O/0397/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 4013662

BY

KUSAI NOAH

TO REGISTER THE FOLLOWING TRADE MARK

IN CLASSES 1, 3, 4, 5, 16, 21 AND 35

AND OPPOSITION THERETO UNDER NUMBER 447812

BY

L'ORÉAL

Background and Pleadings

1. On 12 February 2024, Kusai Noah ("the Applicant") applied to register in the UK the trade mark as depicted on the cover page of this decision ("the contested mark") in respect of a range of goods and services in classes 1, 3, 4, 5, 16, 21 and 35 as set out in full in the Annex to this decision. Only those goods in class 3 are opposed namely:

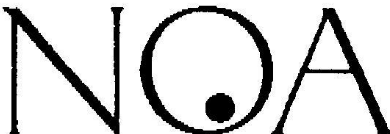
> Class 3: Perfume; Perfumes; Perfume oils; Perfumery and fragrances; Amber [perfume]; Fragrances; Oils for perfumes and scents; Fragrance sachets; Musk [perfumery]; Cologne; Perfume water; Aromatics for perfumes; Room perfume sprays; Liquid perfumes; Potpourris [fragrances]; Colognes; Scents; Fragrance emitting wicks for room fragrance; Aromatics for fragrances; Perfumery; Perfumes for cardboard; Fragrance refills for non-electric room fragrance dispensers; Cedarwood perfumery; Extracts of perfumes; Extracts of flowers [perfumes]; Flowers (Extracts of -) [perfumes]; Extracts of flowers being perfumes; Body deodorants [perfumery]; Eau de cologne [cologne water]; Perfumes for ceramics; Ionone [perfumery]; Deodorants for personal use [perfumery]; Aftershave lotions; Body fragrances; Perfumeries; Fragrance preparations; Perfume oils for the manufacture of cosmetic preparations; Fragrances for automobiles; Vanilla perfumery; Household fragrances; Perfumed potpourris; Perfumed sachets; Room perfumes in spray form; Natural oils for perfumes; Fragrance sachets for eye pillows; Room fragrances; Perfumery products; Aftershave; Perfumed soaps; Feminine deodorant sprays; Cologne water; Mint for perfumery; Solid perfumes; After-shave lotions; Air fragrance preparations; Peppermint oil [perfumery]; Perfumed soap; Perfuming sachets; Aftershave balms; Scented oils; Scented linen sprays; Synthetic perfumery; Scented sachets; Aftershave balm; Air fragrance reed diffusers; Perfumed powders [for cosmetic use]; Scented body lotions; Synthetic vanillin [perfumery]; Aftershaves; Geraniol for fragrancing; Perfumed powder [for cosmetic use]; Scented soaps; Incense spray; Perfumed powders; Scented body spray; Perfumed creams; Suntan lotion [cosmetics]; Essential oils as perfume for laundry purposes; Eau de Cologne; Eau de cologne; Sachets for perfuming linen; Linen (Sachets for perfuming -); Perfumed powder; Fumigation preparations [perfumes]; Scented room sprays; After-sun oils [cosmetics];

Suntan oils [cosmetics]; Eau de colognes; Perfumed lotions [toilet preparations]; After-shave; Fragrance for household purposes; Aromatherapy lotions; After-shave balms; Scented body lotions and creams; Aftershave creams; Tanning oils [cosmetics]; Scented fabric refresher sprays; Skin fresheners [cosmetics]; Perfumery, essential oils; Eaux de cologne; Eaux de Cologne; Deodorant soap; Soap (Deodorant -); Perfumed body lotions [toilet preparations]; Fragrant sachets; Incense sachets; Aftershave milk; Agarwood [incense]; Geraniol fragrancing compounds; Roll-on deodorants [toiletries]; Natural perfumery; Perfumed water; Cosmetics; Scented body creams; Scented fabric refresher spray; Eau de parfum; Moisturisers [cosmetics].

2. On 31 May 2024, L'Oréal ("the Opponent") opposed the application under sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 ("the Act") and against all the aforementioned goods in class 3 for which registration is sought.

3. Under both sections 5(2)(b) and 5(3) the Opponent relies upon the following trade mark:

UKTM no. 902652170



Filed on 12 April 2002 and registered on 25 July 2003, claiming seniority from a UK trade mark registration no. 0702616 dated 3 October 1998. It stands registered for the following goods:

Class 3: Perfumes, eaux de toilette; bath and shower gels and salts not for medical purposes; toilet soaps; deodorants for personal use; cosmetics, in particular creams, milks, lotions, gels and powders for the face, body and hands; sun-tanning milks, gels and oils and after-sun preparations (cosmetics); make-up preparations; shampoos; gels, mousses, balms and preparations in aerosol form for hairdressing and haircare; hair lacquers; hair dyes and

preparations for decorating hair; permanent waving and curling preparations; essential oils.

("the earlier mark")

4. Under section 5(2)(b) of the Act, the Opponent claims that the marks are highly similar and that the goods are either identical or similar, such that there exists a likelihood of confusion which includes a likelihood of association between the respective marks.

5. Under section 5(3) of the Act, the Opponent claims that it holds a reputation in its mark for all the goods of its registration and that use by the Applicant of a mark highly similar to it would lead to a link being made in the minds of the public leading to damage being caused to the Opponent's reputation. It claims that use of the contested mark would, without due cause, take unfair advantage of, and/or be detrimental to the repute of the earlier mark.[1]

6. The Applicant filed a defence and counterstatement denying the claims made. In relation to the section 5(2)(b) claim the Applicant contends that the respective marks are aurally, visually and conceptually different as are the respective goods. Under section 5(3) the Applicant denies that the Opponent has a reputation for its trade mark or that any of the heads of damage would be caused by the Applicant's use of his mark and puts the Opponent to proof of such a claim.

Representation

7. The Opponent is represented by Baker & McKenzie LLP, whilst the Applicant is represented by Trade Mark Wizards Limited. Only the Opponent filed evidence. A hearing was requested by the Applicant, which took place before me via video link on 25 February 2026. Ms Rachel Wilkinson-Duffy from Baker & McKenzie LLP appeared for the Opponent. In addition, the Opponent filed skeleton arguments and authorities in advance of the hearing. Neither the Applicant nor his representative attended the hearing. After the hearing the Applicant filed submissions in lieu of a hearing, the circumstances of which I shall address further below.

[1] Whilst originally relying on all three heads of damage, at the hearing Ms Wilkinson-Duffy confirmed that the Opponent was no longer pursuing its claim of damage by way of detriment to the distinctive character of its mark (dilution).

Relevance of EU Law

8. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the Page 6 of 44 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

9. Whilst the Applicant requested a hearing and his representatives were notified of the date of the hearing, neither attended. On the morning of the hearing, after the hearing had concluded, an email was brought to my attention having been sent directly from the Applicant. Within the email the Applicant stated as follows:

> "A trade mark Opposition hearing is scheduled for today at 10.00am.
>
> I have not received any link from the tribunal yet.
>
> Kindly advise whether we could adjourn the hearing for another day as I do not feel well to attend today."

10. The hearing was listed to commence at 10 am. The email was sent at 10.02 am, to the Hearing Team's central inbox. The email was not read by any members of the Hearings Team or brought to my attention until after the hearing had concluded (at 11am), consequently it was not possible to adjourn the hearing as it had already taken place. I considered whether there was merit in reconvening the hearing to give Mr Noah the opportunity to be heard but considered that both he and his representatives were aware of the hearing date and time, and no contact had been received from either until after the scheduled commencement time of the hearing. No indication was given by Mr Noah as to the nature of the illness preventing him from attending the hearing or why he had been unable to contact the Tribunal earlier. Consequently, having considered the rights of both parties and the prejudice to the Opponent in having to rehear the matter, the Applicant's request to adjourn the matter to another day was refused. However, in the interests of justice, I gave the Applicant the opportunity to file submissions in lieu of hearing, which he duly did.

Evidence and submissions

11. The Opponent's evidence consists of the witness statement of Delphine De Chalvron dated 21 November 2024, accompanied by 8 exhibits marked DDC1-DDC8. Ms Chalvron is the 'General Counsel IP and Media' for the Opponent, a position she has held since 2016. Ms Chalvron's evidence serves to show the genuine use the Opponent has made of its earlier mark and the reputation it claims to hold.

12. The Applicant filed submissions in lieu of a hearing dated 11 March 2026.

13. I have considered all the evidence, authorities and submissions in reaching my decision, however, I do not propose to summarise them in full but rather shall refer to the salient points to the extent that they are relevant at the appropriate stages of my decision.

Decision

Proof of Use

14. The Opponent's mark qualifies as an earlier trade mark under section 6 of the Act by virtue of its earlier filing date. As it completed its registration process more than five years before the date on which the application for the contested mark was made, it is subject to the proof of use provisions under section 6A of the Act. The Applicant has put the Opponent to proof of the same.

15. The relevant statutory provisions are as follows:

> "6(1) This section applies where:
>
> > (a) an application for registration of a trade mark has been published,
> >
> > (b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and
> >
> > (c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.
>
> (1A) In this section "the relevant period" means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

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

(3) The use conditions are met if –

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

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

(4) For these purposes –

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

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

(5) - (5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services."

16. As the earlier mark is a comparable mark, paragraph 7 of Part 1, Schedule 2A of the Act is also relevant which reads as follows:

"(1) Section 6A applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the relevant period referred to in section 6A(3)(a) (the 'five-year period') has expired before IP completion day-

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A(3) and (4) to the United Kingdom include the European Union.

(3) Where [IP completion day] falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day-

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A to the United Kingdom include the European Union."

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

"If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it."

18. The relevant period for assessing genuine use is the five-year period ending with the filing date of the application in issue i.e. 13 February 2019 and 12 February 2024.

19. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

"105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider Corp* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'*[2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v*

Centrotherm Clean Solutions GmbH & Co KG [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C–720/18 and C–721/18 *Ferrari SpA v DU* [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:

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

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

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

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with

the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

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

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

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

My Approach

21. At the hearing Ms Wilkinson-Duffy conceded that genuine use had only been shown in relation to *perfumes* and *eau/x de toilette* and not the broader specification the Opponent had originally relied upon in its pleadings. Further, the focus of the evidence has been primarily on use in the UK rather than the wider EU. Consequently, I shall assess the evidence of use with these matters in mind.

Evidence

22. I note the following from Ms Chalvron's evidence:

23. Ms Chalvron provides an overview of the history of the Opponent. She states that the Opponent is the world's largest cosmetic company producing a broad range of goods in the perfumery, skin care, sun protection, makeup and hair care industries. She states that the company was founded in 1909 and currently has over 90,000 employees worldwide, spanning 150 countries.[2]

24. In 1977 Jean Cacharel granted a license to the Opponent to create, manufacture and commercialise fragrances and beauty products under the CACHAREL brand. A number of fragrances have since been launched by the Opponent under this brand, including NOA in 1998. Various editions have been placed on the market over the years to include 'Noa Fleur', 'Noa Perle' and 'Noa Summer Edition'. Ms Chalvron produces images of NOA branded products and packaging, reproduced as follows:

[2] Exhibit DDC1

25. Ms Chalvron provides the Opponent's global sales revenue figures for 2022 and 2023 totalling over £38 billion and £41 billion respectively. Extracts taken from the Opponent's Annual Reports supporting these figures for these years are produced.[3]

26. Net sales figures specific to the NOA brand in the UK are provided in the following table:

Year	Net Sales
2016	£1,144,827
2017	£1,016,445
2018	£104,652
2019	£1,359,616
2020	£1,053,824
2021	£1,061,048
2022	£1,225,129
2023	£982,513

27. Ms Chalvron produces the number of NOA branded items sold in the UK as follows:

Year	Units Sold[4]
2016	112,249
2017	99,930
2018	10,041
2019	121,817
2020	94,166
2021	90,609
2022	91,302
2023	68,176

28. Information is also given regarding the Opponent's advertising and promotional activity in the UK. Ms Chalvron produces the following table setting out the Opponent's annual advertising expenditure figures for the NOA brand in the UK:

[3] Exhibits DDC2 and DDC3.
[4] Described as 'sale items' i.e. "the number of NOA brand sold in the UK".

Year	Advertising Spend
2017	£15,284
2018	£3,214
2019	£11,748
2020	£3,680
2021	£1,775
2022	£1,294
2023	£13,066

29. Ms Chalvron states that NOA branded goods are sold and marketed via well-known UK retailers to include inter alia Boots, Superdrug, Debenhams and Amazon. Screenshots taken from these retailer's websites are produced showing NOA perfume being offered for sale and customer reviews.[5]

30. The Opponent is said to have dedicated social media accounts for 'Cacharel Parfums' within which it promotes the NOA products. Screengrabs from these accounts are produced dated as at November 2024.[6] I note that the accounts refer to the Cacharel brand generally, but no reference is made to the brand NOA within the images produced.

31. Ms Chalvron produces engagement statistics of its global Cacharel accounts and a screenshot specifically to show the occasions that references have been made to NOA on social media in 2024 across various platforms.[7] Although the figures within the table have not been explained by Ms Chalvron, it appears to show that there were 13 posts referring to the NOA brand across all platforms and over 39k video views on YouTube in the "year to date".

32. Screenshots are also produced of images of in-store displays illustrating the way in which the products are displayed, an example of which is reproduced below.[8]

[5] Exhibits DDC6-DDC7
[6] Exhibit DDC4
[7] Exhibit DDC5
[8] Exhibit DDC8

Use of the mark as registered or in a variant form

33. Before I consider whether the evidence constitutes sufficient use of the earlier mark, it is necessary to address the mark shown in use and determine whether this is either use of the mark as registered and/or use of an acceptable variant of the same.

34. Where the Opponent has used the earlier mark in the form in which it is registered, then clearly this will be use upon which it may rely. It is also settled law that use of a trade mark includes its independent use and its use as part of a composite mark, provided that it continues to be indicative of the origin of the product.[9]

35. Further in *Lactalis McLelland Limited v Arla Foods AMBA*,[10] Mr Phillip Johnson, sitting as the Appointed Person, considered the correct approach to the test under s. 46(2). He said (emphasis added):

> "13. […] While the law has developed since *Nirvana* [BL O/262/06], the recent case law still requires a comparison of the marks to identify elements of the mark added (or subtracted) which have led to the alteration of the mark (that is,

[9] *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12
[10] BL O/265/22.

the differences) (see for instance, T-598/18 *Grupo Textil Brownie v EU*IPO*, EU:T:2020:22, [63 and 64]).

14. The courts, and particularly the General Court, have developed certain principles which apply to assess whether a mark is an acceptable just use and the following appear relevant to this case.

15. First, when comparing the alterations between the mark as registered and used it is clear that the alteration or omission of a non-distinctive element does not alter the distinctive character of the mark as a whole: T-146/15 *Hypen v EUIPO*, EU:T:2016:469, [30]. Secondly, where a mark contains words and a figurative element the word element will usually be more distinctive: T-171/17 *M & K v EUIPO*, EU:T:2018:683, [41]. This suggests that changes in figurative elements are usually less likely to change the distinctive character than those related to the word elements.

16. Thirdly, where a trade mark comprises two (or more) distinctive elements (eg a house mark and a sub-brand) it is not sufficient to prove use of only one of those distinctive elements: T-297/20 *Fashioneast v AM.VI. Srl*, EU:T:2021:432, [40] (I note that this case is only persuasive, but I see no reason to disagree with it). Fourthly, the addition of descriptive or suggestive words (or it is suppose figurative elements) is unlikely to change the distinctive character of the mark: compare, T-258/13 *Artkis*, EU:T:2015:207, [27] (ARKTIS registered and use of ARKTIS LINE sufficient) and T-209/09 *Alder*, EU:T:2011:169, [58] (HALDER registered and use of HALDER I, HALDER II etc sufficient) with R 89/2000-1 CAPTAIN (23 April 2001) (CAPTAIN registered and use of CAPTAIN BIRDS EYE insufficient).

17. It is also worth highlighting the recent case of T-615/20 *Mood Media v EUIPO*, EU:T:2022:109 where the General Court was considering whether the use of various marks amounted to the use of the registered mark MOOD MEDIA. It took the view that the omission of the word "MEDIA" would affect the distinctive character of the mark (see [61 and 62]) because MOOD and MEDIA were in combination weakly distinctive, and the word MOOD alone was less distinctive still."

36. The evidence includes the use of the earlier marks in its registered form and as follows:

(i) NOA

(ii)

Cacharel - Noa - Eau de Toilette Women's Perfume - Long

(iii)

37. Where the mark is used in word only form, despite the absence of the stylisation and the black dot used in its registered form, the word NOA is the dominant element of the mark, (for reasons outlined later in my decision) meaning it is still clearly identifiable as an indication of origin and therefore can be relied upon. The same applies with its use in combination with the word Cacharel. The element NOA still retains its independent distinctive character when used with another mark and will be recognised as house brand - sub brand use. The variants shown above therefore are acceptable and may be relied upon for the purposes of the genuine use assessment.

Assessment of the evidence

38. Whilst Ms Chalvron’s witness statement refers to the Opponent and Cacharel’s brand generally, she nevertheless produces evidence to show that goods under the earlier mark have been sold in the UK over a long period of time via well known and national UK retailers. Annual sales figures are provided showing consistent sales

having taken place each year, although the overall sales figures appear to be very low in the context of the market as a whole for the goods at issue. The screenshots taken from the Opponent's social media accounts do not refer specifically to the earlier mark, but I note that the statistical information produced show that, in particular, thousands of references have been made to the brand NOA by way of video views on YouTube, which are said to be specifically UK related. Whilst the data appears to have been collected as at November 2024, in light of the other evidence produced there is no reason to believe that the engagement was any different over the relevant period, especially since the use has been shown to be longstanding. After all, given that the product was launched several decades ago with annual sales consistently exceeding £1 million, consumers' engagement with the product is unlikely to have only started in 2024.

39. Whilst no market share figures are produced, the evidence shows regular and consistent use over a number of years. The reviews from customers on Amazon's UK website, for example, show that the goods had received a "4.6 rating out of 5, from 3,665 ratings" and that "500+ products were bought in the past month". The same screenshots taken from Amazon UK indicate that the NOA perfume products were first available on its platform in April 2007 and that it is ranked 4,055th for Best Sellers Beauty and 35th in Women's Eau de Toilette categories.

40. In light of the evidence as summarised above and Ms Wilkinson-Duffy's concession, I have no hesitation in finding that the Opponent has demonstrated genuine use for *perfumes* and *eau de toilette* and may rely upon these goods for the purposes of its opposition.

Section 5(2)(b)

41. 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.

42. 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

43. 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 Pairs 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

44. 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."

45. 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.

46. In so far as construing words in specifications, Lord Kitchin set out the proper approach to considering terms in specifications in *SkyKick UK Ltd & Anor v Sky Ltd & Ors*[11]:

> "365. […] The correct approach, as a matter of principle, in considering a specification of services which is defined by terms which are not clear or precise, is to confine the terms used to the substance or core of their possible meanings: see, for example, *Reed Executive plc v Reed Business Information Ltd* [2004] EWCA Civ 159; [2004] RPC 40, at para 43. So too, if a specification of goods is defined by terms which are ambiguous, then it should be confined to those goods which are clearly covered. These principles are consistent with first, the requirement that the specifications of goods and services must be clear and precise so that others know what they can and cannot do; and secondly, general fairness because any ambiguity is the responsibility of the owner of the

[11] *(Rev1)* [2024] UKSC 36

mark. If despite this, the words used are still unclear so that they cannot be interpreted, then it is permissible to disregard them. But, in my opinion, that will rarely be the case."

47. Further, in *YouView TV Ltd v Total Ltd*,[12] 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."

48. In *Gérard Meric v Office for Harmonisation in the Internal Market,* Case T-133/05, the General Court ("GC") stated that:

> "29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 Institut für Lernsysteme 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".

49. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal*

[12] [2012] EWHC 3158 (Ch),

*Market (Trade Marks and Designs) (OHIM)***,** Case T-325/06, the 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."

50. The competing goods are set out as follows:

The contested mark	The earlier mark
Class 3: Perfume; Perfumes; Perfume oils; Perfumery and fragrances; Amber [perfume]; Fragrances; Oils for perfumes and scents; Fragrance sachets; Musk [perfumery]; Cologne; Perfume water; Aromatics for perfumes; Room perfume sprays; Liquid perfumes; Potpourris [fragrances]; Colognes; Scents; Fragrance emitting wicks for room fragrance; Aromatics for fragrances; Perfumery; Perfumes for cardboard; Fragrance refills for non-electric room fragrance dispensers; Cedarwood perfumery; Extracts of perfumes; Extracts of flowers [perfumes]; Flowers (Extracts of -) [perfumes]; Extracts of flowers being perfumes; Body deodorants [perfumery]; Eau de cologne [cologne water]; Perfumes for ceramics; Ionone [perfumery]; Deodorants for personal use [perfumery]; Aftershave lotions; Body fragrances; Perfumeries; Fragrance preparations; Perfume oils for the manufacture of cosmetic	Class 3: Perfumes; eau de toilette

preparations; Fragrances for automobiles; Vanilla perfumery; Household fragrances; Perfumed potpourris; Perfumed sachets; Room perfumes in spray form; Natural oils for perfumes; Fragrance sachets for eye pillows; Room fragrances; Perfumery products; Aftershave; Perfumed soaps; Feminine deodorant sprays; Cologne water; Mint for perfumery; Solid perfumes; After-shave lotions; Air fragrance preparations; Peppermint oil [perfumery]; Perfumed soap; Perfuming sachets; Aftershave balms; Scented oils; Scented linen sprays; Synthetic perfumery; Scented sachets; Aftershave balm; Air fragrance reed diffusers; Perfumed powders [for cosmetic use]; Scented body lotions; Synthetic vanillin [perfumery]; Aftershaves; Geraniol for fragrancing; Perfumed powder [for cosmetic use]; Scented soaps; Incense spray; Perfumed powders; Scented body spray; Perfumed creams; Suntan lotion [cosmetics]; Essential oils as perfume for laundry purposes; Eau de Cologne; Eau de cologne; Sachets for perfuming linen; Linen (Sachets for perfuming -); Perfumed powder; Fumigation preparations [perfumes]; Scented room sprays; After-sun oils [cosmetics]; Suntan oils [cosmetics]; Eau de colognes; Perfumed lotions [toilet	

preparations]; After-shave; Fragrance for household purposes; Aromatherapy lotions; After-shave balms; Scented body lotions and creams; Aftershave creams; Tanning oils [cosmetics]; Scented fabric refresher sprays; Skin fresheners [cosmetics]; Perfumery, essential oils; Eaux de cologne; Eaux de Cologne; Deodorant soap; Soap (Deodorant -); Perfumed body lotions [toilet preparations]; Fragrant sachets; Incense sachets; Aftershave milk; Agarwood [incense]; Geraniol fragrancing compounds; Roll-on deodorants [toiletries]; Natural perfumery; Perfumed water; Cosmetics; Scented body creams; Scented fabric refresher spray; Eau de parfum; Moisturisers [cosmetics].	

51. I shall go through the Applicant's terms in turn grouping terms together where appropriate.[13]

Perfume; Perfumes; Perfume oils; Perfumery and fragrances; Amber [perfume]; Fragrances; Musk [perfumery]; Cologne; Perfume water; Aromatics for perfumes; Liquid perfumes; Colognes; Scents; Aromatics for fragrances; Perfumery; Perfumes for cardboard; Cedarwood perfumery; Extracts of perfumes; Extracts of flowers [perfumes]; Flowers (Extracts of -) [perfumes]; Extracts of flowers being perfumes; Eau de cologne [cologne water]; Ionone [perfumery]; Body fragrances; Perfumeries; Vanilla perfumery; Perfumery products; Aftershave; Cologne water; Mint for perfumery; Solid perfumes; Peppermint oil [perfumery]; Scented oils; Synthetic perfumery; Perfumed powders [for cosmetic use]; Synthetic vanillin [perfumery]; Aftershaves; Geraniol for

[13] *Separode* Trade Mark BL O/399/10 (AP)

fragrancing; Perfumed powder [for cosmetic use]; Perfumed powders; Scented body spray; Eau de Cologne; Eau de cologne; Perfumed powder; Eau de colognes; After-shave; Perfumery, essential oils; Eaux de cologne; Eaux de Cologne; Agarwood [incense]; Geraniol fragrancing compounds; Natural perfumery; Perfumed water; Eau de parfum

52. The above products are all perfumes or fragrances intended to be applied to the body (or more generally) to impart a pleasant scent. Consequently, either the same term is used in both parties' respective specifications making them self evidently identical or the above listed terms are encompassed within the Opponent's broader category *perfumes/eau de toilette* rendering them identical in accordance with the principles in *Meric*.

Perfumed soaps; Perfumed soap; Scented soaps

53. The above applied for goods are generally considered a fragranced product used to cleanse the face and body. The purpose of soap is to cleanse and enhance an individual's appearance and mask odour with fragrance, which often complement a person's perfume products. I consider that the nature and core purpose of these goods would differ to the Opponent's *perfumes* but there would be a degree of overlap in overall purpose, in so far as they each are used to enhance a person's scent. The respective goods would share trade channels, be directed at the same user and overlap in method of use i.e. applied to the body. The products would not be complementary as outlined by the caselaw, in the sense that they would not be indispensable to the other, but the respective goods would complement each other in that a consumer may purchase a range of beauty products all fragranced with the same scent and to that extent they would believe that the same entity produced both types of product. Consequently, I consider that the above goods are similar to the Opponent's *perfumes* to a medium degree.

Body deodorants [perfumery]; Deodorants for personal use [perfumery]; Roll-on deodorants [toiletries]; Feminine deodorant sprays; Deodorant soap; Soap (Deodorant)

54. The contested terms can all be described generally as deodorants which are bars or liquid which contain antibacterial properties designed to kill odour causing bacteria and mask odours with fragrance. I find that they are similar to the Opponent's *perfumes*

as they have the same general purpose namely to mask personal odour through fragrance. Further, I consider that they overlap in methods of use in so far as they are to be used on the body (albeit different areas of the body), relevant public and channels of trade. Whilst the core ingredients may differ in that a deodorant includes chemicals to prevent perspiration, both types of goods will be fragranced and therefore they will be a degree of overlap in nature in that respect. I consider that overall, they are similar to a medium degree.

Cosmetics; Scented body lotions; Perfumed lotions [toilet preparations]; Aromatherapy lotions; Scented body lotions and creams; Perfumed body lotions [toilet preparations]; Perfumed creams; Aftershave balms; Aftershave creams; After-shave lotions; Aftershave milk; Scented body creams; Moisturisers [cosmetics]; Skin fresheners [cosmetics]

55. The above goods are all lotions, creams and sprays used on the body to improve a person's appearance and to smooth and/or hydrate the skin. They are often fragranced and are used as part of a person's daily beauty regime. Whilst they do not appear to overlap in core purpose, given that they can be scented, they would still overlap in general purpose to the Opponent's *perfumes*. The method of use overlap, being designed to be used on the body, as well as channels of trade and directed at the same users. I see no obvious complementarity in accordance with the caselaw, but certainly the goods would be provided by the same entities who produce a range of cosmetic goods all with the same scent to complement each other. Overall, I find that the respective goods are similar to a medium degree.

Room perfume sprays; Potpourris [fragrances]; Fragrance emitting wicks for room fragrance; Fragrance refills for non-electric room fragrance dispensers; Perfumes for ceramics; Fragrances for automobiles; Household fragrances; Incense spray; Perfumed potpourris; Perfumed sachets; Room perfumes in spray form; Fragrance sachets for eye pillows; Room fragrances; Air fragrance preparations; Perfuming sachets; Scented linen sprays; Scented sachets; Air fragrance reed diffusers; Essential oils as perfume for laundry purposes; Sachets for perfuming linen; Linen (Sachets for perfuming -); Fumigation preparations [perfumes]; Scented room sprays; Fragrance for household purposes; Fragrance sachets; Scented fabric refresher sprays; Fragrant sachets; Incense sachets; Scented fabric refresher spray

56. The listed goods can be described generally as household products, room fragrances and diffusers used to fragrance the home or linen. They are all products which enhance the scent of a room or soft furnishings by emitting perfume from various sources be it dispensed via reeds, sachets, wicks or an atomiser of some sort or used when washing. Whilst the nature and methods of use of these goods differ to the Opponent's *perfumes* where one is worn on the body as opposed to being used in the home, they overlap in general overall purpose to enhance the fragrance of something or someone. Consequently, the respective goods overlap in users and channels of trade although they would not necessarily be sold in close proximity to each other – the one sold at the cosmetic counter of retail outlets, for example, where the other in the household section. I accept Ms Wilkinson-Duffy submissions, however, that consumers would purchase a signature scent across an array of products to include scented candles, diffusers and home fragrances, to enhance the scent of the home as well as the individual. I consider that the goods are similar to a low degree.

Suntan lotion [cosmetics]; After-sun oils [cosmetics]; Suntan oils [cosmetics]; Tanning oils [cosmetics]

57. These goods are all goods worn on the body and face to prevent an individual from burning, protect them from the sun's rays or to be used after exposure to soothe the skin. Whereas the Opponent's perfumes and eau de toilette goods have the purpose of imparting fragrance on a person. Whilst the respective goods are generally worn on the body their natures and methods of use differ as do their purpose. I am not aware of, and neither is there evidence to show that, suntan/aftersun lotions/oils are perfumed or scented and therefore I do not consider that the channels of trade or users would overlap other than in very general terms which could be said for all beauty products. I see no obvious similarity between the respective goods but if there is, they would only be similar to a very low degree at best.

Fragrance preparations; Oils for perfumes and scents; Perfume oils for the manufacture of cosmetic preparations; Natural oils for perfumes

58. To my mind these goods are different to those perfumery oils outlined in paragraph 52, because the wording suggests that they are all goods used as ingredients in the production of/or as bases to the scented products and the Opponent's *perfumes* as opposed to the finished product. These goods in my view target manufacturers as

opposed to the end users and have different uses, purposes, and trade channels. They are neither complementary nor in competition. I see no obvious similarity between the respective parties' goods. They are dissimilar.

Average Consumer and the purchasing process

59. 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.[14]

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

[14] *Lloyd Schuhfabrik Meyer*, case c-342/97.

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.

61. The average consumer of the parties' goods is a member of the general public. The costs are likely to vary but neither set are particularly costly or are bought on an infrequent basis but likewise they are not those purchased daily. Various factors will be taken into account in the purchasing process namely their cost, quality, fragrance and suitability. Consequently, I consider that the level of attention paid would be average (medium) no higher or lower than the norm for such goods.

62. Ms Wilkinson-Duffy accepted that predominantly the goods would be selected via visual means but she also argued that aural considerations would still play a part. I agree. The goods are likely to be purchased by self selection from shelves of retail premises or their online equivalents where visual considerations will dominate but I do not discount that requests/advice may be made to/sought from sales assistants when purchasing the goods, or word of mouth recommendations. Even where the goods are requested aurally, however, visual considerations would still dominate before the goods are selected, given that consumers will often search for the goods in a display stand behind the counter or a locked cabinet at the point of purchase.

Comparison of the marks

63. 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."

64. 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.

65. The respective trade marks are shown below:

The contested mark	**The earlier mark**

Overall Impression

66. The earlier mark consists of the letters NOA presented in a slightly stylised font, with a small black dot contained within the letter O. The font used is unremarkable and therefore plays a much lesser role in the mark as a whole, as does the small black dot. Consequently, whilst these elements contribute to the overall impression of the mark, the earlier mark is dominated by the letters/word NOA.

67. The contested mark consists of several components dominated by its central element being the letters N-AH, presented in a purple stylised font, in combination with a device. The device consists of a side profile of a female head, partly enclosed by a circular outline attached to which are decorative elements resembling flowers and

leaves. The device is subsumed within the word being integral to it rather than separate and distinct from it. There is a tendency for the "human eye to see what it expects to see and the human ear to hear what it expects to hear".[15] Therefore, the device will be seen to represent and replace the letter O to make up the word/name NOAH particularly given that this name is a relatively common name within the UK. The mark also includes additional verbal elements namely the words Exist in Your Scent and LONDON which will be seen as a phrase/promotional statement and geographical location. Due to their size, position and impact these elements are likely to be overlooked or at least make a much lesser contribution to the mark as a whole. The same applies to the use of colour and the stylisation. The cream rectangle overlaid with a faint crisscross pattern makes very little contribution, as it will purely be seen as a background upon which the other elements are presented. Consequently, the overall impression of the mark lies predominantly in the letters N-AH and the device, in combination representing the word NOAH.

Visual Comparison

68. Visually the marks coincide with the letters N and A. The differences arise in the contested mark from the colour and stylisation of the respective letters, the inclusion of the letter H at the end of the central dominant element, the device replacing the letter O, the words Exist in Your Scent and LONDON, and the use of the stylised cream rectangle acting as a background. Additionally, a further difference arises from the inclusion of the small black dot within the letter O of the earlier mark. Weighing up the similarities as against the differences, I consider that the marks are visually similar to a low degree.

Aural Comparison

69. Aurally although the contested mark does not actually contain the name NOAH, in light of what I have said earlier that the eye sees what it expects to see, consumers will look for a word within a trade mark in order to be able to refer to it verbally. Consequently, I consider that the letters N-AH and the device will be viewed as representing the name NOAH and be pronounced as NO-AH.

[15] *Aveda Corporation v. Dabur India Ltd* [2013] ETMR 33 at [48]

70. In relation to the other verbal elements present in the contested mark namely Exist in Your Scent and LONDON I bear in mind the comments of Mr Phillip Johnson sitting as the Appointed Person, on appeal, in *TM ENRICH LEARNING*[16] where he said:

> "15. The General Court continues to take the view that secondary or descriptive elements of marks are not necessarily spoken: see T-68/2021 *Hauz 1929 v EUIPO*, EU:T:2021:127, [40]; T-560/20 *Yadex International v EUIPO*, EU:T:2021:714, [75]; T-357/21 *Jose Alfonso Arpon v EUIPO*, EU:T:2022:405, [52]; T-1144/23 *Enedo Oyj v EUIPO*, EU:T:2025:207, [88]. These cases follow the general pattern of the jurisprudence before the UK left the EU and so they remain strongly persuasive, and I therefore consider them as reflecting English law: see *Lipton v BA Cityflyer Ltd* [2024] UKSC 24, [158].
>
> 16. In my view, the principle that descriptive or secondary elements in a mark may not be pronounced when the mark is spoken is distinct from the rule that negligible elements of marks can be disregarded in the comparison of marks (see C-3/03/P *Matratzen Concord* [2004] ECR I-3657). The former is a reflection of the fact that in everyday life people often say things in a simplified or shortened form (even though they may be aware of the entire mark). The latter principle, on the other hand, reflects the fact that negligible or insignificant elements of the mark will be forgotten (or not memorised in the first place)."

71. Given my findings regarding the other verbal elements and the part they play in the overall impression of the contested mark and taking note of Mr Johnson's comments, I consider that the word NOAH will be the only element articulated in the contested mark when referring to it verbally rather than pronouncing all the verbal elements.

72. The earlier mark will also be pronounced in the same way as NO-AH even absent the letter H at the end.

73. For these reasons, I find that the marks are aurally identical.

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[16] BL/O/1141/25

Conceptual Comparison

74. The Opponent submits that:

> "The words "NOA" and "NOAH" would be understood in French as being the feminine and masculine version of the name "NOAH". In the UK, "NOAH" is a known, but not particularly common name, originating from the biblical story of a man chosen by God to build an ark in which to house animals to avoid a flood sent to destroy mankind. The name does not have any meaning in the context of perfumery or cosmetic products and is sufficiently unusual that UK consumers may not be certain of its correct spelling. As such, upon encountering either "NOA" or "NOAH" on the respective goods, the average UK consumer is likely to perceive both as having concept of the biblical name Noah, rendering both marks conceptually identical."

75. Given that it is the perspective of UK consumers which is key I am not convinced by Ms Wilkinson-Duffy's arguments that consumers will see the word NOA as the feminine version of the biblical male forename NOAH as opposed to an invented word or word of foreign origin which conveys no meaning. Further there is no evidence regarding the point. The Applicant has merely submitted that the earlier mark does not necessarily convey the same concept of a personal name but offers no alternative concept. Given that the position advanced by the Opponent appears to represent its best case, I shall proceed on the same basis.

76. As stated earlier the letters N-AH and the device in the contested mark will be understood to represent the name NOAH but otherwise any meaning that might be conveyed by the presence of the device is not immediately graspable. The words Exist in Your Scent and LONDON in the contested mark do not give rise to any clear meaning beyond being perceived as a promotional slogan and a geographical location. Therefore, whilst they are points of conceptual difference, they are not significant ones. Overall taking all of this into account, I consider that the respective marks are conceptually similar to the extent that a name has any concept. Otherwise beyond being a name, the respective marks do not convey any semantic content and therefore would be conceptually neutral.

Distinctive character

77. Registered trade marks possess varying degrees of inherent distinctive character. Those marks that are regarded as descriptive of the goods/services will possess a low degree of distinctiveness. Conversely invented words with no association to the goods/services are highly distinctive. The more distinctive the earlier marks (either per se or by the use that has been made of them) the greater the likelihood of confusion.[17]

78. 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).

79. Taking the case advanced by the Opponent which appears to be its strongest case, I am not convinced that the earlier mark will be seen as the female spelling of the male forename NOAH, absent the letter H, as it suggests, particularly since there is no evidence on the point to support this contention. In my view, at best, the name NOA is likely to be recognised as a female forename. Names are widely regarded as not being particularly distinctive as they are often used as trade marks. In *Harman International Industries, Inc v OHIM*, Case C-51/09P, the CJEU found that:

> "Although it is possible that, in a part of the European Union, surnames have, as a general rule, a more distinctive character than forenames, it is appropriate, however, to take account of factors specific to the case and, in particular, the fact that the surname concerned is unusual or, on the contrary, very common, which is likely to have an effect on that distinctive character. That is true of the surname 'Becker' which the Board of Appeal noted is common".

[17] *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)

80. Whilst this case was dealing with surnames there is no reason to believe that the position is any different with forenames. I accept that as a female forename NOA is not a particularly common name in the UK. I bear in mind that I found the stylisation and inclusion of the black dot in the earlier mark not to be particularly remarkable and therefore any contribution they make to its distinctiveness will be small. Taking all of this into account, I consider that the earlier mark as a whole, is inherently distinctive to a medium degree.

Enhanced Distinctive Character

81. I have already outlined the Opponent's evidence when assessing genuine use. Whilst the sales figures are not insignificant, neither can they be described as substantial. The evidence shows that the use of the mark NOA for *perfume* has been longstanding and consistent, with continuous sales over a number of years. However, the sales figures themselves are modest when taken in the context of the market as a whole, for the goods in issue.

82. Although the Opponent has sold its goods under the mark through well-known national retail outlets with premises across the UK, its promotional activity is not shown to be extensive. The evidence indicates only a fairly modest social media presence, and the total advertising and marketing expenditure referred to is low, amounting to just over £50,000 over the whole period. There is no evidence demonstrating how the mark has been promoted beyond its presence on the websites of those retail outlets, a limited number of customer reviews, and a statistical report relating to social media engagement. Notably, there are no examples of the sort of promotional or marketing materials that would ordinarily be expected in a case of this nature, and which might assist in assessing the extent of the mark's exposure to the relevant UK consumer.

83. In relation to market share, no evidence has been provided regarding the size of the relevant market or the Opponent's position within it, and I am therefore unable to determine, with any degree of certainty, the level of consumer recognition enjoyed by the earlier mark. I note that the Opponent's 2022 Annual Report records global sales in excess of €38 billion, albeit across all beauty/cosmetic sectors. By contrast, sales under the earlier mark in the same year amounted to just over £1 million, representing

a very small proportion of the Opponent's own turnover, let alone that of the market as a whole.

84. That said, the evidence does show consistent and geographically widespread sales of the goods in the UK over a number of years. Having considered the evidence as a whole, I find that the Opponent has demonstrated some enhancement to the distinctive character of its earlier mark as a result of use, but only to a limited extent. The distinctive character of the earlier mark has therefore been enhanced marginally above medium, but not significantly so.

Likelihood of confusion

85. 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 originate from the same or a related source.

86. 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."[18]

[18] *Robert Bosch GmbH v Bosco Brands UK Limited*, BL O/301/20.

87. 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*:[19]

> "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'.
>
> 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.).

[19] BL O/375/10.

(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)."

88. 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.[20] 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.[21]

89. Earlier in my decision I found that the contested mark was visually similar to the earlier mark to a low degree. Taking the case most favourable to the Opponent, the respective marks were aurally identical and to the extent that names have any concepts they were conceptually similar but otherwise they were conceptually neutral. I found that most of the applied for goods were either identical or similar in various degrees to the Opponent's *perfumes*. I found some goods to be dissimilar, and for these goods, the opposition under section 5(2)(b) fails at the outset, since there is a requirement of similarity in order to succeed under this ground. The earlier mark as a whole was inherently distinctive to a medium degree, and that the evidence supported that it had enhanced its distinctive character to marginally beyond a medium degree but not significantly. The average consumers of the goods were the general public undertaking an average (medium) level of attention when selecting the goods predominantly by visual means but not discounting aural considerations. However, even where the goods were requested verbally, visual considerations would still dominate at the point of purchase.

90. Dealing with direct confusion first. In my view the differences between the marks identified earlier, particularly the visual differences, will be enough to avoid the marks being mistakenly recalled or misremembered for each other, even when used on identical goods. Leaving aside the device and additional text elements in the contested mark, I consider that the names NOA and NOAH are sufficiently different (even if the

[20] *Liverpool Gin Distillery Limited v Sazerac brands LLC* [2021] EWCA Civ 1207
[21] *Duebros Limited v Heirler Cenovis GmbH,* BL O/547/17

former is seen as the female version of the latter) that they will not be mistakenly recalled as each other, even when the earlier mark is attributed an enhanced degree of distinctiveness and/or there is conceptual similarity as a result of each being seen as a female/male name.

91. I have considered that there is capacity for the marks to be mistaken one for the other when spoken, but I found that the purchase was predominantly a visual one, (a position accepted by the Opponent) and therefore reject this proposition. In coming to this conclusion, I bear in mind the comments of Mr Iain Purvis Q.C. (now K.C.), sitting as the Appointed Person in *The Royal Academy of Arts v Errea Sport S.P.A.*[22], in which he rejected the Appellant's submission that there was bound to be a likelihood of confusion because:

> "This argument seems …to fly in the face of the necessary 'global' assessment, bearing in mind the visual, conceptual and aural similarities, which the tribunal must carry out. Particularly in the case of an earlier mark which is a heavily stylised device mark, taking the aural similarities alone tends to ignore the real substance and distinctive character of the mark and is likely to lead to an erroneous result."

92. Whilst in this case it is the contested mark that is heavily stylised and includes additional elements, that is not all, the letter O within the dominant central element N-AH, is replaced by a device which will not be overlooked. After all, as Arnold J. observed in *TVIS Limited v Howserv Services Limited & Ors*:[23]

> "35…. while it is conventional for first instance tribunals in trade mark cases to articulate their assessment of the degree of visual and aural similarity between signs and trade marks using words such as "high", "medium" or "low", there is no legal requirement for tribunals to do so. All that is required is for the tribunal to assess the nature and extent of any similarities. This is because what matters is not the verbal label that is applied to the assessment, but whether the similarities in conjunction with the other factors which must be taken into account lead to a likelihood of confusion. It is possible for there to be no likelihood of confusion despite a relatively high degree of visual and aural

[22] BL O/010/16
[23] [2024] EWCA Civ 1103

similarity. Equally it is possible for there to be a likelihood of confusion despite a relatively low degree of visual and aural similarity. It depends on the other factors that are in play."

93. Taking all these matters into account in the global assessment together with the fact that names are not greatly distinctive in themselves, I do not consider that there will be likelihood of direct confusion.

94. In so far as indirect confusion is concerned, if consumers note that the marks are different, I find it improbable that they would then acknowledge those differences but conclude that the one mark is a brand extension or sub brand of the other or that the goods are provided by one and the same or related undertaking. Setting aside the other elements present in the contested mark for the time being and focussing on the dominant central element, if consumers note that the marks are different, in my view it would be highly unusual for a sub brand/extension or variant to adopt a different name to the original, other than some overlap in their letters and further replace one of those letters with a device, which is entirely different from the one used originally. In my view it would not be logical for consumers to believe that there is an economic connection between them, merely because one of the elements shares some of the same letters or includes a component that relates to the name NOAH but uses a different spelling of the same. I do not find that consumers will regard the later mark as a male version of the earlier mark, for the reasons outlined. There is nothing to suggest that the two entities are connected. When comparing the marks as wholes and factoring back in all the elements present in the respective marks, I do not find a likelihood of indirect confusion.

95. For the avoidance of doubt even if I had found that the earlier mark was an invented word resulting in a high degree of distinctive character this would not have assisted the Opponent. In those circumstances the likelihood of confusion would have been even less likely, given the clear conceptual dissimilarity that would have arisen as a result when taken together with the visual distinctions I have already identified. The aural identity would still not have counteracted these differences.

96. The opposition based upon section 5(2)(b) of the Act is unsuccessful.

Section 5(3)

97. Section 5(3) of the Act states:

> "A trade mark which-
>
> (a) is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.
>
> (3A) Subsection (3) applies irrespective of whether the goods and services for which the trade mark is to be registered are identical with, similar to or not similar to those for which the earlier trade mark is protected."

98. I bear in mind the relevant case law set out in the following judgments of the CJEU: Case C-375/97, *General Motors*, Case 252/07, *Intel,* Case C-408/01, *Addidas-Salomon*, Case C-487/07, *L'Oreal v Bellure* and Case C-323/09, *Marks and Spencer v Interflora*. The conditions of section 5(3) are cumulative. Firstly, the Opponent must show that the earlier mark is similar to the contested mark. Secondly, the Opponent must show that the earlier mark has achieved a level of knowledge/reputation amongst a significant part of the public. Thirdly, it must be established that the level of reputation and the similarities between the marks will cause the public to make a link between them, in the sense of the earlier marks being brought to mind by the later mark. Fourthly, assuming that the first three conditions are met, section 5(3) requires that one or more of the types of damage will occur. It is unnecessary for the purposes of section 5(3) for the goods to be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks. For the purposes of section 5(3) the relevant date for the assessment is 12 February 2024.

Similarity between the marks

99. Earlier in my decision I found the marks to be similar visually only to a low degree, aurally identical and conceptually similar to the extent that both marks will be seen as a reference to names, otherwise conceptually neutral.

Reputation

100. In *General Motors*, Case C-375/97, the CJEU held that:

> "25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.
>
> 26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.
>
> 27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.
>
> 28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation 'in the Member State'. In the absence of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation 'throughout' the territory of the Member State. It is sufficient for it to exist in a substantial part of it."

101. In assessing whether the earlier marks have a reputation to a significant number of consumers, I must assess the evidence in terms of the extent it demonstrates "the market share held by the trademark, the intensity, geographical extent and duration of use, and the size of the investment made by the undertaking in promoting it."[24]

102. I have already assessed the evidence when considering whether the Opponent had shown genuine use of its mark and whether it had enjoyed an enhanced level of distinctive character through use. As I have already outlined, no market share figures are given, and the sales figures are modest in the context of the market as a whole.

[24] *General Motors* para 27

The geographical extent of the sales in the UK are nonetheless widespread given that I accept that the UK retailers referred to are national retailers with retail outlets across the UK. The size of the investment in promoting the earlier mark has been shown to be at a low level. However, the duration of use has nevertheless been longstanding. Bearing in mind my earlier assessment of the evidence I am satisfied that the Opponent has a qualifying reputation at the relevant date for *perfumes* and *eau de toilette*, but only to a fairly modest degree.

Link

103. As noted above, my assessment of whether the public will make the required mental link between the marks must take account of all relevant factors. The factors identified in *Intel* are:[25]

> *The degree of similarity between the conflicting marks.*
>
> I found that the marks are visually similar to a low degree, the common element is aurally identical and conceptually they share similarity to the extent that each refers to a name.
>
> *The nature of the goods or services for which the conflicting marks are registered, or proposed to be registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public.*
>
> Some of the contested goods are identical, some are similar in varying degrees ranging from very low to medium and some are dissimilar.
>
> *The strength of the earlier mark's reputation*.
>
> The Opponent's mark has a fairly modest reputation in relation to *perfumes/eau de toilette*.
>
> *The degree of the earlier mark's distinctive character, whether inherent or acquired through use.*

[25] *Intel Corporation Inc v CPM United Kingdom Ltd* - [2009] RPC 15 (CJEU).

The earlier mark is inherently distinctive to a medium degree overall for reasons that I have addressed earlier, and its distinctiveness has been enhanced to marginally higher than a medium degree but not significantly.

Whether there is a likelihood of confusion.

I found that there is no likelihood of confusion.

104. I am now required to determine whether, in this particular case, the relevant public would bring the Opponent's registration to mind when confronted with the contested mark, thereby creating the necessary link.

105. I am not persuaded that the earlier mark would be brought to the mind of the relevant public when seeing the contested mark, even for identical goods. Having concluded that it is unlikely that the average customer would confuse between the two marks, the Opponent's case has no greater prospect of success under Section 5(3) than it did under Section 5(2)(b). For the same reasons, it is considered unlikely that the mark NOA would be brought to mind when consumers come across the contested mark where the figurative element NOAH has the letter O within the name replaced by a device and the difference in spelling. These differences in combination with the other elements makes the distance between the two marks too great. Even though there is a greater degree of similarity between the marks when spoken this does not offset the visual differences particularly since the goods are predominantly a visual purchase. I consider that despite the identity/similarities between the respective goods the distance between the marks is too great overall to bridge the gap between the two entities for a connection to be made, particularly given the Opponent's fairly modest reputation for *perfumes/eau de toilette*. In my view if the Opponent's mark is brought to mind when coming across the Applicant's mark, it will be fleeting at best and insufficient for any of the heads of damage to arise.

106. The opposition under section 5(3) fails.

Final Conclusion

107. Subject to appeal, the application for registration can proceed to registration for all its goods and services as set out in full in the Annex to this decision.

Costs

108. The Applicant has been successful and is entitled to a contribution towards its costs which are in accordance with the scale as set out in Tribunal Practice Notice 1/2023. Following this guidance, I award costs to the Applicant as follows:

Considering the opposition and filing a defence and counterstatement:	£400
Considering the Opponent's evidence and filing submissions in lieu of hearing:	£400
Total	**£800**

109. I order L'Oréal to pay Kusai Noah the sum of £800 as a contribution towards his costs. 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 this decision is unsuccessful.

Dated this 8th day of May 2026

Leisa Davies

For the Registrar

ANNEX

UKTM no. 4013662
Class 1: Alcohol for use in the manufacture of perfumes; Synthetic fragrance ingredients; Chemical products for the preparation of perfumes; Chemical substances for use in the manufacture of scented cosmetics; Chemical substances for use in the manufacture of perfumes; Chemical substances for use in the manufacture of scented toiletries. Class 3: Perfume; Perfumes; Perfume oils; Perfumery and fragrances; Amber [perfume]; Fragrances; Oils for perfumes and scents; Fragrance sachets; Musk [perfumery]; Cologne; Perfume water; Aromatics for perfumes; Room perfume sprays; Liquid perfumes; Potpourris [fragrances]; Colognes; Scents; Fragrance emitting wicks for room fragrance; Aromatics for fragrances; Perfumery; Perfumes for cardboard; Fragrance refills for non-electric room fragrance dispensers; Cedarwood perfumery; Extracts of perfumes; Extracts of flowers [perfumes]; Flowers (Extracts of -) [perfumes]; Extracts of flowers being perfumes; Body deodorants [perfumery]; Eau de cologne [cologne water]; Perfumes for ceramics; Ionone [perfumery]; Deodorants for personal use [perfumery]; Aftershave lotions; Body fragrances; Perfumeries; Fragrance preparations; Perfume oils for the manufacture of cosmetic preparations; Fragrances for automobiles; Vanilla perfumery; Household fragrances; Perfumed potpourris; Perfumed sachets; Room perfumes in spray form; Natural oils for perfumes; Fragrance sachets for eye pillows; Room fragrances; Perfumery products; Aftershave; Perfumed soaps; Feminine deodorant sprays; Cologne water; Mint for perfumery; Solid perfumes; After-shave lotions; Air fragrance preparations; Peppermint oil [perfumery]; Perfumed soap; Perfuming sachets; Aftershave balms; Scented oils; Scented linen sprays; Synthetic perfumery; Scented sachets; Aftershave balm; Air fragrance reed diffusers; Perfumed powders [for cosmetic use]; Scented body lotions; Synthetic vanillin [perfumery]; Aftershaves; Geraniol for fragrancing; Perfumed powder [for cosmetic use]; Scented soaps; Incense spray; Perfumed powders; Scented body spray;

Perfumed creams; Suntan lotion [cosmetics]; Essential oils as perfume for laundry purposes; Eau de Cologne; Eau de cologne; Sachets for perfuming linen; Linen (Sachets for perfuming -); Perfumed powder; Fumigation preparations [perfumes]; Scented room sprays; After-sun oils [cosmetics]; Suntan oils [cosmetics]; Eau de colognes; Perfumed lotions [toilet preparations]; After-shave; Fragrance for household purposes; Aromatherapy lotions; After-shave balms; Scented body lotions and creams; Aftershave creams; Tanning oils [cosmetics]; Scented fabric refresher sprays; Skin fresheners [cosmetics]; Perfumery, essential oils; Eaux de cologne; Eaux de Cologne; Deodorant soap; Soap (Deodorant -); Perfumed body lotions [toilet preparations]; Fragrant sachets; Incense sachets; Aftershave milk; Agarwood [incense]; Geraniol fragrancing compounds; Roll-on deodorants [toiletries]; Natural perfumery; Perfumed water; Cosmetics; Scented body creams; Scented fabric refresher spray; Eau de parfum; Moisturisers [cosmetics].

Class 4: Aromatherapy fragrance candles; Musk scented candles; Candles (Perfumed -); Perfumed candles; Scented candles; Fragranced candles; Lanolin for use in the manufacture of cosmetics and ointments.

Class 5: Medicated after-shave lotions; Mosquito-repellent incense; Deodorants for clothing.

Class 16: Scented stationery.

Class 21: Perfume atomisers; Perfume bottles; Perfume sprayers; Perfume vaporizers; Perfume atomizers [empty]; Perfume burners; Burners (Perfume -); Vaporizers for perfume [empty]; Scent sprays [atomizers]; Perfume sprays, sold empty; Perfume sprayers [sold empty]; Perfume bottles sold empty; Vaporizers for perfume sold empty; Perfume burners [other than electric].

Class 35: Marketing research in the fields of cosmetics, perfumery and beauty products; Retail services relating to jewelry.