit of the tort recognised forms of the action for passing off which were not under consideration on the facts before the House."

55) Further guidance is given in paragraphs 184 to 188 of the same volume with regard to establishing the likelihood of deception or confusion. In paragraph 184 it is noted (with footnotes omitted) that:

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

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

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

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

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

(a) the nature and extent of the reputation relied upon;

(b) the closeness or otherwise of the respective fields of activity in which the plaintiff and the defendant carry on business;

(c) the similarity of the mark, name etc. used by the defendant to that of the plaintiff;

(d) the manner in which the defendant makes use of the name, mark etc. complained of and collateral factors; and

(e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.

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

56) Earlier in this decision I found that the opponent has goodwill and reputation in its mark. I also found earlier in this decision that use of the mark in suit, actual or on a fair and notional basis would not result in confusion with the opponent’s mark. Accordingly, it seems to me that the necessary misrepresentation required by the tort of passing off will not occur.

The opposition under Section 5(4)(a) of the Act must fail.

CONCLUSION

57) The opposition under sections 5(2)(b), 5(3) & 5(4) all failed. Trade mark 03594111 can proceed to registration.

COSTS

58) As the applicant has been successful it is entitled to a contribution towards its costs.

Preparing a statement and considering the other side’s statement	£400
Preparing evidence	£400

Providing submissions	£800
TOTAL	£1600

59) I order Moldex-Metric AG & Co. KG to pay Hofmann GmbH Qualitatswerkzeuge the sum of £1,600. This sum to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 4th day of July 2022

G W Salthouse

For the Registrar

the Comptroller-General

Annex 1

Class 1

Adhesives for use in industry; putties, and fillers and pastes for use in industry; chemical substances, chemical materials and chemical preparations.

Class 3

Cloths impregnated with polishing preparations for cleaning, abrasive sponges, included in class 3; abrasive paper (sandpaper), abrasives, abrasives; buffing compounds, abrasive cloth; refurbishing preparations; cleaning sprays.

Class 4

Lubricants, industrial greases, waxes and fluids; preservatives for metals [oils]; products for protecting concrete [oils]; rust remover sprays; lubricating sprays; all purpose penetrating and lubricating oil.

Class 5

Plasters, materials for dressings, dressings, medical, first-aid boxes, first aid boxes; medicated skin protection creams; eyewash solution; cooling sprays for medical purposes.

Class 6

Signboards of metal; tool storage containers, in particular of metal, for storing tools and technical equipment; stepladders of metal; step ladders of metal; tanks of metal; metal tool boxes.

Class 7

Machine operated tools for all kinds of materials; machines and machine tools for metalworking, woodworking and plastic processing, in particular battery machines, drilling machines, angle grinders, hand-held sawing machines, belt sanding machines, core drilling machines, compressed air machines; polishing and abrasive belts; polishing and abrasive sleeves; polishing and abrasive brushes; polishing and abrasive pins; polishing and abrasive strips; polishing and abrasive discs; machine-operated tools for materials of all kinds, in particular tools with polishing and abrasive belts, polishing and abrasive sleeves, polishing and abrasive brushes, polishing and abrasive pins, polishing and abrasive strips, polishing and abrasive discs, included in class 7; cutting, drilling, abrading, sharpening and surface treatment machines and apparatus; polishers; gaskets for internal combustion engines; mechanical seals [machine

parts]; mechanical sprayers; pumps, compressor and blowers, and accessories therefor; screwdrivers, pneumatic; portable air tools; air spray guns; hose reels, mechanical; compressed air couplings; hoses (metal -) for use in hydraulic systems in machines; hoses (non-metallic -) for use in hydraulic systems in machines; hoses (non-metallic -) for transferring hydraulic power in machines; compressed-air pistols.

Class 8

Hand tools for all kinds of materials; hand-operated polishing and abrasive tools, namely polishing and abrasive belts, polishing and abrasive sleeves, polishing and abrasive brushes, polishing and abrasive pins, polishing and abrasive strips, polishing and abrasive discs; hand-operated tools for materials of all kinds, in particular tools with polishing and abrasive belts, polishing and abrasive sleeves, polishing and abrasive brushes, polishing and abrasive pins, polishing and abrasive strips, polishing and abrasive discs, included in class 8; emery boards; sanding blocks; hand operated sprayers.

Class 9

Measuring apparatus and hand-held measuring equipment; optical apparatus and instruments, optical magnifying apparatus and instruments, in particular magnifying glasses and microscopes; protective work clothing, in particular protective suits, in particular against fire and chemicals, protective shoes, safety shoes, protective gloves; head protection, in particular protective helmets; safety goggles; head mounts for protective visors; protective masks, in particular respiratory masks, welding masks; safety devices, safety apparatus and safety instruments for fall protection systems for persons; restraints (safety -), protective nets; all the aforesaid goods for the safety of persons or for securing equipment; safety cable devices and equipment for fall-arrest systems for persons; horizontal and vertical fall-arrest systems; abseil rescue apparatus; eyewash devices; respiratory apparatus and respiratory masks, except for artificial respiration; software, in particular application software (apps); model-based operating software systems and data collections for the simulation of tool machining processes; software; data carriers, in particular data carriers containing information; visors for helmets; mounts for helmets; batteries; optical lanterns; lamps for use as warning beacons.

Class 10

Dispensers for ear protection devices; hearing protection means; hearing protection means, in particular protective earplugs, protective ear flanges, protective earmuffs (ear protection devices in the form of headphones).

Class 11

Helmet lights; electric torches; lighting and lighting reflectors; head torches; LED luminaires; spotlights; LED spotlights; luminaires.

Class 16

Self-adhesive tapes for stationery use; color pencils; highlighter pens; brush pens; decorators' paintbrushes; house painters' rollers; paint roller handles; stickers [stationery]; all aforesaid goods in the do-it-yourself or industrial sector or for workshops.

Class 17

Gaskets; sealant materials and fittings; adhesive tapes, strips, bands and films; fittings, not of metal, for compressed air lines; non-metal fittings for flexible compressed air pipes; flexible pipes, tubes, hoses and fittings therefor (including valves), and fittings for rigid pipes, all non-metallic.

Class 18

Garment bags; Tool bags of leather and imitations of leather.

Class 20

Work benches of wood and/or of metal; chests of drawers of metal for storing tools and technical equipment; ladders of wood and/or of metal; step ladders of wood and/or of metal; office furniture; workshop furniture; office armchairs and workshop chairs; desks; work benches of metal; tool storage cabinets, in particular of metal, for storing tools and technical equipment.

Class 25

Clothing, in particular jackets (clothing), uniform jackets, shell jackets, soft-shell jackets, insulating jackets, industrial jackets, work jackets and work trousers, trousers, uniform trousers, overalls, service trousers, functional clothing, undergarments, socks, outerwear, in particular t-shirts, polo shirts, jumpers (pullovers), sweatshirts, hoodies, cardigans, vests; shoes, in particular occupational footwear; caps being headwear; headbands [clothing].

