

O/0382/23

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. UK00003561974
BY PANGAIA MATERIALS SCIENCE LIMITED
TO REGISTER:**

PANGAIA

**AS A TRADE MARK IN CLASSES 3, 5, 9, 14, 16,
18, 20, 22, 24, 28, 30, 32, 35 & 40**

AND

**IN THE MATTER OF THE OPPOSITION THERETO
UNDER NO. 425040 BY
PANGAEA LABORATORIES LIMITED**

BACKGROUND AND PLEADINGS

1. On 30 November 2020, Pangaia Materials Science Limited (“the applicant”) applied to register the trade mark shown on the cover of this decision (“the applicant’s mark”) in the UK for the goods set out in the **Annex** to this decision. The applicant’s mark derives from two earlier EUTMs and, as a result, has two earlier priority dates, being 29 May 2020 and 26 November 2020.
2. The applicant’s mark was published for opposition purposes on 19 March 2021 and, on 18 June 2021, it was opposed by Pangaea Laboratories Limited (“the opponent”). The opposition is based on section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and is reliant upon the following marks:

pangaea

UK registration no: 2368933

Filing date 23 July 2004; registration date 14 January 2005

Relying on all goods and services, namely:

Class 3: Toiletries, soaps, antiperspirants, shampoos, foam bath, shower gel, preparations for the hair and skin.

Class 5: Preparations for the hair and preparations for the skin, pharmaceutical goods, sanitary preparations, dental preparations, plasters and materials for dressings.

Class 35: The bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods in a retail store, specialising in beauty care and personal care products.

Class 42: Laboratory and knowledge base research into new medical preparations, ingredients, chemical formulations for the care,

treatment and maintenance of the skin, hair or body or for camouflage purposes.

("the opponent's first mark"); and

pangaea

International Registration no 0926265 designating the EU¹

International registration date 13 March 2007; date protection granted in the EU 13 March 2007

Relying on all goods, namely:

Class 3: Toiletries, soaps, antiperspirants, shampoos, foam bath, shower gel, preparations for the hair and skin.

Class 5: Preparations for the hair and preparations for the skin, pharmaceutical goods, sanitary preparations, dental preparations, plasters and materials for dressings.

("the opponent's second mark")

3. I note that the opposition is targeted against only some of the applicant's goods, being the following:

Class 3: Non-medicated cosmetics and toiletry preparations; non-medicated dentifrices; perfumery, essential oils; bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; Soaps; essential oils, cosmetics, hair lotions; Dentifrices; Toothpaste; Mouthwash; Non-medicated toilet preparations; Pre-shave and after shave lotions; Deodorants and antiperspirant preparations; Cosmetic

¹ Although the UK has left the EU and the International Registration designating the EU for protection relied upon by the opponent now enjoys protection in the UK as a comparable trade mark, the International Registration remains the relevant right in these proceedings. That is because the application was filed before the end of the Implementation Period and, under the transitional provisions of the Trade Marks (Amendment etc.) (EU Exit) Regulations 2019, I am obliged to decide the opposition on the basis of the law as it stood at the date of application. Further, see paragraph 3 of Tribunal Practice Notice 2/2020

and toilet preparations for use in the bath; Bath foam; Shower gels; Body lotion; Cosmetics all for sale as part of a kit; Cleansing, toning, moisturising and exfoliating preparations and exfoliating substances; Sachets for perfuming linen; Make-up preparations; Makeup all for sale as part of a kit; Emollients and emollient substances; Essential oils, Massage oils and Massage lotions.

4. The opponent claims that the marks are extremely similar visually and that they are aurally and conceptually identical. Together with the identity and/or extreme similarity between the goods and services at issue, the applicant's mark will create a likelihood of confusion on the part of the public, which includes a likelihood of association with the opponent's marks.
5. The applicant filed a counterstatement denying the claims made and put the opponent to proof of use for both of its marks for all goods and services relied upon.
6. Both parties filed evidence in chief. I note that, accompanying its evidence in chief, the opponent also filed written submissions. Further, while the opponent did not elect to file evidence in reply, it did file written submissions in reply. A hearing took place before me on 16 February 2023, by video conference. The opponent was represented by Mr Jamie Muir Wood of Hogarth Chambers. Mr Muir Wood was instructed by Wedlake Bell LLP, who have represented the opponent throughout these proceedings. The applicant was represented by Ms Amanda Michaels of Hogarth Chambers. Ms Michaels was instructed by Bonum IP Limited, who have represented the applicant throughout these proceedings.
7. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied 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.

EVIDENCE

8. As above, both parties filed evidence. The opponent's evidence in chief came in the form of the witness statement of Mr Elliot Isaacs dated 27 May 2022. Mr Isaacs is the Director of the opponent. His statement is accompanied by 14 exhibits, being those labelled Exhibits E11 to E14. As I have set out above, the opponent filed submissions accompanying this evidence and also filed written submissions in reply.
9. The applicant's evidence in chief came in the form of the witness statement of Jennifer Kathryn Good dated 28 July 2022. Ms Good is a Chartered Trade Mark Attorney at the applicant's representative and is, therefore, duly authorised to make the statement on behalf of the applicant. Ms Good's statement is accompanied by four exhibits, being those labelled Exhibits JKG1 to JKG4.
10. I will refer to points from the evidence or submissions where necessary.

DECISION

Proof of use

11. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

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

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

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

12. The relevant statutory provisions are as follows:

“Section 6A

(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), (b) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

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

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

(3) The use conditions are met if –

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

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

(4) For these purposes –

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

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

(5) In relation to a European Union trade mark or international trade mark (EC), any reference in subsection (3) or (4) to the United Kingdom shall be construed as a reference to the European Community.

(5A) In relation to an international trade mark (EC) the reference in subsection (1)(c) to the completion of the registration procedure is to be construed as a reference to the publication by the European Union Intellectual Property Office of the matters referred to in Article 190(2) of the European Union Trade Mark Regulation.

(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.

13. Section 100 of the Act is also relevant, which reads:

“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.”

14. Given their filing dates, the opponent’s marks qualify as earlier trade marks under the above provisions. The opponent’s marks completed their registration procedures over five years prior to the earliest filing date of the applicant’s mark and, as set out above, the applicant requested that the opponent provide proof of use for its marks. As a result, the opponent’s marks are subject to a proof of use assessment in respect of the goods and services relied upon.

15. 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 Bunderversammlung Kamaradschaft ‘Feldmarschall Radetsky’* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], [2013] ETMR 16, Case C-609/11 P *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], [2014] ETMR, Case C-141/13 P *Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089] and Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434], [2017] Bus LR 1795.

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

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

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

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

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14] and [22]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

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

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector

concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Leno* at [29]-[30], [56]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34].

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

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

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

“22. The burden lies on the registered proprietor to prove use [...]. However, it is not strictly necessary to exhibit any particular kind of documentation, but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the

tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public.”

17. and further at paragraph 28:

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

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

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

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

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

19. Pursuant to Section 6A of the Act, the relevant period for assessing whether there has been genuine use of the opponent’s mark is the 5-year period ending with the earlier priority date of the applicant’s mark, being 29 May 2020. Therefore, the relevant period for this assessment is 30 May 2015 to 29 May 2020.

20. The opponent’s second mark is an international registration which is designated for protection in the EU. As I have explained above, these proceedings are to be determined as per the law prior to IP Completion Day (being 31 December 2020). This means that use of the opponent’s second mark in the EU is relevant to these

proceedings. On this point, I refer to the case of *Leno Merken BV v Hagelkruis Beheer BV*, Case C-149/11, wherein the Court of Justice of the European Union noted that:

“It should, however, be observed that ... the territorial scope of the use is not a separate condition for genuine use but one of the factors determining genuine use, which must be included in the overall analysis and examined at the same time as other such factors. In that regard, the phrase ‘in the Community’ is intended to define the geographical market serving as the reference point for all consideration of whether a Community trade mark has been put to genuine use.”

And

“50. Whilst there is admittedly some justification for thinking that a Community trade mark should – because it enjoys more extensive territorial protection than a national trade mark – be used in a larger area than the territory of a single Member State in order for the use to be regarded as ‘genuine use’, it cannot be ruled out that, in certain circumstances, the market for the goods or services for which a Community trade mark has been registered is in fact restricted to the territory of a single Member State. In such a case, use of the Community trade mark on that territory might satisfy the conditions both for genuine use of a Community trade mark and for genuine use of a national trade mark.”

21. Proven use of a mark which fails to establish that “the commercial exploitation of the mark is real”² because the use would not be “viewed as warranted in the economic sector concerned to maintain or create a share in the mark for the goods or services protected by the mark” is, therefore, not genuine use.

² *Jumpman* BL O/222/16

Preliminary comments in respect of 'fluidnotgel' products

22. Before proceeding to consider the substantive assessment of genuine use, I consider it necessary to address the opponent's evidence in respect of its 'fluidnotgel' range of products, being a range that the opponent seeks to rely on in the present proceedings. Examples of the packaging for this product range include the 'PANGAEA' branding so would, therefore, be in consideration for the issue of genuine use. Having reviewed the evidence in respect of this range of goods, I note that this range was launched at some point in 2020 but it is not confirmed precisely when. As I have confirmed above, the relevant period for genuine use concludes on 29 May 2020. The evidence of 'fluidnotgel' products includes print-outs taken from an Amazon product listing³ and references to their sale via two invoices.⁴ Firstly, the Amazon product listing shows these products as being first available on 16 June 2020, being after the conclusion of the relevant period. Secondly, the invoices that cover the sale of 'fluidnotgel' products are dated 22 September and 12 November 2020, also after the conclusion of the relevant period.

23. At the hearing, Mr Muir Wood accepted that the evidence in respect of 'fluidnotgel' was fairly scant but submitted that as the product was made available on Amazon shortly after the end of the relevant period, the preparations for it to be brought onto the market were plainly during the relevant period and that, as per paragraph four of the case of *Walton* (cited above), preparations being underway are potentially enough to qualify as use. The reference to paragraph four of *Walton* is noted but I presume that this was intended as a reference to point four of the principles laid out at paragraph 115 of that case (being those reproduced in full above) which sets out that use of the mark must be in relation 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. While general advertising expenditure has been provided in relation to the entirety of PANGAEA's brands, there is no breakdown to suggest how much, if any, of this relates to 'fluidnotgel' during the relevant period. Further,

³ Exhibit E17

⁴ Exhibit E18

no evidence has been provided that points to any advertising campaigns or other preparations to secure customers as being underway prior to 'fluidnotgel' products being listed for sale on Amazon. Given the lack of specificity on this point, I am unwilling to infer that the evidence is able to demonstrate that there was sufficient advertising undertaken during the relevant period.

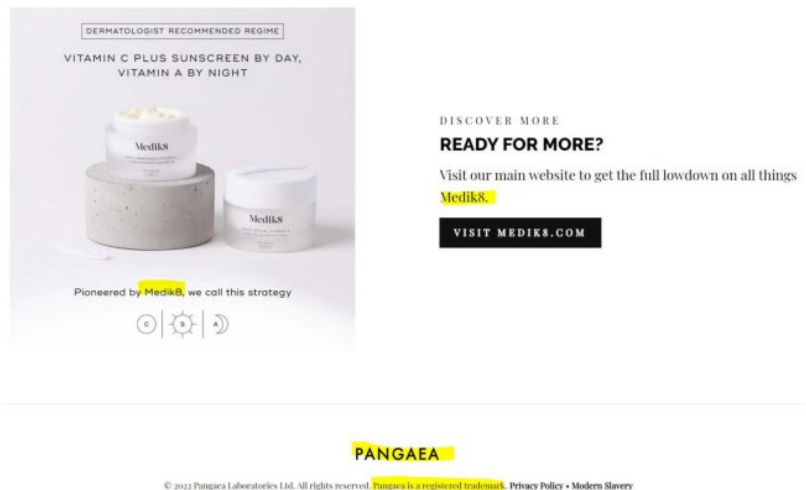
24. In light of the above, I conclude that the evidence in relation to 'fluidnotgel' products clearly stems from after the conclusion of the relevant period and I have nothing before me to suggest otherwise. Therefore, I do not consider that the 'fluidnotgel' products are of any assistance to the opponent going forward and I will say nothing further about them.

Evidence of use

25. Mr Isaacs's evidence begins with a discussion surrounding the history of the opponent's business. He states that the opponent is a well-known international beauty house and manufacturer of high quality cosmetics, skin care and haircare products. In respect of the opponent's mark, Mr Isaacs confirms that the opponent has used 'PANGAEA' since it was formed in 1999. The opponent continues to produce and sell its 'PANGAEA' branded products throughout the UK and internationally and Mr Isaacs claims that it has become internationally recognised as the origin of leading skin and hair care products. While the opponent's second mark is registered for goods only, its first mark is registered for both goods and services. I acknowledge that there is a brief mention of goods being sold directly by the opponent on its own websites, however, aside from this apparent allusion to retail services, the evidence relates to goods only. As is ordinary for genuine use assessment, if I am satisfied that the opponent has shown use, I will be required to assess a fair specification at that stage. If necessary, I will explore the lack of reference to services further at that point and will, for now, say no more on this point.

26. In regard to the brands that the opponent operates, I note that reference is made to three of them in Mr Isaacs's evidence, being 'PANGAEA', 'Medik8' and

'Nanogen'. Details of these brands are provided by way of print-outs from the opponent's website, pangaea.co.uk.⁵ They are dated 29 April 2022 (being outside the relevant period) but I note that where 'PANGAEA' is not displayed on the featured product, the word is displayed at the bottom of the page as follows (the highlighting included in these examples remains as it was in the evidence filed):⁶



27. I note that Mr Isaacs's narrative evidence goes on to state that the 'Medik8' skincare range was launched in February 2009 and the 'Nanogen' hair care range was launched in February 2010. On the point of these additional brandings, I note that Mr Isaacs sets out that they all use 'PANGAEA' as a badge of origin. Examples

⁵ Exhibit E14

⁶ See page 22 of Exhibit E14, for example, which shows 'PANGAEA' branding on a page dedicated to 'Medik8'

of how 'PANGAEA' is displayed on the products is provided by way of photographs of the products themselves.⁷ I note that the photographs show approximately 39 products in the 'Medik8' and 'Nanogen' ranges.⁸ While it is not necessary to display all of the images here, some examples of how 'PANGAEA' appears on these products are set out below (the red lines pointing to the words are as originally included in the evidence). To confirm, these images represent the same or very similar presentations of the word 'PANGAEA' across all of the images provided. I note that none of the images provided show the front of the packaging.

An example of 'Medik8' products:



An example of 'Nanogen' products:



⁷ Exhibit EI5

⁸ There are a number of 'fruitnetgel' products but these have been discounted from the total of images shown.

28. In terms of distribution, Mr Isaacs confirms that the opponent sells its goods via its own websites, being pangaea.co.uk, medik8.com and nanogen.com. No images are shown of the products for sale on the opponent's website but I note that print-outs from Google Analytics are provided that show the user information for these websites.⁹ In respect of the user information provided, I note that they show data from 1 January 2017 to 1 January 2020 and each print-out includes a graph that seemingly shows a range of figures for active users. While noted, no precise information is provided as to how many visitors to these websites there were during this time, whether they were unique visitors, whether those visits were from customers in the relevant territories (a particular issue for the 'Medik8' and 'Nanogen' websites, which I note are .com websites) or whether the visits translated into actual sales. In addition, I note that there are figures for '1 Day Active Users', '7 Day Active Users', '14 Day Active Users' and '28 Day Active Users' on each of the print-outs. In respect of pangaea.co.uk, these figures are 12, 175, 403 and 1,239, respectively. Again, I have nothing to suggest what these figures cover or how they are applicable to the assessment I must now make. For example, are they total figures for this period, figures from the previous one, seven, 14 or 28 days before the print-out date or an indication of returning active users during each respective period? Without anything further, I fail to see how this information is of any real assistance.

29. Additionally in respect of distribution, I note that Mr Isaacs confirms that the opponent's products can be bought throughout selected stores in the UK including SpaceNK, Amazon and Boots. While the latter two retailers are well-known and have a UK-wide presence, I have no evidence to suggest the popularity or reach of 'SpaceNK'. I note that evidence has been provided of products listed for sale via these retailers' websites.¹⁰ The print-outs for Amazon and SpaceNK show 'Medik8' and 'Nanogen' products for sale but are dated after the end of the relevant period. Further, the Amazon 'Medik8' listing shows the date on which the product was first available as 17 March 2021, also being outside of the relevant period. As for the

⁹ Exhibit E16

¹⁰ Exhibit E17

Boots print-outs, these are taken from the internet archive facility, 'the Wayback Machine' and are dated 2017. They show 'Nanogen' products only and an example of how these goods were presented to consumers on the Boots website at that time is as follows:

The screenshot shows the Boots website interface for Nanogen products. At the top, there is a search bar and navigation links. The main content area is titled 'Products ([ProductTotalCount])' and shows a list of items. On the left, there are filter options for 'rating' and 'brand'. The product list includes:

- Nanogen Hair Thickening Keratin Fibres - Medium...** (12 reviews, £19.99)
- Nanogen Hair Thickening Fibres Light Brown 15g (1...** (7 reviews, £19.99)
- Nanogen Hair Thickening Keratin Fibres - Black 30g.(2...** (6 reviews, £29.99)
- Nanogen Hair Thickening Keratin Fibres - Dark Brown...** (11 reviews, £29.99)

Below this, another set of products is shown:

- Nanogen Hair Thickening Fibre Sprayer Black 22.5g** (0 reviews, £29.99)
- Nanogen Hair Thickening Fibre Sprayer Medium..** (0 reviews, £29.99)
- Nanogen Hair Thickening Fibre Sprayer Light Brown** (1 review, £29.99)
- Nanogen Hair Thickening Fibre Sprayer Dark Brown** (1 review, £29.99)

30. None of the examples above (and this is an issue consistent with the Amazon and SpaceNK print-outs) show the 'PANGAEA' branding. Another point I wish to address is that while the Amazon print-outs are after the relevant date, the 'Medik8' products are also listed as being sold by 'Medik8' and not 'PANGAEA'. I note that there are several references to 'PANGAEA' as the manufacturer for these

products, however, this information is quite far down the page under the 'Technical Details' and, even if this evidence could be said to relate to the relevant period, it is unclear as to how many average consumers would see this information or seek it out.

31. The evidence goes into detail regarding the opponent's UK sales figures for 2015 to 2020. The figures are not broken down into any category but Mr Isaacs states that the turnover is generated from sales through both brick and mortar stores and online, which he claims has grown exponentially and consistently upward in both the UK and internationally. The turnover figures provided are as follows:

Year	Sales - £
2015	7,250,588
2016	8,179,368
2017	9,813,302
2018	8,127,406
2019	14,056,746
2020	18,948,793

32. I note that the above turnover figures represent a total turnover of £66,376,203. I appreciate that some of the 2015 and 2020 turnover will inevitably include figures from outside the relevant period on the basis that the relevant period starts and ends in the May of each year, a point I will bear in mind when considering these figures. In respect of the opponent's turnover, I note that the applicant filed evidence in the form of copies of the opponent's account filings which show that the above figures are not UK only figures but relate to the entire global turnover of the opponent.¹¹ At the hearing, Mr Muir Wood acknowledged this issue and set out that, regardless, the figures (particularly the UK) are large and indicate that the brand is doing well. On this point, I note that the turnover in the UK and the EU is, according to the Companies House filings, as follows:

¹¹ Exhibit JKG2

Year	UK (£)	Rest of Europe (£)
2015	2,715,095	2,276,340
2016	3,369,670	2,667,740
2017	3,933,738	3,334,054
2018	3,240,871	2,424,266
2019	5,084,284	5,655,852
2020	8,042,226	5,502,240
Total:	26,385,884	21,860,492

33. In respect of the European figures, I note that this is categorised as ‘Rest of Europe’ and not the EU. I take this to mean the European continent as a whole (outside of the UK, of course) and, therefore, I consider it likely that some of these figures are from European countries that are not EU Member States. Having said that, I accept that the majority of the figures are from EU countries but this is a point I must bear in mind going forward.

34. Sample invoices are provided that Mr Isaacs believes are fairly representative of what the opponent’s invoices looked like during the relevant period.¹² Some of the invoices fall outside of the relevant period but I note that the majority of them fall within it. Having reviewed the invoices, I note that each invoice includes the opponent’s name and business address in the top right hand corner, however, the same issue with the product evidence discussed above is present here in that the goods in the description column of the invoices all bear marks other than ‘PANGAEA’. For example, I note the presence of ranges of goods labelled ‘Z1’, ‘PROFESSIONAL’ and ‘Aquamatch’. I have no evidence before me to suggest how such ranges are labelled and whether or not they include the opponent’s mark and, if they do, is the branding consistent with the range of ‘Medik8’ and ‘Nanogen’ products referred to above or is ‘PANGAEA’ featured more prominently? Without evidence of such, I do not consider it appropriate (or fair to the applicant) to determine that ‘PANGAEA’ is featured prominently on these products.

¹² Exhibit E18

35. Turning to marketing expenditure, Mr Isaac's confirms that the opponent has spent the following in promoting the 'PANGAEA' brand:

Year	Marketing spend - £
2015	480,700
2016	691,700
2017	782,600
2018	639,300
2019	524,000
2020	587,400

36. The above figures reflect a total of £3,705,700. As was the case with some of the 2015 and 2020 turnover figures being outside of the relevant period, the same applies in respect of the marketing spend for those same years.

37. Mr Isaacs goes on to discuss the opponent's social media presence with reference to 'PANGAEA's' Facebook and Twitter pages and separate accounts for 'Medik8' and 'Nanogen'. There is also reference to a LinkedIn profile. Print-outs taken from these accounts are provided.¹³ Where there are posts visible on the accounts, they are from within the relevant period. As for follower counts, I note that 'PANGAEA's' Facebook page has 312 likes with 322 followers with its Twitter account having 29 followers. I note that the 'Medik8' and 'Nanogen' accounts have significantly more followers but make no mention of the 'PANGAEA' branding. The opponent has provided analytics for these accounts but these cover timeframes from outside the relevant period.¹⁴ Lastly, I note that where there are products shown on posts from any of these accounts, there is no reference shown to the 'PANGAEA' branding. Given Mr Isaacs's claims that the opponent is a large international brand, it is likely that some of the followers of these accounts come from outside of the UK or the EU, for that matter. Further, even though the posts shown come from within the relevant period, the print-outs themselves are all undated and there is no indication

¹³ Exhibit EI9

¹⁴ Also within Exhibit EI9

as to what the accounts' followings were during the relevant period. In any event, the social media following for 'PANGAEA' accounts is limited.

38. There is evidence provided that relates to awards that the opponent has obtained during the relevant period.¹⁵ The first award is 'Best New Male Hair Product' from the 'PURE BEAUTY AWARDS 2017'. This was awarded to the opponent in respect of a 'Nanogen' product. In addition, there is an email confirmation relating to the opponent being shortlisted for a 'Queen's Award for Enterprise: International Trade'. There is nothing before me to suggest the nature of these awards i.e. how they were voted for and who made up the voting body (members of the general public or a select panel of judges, for example). Further, there is nothing before me to suggest the reach of such awards.

39. Mr Isaacs, lastly, goes on to discuss the opponent's additional activities that include a collaboration with 'Perdoo OKR',¹⁶ support for various charities¹⁷ and the branding at its UK Head Office.¹⁸ Firstly, the Perdoo OKR report provided is of little assistance as there is no information as to what sort of reach it had across the average consumer base. As for the charity support, this is noted, but I fail to see how it constitutes use of the opponent's marks. Turning, lastly, to the signage at the UK Head Office, this is of no assistance to the point of use as there is nothing before me to suggest how frequently such signage is seen by members of the general public and whether it is associated with the actual goods at issue.

40. I note that in its evidence in chief, the applicant filed evidence as to the size of the cosmetics market in the UK. The applicant has provided copies of the relevant pages from the annual reports regarding this market for the years 2016 to 2020. I note that these show that the market was worth approximately £9.379 billion in 2016, £9.769 billion in 2017, £9.681 billion in 2019, £9.348 billion in 2019 and £8.712 billion in 2020. Clearly, this represents an enormous market.

¹⁵ Exhibit E111

¹⁶ Exhibit E112

¹⁷ Exhibit E113

¹⁸ Exhibit E114

Conclusions on genuine use

41. The evidence is, in my view, clear in that it shows that the opponent operates a sizeable business. However, the issue facing the opponent in these proceedings is down to how its marks are used and whether this constitutes genuine use of the marks at issue, i.e. whether the use of the marks is consistent with the essential function of a trade mark. On this point, I note that the narrative evidence of Mr Isaacs sets out that the opponent has produced and sold 'PANGAEA' branded products throughout the UK¹⁹ and that it has been used as a badge of origin and branding on the 'Medik8' skincare range.²⁰ While I do not disbelieve that Mr Isaacs considers that the opponent's use of 'PANGAEA' is as a badge of origin, this is not relevant to the assessment I must make. Instead, I must consider whether the average consumer considers it as such.

42. The issue of how the opponent has used its marks was a topic of detailed discussion at the hearing. It is not my intention to repeat the entirety of the submissions from the parties at this point, however, I will briefly summarise their respective positions. The opponent argues that the use shown in the evidence is genuine trade mark use of the marks at issue. As for the applicant's position, Ms Michaels stated at the hearing that the use shown in the evidence is not the sort of use that one would expect to see for a house branding as it is not on the front of the products and is not used in conjunction with an indicator of a sub-brand, for example. Ms Michaels doubts that the average consumer will spot use of the 'PANGAEA' marks and that the use does not, therefore, serve to function as an indicator of origin. As above, it is not my intention to discuss in detail the parties' submissions on this issue but I confirm that I have taken them into account whilst making this assessment.

43. In assessing the evidence, I note that I have nothing before me that shows any goods branded solely as 'PANGAEA' products. The only evidence of use on actual products is that which is discussed at paragraph 27 above, being examples of

¹⁹ Paragraph 14 of the Witness Statement of Elliot Isaacs

²⁰ Paragraph 16 of the Witness Statement of Elliot Isaacs

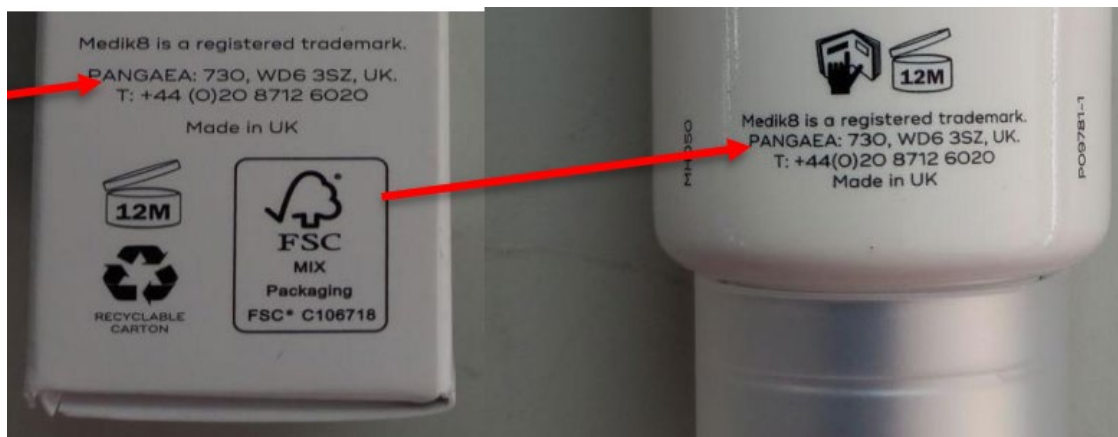
various products in the opponent's 'Nanogen' and 'Medik8' ranges. While the remaining evidence is noted, it is either from outside the relevant period or does not purport to show any use of the opponent's marks whatsoever. Briefly, I note that the print-outs from the opponent's website are undated or make reference to dates outside the relevant period so cannot be said to be reflective of the position as at the relevant date. While the website information provided is from during the relevant period, I repeat what I have said above in that it is not clear as to what this evidence purports to show. Further, the print-out from Amazon relates to products listed for sale after the relevant period ended and, even so, any reference to 'PANGAEA' is limited (in that it is referred to at the very bottom of the print-outs provided). As for the SpaceNK print-out, this is undated and shows use of the 'Medik8' branding only. I accept that the Boots print-outs are from within the relevant period but they make no reference to the opponent's marks whatsoever and even go so far as to show the brand of goods listed as being 'Nanogen'. Lastly, the social media accounts for 'Medik8' and 'Nanogen' make no reference to 'PANGAEA' whatsoever. As for the 'PANGAEA' account, this makes no reference to any actual products and, in any event, the following for this account is very limited.

44. As a result of what I have said in the preceding paragraph, I am of the view that my entire assessment hinges on the use demonstrated at paragraph 27 above. Such use poses a certain problem for the opponent on the basis that, in order to find that this use satisfies the essential function of a trade mark, I must be satisfied that upon selecting the goods at issue the consumer or end user would see the opponent's mark on the back of the products and, if they did, whether they would use it to identify the origin of those goods (be that primary or secondary).

45. In order to make such an assessment, I consider it necessary to first assess how the goods at issue are usually selected by average consumers. The average consumer base for the goods at issue will be ordinary members of the general public who will select them having viewed them on shelves in physical retailers or images of them on websites. Such a process depends predominantly on the visual component; however, I do not discount aural considerations stemming from advice from sales assistants or word of mouth recommendations. When selecting these

goods, the average consumer will consider various factors such as purpose, cost, ingredients and whether the goods have been tested on animals. This, in my view, results in a medium degree of attention.

46. As alluded to above, I will now turn to consider in detail how 'PANGAEA' is presented on the goods at issue and then conclude whether this satisfies the essential function of a trade mark or not. I remind myself that the evidence referred to at paragraph 27 above shows 39 different products, all of which bear the word 'PANGAEA'. While not all products were reproduced above, I consider that the examples provided are in line with how 'PANGAEA' is presented in the 39 product photographs. For the purpose of making my present assessment, I provide the following example of one product, albeit zoomed in for clarity:²¹



47. While I accept that 'PANGAEA' is clear in the above photograph, I repeat the fact that it is zoomed in. For the full impact of this issue to be apparent, I consider that the above photograph must be viewed in context with the entirety of the packaging for this same product. This is as follows:

²¹ See product listing number 13, which can be found at page 37 of Exhibit EI05



48. The front of the packaging for the above product is not shown. Given that the above image is of a 'Medik8' product, it is reasonable to infer that the front of the packaging includes the mark 'Medik8'. If it was the case that the front of the packaging included the word 'PANGAEA', I consider it reasonable to expect the evidence to include an image of such and, as per the case of *Plymouth Life* (cited above), I am entitled to be sceptical of the fact that no evidence showing this has been provided. On this point, there is no evidence before me of any product with 'PANGAEA' elsewhere on packaging and, as such, I can only conclude that the above example is indicative of the only way in which the opponent has sought to use its marks during the relevant period.

49. Using the above product as an example, I am of the view that, in selecting the product, the average consumer would pick it up off a shelf or from an image on a website and immediately consider that 'Medik8' was the indicator of origin. I see no reason why they would need to consider the packaging any further in order to identify another indicator of origin. As I have discussed above, the average consumer is likely to consider the ingredients of the goods and whether the goods

have been tested on animals or not. These are, in my view, ordinary considerations that would result in the consumer looking at the back of the packaging. Even in doing so, I have no reason to believe that they would notice the wording 'PANGAEA'. I say this on the basis that 'PANGAEA' is presented in such a small manner at the bottom of the package and is placed underneath the trade mark information of the product (which refers to 'Medik8', not 'PANGAEA') and together with information regarding the packaging, expiration of the product and recycling. I am of the view that the average consumer would not give any consideration to this part of the packaging upon the purchase of said products.

50. That being said, I cannot fully discount the fact that 'PANGAEA' would be seen by at least a significant proportion of average consumers. However, I am of the view that even if it was noticed, the average consumer would not believe that 'PANGAEA' was intended to have a trade mark function and would not consider it as a badge of origin. I say this based on the fact it is only referenced once on the packaging and its size and placement is such that the consumer would not give it any serious consideration, especially to the point where it would be viewed as something that is intended to be indicative of the origin of the goods. Even if the consumer was to consider it further, I still do not think that it would be viewed as a trade mark on the basis that the average consumer would expect any trade mark to feature more noticeably elsewhere on the packaging. On this point, I also note that the reference to 'PANGAEA' is immediately beneath a reference to 'Medik8' being the registered trade mark. In such circumstances, I am of the view that the average consumer would expect 'PANGAEA' to also be referred to as a registered trade mark on the packaging if it was meant to be viewed as one.

51. Taking all of the evidence into account and in light of my comments above, I hereby conclude that the use shown in the evidence of the way in which the opponent uses 'PANGAEA' on its products does not satisfy the essential function of a trade mark. This is on the primary basis that it would not be noticed. However, even if it was, I make a secondary finding that it will not be viewed as an indicator that guarantees either the primary or secondary origin of the goods at issue. As a result, I find that the opponent has failed to show genuine use of its marks meaning that the

opponent is not entitled to rely on either of them under its 5(2)(b) ground. The opposition must, therefore, fail.

CONCLUSION

52. The opposition fails in its entirety and the application may, therefore, proceed to registration.

COSTS

53. As the applicant has been successful, it is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 2/2016. In the circumstances, I award the applicant the sum of **£1,500** as a contribution towards its costs. The sum is calculated as follows:

Considering the notice of opposition and preparing a counterstatement:	£200
Considering the opponent's evidence and preparing evidence:	£500
Preparation for and attendance at the hearing:	£800
Total:	£1,500

54. I hereby order Pangaea Laboratories Limited to pay Pangaea Materials Science Limited the sum of £1,500. The above sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 25th day of April 2023

A COOPER
For the Registrar

ANNEX

Class 3

Non-medicated cosmetics and toiletry preparations; non-medicated dentifrices; perfumery, essential oils; bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; Soaps; essential oils, cosmetics, hair lotions; Dentifrices; Toothpaste; Mouthwash; Non-medicated toilet preparations; Pre-shave and after shave lotions; Deodorants and antiperspirant preparations; Cosmetic and toilet preparations for use in the bath; Bath foam; Shower gels; Body lotion; Cosmetics all for sale as part of a kit; Cleansing, toning, moisturising and exfoliating preparations and exfoliating substances; Sachets for perfuming linen; Make-up preparations; Makeup all for sale as part of a kit; Emollients and emollient substances; Essential oils, Massage oils and Massage lotions.

Class 5

Pharmaceuticals, medical and veterinary preparations; sanitary preparations for medical purposes; dietetic food and substances adapted for medical or veterinary use, food for babies; dietary supplements for human beings and animals; plasters, materials for dressings; sanitary preparations for personal hygiene, other than toiletries; diapers for babies and for incontinence; medicated shampoos, soaps, lotions and dentifrices; dietary supplements intended to supplement a normal diet or to have health benefits; meal replacements and dietetic food and beverages adapted for medical or veterinary use.

Class 9

Scientific, research, navigation, surveying, photographic, cinematographic, audiovisual, optical, weighing, measuring, signalling, detecting, testing, inspecting, life-saving and teaching apparatus and instruments; apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data; recorded and downloadable media, computer software, blank digital or analogue recording and storage media; diving suits, divers' masks, ear plugs for divers, nose clips for divers and swimmers, gloves for divers, breathing apparatus for underwater swimming; clothing that protects against serious or life-threatening injuries, for example, clothing

for protection against accidents, irradiation and fire, bullet-proof clothing, protective helmets, head guards for sports, mouth guards for sports, protective suits for aviators, knee-pads for workers; sunglasses, eyeglasses; contact lenses, magnifying glasses, mirrors for inspecting work; smart glasses; smartwatches; wearable activity trackers; notebook bags and cases; eyeglass cases; cases for smartphones; cases especially made for photographic apparatus and instruments; Part and accessories for all the aforesaid goods.

Class 14

Precious metals and their alloys; jewellery, precious and semi-precious stones; horological and chronometric instruments.

Class 16

Paper and cardboard; printed matter; bookbinding material; photographs; stationery and office requisites, except furniture; adhesives for stationery or household purposes; drawing materials and materials for artists; paintbrushes; instructional and teaching materials; plastic sheets, films and bags for wrapping and packaging; printers' type, printing blocks; paper knives and paper cutters; cases, covers and devices for holding or securing paper, namely, document files, money clips, holders for cheque books, paper-clips, passport holders, scrapbooks; painting articles for use by artists and interior and exterior painters, for example, artists' watercolour saucers, painters' easels and palettes, paint rollers and trays; disposable paper products, namely, bibs, handkerchiefs and table linen of paper; picture stories; Books; Books for children; Picture books; Comic books, graphic novels; Magazines (periodicals); Notebooks; Diaries; Scrapbooks, sketchbook albums; Photographic albums; Poster books; Sticker albums; Stickers [stationery]; Vehicle bumper stickers; And posters; Collectable trading cards; Collectable cards; Collectors' albums; Artists' materials, namely crayons, markers, coloured pencils, paint brushes, pre-printed sheets or posters for colouring or painting; Blackboards; Chalk and chalkboards; Decals and iron-on heat transfers; School supplies, namely pens, pencils, rubber erasers, pencil cases, pencil sharpeners, rulers, staplers, paperweights, notebooks, folders, ring binders, spiral notepads, book covers and bookmarks; Stationery, writing paper, envelopes, note cards, greeting cards, postcards, notepads, memo pads; Appointment books;

Calendars; Printed patterns for costumes; party goods made of paper, namely gift paper, paper doyleys, Crepe paper, Invitation cards, Paper cake decorations, Table napkins of paper, tablemats being of paper, Centrepieces of paper, tablecloths made of paper.

Class 18

Leather and imitations of leather; luggage and carrying bags; umbrellas and parasols; walking sticks; collars, leashes and clothing for animals; luggage or baggage tags; business card cases and pocket wallets; boxes and cases of leather or leatherboard; Luggage, bags, wallets and other carriers; Trunks and travelling bags; Sport bags; Beach bags; Hipsacks; shore bags; Duffel bags; Backpacks; Satchels; Cross-body bags; Shopping bags; Towelling bags; Vanity cases (sold empty); Toiletry bags; Suit carriers being travelling bags; Weekend bags; Work bags; Umbrellas, parasols and walking sticks; Whips, harness and saddlery; Purses; Clutch purses; Coin purses; Bags for holding cosmetics; Evening clutch bags; Wallets, not of precious metal; Parts and accessories for all the aforesaid goods.

Class 20

Furniture, mirrors, picture frames; containers, not of metal, for storage or transport; metal furniture; furniture for camping, gun racks, newspaper display stands; indoor window blinds and shades; bedding, for example, mattresses, bed bases, pillows; looking glasses, furniture and toilet mirrors.

Class 22

Ropes and string; nets; tents and tarpaulins; awnings of textile or synthetic materials; sails; sacks for the transport and storage of materials in bulk; padding, cushioning and stuffing materials, except of paper, cardboard, rubber or plastics; raw fibrous textile materials and substitutes therefor; Padding and stuffing material; down; vegan down; vegan padding and stuffing material; Fibers for textile use; Carbon fibers [fibres] for textile use, Binding twine made of natural textile fibres; Carbon fibers for textile use; Ceramic textile fibres; Chemical fibers for textile use; Cords made of textile fibres; Fibers (Textile -); Fibres being partly prepared synthetic materials for textile use; glass fibers for textile use; Non-woven polymeric fibers for textile use; Non-woven textile

fibres; Polymeric fibers for textile use; plastic fibers for textile use; polyester fibers for textile use; natural fibers for textile use; Raw textile fibers and substitutes; Synthetic fibers for textile use; Textile filaments.

Class 24

Textiles and substitutes for textiles; household linen; curtains of textile or plastic; household linen, for example, bedspreads, pillow shams, towels of textile; bed linen of paper; sleeping bags, sleeping bag liners; mosquito nets; Textiles and textile goods, not included in other classes; Bed covers; Table covers; Bath linens, namely, bath towels and wash cloths; bed linens, namely, Bed covers, Bed canopies, Bed pads, Bed sheets, quilt bedding, Bed covers, Pillowcases, Comforters, Duvet covers, Mattress covers, Bed skirts, Blankets, Throws, Shams; Textile wall hangings; Curtains; Cotton, polyester and/or nylon fabric; Linens; Kitchen linen, namely, Textile napkins, Dish cloths, Table covers of textile, Kitchen towels, Individual place mats made of textile, Bath mitts, Fabric table runners, Textile coasters; Pocket handkerchiefs, quilt bedding, Bed covers, and Golf towels; Travelling rugs [lap robes]; Lap rugs; quilt bedding, Bed covers, canopies; Sleeping bags (sheeting); Cloth; Fabrics; Table covers and table linen; Place mats; Napkins, serviettes and table runners; Kitchen linen, namely, Doilies of textile, Textile napkins, Table covers of textile, Kitchen towels, Individual place mats made of textile, Curtain holders of textile material; Banners of textile or plastic; Cushion covers; Coverings for furniture; Curtains for showers; Bunting of textile or plastic; Curtains of textile or plastic; Flags of textile or plastic; Furniture coverings of plastic; Plastic material [substitute for fabrics]; Shower curtains of textile or plastic; Textile goods, and substitutes for textile goods; Coated fabrics; Coated textiles; Coated woven textile materials; woven textile materials; Coverings (Furniture -) of textile; Fabrics being textile piece goods made of mixtures of fibres; Fabrics for textile use; Knitted fabrics; Lining fabrics; Material (Textile -); Mesh-woven fabrics; woven fabrics; Mixed fiber fabrics; Non-woven fabrics; Textile fabrics; Textile sheets; Textile materials.

Class 28

Games, toys and playthings; video game apparatus; gymnastic and sporting articles; decorations for Christmas trees; Paper party hats; Card games; Hand held units for

playing electronic games; Toys, games and playthings; Toy action figures and accessories, Toy vehicles; Action play sets sold as a unit for playing a creative games; Soft sculpture dolls, Figurines with movable joints, Puppets; Balloons, Water toys, Inflatable toys; Chess games; Board games; Puzzles; Kites; Role playing games; Kits of parts [sold complete] for making toy models; Hand tools being toys; Hand-held electronic games; Gymnastic and sporting articles; Skateboards; Ice skates; Rollerskates, In-line roller skates, Protective elbow pads and knee pads for use when skateboarding; jump ropes; Snow sleds for recreational use; Sailboards; Swimboards for recreational use; Toy bakeware and toy cookware; Balls; Part and accessories for all the aforesaid goods.

Class 30

Coffee, tea, cocoa and artificial coffee; rice, pasta and noodles; tapioca and sago; flour and preparations made from cereals; bread, pastries and confectionery; chocolate; ice cream, sorbets and other edible ices; sugar, honey, treacle; yeast, baking-powder; salt, seasonings, spices, preserved herbs; vinegar, sauces and other condiments; ice (frozen water).

Class 32

Beers; non-alcoholic beverages; mineral and aerated waters; fruit beverages and fruit juices; syrups and other non-alcoholic preparations for making beverages.

Class 35

Advertising, marketing, promotion, retail (whether in store, by mail order, telephone, or via the internet) of Non-medicated cosmetics and toiletry preparations, non-medicated dentifrices, perfumery, essential oils, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, Soaps, essential oils, cosmetics, hair lotions, Dentifrices, Toothpaste, Mouthwash, Non-medicated toilet preparations, Pre-shave and after shave lotions, Deodorants and antiperspirant preparations, Cosmetic and toilet preparations for use in the bath, Bath foam, Shower gels, Body lotion, Cosmetics all for sale as part of a kit, Cleansing, toning, moisturising and exfoliating preparations and exfoliating substances, Sachets for perfuming linen, Make-up preparations, Makeup all for sale as part of a kit,

Emollients and emollient substances, Essential oils, Massage oils and Massage lotions, Pharmaceuticals, medical and veterinary preparations, sanitary preparations for medical purposes, dietetic food and substances adapted for medical or veterinary use, food for babies, dietary supplements for human beings and animals, plasters, materials for dressings, sanitary preparations for personal hygiene, other than toiletries, diapers for babies and for incontinence, medicated shampoos, soaps, lotions and dentifrices, dietary supplements intended to supplement a normal diet or to have health benefits, meal replacements and dietetic food and beverages adapted for medical or veterinary use, Scientific, research, navigation, surveying, photographic, cinematographic, audiovisual, optical, weighing, measuring, signalling, detecting, testing, inspecting, life-saving and teaching apparatus and instruments, apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data, recorded and downloadable media, computer software, blank digital or analogue recording and storage media, diving suits, divers' masks, ear plugs for divers, nose clips for divers and swimmers, gloves for divers, breathing apparatus for underwater swimming, clothing that protects against serious or life-threatening injuries, for example, clothing for protection against accidents, irradiation and fire, bullet-proof clothing, protective helmets, head guards for sports, mouth guards for sports, protective suits for aviators, knee-pads for workers, sunglasses, eyeglasses, contact lenses, magnifying glasses, mirrors for inspecting work, smart glasses, smartwatches, wearable activity trackers, notebook bags and cases, eyeglass cases, cases for smartphones, cases especially made for photographic apparatus and instruments, Precious metals and their alloys, jewellery, precious and semi-precious stones, horological and chronometric instruments, Paper and cardboard, printed matter, bookbinding material, photographs, stationery and office requisites, except furniture, adhesives for stationery or household purposes, drawing materials and materials for artists, paintbrushes, instructional and teaching materials, plastic sheets, films and bags for wrapping and packaging, printers' type, printing blocks, paper knives and paper cutters, cases, covers and devices for holding or securing paper, namely, document files, money clips, holders for cheque books, paper-clips, passport holders, scrapbooks, painting articles for use by artists and interior and exterior painters, for example, artists' watercolour saucers, painters' easels and palettes, paint rollers and trays, disposable paper products, namely, bibs, handkerchiefs and table linen of

paper, picture stories, Books, Books for children, Picture books, Comic books, graphic novels, Magazines (periodicals), Notebooks, Diaries, Scrapbooks, sketchbook albums, Photographic albums, Poster books, Sticker albums, Stickers [stationery], Vehicle bumper stickers, And posters, Collectable trading cards, Collectable cards, Collectors' albums, Artists' materials, namely crayons, markers, coloured pencils, paint brushes, pre-printed sheets or posters for colouring or painting, Blackboards, Chalk and chalkboards, Decals and iron-on heat transfers, School supplies, namely pens, pencils, rubber erasers, pencil cases, pencil sharpeners, rulers, staplers, paperweights, notebooks, folders, ring binders, spiral notepads, book covers and bookmarks, Stationery, writing paper, envelopes, note cards, greeting cards, postcards, notepads, memo pads, Appointment books, Calendars, Printed patterns for costumes, party goods made of paper, namely gift paper, paper doyleys, Crepe paper, Invitation cards, Paper cake decorations, Table napkins of paper, tablemats being of paper, Centrepieces of paper, tablecloths made of paper, Leather and imitations of leather, luggage and carrying bags, umbrellas and parasols, walking sticks, collars, leashes and clothing for animals, luggage or baggage tags, business card cases and pocket wallets, boxes and cases of leather or leatherboard, Luggage, bags, wallets and other carriers, Trunks and travelling bags, Sport bags, Beach bags, Hipsacks, shore bags, Duffel bags, Backpacks, Satchels, Cross-body bags, Shopping bags, Towelling bags, Vanity cases (sold empty), Toiletry bags, Suit carriers being travelling bags, Weekend bags, Work bags, Umbrellas, parasols and walking sticks, Whips, harness and saddlery, Purses, Clutch purses, Coin purses, Bags for holding cosmetics, Evening clutch bags, Furniture, mirrors, picture frames, containers, not of metal, for storage or transport, metal furniture, furniture for camping, gun racks, newspaper display stands, indoor window blinds and shades, bedding, for example, mattresses, bed bases, pillows, looking glasses, furniture and toilet mirrors, Ropes and string, nets, tents and tarpaulins, awnings of textile or synthetic materials, sails, sacks for the transport and storage of materials in bulk, padding, cushioning and stuffing materials, except of paper, cardboard, rubber or plastics, raw fibrous textile materials and substitutes therefor, Padding and stuffing material, down, vegan down, vegan padding and stuffing material, Fibers for textile use, Carbon fibers [fibres] for textile use, Binding twine made of natural textile fibres, Carbon fibers for textile use, Ceramic textile fibres, Chemical fibers for textile use, Cords made of textile fibres,

Fibers (Textile -), Fibres being partly prepared synthetic materials for textile use, glass fibers for textile use, Non-woven polymeric fibers for textile use, Non-woven textile fibres, Polymeric fibers for textile use, plastic fibers for textile use, polyester fibers for textile use, natural fibers for textile use, Raw textile fibers and substitutes, Synthetic fibers for textile use, Textile filaments, Textiles and substitutes for textiles, household linen, curtains of textile or plastic, household linen, for example, bedspreads, pillow shams, towels of textile, bed linen of paper, sleeping bags, sleeping bag liners, mosquito nets, Textiles and textile goods, not included in other classes, Bed covers, Table covers, Bath linens, namely, bath towels and wash cloths, bed linens, namely, Bed covers, Bed canopies, Bed pads, Bed sheets, quilt bedding, Bed covers, Pillowcases, Comforters, Duvet covers, Mattress covers, Bed skirts, Blankets, Throws, Shams, Textile wall hangings, Curtains, Cotton, polyester and/or nylon fabric, Linens, Kitchen linen, namely, Textile napkins, Dish cloths, Table covers of textile, Kitchen towels, Individual place mats made of textile, Bath mitts, Fabric table runners, Textile coasters, Pocket handkerchiefs, quilt bedding, Bed covers, and Golf towels, Travelling rugs [lap robes], Lap rugs, quilt bedding, Bed covers, canopies, Sleeping bags (sheeting), Cloth, Fabrics, Table covers and table linen, Place mats, Napkins, serviettes and table runners, Kitchen linen, namely, Doilies of textile, Textile napkins, Table covers of textile, Kitchen towels, Individual place mats made of textile, Curtain holders of textile material, Banners of textile or plastic, Cushion covers, Coverings for furniture, Curtains for showers, Bunting of textile or plastic, Curtains of textile or plastic, Flags of textile or plastic, Furniture coverings of plastic, Plastic material [substitute for fabrics], Shower curtains of textile or plastic, Textile goods, and substitutes for textile goods, Coated fabrics, Coated textiles, Coated woven textile materials, woven textile materials, Coverings (Furniture -) of textile, Fabrics being textile piece goods made of mixtures of fibres, Fabrics for textile use, Knitted fabrics, Lining fabrics, Material (Textile -), Mesh-woven fabrics, woven fabrics, Mixed fiber fabrics, Non-woven fabrics, Textile fabrics, Textile sheets, Textile materials, Clothing, footwear, headwear, Trunks, Non-slipping devices for footwear, bath sandals, bath slippers, stockings, berets, caps [headwear], hosiery, boots, half- boots, lace boots, collars [clothing], neck scarves [mufflers], camisoles, boxer shorts, skull caps, bodices [lingerie], hoods [clothing], hat frames [skeletons], cappeaks, belts [clothing], shawls, dressing gowns, chasubles, socks, sock suspenders, garters, stockingsuspenders, boot uppers, inner soles, shirts,

shirt fronts, short-sleeve shirts, hats, headgear for wear, fittings of metal for footwear, furs [clothing], detachable collars, tights, wet suits for waterskiing, combinations [clothing], corselets, suits, ready-made clothing, babies' pants [underwear], earmuffs [clothing], neckties, footwear uppers, breeches for wear, trousers, cyclists' clothing, outerclothing, gloves [clothing], ready-made linings [parts of clothing], sashes for wear, knitwear [clothing], shirt yokes, esparto shoes or sandals, fur stoles, top hats, gabardines [clothing], corsets [underclothing], girdles, wimples, gymnastic shoes, coats, waterproof clothing, leggings [leg warmers], jerseys [clothing], skirts, layettes [clothing], liveries, sports jerseys, aprons [clothing], muffs [clothing], maniples, mittens, slippers, pelerines, pelisses, beach clothes, beach shoes, pockets for clothing, pyjamas, dresses, wooden shoes, sandals, underpants, brassieres, heelpieces for footwear, togas, welts for footwear, uniforms, stuff jackets [clothing], jackets [clothing], down jackets, paper clothing, veils [clothing], bathing caps, bath robes, soles for footwear, shoes, sports shoes, footmuffs, not electrically heated, studs for football boots, boots for sports, headbands [clothing], parkas, petticoats, ski boots, slips [underclothing], bandanas [neckerchiefs], clothing for gymnastics, clothing of imitations of leather, clothing of leather, mantillas, masquerade costumes, saris, tee-shirts, turbans, ascots, shower caps, fishing vests, money belts [clothing], pocket squares, paper hats [clothing], sleep masks, skorts, ponchos, sarongs, ski gloves, leggings [trousers], visors [headwear], sports singlets, albs, ankle boots, sweat-absorbent socks, hairdressing capes, karate uniforms, judo uniforms, leotards, kimonos, Mitres [hats], Teddies [underclothing], bodies [underclothing], panties, knickers, smocks, boas [necklets], Braces for clothing [suspenders], sweaters, pullovers, jumpers, cuffs, wristbands, overcoats, jumperdresses, pinafore dresses, bathing trunks, bathing drawers, bathing suits, gaiter straps, vests, waistcoats, galoshes, football shoes, football boots, scarfs, scarves, gaiters, spats, sweat-absorbent underwear, sweat-absorbent underclothing, underwear, underclothing, Games, toys and playthings, video game apparatus, gymnastic and sporting articles, decorations for Christmas trees, Paper party hats, Card games, Hand held units for playing electronic games, Toys, games and playthings, Toy action figures and accessories, Toy vehicles, Action play sets sold as a unit for playing a creative games, Soft sculpture dolls, Figurines with movable joints, Puppets, Balloons, Water toys, Inflatable toys, Chess games, Board games, Puzzles, Kites, Role playing games, Kits

of parts [sold complete] for making toy models, Hand tools being toys, Hand-held electronic games, Gymnastic and sporting articles, Skateboards, Ice skates, Rollerskates, In-line roller skates, Protective elbow pads and knee pads for use when skateboarding, jump ropes, Snow sleds for recreational use, Sailboards, Swimboards for recreational use, Toy bakeware and toy cookware, Balls, Coffee, tea, cocoa and artificial coffee, rice, pasta and noodles, tapioca and sago, flour and preparations made from cereals, bread, pastries and confectionery, chocolate, ice cream, sorbets and other edible ices, sugar, honey, treacle, yeast, baking-powder, salt, seasonings, spices, preserved herbs, vinegar, sauces and other condiments, ice (frozen water), Beers, non-alcoholic beverages, mineral and aerated waters, fruit beverages and fruit juices, syrups and other non-alcoholic preparations for making beverages, alcoholic beverages.

Class 40

Treatment and transformation of textiles, fabrics and clothing; Treatment of materials for the manufacture of textiles, fabrics and clothing; Custom manufacture of textiles, fabrics and clothing.