

O-019-17

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 3156568

BY EMOJI HONG KONG LIMITED

TO REGISTER THE TRADE MARKS



&



IN CLASS 5

AND

IN THE MATTER OF OPPOSITION THERETO UNDER NO. 600000458

BY EMOJI COMPANY GMBH

BACKGROUND

1. On 24 March 2016, Emoji Hong Kong Limited (the applicant) applied to register the marks shown on the cover page of this decision for the following goods:

Class 5: Car air fresheners; air fresheners; air freshening preparations; air deodorising preparations; car deodorants; deodorisers and air purifiers.

2. The application was published for opposition purposes on 22 April 2016 and a notice of opposition, under the fast track procedure, was subsequently filed by emoji company GmbH (the opponent).

3. The opposition, which is based upon Sections 5(2)(a) and 5(2)(b) of Trade Marks Act 1994 (the Act), is directed against all of the goods in the application. For the purpose of its claim, the opponent lists three European Union Trade Mark (EUTM) registrations upon which it relies, the details of which can be seen in the following table:

Mark details	Goods and services relied upon ¹
EUTM 013709373 emoji Filing date: 4 February 2015 Registration date: 21 May 2015	Classes 11,12, 35, 39
EUTM 012057162 Emoji Filing date: 9 August 2013 Registration date: 12 April 2014	Classes 3,14, 16, 18, 24, 25, 27, 28, 29, 30, 32, 33, 34

¹ The specifications are reproduced below in the Annex to this decision.

EUTM 013177316 emoji Filing date: 15 August 2014 Registration date: 7 May 2015	Classes 3, 9, 14, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 32
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4. The only comments I have from the opponent are in its notice of opposition, where it states:

“The trademarks are highly similar if not identical. The goods are similar as they are intended for a similar purpose”

5. The applicant filed a counterstatement in which it denies the basis of the opposition. I will return to the applicant’s comments later in this decision.

6. Rules 20(1)-(3) of the Trade Marks Rules (TMR) (the provisions which provide for the filing of evidence) do not apply to fast track oppositions but Rule 20(4) does. It reads:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”

7. The net effect of the above is to require parties to seek leave in order to file evidence (other than the proof of use evidence which is filed with the notice of opposition) in fast track oppositions.

8. No leave was sought in respect of these proceedings.

9. Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if 1) the Office requests it or 2) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost. Otherwise written arguments will be taken.

10. A hearing was neither requested nor considered necessary. Only the applicant filed written submissions in lieu of attendance at a hearing, which I will refer to as necessary, below.

DECISION

11. The opposition is based upon Sections 5(2)(a) and 5(2)(b) of the Act which read as follow:

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

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

(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”.

12. An earlier trade mark is defined in Section 6 of the Act, which states:

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

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

The opponent's best case

13. In these proceedings, the opponent is relying upon the three earlier marks mentioned above, all of which consist of the same element, i.e. the word emoji/Emoji. In a global appreciation, the opponent's best case must, therefore, lay with the goods that are the closest to the applicant's goods. These, I agree with the applicant, are the goods in class 3. As the 13177316 mark contains a broader range of goods in class 3, it is this mark I shall use for the purposes of comparison. If the opponent does not succeed in relation to this mark, it will be in no better position in relation to its other earlier marks.

14. Given its date of filing, the 13177316 mark is an earlier mark in accordance with Section 6 of the Act. As this mark had not been registered for five years or more at the publication date of the opposed application, the proof of use provisions contained in Section 6A of the Act do not apply. This means that the opponent can rely upon its earlier mark without having to prove use.

Section 5(2)(b) case law

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

The principles

- (a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well

informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

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

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

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

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

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

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

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

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

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

Comparison of goods and services

16. In the judgment of the Court of Justice of the European Union (CJEU) in *Canon*, Case C-39/97, the court stated that:

“23. 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”.

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

- a) The respective users of the respective goods or services;
- b) The physical nature of the goods or acts of services;
- c) The respective trade channels through which the goods or services reach the market;
- d) 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;

- e) 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.

18. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the General Court (GC) stated that “complementary” means:

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

19. In *Sanco SA v OHIM*, Case T-249/11, the GC indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. *chicken* against *transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited* BL-0-255-13:

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes.”

Whilst on the other hand:

“.....it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.”

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

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

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

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

22. The opponent has filed no evidence or submissions to address the issue of goods and services similarity. In its submissions, the applicant identifies the opponent's closest goods as its goods in class 3. It states:

"...for the purpose of economy we have not reproduced goods of the Opponent in classes other than class 3 below because these are the closest to the Applicant's goods and, since we discuss below, even these goods are dissimilar to those of the Applicant the same conclusion should clearly also be drawn in relation to the remaining goods of the Opponent..."

23. The applicant then goes on to compare its goods with the opponent's "perfumery, essential oils and cosmetics". It states:

"...the nature of the goods is different in that the Applicant's goods are for air deodorising and freshening, particularly in cars and the goods of the Opponent are perfumes and cosmetics. As such, the goods have different intended purposes. On the one hand the Opponent's goods are clearly used for personal application whereas the Applicant's goods are not. As a result they would be sold either in different stores or very different parts of large department stores for examples. The purpose of the products are actually very different and as a result consumers would not expect them to originate from the same trade source. Accordingly the goods should clearly be considered dissimilar..."

24. Further, it refers me to two European Union Intellectual Property Office (EUIPO) decisions in which it was found that there was no similarity between, inter alia, the following sets of goods: i) "perfumes for human use" (class 3) and "preparations for air fresheners and sprays for household use" (class 5) (opposition B 2 134 008) and ii) "air fresheners" (class 5) and "cosmetics, skin care preparations, toiletries, hair care and perfumery" (class 3)² (opposition B 715 476). Aside from the fact that the EUIPO decisions are not binding upon national offices, in the aforementioned decisions the EUIPO considered that the concerned goods were limited to perfumes and perfumery for personal use, which is not the case here (I say more about this below). Consequently, the outcome reached in these decisions is of no assistance in the proceedings at issue.

25. Finally, before I start my analysis, it is important to recognise that even though I do not have the benefit of evidence from the parties on the similarity of goods and services, I am able to draw upon commonly known facts. Mr Geoffrey Hobbs QC sitting as the Appointed Person said in *Raleigh International trade mark*³, that evidence of similarity will be required if the goods or services specified in the

² The decision refers to the relevant class as class 5 but this appears to be an error as the records show that the relevant goods are registered in class 3

³ [2001] R.P.C. 11 at paragraph 20

opposed application for registration are not identical or self-evidently similar to those for which the earlier trade mark is registered. But where there is self-evident similarity, and especially in relation to everyday items, evidence may not be necessary.

26. Beyond its broad statement that the goods are similar as they are intended for a similar purpose, the opponent makes no further submissions. In the absence of specific arguments put forward by the opponent, I find that its best prospect of success lays with the following goods:

Applicant's goods	Opponent's goods
Car air fresheners; air fresheners; air freshening preparations; air deodorising preparations; car deodorants; deodorisers and air purifiers.	Class 3: perfumery, essential oils

27. Where appropriate, I will for the purpose of comparison, group related goods together in accordance with the decision in *Separode Trade Mark*⁴.

Air fresheners, air freshening preparations, air deodorising preparations, deodorisers

28. As I have mentioned above, the applicant's approach unduly limits the opponent's class 3 goods to perfumery for personal use. However, the term "perfumery" in the opponent's specification is drafted in wide terms and it is not limited in any way. In this connection, I note that in the opposition B 2 134 008, to which the opponent refers, the mark relied upon for the purpose of the opposition was registered for "perfumes" at large; however, in determining the goods on which genuine use had been shown (and upon which the opponent was entitled to rely), the EUIPO found that the mark had been used only in relation to "perfumes for human use". Such finding implies, in itself, that the term "perfumes" extends beyond perfumes for personal use. A similar view was taken in case BL O-175/14, where Ms

⁴ BL O-399-10

Anna Carboni, sitting as the Appointed Person, accepted that the term “perfumes” includes perfumes designed to perfume the air. She stated:

“40. Mr Harris suggested that, given the Hearing Officer’s use of the Collins Dictionary for understanding other terms referred to in the Decision, it would be appropriate to refer to that dictionary for a definition of “perfume” along the lines of what the Hearing Officer had, or should have had, in mind. He set out the Collins English Dictionary online definition in his skeleton argument, as follows:

“1. noun: a mixture of alcohol and fragrant essential oils extracted from flowers, spices, etc, or made synthetically, used esp to impart a pleasant long-lasting scent to the body, stationery, etc See also cologne, toilet water; 2. a scent or odour, esp a fragrant one”

41. Mr Harris also directed me to the “TMclass” database operated by the Community trade mark office (OHIM), which is being rolled out across the EU member states, and which the UK Registry now adopts for classification purposes. When one searches for the term “perfume” in Class 3, one gets a list of over 40 ‘sub-categories’ to choose from, including (as highlighted by Mr Harris):

Perfume oils
Fumigation preparations [perfumes]
Perfumes for ceramics
Peppermint oil [perfumery]
Room perfumes in spray form

Mr Harris pointed out in particular that, as for the dictionary definition, this list extends beyond perfumes for personal (body) use.

42. While I accept that dictionary definitions may be of assistance in understanding what is meant by words used in a trade mark specification, and may remind one of alternative meanings which do not immediately spring to

mind, I am more cautious about reliance on the TMclass database, particularly in this case where that database was not (at least not openly) in use by the UK IPO at the filing date of the Application. However, like the dictionary definition, the above list does serve as a reminder that “perfumes” are not limited to bottles of perfume/scent that one would apply to one’s body.....

44. Similarly, having stated earlier in the paragraph that essential oils can be used to perfume the air, it was strange that [the Hearing Officer] concluded that perfume and essential oils would not be competitive in the sense that one would choose an essential oil as an alternative to perfume (or vice versa). If both products can perform that same function of perfuming the air, then surely they are competitive alternatives that a consumer can choose between. The same can be said of essential oils and perfumes designed for perfuming things such as stationery items.”

29. Accordingly, I proceed on the basis that “perfumery” in the opponent’s specification is broad enough to include perfumes for perfuming the air. In determining whether the applied for “air fresheners, air freshening preparations, air deodorising preparations and deodorisers” are similar to the opponent’s “perfumery”, I keep in mind that it is permissible to take into account the class number specified by the applicant when assessing the meaning of the description of goods and services included in the application⁵.

30. Air fresheners are products used to make rooms smell pleasant; deodorisers are substances used to remove, disguise or absorb unpleasant odours. The fact that the applied for air fresheners, air freshening preparations, air deodorising preparations and deodorisers are classified in class 5 implies that the goods involve a bactericidal or germicidal component; the purpose of the goods is to clean the air from elements/microorganisms which cause odours. Nevertheless, they are substances devoted to make the atmosphere smell fresh and/or mask unpleasant odours by introducing a pleasant scent. The respective goods share, therefore, the same

⁵ *Altecnic Ltd’s Trade Mark Application* [2002] RPC 34 (COA).

purpose, i.e. perfuming the air, although the applied for goods also have disinfectant properties. The goods may be available in the same (or similar) format (liquid form distributed by aerosol, sprays or atomizer) and are normally sold in supermarkets and drugstores alongside or in close proximity, so there is a similarity in terms of nature, methods of use and trade channels. Further, the goods are competitive, as the consumer may use an air freshener and/or a deodoriser to perfume a room. Finally, there is a degree of complementarity as it is likely that consumers will believe that the responsibility for the goods lies with the same undertaking. Overall, **there is a high degree of similarity between the opponent's perfumery and the applied for air fresheners, air freshening preparations, air deodorising preparations and deodorisers.**

Air purifiers

31. Whilst air purifiers are aimed to remove contaminants from the air, they do not normally distribute a perfume/scent of their own and the opponent's perfuming goods do not purify the air. Nevertheless, I consider that given the interconnected purpose of the respective goods, i.e. purify the air on the one hand and perfuming it on the other, the goods may be in competition, although to a lesser degree than in respect of air fresheners and air deodorisers. Further, for the same reasons as above, there is a similarity in terms of nature and trade channels and a degree of complementarity. Overall, **there is a medium degree of similarity between the opponent's perfumery and the applied for air purifiers.**

Car air fresheners and car deodorants

32. Car air fresheners and car deodorants are perfumed products used to remove odours and leave a pleasant fragrance in cars. Having found that the opponent's "perfumery" encompasses perfumes designed to perfume a room, I also find that the term is broad enough to include fragrances designed to perfume a car. Proceeding on that basis, the goods share the same purpose, i.e. perfuming a car, target the same consumers, i.e. those who drive a car, may be available in the same format, i.e. sprays, and through the same trade channels, i.e. garages, petrol stations, specialised outlets which sell car related products. Finally, there is some degree of

complementarity as it is likely that consumers will believe that the responsibility for the goods lies with the same undertaking. **There is a high degree of similarity between the opponent's perfumery and the applied for car air fresheners and car deodorants.**

33. For the sake of completeness, I will also consider the opponent's position in relation to "essential oils", which, in my view, represents its (alternative) most favourable position. Essential oils are organic oils extracted from plants and used in perfumery. Whilst there is no evidence on the point, it is a notorious fact that the goods are used by the general public (as opposed to perfumery manufacturers) for their aroma therapeutic properties. For example, essential oils can be diluted with water to create fragranced sprays or used with oil burners to diffuse vapours which perfume, i.e. lavender, or purify, i.e. tea tree, the atmosphere. There is no evidence on where the goods are likely to be sold, but, from my experience, they can be bought in health and beauty chains and in health food outlets. Although the methods of use and trade channels are not particularly similar, the respective goods share the same purpose, i.e. purify the air or improve the odour in a space, and are in competition, as one could choose essential oils as a natural alternative to the applicant's goods. Further, there is a degree of complementarity since essential oils are likely to be used in the production of the applicant's goods. **In the alternative, there is a medium degree of similarity between the opponent's essential oils and all of the applied for goods.**

The average consumer and the nature of the purchasing act

34. As the case law above indicates, it is necessary for me to determine who the average consumer is for the goods at issue; I must then determine the manner in which these goods will be selected in the course of trade.

35. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

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

36. The average consumer of the opponent’s perfumery and of the applicant’s car air fresheners, air fresheners, air freshening preparations, air deodorising preparations, car deodorants, deodorisers and air purifiers is the public at large, though car air fresheners and car deodorants will be sought only by those who drive a car. The goods are likely to be self- selected from the shelves of a shop or its online equivalent, though the average purchase of car air fresheners and car deodorants could also take place in a garage or petrol station. Accordingly, visual considerations dominate the selection process although I do not discount aural considerations. The goods are relatively low costs and the degree of care and attention will range from low, i.e. a car air freshener picked up on impulse whilst paying for petrol, to no more than average, i.e. air fresheners selected taking into account the disinfectant properties and scent of the product.

37. In line with my finding above, I will also consider, in the alternative, the opponent’s essential oils. The average consumer of the goods is the public at large. The goods will be chosen predominantly by visual means from the shelves of a shop or from a website although aural considerations must not be overlooked. The goods are likely to be chosen for their aroma therapeutic properties, which involve a certain degree of care and attention, however, due to relatively inexpensive costs of the goods, I consider that the average degree of care and attention will be no more than average.

Comparison of marks

38. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its

various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by them, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

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

40. The marks to be compared are:

Applicant's marks	Opponent's mark
	<p>emoji</p>

Overall impression

41. The opponent's mark consists of the word "emoji" presented in lower case, in an ordinary typeface. The mark contains no dominant components; rather, its distinctive character resides in the word itself.

42. One of the applied for marks is in colour, however, such colouring is not relevant for the purposes of my comparison⁶. I will therefore make the comparison on the basis of the non-coloured version of the applied for mark as the coloured version must be drained of colour. The applicant accepts that its mark is a stylised representation of the word “emoji”⁷. The word is presented in a bold cartoon-type face in shades of grey and in a slightly undulating banner. In the word “emoji” the letter “o” has been substituted with a large smiley face, and the dots above the letters “j” and “i” have been replaced by smaller animated faces, one that is crying with laughter and one that is wearing sunglasses. In the absence of any submission from the applicant on the inclusion of the animated faces within the mark, in my view, they do no more than conveying an expression. Accordingly, whilst the stylisation of the mark and the logo elements are far from negligible and will too contribute to the overall impression, the average consumer is likely to remember the mark as an animated version of word “emoji”, which is the distinctive element of the mark.

Visual similarity

43. From a visual perspective, both marks share a similarity, namely that the opponent’s mark consists of the pure word “emoji” and the applicant’s mark comprises an animated version of the word “emoji”. I also bear in mind that the correct approach is not to compare just the word element of the application with the earlier trade mark unless the other components of the application are negligible⁸. Overall, I consider that due to the animated faces and the stylisation of the letters in the applied for mark, there is only a low degree of visual similarity between the marks.

⁶ See *Mary Quant Cosmetics Japan Ltd v. Able C&C Co Ltd*, O-246-08 and *Specsavers International Healthcare Limited & Others v Asda Stores Limited* [2010] EWHC 2035 (Ch).

⁷ Page 2 of the applicant’s submissions where it is stated: “When compared with the Opponent’s word mark, despite the shared EMOJI word element, the Applicant’s mark is highly stylised...”

⁸ Case C-334/05P *OHIM v Shaker di L. Laudato & C. Sas* paragraph 42

Aural similarity

44. From an aural perspective, both marks will be pronounced as I- MOUDGI. The marks are aurally identical.

Conceptual similarity

45. I have no submissions from the parties on the meaning of the word “emoji” and how it will be perceived by the relevant public. The only comments made by the applicant are in relation to the distinctive character of the opponent’s marks and are reproduced below:

“...the verbal element EMOJI would be seen as a reference to an iconographic language rather possessing high levels of distinctive character either inherently or through extensive use by the Opponent”.

46. The applicant’s understanding of the word correspond to the dictionary definition as:

“a small image used in electronic mail and text messaging to express an idea, such as a smiling face to express happiness⁹”

47. However, the applicant’s submissions are clearly misconceived. The fact that the average consumer may be aware of the meaning of the word “emoji”, does not inevitably result in the opponent’s mark not being endowed with a high degree of inherent distinctive character (I say more about this below). Accordingly, I will proceed on the basis that, as the applicant accepts, the average consumer would be aware of the meaning of the word “emoji”, in which case both marks would bring to mind the same concept and would be conceptually identical.

⁹ Oxford English Dictionary

Distinctive character of the earlier mark

48. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated at paragraphs 22 and 23 that:

“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).

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

49. I have already touched upon the distinctive character of the opponent’s mark. Whilst it is true that invented words are endowed with the highest degree of distinctive character, the level of distinctive character of the word “emoji” in the earlier mark depends on whether it has any association or connection with the goods covered by the registration¹⁰. The association between perfumery (or essential oils) and the word “emoji” is totally random and unusual. This results, in my view, in the

¹⁰ See by analogy the comments of Mr Thomas Mitcheson QC, sitting as the Appointed Person, in BL-O-223/16

opponent's mark being endowed with a medium to high degree of distinctive character in the context of the concerned goods.

Likelihood of confusion

50. In determining whether there is a likelihood of confusion, a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective marks may be offset by a greater degree of similarity between the respective goods and vice versa. I must also keep in mind the average consumer for the goods, the nature of the purchasing process and the fact that the average consumer rarely has the opportunity to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has retained in his mind.

51. There are two types of relevant confusion to consider: direct confusion (where one mark is mistaken for the other) and indirect confusion (where the respective similarities lead the consumer to believe that the respective goods come from the same or a related trade source). This distinction was summed up by Mr Iain Purvis Q.C. sitting as the Appointed Person in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

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

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

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

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

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

52. The opponent relies in its notice of opposition on both Section 5(2)(a) and 5(2)(b) of the Act. I will begin with Section 5(2)(b) which has the greatest potential for the opponent.

53. In relation to direct confusion, the respective goods are similar to a medium to high degree. Whilst the marks are aurally and conceptually identical, the visual differences between the competing marks are significant. Even making due allowance for the fact that in selecting some of the goods the average consumer will not pay a great degree of attention, which increases the effects of imperfect recollection, the goods will be selected primarily by visual means and the differences between the marks will be noticed. Overall, **there is no likelihood of direct confusion**, i.e. the applicant’s mark will not be mistaken for the opponent’s mark.

54. As to whether there is a likelihood of indirect confusion, I do not consider the differences between the respective marks and the respective goods sufficient to avoid it. This is because, notwithstanding the stylisation of the applied for mark, the verbal element of the mark is recognisable as “emoji”. Proceeding on the basis that

the average consumer would be aware of the meaning of the word “emoji”, the marks are conceptually identical and the stylisation of the applied for mark only reinforces that concept. In this connection the applicant’s main defence is based on the argument that the word “emoji” is not highly distinctive per se, an argument which I have already dismissed. Balancing all the relevant factors, I consider that it is likely that the average consumer encountering the applied for mark would assume that it is an amusing and animated variant of the earlier mark and that the goods are offered by the same or economically related undertakings. Accordingly **there is a likelihood of indirect confusion.**

CONCLUSION

55. As the opposition has succeeded under section 5(2)(b), I do not need consider the other grounds of opposition.

COSTS

56. As emoji company GmbH has been successful, it is entitled to a contribution towards its costs. Awards of costs in Fast Track opposition proceedings are governed by Tribunal Practice Notice (TPN) 2/2015. I noted that, for the purpose of this opposition, the opponent relied upon the entire specifications for which its marks are registered. The applicant requested this factor to be taken into account in the costs award. Whilst I agree that the opponent could have presented its case more efficiently, the applicant is professionally represented and it would have been apparent to a professional representative that most of the goods and services relied upon by the opponent were self-evidently dissimilar, so that the preparation of the applicant’s defence would not have requested a disproportionate amount of time and effort. This is all the more so, since the applicant focused only on the goods in class 3. Accordingly, I award costs to emoji company GmbH on the following basis:

Official fees:	£100
Preparing a statement and considering the other side’s statement:	£200
Considering the other party’s submissions:	£100
Total:	£400

57. I order Emoji Hong Kong Limited to pay emoji company GmbH the sum of £400 as a contribution towards its costs. This sum is to be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case, if any appeal against this decision is unsuccessful.

Dated this 19th day of January 2017

A handwritten signature in black ink, appearing to be 'TP' followed by a large, stylized loop.

Teresa Perks

For the Registrar

The Comptroller – General

Annex

EUTM 013709373

Class 11: Furnace ash boxes; Heaters, electric, for feeding bottles; Bath tubs; Bath installations; Barbecues; Aquarium lights; Lighting installations for air vehicles; Lighting apparatus and installations; Lights for vehicles; Light-emitting diodes [LED] lighting apparatus; Lamps; Ventilation hoods; Bed warmers; Anti-dazzle devices for automobiles [lamp fittings]; Cycle lights; Vehicle reflectors; Vehicle headlights; Hair dryers; Taps [faucets] *; Hand drying apparatus for washrooms; Hot air apparatus; Water heaters and boilers; Blankets, electric, not for medical purposes; Electric lamps; Heating apparatus for defrosting windows of vehicles; Pressure cookers [autoclaves], electric; Chimney blowers; Diving lights; Immersion heaters; Electric toasters; Toilets [water-closets]; Toilet bowls; Toilet seats; Waffle irons, electric; Tobacco roasters; Pocket torches, electric; Pocket warmers; Luminous house numbers.

Class 12: Motor buses; Cars; Automobile tires [tyres]; Sleeping berths for vehicles; Saddle covers for bicycles or motorcycles; Covers for vehicle steering wheels; Ships; Motor homes; Tricycles; Shopping trolleys [carts (Am.)]; Hydroplanes; Casters for trolleys [vehicles] [carts (Am.)]; Non-skid devices for vehicle tires [tyres]; Golf cars [vehicles]; Hot air balloons; Upholstery for vehicles; Yachts; Pushchairs; Stroller covers [pushchairs]; Tilting-carts; Dump carts; Cycle cars; Audible warning systems for cycles; Head-rests for vehicle seats; Spray prevention flaps for vehicles; Aircraft; Air cushion vehicles; Air pumps [vehicle accessories]; Mopeds; Motorcycles; Paddles for canoes; Screws [propellers] for ships; Hub caps; Space vehicles; Pneumatic tires [tyres]; Tires for vehicle wheels; Scooters [vehicles]; Rearview mirrors; Oars; Rowlocks; Ships' hulls; Two-wheeled trolleys; Saddles for bicycles, cycles or motorcycles; Saddlebags adapted for bicycles; Clutches for land vehicles; Launches; Windshield wipers; Headlight wipers; Sleighs [vehicles]; Mudguards; Anti-skid chains; Snowmobiles; Seat covers for vehicles; Funnels for locomotives; Human-powered trolleys and carts; Mudguards for two-wheeled motor vehicles or bicycles;

Cycle mudguards; Adhesive rubber patches for repairing inner tubes; Safety belts for vehicle seats; Safety seats for children, for vehicles; Ski lifts; Ski carriers for cars; Sun-blinds adapted for automobiles; Spikes for tires [tyres]; Spoilers for vehicles; Sports cars; Suspension shock absorbers for vehicles; Vehicle shock absorbers; Shock absorbing springs for vehicles; Vehicle bumpers; Bumpers for automobiles; Caps for vehicle petrol [gas] tanks; Tractors; Handling carts; Valves for vehicle tires [tyres]; Disengaging gear for boats; Water vehicles; Seaplanes; Windscreens; Campers [recreational vehicles]; Caravans; Cycle stands.

Class 35: Design of advertising materials; Television advertising; Business information; Commercial administration of the licensing of the goods and services of others; Layout services for advertising purposes; Marketing; Market research; Opinion polling; Public relations services; Organization of exhibitions for commercial or advertising purposes; Organization of fashion shows for promotional purposes; Production of advertising films; Radio advertising; News clipping services; Shop window dressing; Organization of trade fairs for commercial or advertising purposes; Dissemination of advertising matter; Writing of publicity texts; Sales promotion for others; Advertising.

Class 39: Parcel delivery; Delivery of goods; Delivery of newspapers; Car rental; Travel and passenger transportation; Flower delivery; Booking of seats for travel; Removal services; Taxi transport.

EUTM 012057162

Class 3: Perfumery; Essential oils, cosmetics.

Class 14: Jewellery, clocks, wristwatches and watches

Class 16: Printed matter; Bookbinding material; Photographs; Stationery; Adhesives for stationery or household purposes; Instructional and teaching material (except apparatus); Plastic materials for packaging (not included in other classes); Paper, cardboard and goods made from these materials, not included in other classes.

Class 18: Bags; Luggage; Carrying cases; Purses; Parasols; Umbrellas.

Class 24: Textiles and textile goods, not included in other classes; Bed covers; Table covers.

Class 25: Clothing, footwear, headgear.

Class 27: Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; Wall hangings (non-textile).

Class 28: Games and playthings; Gymnastic and sporting articles not included in other classes; Decorations for Christmas trees.

Class 29: Preserved, frozen, dried and cooked fruits and vegetables; Jellies, jams, compotes; Milk and milk products.

Class 30: Coffee, tea, cocoa and artificial coffee; Bread, pastry and confectionery; Ices.

Class 32: Beers; Mineral and aerated waters and other non-alcoholic beverages; Fruit beverages and fruit juices; Syrups and other preparations for making beverages.

Class 33: Alcoholic beverages (except beers).

Class 34: Tobacco; Smokers' articles; Matches

EUTM 013177316

Class 3: Toiletries; Shampoos for pets; Shampoo; Soaps; Shoe polish; Laundry preparations; Cosmetic masks; Make-up; Oils for toilet purposes; Make-up; Powder for make-up; Oils for perfumes and scents; Perfumery; Perfumery; Lipstick; False nails; Eyelashes (False -); Dry shampoos; Cosmetics; Eyebrow pencils; Creams (Cosmetic -); Skincare cosmetics; Henna [cosmetic dye]; Hair spray; Shampoo; Hair

lotions; Depilatories; Wax (Depilatory -); Scale removing preparations for household purposes; Perfume water; Javelle water; Deodorants for human beings or for animals; Bath salts, not for medical purposes; Baths (Cosmetic preparations for -); Antiperspirants [toiletries]; Eyebrow pencils; Eyebrow cosmetics; Breath freshening strips; Breath freshening sprays; Essential oils; Transfers (Decorative -) for cosmetic purposes; Aftershave; Polishing preparations; Dentifrices; Dental bleaching gels; Parquet floor wax; Shoe wax.

Class 9: Computer carrying cases; Sleeves for laptops; Mouse mats; Speaker enclosures; Light-emitting diodes [LED]; Electromagnetic coils; Animated cartoons; USB flash drives; Sunglasses; Signs, luminous; Headphones; Chipcards; Integrated circuits; Television apparatus; Magnets (Decorative -); Encoded magnetic cards; 3D spectacles; Head protection; Protective helmets for sports; Mouse [computer peripheral].

Class 14: Timepieces; Watchstraps; Clock cases; Cases for watches [presentation]; Ornaments [jewellery, jewelry (Am.)]; Jewellery; Key rings [trinkets or fobs]; Rings [jewellery, jewelry (Am.)]; Pearl; Medals; Medallions; Wire of precious metal [jewellery, jewelry (Am.)]; Chronographs; Bracelets; Watches; Ornamental pins; Paste jewellery [costume jewelry [Am.]]; Beads for making jewelry; Tie pins; Ivory jewelry; Clocks and watches, electric; Jewellery of yellow amber.

Class 16: Folders for papers; Document files; Scrapbooks; Stickers [stationery]; Mats for beer glasses; Erasing products; Stamps; Writing paper; Sealing stamps; Inking pads; Highlighters; Notebooks; Stencils; Document files; Paper towels; Booklets; Pads [stationery]; Greeting cards; Postcards; Tissues of paper; Hygienic paper; Paper table covers; Paper bags; Boxes for pens; Writing cases [stationery]; Bags [envelopes, pouches] of paper or plastics, for packaging; Passport holders; Bookbinding material; Books; Book binders; Rubber erasers; Erasing shields; Newspapers; Periodicals; Drawings; Notebooks; Wrapping paper; Prospectuses; Table napkins of paper; Transparencies [stationery]; Fiberboard boxes; Adhesive tapes for stationery or household purposes; Writing instruments; Writing or drawing books; Document portfolios; Writing materials; Signboards of paper or cardboard; Sealing wafers; Musical greeting cards; Luminous paper; Bibs of paper; Catalogues;

Calendars; Envelopes; Handbooks [manuals]; Elastic bands for offices; Gummed tape [stationery]; Drawings; Graphic reproductions; Correcting fluids [office requisites]; Flyers; Plastic film for wrapping; Forms, printed; Photographs [printed]; Paintings [pictures], framed or unframed; Figurines [statuettes] of papier mâché; Bottle envelopes of cardboard or paper; Filter paper; Chromos; Flags of paper; Wrappers [stationery]; Printed matter; Comic strips; Stationery (Cabinets for -) [office requisites]; Money holders; Address stamps; Tracing patterns; Drawer liners of paper, perfumed or not; Stickers [stationery]; Writing tablets; Note pads; School supplies [stationery]; Printed tickets; Cardboard; Colorboard [colored paperboard].

Class 17: Rings of rubber; Gum, raw or partly processed; Rubber stops; Bags [envelopes, pouches] of rubber, for packaging; Semi-processed plastics; Adhesive bands, other than stationery and not for medical or household purposes.

Class 18: Baggage; Envelopes, of leather, for packaging; Gym bags; Parasols; Rucksacks; Baggage; Collars for animals; Baggage; Imitation leather; Credit card cases [wallets]; Saddle cloths for horses; Card holders; Baggage; Hand bags; Net bags for shopping; Shopping bags; Satchels; Satchels; Casual bags; Key bags; Leather shoulder belts; Straps for skates; Cases, of leather or leatherboard; Sling bags for carrying infants; Sling bags for carrying infants; Beach bags.

Class 20: Packaging containers of plastic; Air mattresses, not for medical purposes; Inflatable furniture; Pillows; Bolsters; Cushions; Pet cushions; Freestanding partitions [furniture]; Locks, not of metal, for vehicles; Boxes of wood or plastic; Decorations of plastic for foodstuffs; Bedding, except linen; Mooring buoys; Inflatable publicity objects; Signboards of wood or plastics; Stoppers for bottles, not of glass, metal or rubber; Statuettes of wood, wax, plaster or plastic; Works of art of wood, wax, plaster or plastic; Chests for toys; Inflatable headrests; Head-rests [furniture].

Class 21: Clothes-pins; Wiping cloths; Lunch boxes; Cosmetic powder compacts; Paper plates; Isothermic bags; Cups of paper or plastic; Saucers; Flasks; Cookie jars; Combs; Perfume vaporizers; Toothbrushes; Toothpicks; Toothbrushes, electric; Boxes of glass; Glass bowls; Glasses [receptacles]; Painted glassware; Moulds [kitchen utensils]; Ice cube molds [moulds]; Bottles; Disposable table plates;

Buckets; Bread bins; Bread baskets, domestic; Bread boards; Pans; Mugs; Beverage glassware; Straws for drinking; Drinking bottles for sports; Drinking vessels; Portable coolers; Pot lids; Pots; Toilet sponges; Toilet paper dispensers; Shakers; Cake moulds; Napkin holders; Toilet utensils; Table plates; Tableware, other than knives, forks and spoons; Trays for domestic purposes; Basins [bowls]; Cookie [biscuit] cutters; Containers for household or kitchen use; Sponges for household purposes.

Class 22: Bags [envelopes, pouches] of textile, for packaging; Hammocks; Straw for stuffing upholstery; Ropes; Sails for ski sailing; Harness, not of metal, for handling loads; Sails; Mail bags; Tarpaulins; Nets; Outdoor blinds of textile.

Class 24: Pillowcases [pillow slips]; Pillowcases [pillow slips]; Continental quilts; Bed clothes and blankets; Bed clothes and blankets; Pillowcases [pillow slips]; Bed covers; Bed covers of paper; Traced cloths for embroidery; Wall hangings of textile; Curtains of plastic; Curtain fabric; Non-woven textile fabrics; Towels; Fitted toilet lid covers of fabric; Tablecloths, not of paper; Tablecloths, not of paper; Textile napkins; Tablecloths, not of paper; Handkerchiefs of textile; Fabrics; Labels; Bed covers; Rugs (Travelling -) [lap robes]; Place mats, not of paper; Mattress covers; Linens; Curtains of textile or plastic; Shower curtains of textile or plastic; Cotton fabrics; Bath linen, except clothing; Banners; Napkins, of cloth, for removing make-up; Pillowcases [pillow slips]; Cot covers; Covers for eiderdown and duvets.

Class 25: Leggings [trousers]; Underwear; Underwear; Tee-shirts; Ski gloves; Socks; Collar protectors; Clothing of leather; Bibs, not of paper; Hats (Paper -) [clothing]; Caps [headwear]; Combinations [clothing]; Dressing gowns; Ear muffs [clothing]; Ties; Ascots; Headgear; Jumpers; Jackets [clothing]; Headgear; Knitwear [clothing]; Overalls; Aprons [clothing]; Hoods [clothing]; Garters; Shirts; Slips [undergarments]; Gloves; Clothing for gymnastics; Gymnastic shoes; Ankle boots; Scarves; Belts [clothing]; Belts (Money -) [clothing]; Goloshes; Gaiters; Football boots; Soles for footwear; Cuffs; Sweat-absorbent underwear; Masquerade costumes; Soles for footwear; Pocket squares; Shower caps; Visors [headwear]; Brassieres; Boxer shorts; Swimming caps; Gowns; Knickers; Knickers; Tights; Boas [necklets]; Pants (Am.); Singlets; Sports shoes; Athletics vests; Paper clothing;

Clothing; Motorists' clothing; Clothing of imitations of leather; Jackets; Pelisses; Berets; Layettes [clothing]; Babies' pants [clothing]; Swimming costumes; Bath robes; Bath shoes; Bath sandals; Suits; Parkas; Pockets for clothing; Uniforms; Waistcoats; Pullovers; Tights; Garters; Stockings; Beach shoes; Beachwear; Boots; Espadrilles; Headbands [clothing]; Trunks.

Class 26: Sewing thimbles; Buttons; Heat adhesive patches for repairing textile articles; Badges [buttons] (Ornamental novelty -); Spangles for clothing; Mica spangles; Belt buckles; Hair ornaments; Hair bands; Artificial garlands; Brooches [clothing accessories]; Shoe laces; Fastenings for clothing; Zip fasteners; Beads, other than for making jewelry; Elastic ribbons; Badges for wear, not of precious metal; Buttons; Bows for the hair; Trouser clips for cyclists.

Class 27: Textile wallpaper; Gymnasium mats; Mats; Vinyl floor coverings; Floor coverings; Bath mats; Vehicles mats and carpets; Carpets, rugs and mats; Gymnasium mats; Mats.

Class 28: Surf skis; Video game apparatus; Arcade video game machines; Portable games with liquid crystal displays; Kites; Draughts; Checkerboards; Board games; Bob-sleighs; Teddy bears; Surfboards; Surf skis; Toys; Playing cards; Playing balls; Balls for games; Masks [playthings]; Boxing gloves; Body boards; Bows for archery; Baseball gloves; Dice; Toys; Toys for domestic pets; Toy cars; Toy figurines; Models being toys; Skateboards; Ski boards; Flotation apparatus for swimming; Flippers for swimming; Swimming belts; Novelties for parties, dances [party favors, favours]; Chess games; Scooters [toys]; Roller skates; In-line roller skates; Dolls; Stuffed toys; Stuffed toys; Paper party hats; Mobiles [toys]; Mah-jong; Dumb-bells; Dumb-bells; Bait [artificial]; Tops (Spinning -) [toys]; Confetti; Bonbons (Explosive -) [Christmas crackers]; Playing cards; Chips for gambling; Playing cards; Hockey sticks; Gloves for games; Gymnastic articles; Golf clubs; Golf gloves; Parlour games; Fitness exercise machines; Conjuring apparatus; Games (Apparatus for -); Slot machines (gaming devices); Gaming machines for gambling; Radio-controlled toy vehicles; Shuttlecocks; Masks [playthings]; Scale model vehicles; Skating boots with skates attached; Dominoes; Christmas tree stands; Body-training apparatus; Bingo cards;

Ninepins; Billiard balls; Ball pitching machines; Rattles [playthings]; Scale model kits [toys]; Marbles; Jigsaw puzzles; Balloons; Air pistols [toys].

Class 29: Potato chips; Fruit jellies; Fruit pulp; Fruit salads; Fruit-based snack food; Fruit chips; Fruit preserved in alcohol; Cheese products; Curd; Soya milk [milk substitute]; Tofu; Raisins; Prepared nuts; Whey; Milk products; Milk shakes; Milk; Marmalade; Margarine; Jams; Fruit, stewed; Condensed milk; Yoghurt; Eggs; Jellies; Quark.

Class 30: Candy; Candy; Rusks; Farinaceous food pastes; Chocolate; Mousses (Chocolate -); Puddings; Popcorn; Pizza; Pancakes; Muesli; Marzipan; Almond confectionery; Liquorice [confectionery]; Stick liquorice [confectionery]; Cake dough; Ice; Cake dough; Ketchup [sauce]; Yoghurt (Frozen -) [confectionery ices]; Cake dough; Honey; Semolina; Groats for human food; Chips [cereal products]; Cereal bars; Cake dough; Royal jelly; Fruit jellies [confectionery]; Fondants; Iced tea; Ices and ice creams; Cheeseburgers [sandwiches]; Bread; Candy; Lozenges [confectionery]; Confectionery for decorating Christmas trees; Waffles; Sugar; Cake dough; Dough; Tea; Edible ices; Rice cakes; Rice-based snack food; Ice, natural or artificial; Ravioli; Popcorn; Petits fours [cakes]; High-protein cereal bars; Oat-based food; Ribbon vermicelli; Noodle-based prepared meals; Cocoa beverages with milk; Coffee beverages with milk; Maize flakes; Gingerbread; Mayonnaise; Crackers; Bubble gum; Cocoa-based beverages; Caramels; Candy; Coffee based drinks; Artificial coffee; Cereal-based snack food; Mousses (Dessert -) [confectionery]; Buns.

Class 32: Pastilles for effervescing beverages; Powders for effervescing beverages; Waters [beverages]; Tomato juice [beverage]; Table waters; Sherbets [beverages]; Soda water; Smoothies; Syrups for beverages; Seltzer water; Preparations for making beverages; Whey beverages; Malt beer; Lemonades; Syrups for lemonade; Sparkling water; Vegetable juices [beverages]; Juices; Fruit nectars, non-alcoholic; Isotonic drinks; Cocktails, non-alcoholic; Beer; Aloe vera drinks, non-alcoholic; Aperitifs, non-alcoholic; Non-alcoholic honey-based beverages; Fruit juice beverages (Non-alcoholic -); Non-alcoholic beverages; Essences for making beverages.