

O/0075/26

TRADE MARKS ACT 1994

IN THE MATTER OF UK TRADE MARK REGISTRATION NO. 3599317

IN THE NAME OF CUIYUAN ZHANG

TO REGISTER THE FOLLOWING TRADE MARK:

**targetone**

IN CLASS 11

AND

THE APPLICATION FOR THE INVALIDATION THEREOF UNDER NO. 507056

BY TARGET BRANDS, INC.

## Background and pleadings

1. On 23 February 2021, Cuiyuan Zhang (“the proprietor”) applied to register the trade mark “targetone” in the UK (“the contested mark”). The application was accepted and published in the Trade Marks Journal on 16 April 2021. It was registered on 25 June 2021 in respect of the following goods:

*Class 11: Light bulbs, electric; Lamps; Electric lights for Christmas trees; Fairy lights for festive decoration; Bread toasters; Coffee machines, electric; Barbecues; Deep fryers, electric; Air fryers; Wine cellars, electric; Ice-cream making machines; Beverage cooling apparatus; Electric beverage heaters; Hair driers; Fans [parts of air-conditioning installations]; Air sterilisers; Electric fans for personal use; Laundry driers, electric; Turkish bath cabinets, portable; Footmuffs, electrically heated; Pocket warmers.*

2. On 27 February 2024, Target Brands, Inc. (“the cancellation applicant”) applied to invalidate the contested mark on the basis of sections 47(2)(a) and 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The application for invalidation relies upon the cancellation applicant’s four earlier UK marks:

### 1. TARGET

UK registration number: UK00003301116

Filing date: 3 April 2018

Registration date: 4 March 2022

*(“the ‘116 registration”)*

2. 

UK registration number: UK00003505854

Filing date: 29 June 2020

Registration date: 11 March 2022

*(“the ‘854 registration”)*



UK registration number: UK00003506341

Filing date: 30 June 2020

Registration date: 17 September 2021

*("the '341 registration")*



UK registration number: UK00003506330

Filing date: 30 June 2020

Registration date: 27 August 2021

*("the '330 registration")*

3. The services relied upon for this invalidation are provided in Annex 1.

4. The cancellation applicant submits that the marks at issue are similar and that the parties' goods and services are identical or similar. On this basis, the cancellation applicant submits that there is a likelihood of confusion and that the contested mark should therefore be declared invalid under section 5(2)(b) of the Act.

5. The proprietor filed a counterstatement denying the grounds of invalidation. It denies that there is any similarity between its goods and the cancellation applicant's services. It also states that the marks are not similar.

6. Both parties filed evidence and the cancellation applicant filed submissions in lieu of a hearing. No hearing was requested and so this decision is taken following a careful perusal of the papers.

7. The cancellation applicant is represented by Cleveland Scott York. The proprietor is represented by Nieves Castro Capitán of Arcade & Asociados.

8. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

## **Preliminary issues**

### Section 5(3)

9. The application for invalidity originally stated that, under section 5(3), three of the earlier trade marks have a reputation and therefore that the use of the contested mark would take unfair advantage of, or be detrimental to, the distinctive character or reputation of the earlier mark.

10. This ground was withdrawn by written communication from the cancellation applicant on 1 October 2024, so it will not be considered in this decision.

### State of the register

11. In paragraph 30 of its counterstatement, the proprietor states that the earlier mark has a very low distinctiveness due to the number of other marks on the register that contain the word 'target'. In relation to the state of the register, in *Zero Industry Srl v OHIM*, Case T-400/06, the General Court ("GC") stated that:

"73. As regards the results of the research submitted by the applicant, according to which 93 Community trade marks are made up of or include the word 'zero', it should be pointed out that the Opposition Division found, in that regard, that '...there are no indications as to how many of such trade marks are

effectively used in the market'. The applicant did not dispute that finding before the Board of Appeal but none the less reverted to the issue of that evidence in its application lodged at the Court. It must be found that the mere fact that a number of trade marks relating to the goods at issue contain the word 'zero' is not enough to establish that the distinctive character of that element has been weakened because of its frequent use in the field concerned (see, by analogy, Case T-135/04 *GfK v OHIM – BUS(Online Bus)* [2005] ECR II-4865, paragraph 68, and Case T-29/04 *Castellblanch v OHIM – Champagne Roederer (CRISTAL CASTELLBLANCH)* [2005] ECR II-5309, paragraph 71). “

12. There is no evidence that any of the marks referred to by the proprietor are in use. The presence of other similar marks on the register, therefore, has no bearing on the present decision as the fact that a number of registered trade marks contain similar words is not enough to conclude that the distinctive character of that element has been weakened. I do not intend to make further reference to this issue within this decision.

### **Evidence**

13. Both parties filed witness evidence in support of their respective claims, which I will discuss further in this decision.

14. The cancellation applicant filed evidence in the form of a witness statement signed by Isabel Moya, dated 16 October 2024, in her capacity as a Chartered Trade Mark Attorney employed by Cleveland Scott York LLP, the legal representative of the cancellation applicant. This was accompanied by three exhibits, labelled IM1 to IM3.

15. Ms Moya's witness statement details an EUIPO opposition decision in which the proprietor's application for an EU trade mark was refused as a result of an opposition filed by the cancellation applicant. Ms Moya states that the mark refused was identical to the contested mark, as were the goods it sought registration for. The exhibits provided show the details of the mark that was refused and the decision issued. I note that, although the Tribunal continues to apply assimilated EU law, the decisions of the EUIPO do not fall within that. Additionally, the decision in question was issued after IP completion day so it would not have been retained even if it did fall within the assimilated EU law. I confirm that I have read this evidence but, as the EUIPO decision

is not binding, I will proceed to undertake a full assessment of all of the relevant factors in this decision.

16. The proprietor also filed evidence in the form of a witness statement signed by Isidro Díaz de Bustamante, dated 25 April 2025, in his capacity as a Trade Mark Lawyer employed by Arcade & Asociados, the legal representative of the proprietor. This was accompanied by five exhibits, labelled Annex 1 to Annex 5.

17. Mr de Bustamante's witness statement details the use of the proprietor's mark. Mr de Bustamante states that the proprietor's mark has been in use for 'lamps and lighting fixtures for parties' since June 2021. The evidence shows five Amazon listings for lights marketed for parties that are sold under the targetone brand. When assessing a likelihood of confusion, it is necessary to consider all the circumstances in which a mark may be used.<sup>1</sup> Additionally, as the cancellation applicant's marks are not subject to proof of use, I will undertake a notional assessment. Therefore, while I note the goods shown in Mr de Bustamante's evidence, I must take into account the goods and services of the parties' marks as they appear in the register.

## **DECISION**

18. The relevant part of section 47 of the Act states as follows:

"47. –

(1) [...]

(2) The registration of a trade mark may be declared invalid on the ground –

(a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain,

[...]

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

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<sup>1</sup> *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited*, Case C-533/06

[... ]

(2A) The registration of a trade mark may not be declared invalid on the ground that there is an earlier trade mark unless –

(a) the registration procedure for the earlier trade mark was completed within the period of five years ending with the date of the application for the declaration,

(b) the registration procedure for the earlier trade mark was not completed before that date, or

(c) the use conditions are met.”

19. An earlier trade mark is defined in section 6 of the Act as “a registered trade mark or international trade mark (UK) 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”.

20. By virtue of their earlier filing dates, the cancellation applicant’s above registrations constitute earlier marks in accordance with section 6 of the Act.

21. As the earlier marks had not been registered for a period of five years or more at the date on which the application for invalidation was filed, it is not subject to the use provisions set out at section 47(2A) of the Act.

22. 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”.

23. 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.”

24. The following principles are gleaned from the decisions of the Court of Justice of the European Union (“CJEU”) 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 C120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

- (a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

### **Comparison of the goods and services**

25. In comparing the respective specifications, all relevant factors should be considered, as per *Canon*, where the CJEU stated at paragraph 23 of its judgment:

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

26. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

- a. The respective uses of the respective goods or services;
- b. The respective users of the respective goods or services;
- c. The physical nature of the goods or acts of service;
- d. The respective trade channels through which the goods or services reach the market;
- e. In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- f. The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

27. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the GC stated that:

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

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

“... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless, the principle should not be taken too far. Treat was decided the way it was because the

ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

29. Further, in *Kurt Hesse v OHIM*,<sup>2</sup> the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*,<sup>3</sup> the GC stated that "complementary" means:

"...there is close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking."

30. With this in mind, the goods and services for comparison are as follows:

<b>Cancellation applicant's services:</b>	<b>Proprietor's goods:</b>
Provided in Annex 1	Class 11: <i>Light bulbs, electric; Lamps; Electric lights for Christmas trees; Fairy lights for festive decoration; Bread toasters; Coffee machines, electric; Barbecues; Deep fryers, electric; Air fryers; Wine cellars, electric; Ice-cream making machines; Beverage cooling apparatus; Electric beverage heaters; Hair driers; Fans [parts of air-conditioning installations]; Air sterilisers; Electric fans for personal use; Laundry driers, electric; Turkish bath</i>

<sup>2</sup> Case C-50/15 P

<sup>3</sup> Case T-325/06

	<i>cabinets, portable; Footmuffs, electrically heated; Pocket warmers.</i>
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31. In its submissions in lieu, the cancellation applicant submits that the intended purpose of its retail services is to encourage the sale of domestic electrical and electronic equipment, and that the proprietor's goods are complementary and have an overlap in users and trade channels as these goods are specified as the subject of the cancellation applicant's retail services.

32. In its counterstatement, the proprietor states that the marks cover dissimilar goods and services and belong to very different sectors of the market.

33. I note that the proprietor's mark is registered for goods and the cancellation applicant's mark is registered for services related to the retail of goods. In *Oakley, Inc v OHIM*, Case T-116/06, at paragraphs 46-57, 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.

*Light bulbs, electric; Electric lights for Christmas trees; Fairy lights for festive decoration; Lamps*

34. The above goods are most similar to the cancellation applicant's 'retail store services, retail services, online retail store services, and online retail services connected with the sale of [...] apparatus for lighting [...] all of the aforementioned services only in the field of, or in association with, operating retail stores and/or online retail stores and/or online marketplaces'. The cancellation applicant's services cover the retailing of the above goods. The nature, purpose and method of use clearly differ. However, the trade channels overlap and the users are the same. Additionally, the goods and services are complementary as the goods are required for the retail of said goods, and it is likely that the consumer would conclude that the same entity is responsible for both. Overall, I consider the above goods to have a medium degree of similarity to the cancellation applicant's 'retail store services, retail services, online retail store services, and online retail services connected with the sale of [...] apparatus for lighting [...] all of the aforementioned services only in the field of, or in

association with, operating retail stores and/or online retail stores and/or online marketplaces’.

*Bread toasters; Coffee machines, electric; Deep fryers, electric; Air fryers; ice cream making machines; Wine cellars, electric; Beverage cooling apparatus; Electric beverage heaters; Hair driers; Electric fans for personal use; Laundry driers, electric; Turkish bath cabinets, portable; Footmuffs, electrically heated*

35. The above goods are the most similar to the cancellation applicant’s ‘supermarket, department store, superstore, and convenience store services and online retail store services, online supermarket, online department store, online superstore, and online convenience store services, all connected with the sale of [...] domestic electrical and electronic equipment including major kitchen and laundry appliances [...] only in the field of, or in association with, operating retail stores and/or online retail stores and/or online marketplaces’. The cancellation applicant’s services cover the retailing of the above goods. The nature, purpose and method of use clearly differ. However, the trade channels and users overlap. The goods and services are complementary as the goods are required for the retail of said goods, and it is likely that the consumer would conclude that the same entity is responsible for both. Overall, I consider the above goods to have a medium degree of similarity to the cancellation applicant’s ‘supermarket, department store, superstore, and convenience store services and online retail store services, online supermarket, online department store, online superstore, and online convenience store services, all connected with the sale of [...] domestic electrical and electronic equipment including major kitchen and laundry appliances [...] only in the field of, or in association with, operating retail stores and/or online retail stores and/or online marketplaces’.

#### *Barbecues*

36. The above goods are most similar to the cancellation applicant’s ‘retail store services, retail services, online retail store services, and online retail services connected with the sale of [...] apparatus for [...] cooking [...], all of the aforementioned services only in the field of, or in association with, operating retail stores and/or online retail stores and/or online marketplaces’. The cancellation applicant’s services cover the retailing of the above goods. The nature, purpose and method of use differs.

However, the trade channels and users overlap. The goods and services are complementary as the goods are required for the retail of said goods, and it is likely that the consumer would conclude that the same entity is responsible for both. Overall, I consider the above goods to have a medium degree of similarity to the cancellation applicant's 'retail store services, retail services, online retail store services, and online retail services connected with the sale of [...] apparatus for [...] cooking [...], all of the aforementioned services only in the field of, or in association with, operating retail stores and/or online retail stores and/or online marketplaces'.

#### *Fans [parts of air-conditioning installations]*

37. The above goods are the most similar to the cancellation applicant's 'supermarket, department store, superstore, and convenience store services and online retail store services, online supermarket, online department store, online superstore, and online convenience store services, all connected with the sale of [...] apparatus for [...] ventilating [...], only in the field of, or in association with, operating retail stores and/or online retail stores and/or online marketplaces'. I do not consider the cancellation applicant's services to cover the retailing of air-conditioning installations. However, I do consider it likely that a retailer of air-conditioning apparatus, and therefore their parts, will also offer apparatus for ventilating. Trade channels therefore overlap, as do users. The nature, purpose and method of use differs. The goods and services are not complementary. Overall, I consider the above goods to have a low similarity to the cancellation applicant's 'supermarket, department store, superstore, and convenience store services and online retail store services, online supermarket, online department store, online superstore, and online convenience store services, all connected with the sale of [...] apparatus for [...] ventilating [...], only in the field of, or in association with, operating retail stores and/or online retail stores and/or online marketplaces'.

#### *Air sterilisers*

38. The above goods are most similar to the cancellation applicant's 'retail store services, retail services, online retail store services, and online retail services connected with the sale of [...] apparatus for [...] sanitary purposes [...], all of the aforementioned services only in the field of, or in association with, operating retail stores and/or online retail stores and/or online marketplaces'. The cancellation

applicant's services cover the retailing of the above goods. The nature, purpose and method of use clearly differ. However, the trade channels and users overlap. The goods and services are complementary as the goods are required for the retail of said goods, and it is likely that the consumer would conclude that the same entity is responsible for both. Overall, I consider the above goods to have a medium degree of similarity to the cancellation applicant's 'retail store services, retail services, online retail store services, and online retail services connected with the sale of [...] apparatus for [...] sanitary purposes [...], all of the aforementioned services only in the field of, or in association with, operating retail stores and/or online retail stores and/or online marketplaces'.

### *Pocket warmers*

39. The above goods are the most similar to the cancellation applicant's 'supermarket, department store, superstore, and convenience store services and online retail store services, online supermarket, online department store, online superstore, and online convenience store services, all connected with the sale of [...] apparatus for [...] heating [...], only in the field of, or in association with, operating retail stores and/or online retail stores and/or online marketplaces'. The cancellation applicant's services cover the retailing of the above goods. The nature, purpose and method of use clearly differ. However, the trade channels and users overlap. The goods and services are complementary as the goods are required for the retail of said goods, and it is likely that the consumer would conclude that the same entity is responsible for both. Overall, I consider the above goods to have a medium degree of similarity to the cancellation applicant's 'supermarket, department store, superstore, and convenience store services and online retail store services, online supermarket, online department store, online superstore, and online convenience store services, all connected with the sale of [...] apparatus for [...] heating [...], only in the field of, or in association with, operating retail stores and/or online retail stores and/or online marketplaces'.

### **Comparison of marks**

40. The opponent relies on four earlier marks, two of which consist of the word "TARGET"/"target" and two of which also contain a figurative element. The two marks that consist only of the word "TARGET"/"target" present the opponent's best case as

they are closer to the contested mark than the earlier marks containing a figurative element. I will therefore proceed to compare the contested mark with the opponent's '116 and '854 registrations and only return to its '341 and '330 registrations if required.

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

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

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

43. The respective trade marks are shown below:

The cancellation applicant's earlier marks	The proprietor's contested mark
1. <b>TARGET</b>  <i>“the '116 registration”</i>	<b>targetone</b>

<p>2. <b>target</b></p> <p><i>“the ‘854 registration”</i></p>	
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44. In its submissions in lieu, the cancellation applicant contends that the marks are highly visually and aurally similar, and conceptually identical.

45. In its counterstatement, the proprietor states that the marks are aurally similar to a very low degree and “perfectly differentiated” visually.

#### *Overall impression*

46. The ‘116 registration is a word-only mark consisting of the word ‘TARGET’. As the word is the only element, it dominates the impression of the mark.

47. The ‘854 registration is a figurative mark consisting of the word ‘target’ in a standard font and black colour. The word is overwhelmingly dominant in the overall impression, whilst the font used plays a minimal role and would likely not be noticed by the consumer.

48. The proprietor’s contested mark is a word-only mark consisting of the letters “targetone”. I consider that this mark would be viewed by a significant proportion of consumers as the two dictionary words “target” and “one”. I consider the word “target” to be more dominant, with the word “one” playing a smaller role in the mark.

#### *Visual comparison*

49. It is well established that the beginnings of marks tend to have more visual impact than the end of marks.<sup>4</sup> The visual similarity between the marks resides in the first six letters; ‘target’. The contested mark further contains three final letters: ‘one’.

50. The ‘854 registration uses a standard font. However, the registration of word-only marks (such as the contested mark) provides protection for use of the words in any

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<sup>4</sup> *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

font type or capitalisation (such as those used in the cancellation applicant's mark).<sup>5</sup> Therefore, this font choice does not act as a point of visual difference.

51. Overall, I consider that the marks are similar to an above medium degree.

#### *Aural comparison*

52. The cancellation applicant's marks both consist of the dictionary word "target". This word will be pronounced in the normal way.

53. The proprietor's contested mark consists of the letters "targetone". As noted above, I consider that a significant proportion of consumers would recognise, and therefore pronounce, the two dictionary words "target" and "one", which will be pronounced in the normal way.

54. The pronunciation of the marks therefore overlaps in the first word "target" but differs as the contested mark further includes the word "one". Overall, I consider that the marks are aurally similar to an above medium degree.

#### *Conceptual comparison*

55. As noted above, a significant proportion of consumers would view the contested mark as the two words "target" and "one".

56. Both the contested mark and the cancellation applicant's marks consist of the word "target". The consumer would understand this word to mean either a goal to be aimed at or the action of aiming at something or someone.

57. The contested mark further includes the final element "one". The consumer would understand this word to refer to the number one. As a whole, the consumer would understand the contested mark to refer to a first goal to be aimed at.

58. Overall, I consider that the marks have between a medium and high degree of conceptual similarity.

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<sup>5</sup> *La Superquímica v EUIPO*, Case T-24/17 and *Migros-Genossenschafts-Bund v EUIPO*, Case T-189/16.

## **Average consumer and the purchasing act**

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

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

60. The earlier and contested goods and services will be purchased by members of the general public as well as professionals for commercial use. Consideration will be taken of the quality and price of the goods and services. The goods and services will not likely be of a high value and will be purchased or used somewhat frequently. Both types of consumers will pay a medium degree of attention during the purchasing process.

61. The goods at issue will primarily be purchased in a store, online or over the phone as a result of viewing products in a catalogue. I consider that visual considerations will dominate the purchasing process, but I acknowledge that guidance may be given by sales associates, so aural considerations cannot be excluded.

## **Distinctive character of the earlier trade mark**

62. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97, the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

63. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it. The cancellation applicant has not filed any evidence of the use of its marks, so I have only the inherent position to consider.

64. In its counterstatement, the proprietor states that the earlier marks have a very low distinctiveness. In its submissions in lieu, the cancellation applicant submits that the earlier marks have a high level of distinctiveness.

65. The earlier ‘116 and ‘854 marks consist of the dictionary word ‘target’, which does not directly describe or allude to the services or to their characteristics. As a common dictionary word, it has a medium degree of inherent distinctiveness.

## **GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion**

66. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle, i.e., a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods or services and vice versa (*Canon* at [17]). It is necessary to keep in mind the distinctive character of the applicant's trade marks, the average consumer of the goods and services and the nature of the purchasing act. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind (*Lloyd Schuhfabrik* at [26]).

67. 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.

68. Earlier in this decision, I found the goods and services to have either a low or medium degree of similarity. I found the marks to be visually and aurally similar to a just above a medium degree, and to have between a medium and high conceptual similarity. I found the applicant's earlier registrations to possess a medium level of inherent distinctive character for the relevant services. I found that consumers would pay a medium degree of attention during the purchasing process, and that the goods and services would be selected primarily by visual means, although I did not discount aural considerations.

69. Considering direct confusion, I note the visual similarities between the marks, being the initial six letters 'target', which make up the entirety of the earlier marks. I note that the contested mark further includes the seventh to ninth letters 'one'. As noted above, the beginnings of marks tend to have more impact. I do not consider it likely that the word 'one' would stick in the mind of a consumer, particularly due to the high conceptual similarity between the marks. I therefore consider it likely that a

consumer would confuse the marks for each other on similar goods or services. As a result, I find there to be a likelihood of direct confusion between the marks for all of the contested goods.

70. If I am wrong and the addition of 'one' would register significantly in the minds of average consumers, the marks will nevertheless be indirectly confused. Indirect confusion occurs when the consumer recognises that the marks are different but puts the similarities between them down to the undertakings being the same or economically linked. This type of confusion was explained by Mr Iain Purvis Q.C., sitting as the Appointed Person in *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10:

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

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

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ('26 RED TESCO' would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as ‘LITE’, ‘EXPRESS’, ‘WORLDWIDE’, ‘MINI’ etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (‘FAT FACE’ to ‘BRAT FACE’ for example).”

71. I do not consider this case to fit neatly into one of the categories set out in *L.A. Sugar* above. However, I remind myself that these are not exhaustive. I also consider the relevance of *Medion vs Thomson*<sup>6</sup> and the subsequent case law. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), Arnold J. (as he then was) considered the impact of the CJEU’s judgment in *Bimbo*, Case C-591/12P, on the court’s earlier judgment in *Medion v Thomson*. The judge said:

“18. The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.

19. The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

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<sup>6</sup> Case C-120/04

20. The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).

21. The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors.”

72. Earlier I found that the word “target” dominates the contested mark, with the word “one” playing a smaller role. It is my view that “target” has an independent distinctive role in the mark, with “one” qualifying it. I did not find the word elements to form a unit that was more than the sum of their parts. Considering these factors, I find it likely in this instance that a consumer who has previously encountered similar or identical goods or services under the earlier “TARGET” mark will see a product or service under the “targetone” mark and note the additional word “one”, but recognise the word “target” as being linked to the goods or services of the earlier brand. In these circumstances, it is my view that the consumer is likely to consider “target” as an indication of origin in both marks, and the addition of “one” in the later mark as reference to an alternative range of goods or services from the same origin. The consumer is therefore likely to conclude that the goods and services are supplied by the same, or economically linked, undertakings.

73. Taking all of this into account, I consider there to be a likelihood of indirect confusion in relation the applicant’s goods and services where there is at least a low degree of similarity.

74. The present case falls into category (b) because I consider that the element ‘one’ is non-distinctive and could indicate a sub-brand or brand extension, indicating the

best or first range of products offered by the main Target brand. I therefore consider there to be a likelihood of indirect confusion in relation to all of the contested goods.

75. In its counterstatement, the registered proprietor states:

“19. In consequence, the respective trademarks at stake cover close dissimilar goods and services and they belong to very different sectors of the market, which is why the brands have been coexisting peacefully in the market, without interference between them, for at least three years.”

76. Although it has not been expressly pleaded, I consider this tantamount to an argument that the designation should be granted protection in the UK by virtue of a coexistence, or honest concurrent use, defence. In *Victoria Plumb Ltd v Victorian Plumbing Ltd* [2016] EWHC 2911 (Ch), Carr J considered the CJEU’s judgment in *Budejovický Budvar NP v Anheuser-Busch Inc. (BUDWEISER)*, Case C482/09, and the Court of Appeal’s judgments in that case and in *IPC Media Ltd v Media 10 Ltd* [2014] EWCA Civ 1403, and stated that a defence of honest concurrence use could, in principle, defeat an otherwise justified claim of trade mark infringement where the two parties had been using the same or closely similar names honestly for a long time and the guarantee of origin of the claimant’s trade mark was not impaired by the defendant’s use.

77. The BUDWEISER case had demonstrated that honest concurrent use may be relevant in cancellation proceedings. Nevertheless, the CJEU noted that the circumstances of that particular case were exceptional. The Court’s answer to the third question put to it was as follows:

“In the light of the foregoing, the answer to the third question is that Article 4(1)(a) of Directive 89/104 must be interpreted as meaning that the proprietor of an earlier trade mark cannot obtain the cancellation of an identical later trade mark designating identical goods where there has been a long period of honest concurrent use of those two trade marks where, in circumstances such as those in the main proceedings, that use neither has nor is liable to have an adverse effect on the essential function of the trade mark which is to guarantee to consumers the origin of the goods or services.”

78. Whether the exceptional circumstances referred to by the CJEU in BUDWEISER apply in a particular case is, ultimately, a question of fact. The evidence adduced by the registered proprietor does not show that the businesses have coexisted for a long period. On the contrary, only three of the exhibits show use of its “targetone” mark in the UK, with the two other exhibits relating to an Amazon web address accessible in Germany. No sales or advertising figures have been provided in connection with its mark. In light of this, I find that the evidence falls a long way short of what would be required to mount a successful honest concurrent use defence.

### Final Remarks

79. The invalidation under section 5(2)(b) has been successful in respect of all of the contested goods. Subject to any successful appeal, the application will be declared invalid in its entirety.

### COSTS

80. The cancellation applicant has achieved success in these proceedings and is therefore entitled to a contribution towards its costs. In the circumstances, I award the cancellation applicant the sum of £1400 as a contribution towards the cost of the proceedings, in accordance with Tribunal Practice Notice 1/2023. The sum is calculated as follows:

Filing the TM26(l) and statement of grounds and preparing and considering the TM8 and counterstatement:	£250
Preparing evidence and considering on the other side’s evidence:	£600
Filing submissions in lieu:	£350
Official fee:	£200
<b>Total:</b>	<b>£1400</b>

81. I therefore order Cuiyuan Zhang to pay Target Brands, Inc. the sum of £1400. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

**Dated this 30<sup>th</sup> day of January 2026**

**K HARBACH**

**For the Registrar**

## **Annex 1**

Services relied on under the '116 registration:

*Class 35: Retail store services, retail services, on-line retail store services, and on-line retail services connected with the sale of chemicals for use in industry, science, photography, agriculture, horticulture and forestry, unprocessed artificial resins, unprocessed plastics, fire extinguishing and fire prevention compositions, fire proofing preparations, tempering and soldering preparations, automotive maintenance and repair supplies and equipment, anti-freeze and automotive accessories, coolants for vehicle engines, chemical substances for preserving foodstuffs, substances for tanning animal skins and hides, adhesives for use in industry, putties and other paste fillers, compost, manures, fertilizers, biological preparations for use in industry and science, paints, varnishes, lacquers, preservatives against rust and against deterioration of wood, colorants, dyes, inks for printing, marking and engraving, raw natural resins, metals in foil and powder form for use in painting, decorating, printing and art, beauty care products, cosmetics, toiletries, health and beauty aids, dentifrices, perfumery, body preparations and soaps, essential oils, hair products, hair removal preparations, artificial nails, manicure sets, pedicure sets, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, industrial oils and greases, wax, lubricants, dust absorbing, wetting and binding compositions, fuels, illuminants, candles, wicks for lighting, pharmaceutical, medical, surgical and veterinary preparations, sanitary preparations for medical purposes, dietetic food and substances adapted for medical or veterinary use, food for babies, dietary supplements, plasters, materials for dressings, material for stopping teeth, dental wax, disinfectants, preparations for destroying vermin, fungicides, herbicides, common metals and their alloys, ores, ironmongery, goods made of common metals, metal materials for building and construction, pipes and tubes of metal, transportable buildings of metal, nonelectric cables and wires of common metal, small items of metal hardware, metal containers for storage or transport, safes, machines, machine tools, power-operated tools, motors and engines, machine coupling and transmission components, agricultural implements, incubators for eggs, automatic vending machines, hand tools and hand-operated implements, domestic electrical and electronic equipment including white goods, machines for household use, cutlery, razors, 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, magnetic data carriers, recording discs, compact discs, DVDs and other digital recording media, mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment, computers, computer software, computer hardware, computer accessories, tablet cases, mobile phone cases, sunglasses, cases for sunglasses, optical goods, spectacles, cases for spectacles, contact lenses, contact lens solutions, contact lens cases, televisions, sound equipment, video recorders, DVD recorders, cameras, batteries, fire-extinguishing apparatus, surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth, orthopaedic articles, suture materials, plasters, bandages, therapeutic and assistive devices adapted for the disabled, massage apparatus, apparatus, devices and articles for nursing infants, sexual activity apparatus, devices and articles, contraceptives, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, vehicles, bicycles, accessories for bicycles, trolleys, apparatus for locomotion by land, air or water, fireworks, precious metals and their alloys, jewellery, precious and semi-precious stones, horological and chronometric instruments, presentation boxes for watches, presentation boxes for jewellery, ornaments and statues of precious metal, tie clips, tie pins, musical instruments, paper and cardboard, printed matter, bookbinding material, photographs, stationery and office requisites, 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, packaging materials, gift wrap, printers' type, printing blocks, unprocessed and semi-processed rubber, gutta-percha, gum, asbestos, mica and substitutes for all these materials, plastics and resins in extruded form for use in manufacture, packing, stopping and insulating materials, flexible pipes, tubes and hoses, leather and imitations of leather, animal skins and hides, luggage and carrying bags, wallets, purses, bags, music cases, suitcases, travelling sets [leather ware], umbrellas and parasols, walking sticks, whips, harness and saddlery, collars, leashes and clothing for animals, building materials, rigid pipes for building, asphalt, pitch and bitumen, transportable buildings, monuments, furniture, mirrors, picture frames, containers for storage or transport,*

*unworked or semi-worked bone, horn, whalebone or mother-of-pearl, shells, meerschaum, yellow amber, household or kitchen utensils and containers, cookware and tableware, combs and sponges, brushes, brush-making materials, articles for cleaning purposes, unworked or semi-worked glass, glassware, porcelain and earthenware, 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, raw fibrous textile materials and substitutes therefor, yarns and threads, textiles, substitutes for textiles, textile goods, bedding, towels, table covers, napkins, household linen, curtains, draperies, blankets, clothing, footwear, headgear, aprons, belts, haberdashery, lace and embroidery, ribbons and braid, buttons, hooks and eyes, pins and needles, artificial flowers, hair decorations, false hair, carpets, rugs, mats and matting, yoga mats, linoleum and other materials for covering existing floors, wall hangings, wallpaper, games, toys and playthings, pet toys, video game apparatus, gymnastic and sporting articles, decorations for Christmas trees, Christmas trees of synthetic materials, Christmas tree stands, food, drink, meat, fish, poultry and game, meat extracts, preserved, frozen, dried and cooked fruits and vegetables, jellies, jams, compotes, eggs, milk and milk products, oils and fats for food, coffee, tea, cocoa and artificial coffee, rice, tapioca and sago, flour and preparations made from cereals, bread, pastries and confectionery, edible ices, sugar, honey, treacle, yeast, baking-powder, salt, mustard, vinegar, sauces (condiments), spices, ice, raw and unprocessed agricultural, aquacultural, horticultural and forestry products, raw and unprocessed grains and seeds, fresh fruits and vegetables, fresh herbs, natural plants and flowers, bulbs, seedlings and seeds for planting, live animals, foodstuffs and beverages for animals, malt, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages, alcoholic beverages, food for animals, animal litter, pet equipment and supplies, pet jewellery, pet grooming articles, trees, plants, flowers, fishing, boating, camping and hunting equipment, gardening tools, garden lawn and patio equipment and supplies, electrical plumbing maintenance and repair supplies and equipment, tobacco, smokers' articles, matches, ecigarettes, e-cigarette liquids, e-cigarette accessories; comparison shopping services; order fulfillment services; all of the aforementioned services only in the field of, or in association with, operating retail stores and/or online retail stores and/or online marketplaces; none of the aforementioned being, or being*

*for and/or related to, lending software; none of the aforementioned being, or being for and/or related to, outsourced loan, mortgage, savings and/or investments servicing services.*

Services relied on under the '854, '341 and '330 registrations:

*Class 35: Supermarket, department store, superstore, and convenience store services and online retail store services, online supermarket, online department store, online superstore, and online convenience store services, all connected with the sale of chemicals for use in industry, science, photography, agriculture, horticulture and forestry, unprocessed artificial resins, unprocessed plastics, fire extinguishing and fire prevention compositions, fire proofing preparations, tempering and soldering preparations, automotive maintenance and repair supplies and equipment, anti-freeze and automotive accessories, coolants for vehicle engines, chemical substances for preserving foodstuffs, substances for tanning animal skins and hides, adhesives for use in industry, putties and other paste fillers, compost, manures, fertilizers, biological preparations for use in industry and science, paints, varnishes, lacquers, preservatives against rust and against deterioration of wood, colorants, dyes, inks for printing, marking and engraving, raw natural resins, metals in foil and powder form for use in painting, decorating, printing and art, beauty care products, cosmetics, toiletries, health and beauty aids, dentifrices, perfumery, body preparations and soaps, essential oils, hair products, hair removal preparations, artificial nails, manicure sets, pedicure sets, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, industrial oils and greases, wax, lubricants, dust absorbing, wetting and binding compositions, fuels, illuminants, candles, wicks for lighting, pharmaceutical, medical, surgical and veterinary preparations, sanitary preparations for medical purposes, dietetic food and substances adapted for medical or veterinary use, food for babies, dietary supplements, plasters, materials for dressings, material for stopping teeth, dental wax, disinfectants, preparations for destroying vermin, fungicides, herbicides, common metals and their alloys, ores, ironmongery, all-purpose boxes and containers of common metal (not being high security cabinets for IT equipment or relating to high security cabinets for IT equipment), statues, busts and works of art of common metal, metal materials for building and construction (not being high security cabinets for IT equipment or relating*

*to high security cabinets for IT equipment), pipes and tubes of metal, transportable buildings of metal (not being high security cabinets for IT equipment or relating to high security cabinets for IT equipment), non-electric cables and wires of common metal (not relating to high security cabinets for IT equipment), small items of metal hardware, metal containers for storage or transport (not being high security cabinets for IT equipment or relating to high security cabinets for IT equipment), safes (not being high security cabinets for IT equipment or relating to high security cabinets for IT equipment), electric cleaning and polishing apparatus, including electric shoe polishers, electric machines and apparatus for carpet shampooing, vacuum cleaners, machine tools, power-operated tools, motors and engines, machine coupling and transmission components, agricultural implements, incubators for eggs, automatic vending machines, hand tools and hand-operated implements, domestic electrical and electronic equipment including major kitchen and laundry appliances, household machines for lightning, heating, cooling, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, cutlery, razors, 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, compact discs, DVDs and other digital recording media, mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment, computers, computer software, computer hardware, computer accessories, tablet cases, mobile phone cases, sunglasses, cases for sunglasses, optical goods, spectacles, cases for spectacles, contact lenses, contact lens solutions, contact lens cases, televisions, sound equipment, video recorders, DVD recorders, cameras, batteries, fire-extinguishing apparatus, surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth, orthopaedic articles, suture materials, plasters, bandages, therapeutic and assistive devices adapted for the disabled, massage apparatus, apparatus, devices and articles for nursing infants, sexual activity apparatus, devices and articles, contraceptives, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, vehicles, bicycles, accessories for bicycles, trolleys, apparatus for locomotion by land, air or water, fireworks, precious metals and their alloys, jewellery,*

*precious and semi-precious stones, horological and chronometric instruments, presentation boxes for watches, presentation boxes for jewellery, ornaments and statues of precious metal, tie clips, tie pins, musical instruments, paper and cardboard, printed matter, bookbinding material, photographs, stationery and office requisites, 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, packaging materials, gift wrap, printers' type, printing blocks, unprocessed and semi-processed rubber, gutta-percha, gum, asbestos, mica and substitutes for all these materials, plastics and resins in extruded form for use in manufacture, packing, stopping and insulating materials, flexible pipes, tubes and hoses, leather and imitations of leather, animal skins and hides, luggage and carrying bags, wallets, purses, bags, music cases, suitcases, travelling sets [leather ware], umbrellas and parasols, walking sticks, whips, harness and saddlery, collars, leashes and clothing for animals, building materials, rigid pipes for building, asphalt, pitch and bitumen, transportable buildings (not being high security cabinets for IT equipment or relating to high security cabinets for IT equipment), monuments, furniture, mirrors, picture frames, containers for storage or transport (not being high security cabinets for IT equipment or relating to high security cabinets for IT equipment), unworked or semi-worked bone, horn, whalebone or mother-of-pearl, shells, meerschaum, yellow amber, household or kitchen utensils and containers, cookware and tableware, combs and sponges, brushes, brush-making materials, articles for cleaning purposes, unworked or semi-worked glass, glassware, porcelain and earthenware, 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, raw fibrous textile materials and substitutes therefor, yarns and threads, textiles, substitutes for textiles, household textile goods, bedding, towels, table covers, napkins, household linen, curtains, draperies, blankets, clothing, footwear, headgear, aprons, belts, haberdashery, lace and embroidery, ribbons and braid, buttons, hooks and eyes, pins and needles, artificial flowers, hair decorations, false hair, carpets, rugs, mats and matting, yoga mats, linoleum and other materials for covering existing floors, wall hangings, wallpaper, games, toys and playthings, pet toys, video game apparatus, gymnastic and sporting articles, decorations for Christmas trees, Christmas trees of synthetic materials, Christmas tree stands, food, drink, meat, fish, poultry and game, meat*

*extracts, preserved, frozen, dried and cooked fruits and vegetables, jellies, jams, compotes, eggs, milk and milk products, oils and fats for food, coffee, tea, cocoa and artificial coffee, rice, tapioca and sago, flour and preparations made from cereals, bread, pastries and confectionery, edible ices, sugar, honey, treacle, yeast, baking-powder, salt, mustard, vinegar, sauces (condiments), spices, ice, raw and unprocessed agricultural, aquacultural, horticultural and forestry products, raw and unprocessed grains and seeds, fresh fruits and vegetables, fresh herbs, natural plants and flowers, bulbs, seedlings and seeds for planting, live animals, foodstuffs and beverages for animals, malt, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages, alcoholic beverages, food for animals, animal litter, pet equipment and supplies, pet jewellery, pet grooming articles, trees, plants, flowers, fishing, boating, camping and hunting equipment, gardening tools, garden lawn and patio equipment and supplies, electrical plumbing maintenance and repair supplies and equipment, tobacco, smokers' articles, matches, e-cigarettes, ecigarette liquids, e-cigarette accessories; retail services in connection with bakery products.; online retail services in connection with bakery products; retail store services in connection with delicatessen products; online retail store services in connection with delicatessen products; retail store services in connection with alcoholic drinks; online retail store services in connection with alcoholic drinks; retail services in connection with optical products; online retail services in connection with optical products; all of the aforementioned services only in the field of, or in association with, operating retail stores and/or online retail stores and/or online marketplaces; none of the aforementioned being, or being for and/or related to, lending software; none of the aforementioned being, or being for and/or related to, outsourced loan, mortgage, savings and/or investments servicing services.*