

O/176/26

TRADE MARKS ACT 1994
CONSOLIDATED PROCEEDINGS

IN THE MATTER OF APPLICATION NO. 3513114
IN THE NAME OF TRANSPORT FOR LONDON
FOR THE FOLLOWING UK TRADE MARK



AND AN OPPOSITION THERETO UNDER NO. 422697
BY THOMAS MOORE

AND

IN THE MATTER OF REGISTRATION NO. 3307700
IN THE NAME OF THOMAS MOORE
FOR THE FOLLOWING UK TRADE MARK

Underground Rum

AND

AN APPLICATION FOR A DECLARATION OF INVALIDITY THERETO
UNDER NO. 505287
BY TRANSPORT OF LONDON

Background and Pleadings

1. On 17 July 2020, Transport for London (“TFL”) applied to register in the UK the trade mark numbered 3513114 (“the 114 mark”) as shown on the front cover page of this decision. The 114 mark was published for opposition purposes on 16 October 2020. Registration is sought for a whole range of goods and services in classes 3, 9, 11, 12, 14, 16, 18, 19, 20, 21, 24, 25, 27, 28, 30, 32, 33, 35, 39, 41, 43 as set out in the Annex attached to this decision. For the purposes of this opposition, only the goods in class 33 are opposed which are set out as follows:

Class 33: Alcoholic beverages; wines, liqueurs and spirits; brandy, cider, cocktails, gin, kirsch, rum, sake, vodka, whisky.

2. On 10 January 2021, Thomas Moore (“Mr Moore”) opposed the application in part (only in so far as those aforesaid goods in class 33) under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). Mr Moore relies upon the following trade mark:

UKTM no. 3307700

Underground Rum

Filing date 30 April 2018; registration date 05 October 2018

(“the 700 Mark”)

3. The 700 mark stands registered for a broad list of goods in class 33 as set out in the Annex to this decision. For the purposes of this opposition, however, Mr Moore relies only upon the following goods namely ‘*spirits and liqueurs; alcopops; alcoholic cocktails*’. Due to its filing date the 700 mark is an earlier mark within the meaning of section 6 of the Act. Its registration process was completed less than five years before the filing date of the 114 mark and therefore it is not subject to the proof of use provisions.

4. Mr Moore claims that as a result of the similarity between the marks and the identity/similarity between the goods there is a high likelihood of confusion with members of the public likely to view the respective marks as part of the same business given the common category in which they each operate namely alcoholic spirits.

5. TFL filed a defence and counterstatement denying the ground of opposition.

6. On 18 August 2022, TFL filed an application for invalidity against the 700 mark and for all the goods of its registration pursuant to section 47(1) and sections 3(1)(b), 3(1)(c) and 3(3)(b) of the Act.

7. In particular TFL claims that:

- (i) under section 3(1)(c) the words UNDERGROUND RUM simply designate a characteristic of the goods sought to be registered;
- (ii) under section 3(1)(b) for the same reasons, the 700 mark is devoid of distinctive character;
- (iii) under section 3(3)(b) the 700 mark is deceptive in relation to goods not produced/aged underground and/or which are not rum or which contain rum.

8. Mr Moore filed a defence and counterstatement denying the grounds of invalidity.

Representation

9. TFL are represented by Cleveland Scott York throughout these proceedings whilst Mr Moore is unrepresented. Both parties filed evidence and additionally Mr Moore's evidence was accompanied by submissions. Neither party requested a hearing, but TFL filed written submissions in lieu of a hearing. This decision is taken following a careful perusal of the papers.

Evidence and submissions

10. For the purposes of the opposition Mr Moore filed written submissions and a statement of use¹ dated 1 and 3 April 2022 respectively. Mr Moore is the Director of Bitter Union Ltd a position he has held since 2017. Whilst the 700 mark is in Mr Moore's individual name it is said to be used by the company. He provides details regarding the aging process of the rum that is produced by the company and states that the products are due to be launched to the market in 2025. The goods are not currently being sold.

11. Mr Moore filed a further witness statement dated 8 December 2023 for the purposes of the invalidation action. Mr Moore's December 2023 statement serves to

¹ Whilst Mr Moore filed a statement of use it is noted that the 700 mark is not subject to the proof of use requirements.

respond to TFL's claims that the 700 mark is non-distinctive, descriptive or liable to deceive the public contrary to TFL's section 3 claims.

12. TFL's evidence consists of the witness statement of Lorna Hobbs dated 11 October 2023 together with exhibits marked LH0-LH17 filed for the purposes of the invalidation action and the witness statement of Ellen Sankey as evidence in reply in the opposition proceedings dated 6 February 2024 together with exhibits marked ES4, ES7, ES7a, ES8, ES9, ES11-13, ES15-ES22.²

13. Whilst I have taken into account both parties' evidence and submissions in their entirety, I do not propose to summarise them in full but shall refer to them later in my decision at the appropriate stage of the proceedings to the extent that I consider necessary.

Relevance of EU Law

14. 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

15. The proceedings were consolidated on 8 June 2023 following a Case Management Conference ("CMC") that took place as a result of a challenge to the consolidation process by TFL. The reasons for consolidation were communicated by letter to the parties shortly after the CMC and I adopt those reasons here.

16. Following the CMC the parties requested a suspension to explore settlement terms. It appeared that a settlement had been reached on the basis that each was withdrawing their respective claims against the other. Mr Moore notified the Tribunal on 11 September 2023 that in light of that agreement he would be withdrawing the opposition on the understanding that TFL would be writing on like terms in relation to the invalidity. The withdrawal of the opposition was actioned on 19 September 2023.

² The evidence was reduced following a challenge that it was over the limit in accordance with TPN 1/2015 and that it was not strictly evidence in reply.

However, it appears that there was a misapprehension regarding the basis and scope of the agreement between the parties and therefore following further communication with Mr Moore the withdrawal request was retracted and on 27 September 2023 the opposition proceedings were reinstated.

17. Mr Moore filed a form TM21B on 30 January 2023 in order to limit the scope of the specification of the 700 mark. However, given that the mark was registered Mr Moore was required to file a form TM23 in order for his request to be actioned. No updated form was filed, and no further communication was received from Mr Moore in respect of the limitation originally sought. Consequently, the goods the subject of the 700 registration remain as originally applied for in full and as set out in the Annex.

18. Ms Sankey's witness statement initially included evidence which was not strictly in reply and which exceeded the page limit as set out in TPN 1/2015. TFL was directed by way of preliminary view to refile its evidence and was given the opportunity to challenge this decision. It chose to refile its evidence which was admitted into proceedings on 14 March 2024.

Decision

19. As the earlier right relied upon in the opposition is subject to invalidation I will deal with the invalidation action first. I will then return to the opposition once the validity and extent of the earlier right relied upon has been determined.

The Invalidation

Section 3

20. Section 3 states:

“3. Absolute grounds for refusal of registration

(1) The following shall not be registered –

(a) [...]

(b) trade marks which are devoid of any distinctive character,

(c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended

purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services,

(d) [...]

Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.”

.....

(3) A trade mark shall not be registered if it is –

(a) [...]

(b) of such a nature as to deceive the public (for instance as to the nature, quality or geographical origin of the goods or service).

21. The relevant parts of section 47 which gives application to section 3 are as follows:

“47(1) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 3 or any of the provisions referred to in that section (absolute grounds for refusal of registration). Where the trade mark was registered in breach of subsection (1)(b), (c) or (d) of that section, it shall not be declared invalid if, in consequence of the use which has been made of it, it has after registration acquired a distinctive character in relation to the goods or services for which it is registered.

[...]

(5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

[...]

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made: Provided that this shall not affect transactions past and closed.”

Evidence

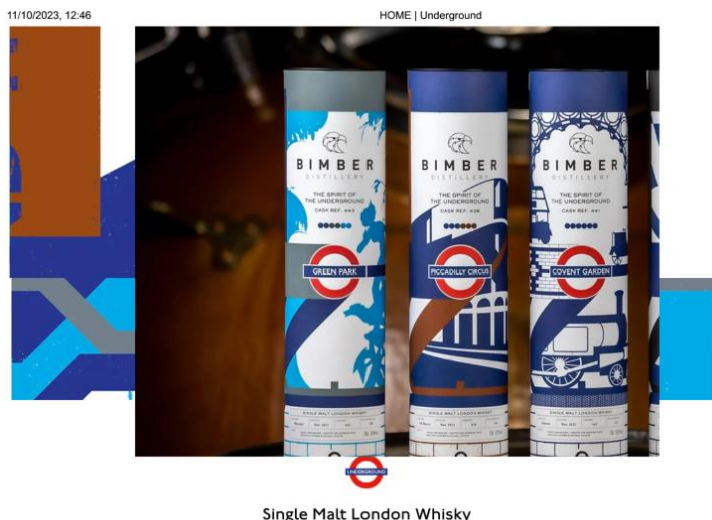
TFL’s evidence

Ms Hobb’s witness statement

22. Ms Hobbs is a partner at TFL’s representative’s firm, a position she has held since 1996. She states that she has worked on the TFL account since 2006 and acted on its behalf for at least 30 years. She states that she is very familiar with TFL’s IP rights and its “highly successful licensing business”, the proceeds of which are said to be reinvested back into London’s transport system. She states that this business includes products in the alcoholic drinks sector.

23. Ms Hobbs’s statement consists of:

(i) Two undated screenshots (reproduced below) taken from www.thespiritoftheunderground.com, as an example of the licensing activities of TFL in the alcoholic drinks sector. The screenshots have an access/print date of 11/10/2023 and consist of images for the provision of Single Malt London Whisky. I note that the packaging on the goods themselves include the roundel device and various London Tube station names such as Leicester Square and Green Park.³



³ Exhibit LH0.



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(ii) An extract taken from Wikipedia accessed on 11/10/2023 regarding the distilling process of rum.⁴

(iii) Various dictionary definitions as to the meaning of the word rum (the most relevant are set out below), taken from a number of online dictionaries accessed on 11/10/2023:⁵

- “a strong alcoholic drink made from the juice of sugar cane”
- “a alcoholic drink made from sugar”
- “a strong alcoholic drink made from molasses (= sweet liquid form sugar plants)”

(iv) Various screenshots with print/access dates of 11/10/2023 to show the different range of rum products available through UK retailers. This is said to show that rum is a “specific kind of alcoholic beverage which is distinct from other alcoholic drinks such as wine, whiskey or gin”.⁶

⁴ Exhibit LH1

⁵ Exhibit LH2 taken from www.oxfordlearnersdictionaries.com; www.collinsdictionary.com and www.dictionary.cambridge.org

⁶ At [3.2] and Exhibit LH3

(v) Extracts taken from www.captainmorgan.com and www.pussersrum.com detailing the three varieties of rum that are available being dark, white and spiced and information regarding the aging and production process. It is said that traditionally rum is stored in wooden barrels some of which are aged in bourbon or cognac casks/barrels.⁷

(vi) The results of internet searches completed on 11/10/2023 in connection with the maturing of wines/spirits underground which it is said demonstrates that rum is a well known and specific kind of alcoholic beverage and that the way wines and spirits are stored affects their flavour.⁸ Further that maturing wines and spirits underground is commonplace thought to enhance flavour and taste.⁹ These results include:

- An extract from www.diffordsguide.com discussing the benefits of aging alcohol in oak barrels. A reference is made within the text to “the warehouses and cellars used to store maturing casks [varying] the world over, from caves to underground bunkers and large buildings”.¹⁰ I note that the article predominantly focusses on the maturing process of the wine and spirits being done in wooden casks which “greatly improve their flavour” together with the practice of using casks previously filled with wine, sherry or bourbon which it is said contributes to the flavour of the spirits, a process known as “first fill casks” and “second fill casks”.
- A blog extract taken from www.rockymountainbarrelcompany.com explaining that storing alcohol in barrels affects its flavour together with other considerations such as location, duration, type of barrel and flavour of the barrel. The location and climate is said to be of utmost importance in the aging process because temperature and humidity impacts on the product. It suggests that for example rum prepared in New England will take longer to age than if it is prepared in the Caribbean.¹¹
- An extract of an article (appearing to be dated in 2022) taken from www.3seaseurope.com in relation to the Starka vodka brand, of the custom in

⁷ Exhibit LH4 and LH6.

⁸ At [6] and Exhibit LH9-LH17

⁹ At [7.1]

¹⁰ Exhibit LH9

¹¹ Exhibit LH10

the 15th century of people in Poland and Lithuania pouring vodka into oak barrels which are buried underground.¹²

- An undated extract taken from Spot Whiskey’s website explaining the history of their brand and the practice in the early 1900s of maturing their whiskey under the streets of Dublin in their network of underground cellars.¹³
- Two undated extracts relating to the Sake brand UROKO the first taken from www.sake.japanpage.jp and the second from www.sake-uroko.com which makes reference to its maturing process. The first excerpt refers to its vintage sake being matured for ten years in ‘subterranean caves’ and the second outlines the history of the cave disclosing that it was a former underground factory built at the end of World War II but had been transformed into a sake storage space. The cave is described as a natural storage facility with an average annual temperature of 10 degrees Celsius.¹⁴
- An undated extract taken from Wikipedia in relation to the meaning and purpose of the term ‘wine cellar’.¹⁵
- An undated extract taken from www.cognacshow.com explaining the differences between humid and dry cellars, and that cognac is able to be aged both above and below ground unlike other appellations where regulations specify that cellars must be underground.¹⁶
- An undated extract taken from www.vinerepair.com suggesting that the process of burying wine underground is a long tradition dating back to the Iron Age.¹⁷

24. Ms Hobbs also refers to Mr Moore’s evidence in which he states “Underground Rum is a brand of UK matured rum that is aged in barrels underground” and that his product is one “involving the aging of rum in the UK underground”.¹⁸ This it is said is tantamount to an admission that simply describes the way in which Mr Moore’s rum is matured.

¹² Exhibit LH11

¹³ Exhibit LH12

¹⁴ Exhibit LH13 and LH14

¹⁵ Exhibit LH15

¹⁶ Exhibit LH16

¹⁷ Exhibit LH17

¹⁸ At [5] and 12 of submissions.

Mr Moore's evidence/submissions

25. Mr Moore filed a witness statement which included both evidence of fact and submissions in relation to both sets of proceedings. I shall outline his evidence here for ease of reference. Mr Moore's December 2023 witness statement¹⁹ consists of the following:

- A definition of the word underground (UK) taken from Wikipedia and said to be a widely used and everyday word. In respect to the alcoholic industry it is said that it would be associated with terms such as the underground movement, prohibition speakeasy bars which were physically or metaphorically underground due to their banning in 1930s USA, and the wider underground counterculture.

"The British counter-culture or underground scene developed during the mid 1960s, and was linked to the hippie subculture of the United States. Its primary focus was around Ladbrooke Grove and Notting Hill in London."

- An explanation regarding the production process of rum which is said to be a distilled alcoholic beverage made from sugar cane and whilst the process can include underground ageing, he refutes that this process is unique or proprietary to his or other third parties' products.
- Denials to the suggestion that TFL's evidence shows that it is commonplace for rum to be aged underground in the UK or more generally. He states that his *"business is domestically ageing rum and using the microclimate of [his] underground ageing location to provide a distinctive beverage and process which has not previously been done"*. This is said to demonstrate that his process is distinctive and unique. Confirmation that Exhibit L9 of Ms Hobb's witness statement shows different ageing characteristics which determine the individual characteristics of the drink.
- The Underground Rum trade mark and brand is said to encompass aspects of Underground culture and its affiliation to doing things differently, novelty and the speakeasy cocktail culture of 1930s prohibition in the USA which were often held in underground bars.

¹⁹ Which includes both evidence of fact and submissions.

- Disputes that the reference to Underground limits the brand or the mark's connection to solely being aged underground and is not solely a characteristic of the product. It is said that the word is not a factual statement or claim regarding the products, but rather is capable of being used as a trade mark to denote trade origin.
- Examples of other trade marks in the drinks industry which Mr Moore believes it could be argued describe a characteristic which is not distinct and could be deceptive giving the example Newcastle Brown Ale, which he states describes the colour of most ales and further claims that it is not brewed in the county of Newcastle. Given the other examples which describe the flavour ingredient or location, Mr Moore argues this demonstrates that in the wider market the average consumer would not expect the trademark to be a literal description or claim about the product.
- Disputes that the term underground rum is an existing term that the average consumer would use to designate existing drinks in the market. He refers to Ms Hobb's statement at exhibit LH4 in which the three types of rum are categorised and notes 'underground' is not one of them.
- Disputes that the mark is deceptive or that consumers would believe that it is only an underground aged product or that rum in the world of sprits can be aged underground.

Section 3(1)(c)

26. Sections 3(1)(b) and (c) are independent and have differing general interests. It is possible, for example, for a mark not to fall foul of section 3(1)(c) but still be objectionable under section 3(1)(b) of the Act.²⁰ In reality, since TFL's case under section 3(1)(c) is that the marks are descriptive of the goods, then it follows that if this is found to be the case they will also lack the necessary distinctiveness. Consequently, if the section 3(1)(c) claim succeeds or fails, then the same outcome will apply to the respective claim under section 3(1)(b). I shall, therefore, consider the section 3(1)(c) ground first.

27. Section 3(1)(c) prevents the registration of marks which designate the kind of goods, or other characteristics of them. I bear in mind when undertaking the

²⁰ *SAT.1 SatellitenFernsehen GmbH v OHIM*, Case C-329/02 P, at paragraph 25.

assessment that the purpose of this section is to ensure signs designating a characteristic of the goods, remain free for use by traders.

28. The case law under section 3(1)(c) (corresponding to Article 7(1)(c) of the EUTM Regulation, formerly Article 7(1)(c) of the CTM Regulation) was set out by Arnold J. (as he then was) in *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2012] EWHC 3074 (Ch) as follows:

“91. The principles to be applied under art.7(1)(c) of the CTM Regulation were conveniently summarised by the CJEU in *Agencja Wydawnicza Technopol sp. zo.o. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-51/10 P) [2011] E.T.M.R. 34 as follows:

“33. A sign which, in relation to the goods or services for which its registration as a mark is applied for, has descriptive character for the purposes of Article 7(1)(c) of Regulation No 40/94 is – save where Article 7(3) applies – devoid of any distinctive character as regards those goods or services (as regards Article 3 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40 , p. 1), see, by analogy, [2004] ECR I-1699 , paragraph 19; as regards Article 7 of Regulation No 40/94 , see *Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) v Wm Wrigley Jr Co* (C-191/01 P) [2004] 1 W.L.R. 1728 [2003] E.C.R. I-12447; [2004] E.T.M.R. 9; [2004] R.P.C. 18 , paragraph 30, and the order in *Streamserve v OHIM* (C-150/02 P) [2004] E.C.R. I-1461 , paragraph 24).

36. ... due account must be taken of the objective pursued by Article 7(1)(c) of Regulation No 40/94 . Each of the grounds for refusal listed in Article 7(1) must be interpreted in the light of the general interest underlying it (see, inter alia , *Henkel KGaA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-456/01 P) [2004] E.C.R. I-5089; [2005] E.T.M.R. 44 , paragraph 45, and *Lego Juris v OHIM* (C-48/09 P) , paragraph 43).

37. The general interest underlying Article 7(1)(c) of Regulation No 40/94 is that of ensuring that descriptive signs relating to one or more

characteristics of the goods or services in respect of which registration as a mark is sought may be freely used by all traders offering such goods or services (see, to that effect, *OHIM v Wrigley* , paragraph 31 and the case-law cited).

38. With a view to ensuring that that objective of free use is fully met, the Court has stated that, in order for OHIM to refuse to register a sign on the basis of Article 7(1)(c) of Regulation No 40/94 , it is not necessary that the sign in question actually be in use at the time of the application for registration in a way that is descriptive. It is sufficient that the sign could be used for such purposes (*OHIM v Wrigley*, paragraph 32; *Campina Melkunie* , paragraph 38; and the order of 5 February 2010 in *Mergel and Others v OHIM* (C-80/09 P), paragraph 37).

39. By the same token, the Court has stated that the application of that ground for refusal does not depend on there being a real, current or serious need to leave a sign or indication free and that it is therefore of no relevance to know the number of competitors who have an interest, or who might have an interest, in using the sign in question (*Joined Cases C-108/97 and C-109/97 Windsurfing Chiemsee* [1999] ECR I-2779, paragraph 35, and *Case C-363/99 Koninklijke KPN Nederland* [2004] ECR I-1619, paragraph 38). It is, furthermore, irrelevant whether there are other, more usual, signs than that at issue for designating the same characteristics of the goods or services referred to in the application for registration (*Koninklijke KPN Nederland*, paragraph 57).

And

46. As was pointed out in paragraph 33 above, the descriptive signs referred to in Article 7(1)(c) of Regulation No 40/94 are also devoid of any distinctive character for the purposes of Article 7(1)(b) of that regulation. Conversely, a sign may be devoid of distinctive character for the purposes of Article 7(1)(b) for reasons other than the fact that it may be descriptive (see, with regard to the identical provision laid down in Article 3 of Directive 89/104, *Koninklijke KPN Nederland* , paragraph 86, and *Campina Melkunie*, paragraph 19).

47. There is therefore a measure of overlap between the scope of Article 7(1)(b) of Regulation No 40/94 and the scope of Article 7(1)(c) of that regulation (see, by analogy, *Koninklijke KPN Nederland*, paragraph 67), Article 7(1)(b) being distinguished from Article 7(1)(c) in that it covers all the circumstances in which a sign is not capable of distinguishing the goods or services of one undertaking from those of other undertakings.

48. In those circumstances, it is important for the correct application of Article 7(1) of Regulation No 40/94 to ensure that the ground for refusal set out in Article 7(1)(c) of that regulation duly continues to be applied only to the situations specifically covered by that ground for refusal.

49. The situations specifically covered by Article 7(1)(c) of Regulation No.40/94 are those in which the sign in respect of which registration as a mark is sought is capable of designating a 'characteristic' of the goods or services referred to in the application. By using, in Article 7(1)(c) of Regulation No 40/94 , the terms 'the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service', the legislature made it clear, first, that the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service must all be regarded as characteristics of goods or services and, secondly, that that list is not exhaustive, since any other characteristics of goods or services may also be taken into account.

50. The fact that the legislature chose to use the word 'characteristic' highlights the fact that the signs referred to in Article 7(1)(c) of Regulation No 40/94 are merely those which serve to designate a property, easily recognisable by the relevant class of persons, of the goods or the services in respect of which registration is sought. As the Court has pointed out, a sign can be refused registration on the basis of Article 7(1)(c) of Regulation No 40/94 only if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of those characteristics (see, by analogy, as regards

the identical provision laid down in Article 3 of Directive 89/104, *Windsurfing Chiemsee*, paragraph 31, and *Koninklijke KPN Nederland*, paragraph 56).”

92. In addition, a sign is caught by the exclusion from registration in art.7(1)(c) if at least one of its possible meanings designates a characteristic of the goods or services concerned: see *OHIM v Wrigley* [2003] E.C.R. I-12447 at [32] and *Koninklijke KPN Nederland NV v Benelux-Merkenbureau* (C-363/99 [2004] E.C.R. I-1619; [2004] E.T.M.R. 57 at [97].”

29. More recently, Zacaroli J summarised the key question in *Puma SE v Nike Innovate C.V.*, [2021] EWHC 1438 (Ch):

“Ultimately, as Ms Himsworth Q.C. submitted, the question is whether the mark applied for, when notionally and fairly used, is descriptive of the goods and services in question within the meaning of section 3(1)(c). A sign can be refused registration ‘only if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of [the characteristics in section 3(1)(c)]’: *Technopol* (above), at [50]. Moreover, a sign will be descriptive ‘if there is a sufficiently direct and specific relationship between the sign and the goods and services in question to enable the public concerned immediately to perceive, without further thought, a description of one of the characteristics of the goods and services in question’: Case T-234/06 *Giampetro Torresan* (above) at [25].”²¹

30. The basis of TFL’s claim under section 3(1)(c) is that the words ‘underground rum’ will simply be seen by consumers as a description of the way Mr Moore’s rum is distilled and serves to indicate the kind of goods protected by the registration.²² It is alleged that Mr Moore has made admissions to this effect in his statement of use/submissions accepting that the product “involves aging the rum in the UK underground” and that “underground rum is a brand of UK matured rum that is aged in barrels underground”.

²¹ Para 21

²² TM26I

31. Given that the 700 mark includes the term 'Rum' I shall start by assessing the section 3(1)(c) claim against the following goods which are clearly rum alcoholic beverages:

Rum; Rum [alcoholic beverage]; Rum infused with vitamins; Rum punch; Rum-based beverages; Sugar cane juice rum; Rum; Rum [alcoholic beverage]; Rum-based beverages.

32. TFL filed evidence contending that the way in which wines and spirits are stored affects the flavour of the drinks, and that maturing such products underground is common in the distilling industry. Consequently, it is argued that the public upon seeing the words underground rum applied to alcoholic drinks might assume that the products they are buying are rum matured underground designating the kind of goods on offer.

33. I start by noting that the average consumer of the goods is a member of the general public over the age of 18 who predominantly select the goods via visual means. An average level of attention will be used in the selection process no higher or lower than the norm for such goods.

34. The relevant date for the consideration under section 3(1)(c) is the filing date of the 700 mark which in this case is 5 October 2018.

35. TFL has produced evidence regarding the meaning of the word rum but has not done so in relation to the word underground. I note that Mr Moore has produced evidence showing that 'underground' does not necessarily mean below ground but can also relate to a clandestine/secretive movement linked to the prohibition. There does not seem to be any dispute between the parties regarding the meaning of the word rum as advanced by Ms Hobbs being an alcoholic beverage distilled from sugar cane.

36. In so far as the meaning of the word underground I note the following dictionary definitions:

occurring situated or used below ground level;

below the surface of the earth;

below ground; and

*situated beneath the surface of the ground.*²³

37. I also note that the definitions of the word include:

An underground activity which is secret and usually illegal;

A group of people who secretly fight against the government;

Secret; hidden;

A movement dedicated to overthrowing a government or occupation forces;

*The underground - a railway system in which electric trains travel through tunnels below ground.*²⁴

38. Mr Moore's evidence as to the secondary meaning of the word underground was unchallenged and I do not consider that there can be any serious doubt as to the meanings of the word underground as advanced by him as being inaccurate, as they accord with my own understanding of the word and as those produced above. Therefore, whilst I accept that the dictionary definition of the word underground is below ground a meaning which will be well known to consumers, I equally accept that it could mean an 'underground activity which is secret and usually illegal' and as advanced by Mr Moore a reference to a 'clandestine and secret movement linked to the prohibition'. The meanings advanced by both parties accord with my own understanding of the words.

39. Neither party referred me to the third meaning in so far as the word being understood as relating to a 'underground railway system' to which I shall refer later in my decision, but which is also clearly one of the dictionary meanings attributed to the word.

40. In so far as the word underground designating the kind and characteristics of rum the evidence produced by TFL demonstrating that distillers or producers store alcohol underground is limited and does not show that it is common practice in relation to the distillation process of rum. Moreover, much of the evidence regarding the maturing and aging processes involving underground storage is either undated or was printed or accessed in October 2023 – some five years after the relevant date. There is no indication within the evidence that as at the relevant date consumers would be aware

²³ www.dictionary.cambridge.org and www.collinsdictionary.com

²⁴ *Ibid*

of or familiar with the practice of storing alcoholic goods underground for them to conclude that the word underground was descriptive of the distillation process as alleged.

41. In my view, the evidence shows that the decision to store alcohol underground appears more closely connected to convenience, and the ability to regulate temperature and humidity naturally at low cost, rather than any recognised industry practice. Whilst I accept that it has been shown that some individual distillers use this traditional method, I am not satisfied that the evidence demonstrates that underground storage is sufficiently prevalent for rum. Irrespective of this and whether underground storage is widespread or not in the alcoholic distilling sector, I am still of a view that it does not describe the kind or characteristics of the goods.

42. Further in so far as Mr Moore's comments are relied upon by TFL to suggest an admission regarding the descriptiveness of his mark, the fact that Mr Moore may regard the term "underground" as alluding to the traditional methods used in maturing his rum does not amount to an unequivocal admission by him that the word is descriptive of the goods. It is the perception of the average consumer that is the determinative factor. Even if Mr Moore regards "underground" as part of his production process, this does not translate into an acceptance that the mark is descriptive, particularly when read alongside his other submissions. At best, his statements amount to a promotional or a selling point that he is using traditional methods—and given that the goods are not yet on the market, it remains untested as to what consumer's perception of the word would be. Accordingly, Mr Moore's statements cannot be taken as an admission that the mark is descriptive.

43. The term "underground" may allude to the fact that traditional methods are being used but it lacks a clear, direct, and exclusive link to any characteristic of rum. Its multiple meanings and vague associations mean that consumers would more likely view it as distinctive rather than descriptive. As was held by the CJEU in *Audi AG v OHIM* (Case C-398/08 P), laudatory, advertising slogans can function as trademarks if they are memorable and identify commercial origin. Therefore, even if the term underground has a promotional element, this does not prevent it from functioning as a trade mark, capable of indicating commercial origin.

44. Even if consumers were to believe that “underground” refers to the physical location where the rum is stored, this would still not make the term descriptive of the kind or a characteristic of the goods. Storage location is merely an incidental property of the manufacturing or maturing process, not a characteristic of the rum itself. Consumers would understand the characteristics of rum to relate to its flavour, strength and colour – characteristics and features shown in TFL’s evidence to be determined by the type of cask or barrel used and generally the length of time the rum is aged - not from whether the product was stored above or below ground.

45. The word “underground” has multiple meanings, including *below ground*, *underground railway system*, *underground activity which is secret and usually illegal* and *clandestine/secret movement linked to the prohibition*. I accept that this does not necessarily mean that it cannot fall foul of section 3(1)(c). However, as Mr Simon Clark, sitting as the Appointed Person, affirmed in O/0235/25:

“39. .. a mark can fall within s.3(1)(c) even if it has more than one meaning (see Arnold J (as he then was) at [92] in Starbucks), provided that it

“may serve in normal usage from the point of view of the relevant public to designate, either directly or by reference to one of their essential characteristics, the goods or services in respect of which registration is sought” (Procter & Gamble v OHIM [2001] Case C-383/99 P).

40. It is ... important to assess the meaning of the word in the context of the mark and in relation to the goods and services covered by it.”

46. The important factor to note is that if a mark has several meanings this will impact on whether or not the alleged descriptive meaning was one which the consumer would reach immediately and directly without further thought. These alternative meanings as to the word underground as set out above weaken any argument that consumers would immediately and directly perceive the word as referring to the physical location of storage of the goods.

47. Given the breadth of possible interpretations, consumers are unlikely to regard “underground” as describing the type or characteristics of rum. TFL’s evidence clearly shows that rum characteristics are generally categorised as white, dark, or spiced, and storage location is not a defining feature of such categories. Even if consumers were

to perceive the meaning as a reference to the place where the goods are stored i.e. below ground, such a characteristic would at best be understood to refer to properties incidental of the goods rather than describing an intrinsic characteristic as to their kind, nature or type. Thus, any perceived reference to traditional storage methods would be vague and incidental, not descriptive of the goods themselves.

48. A registration can only be refused on the basis of descriptiveness “if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of those characteristics. Furthermore, although it is irrelevant whether such a characteristic is commercially essential or ancillary, a characteristic must nevertheless be ‘objective’ and ‘inherent to the nature of that product’ or service and ‘intrinsic and permanent’ with regard to that product or service”.²⁵

49. The characteristics in terms of flavour, quality, colour and alcoholic strength of the goods come from the ingredients, ageing process and the length of time the alcohol is matured and aged; the location is purely an incidental property to this distilling process.

50. In order to succeed under section 3(1)(c) the mark must be regarded as descriptive of inter alia the kind, nature or type or other characteristics of the goods at issue. Whilst the evidence shows that certain alcoholic goods can be stored underground I do not consider that consumers upon seeing the word would consider that it conveys obvious and direct information about the kind or characteristics of the rum goods in question, especially although not determinative the other possible meaning of the word as advanced by Mr Moore which would equally be understood by consumers to refer to an underground activity which is secret and usually illegal, a clandestine/secretive movement linked to the prohibition or a underground railway system.

51. Taking all of this into account and balancing all of the factors discussed in the case law I do not find that TFL has established that the 700 mark is descriptive, and is incapable of indicating commercial origin, or is devoid of distinctive character. I am not satisfied that the 700 mark falls foul of section 3(1)(c) of the Act for those goods outlined above. For those remaining goods that are mixed alcoholic beverages or non-rum based goods the descriptive claim is even less persuasive. Given that the 700 mark is not descriptive for rum it also fails in relation to all the other goods under

²⁵ *Fissler GmbH v EUIPO*, case T-423/18

consideration, which would be even less apparent that they are distilled/matured underground.

52. Consequently, the section 3(1)(c) claim fails in its entirety.

Section 3(1)(b)

53. I can deal with this ground relatively swiftly. Since the extent of TFL's case under section 3(1)(b) is that the 700 mark is descriptive then, given my findings under section 3(1)(c) the same outcome will apply to its claim under section 3(1)(b). I find that the mark is, as a whole, distinctive. Notwithstanding the descriptive nature of the element 'rum' the word 'underground' is capable of acting within the essential functions of a trade mark to denote trade origin. This finding does not prevent other traders from being able to use the words underground or rum descriptively for their goods or services.

Section 3(3)(b)

54. TFL's claim is that the 700 mark is deceptive as to the nature of the goods because (1) it is applied to goods which are not aged underground or made from goods which are not aged underground and (2) by the inclusion of the word RUM in the mark that it would be deceptive of such goods for example absinthe, arak, brandy, gin, whisky, rice based alcohol, wines etc as to the content of the product indicating that they are or contain rum when this in reality is not the case. Mr Moore did not advance any specific submissions, and instead merely denied this claim.

55. In *TWG TEA COMPANY PTE LTD V MARIAGE FRÈRES SA*, BL O/358/17, Mr Phillip Johnson, sitting as the Appointed Person, conveniently summarised the case law at para 84 as follows:

“(a) it is necessary to establish that the mark will create actual deceit or a sufficiently serious risk that the consumer will be deceived: *C-87/97 Consorzio per la tutela del formaggio Gorgonzola*, ECLI: EU:C:1999:115, paragraph 41; *C-259/04 Emanuel*, ECLI:EU:C:2006:2015, paragraph 47; *C-689/15 W. F. Gözze Frottierweberei*, EU:C:2017:434, paragraph 54;

- (b) the deception must arise from the use of the mark itself (i.e. the use per se will deceive the consumer): *Gorgonzola*, paragraph 43; *Emanuel*, paragraph 49; *Gözze Frottierweberei*, paragraph 55;
- (c) the assessment of whether a mark is deceptive should be made at the date of filing or priority date and so cannot be remedied by subsequent corrective statements: *Axle Associates v Gloucestershire Old Spot Pig Breeder's Club* [2010] ETMR 12, paragraphs 25 and 26;
- (d) the deception must have some material effect on consumer behaviour: *CFA Institute's Application* [2007] ETMR, paragraph 40;
- (e) where the use of a mark, in particular a collective mark, suggests certain quality requirements apply to goods sold under the mark, the failure to meet such requirements does not make use of the mark deceptive: *Gözze Frottierweberei*, paragraphs 57 and 58;
- (f) only where the targeted consumer is made to believe that the goods and services possess certain characteristics which they do not in fact possess will the consumer be deceived by the trade mark: T-248/05, *HUP Usługi Polska v OHIM*, ECLI:EU:T:2008:396, paragraph 65;
- (g) where a mark does not convey a sufficient specific and clear message concerning the protected goods and services or their characteristics but, at the very most, hints at them, there can be no deception in relation to those goods and services: *HUP*, paragraphs 67 and 68; T-327/16, *Aldi v EUIPO*, ECLI:EU:T:2017:439, paragraph 51;
- (h) once the existence of actual deceit, or a sufficiently serious risk that the consumer will be deceived, has been established, it becomes irrelevant that the mark applied for might also be perceived in a way that is not misleading: T-29/16 *Caffè Nero Group v EUIPO*, ECLI:EU:T:2016:635, paragraph 48;
- (i) where a trade mark contains information which is likely to deceive the public it is unable to perform its function of indicating the origin of goods: T-41/05 *SIMS – École de ski internationale v OHIM*, EU:T:2991:200, paragraph 50; *Caffè Nero*, paragraph 47.”

56. In *Emanuel*, the CJEU referred to the perceptions of the average consumer. In *Gut Springenheide and Tusky v Oberkreisdirektor des Kreises Steinfurt*, Case C-210/96, the CJEU stated that the average consumer is “reasonably well-informed and reasonably observant and circumspect”. The deception envisaged by the legislation must derive from the intrinsic qualities of the mark itself at the date on which the application was made.

57. The caselaw makes it clear that in order to succeed under section 3(3)(b) the mark in question in this case Underground Rum will create actual deceit or a sufficiently serious risk that the relevant public will be deceived, materially affecting their economic behaviour namely that they will buy Mr Moore’s products thinking that they are buying goods that are aged/matured underground when they are not and more particularly that they are buying rum when the goods are not in fact made of or contain this spirit.

58. Two points are clear (1) that the deception must have some material effect on consumer behaviour and (2) there can be no deception in relation to those goods if the message conveyed by the mark is not sufficiently specific and clear concerning the protected goods or their characteristics but, at the very most, merely hints at them.

59. Taking the point regarding the word ‘underground’ first, given that I have already found that the message conveyed by this word is not sufficiently specific and clear to designate the kind or characteristics of the goods then I do not accept the arguments advanced that this element would be deceptive. However, given the breadth of the specification and in so far as the claim that the mark is deceptive for goods that are not rum, rum based or rum flavoured then there is some merit in this argument.

60. In *TWG Tea*, Mr Johnson considered the decision of *Caffè Nero* stating as follows:

“85. While neither party mentioned it, there are some clear parallels between this case and *Caffè Nero v EUIPO*. In that case, the applicant sought to register the mark CAFFÈ NERO for an assortment of goods in Class 30 (and services in Class 35). The words Caffè Nero mean “black coffee” in Italian.

86. A summary of the finding of the Board of Appeal is at paragraph 45:

“...The Board of Appeal considered that consumers were likely to believe that some of the goods referred to in the application for registration, namely tea, cocoa, coffee substitutes, herb tea, tea beverages, cocoa

and cocoa-based preparations, cocoa beverages, preparations and mixes for making the aforesaid goods, and powdered chocolate, were or contained black coffee, even if, in actual fact, this was not the case...”

87. Importantly, the original examiner (upheld by the Board of Appeal: R 410/2015-1 *Caffè Nero*, 4 November 2015, paragraph 29) did not hold that *Caffè Nero*'s application was deceptive in relation to the following goods in Class 30:

coffee; biscuits; cookies; bread, pastry and confectionery, chocolate bars, chocolate covered coffee beans; ices; cakes, flans and puddings; pastries; flavourings; prepared meals consisting primarily of bread, crackers and/or cookies; coffee pods; coffee and espresso beverages; beverages made with a base of coffee and/or espresso; coffee based non-alcoholic drinks and soft drinks; ground and whole bean coffee; coffee essences and extracts; sponges, muffins, scones, pies; muesli and muesli bars; sauces; syrups, toppings and spreads; sherbets and sorbets; flavoured ices and frozen confections; flavouring syrups to add to beverages; porridge; oatmeal

88. The General Court, in upholding the Board of Appeal, accepted that the use of “black coffee” might suggest that something contains coffee when it does not do so. However, it appears to me that if somebody sold “black coffee pudding” most consumers would assume that it contains coffee or a coffee like flavour. This suggests that in relation to those other goods, the Board of Appeal must have accepted either that the use of “black coffee” on the goods was not deceptive when used as a flavouring or, alternatively, that black coffee is an arbitrary mark in relation to say, puddings or biscuits. Although not expressed by the court, the former reasoning seems the much more likely to me.”

61. Taking the same approach as taken by Mr Johnson endorsing the approach taken by the General Court (“GC”) and Board of Appeal (“BOA”) in *Caffè Nero*, this suggests that a mark is not deceptive in circumstances where the mark is used directly to describe the nature of the goods or which may be used in relation to goods that contain or are flavoured with such goods. Consequently, I shall go through the terms in turn

and for those goods that are clearly identifiable as rum products or which contain rum the mark is not deceptive for such goods.

Aguardiente [sugarcane spirits]; Cachaca; Nira [sugarcane-based alcoholic beverage]; Rum; Rum [alcoholic beverage]; Rum infused with vitamins; Rum punch; Rum-based beverages; Sugar cane juice rum; Rum; Rum [alcoholic beverage]; Rum-based beverages.

62. These goods are clearly rum or contain rum or are a variant or a related product of rum,²⁶ being defined as a spirit made from sugar cane. All these goods could reasonably be regarded as rum even where it is known by a different name and therefore are not deceptive. The 3(3)(b) objection fails in relation to these goods.

63. I have no evidence or submissions from either party other than in very general terms as to the exact nature of the goods term by term. Consequently, as per the decision in *Smart X*²⁷ where it is not self-evident and absent arguments from the parties, it is not for me to go through the specification term by term and try and extract those that I consider to be covered by or are closest to rum or which contain or are flavoured with rum such that would give rise to a deception or otherwise. Neither TFL nor Mr Moore has given any evidence or specific submissions in support or against of the individual terms and whether they fall within or are a sub category of rum. Therefore, in absence of such arguments the following terms would not obviously be regarded as rum, rum based or contain or to be flavoured with rum by the relevant consumer. Consequently, I am prepared to accept that the 700 mark would be deceptive in relation to the following goods:

Class 33: Absinthe; Acanthopanax wine (Ogapiju); Alcohol (Rice -); Alcoholic wines; Alcoholic aperitif bitters; Amontillado; Anise [liqueur]; Anisette; Anisette [liqueur]; Aperitif wines; Arak; Arak [arrack]; Arrack; Arrack [arak]; Baijiu [Chinese distilled alcoholic beverage]; Black raspberry wine (Bokbunjaju); Blackcurrant liqueur; Blended whisky; Bourbon whiskey; Brandy; Calvados; Canadian whisky; Cherry brandy; Cider; Ciders; Cooking brandy; Cooking wine; Curacao; Dessert wines; Distilled rice spirits [awamori]; Distilled spirits of

²⁶ As set out in the Wikipedia entry at Exhibit LH1.

²⁷ On appeal Mr Iain Purvis K.C, O/0911/24 which although this point was in relation to a comparison as to the similarity of goods/services which were not obvious or had been explained, it nevertheless has application in the exercise before me.

rice (awamori); Dry cider; Fortified wines; Gaolian-jiou [sorghum-based Chinese spirits]; Gin; Ginseng liquor; Grape wine; Grappa; Herb liqueurs; Hulless barley liquor; Hydromel [mead]; Japanese liquor containing herb extracts; Japanese liquor containing mamushi-snake extracts; Japanese liquor flavored with Japanese plum extracts; Japanese liquor flavored with pine needle extracts; Japanese regenerated liquors (naoshi); Japanese sweet grape wine containing extracts of ginseng and cinchona bark; Japanese sweet rice-based mixed liquor (shiro-zake); Japanese sweet rice-based mixed liquor [shiro-zake]; Japanese white liquor (shochu); Japanese white liquor [shochu]; Kirsch; Korean distilled spirits (soju); Korean traditional rice wine (makgeoli); Chinese brewed liquor (laojiou); Chinese mixed liquor (wujiapie-jiou); Chinese spirit of sorghum (gaolian-jiou); Chinese white liquor (baiganr); Chinese white liquor [baiganr]; Bitters; Fruit wine; Low-alcoholic wine; Malt whisky; Mead [hydromel]; Mulled wine; Mulled wines; Natural sparkling wines; Naturally sparkling wines; Peppermint liqueurs; Perry; Piquette; Red ginseng liquor; Red wine; Red wines; Rice alcohol; Rose wines; Sake; Sake substitutes; Schnapps; Scotch whisky; Scotch whisky based liqueurs; Sherry; Shochu (spirits); Sorghum-based Chinese spirits; Sparkling fruit wine; Sparkling grape wine; Sparkling red wines; Sparkling white wines; Sparkling wine; Sparkling wines; Still wine; Strawberry wine; Sweet cider; Sweet wine; Sweet wines; Table wines; Tonic liquor containing herb extracts (homeishu); Tonic liquor containing mamushi-snake extracts (mamushi-zake); Tonic liquor flavored with japanese plum extracts (umeshu); Tonic liquor flavored with pine needle extracts (matsuba-zake); Vermouth; Vodka; Whiskey; Whiskey [whisky]; Whisky; White wine; White wines; Wine; Wine coolers [drinks]; Wine-based aperitifs; Wine-based drinks; Wines; Wines of protected appellation of origin; Wines of protected geographical indication; Yellow rice wine.

64. In relation to the remaining terms again given that I have no evidence or submissions to assist, the following products are either phrased in sufficiently broad terms that they would be regarded as falling within or which would encompass the term rum or which are capable of containing rum or being rum flavoured. I cannot rule out/exclude the possibility that the following goods may contain or be flavoured with rum and therefore the mark will not be deceptive for such goods:

Class 33: Alcoholic aperitifs; Alcoholic beverages containing fruit; Alcoholic beverages, except beer; Alcoholic beverages (except beer); Alcoholic beverages except beers; Alcoholic beverages (except beers); Alcoholic beverages [except beers]; Alcoholic beverages of fruit; Alcoholic bitters; Alcoholic carbonated beverages, except beer; Alcoholic cocktail mixes; Alcoholic cocktails; Alcoholic cocktails containing milk; Alcoholic cocktails in the form of chilled gelatins; Alcoholic coffee-based beverage; Alcoholic cordials; Alcoholic egg nog; Alcoholic energy drinks; Alcoholic essences; Alcoholic extracts; Alcoholic fruit beverages; Alcoholic fruit cocktail drinks; Alcoholic fruit extracts; Alcoholic jellies; Alcoholic punches; Alcoholic tea-based beverage; Alcopops; Aperitifs; Aperitifs with a distilled alcoholic liquor base; Beverages (Alcoholic -), except beer; Beverages containing wine [spritzers]; Beverages (Distilled -); Cocktails; Coffee-based liqueurs; Cordials [alcoholic beverages]; Cream liqueurs; Digesters [liqueurs and spirits]; Distilled beverages; Distilled spirits; Extracts of spiritous liquors; Fermented spirit; Flavored tonic liquors; Fruit (Alcoholic beverages containing -); Fruit extracts, alcoholic; Liqueurs; Liqueurs containing cream; Liquor-based aperitifs; Low alcoholic drinks; Potable spirits; Pre-mixed alcoholic beverages; Pre-mixed alcoholic beverages, other than beer-based; Preparations for making alcoholic beverages; Prepared alcoholic cocktails; Prepared wine cocktails; Sangria; Spirits; Spirits and liquors; Spirits [beverages]; Wine punch.

65. Given that the mark in its entirety is Underground Rum, having found that the term underground is not descriptive then it would not be capable of being deceptive as claimed, for goods that were rum or rum related. However, for those goods that are not rum, then I accept that by the inclusion of the word rum in the mark there is a serious risk that it would mislead the public into believing that the goods were rum when in fact they were not. Consequently, the invalidity claim under section 3(3)(b) of the Act succeeds in part for those aforementioned goods at paragraph 63.

The Opposition

Section 5(2)(b)

66. Section 5(2)(b) of the Act reads as follows:

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

(a)...

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

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

67. Section 5A of the Act reads 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.”

The principles

68. The standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25 and are as follows:

(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, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite 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 greater 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; and

(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

69. When conducting a goods comparison, all relevant factors should be considered as per the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon Kabushiki Kaisha v Metro Goldwyn Mayer Inc*, Case C-39/97, where the court stated at paragraph 23 that:

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

70. I am also guided by the relevant factors for assessing similarity identified by Jacob J in *Treat* [1996] R.P.C. 281, namely:

- (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.

71. 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 Applicant relies on those goods as listed in paragraph where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

72. Given the limited nature of the goods relied upon by Mr Moore as the basis of his opposition, my earlier finding in relation to the invalidation action will not greatly affect the terms as relied upon.

73. The goods to be compared are as follows:

TFL's goods	Mr Moore's goods
Class 33: Alcoholic beverages; wines, liqueurs and spirits; brandy, cider, cocktails, gin, kirsch, rum, sake, vodka, whisky.	Class 33: spirits and liqueurs; alcopops; alcoholic cocktails.

74. I shall go through TFL's terms in turn grouping terms together where appropriate.²⁸

Liqueurs and spirits

75. TFL and Mr Moore both have the terms 'liqueurs' and 'spirits' in their respective specifications which are self-evidently identical.

Alcoholic beverages

76. TFL has the term *alcoholic beverages* which is a broad term and clearly encompasses all of Mr Moore's goods. The goods are identical in accordance with the principles in *Meric*.

Brandy, gin, kirsch, rum, sake, vodka, whisky

77. TFL's *brandy, gin, kirsch, rum, sake, vodka, whisky* goods are all spirits and would clearly fall within Mr Moore's term 'spirits and liqueurs' and thus be identical on the principles in *Meric*.

Cocktails

78. TFL's term 'cocktails' is clearly identical either self-evidently or on the principles in *Meric* to Mr Moore's '*alcoholic cocktails*' and vice versa.

Wines, ciders

²⁸ *Separode* Trade Mark BL O-399-10 (AP)

79. This leaves wine and cider. I note Mr Philip Johnson's comments sitting as the Appointed Person in the decision in O/0488/25 on appeal where he summarised the caselaw relating to the various findings in respect of a range of alcoholic beverages on offer and the assessments regarding the various combinations. He noted at [12] that:

“It is important to remember that the outcomes of all these cases²⁹ are fact dependent and that they are not binding (in the strict sense) in relation to other cases involving similar pairs of goods. This is because the relevant public will be different (whether in terms of time or place) on the relevant date. There are, however, relevant considerations set out in all these decisions which may be applied in other cases.”

80. I take from this decision that it is not necessarily a question of following the various decisions referred to (given that many conflict with each other) but rather assessing the combinations as they appear before me. I start by noting that neither party filed evidence or detailed submissions regarding the identity, similarity or otherwise of the goods at issue. Therefore, having in mind Mr Johnson's comments and going through the *Treat* factors in turn I find that whilst there is no identity between any of Mr Moore's goods and TFL's wines and ciders there is a degree of similarity between those goods and the registered *alcopops/spirits and liqueurs*. Wine are goods made from grapes as their base ingredient, such a term would include fortified wines as a sub category such as port, madeira and sherry which are sweet alcoholic beverages of high alcoholic content generally drunk as an aperitif or as an after dinner drink. To my mind these goods share similarity with Mr Moore's 'spirits and liqueurs' as a liqueur in particular is a sweet alcoholic beverage with a high alcohol content, also drunk before or after a meal. Whilst both spirits and liqueurs are generally produced from different core ingredients to wine and have on the whole different manufacturing processes, they are in general terms all similar in nature, each being an alcoholic beverage with the same end purpose namely to be consumed for pleasure. The respective goods are likely to reach the market through the same trade channels and will be found in general retail outlets such as supermarkets, off-licences, bars and the like. I consider that whilst the respective goods are unlikely to be sold on the same

²⁹ The ones referred to by him at paragraph 9 of his decision

shelves of supermarkets, they will nevertheless be displayed in close proximity to each other in the same aisles. There may be a degree of competition between them in that a consumer may prefer to purchase a bottle of wine as opposed to a spirit/liqueur and vice versa, but I consider this to be an overgeneralisation and not in the spirit of the factors as set out in *Treat*.

81. When assessing the degree of similarity between goods, as Mr Philip Johnson (sitting as the Appointed Person) observed, in *Clinton Ogbenna v Nike Innovate C.V.* (GRAVITY) BL O/683/21

“It must be remembered that this is not a counting exercise. So just because numerous factors point against similarity does not preclude this being more than counterbalanced by one factor pointing strongly towards goods being similar.”

82. Taking all these matters into account, I consider that TFL’s *wines* will overlap in nature, purpose, end users and trade channels to Mr Moore’s *spirits and liqueurs*. In my view the respective goods are similar to between a low and medium degree.

83. I make similar findings in relation to TFL’s *cider* goods which in general terms is a sweet alcoholic beverage made from apples. Given that Mr Moore retains *alcopops* which is also a sweet alcoholic beverage I consider that TFL’s *cider* goods are similar to Mr Moore’s *alcopops*. The respective goods are of a similar strength sweet alcoholic beverage, overlapping in user, trade channels and purpose. There would also be a degree of competition between them in that a consumer may choose to purchase cider over an alcopop and vice versa. The respective goods are similar to a low degree.

Average Consumer and the purchasing process

84. When considering the opposing marks, the average consumer is deemed reasonably informed and reasonably observant and circumspect. For the purposes of assessing the likelihood of confusion the average consumer’s level of attention is likely to vary according to the category of goods in question.³⁰

85. In *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain*

³⁰ *Lloyd Schuhfabrik Meyer*, case c-342/97.

Ltd & Anor v Tesco Stores Ltd & Anor (Rev1) [2024] EWCA Civ 262, where he pointed out that:

- (a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;
- (b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;
- (c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;
- (d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence;
- (e) The average consumer's level of attention varies according to the category of goods or services in question; and
- (f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

86. Given the nature of the goods, the average consumer will be a member of the general public having attained the age of 18 years. Notwithstanding that there may be variations in the price of the goods, overall, they are consumable goods, purchased on a fairly frequent basis. Considerations such as personal taste, alcoholic strength and cost will play a part in the selection process leading to an average (medium) level of attention being undertaken, no higher or lower than the norm for such goods.

87. The goods will be self-selected from display shelves of retail outlets or their online equivalents, where visual considerations would dominate. I acknowledge that the goods may also be consumed in public houses, bars, restaurants and the like where an oral aspect in the selection process will arise following requests made to serving staff. Even in these settings, however, visual considerations would still play a part before the goods are selected, given that consumers will often peruse a menu or search for the goods from a display stand behind the counter or from a dispenser, at the point of purchase.³¹

Comparison of the marks


88. 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.”

89. It would be wrong to artificially dissect the trade marks, although, it is necessary to consider 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.

³¹ *Simonds Farsons Cisk Plc v OHIM* T-3/04.

90. The respective trade marks are shown below:

The 700 Mark	The 114 mark
Underground Rum	

91. Mr Moore submits as follows:

“When a customer would look to purchase our product they would be doing so in one of three ways 1) by typing on a computer for e-commerce 2) by ordering in person with a bar or shop, or 3) Browsing a shop and using the product name and shelf edge ticket to identify the relevant product. In all three of these examples there would be confusion by searching for “Underground Rum” or any variant of rum licensed by TFL and incorporating the word “underground”, regardless of the visual recognition of the roundel. It is for this reason that we object to the trademark application.”

92. TFL submits that the dominant and distinctive element of the applied for mark is the blue and red roundel device by virtue of the Applicant’s long history and association with the London Underground and its licensing activities. As a result, there are striking differences aurally, visually and conceptually between the respective marks.

Overall Impression

93. The 700 mark consists of the two words Underground and Rum. Given that the word Rum would clearly be understood as an alcoholic beverage and the nature of the goods on offer this element is clearly descriptive and plays a considerably lesser role in the overall impression of the mark. The overall impression of the mark is therefore dominated by the word Underground.

94. The 114 mark is a figurative mark consisting of a red roundel with a blue rectangular intersected through the middle. Within the blue rectangle are the words

UNDERGROUND presented in white uppercase lettering. As a general principle, words have more impact than devices and are therefore regarded as more dominant because consumers are more likely to identify the mark through the words. This is however not always the case and the assessment will depend on whether it is an integrated device with the word incorporated into it or presented separately from it and the size and position of the elements relative to each other.³² I consider that here given the size of the device and the fact that the word UNDERGROUND takes a central position it will draw the eye in conjunction with the device. Consequently, I consider that both the device and the word UNDERGROUND play roughly an equal role in the overall impression of the mark when regarded as a whole.

Visual Comparison

95. The difference in casing used by the parties will have no impact on the assessment of the verbal elements. The marks coincide only in relation to the word UNDERGROUND which is the first and dominant element of the 700 mark and is roughly the equally dominant element of the 114 mark. The marks differ with the inclusion of the coloured roundel device and the word RUM there being no counterpart in the other's marks. Weighing up the similarities as against the differences I find that the marks are visually similar to a medium degree.

Aural Comparison

96. Given that the device in the 114 mark will not be articulated when the mark is referred to aurally, then the aural comparison is between the verbal elements. Both marks include common English dictionary words which will be articulated in their normal way. The aural difference arises only with the addition of the word RUM in the 700 mark which will be regarded as a descriptive element as to the nature of the goods on offer, but that does not mean that it will be aurally invisible and ignored. I consider that overall, aurally the marks will be highly similar as a result of the articulation of the common element UNDERGROUND being the only word in the 114 mark and the first word of the 700 mark.

³² See Iain Purvis K.C. sitting as the Appointed Person in *C & J Clark International Ltd v Global Trademark Services Ltd*, BL O/992/22 at [17]

Conceptual Comparison

97. Conceptually the parties share the common element UNDERGROUND which has several meanings as set out earlier in my decision. The element RUM is descriptive of an alcoholic beverage with a high alcohol content made from fermented sugarcane.

98. Under section 3(1)(c) I already found and rejected TFL's argument that Underground Rum would be understood to be descriptive of the kind or characteristics of the goods but this does not prevent the word underground being understood as meaning below ground taking its ordinary meaning. Equally consumers may consider that the 700 mark would be a reference to the clandestine movement linked to the prohibition or as per the third definition a reference to the underground transport system.

99. TFL submits that given the reputation of the applied for mark being recognised as referring to the London Underground tube system, consumers will recognise the mark immediately as associated with TFL which is sufficient to distinguish between the marks at issue rendering the marks conceptually dissimilar.

100. In support of this contention Ms Sankey filed a witness statement. Ms Sankey is the brand manager of TFL, a position she has held since November 2020. Her statement serves to outline TFL's reputation and details of its licensing activities, which in particular is said to show its long history of using and registering marks in relation to alcoholic drinks, including rum.

101. Ms Sankey's evidence consists of the history of TFL as the body responsible for London's transportation network. She includes details regarding its funding, the extent of the network and produces extracts of its annual reports regarding the number of passengers that use the network and the revenue generated as a result of this use.³³

102. Further details are given regarding the history and use of the roundel device which is said to appear prominently on the entrances to all London underground stations the sides of trains and station platforms.³⁴

³³ At [3-3.7]

³⁴ Exhibit ES7A-ES8

103. Ms Sankey produces extracts from various publications regarding the distinctiveness of TFL's roundel device/logo said to be one of the best known brands in the world.³⁵

104. Details are provided regarding TFL's licensing activities which are said to extend to the use of the roundel device/logo on a wide range of goods. Ms Sankey states that approaches are regularly made to TFL for the opportunity to use their trade marks under license. It is said that the roundel brand is used on a broad range of merchandise including on alcoholic drinks particularly whiskey, gin and rum. The roundel device is described as 'the bar and line roundel logo' and is one of TFL's globally recognised brands.³⁶

105. Copies of extracts from two license agreements are produced (dated July 2018 and January 2021) and images relating to a range of products using the mark under license to include inter alia posters, books, toys, clothing, bags, chocolates and biscuits. Reference is made to its licensing arrangement with Bimber who produced a limited edition range of malt whiskey in 2021. Whilst reference is made to collaborations with distillers for gin and rum, the collaboration with 'kimm and miller' for 'London Underground Gin' as set out by Ms Sankey at paragraph 7.6 only went as far as the development stage and did not go into production. The references to other gin and rum products referred to in evidence relate to screenshots taken via the wayback machine archive tool and a twitter post showing a limited edition 'London Gin' (produced to celebrate the year of the bus) and an 'After Dark rum', produced by the East London Liquor Company were available for sale in the London Transport Museum shop in 2015, with the gin also being featured in the London Design festival in 2014. The labels of both these products display the roundel device solus in gold, absent the word 'underground' on the front labels of the bottles. It is accepted by Ms Sankey that in so far as TFL's licensing activities the roundel device is sometimes used solus without words through the central bar or includes words other than the word 'underground'. Examples are given of the use of the words 'London' and 'Arsenal' in licensing arrangements with Adidas and the Arsenal football club. Other examples

³⁵ Exhibit ES9

³⁶ At [5.4]

are produced of the roundel device being used together with names of the London Underground/Tube stations.³⁷

106. In so far as the Bimber collaboration for whiskey Ms Sankey states that the first edition was issued in May 2021 and that there have been five releases. Each release is said to include approx. “260 bottles per expression”. The labels on the bottles themselves display the roundel device and include text to show that it is an ‘official licensed product’ of TFL. It is said that 3,530 bottles were sold in total with sales exceeding £90,000 earning TFL royalties of £14,000. Screenshots taken from various websites are also produced showing bottles of Bimber whisky for resale on auction sites which suggests that the whiskey is no longer in production and supports the evidence that only a limited number of bottles were produced.

107. TFL have also collaborated with the Camden Town Brewery and were involved in a pop-up bar at a special celebratory event at the Design Junction during London Design festival in 2013. The roundel device together with the words ‘Underground’ and ‘Camden Town’ featured during the event (images of which are reproduced below).³⁸

³⁷ At [5.5] and Exhibit ES12-ES13

³⁸ Exhibit 18



108. The museum run by TFL includes a café which opened in 2019 and operates under the roundel brand. The café is said to sell beer, wines and cocktails.³⁹ The TFL museum also offers after dark events called “lates” where alcohol is sold and details of some of the events are provided.⁴⁰

³⁹ Exhibit 21.

⁴⁰ Exhibit 22.

109. I note that the GC has consistently held that the reputation of the later mark is in principle irrelevant to the assessment of the likelihood of confusion with an earlier mark.⁴¹ In *Associazione Calcio Milan SpA (AC Milan) v EUIPO*⁴² it upheld a decision of the Board of Appeal of the EUIPO to refuse registration of a composite trade mark which included the word MILAN. It rejected the Applicant's argument that the Board of Appeal had failed to take into account in the context of the assessment of the likelihood of confusion, the high reputation of the sign constituting the mark applied for and of the football club AC Milan. The GC Court stated that:

“113.with regard to the applicant's argument based on the reputation of the mark applied for in Germany, it should be noted, as EUIPO rightly pointed out, that only the reputation of the earlier mark, and not that of the mark applied for, must be taken into account in order to assess whether the similarity of the goods designated by the two marks is sufficient to give rise to a likelihood of confusion (see, to that effect, judgment of 3 September 2009, *Aceites del Sur-Coosur v Koipe*, C-498/07 P, EU:C:2009:503, paragraph 84 and the case-law cited). That case-law is in line with the objective of Article 8(1)(b) of Regulation No 207/2009, which is to provide adequate protection for the proprietors of earlier rights against subsequent applications for identical or similar European Union trade marks (judgment of 29 January 2019, *The GB Foods v EUIPO – Yatecomeré (YATEKOMO)*, T-336/17, not published, EU:T:2019:840, paragraph 49).

114. Therefore, the applicant's argument based on the alleged reputation of the mark applied for is entirely irrelevant.”

110. However, in *Lionel Andrés Messi Cuccuttini v EUIPO*⁴³ the Court of Justice of the European Union (“CJEU”) rejected the argument that the GC was wrong to take into account the notoriety of Lionel Messi as a factor in the assessment of the likelihood of confusion. In rejecting the submissions it stated:

⁴¹ *The GB Foods SA v OHIM*, Case T-336/17, *Mayer Naman v OHIM*, Case T-498/10 and *Agatha Ruiz de la Prada de Sentmenat v OHIM*, Case T-522/08.

⁴² T-353/20

⁴³ Joined cases C-449/18P & C-474/18P

“44. In so far as JM-EV criticizes the General Court for disregarding Article 8(1)(b) of Regulation No 207/2009 by considering, in paragraph 62 of the judgment under appeal, that there was account of the notoriety of Mr Messi Cuccittini in the context of the assessment of the likelihood of confusion, within the meaning of that provision, it should be recalled that, according to settled case-law of the Court, the existence of a likelihood of confusion in the mind of the public must be assessed globally taking into account all the relevant factors of the case.

45. According to equally settled case-law, the overall assessment of the likelihood of confusion must, as regards the visual, phonetic, or conceptual similarity of the signs at issue, be based on the overall impression produced by them, taking into account, in particular, of their distinctive and dominant elements.

46. In the context of that overall assessment, the reputation of the earlier mark is, admittedly, a relevant factor for the purposes of assessing the likelihood of confusion.

47. However, as the Court has held, account must also be taken of the possible notoriety of the person applying for his name to be registered as a trade mark, since that reputation may obviously, have an influence on the perception of the mark by the relevant public (see, to that effect, judgment of 24 June 2010, *Becker v Harman International Industries*, C-51/09 P, paragraph 37).

48. It follows that the General Court was right to consider, in paragraph 62 of the judgment under appeal, that the notoriety of Mr Messi Cuccittini constituted a relevant factor in order to establish a difference at the conceptual level between the term ‘Messi’ and the term ‘Massi’.”

111. The decision in *Messi* appears to suggest a narrow exception to the rule in *Associazione Calcio Milan*, namely that the reputation of the later mark only comes into play in the confusion assessment, in such cases where the notoriety of a famous person may influence the perception of the later mark by the relevant public. However, whilst the settled caselaw appears to only focus on names of famous people there is no reason why it could not apply to organisations with a well-known conceptual

meaning but only in so far as the conceptual comparison assessment.⁴⁴ The relevance of the later mark's reputation was discussed by Mr Allan James, the Registrar's Hearing Officer, in *Extinction Rebellion* where he stated:⁴⁵

“As Mr Phillip Harris, as the Appointed Person, explained in *Retail Royalty Company v Harringtons Clothing Limited* the reputation of a sign as a trade mark is not usually relevant to its conceptual meaning, which is to be derived from the ordinary meaning(s) of the word(s) or sign at the relevant date, i.e. the meaning(s) that can usually be found in dictionaries. This applies to the earlier mark as well as the later mark. So, for example, when comparing the conceptual similarity between BATMAN and BATSMAN (both for printed publications) it was appropriate to take into account that BATMAN is a well-known fictional character from Gotham City, whereas BATSMAN historically describes what is now called a batter in cricket. There was no suggestion that the secondary meaning of BATMAN as a trade mark for comic books was relevant to the conceptual similarity between the marks. There are two reasons why the acquired reputation of a sign as a trade mark is irrelevant. Firstly, taking account of the trade mark meaning of the earlier mark when assessing the degree of conceptual similarity between it and the later mark would be ‘double counting’. This is because the reputation of the earlier mark is already taken into account as a factor which may increase the likelihood of confusion as part of the required evaluation of its distinctive character. Secondly, and more fundamentally, the assessments required under sections 5(2) and 5(3) of the Act necessarily requires the tribunal to assume that both marks will be used as trade marks and that average consumers will recognise them as such. Therefore, the public's existing recognition of one or both of the marks as trade marks adds nothing to the evaluation of the conceptual similarity between them.”

112. Ms Hobbs submitted that such is the repute of TFL's mark that the average UK consumer in the UK when seeing the roundel device and word UNDERGROUND will automatically and with no further thought process bring to mind TFL and the London

⁴⁴ *This Ain't Rock N' Roll Limited v Jason and Christopher Kingsley*; TM Extinction Rebellion O/214/22

⁴⁵ *Ibid* O/214/22 para 52

Underground. I agree that the evidence supports the repute of TFL for transport services which also includes its licensing activities. However, the evidence does not support the contention that its reputation in the applied for mark extends to cover goods in the alcoholic beverage sector. Consequently, there does not appear to be a potential link between the conceptual meaning of the mark and the goods the subject of its application. Nevertheless, I accept that members of the general public have been educated into associating the figurative 114 mark as a whole both the word and device with the London Underground.

113. Irrespective of this, as set out in *Extinction Rebellion*⁴⁶ the reputation of an applied for mark will only be relevant in so far as it can be proven that consumers are educated as to the different meaning beyond the meaning of the word itself/mark and device. It was argued that this assessment is fact dependent. When assessing the degree of conceptual similarity between trade marks, it is the ordinary meaning attributed to the words, by the relevant public, at the relevant date, which is important. I accept that the word underground and the roundel will be regarded by the relevant public as referring to the underground railway system in London. If the word underground in the 700 mark is perceived by a proportion of the relevant public as associated with a clandestine or secretive movement then the marks are conceptually dissimilar. However, in light of the dictionary definitions as set out earlier in my decision as to the meaning of the word underground, this does not preclude that the 700 mark also being perceived as a reference to the network rail system that runs underground. I consider that a significant proportion of relevant consumers would attribute this meaning to the mark rendering the respective marks to be conceptually highly similarity in such circumstances.

Distinctive character of the earlier mark

114. Registered trade marks possess varying degrees of inherent distinctive character. Those marks that are regarded as descriptive of the goods will possess a low degree of distinctiveness. Conversely invented words with no association to the

⁴⁶ O/214/22

goods are highly distinctive. The more distinctive the earlier mark (either per se or by the use that has been made of it) the greater the likelihood of confusion.⁴⁷

115. 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).

116. Whilst Mr Moore filed evidence it does not support a claim of enhanced distinctive character, and therefore I only have the inherent position to consider. As outlined, the 700 mark is a word only mark consisting of the two words UNDERGROUND and RUM. I already found that the word RUM would be perceived as descriptive of the nature of the goods and thus it holds no distinctive character on its own. The distinctive and dominant element of the mark is in the word UNDERGROUND which is an ordinary English dictionary word but which is neither allusive nor descriptive of the goods on offer. Consequently, I consider that the distinctiveness of the mark is unaffected by the word RUM and therefore the word UNDERGROUND either solus or when regarded in the mark as a whole is inherently distinctive to a medium degree.

Likelihood of confusion

117. When considering whether there is a likelihood of confusion between the marks I must consider whether there is direct confusion, where one mark is mistaken for the other or whether there is indirect confusion where the similarities between the marks lead the consumer to believe that the respective goods and services originate from the same or a related source.

⁴⁷ *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)

118. A number of factors must also be borne in mind when undertaking the assessment of confusion. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. As I mentioned above, it is also necessary for me to keep in mind a global assessment of all relevant factors when undertaking the comparison and that the purpose of a trade mark is to distinguish the goods and services of one undertaking from another. In doing so, I must consider that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind. Mr James Mellor, as the Appointed Person, directed that a common sense approach should be undertaken in any assessment where “every comparison must be conducted according to the approach laid down in the CJEU case law and every comparison will depend on its own facts” applying “the well-established propositions for assessing the visual, aural and conceptual similarities.”⁴⁸

119. The difference between the two types of confusion was described in the following terms by Iain Purvis QC (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc.*⁴⁹

“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 recognised 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’.

⁴⁸ *Robert Bosch GmbH v Bosco Brands UK Limited*, BL O/301/20

⁴⁹ BL O/375/10

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).”

110. I bear in mind that the examples as set out by Mr Purvis in *L.A. Sugar* (above) are not exhaustive and that they are only intended to be illustrative of the general approach.⁵⁰ Furthermore, in *Liverpool Gin*, Arnold L.J. pointed out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion. A finding of indirect confusion should not be made merely because two marks share a common element; it is not enough that one mark merely calls to mind another, this is mere association, not indirect confusion.⁵¹

111. Earlier in my decision I found that the respective marks were visually similar to a medium degree, aurally highly similar and conceptually highly similar or dissimilar depending on the view taken by consumers as to the meaning of the word Underground in the 700 mark. I found the goods to be identical other than wine and cider which I found to be similar to between a low and medium degree/low degree. I found that the 700 mark was inherently distinctive to a medium degree as a whole as

⁵⁰ *Liverpool Gin Distillery Limited v Sazerac brands LLC* [2021] EWCA Civ 1207

⁵¹ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

by virtue of the element UNDERGROUND solus. The average consumer for the goods was a member of the general public over the age of 18 selecting the goods via visual means using an average (medium) level of attention, no higher or lower than the norm for such goods. I did not discount aural considerations, however.

112. Taking account of these conclusions, I remind myself that I must assess the matter as to how the marks are perceived on first impressions and from the perspective of the consumer's immediate and instinctive reaction to the marks on first encounter.⁵²

113. I consider that given the visual differences between the respective marks for goods that are purchased primarily by visual means the inclusion of the roundel device in the 114 mark will not go unnoticed and therefore there would not be a likelihood of direct confusion as between the respective marks.

114. However, in so far as indirect confusion I consider that as a result of the common element UNDERGROUND which holds a medium level of inherent distinctive character, together with the identity/similarity of the goods (even to a low degree) this will still lead a significant proportion of relevant consumers into believing that there is an economic connection between the two marks and that the goods are provided by the same or related entity. The fact that TFL holds a reputation and the word underground together with the roundel device gives rise to the concept of the London transport system does not negate this finding. This is because the meaning of the word underground solus would apply equally to the 700 mark as it would to the 114 mark which would include a reference to the underground railway system as per the dictionary definition outlined earlier. I consider that this concept would be perceived by an equally significant proportion of consumers as those that would not, which would still lead to a likelihood of confusion.⁵³

115. Whilst TFL filed evidence regarding its reputation arguing because of this, consumers would not be led to believe that there was a connection between the two entities. I reject this argument. This is because the use and 'reputation' of the later mark is, irrelevant in the likelihood confusion assessment, particularly where, as in this case, the 700 mark is unused and therefore the likelihood of confusion with the later

⁵² *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

⁵³ *Comic Enterprises Ltd v Twentieth Century Fox Film Corporation* [2016] EWCA Civ 41

mark is untested. Even though it is argued by TFL that the later mark will not be confused with the earlier mark it has to be remembered that in *Comic Enterprises v Twentieth Century Fox* [2016] EWCA 41, the Court of Appeal ruled a likelihood of confusion can still be found even in circumstances of 'wrong way round confusion'. In that case Kitchin LJ explained at §80:

“80. ...whether a particular instance of confusion is “right way round” or “wrong way round” may be a consequence of nothing more meaningful than the order in which the consumer happened to come across the mark and the sign. Further, in both cases the consumer thinks that the goods or services in issue come from the same undertaking or economically linked undertakings, and they may be equally damaging to the distinctiveness and functions of the mark.”

116. I find this to be the case here. In my view it makes little difference whether the consumer comes across Mr Moore's goods first, or TFL's - a likelihood of confusion will arise in either scenario. As TFL has submitted in evidence they enter into licensing agreements with a broad range of commercial enterprises and therefore irrespective of who consumers come across first they will believe that there is a commercial relationship between the two entities. If they come across Mr Moore's goods later they may well consider, for example, that those goods are provided by an entity which has a commercial relationship with TFL by way of a licensing agreement. Consequently, it matters not which mark the consumer has encountered first, a likelihood of confusion will still arise.

117. Given the equal dominance of the roundel device in the 114 mark, whilst this may rule against a finding of direct confusion, in that the roundel device will undoubtedly be noticed, this does not avoid a likelihood of indirect confusion from arising with the earlier mark being regarded as a word only version used under license to the applied for mark in a wrong way round confusion scenario. Even in right way round confusion consumers of the earlier mark will still consider that there is an economic connection between the parties believing that it is an alternative version of the other for example the figurative mark used on packaging and promotional material where the other is used in plain text. Consumers in my view will believe that there is an economic connection between the parties and the respective marks. I find there is

a likelihood of indirect confusion in relation to all the goods for which I found identity/similarity even those to that were similar only to a low degree. Perceiving the 700 mark to be a reference to a clandestine/secret movement as advanced by Mr Moore does not change this finding given the identity of the common element.

118. The opposition under section 5(2)(b) succeeds in its entirety. The application shall be refused registration for all those goods in class 33. Since no opposition was raised in relation to the remaining goods and services of the 114 application it shall proceed to registration for all its remaining goods and services.

Closing Remarks

119. In so far as the refusal to allow TFL to file evidence that was not strictly in reply and for it to be reduced even if this evidence had been admitted to its full extent this would not have assisted TFL. The evidence as originally filed, for the most part only provided further evidence regarding TFL's reputation which for reasons that I have already explained has not assisted it in the assessment of the likelihood of confusion. This would not have therefore placed TFL in any stronger position.

Invalidation

120. The invalidation action has succeeded in part and therefore for the following goods UKTM 3307700 shall be invalidated and in according to section 47(6) shall be deemed never to have existed:

Class 33: Absinthe; Acanthopanax wine (Ogapiju); Alcohol (Rice -); Alcoholic wines; Alcoholic aperitif bitters; Amontillado; Anise [liqueur]; Anisette; Anisette [liqueur]; Aperitif wines; Arak; Arak [arrack]; Arrack; Arrack [arak]; Baijiu [Chinese distilled alcoholic beverage]; Black raspberry wine (Bokbunjaju); Blackcurrant liqueur; Blended whisky; Bourbon whiskey; Brandy; Calvados; Canadian whisky; Cherry brandy; Cider; Ciders; Cooking brandy; Cooking wine; Curacao; Dessert wines; Distilled rice spirits [awamori]; Distilled spirits of rice (awamori); Dry cider; Fortified wines; Gaolian-jiou [sorghum-based Chinese spirits]; Gin; Ginseng liquor; Grape wine; Grappa; Herb liqueurs; Hulless barley liquor; Hydromel [mead]; Japanese liquor containing herb extracts; Japanese liquor containing mamushi-snake extracts; Japanese liquor

flavored with Japanese plum extracts; Japanese liquor flavored with pine needle extracts; Japanese regenerated liquors (naoshi); Japanese sweet grape wine containing extracts of ginseng and cinchona bark; Japanese sweet rice-based mixed liquor (shiro-zake); Japanese sweet rice-based mixed liquor [shiro-zake]; Japanese white liquor (shochu); Japanese white liquor [shochu]; Kirsch; Korean distilled spirits (soju); Korean traditional rice wine (makgeoli); Chinese brewed liquor (laojiou); Chinese mixed liquor (wujiapie-jiou); Chinese spirit of sorghum (gaolian-jiou); Chinese white liquor (baiganr); Chinese white liquor [baiganr]; Bitters; Fruit wine; Low-alcoholic wine; Malt whisky; Mead [hydromel]; Mulled wine; Mulled wines; Natural sparkling wines; Naturally sparkling wines; Peppermint liqueurs; Perry; Piquette; Red ginseng liquor; Red wine; Red wines; Rice alcohol; Rose wines; Sake; Sake substitutes; Schnapps; Scotch whisky; Scotch whisky based liqueurs; Sherry; Shochu (spirits); Sorghum-based Chinese spirits; Sparkling fruit wine; Sparkling grape wine; Sparkling red wines; Sparkling white wines; Sparkling wine; Sparkling wines; Still wine; Strawberry wine; Sweet cider; Sweet wine; Sweet wines; Table wines; Tonic liquor containing herb extracts (homeishu); Tonic liquor containing mamushi-snake extracts (mamushi-zake); Tonic liquor flavored with japanese plum extracts (umeshu); Tonic liquor flavored with pine needle extracts (matsuba-zake); Vermouth; Vodka; Whiskey; Whiskey [whisky]; Whisky; White wine; White wines; Wine; Wine coolers [drinks]; Wine-based aperitifs; Wine-based drinks; Wines; Wines of protected appellation of origin; Wines of protected geographical indication; Yellow rice wine.

121. UKTM no. 3307700 shall remain registered for all remaining goods namely:

Class 33: Aguardiente [sugarcane spirits]; Cachaca; Nira [sugarcane-based alcoholic beverage]; Rum; Rum [alcoholic beverage]; Rum infused with vitamins; Rum punch; Rum-based beverages; Sugar cane juice rum; Rum; Rum [alcoholic beverage]; Rum-based beverages; Alcoholic aperitifs; Alcoholic beverages containing fruit; Alcoholic beverages, except beer; Alcoholic beverages (except beer); Alcoholic beverages except beers; Alcoholic beverages (except beers); Alcoholic beverages [except beers]; Alcoholic beverages of fruit; Alcoholic bitters; Alcoholic carbonated beverages, except

beer; Alcoholic cocktail mixes; Alcoholic cocktails; Alcoholic cocktails containing milk; Alcoholic cocktails in the form of chilled gelatins; Alcoholic coffee-based beverage; Alcoholic cordials; Alcoholic egg nog; Alcoholic energy drinks; Alcoholic essences; Alcoholic extracts; Alcoholic fruit beverages; Alcoholic fruit cocktail drinks; Alcoholic fruit extracts; Alcoholic jellies; Alcoholic punches; Alcoholic tea-based beverage; Alcopops; Aperitifs; Aperitifs with a distilled alcoholic liquor base; Beverages (Alcoholic -), except beer; Beverages containing wine [spritzers]; Beverages (Distilled -); Cocktails; Coffee-based liqueurs; Cordials [alcoholic beverages]; Cream liqueurs; Digesters [liqueurs and spirits]; Distilled beverages; Distilled spirits; Extracts of spiritous liquors; Fermented spirit; Flavored tonic liquors; Fruit (Alcoholic beverages containing -); Fruit extracts, alcoholic; Liqueurs; Liqueurs containing cream; Liquor-based aperitifs; Low alcoholic drinks; Potable spirits; Pre-mixed alcoholic beverages; Pre-mixed alcoholic beverages, other than beer-based; Preparations for making alcoholic beverages; Prepared alcoholic cocktails; Prepared wine cocktails; Sangria; Spirits; Spirits and liquors; Spirits [beverages]; Wine punch.

Opposition

122. The opposition has succeeded in its entirety and therefore the application no. 3513114 shall be **refused** in relation to all goods in class 33. The application shall be refused for:

Class 33: Alcoholic beverages; wines, liqueurs and spirits; brandy, cider, cocktails, gin, kirsch, rum, sake, vodka, whisky.

123. Since no opposition was raised in relation to TFL's remaining goods and services UKTM no. 3513114 shall proceed to registration for all the remaining goods and services of its application.

Costs

124. In so far as costs Mr Moore has had the greater share of success in so far as both the invalidation action overall and the opposition in its entirety. Mr Moore being a litigant in person was invited to complete a pro forma regarding the hours spent on a range of given activities and the costs incurred during these proceedings. He was

directed to return the completed pro forma form by 12 April 2024. Having checked the records I note that nothing further was received from Mr Moore in relation to any claim for costs. Consequently, I make no costs award other than a reimbursement of the official fee amounting to £100 in relation to bringing the opposition proceedings.

125. I order Transport for London to pay Thomas Moore the sum of £100 as a reimbursement of the official fee in relation to bringing the opposition. This sum is to be paid within 21 days of the expiry of the appeal period or within 21 days of the final determination of this case, if any appeal against the decision is unsuccessful.

Dated this 27th day of February 2026

Leisa Davies

For the Registrar

Annex

UKTM 3307700

Class 33: Absinthe; Acanthopanax wine (Ogapiju); Aguardiente [sugarcane spirits]; Alcohol (Rice -); Alcoholic aperitif bitters; Alcoholic aperitifs; Alcoholic beverages containing fruit; Alcoholic beverages, except beer; Alcoholic beverages (except beer); Alcoholic beverages except beers; Alcoholic beverages (except beers); Alcoholic beverages [except beers]; Alcoholic beverages of fruit; Alcoholic bitters; Alcoholic carbonated beverages, except beer; Alcoholic cocktail mixes; Alcoholic cocktails; Alcoholic cocktails containing milk; Alcoholic cocktails in the form of chilled gelatins; Alcoholic coffee-based beverage; Alcoholic cordials; Alcoholic egg nog; Alcoholic energy drinks; Alcoholic essences; Alcoholic extracts; Alcoholic fruit beverages; Alcoholic fruit cocktail drinks; Alcoholic fruit extracts; Alcoholic jellies; Alcoholic punches; Alcoholic tea-based beverage; Alcoholic wines; Alcopops; Amontillado; Anise [liqueur]; Anisette; Anisette [liqueur]; Aperitif wines; Aperitifs; Aperitifs with a distilled alcoholic liquor base; Arak; Arak [arrack]; Arrack; Arrack [arak]; Baijiu [Chinese distilled alcoholic beverage]; Beverages (Alcoholic -), except beer; Beverages containing wine [spritzers]; Beverages (Distilled -); Bitters; Black raspberry wine (Bokbunjaju); Blackcurrant liqueur; Blended whisky; Bourbon whiskey; Brandy; Cachaca; Calvados; Canadian whisky; Cherry brandy; Chinese brewed liquor (laojiou); Chinese mixed liquor (wujiapie-jiou); Chinese spirit of sorghum (gaolian-jiou); Chinese white liquor (baiganr); Chinese white liquor [baiganr]; Cider; Ciders; Cocktails; Coffee-based liqueurs; Cooking brandy; Cooking wine; Cordials [alcoholic beverages]; Cream liqueurs; Curacao; Dessert wines; Digesters [liqueurs and spirits]; Distilled beverages; Distilled rice spirits [awamori]; Distilled spirits; Distilled spirits of rice (awamori); Dry cider; Extracts of spiritous liquors; Fermented spirit; Flavored tonic liquors; Fortified wines; Fruit (Alcoholic beverages containing -); Fruit extracts, alcoholic; Fruit wine; Gaolian-jiou [sorghum-based Chinese spirits]; Gin; Ginseng liquor; Grape wine; Grappa; Herb liqueurs; Hulled barley liquor; Hydromel [mead]; Japanese liquor containing herb extracts; Japanese liquor containing mamushi-snake extracts; Japanese liquor flavored with Japanese plum extracts; Japanese liquor flavored with pine needle extracts; Japanese regenerated liquors (naoshi); Japanese sweet grape wine containing extracts of ginseng and cinchona bark; Japanese sweet rice-based mixed liquor

(shiro-zake); Japanese sweet rice-based mixed liquor [shiro-zake]; Japanese white liquor (shochu); Japanese white liquor [shochu]; Kirsch; Korean distilled spirits (soju); Korean traditional rice wine (makgeoli); Liqueurs; Liqueurs containing cream; Liquor-based aperitifs; Low alcoholic drinks; Low-alcoholic wine; Malt whisky; Mead [hydromel]; Mulled wine; Mulled wines; Natural sparkling wines; Naturally sparkling wines; Nira [sugarcane-based alcoholic beverage]; Peppermint liqueurs; Perry; Piquette; Potable spirits; Pre-mixed alcoholic beverages; Pre-mixed alcoholic beverages, other than beer-based; Preparations for making alcoholic beverages; Prepared alcoholic cocktails; Prepared wine cocktails; Red ginseng liquor; Red wine; Red wines; Rice alcohol; Rose wines; Rum; Rum [alcoholic beverage]; Rum infused with vitamins; Rum punch; Rum-based beverages; Sake; Sake substitutes; Sangria; Schnapps; Scotch whisky; Scotch whisky based liqueurs; Sherry; Shochu (spirits); Sorghum-based Chinese spirits; Sparkling fruit wine; Sparkling grape wine; Sparkling red wines; Sparkling white wines; Sparkling wine; Sparkling wines; Spirits; Spirits and liquors; Spirits [beverages]; Still wine; Strawberry wine; Sugar cane juice rum; Sweet cider; Sweet wine; Sweet wines; Table wines; Tonic liquor containing herb extracts (homeishu); Tonic liquor containing mamushi-snake extracts (mamushi-zake); Tonic liquor flavored with japanese plum extracts (umeshu); Tonic liquor flavored with pine needle extracts (matsuba-zake); Vermouth; Vodka; Whiskey; Whiskey [whisky]; Whisky; White wine; White wines; Wine; Wine coolers [drinks]; Wine punch; Wine-based aperitifs; Wine-based drinks; Wines; Wines of protected appellation of origin; Wines of protected geographical indication; Yellow rice wine; Rum; Rum [alcoholic beverage]; Rum-based beverages.

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Class 3: Non-medicated toilet preparations; soap; talcum powder; bubble bath; bath gel; shower gel; body scrub; deodorants and anti-perspirants; depilatories; non-medicated preparations in the form of oils, creams, gels and lotions; face masks; cosmetics; lip sticks, lip glosses, blushers, face powder, eye shadow, mascara, eye brow cosmetics and pencils, false eye lashes; cosmetic kits; body glitter; cotton wool for cosmetic purposes; cotton sticks for cosmetic purposes; tissues impregnated

with cosmetic lotions; perfumes; colognes; fragrances; toilet water; pre-shaving, shaving and after-shave preparations, shaving creams, shaving gels, shaving foam, shaving sticks, shaving soap, shaving balms, shaving oils, shaving lotions, after-shave; preparations for the hair and hair care products; shampoo; conditioner, hair spray, hair lotions and hair gels, hair dyes, hair colourants; preparations for nails and nail care products; nail varnish; nail varnish remover; false nails; nail art stickers; preparations for use in tanning and sun protection; dentifrices and preparations for cleaning and polishing teeth; toothpaste; breath freshening preparations and sprays; mouth washes; bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; incense; joss sticks; pomades for cosmetic purposes; pot pourris; air fragrancing preparations.

Class 9: Display, indication, indicator, LCD, modular sign and signalling panels and boards adapted to feature information, communications and advertising; mechanical, electronic, illuminated and luminous advertising boards, advertising panels, advertising signs, display apparatus, display signs, signboards and signs; neon signs; electric or electronic signalling or regulating apparatus and instruments; information or data processing apparatus; sound or image recording and reproduction media; sound and image transmitting and receiving apparatus; apparatus and instruments for the retrieval, storage and processing of texts, information or data; software, software packages, computer programs including in the fields of advertising, communications, marketing and multimedia; magnetic data carriers; sound, video and data recordings and carriers including records, discs, tapes, cassettes, cartridges, compact discs, CD ROMS, MPEGs, JPEGs, DVDs, DVD-RWs and all other media for storing and/or reproduction of information, data, signals, images and/or sounds; software (recorded programs) exclusively for searching advertising space; sound and video recordings; downloadable and streamable sound recordings, video recordings, music, sounds, images, text, signals, software, information, data and code provided by telecommunications networks, by online delivery and by way of the Internet and the world wide web; magnetic data carriers, audio CDs; compact discs, DVDs and other digital information carrying mediums, including with recordings; downloadable, non-downloadable, interactive and networked software, files and applications for

computers; multi-function hand-held computers, electronic personal organizers, e-readers, tablet computers, personal audio players, personal electronic entertainment devices, namely, laptops, electronic tablets, smart phones, media players, electronic readers, portable gaming devices, mobile phones, and cases and covers for such goods; hands free kits for phones; microphones, megaphones, loudspeakers; cameras; computer software, including software for the downloading of music, audio, video and text by means of a global computer network; floppy discs; hard discs; video cassettes; audio cassettes; radios; phonograph records; tapes; CD ROMs; phonograph turntables and record players; teaching apparatus; video and computer game programs and discs, virtual reality game software, downloadable video games; downloadable digital media and computer files; downloadable digital animations and moving images; downloadable ring tones; downloadable digital media and computer files being text messages, video messages, musical messages and multimedia messages; downloadable digital media being electronic greeting cards; downloadable digital educational media; electronic publications and downloadable electronic publications; computer software; interactive data media; podcasts; apparatus for recording, transmission or reproduction of sound and/or images; electronic publications; electronic media and magnetic media all bearing music or sound; communications apparatus; digital music; digital audiovisual media; computers; personal audio players, personal video players, personal media players; MP3 players; multi-media recordings and publications; downloadable files including music and images; apparatus for processing music; video, music and audiovisual recordings; contact lenses; spectacles, eyeglasses, sunglasses, eyewear and their frames, cases, chains and lenses; voting machines; facsimile machines; weighing machines; compasses; measuring apparatus; binoculars; wires, electric; magnets; heat-regulating apparatus; electrolysers; fire extinguishers; helmets; protective masks; alarms; battery chargers; films; decorative magnets.

Class 11: Lighting apparatus and instruments; lamps; electric lamps; table lamps; bedside lamps; overhead lamps; wall lamps; sconces; lamp stands; lamp bases; lamp shades; lamp shade holders; lamp fittings; lamp casings; chandeliers; ceiling lights; light diffusers; light reflectors; book lights; spot lights; decorative lights; garden

lights; strings of lights; electric fairy lights; electric lights for Christmas trees; bicycle lights; light bulbs; electric light bulbs; halogen light bulbs; LED lights; light assemblies; fixtures and fittings for lights and lamps; apparatus for heating and cooking; household and kitchen apparatus, namely air filters and air purifying apparatus or domestic use, air deodorising apparatus, disinfectant dispensers for toilets, electric fans, beverage cooling apparatus, electric cooking utensils; egg cookers; electric ice cream makers; electric slow cookers; electric toasters; electric waffle makers; apparatus and utensils for warming food or drink; electric coffee machines; electric coffee makers and coffee pots; electric beverage heaters; electric water kettles, hot pots and tea brewing apparatus; parts and fittings for all the aforesaid goods.

Class 12: Vehicles; apparatus and vehicles for locomotion by land, air, rail, road (not including buses, except buses used to replace trains on a temporary basis), tram or water; parts and fittings for the aforesaid goods; bicycles, bottle cages for bicycles, chains, parts and fittings for bicycles, air pumps for inflating tyres; bells, saddles, spokes, rims, frames, all for bicycles; panniers adapted for bicycles; bags for bicycles; cycles bags.

Class 14: Clocks; alarm clocks; atomic clocks; digital clocks; watches; wrist watches; watch straps; watch bands; buckles for watchstraps; watch cases; cases for jewellery, watches and clocks; boxes of precious metals; figurines of precious metal; trinkets; key rings; jewellery and imitation jewellery; necklaces, chains, pendants; bracelets; charms; ear-rings, brooches and rings; tie pins and tie clips; cuff links; hat ornaments of precious metal; beads for making jewellery; medals; badges of precious metal.

Class 16: Printed publications; books, annuals, comic books, joke books; publicity texts, journals, magazines, news sheets and newspapers, manuals, catalogues, brochures, guides, maps; illustrated maps; atlases; instructional and teaching materials; text books; reference materials; leaflets; printed matter; advertising material; tickets; vouchers; travel vouchers; travel and transport cards; card holders made of paper; passport holders; time tables; labels; tags; writing implements;

rulers; erasers; pencil sharpeners; pencil holders and pencil cases; stationery; office requisites; artists' materials; stencils; stickers; temporary tattoos; scrap-books; pictures and posters; prints; photographs; calendars; diaries; address books; note books; ring binders; wall charts; book-ends; clip boards; thumb tacks; paper clips and paper weights; paper, cardboard; paper articles namely announcement cards made of paper [stationery]; bags of paper; bibs of paper; blotters; bottle envelopes of paper; bottle wrappers of paper; boxes of paper; coasters of paper; conical paper bags; desk mats of paper; face towels of paper; flower-pot covers of paper/covers of paper for flower pots; packing [cushioning, stuffing] materials of paper; paper ribbons; paper bows; placards of paper; place mats of paper; tissues of paper for removing make-up; wrapping paper/packing paper; card board articles namely announcement cards made of cardboard [stationery]; bookends made of cardboard; bottle envelopes of cardboard; bottle wrappers of cardboard; boxes of cardboard; hat boxes of cardboard; cardboard tubes, coasters of cardboard; desk mats of cardboard; packing [cushioning, stuffing] materials of cardboard; placards of cardboard; place mats of cardboard; handkerchiefs of paper; table linen of paper; table mats; paper napkins; coasters; toilet paper; paper towels; greetings cards; post cards; wrapping paper; gift bags of paper; packaging materials; cardboard tubes.

Class 18: Goods made of leather and imitations of leather, namely, shoulder belts and shoulder straps, boxes, bags, suitcases, trunks, garment bags for travel, luggage straps, luggage tags, briefcases, card cases, casings, covers for animals, fastenings for saddles, harnesses for animals, canes, umbrellas and parasol covers, furniture coverings of leather; bags; handbags; beach bags; sports bags; shopping bags and wheeled shopping bags; rucksacks; school bags; school satchels; portfolios; brief cases; document bags and cases; music cases; attaché cases; travel bags; trunks and travelling bags; suitcases; slings and pouches for carrying infants; hat boxes; key cases; purses and wallets; purses for travel cards and passes; purses for payment cards; wallets for travel cards and passes; wallets for payment cards; holders for payment cards, travel cards and travel passes; cases for toiletry or cosmetic articles; umbrellas, parasols and walking sticks; reins; riding saddles, whips; mountaineering sticks; collars for animals; clothing for pets.

Class 19: Ceramic tiles; glazed ceramic tiles; non-metallic wall, ceiling and floor tiles; stucco tiles; mosaic tiles; tiles of glass, marble, porcelain or slate; mosaics for building; bricks; cornices, not of metal; works of art of stone, concrete, marble; monuments, not of metal.

Class 20: Furniture and parts therefor; furniture units; furniture panels; furniture screens; upholstered furniture; padded furniture; stuffed furniture; furniture frames; furniture moldings; nursery furniture; bathroom furniture; outdoor furniture; garden furniture; animal housing and beds; beds, bedding, mattresses, pillows; cushions, chair cushions, seat cushions; mirrors; furnishings of wood, cork, reed, cane, wicker, horn, bone, ivory whalebone, shell, amber, mother of pearl, meerschaum and substitutes for all these materials; picture frames, photo frames; notice boards and display boards; flower pot pedestals, flower stands; newspaper display stands; umbrella stands; works of art of wood, wax, plaster or plastic; baskets; storage boxes; bins not of metal; clothes hangers and hooks; gate and window fittings; indoor blinds and fittings for curtains and indoor blinds; curtain tie backs; curtain rods, rails, rings and poles; book rests and book stands; bottle caps, not of metal; corks; bottle racks; tea carts and tea trolleys; trays, not of metal.

Class 21: Household and kitchen utensils and containers; moulds; ice cube moulds; glassware, porcelain and earthenware not included in other classes; works of art of porcelain, ceramic, earthenware or glass; figurines (statuettes) of porcelain, ceramic, earthenware or glass, statuettes of porcelain, ceramic, earthenware or glass; china ornaments; majolica; mosaics of glass, not for building; pottery; urns; vases; watering cans; articles made of ceramics, glass, porcelain or earthenware including souvenirs made from these materials, namely mugs, plates, plaques; signboards of porcelain and glass; crockery; plates; jugs; knife rests; menu card holders; napkin holders and napkin rings; lazy susans; plastic plates; cups; plastic cups; bowls; salad bowls; plastic bowls; egg cups; butter dishes; tea pots; coffee pots; cafetieres; sugar bowls; milk jugs; coffee grinders (non electric); tea cosies; covers for cafetieres; mugs; beer mugs; flasks; refrigerating bottles; heat insulating containers for beverages; containers for household or kitchen use; lunch boxes; picnic baskets; bottle openers; corkscrews; drinking straws; chop sticks; bread

boards and bread bins; bread baskets; cookie jars; trays for domestic purposes; cruet stands for oil and vinegar; domestic grinders (non electric); salt cellars; sieves and sifters; spice sets; candle sticks and candelabra; coasters; paper plates; paper cups; paper bowls; serving trays; rolling pins; bakeware; aluminum bakeware; cookware; cake tins; pastry cutters; saucepans; frying pans; cooking pots; cooking pot sets; cooking utensils (non electric); ice cream scoops; pie dishes and pie servers; vegetable dishes; graters; griddles, griddles (cooking utensils) and grill supports; chopping boards; gloves for household purposes; oven gloves; oven mitts; cloths for cleaning; chopsticks; combs and sponges; bottles; toothbrushes; trays; teapots; saucers; brushes; bristles; basins; baskets; brooms; buckets; cleaning cloths.

Class 24: Table covers; napkins, place mats and table cloths and table runners not made of paper; table mats, not of paper and other than table linen; oil cloth for use as tablecloths; bunting; banners; flags; bath linen; towels; toilet seat covers; shower curtains; face cloths; tea towels; cushion covers; blankets; bed linen; bed clothes, bed covers; sheets; duvet covers; pillow cases; quilts; sleeping bags; textiles and fabrics; covers for furniture; upholstery fabrics; curtains; handkerchiefs of textile; wall hangings of textiles.

Class 25: Articles of clothing; tank tops; t-shirts; short-sleeve shirts; blouses; blazers; waistcoats; suits; tuxedos; uniforms; knitwear; cardigans; fleeces; sweaters; hooded sweatshirts; hoods [clothing]; jumpers, jerseys; gilets; fur stoles; furs [clothing]; jackets; stuff jackets; denim jackets; leather jackets; clothing of imitations of leather; clothing of leather; coats; top coats, over coats; mackintoshes; parkas; waterproof clothing; raincoats; anoraks; ponchos; rain ponchos; leisurewear; sports clothing; clothing for gymnastics; leotards; clothes for cycling; clothes for walking; trouser straps, gaiter straps; judo uniforms; karate uniforms; tracksuits; jogging bottoms; sports jerseys; sports singlets; clothing for skiing; ski gloves; salopettes; thermal clothing; wet suits; swimwear; bathing suits, swimsuits; bathing trunks; beach clothes; sarongs; kaftans; kimonos; robes; masquerade costumes; playsuits; dresses; jumper dresses, pinafore dresses; overalls; smocks; tunics; togas; saris; kilts; skirts; skorts; shorts; leggings; jeans; trousers; suspenders,

braces; belts [clothing]; money belts [clothing]; pocket squares; cuffs, wristbands [clothing]; muffs [clothing]; ear muffs [clothing]; gloves; mittens; neckwear; collars [clothing]; detachable collars; neckties; ascots; cravats; bandanas; neckerchiefs; boas, necklets; neck scarves; scarves; shawls; headscarves; veils [clothing]; underclothing; girdles; camisoles; slips; petticoats; vests; underwear; brassieres; corsets; corselets; bodices [lingerie]; teddies; garters; knickers, panties; underpants; boxer shorts; hosiery; stockings; stocking suspenders; tights; socks; sock suspenders; sweat-absorbent socks; sleepwear; pyjamas; nightgowns; dressing gowns; sleep masks; maternity clothing; baby clothing; layettes, romper suits; bibs, not of paper, plastic baby bibs; plastic aprons; aprons; headwear; caps, flat caps, golf caps, cap peaks; beanie hats, bobble hats, woolly hats; fur hats; berets; bonnets; top hats; sun hats, beach hats; visors, sun visors; shower caps, bathing caps; fascinator hats; headbands; balaclavas; turbans; head sweatbands; wrist sweatbands.

Class 27: Carpets; rugs; mats and matting; bath mats; beach mats; door mats; play mats; gymnastic and yoga mats; floor runners; floor coverings; textile floor coverings; linoleum and other materials for covering existing floors; floor coverings and materials for covering existing floors made from leather hides; protective floor coverings; hard surface covering for floors; carpet tiles; cork tiles; linoleum tiles; vinyl tiles; anti-slip materials for use under floor coverings; anti-slip materials for use under carpets; underlays for carpets; underlays for mats; underlays for rugs; cloth wall coverings; decorative wall hangings, not of textile; friezes (non-textile wall hangings); wallpaper; wallpaper borders; wall hangings; wall coverings.

Class 28: Toys, games and playthings; action figures; dolls and accessories for dolls, including dolls' clothes, dolls' feeding bottles and dolls' houses; marionettes and puppets; teddy bears; soft toys; plush toys; mobiles; kites; balloons; rocking horses; rattles; spinning tops; theatrical masks; toy masks; bath toys; board games; chess boards and chess sets; checkerboards and checkerboard sets; draughts and draughtboards; backgammon games; mah-jong; parlour games; jigsaws; playing cards; bingo cards; building blocks; dice and cups for dice; marbles; conjuring apparatus; toy vehicles; toy scooters; scale model vehicles; toys for domestic pets;

twirling batons; flying discs; electric games and playthings (other than those adapted for use with television); electronic remote controlled toys; hand held computer games; hand held electronic games; amusement apparatus and machines being automatic and/or coin or counter operated; amusement apparatus for use in arcades; amusement apparatus and machines incorporating television screens and/or sound recording; coin-operated games; decorations for Christmas trees; Christmas crackers; novelty items, namely novelty toys, novelty games, novelty masks, novelty fake teeth, novelty noisemaker toy for parties; practical jokes; novelties for parties; paper party hats; piñatas; confetti; sporting and gymnastic apparatus; balls; bats and racquets; hockey sticks; golf clubs; gloves for sporting purposes, including golf gloves and boxing gloves, protective padding, elbow guards and knee guards; skates and parts and fittings for such goods; skateboards; inflatable swimming pools; swimming flippers; swimming floats; swings and slides; skittles, quoits and ninepins; swimming jackets; swimming belts.

Class 30: Flour, cereals, cereal products and preparations made from cereals; pasta; spaghetti; noodles; snack products, namely muesli based snacks, multi-grain based snacks, corn based snacks, maize based snacks, snack foods prepared from potato flour, snack foods consisting principally of pasta, snack foods consisting principally of bread, snack foods consisting principally of confectionery, snack bars containing a mixture of grain, nuts and dried fruit [confectionery], cereal bars; food package combinations consisting primarily of cereal products; baking products, namely, baking powder, baking soda, flour for baking, prepared baking mixes; baking powder, baking soda, cake flavourings, cake decorations, cake frosting; crackers; yeast; rice cakes; crisp breads; popcorn; cereal based snack food; cheese flavoured puffed corn snacks; cheese flavoured snacks, cheese balls; cheese flavoured snacks; cheese curls; extruded corn snacks; extruded wheat snacks; snack bars; puffed corn snacks; rice-based snack foods; snack mix consisting primarily of crackers, pretzels, and/or popped popcorn; wheat-based snack foods; bread and bread products; sandwiches; food package combinations consisting primarily of bread and/or crackers; biscuits for cheese; pizzas; quiches; condiments; sauces; salad dressings; vinegar; chutneys; relish; ketchup; confectionery, sugar confectionery, sweets; marzipan; pastries; biscuits, rusks, cakes, cookies, pancakes

and pastries, tarts, wafers, toffees; puddings and desserts (included in this class); honey; treacle; golden syrup; jelly; chocolate, chocolate products, chocolate confectionery, chocolate spreads, spreads made from chocolate and nuts; beverages with a chocolate, cocoa or coffee base and containing milk; coffee, coffee extracts, coffee-based preparations and beverages; iced coffee; artificial coffee, artificial coffee extracts, preparations and beverages made with artificial coffee; chicory; tea, tea extracts, preparations and beverages made with tea; iced tea; malt-based preparations for human consumption; cocoa, powdered preparations containing cocoa for use in making beverages; cocoa-based preparations and beverages; cocoa based beverages with milk; cocoa powder; chocolate-based preparations and beverages; drinking chocolate; edible ices, water ices, ice confectioneries, ice creams, ice desserts, frozen yogurts, powders and binding agents (included in this class) for making edible ices and/or water ices and/or sorbets and/or ice confectioneries and/or iced cakes and/or ice-creams and/or ice desserts and/or frozen yogurts.

Class 32: Beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices syrups and other preparations for making beverages.

Class 33: Alcoholic beverages; wines, liqueurs and spirits; brandy, cider, cocktails, gin, kirsch, rum, sake, vodka, whisky.

Class 35: Retail services connected with the sale of clothing, headgear and footwear, bags, luggage and accessories for men, women, children and infants, namely, belts, scarves, tights, umbrellas, key rings, badges and hair accessories, jewellery, clocks and watches, soaps and toiletries, cosmetics, beauty care products, spectacles, sunglasses, cases for spectacles and sunglasses, electrical goods, namely, vacuum cleaners, music systems, radios, hairdryers, hair straighteners, irons, electric fans, electric heaters, microwaves, food blenders, food processors, espresso machines, kettles, toasters, crockery, cutlery, mugs, glasses, vases, jugs, decanters, household cleaning preparations, brooms, mops, buckets, brushes, dustpan and brush sets, rubber gloves, cloths, scourers, ironing boards and ironing board covers, tea towels, aprons, home furnishings, bedding, linens,

curtains, draperies, textiles, furniture and rugs, picture frames and mirrors, ornaments, decorations, lights and light accessories, food and drinks, beers, tea and coffee, Christmas trees, plants, flowers, garden, lawn and patio equipment and supplies, namely outdoor furniture, patio tables, patio chairs, outdoor cushions, patio umbrellas, umbrella bases, umbrella covers, fire pits, patio heaters, outdoor string lights, outdoor lanterns, outdoor lamps, pet equipment and supplies, namely collars for animals, leashes and leads for animals, water bowls for animals, food bowls for animals, pet food, bedding for animal, toys for animals, carriers for animals, cages for animals, kennels for animals, toys, games and sporting goods, party supplies, namely, balloons, party hats, empty party bags, bunting, banners, confetti, paper tablecloths, paper tableware, party poppers, hobby and craft supplies and equipment, namely, sewing machines, needles, thread, ribbons, felt, fabric, dyes (for fabric), paints, namely acrylic paint, oil paint, watercolour paint, paint brushes, pens, coloured paper and card, glue, glue guns, clay (for modelling), books and magazines, stationery, office and school supplies, computer hardware, software and computer hardware accessories, cameras, calculators and telephones, mobile phones and mobile phone accessories, tablets, cases for mobile phones, tablets and cameras, CDs, fridge magnets, bicycle accessories; the bringing together, for the benefit of others, of a variety of goods in the fields of clothing, headgear and footwear, bags, luggage and accessories for men, women, children and infants, namely, belts, scarves, tights, umbrellas, key rings, badges and hair accessories, jewellery, clocks and watches, soaps and toiletries, cosmetics, beauty care products, spectacles, sunglasses, cases for spectacles and sunglasses, electrical goods, namely, vacuum cleaners, music systems, radios, hairdryers, hair straighteners, irons, electric fans, electric heaters, microwaves, food blenders, food processors, espresso machines, kettles, toasters, crockery, cutlery, mugs, glasses, vases, jugs, decanters, household cleaning preparations, brooms, mops, buckets, brushes, dustpan and brush sets, rubber gloves, cloths, scourers, ironing boards and ironing board covers, tea towels, aprons, home furnishings, bedding, linens, curtains, draperies, textiles, furniture and rugs, picture frames and mirrors, ornaments, decorations, lights and light accessories, food and drink, beers, tea and coffee, Christmas trees, plants, flowers, garden, lawn and patio equipment and supplies, namely outdoor furniture, patio tables, patio chairs, outdoor

cushions, patio umbrellas, umbrella bases, umbrella covers, fire pits, patio heaters, outdoor string lights, outdoor lanterns, outdoor lamps, pet equipment and supplies, namely collars for animals, leashes and leads for animals, water bowls for animals, food bowls for animals, pet food, bedding for animal, toys for animals, carriers for animals, cages for animals, kennels for animals, toys, games and sporting goods, party supplies, namely, balloons, party hats, empty party bags, bunting, banners, confetti, paper tablecloths, paper tableware, party poppers, hobby and craft supplies and equipment, namely, sewing machines, needles, thread, ribbons, felt, fabric, dyes (for fabric), paints, namely acrylic paint, oil paint, watercolour paint, paint brushes, pens, coloured paper and card, glue, glue guns, clay (for modelling), books and magazines, stationery, office and school supplies, computer hardware, software and computer hardware accessories, cameras, calculators and telephones, mobile phones and mobile phone accessories, tablets, cases for mobile phones, tablets and cameras, CDs, fridge magnets, bicycle accessories enabling customers to conveniently view and purchase those goods in a retail store or online; the bringing together, for the benefit of others, of a variety of goods in the fields of clothing, headgear and footwear, bags, luggage, accessories for men, women, children and infants, namely, belts, scarves, tights, umbrellas, key rings, badges and hair accessories, jewellery, clocks and watches, soaps and toiletries, cosmetics, beauty care products, spectacles, sunglasses, cases for spectacles and sunglasses, electrical goods, namely, vacuum cleaners, music systems, radios, hairdryers, hair straighteners, irons, electric fans, electric heaters, microwaves, food blenders, food processors, espresso machines, kettles, toasters, crockery, cutlery, mugs, glasses, vases, jugs, decanters, household cleaning preparations, brooms, mops, buckets, brushes, dustpan and brush sets, rubber gloves, cloths, scourers, ironing boards and ironing board covers, tea towels, aprons, home furnishings, bedding, linens, curtains, draperies, textiles, furniture and rugs, picture frames, mirrors, ornaments, decorations, lights and light accessories, Christmas trees, plants, flowers, food and drink, beers, tea and coffee, garden, lawn and patio equipment and supplies, namely outdoor furniture, patio tables, patio chairs, outdoor cushions, patio umbrellas, umbrella bases, umbrella covers, fire pits, patio heaters, outdoor string lights, outdoor lanterns, outdoor lamps, pet equipment and supplies, namely collars for animals, leashes and leads for animals, water bowls for animals, food bowls for

animals, pet food, bedding for animal, toys for animals, carriers for animals, cages for animals, kennels for animals, toys, games, sporting goods, party supplies, namely, balloons, party hats, empty party bags, bunting, banners, confetti, paper tablecloths, paper tableware, party poppers, hobby and craft supplies and equipment, namely, sewing machines, needles, thread, ribbons, felt, fabric, dyes (for fabric), paints, namely acrylic paint, oil paint, watercolour paint, paint brushes, pens, coloured paper and card, glue, glue guns, clay (for modelling), books and magazines, stationery, office and school supplies, computer hardware, software and computer hardware accessories, cameras, calculators and telephones, mobile phones and mobile phone accessories, tablets, cases for mobile phones, tablets and cameras, CDs, fridge magnets, bicycle accessories, enabling customers to conveniently view and purchase those goods in a retail store online from a catalogue, by mail order or by means of telecommunications, or from a general merchandise website, department store website or supermarket internet website; organization of exhibitions and trade fairs for commercial or advertising purposes; advertising and marketing services; promotional services; production and organization and delivery of promotions; public relations services; provision of advertising space; brand creation consultancy services; brand evaluation services; brand positioning; brand testing; brand strategy; business assistance relating to franchising and business advertising services relating to franchising; marketing and advertising media management services; media buying services, namely, purchasing time and space for the delivery of advertising messages through broadcast time, print space, indoor space, outdoor space or other media such as CDs and DVDs or website space/time; event marketing and management services; professional consultation and advice relating to events marketing and management; promotional sponsorship consultancy services; business services relating to the provision of sponsorship of the arts, sports, music and theatre events; management of athletes, sportspeople, artistes and celebrities; business management and research; market research; business administration and business consultancy services; business management of event hospitality services; recruitment services; opinion polls; compilation of statistics; processing and analysis of business statistics; business introduction services; arranging and conducting of commercial exhibitions and shows; production of advertisements for radio, video, film, computers, internet

web sites, television and mobile devices; all the aforesaid services also provided on-line via computer websites or through wireless transmissions; advertising by mail order; compilation of direct mailing lists; compilation of mailing lists; direct mail advertising; marketing by mail; preparation of mailing lists; preparation of mailing lists for direct mail advertising services; direct marketing, database marketing, telemarketing; statistical analysis and reporting; database management; information services (business); direct mail advertising services; business consulting services in the field of electronic commerce; advertising and marketing management agency services, namely, the creation, development and dissemination of advertising and promotional materials via direct mail, newspaper, radio, television, mobile devices, a global computer network and other interactive media; information services relating to all the aforesaid; file and document retrieval; secure file and document retrieval; design of publicity and advertising materials; implementation of brands names; creation, development and implementation of slogans, lettering and logos; mobile advertisements and direct mail advertisements; advertising research services; information, consultancy and advisory services in relation to the aforesaid.

Class 39: Transport services; passenger transportation services; rail, bus, taxi, tram, cable car and river transport services; travel services; rental, hire and leasing of bicycles and electric bicycles; booking and reservation services; travel information services; provision of information relating to travel, bicycle hire and cycle routes, including that provided on-line from computer databases or websites on global computer networks; timetable and travel information services; time table and fare enquiry services; services for the booking of travel; ticketing services; issuing of tickets; rental and leasing of ticket dispensing machines; arranging and conducting of tours and sightseeing; luggage storage services; escorting of passengers; information, advisory and consultancy services relating to all the aforesaid services; consultancy, advisory and information services relating to passenger transportation services, infrastructure for transport, rolling stock, light rapid transport and integrated transport; advisory and consultancy services relating to the conditions of the carriage of passengers; monitoring, checking and approval of transport services; professional advisory and consultancy services relating to transport.

Class 41: Education; providing of training; education and training services relating to ticketing and transportation; educational and training services relating to transportation around London, facilities available in London and events in London; entertainment services for children; bike safety educational services; road safety educational services; language school services; corporate hospitality (entertainment); entertainment services; entertainment by or relating to television or radio; production, presentation, recording, distribution and rental of audio, film, and video recordings, multi-media recordings, radio and television programmes and animated cartoons; rental of films, cartoons, television programmes and of audio and video recordings; provision of entertainment and cultural facilities; presentation of live performances; producing, arranging and organising of plays, music events, concerts, exhibitions, performing arts, shows, competitions and quizzes; provision of cinema facilities; theatre productions; concert hall services; information relating to education, entertainment, sporting and cultural activities provided on-line from a computer database or the Internet or provided by other means; library and mobile library services; recreational services and providing recreational facilities; holiday camp services; sporting and fitness activities; sport entertainment services; sports educational services; sports and fitness recreational services; provision of sporting and fitness facilities; organising and staging of sports events; providing sports results services; handicapping services for sporting events; producing, arranging and organising of live sports events, sporting activities, sport shows, sports events, sporting competitions and e-sports competitions; hosting of fantasy sport leagues; provision of leisure facilities; sporting and fitness services; sports park services; sport camp services; provision of sports training, tuition, refereeing, officiating, sports coaching; training of sports teachers; rental of sports premises and sports facilities; leasing of sports premises and sports facilities; rental of sports equipment; advice and information services relating to sports and fitness, sports property and sports facilities; booking of sports personalities for events (services of a promoter); booking agency services; reservation agency services for entertainment services, theatre, cinema, concert, show, museum, exhibitions; cultural activities; club and nightclub services and recreational activities; education and training of sports personnel; organising of competitions for education and entertainment purposes; entertainment by or relating to games, competitions, quizzes; prize draws; gaming

and gambling services; operating lotteries; publishing services; provision of on-line electronic publications; publication of books, magazines, newspapers, multi-media recordings; publication of directories relating to tourism and transportation around London, facilities available in London and events in London; organising and arranging conferences, seminars, courses, workshops and events; arranging and conducting training workshops; arranging and conducting exhibitions, conferences, seminars, courses, workshops and events; arranging and conducting exhibitions, conferences, seminars, courses, workshops and events relating to ticketing, transportation, transportation around London and facilities available in London; educational programs provided electronically on-line or via electronic media; provision of consultancy, information and advice relating to all the aforesaid.

Class 43: Services for providing food and drink; cafés; bars; restaurants; grill restaurants; bistros; carvery restaurants; tapas bars; delicatessens [restaurants]; pizza parlours; ice-cream parlours; canteens; canteen services; cafeteria services; tea rooms; coffee shops; coffee supply services for offices [provision of beverages]; business catering services; corporate hospitality [provision of food and drink]; food preparation; food sculpting; food preparation for others on an outsourcing basis; catering services; outside catering services; organisation of catering for birthday parties; banqueting services; arranging of wedding receptions [venues]; arranging of wedding receptions [food and drink]; mobile catering services; mobile restaurant services; providing food and drink via a mobile truck; supplying of meals for immediate consumption; fast food restaurants; take-out restaurant services; takeaway services; self-service restaurants; self-service cafeteria services; salad bars; juice bars; snack-bar services; serving of alcoholic beverages; bar services; beer garden services; pubs; wine bars; wine tasting services; sommelier services; cocktail lounge services; night club services [provision of food]; club services for the provision of food and drink; private members drinking club services; private members dining club services; personal chef services; information relating to cookery, food and drink provided on-line from a computer database on the internet; provision of information relating to bars and restaurants; reservation services for the booking of meals; consultancy services in the field of food and drink catering; cookery advice; providing information in the nature of recipes for drinks; providing

information about bartending and bar services; providing reviews of restaurants and bars; operating membership accommodation; hotel services for preferred customers; hotels, hotel services, hostels, boarding houses, holiday and tourist accommodation; boarding house services; guesthouses; guest house services; motels; motel services; resort hotels; resort hotel services; hotel catering services; hotel restaurant services; hiring of marquees, pavilions; rental of tents; providing campground facilities; hiring of temporary office space; room booking; room hire services; room rental for exhibitions; rental of meeting rooms; rental of rooms for social functions; providing community centres for social gatherings and meetings; provision of facilities for board meetings, conferences, exhibitions, conventions; hiring of furniture for conferences, exhibitions, presentations; rental of lighting apparatus, furniture; rental of kitchen worktops, non-electric cooking heaters; rental of cooking apparatus; rental of catering equipment; rental of food service apparatus; rental of chocolate fountains, cotton candy making machines, popcorn poppers; rental of drink dispensing machines; rental of water dispensers; rental of bar equipment; rental of bed linen, quilts, pillows, blankets, beds; rental of chairs, tables, tableware, table linen, glassware, cutlery; rental of floor coverings, rugs, carpets, curtains, wall hangings, towels, furnishings for hotels; accommodation services for functions; hospitality services; reception services for temporary accommodation; accommodation bureau services [hotels, boarding houses]; consultancy services relating to hotel facilities; rating of holiday accommodation; electronic information services relating to hotels; hotel reservation services provided via the internet; booking agency services for hotel accommodation; booking of hotel accommodation; tour operator services for booking temporary accommodation; travel agency services for booking accommodation; temporary accommodation reservation services; letting of holiday accommodation; provision of information relating to hotels and temporary accommodation; child care services; children's creches; nurseries; provision of information about creche services; pet day care services; animal boarding; boarding for pets; cattery services; boarding kennel services; pet hotel services; provision of consultancy and information about the aforesaid services.