

O-926-22

**TRADE MARKS ACT 1994
IN THE MATTER OF
TRADE MARK APPLICATION NO. 3573494
BY BINOVO MANUFACTURING CO., LTD
TO REGISTER**

NEXTOOL

**AS A TRADE MARK
IN CLASSES 8, 9 & 11
AND OPPOSITION THERETO (UNDER NO. 425788)
BY
NEXT RETAIL LIMITED**

Background & pleadings

1. Binovo Manufacturing Co., Ltd (“the applicant”) applied to register the trade mark set out on the title page of this decision on 30 December 2020. It was examined and published in the Trade Mark Journal on 23 April 2021 for the goods set out in Annex 1 of this decision.

2. Next Retail Limited (“the opponent”) opposed the application in full on 23 July 2021 under sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”). The opponent relies on some goods in classes 8, 9, 11 and 35 from two earlier registrations, one being an EU TM (classes 8 and 35) and the other a UK TM (classes 9, 11 and 35). The details of the earlier registrations are set out below and the relied-on goods and services are set out in Annex 2 of this decision:

| UK TM No. 2453621 | EU TM No.17607474 |
|--|--|
|  <p>(Series of 2)</p> <p>Filing date: 25 April 2007 Registration date: 24 October 2008</p> |  <p>Filing date: 22 June 2016 Registration date: 4 January 2018</p> |

3. It is convenient to set out at this stage the law that applies to the proceedings, and the impact of the end of the Brexit transitional period. The application was applied for before IP Completion Day (being 11pm on 31 December 2020). The transitional provisions set out in the Trade Marks (Amendment etc.) (EU Exit) Regulations 2019 state that the proceedings should continue to be dealt with under the Act as it existed before IP Completion Day. The effect of this is that the opponent may rely on its EU TM as an earlier mark.

4. The opponent’s trade marks both have a registration date that is earlier than the filing date of the application and, therefore, they are earlier marks, in accordance

with Section 6 of the Act. As the registration procedure for UK TM No.2453621 was completed more than 5 years prior to the filing date of the contested application, it is subject to proof of use conditions, as per section 6A of the Act. The opponent made a statement of use in respect of all the goods and services it relies on. The remaining earlier right, EU TM No.17607474, has not been registered for 5 years or more at the filing date of the application so is not subject to proof of use provisions.

5. The opponent pleads under section 5(2)(b) that the application is highly similar to its earlier registrations and covers goods which are identical or highly similar to its own goods and services thus leading to a likelihood of confusion. Under section 5(3) the opponent pleads that the application would take unfair advantage of or be detrimental to the distinctive character and repute of the earlier registrations.

6. The applicant filed a counterstatement in which it denied both grounds of opposition and put the opponent to proof of use of its earlier UK TM.

7. Both parties have been represented throughout proceedings. The applicant has been represented by Mathys & Squire LLP, whilst the opponent has been represented by Marks & Clerk LLP. Only the opponent filed evidence. Both parties filed submissions in lieu of a hearing.

8. I make this decision following a consideration of all the material before me.

Preliminary issue

9. Section 6(3)(a) of the European (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 Trade Marks Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

Opponent's evidence

10. The opponent supplied a witness statement and 16 appended exhibits. The witness statement was made in the name of Ian Blackwell, the opponent's Legal and Compliance Director. I do not intend to summarise the evidence in fine detail but I

1. The earlier mark **next** appears on a range of radio docks, speaker docks, hi-fis, laptops, tablets, TVs, cameras, DVD players, DAB radios, telephones, lighting, cooking apparatus and appliances.

11. Mr Blackwell gives the opponent's turnover between 2010 and 2020 as being:

| Year | Pounds Sterling (£billion) |
|------|----------------------------|
| 2010 | 3.4 |
| 2011 | 3.5 |
| 2012 | 3.5 |
| 2013 | 3.5 |
| 2014 | 3.8 |
| 2015 | 4.0 |
| 2016 | 4.1 |
| 2017 | 4.1 |
| 2018 | 4.1 |
| 2019 | 4.2 |
| 2020 | 4.4 |

12. Mr Blackwell gives the opponent's advertising expenditure figures as:

| Year | Pounds Sterling (£) |
|------|---------------------|
| 2013 | 71,106,000 |
| 2014 | 77,007,000 |
| 2015 | 77,490,000 |
| 2016 | 77,748,000 |

13. In terms of market share, Mr Blackwell states that the opponent has been inside the top 500 world's most valuable brands since at least 2007², in addition it is stated that the opponent has a 7.4% share of the UK's clothing, footwear and accessories³. The opponent also appears at no. 36 in a list of the top 50 global online retailers in 2020⁴ in which it is categorised as a clothing, footwear and accessories specialists.

¹ Exhibit IB3

² Exhibit IB13

³ Exhibit IB14

⁴ Exhibit IB15

14. In addition to its physical shops, mail order and website retail business, the opponent states it also has a presence on the following social media channels namely Facebook, Twitter, YouTube, Pinterest, Tumblr and Instagram and has provided relevant screenshots⁵. Although the screenshots are dated from March 2022, I have presumed that was the date of compilation as the footer on each screenshot states they were taken from Web.archive.org. so these should be an accurate reflection of the website at the relevant date.

Proof of use provisions

15. The relevant statutory provisions for proof of use are as follows:

“(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

⁵ Exhibits IB8-12

(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.”

16. 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.”

17. 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*

Bunderversvereinigung 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 Marken 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].”

Relevant period

18. My first task is to establish whether, or to what extent, the opponent has shown genuine use of the earlier UK mark within the ‘relevant period’. The relevant period is defined as being a period of five years ending with the filing date of the contested application. In this case the relevant period is 31 December 2015 to 30 December 2020.

Sufficiency of use

19. The evidence shows the opponent’s earlier marks **next** and *next* being used as the title of the goods directory/mail order catalogue and on goods themselves. The opponent has demonstrated a consistently high turnover in the billions for its retail operation during the relevant period. In its written submissions, the applicant contends that only 11% of the opponent’s turnover can be attributed to non-clothing goods. I understand the point made but even an 11% percentage of those figures for non-clothing categories of goods such as homewares would still be very high, e.g. taking one of the years given at random such as 2017 at £4.1bn would equate to £440m. The evidence confirms that the opponent is a significant retailer in the UK market. I find that the evidence supports the statements made by the opponent in its witness statement and find that there has been genuine use of the earlier mark on the goods and on retail services during the relevant period. I also find that the opponent has demonstrated a significant reputation as a retailer.

Framing a fair specification

20. The next stage is to decide whether the opponent's use entitles it to rely on all of the goods and services for which it is registered. In framing a fair specification, I rely on guidance given in the following judgements. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*⁶, Mr Geoffrey Hobbs Q.C. as the Appointed Person summed up the law as being:

“In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned.”

21. In *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors*⁷, Mr Justice Carr summed up the law relating to partial revocation as follows (at [47]):

“iii) Where the trade mark proprietor has made genuine use of the mark in respect of some goods or services covered by the general wording of the specification, and not others, it is necessary for the court to arrive at a fair specification in the circumstance, which may require amendment; *Thomas Pink Ltd v Victoria's Secret UK Ltd* [2014] EWHC 2631 (Ch) (“Thomas Pink”) at [52].

iv) In cases of partial revocation, pursuant to section 46(5) of the Trade Marks Act 1994, the question is how would the average consumer fairly describe the services in relation to which the trade mark has been used; *Thomas Pink* at [53].

⁶ BL O/345/10

⁷ [2016] EWHC 3103 (Ch)

v) It is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do. For example, in *Pan World Brands v Tripp Ltd* (Extreme Trade Mark) [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally; *Thomas Pink* at [53].

vi) A trade mark proprietor should not be allowed to monopolise the use of a trade mark in relation to a general category of goods or services simply because he has used it in relation to a few. Conversely, a proprietor cannot reasonably be expected to use a mark in relation to all possible variations of the particular goods or services covered by the registration. *Maier v Asos Plc* [2015] EWCA Civ 220 ("Asos") at [56] and [60].

vii) In some cases, it may be possible to identify subcategories of goods or services within a general term which are capable of being viewed independently. In such cases, use in relation to only one subcategory will not constitute use in relation to all other subcategories. On the other hand, protection must not be cut down to those precise goods or services in relation to which the mark has been used. This would be to strip the proprietor of protection for all goods or services which the average consumer would consider to belong to the same group or category as those for which the mark has been used and which are not in substance different from them; *Mundipharma AG v OHIM* (Case T-256/04) ECR II-449; EU:T:2007:46."

22. In *Merck KGaA v Merck Sharp & Dohme Corp & Ors*⁸, a case which concerned pharmaceutical substances and preparations, Kitchen LJ held that it was well established that (1) a category of goods/services may contain numerous subcategories capable of being viewed independently and, (2) the purpose and intended use of a pharmaceutical product are of particular importance in identifying the subcategory to which it belongs.

⁸ [2017] EWCA Civ 1834 (Court of Appeal)

23. The evidence demonstrates that the opponent has used its mark across a large number of products and retail services. I find that a fair specification which reflects use made of the mark demonstrated by the evidence provided is as follows:

Class 9: photographic and cinematographic apparatus and instruments, apparatus for recording, transmission, or reproduction of sound or images; data processing equipment and computers.

Class 11: apparatus for lighting and cooking

Class 35: Retail services, including retail services offered via a general merchandising and clothing store, mail order catalogue, online, via television channel, via mobile phone and by direct marketing, all connected with the sale of photographic and cinematographic apparatus and instruments, apparatus for recording, transmission, or reproduction of sound or images, data processing equipment and computers, telephones, headphones, mobile phone cases, apparatus for lighting and cooking, kitchenware, furniture.

Section 5(2)(b)

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

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

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

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

“5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the

trade mark is applied for, the application is to be refused in relation to those goods and services only.”

26. 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.

The principles

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

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

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

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

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

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

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

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

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

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

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

Comparison of the goods and services

27. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*⁹, 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

⁹ Case C-39/97

intended purpose and their method of use and whether they are in competition with each other or are complementary”.

28. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case¹⁰, 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.

29. I also find that the following case law is useful in these proceedings where in *Gérard Meric v Office for Harmonisation in the Internal Market (“OHIM”)*¹¹, 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

¹⁰ [1996] R.P.C. 281

¹¹ Case T- 133/05

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”.

30. In *Oakley, Inc v OHIM*¹², the GC held that although retail services are different in nature, purpose and method of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree.

31. In *Tony Van Gulck v Wasabi Frog Ltd*¹³, Mr Geoffrey Hobbs Q.C. as the Appointed Person reviewed the law concerning retail services v goods. He said (at paragraph 9 of his judgment) that:

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

32. However, on the basis of the European courts’ judgments in *Sanco SA v OHIM*¹⁴, and *Assembled Investments (Proprietary) Ltd v. OHIM*¹⁵, upheld on appeal in

¹² Case T-116/06, paragraphs 46-57

¹³ Case BL O/391/14

¹⁴ Case C-411/13P

¹⁵ Case T-105/05, at paragraphs [30] to [35] of the judgment

*Waterford Wedgwood Plc v. Assembled Investments (Proprietary) Ltd*¹⁶, Mr Hobbs concluded that:

- i) Goods and services are not similar on the basis that they are complementary if the complementarity between them is insufficiently pronounced that, from the consumer's point of view, they are unlikely to be offered by one and the same undertaking;
- ii) In making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it is necessary to envisage the retail services normally associated with the opponent's goods and then to compare the opponent's goods with the retail services covered by the applicant's trade mark;
- iii) It is not permissible to treat a mark registered for 'retail services for goods X' as though the mark was registered for goods X;
- iv) The General Court's findings in *Oakley* did not mean that goods could only be regarded as similar to retail services where the retail services related to exactly the same goods as those for which the other party's trade mark was registered (or proposed to be registered).

32. In *Tulliallan Burlington Ltd v EUIPO*¹⁷, the CJEU considered the correct approach to determining the appropriate scope of protection afforded to trade marks that were registered for retail services prior to the court's judgment in *Praktiker*¹⁸. This judgment required applicant's to register trade marks for such services to specify the goods to which the services relate. The GC had decided that, absent such a list of goods, it was not possible to compare retail services-type registrations with later applications to register trade marks in relation to particular goods. The applicant appealed. The CJEU upheld the appeal ruling that:

¹⁶ Case C-398/07P

¹⁷Cases C-155/18P to C-158/18P

¹⁸Case C-418/02

“132. In that regard, admittedly, the Court of Justice has held that, for the purposes of registration of a trade mark covering services provided in connection with retail trade, it is not necessary to specify in detail the service or services for which that registration is sought, but that, on the other hand, the applicant must be required to specify the goods or types of goods to which those services relate (judgment in *Praktiker*, paragraphs 49 and 50).

133. However, first, the Court has made clear that the line of authority derived from the judgment in *Praktiker* concerns only applications for registration as trade marks and does not concern the protection of trade marks registered at the date of that judgment’s delivery (judgment of 11 October 2017, *EUIPO v Cactus*, C-501/15 P, EU:C:2017:750, paragraph 45). Since in the present case Tulliallan Burlington’s three earlier United Kingdom trade marks, which Tulliallan Burlington relied on in support of its opposition, were registered before the date on which the judgment in *Praktiker* was delivered, they were not, in any event, concerned by the obligation arising from that judgment.

134. Secondly, it cannot be inferred from the considerations in the judgment in *Praktiker* mentioned in paragraph 132 of the present judgment that, when a trade mark covering retail services, registered after that judgment’s delivery, is relied on in support of the ground of opposition referred to in Article 8(1)(b) of Regulation No 207/2009, that ground of opposition may be rejected from the outset, simply by invoking the absence of any precise statement of the goods to which the retail services covered by the earlier trade mark may relate.

135. To act in such a manner would mean that the earlier trade mark is precluded from being relied upon in opposition in order to prevent the registration of an identical or similar mark in respect of similar goods or services and, consequently, refuse to recognise it as having any distinctive character, even though that mark is still registered and it has not been declared invalid on one of the grounds laid down in Regulation No 207/2009.

136. In addition, as EUIPO in essence notes, it is possible, by means of a request seeking proof of genuine use of the earlier trade mark, within the

meaning of Article 42(2) of Regulation No 207/2009, to determine the precise goods covered by the services for which the earlier trade mark was used and, therefore, pursuant to the last sentence of that paragraph, to take into account, for the purposes of the examination of the opposition, only those goods.

137. Accordingly, it is apparent from all the foregoing considerations that, in finding, in paragraph 71 of the judgments under appeal, that the absence of any precise statement of the goods which may be sold in the various shops comprising a shopping arcade, such as the shopping arcade referred to by the earlier trade marks, precluded any association between those shops and the goods of the mark applied for, the General Court erred in law.”

33. The goods and services to be compared are contained in Annex 1 and 2 of this decision.

Class 8

34. In its EU TM, the opponent has the terms *Hand tools and implements (hand-operated); hand-operated tools and implements for treatment of materials and for construction, repair and maintenance; parts and fittings for all the aforesaid goods*. I find that these terms will cover *Sharpening instruments; pliers; glaziers' diamonds [parts of hand tools]; handles for hand-operated hand tools; instruments and tools for skinning animals; harpoons; truncheons* in the applicant's specification. Therefore they are identical on the *Meric* principle.

35. The opponent has *clippers for personal use* which I find to be *Meric* identical to *beard clippers* in the applicant's specification.

36. The opponent has *cutlery* at large in its specification which I find to be *Meric* identical with the applicant's terms *table cutlery [knives, forks and spoons]*.

37. The applicant has *knives* at large in its specification which I find to be *Meric* identical with the opponent's terms *kitchen knives; penknives*.

Class 9

38. The opponent has *photographic and cinematographic apparatus and instruments* at large which I find is broad enough to cover *radiogram* and *flash lamps for cameras* in the applicant's specification and is therefore identical on the *Meric* principle.

39. In addition the opponent has *data processing equipment* at large which I find is broad enough to cover *USB wires* and *electronic chips* in the applicant's specification and is therefore identical on the *Meric* principle.

40. With regard to the case law cited in paragraphs 31 and 32, it is permissible for me to consider the retail of specific goods as complementary to the goods themselves. As such as I find the opponent's terms *Retail services, including retail services offered via a general merchandising and clothing store, mail order catalogue, online, via television channel, via mobile phone and by direct marketing, all connected with the sale of Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), lifesaving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, fire-extinguishing apparatus, spectacles, dog whistles, microscopes, mobile phone cases, life-saving apparatus and equipment* to be complementary to a low degree to the applicant's terms *Electronic pens; chronographs [time recording apparatus]; machines for checking on work attendance; scales; tape measure; signal lanterns; cell phone covers; testing apparatus not for medical purposes; microscopes; igniting apparatus, electric, for igniting at a distance; fire extinguishing apparatus; life saving apparatus and equipment; alarms; spectacles; batteries, electric; dog whistles* in class 9. I make this finding as the goods will share the share the same channels of trade.

Class 11

41. In its UK TM, I find that the opponent's class 11 term *apparatus for lighting and cooking* is sufficiently broad to cover *Lighting apparatus and installations; roasting spits; lighters; refrigerating appliances and installations* in the applicant's specification on the *Meric* principle.

42. As previously stated it is permissible for me to consider the retail of specific goods as complementary to the goods themselves. As such as I find the opponent's terms *Retail services, including retail services offered via a general merchandising and clothing store, mail order catalogue, online, via television channel, via mobile phone and by direct marketing, all connected with the sale of Apparatus and installations for lighting, heating, steam generation, cooking, refrigerating, drying, ventilation, water supply and sanitary purposes, sanitary installations, water supply and sanitation equipment, toilet seats, installations for lighting, lamps, decorative fountains* to be complementary to a low degree to the applicant's terms in Class 11, namely *drying apparatus and installations; heating apparatus; fountains; water flushing installations; disinfectant apparatus; pocket warmers*. I make this finding as the goods will share the share the same channels of trade.

Average Consumer

43. I next consider who the average consumer is for the contested goods and how they are purchased. It is settled case law that the average consumer is deemed to be reasonably well informed and reasonably observant and circumspect¹⁹. 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 question²⁰.

44. The average consumer for the contested goods is the general public and professionals. The goods are likely to have a large price range, from the relatively inexpensive for something like a dog whistle to an expensive item such as a lighting installation. However consumers would be paying a least a medium level of attention as they will purchasing an item on the basis of suitability for purpose, or compatibility such as for computer items. I find the purchasing process will be primarily visual as consumers are likely to browse in retail establishments or catalogues and their online equivalents. There is likely to be an aural aspect to purchase either through word-of-mouth recommendations or seeing advice from sales advisors.

¹⁹ *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)

²⁰ *Lloyd Schuhfabrik Meyer*, Case C-342/97.



Mark comparisons

45. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade 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 trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in *Bimbo SA v OHIM*²¹, that:

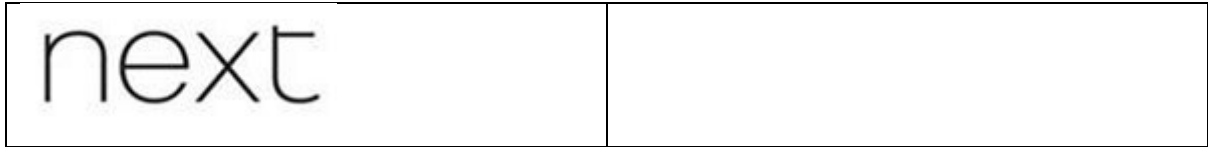
“... it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in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

46. It would be wrong, therefore, to artificially dissect the trade marks, 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.

47. The respective trade marks to be compared are:

| Opponent's earlier marks | Applicant's mark |
|---|--|
|  |  |

²¹ Case C-591/12P



48. The opponent's earlier marks essentially consist of the word NEXT presented in upper and lower cases. Neither the background nor the font used is particularly unusual so any distinctive character resides in the word NEXT itself.

NEXTOOL

50. In a visual comparison, the respective marks share the letters N-E-X-T, that is the entirety of the word element of the opponent's marks and over half of the applicant's mark. The remaining letters "OOL" have no counterpart in the earlier marks. The hexagonal shape in the second letter 'O' may have a small visual impact on some consumers but in my view is likely to be overlooked by most. In its written submissions the opponent drew my attention to the settled case-law²² which states that consumers are more likely to pay attention to the beginnings of words rather than to the ends. Taking this into account, I find there to be a medium level of visual similarity.

51. Turning now to the aural comparison I find NEXT is an ordinary dictionary word so will be given its usual pronunciation. The applicant contends that its mark will be verbalised as NEX-TOOL. I agree with that submission and find that the additional syllable is a point of aural difference. However even taking this into account I find there is a medium degree of aural similarity.

52. Finally with regard to the conceptual comparison, the earlier marks NEXT will bring to mind the usual meaning of "immediately following". The applicant's mark will

²² *El Corte Inglés, SA v OHIM*, Case T-39/10

be seen by some consumers as an invented word with no immediately graspable concept. In which case the respective marks are conceptually dissimilar.

53. In its written submissions the opponent contends that,

“For the part of the public that would perceive the contested mark as an amalgamation of the words “next” and “tool”, they would understand the overall mark as meaning “the tool that comes immediately after”, which is conceptually highly similar to the earlier marks”

54. I accept it is possible that some consumers see the recognisable words “next” or “tool”. However even if that were the case, I disagree with the opponent that this scenario means the respective marks are highly conceptually similar. At best I find there would some low degree of conceptual similarity between a consumer’s understanding of “next” in the whole “nextool” and the earlier marks.

Distinctive character of the earlier mark

55. The degree of distinctiveness of the earlier mark must be assessed. This is because the more distinctive the earlier mark, based either on inherent qualities or because of use made, the greater the likelihood of confusion. In *Lloyd Schuhfabrik Meyer*²³ 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 *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97

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).”

56. Registered trade marks possess varying degrees of inherent distinctive character starting from the very low, because they are suggestive of, or allude to, a characteristic of the goods or services, scaling up to those with high inherent distinctive character, such as invented words.

57. The word NEXT is an ordinary dictionary word and has no meaning in relation to the goods and services for which it is registered. Therefore I find that the earlier mark is inherently distinctive to a medium degree.

58. As evidence has been provided for UK TM No. 2453621, I must consider whether use made of this mark has enhanced its distinctiveness (a finding which, given the identity of the marks, would be transferable to the other earlier registration). I remind myself of the *Windsurfing Chiemsee* factors set out above as to what I should consider.

59. As I set out in paragraph 19 above, the evidence demonstrated that there has been use of the mark for over 40 years, consistently high turnover, considerable advertising expenditure, significant market share and a geographically wide customer base in the UK. Taking this into account I find that the earlier marks’ distinctive character has been enhanced though use to a high degree.

Likelihood of confusion

60. In assessing the likelihood of confusion, I must adopt the global approach advocated by case law and take into account the fact that marks are rarely recalled

perfectly, the consumer relying instead on the imperfect picture of them that they have kept in mind.²⁴ I must also keep in mind the average consumer for the goods, the nature of the purchasing process and have regard to 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.

61. 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.

62. In *L.A. Sugar Limited*²⁵, Mr Iain Purvis Q.C., sitting as the Appointed Person, explained that:

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

63. In *Kurt Geiger v A-List Corporate Limited*²⁶, Mr Iain Purvis Q.C. again sitting as the Appointed Person pointed out that the level of ‘distinctive character’ is only likely

²⁴ *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* paragraph 27

²⁵ *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10

²⁶ BL O-075-13

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.”

64. 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.

65. So far in this decision I have found that,

- The goods and services are identical and complementary
- The average consumer will pay a medium level of attention during the primarily visual purchasing process
- There is a medium degree of visual and aural similarity
- There is conceptual dissimilarity between the respective marks if the contested mark is seen as an invented word or a low degree of similarity if consumers identify the word ‘next’ in ‘nextool’
- The earlier marks are distinctive to a high degree

66. The respective marks clearly share the same four letters, namely **NEXT**, at their beginnings. However even taking into account the case law relating to the beginnings of words and the distinctiveness of the earlier marks, I find this similarity is outweighed by the difference, namely the additional letters **ool**, in the applicant’s mark. These additional letters are sufficient in my view for the average consumer

not to directly confuse the marks, that is to mistake one mark for the other even where the goods and services are identical.

67. Having found that there is no likelihood of direct confusion, I now consider whether there is any indirect confusion. I remind myself of the guidance given in *L.A. Sugar* that indirect confusion requires a consumer to undertake a thought process whereby they acknowledge the differences between the marks yet attribute the common element to a shared undertaking, taking the later mark to be a possible brand extension or sub brand of the earlier mark.

68. I find that the average consumer on seeing **NEXTTOOL** may note the additional **TOOL** element but will likely assume that this is a brand extension from the opponent, e.g. a play on words for a range of tools from **NEXT** and is likely to be confused in to believing that respective goods come from the same or economically linked undertakings. As such I find there is a likelihood of indirect confusion.

69. The opposition under section 5(2)(b) is successful.

Section 5(3)

70. Having found a likelihood of confusion under Section 5(2)(b), I turn to consider the claim made under section 5(3). The opponent opposed the application under Section 5(3) of the Act based on its earlier marks for which it claims to have a reputation for a wide range of goods sold in stores, by mail order and online website.

71. In particular the opponent argues in its notice of opposition that,

The Opponent has used its earlier marks relied upon in connection with Section 5(3) of the Act in relation to a wide range of goods sold in stores, by mail order catalogue and via their online website. The adoption by a third party of a confusingly similar trade mark, such as the mark applied for, is very likely to cause confusion amongst the average consumers, when used in relation to the goods covered by the UK Trade Mark Application No. UK00003573494. The production and sale of both identical and closely related goods would take unfair advantage of, or be detrimental to the distinctive character or repute of the Opponent's earlier trade marks and registration of the mark applied for would be contrary to the provisions of Section 5(3) of the Act.

In view of the substantial reputation that the Opponent enjoys in its earlier trade marks relied upon in connection with Section 5(3) of the Act, for goods and services that are the same or similar to the goods covered by UK Trade Mark Application No. UK00003573494, the use of the mark applied for would take unfair advantage of and be detrimental to the distinctive character and repute of the Opponent's prior trade marks. The Applicant will also benefit from the substantial and highly regarded reputation and goodwill that has been developed by the Opponent over many years in trade marks consisting of or containing the mark NEXT, such that the impression of their products will be enhanced and would achieve a wider recognition than might otherwise be obtained. The detriment to the Opponent would arise as a result of dilution of its rights in trade marks consisting of or containing the mark NEXT for this category of goods. It would also be damaging to the Opponent given that consumers or potential customers will consider there to be an economic link between the parties, which does not exist. Further, there could be damage to the repute of the Opponent's earlier marks, particularly if the goods and services provided by the Applicant are of poor quality. Registration of the mark applied for would therefore be contrary to the provisions of Section 5(3) of the Trade Marks Act 1994.

Legislation

72. The relevant part of the act states:

“5(3) A trade mark which-

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”.

73. Section 5(3A) states:

“(3A) Subsection (3) applies irrespective of whether the goods and services for which the trade mark is to be registered are identical with, similar to or not similar to those for which the earlier trade mark is protected”.

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

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

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

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas 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* and *Environmental Manufacturing, paragraph 34*.

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

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

Reputation

75. I must firstly consider whether the opponent has met the test for reputation. In *General Motors, Case C-375/97*, the CJEU held that:

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

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

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

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation 'in the Member State'. In the absence of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation 'throughout' the territory of the Member State. It is sufficient for it to exist in a substantial part of it."

76. Having considered the factors set out above and weighing in the opponent's evidence I examined earlier in this decision, I find that use of the earlier trade mark has established a significant reputation for goods and retail of those goods. The evidence demonstrates a consistent annual turnover, advertising expenditure and market share. Overall, from the evidence, I find the opponent has established a reputation *inter alia* for kitchenware, homewares, lighting, cookware, electrical and electronic goods.

Link

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

The degree of similarity between the conflicting marks

78. For the reasons given at paragraphs 50 to 54, I find there is a medium degree of visual and aural similarity and either a low conceptual identity or dissimilarity.

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

79. The contested goods will be purchased by the general public paying a medium degree of attention, for the reasons given at paragraphs 43 and 44. I have already found that the goods listed at paragraphs 34-42 are identical and complementary.

The strength of the earlier mark's reputation

80. The earlier marks have a strong reputation.

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

81. For the reasons given at paragraph 59, the word **NEXT** is inherently distinctive to a medium degree. Given the use which has been made of the earlier mark, I find that its distinctiveness has been enhanced. As such it is distinctive to a high degree.

Whether there is a likelihood of confusion

82. The earlier registration has considerable use and reputation for goods in classes 8, 9, 11 and 35. Therefore, in addition to finding a likelihood of confusion, I find that the public will make a link between the marks for these goods and services.

Damage

83. I must next assess whether any of the pleaded types of damage will arise. The opponent states

“In view of the substantial reputation that the opponent enjoys...the use of the mark applied for would take unfair advantage and be detrimental to the distinctive character and repute of the opponent's prior trade marks”.

84. I bear in mind that unfair advantage has no effect on the consumers of the goods of the earlier marks, but instead the taking of unfair advantage of the reputation and distinctive character of earlier marks means that consumers are more likely to

purchase the goods and services of the later mark than they would otherwise have done if they had not been reminded of the earlier marks.

85. In *Jack Wills Limited v House of Fraser (Stores) Limited* [2014] EWHC 110 (Ch) Arnold J. (as he then was) considered the earlier case law and concluded that:

“80. The arguments in the present case give rise to two questions with regard to taking unfair advantage. The first concerns the relevance of the defendant's intention. It is clear both from the wording of Article 5(2) of the Directive and Article 9(1)(c) of the Regulation and from the case law of the Court of Justice interpreting these provisions that this aspect of the legislation is directed at a particular form of unfair competition. It is also clear from the case law both of the Court of Justice and of the Court of Appeal that the defendant's conduct is most likely to be regarded as unfair where he intends to benefit from the reputation and goodwill of the trade mark. In my judgment, however, there is nothing in the case law to preclude the court from concluding in an appropriate case that the use of a sign the objective effect of which is to enable the defendant to benefit from the reputation and goodwill of the trade mark amounts to unfair advantage even if it is not proved that the defendant subjectively intended to exploit that reputation and goodwill.”

86. As set out above, I found sufficient evidence that the opponent enjoys a reputation for its goods and retail services. Given the strength of that reputation, the shared use of the NEXT element and the identity and complementarity of the goods and services, it is clear that there is the potential for the applicant to gain an unfair advantage which would be a commercial advantage, benefitting from the opponent's reputation without paying financial compensation and would therefore be likely to take unfair advantage of the earlier marks.

87. As damage is made out on the basis of unfair advantage, it is not necessary for me to go on and consider the other heads of damage.

88. The opposition is therefore successful under section 5(3).

Conclusion

89. The opposition has been successful in its entirety and subject to any appeal of this decision, the application will be refused.

Costs

90. The opponent has been successful and is entitled to a contribution to its costs. Awards of costs are governed by Annex A of Tribunal Practice Notice (TPN) 2/2016. Bearing in mind the TPN, I award costs as follows:

| | |
|--------------|--|
| £200 | Official fee |
| £400 | Preparing a statement and considering the counterstatement |
| £800 | Preparing evidence |
| £300 | Preparing written submissions |
| £1700 | Total |

91. I order Binovo Manufacturing Co., Ltd to pay Next Retail Limited the sum of £1700. This sum is 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 25th day of October 2022

June Ralph

For the Registrar

The Comptroller-General

Annex 1 – Applicant’s goods

Class 8: *Sharpening instruments; shovels [hand tools]; garden tools, hand-operated; instruments and tools for skinning animals; harpoons; beard clippers; pliers; glaziers' diamonds [parts of hand tools]; knives; truncheons; table cutlery [knives, forks and spoons]; handles for hand-operated hand tools.*

Class 9: *Electronic pens; chronographs [time recording apparatus]; machines for checking on work attendance; scales; tape measure; signal lanterns; cell phone covers; radiogram; flash lamps for cameras; testing apparatus not for medical purposes; microscopes; USB wires; electronic chips; igniting apparatus, electric, for igniting at a distance; fire extinguishing apparatus; life saving apparatus and equipment; alarms; spectacles; batteries, electric; dog whistles.*

Class 11: *Lighting apparatus and installations; roasting spits; refrigerating appliances and installations; drying apparatus and installations; heating apparatus; fountains; water flushing installations; disinfectant apparatus; pocket warmers; lighters.*

Annex 2 – Opponent’s relied on goods and services for UK TM 2453621

Class 9: *photographic and cinematographic apparatus and instruments, apparatus for recording, transmission, or reproduction of sound or images; data processing equipment and computers.*

Class 11: *apparatus for lighting and cooking*

Class 35: *Retail services, including retail services offered via a general merchandising and clothing store, mail order catalogue, online, via television channel, via mobile phone and by direct marketing, all connected with the sale of photographic and cinematographic apparatus and instruments, apparatus for recording, transmission, or reproduction of sound or images, data processing equipment and computers, telephones, headphones, mobile phone cases, apparatus for lighting and cooking, kitchenware, furniture.*

Annex 2 - Opponent's relied on goods and services for EU TM 017607474

Class 8: *Hand tools and implements (hand-operated); gardening and landscaping tools; hand-operated tools and implements for treatment of materials and for construction, repair and maintenance; irons; cutlery; razors; hair cutting and removal implements; hair styling appliances; crimping irons; curling tongs; straightening irons; hygienic and beauty implements for humans and animals; tweezers, trimmers, scissors; clippers for personal use; manicure and pedicure tools; food and drink preparation implements; zesters; slicers; barbecue forks and tongs; kitchen knives; penknives; parts and fittings for all the aforesaid goods*

Class 35: *Retail services, wholesale and franchise services, including those services offered via a general merchandising department store and clothing store, mail order catalogue, online, via television channel, via mobile phone and by direct marketing, presentation of goods on communication media, for retail purposes, provision of an on-line marketplace for buyers and sellers of goods and services, all connected with the sale of the following: Bleaching preparations and other substances for laundry use, cleaning, polishing, degreasing, scouring and abrasive preparations, soaps and gels, perfumery, essential oils and aromatic extracts, cosmetics, toiletries, hair lotions, dentifrices, perfumes, eau de toilette, shower gels, bubble baths, bath preparations, not for medical purposes, talc, deodorants, antiperspirants, aftershave, shaving preparations, shaving gel, shampoos, conditioners, hair gel, hair spray, body wash, shaving balms, moisturisers, beauty masks, foam bath, shimmer powder, body spray, tooth-powder, cream and pastes, cotton wool for cosmetic purposes, dry shampoos, nail polish, nail care preparations, nail art stickers, false nails, make-up preparations, make-up removing preparations, baby care products (non-medicated), non-medicated toilet preparations, preparations and treatments for the hair, hair removal preparations, preparations for the skin, preparations for use in the bath or shower, lotions for the care of the hands and body, non-medicated creams, for the care of the skin, non-medicated lotions for suntanning, body cleaning and beauty care preparations, oral hygiene preparations, cosmetic preparations for eyelashes, adhesives for cosmetic purposes, air fragrancing preparations, aromatic potpourris, leather and shoe cleaning and polishing preparations, wallpaper cleaning preparations, vehicle cleaning preparations, lubricants, grease for footwear, belts and leather, candles and wicks for lighting, illuminants, beeswax, Christmas tree*

candles, coal briquettes, firelighters, firewood, fuel (including motor spirit), dust absorbing, wetting and binding compositions, Fasteners, clips, hinges, connectors, drawer runners, screws, nuts, bolts and handles, all being items of metal hardware and all being parts and fittings for furniture, chains for dogs, dog tags, identification tags of metal for pets, metal building materials and metal furniture fittings, containers, and transportation and packaging articles, of metal, non-electric cables and wires of common metal, ironmongery, metal hardware, pipes and tubes of metal, safes, money boxes of metal, greenhouses of metal, sheds (buildings) of metal, hooks, arbours (metal structures), articles of metal for use in the garden, doors, gates, windows and window coverings of metal, statues and works of art of common metal, bird baths [structures] of metal, door stops, handles, panels, bolts, frames and casings of metal, ladders and scaffolding of metal, locks of metal, other than electric, nails, tool boxes of metal, empty, parts and fittings for all the aforesaid goods, Machines and machine tools, machines for mixing, kneading, pulping, grinding, mincing, chopping, blending shredding, peeling, pressing and frothing foodstuffs and beverages, dishwashing machines, washing machines, drying machines, machines for airing clothes, sweeping, cleaning, washing and laundering machines, ironing machines and laundry presses, liquidisers, food processors, electric kitchen tools and knives, electric machines for preparing and processing food and drink, food waste disposal machines, agricultural implements other than hand-operated, textile and leather sewing equipment, sewing machines, bobbins for sewing machines, 3D printers, air brushes, beverage making machines, blow torches, vacuum cleaners, vacuum cleaner bags, construction equipment, gardening machines and tools (electric), hand-held tools, mechanically operated, hand-held power-operated tools, parts and fittings for all the aforesaid goods, Hand tools and implements (hand-operated), gardening and landscaping tools, hand-operated tools and implements for treatment of materials and for construction, repair and maintenance, irons, cutlery, razors, wine pourers, hair cutting and removal implements, hair styling appliances, crimping irons, curling tongs, straightening irons, hygienic and beauty implements for humans and animals, tweezers, trimmers, scissors, clippers for personal use, manicure and pedicure tools, food and drink preparation implements, zesters, slicers, barbecue forks and tongs, kitchen knives, penknives, parts and fittings for all the aforesaid goods, Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), lifesaving and

teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs, automatic vending machines and mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment and computers, fire-extinguishing apparatus, parts and fittings for all the aforesaid goods, sunglasses, spectacles, spectacle frames, cases for spectacles and sunglasses, lenses, contact lenses, cords and chains for sunglasses, eyeglasses, eyewear, 3D spectacles, binoculars, goggles, calculators, electronic organisers, cameras, battery chargers, camcorders, time recording devices, cassette players, compact disc players, DVD players, MP3 players excluding MP3 docking stations, televisions, amplifiers, printers, computers, computer games, computer peripheral devices excluding standalone speakers, bags adapted for laptops, radios, telephones, answering machines, baby monitors, satellite navigational apparatus, navigation, guidance, tracking, targeting and map making devices, weighing machines, magnetic encoded cards, floats for bathing and swimming, protective clothing, protective helmets, buoyancy aids, swimming floats, reflective clothing for the prevention of traffic accidents, batteries for lighting, battery chargers, buzzers, cabinets for loudspeakers, cases for photographic apparatus and instruments, cases for smartphones, cell phone straps, decorative magnets, digital photo frames, digital signs, directional compasses, divers' masks, diving suits, dog whistles, electric door bells, downloadable music and image files, egg timers, electronic publications, downloadable, magnetic encoded identification bracelets, hands free kits for telephones, head guards for sports, life-saving apparatus and equipment, magic lanterns, measuring spoons, microscopes, money counting and sorting machines, pedometers, smartglasses, smartphones, smartwatches, solar batteries, walkie-talkies, wearable activity trackers, weights, parts and fittings for all the aforesaid goods, none of the aforesaid goods including speaker docks or standalone speakers, Apparatus and installations for lighting, heating, steam generation, cooking, refrigerating, drying, ventilation, water supply and sanitary purposes, sanitary installations, water supply and sanitation equipment, toilet seats, installations for lighting, lamps, parts and fittings for the aforesaid goods, lighting and lighting reflectors, lamp bases, lampshades, light bulbs, fairy lights, decorative fountains, sprinkler and irrigations systems, bathroom apparatus and installations, burners,

boilers and heaters, fireplaces, heating, ventilating, and air conditioning and purification equipment (ambient), installations and apparatus for freezing and air conditioning, hot water bottles, food and beverage cooking, heating, cooling and treatment equipment, bread-making machines, chip pans, coffee machines, barbecue apparatus, electric cooking utensils, toasters, kettles, filters for household use, personal heating and drying implements, drying installations, parts and fittings for all the aforesaid goods, Precious metals and their alloys and goods made thereof or coated therewith, jewellery, imitation jewellery, tiaras, necklaces, bracelets, earrings, rings, jewellery cases, jewellery display stands, precious stones, semi-precious stones, clocks, watches and chronometric instruments, watch straps, watch bracelets, badges of precious metal, clock cases, cuff links, statues and figurines, made of or coated with precious or semi-precious metals or stones, or imitations thereof, jewellery boxes, key rings [trinkets or fobs] and key chains, ornamental pins, stopwatches, sundials, tie clips, tie pins, parts and fittings for all the aforesaid goods, Paper, cardboard and goods made of these materials, printed matter, bookbinding materials, photographs, stationery, adhesives for stationery or household purposes, artist materials, paint brushes, typewriters and office requisites (except furniture), instructional and teaching material (except apparatus), plastic materials for packaging, pens, pencils, swing tags and labels, till receipts, carrier bags, accessories for home and house, namely, wall stickers, framed and unframed art pictures, framed and unframed art prints and framed and unframed art reproductions, chalk boards and memorandum boards, greetings cards, paper gift wrap, paper bags, cardboard boxes and containers, cardboard gift boxes, paper and cardboard gift tags, paper and cardboard tableware, paper and cardboard place mats, paper and cardboard table mats, paper and cardboard coasters, paper napkins and serviettes, paper table linens, paper tablecloths, wallpaper stencils, wallpaper sample books, wallpaper pattern books, paper for use in the manufacture of wallpaper, letter racks, photographs, framed pictures, wall art, photographic prints, pictures, paper picture mounts, gift vouchers, catalogues, mail order catalogues, brochures, books, diaries, magazines, calendars, newsletters, printed manuals, pamphlets, writing paper, wrapping paper and gift tags, paper or cardboard gift bags for bottles, table napkins of paper, cardboard tubes, cardboard household storage boxes, paper party bags, paper pouches for packaging, plastic bags for packaging, plastic bubble packs for wrapping or packaging, labels, namely, printed paper labels,

printed shipping labels, labels and return address labels, not of textile, paper signs, advertising signs made of cardboard, paper labels, plastic bags for general use, paper and cardboard tableware, paper and cardboard cake decorations, drawer liners made of scented or unscented paper, paper handtowels, paper towels, paper garlands, paper bunting, paper banners, paper flags, hat boxes made of cardboard, figurines made of card, wallpaper stencils, wallpaper sample books, wallpaper pattern books, paper for use in the manufacture of wallpaper, pencil sharpeners, pencil cases, chalk, erasers, rubber erasers, chalk erasers, blackboard erasers, posters, notebooks, memo pads, scribble pads, writing paper, notepaper, envelopes, date books, address books, agenda books, rubber stamps, stamp pads, folders, paper picture mounts, photo albums, postcards, greeting cards, trading cards, colouring books, children's activity books, picture books, book covers, paper book markers, bookplates, stencils for tracing designs onto paper, decals, stickers, notebook holders, document cases and holders, chequebook holders, printed publications, print advertising, adhesives [glues] for stationery or household purposes, albums, scrapbooks, bookends, desk mats, drawing materials, drawing instruments, geographical maps, glue for stationery or household purposes, pastes for household purposes, letter trays, passport holders, pen cases, boxes for pens, transfers [decalcomanias], writing materials, Leather and imitations of leather, and goods made of these materials, leather, un-worked or semi-worked, processed or unprocessed leather and hides, artificial leather, cowhide, lining leather, animal skins, hides, trunks and travelling bags, umbrellas, parasols and walking sticks, shooting sticks, whips, harness and saddlery, bags, handbags, shoulder bags, cases, suitcases, briefcases, rucksacks, belts and girdles, bags, purses, travelling cases, backpacks, duffel bags, bags for campers, shopping bags, carrier bags, furniture covering of leather, leather straps (not for clothing), pocket wallets, toilet bags, accessories for clothing and fashion, namely, purses, handbags, wallets, clutch bags, tote bags, key cases, pocket wallet holders (in the nature of wallets) for credit cards or visiting cards, toilet bags (not fitted), travelling bags, leather bags, bags of synthetic materials, wallets, attaché cases, music cases, satchels, bike bags, diaper bags, beach bags, bumbags, sports bags, casual bags, beauty cases, carriers for suits, for shirts and for dresses, tie cases, notecases, credit card cases and holders, tool bags, messenger bags, document bags, business card cases, collars for animals, hat boxes of leather, luggage tags, sling bags for carrying infants, vanity

cases, Furniture, mirrors (looking glasses), picture frames, beds, bed heads, cots, sofas, sofa beds, chairs, armchairs, tables, bedside tables, bookcases, sideboards, desks, bureaus, shelves, mirrors, picture frames, chests of drawers, wardrobes, cabinets, chests, beanbags, pillows, duvets, cushions, mattresses, bedding, fireguards, baskets, curtains and blinds, footstools, upholstered footstools, tables, accessories for home and house, namely, drawer units, towel racks, decorative wall plaques made of plastics or wood, bins of wood or plastic, boards (display-), bottle racks, chests for toys, chopping blocks (table), closures (bottle-) not of metal, clothes hooks, not of metal, covers for clothing (wardrobe), cupboards, curtain hooks, curtain rails, curtain poles, curtain rings, curtain rods, curtain rollers, curtain tie-backs, deck chairs, desk (furniture), dispensers (towel-), not of metal, fixed, door fittings, not of metal, easy chairs, flower pot pedestals, flower stands (furniture), footstools, garment covers (storage), glass (slivered-) [mirrors], high chairs for babies, infant walkers, jewellery cases [caskets], not of precious metal, keyboards for hanging keys, magazine racks, medicine cabinets, mobiles (decoration), playpens for babies, settees, showcases (furniture), sideboards, shelves for storage, stools, slatted indoor blinds, wickerwork, door stops, trophies, mortician or festival goods, wall mounted mirror, vanity mirror, hooks (clothes-) of non-metallic materials, kitchen furniture, bathroom furniture, covers for furniture, garden furniture of metal, goods of wood, namely, furniture, garden furniture, beds, bedframes, bed heads, sideboards, bunk beds, cots, futons, sofa beds, bedside tables, chests of drawers, wardrobes, dressing tables, curtain poles, blinds, sofas, chairs, arm chairs, footstools, upholstered footstools, tables, desks, bureaus, cabinets, chests, units, bookcases, boxes, storage racks, storage furniture, baskets, shelves, ornaments, picture frames, mirror frames, doors, consoles, goods of cork, namely, memo boards, notice boards, pin boards, goods of reed, namely, blinds, caskets, divans, diffusers, goods of cane, namely, caskets, containers, divans, bedroom, living room, dining room and bathroom furniture, garden furniture, goods of wicker, namely, bedroom, living room, dining room and bathroom furniture, garden furniture, chests of drawers, units, laundry bins, ornaments, goods of amber, namely, figurines, sculptures, caskets, panels, fasteners, clips, hinges, connectors, drawer runners, screws, nuts, bolts and handles, none made of metal and all being parts and fittings for furniture, baby changing mats, bed fittings, not of metal, bed bases, beds for household pets, work benches, coat hangers, clothes hangers, containers, not of metal, hampers

[baskets], hand-held mirrors, hat stands, inflatable furniture, jewellery organiser displays, ladders or wood or plastics, letter boxes, not of metal or masonry, mats, removable, for sinks, removable mats or covers for sinks, mats for infant playpens, mirror tiles, nesting boxes, office furniture, plugs, not of metal, racks [furniture], screens for fireplaces [furniture], shells, shelving units, sleeping pads, sleeping mats, statues of wood, wax, plaster or plastic, step stools, not of metal, table tops, tent pegs, not of metal, trays, not of metal, umbrella stands, wind chimes [decoration], winding spools, not of metal, non-mechanical, for flexible hoses, works of art of wood, wax, plaster or plastic, parts and fittings for all the aforesaid goods, Household or kitchen utensils and containers, combs and sponges, brushes (except paint brushes), brushmaking materials, make-up brushes and sponges, articles for cleaning purposes, steel wool, unworked or semi-worked glass (except glass used in building), plant pots and candlesticks, accessories for home and house, namely, chopping boards for kitchen use, dish drying racks, pasta bowls, household containers for foods, saucepans, cake stands, bowls, bottles sold empty, waste and refuse bins for household use, laundry bins, toothbrush holders, pet feeding and drinking bowls, bird feeders, planters for domestic gardening, laundry hampers, accessories for the home and house, namely, ornaments of china, decorative wall plaques of china, porcelain or glass, ornaments and figurines [statuettes] of porcelain, ceramic, earthenware or glass, personal outfittings, buttons, bags, pouches, jewels and their imitations, artificial flowers, toilet sets, brushes for washing dishes, scrapers for cleaning windows, clothes pegs, baskets for washing, buckets, waste paper and rubbish bins, cake moulds, photo frames, abrasive pads for kitchen purposes, abrasive sponges for scrubbing the skin, aerosol dispensers, not for medical purposes, animal bristles [brushware], apparatus for waxpolishing, non-electric, aquarium hoods, autoclaves [pressure cookers], non-electric, baby baths, portable, baking mats, basins [bowls], basins [receptacles], baskets for domestic use, basting spoons, for kitchen use, beaters, non-electric, beer mugs, bird baths, birdcages, blenders, non-electric, for household purposes, boot jacks, boot trees [stretchers], bottle gourds, bottle openers, bottles, boxes for dispensing paper towels, boxes of glass, bread baskets, domestic, bread bins, bread boards, brooms, brush goods, Brushes for cleaning tanks and containers, brushes for footwear, buckets made of woven fabrics, buckskin for cleaning, busts of porcelain, ceramic, earthenware or glass, butter-dish covers, butter dishes, buttonhooks, cages for

household pets, cake moulds, candle extinguishers, candle rings, candlesticks, candy boxes, carpet beaters, not being machines, carpet sweepers, cauldrons, ceramics for household purposes, chamber pots, cheese-dish covers, china ornaments, chopsticks, cleaning instruments, hand-operated, closures for pot lids, cloths for washing floors, clothes-pegs, clothes racks, for drying, clothing stretchers, coasters, not of paper and other than table linen, cocktail stirrers, coffee filters, non-electric, coffee grinders, hand-operated, coffee percolators, non-electric, coffee services [tableware], coffeepots, non-electric, comb cases, combs, combs for animals, confectioners' decorating bags [pastry bags], containers for household or kitchen use, cookery mould, cookie [biscuit] cutters, cookie jars, cooking pins of metal, cooking pot sets, cooking pots, cooking utensils, non-electric, corkscrews, cosmetic utensils, cotton waste for cleaning, crockery, cruet sets for oil and vinegar, cruets, crumb trays, crystal [glassware], cups, cups of paper or plastic, currycombs, cutting boards for the kitchen, decanters, deep fryers, non-electric, deodorising apparatus for personal use, dish covers, dishes, dishwashing brushes, disposable table plates, drinking glasses, drinking horns, drinking straws, drinking troughs, drinking vessels, drying racks for washing, dustbins, dusting apparatus, non-electric, dusting cloths, earthenware saucepans, egg cups, electric brushes, except parts of machines, electric combs, electric devices for attracting and killing insects, enamelled glass, eyebrow brushes, feather-dusters, feeding troughs, fitted picnic baskets, including dishes, flasks, flat-iron stands, floss for dental purposes, flower-pot covers, not of paper, flower pots, fly swatters, fly traps, food cooling devices, containing heat exchange fluids, for household purposes, fruit cups, fruit presses, non-electric, for household purposes, frying pans, funnels, furniture dusters, gardening gloves, garlic presses [kitchen utensils], glass bowls, glass bulbs [receptacles], glass caps, glass flasks [containers], glass jars [carboys], glass [receptacles], glass wool other than for insulation, glove stretchers, gloves for household purposes, glue-pots, graters [household utensils], grill supports, grills [cooking utensils], hair for brushes, heat-insulated containers, heat insulated containers for beverages, heaters for feeding bottles, non-electric, holders for flowers and plants [flower arranging], horse brushes, hot pots, not electrically heated, ice cube moulds, ice pails, indoor aquaria, indoor terrariums [plant cultivation], indoor terrariums [vivariums], insect traps, ironing board covers, shaped, ironing boards, isothermic bags, jugs, kettles, non-electric, kitchen containers, kitchen mixers, non-

electric, kitchen utensils, knife rests for the table, largetoothed combs for the hair, lazy susans, liqueur sets, litter trays for pets, lunch boxes, majolica, makeup removing appliances, mangers for animals, material for brush-making, menu card holders, mills for domestic purposes, hand-operated, mixing spoons [kitchen utensils], moulds [kitchen utensils], mop wringers, mops, mosaics of glass, not for building, mouse traps, mugs, nail brushes, napkin holders, napkin rings, non-electric portable coldboxes, noodle machines, hand-operated, nozzles for sprinkler hoses, opal glass, opaline glass, pails, painted glassware, paper plates, pastry cutters, pepper mills, hand-operated, pepper pots, perfume burners, perfume sprayers, pie servers, piggy banks, plates to prevent milk boiling over, plungers for clearing blocked drains, polishing apparatus and machines, for household purposes, non-electric, polishing gloves, polishing leather, porcelain ware, pot lids, pots, pottery, powder compacts, powder puffs, powdered glass for decoration, rags for cleaning, rat traps, refrigerating bottles, rings for birds, rolling pins, domestic, roses for watering cans, salad bowls, salt cellars, saucepan scourers of metal, saucers, scoops [tableware], scouring pads, scrubbing brushes, services [dishes], shakers, shaving brush stands, shaving brushes, shoe horns, shoe trees [stretchers], sieves [household utensils], sifters [household utensils], signboards of porcelain or glass, siphons for carbonated water, smoke absorbers for household purposes, soap boxes, soap dispensers, soap holders, soup bowls, spatulas [kitchen utensils], spice sets, sponge holders, sponges for household purposes, spouts, sprinklers, statues of porcelain, ceramic, earthenware or glass, statuettes of porcelain, ceramic, earthenware or glass, steel wool for cleaning, stew-pans, strainers, strainers for household purposes, sugar bowls, syringes for watering flowers and plants, table plates, tableware, other than knives, forks and spoons, tankards, tea infusers, tea balls, tea caddies, tea cosies, tea services [tableware], tea strainers, teapots, thermally insulated containers for food, tie presses, toilet brushes, toilet cases, toilet paper dispensers, toilet paper holders, toilet sponges, toilet utensils, toothbrushes, toothbrushes, electric, toothpick holders, toothpicks, towel rails and rings, trays for domestic purposes, trays for domestic purposes, of paper, trivets [table utensils], trouser presses, urns, utensils for household purposes, vacuum bottles, vases, vegetable dishes, vessels of metal for making ices and iced drinks, waffle irons, non-electric, washing boards, washtubs, waste paper baskets, water apparatus for cleaning teeth and gums, watering cans, watering devices, wax-polishing appliances,

non-electric, for shoes, whisks, non-electric, for household purposes, window-boxes, wine tasters [siphons], wool waste for cleaning, works of art of porcelain, ceramic, earthenware or glass, candelabras, candle jars [holders], car washing mitts, chamois leather for cleaning, cocktail shakers, basting brushes, bulb basters, cosmetic spatulas, crushers for kitchen use, non-electric, demijohns, drinking bottles for sports, dripping pans, earthenware/crockery, food steamers, non-electric, hip flasks, insulating flasks/vacuum bottles, kitchen grinders, non-electric, barbecue mitts, kitchen mitts, pipettes, pot holders, tortilla presses, non-electric [kitchen utensils], parts and fittings for all the aforesaid goods, Textiles and textile goods, bed and table covers, plastic material as a substitute for fabric, bed linen, table linen, household linen, wall hangings, blankets, quilts, duvets and duvet covers, sheets, pillow cases, bed valances, bed-covers, table cloths, table mats, napkins, linen fabrics, fabric wall coverings, curtains, curtain tie-backs, cushion covers, pelmets, blinds, covers for chairs and sofas, towels and face cloths, accessories for home and house, namely, wall hangings of textile, curtains of textile, shower curtains, tea towels, textile place mats, cork placemats, leather placemats, synthetic placemats, upholstery fabrics, furniture coverings of textile, curtain holders of textile material, curtain linings, picnic blankets, travel rugs, woven fabrics for sofas (upholstery), banners, bath linen, except clothing, bath mitts, bed blankets, blankets for household pets, bunting, coasters [table linen], covers [loose] for furniture, diaper changing cloths for babies, eiderdowns [down coverlets], face towels of textile, felt, flags, not of paper, furniture coverings of plastic, handkerchiefs of textile, mattress covers, mosquito nets, place mats, not of paper, sleeping bag liners, table runners, fitted toilet lid covers of fabric, parts and fittings for all the aforesaid goods, Clothing, footwear, headgear, sports clothing, socks, maternity wear, clothing for men, women and children, namely, coats, rain coats, anoraks, parkas, blazers, jackets, cardigans, boleros, sport coats, wind resistant jackets, suits, tuxedos, vests, dresses, evening gowns, jumpers, jerseys, skirts, pants, slacks, trousers, jeans, jean shirts, jump suits, coveralls, flight suits, gym suits, jogging jerseys, blouses, tunics, sweatshirts, t-shirts, tops, halter tops, tank tops, body suits, camisoles, chemises, undershirts, slips, foundation garments, body shapers, bustiers, briefs, boxer shorts, underpants, panties, laundry, lounge wear, night gowns, night shirts, negligees, robes, pyjamas, hosiery, tights, leggings, socks, ties, neckties, bow ties, scarves, shoals, neckerchiefs, gloves, mittens, belts, swimwear, bathing suits, beachwear, beach cover-ups, sarongs, ski

wear, ski suits, ski pants, ski gloves, thermal socks, infant wear, play suits, footwear, namely, shoes, boots, sandals, flip flops, thongs, pool sliders and slippers, headgear namely, hats, caps, headbands, ear warmers, ready-made clothing, clothing of leather or suede, overalls, pullovers, shirts, swimming suits, training suits, jogging suits, mufflers, ear muffs, shawls, lingerie, bras, bodies, sleep sets, waterproof clothing, dancing clothing, shorts, clothing, footwear and headgear for children and babies, clothing, footwear and headgear all for sports and leisurewear, knitwear in the nature of sweaters, footwear in the nature of trainers, joggers, namely jogging suits, hoodies, polo shirts, sweat tops, track suits, leotards, trunks, waistcoats, bridesmaid dresses, ponchos, raincoats, dressing gowns, knickers, basques, stoles, wraps, cravats, kaftans, rompers, fleeces, fleece shirts, windbreakers, aprons, clothing for babies, babies' bibs, not of paper, babies' diapers of textile, dinner jackets, braces, babies' sleepsuits, garters, sock suspenders, bandanas [neckerchiefs], special sporting and gymnastic wear, special sporting and gymnastic footwear, ankle boots, babies' pants [underwear], bath sandals, bath slippers, bath robes, bathing caps, bathing trunks, swimsuits, beach clothes, beach shoes, berets, boas [necklets], bodices [lingerie], boot uppers, boots for sports, breeches for wear, cap peaks, caps [headwear], clothing for gymnastics, clothing of imitations of leather, collars [clothing], combinations [clothing], corselets, corsets [underclothing], cuffs/wristbands [clothing], cyclists' clothing, detachable collars, dress shields, fishing vests, fittings of metal for footwear, football shoes/football boots, footmuffs, not electrically heated, footwear uppers, fur stoles, furs [clothing], gabardines [clothing], galoshes, gymnastics shoes, half-boots, hat frames [skeletons], heelpieces for stockings, heelpieces for footwear, heels, hoods [clothing], jumper dresses, pinafore dresses, lace boots, layettes [clothing], leg warmers, masquerade costumes, money belts [clothing], motorists' clothing, neckties, non-slipping devices for footwear, outerclothing, overcoats, topcoats, paper clothing, paper hats [clothing], petticoats, pockets for clothing, ready-made linings [parts of clothing], saris, sashes for wear, shirt fronts, shirt yokes, short sleeve shirts, shower caps, ski boots, skorts, skull caps, sleep masks, slippers, inner soles, soles for footwear, spats, gaiters, sports jerseys, sports shoes, sports singlets, stocking suspenders, stockings, studs for football boots, stuff jackets [clothing], sweat-absorbent stockings, sweat-absorbent underwear and underclothing, sweatabsorbent socks, teddies [undergarments], tips for footwear, togas, top hats, trouser straps/gaiter straps,

turbans, underwear/underclothing, uniforms, valenki [felted boots], veils [clothing], visors [headwear], welts for footwear, wet suits for water-skiing, wooden shoes, Lace and embroidery, ribbons and braid, buttons, hooks and eyes, pins and needles, artificial flowers, hair clips, appliqués [haberdashery], artificial flowers, artificial fruit, artificial garlands, artificial Christmas garlands, artificial Christmas wreaths, artificial flower arrangements in containers, artificial flower wreaths, artificial plants, artificial trees, badges for wear, not of precious metal, hair bands, decorative articles for the hair, bows for gift wrapping, brooches [clothing accessories], bra strap extenders, hair curlers, other than hand implements, hair accessories, reinforcing tape for clothing, silk flowers, silk knots, silk ribbons, shoe laces, snoods, velvet ribbons, needle cushions, tassels [haberdashery], trouser clips for cyclists, Carpets, rugs, rug grippers, floor runners, mats and matting, door mats, yoga mats, floor coverings, mats, non-textile wall coverings, wall papers, wall paper borders, decorative wall hangings, not of textile, textile wallpaper, bath mats, linoleum and other materials for covering existing floors, carpet underlay, non-slip mats, vinyl floor coverings, parts and fittings for all the aforesaid goods, Toys, games, playthings and novelties, gymnastic and sporting articles, bags specially adapted for sports equipment, balls for playing games and sports, decorations for Christmas trees, Christmas trees of synthetic materials, artificial snow for Christmas trees, Christmas crackers, confetti, craft model kits, board games, dominoes, card games, electronic games, video game apparatus, puzzles, articles of clothing for toys and dolls, baby play things, inflatable toys, toy masks, novelties for parties, parts and fittings for all the aforesaid goods, Preserved, frozen, dried and cooked fruits and vegetables, jellies, jams, fruit and vegetable spreads, compotes, edible oils and fats, olive oil, extra virgin olive oil, sunflower oil, flavoured sunflower oil, flavoured olive oil, preserved olives, preserved chillies, marmalade, fruit conserves, dried orange peel, cranberry sauce, dried garlic, apple sauce, olive pastes, nuts, prepared, flavoured nuts, nut-based snack foods, Coffee, tea, cocoa and artificial coffee, coffee, tea and cocoa-based beverages, rice, tapioca, sago, flour and preparations made from cereals, bread, pastry and confectionery, edible ices, sugar, honey, treacle, yeast, baking-powder, baking soda, salt, mustard, vinegar, sauces (condiments), condiments, seasonings, dressings for salad, spices, ice, balsamic vinegar, white wine vinegar, dried herbs and spices, breadcrumbs, marinades, rock salt, chutneys, dried coffee, tea bags, drinking chocolate, biscuits/ cookies, gingerbread, crackers, pancakes, waffles, chocolate,

chocolate-based beverages, chocolate coated nuts, sweets, marshmallows, edible decorative cake toppings, cake icing, cereal snack bars, spices for making mulled wine, cinnamon sticks, sugar, dried garlic, apple sauce, horseradish sauce, dried meat rubs, pre-prepared baking mixes for cookies and cakes, popcorn, Fresh flowers, dried flowers, plants, seeds, horticultural products, agricultural, horticultural and forestry products and grains, live animals, fresh fruits and vegetables, seeds, natural plants and flowers, foodstuffs for animals, malt, Beers, mineral and aerated waters and other non-alcoholic drinks, fruit beverages and fruit juices, vegetable juice, syrups and other preparations for making beverages, flavoured drink mixes, smoothies, wine, champagne, spirits, domestic electrical products namely: apparatus for lighting, heating, steam generation, cooking, refrigerating, drying, ventilation, water supply and sanitary purposes, installations for lighting, lamps, parts and fittings for the aforesaid goods, installations and apparatus all for cooking, heating, burners, boilers and heaters, fireplaces, heating, ventilating, and air conditioning and purification equipment (ambient), installations and apparatus, all for refrigeration, freezing and air conditioning, food and beverage cooking, heating, cooling and treatment apparatus and equipment, electric cooking utensils, toasters, kettles, personal heating and drying implements, drying installations, household electric heating appliances, scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus for recording, transmission or reproduction of sound or images, automatic vending machines and mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment and computers, parts and fittings for all the aforesaid goods, electronic organisers, cameras, battery chargers, camcorders, time recording devices, cassette players, compact disc players, dvd players, mp3 players excluding mp3 docking stations, televisions, amplifiers, printers, computers, computer games, computer peripheral devices excluding standalone speakers, radios, telephones, answering machines, baby monitors, satellite navigational apparatus, weighing machines, batteries for lighting, battery chargers, buzzers, hands free kits for telephones, life-saving apparatus and equipment, magic lanterns, measuring spoons, microscopes, money counting and sorting machines, pedometers, smartglasses, smartphones, smartwatches, solar batteries, walkie-

talkies, wearable activity trackers, parts and accessories for all the aforesaid goods, none of the aforesaid goods including speaker docks or standalone speakers, machines and machine tools, machines for mixing, kneading, pulping, grinding, mincing, chopping, blending, shredding, peeling, pressing and frothing foodstuffs and beverages, dishwashing machines, washing machines, drying machines, machines for airing clothes, sweeping, cleaning, washing and laundering machines, ironing machines and laundry presses, liquidisers, food processors, electric kitchen tools and knives, electric machines for preparing and processing food and drink, food waste disposal machines, machine coupling and transmission components (except for land vehicles), agricultural implements other than hand-operated, incubators for eggs, textile and leather sewing equipment, sewing machines, 3D printers, beverage making machines, vacuum cleaners, vacuum cleaner bags, construction equipment, gardening machines and tools (electric), hand held tools, mechanically operated, gardening and landscaping tools, hair cutting and removal implements, hair styling appliances, crimping irons, curling tongs, straightening irons, hygienic and beauty implements for humans and animals, clippers for personal use, food and drink preparation implements; Advertising; business management; business administration; office functions; outsourcing services (business assistance); provision of outsourced administration services to business; business consultancy services; customer enquiry, comments and complaint services; telephone marketing services; consultancy, information and advisory services relating to all the aforesaid services; business management consultancy including giving assistance and advice in the establishment of retail stores in the field of the aforesaid goods; customer loyalty services for commercial, promotional and/or advertising purposes; organization and management of customer loyalty programs; organization, operation and supervision of customer loyalty schemes; organisation of fashion shows for commercial and promotional purposes; product marketing; product merchandising; promotional marketing; providing commercial information to consumers; providing consumer product information via the internet; providing information and advice to consumers regarding the selection of products and items to be purchased; wholesale ordering services; sales promotion; sales management services; provision of sales staff; consulting in sales techniques and sales programmes; advisory services relating to sales promotion; retail shop window display arrangement services; clerical services for the taking of sales orders; business administration services for processing sales

made on the internet; arranging business introductions relating to the buying and selling of products; organization, operation and supervision of sales and promotional incentive schemes; electronic commerce services, namely, providing information about products via telecommunication networks for advertising and sales purposes; demonstration of goods and services by electronic means, also for teleshopping and homeshopping services; sales promotion for others provided through the distribution and the administration of privileged user cards; services relating to advertising, marketing and public relations (including the organization of exhibitions and fairs for trade purposes); office services; business administration, management and consultancy services related with these matters (including the accounting services); import-export agency services; services of an expert for trade and industrial products; organization and arrangement of public auctions; consultancy, information and advisory services relating to all the aforesaid services; all the aforesaid services excluding modelling agency services.