

O/0419/26

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF INTERNATIONAL REGISTRATION  
DESIGNATING THE UK NO. 1722281  
IN THE NAME OF NEXTEVO HOLDINGS PTE. LTD.

AND IN THE MATTER OF OPPOSITION THERETO  
UNDER NO. 441928  
BY NEXT RETAIL LIMITED

AND

IN THE MATTER OF INTERNATIONAL REGISTRATION  
DESIGNATING THE UK NO. 1720197  
IN THE NAME OF NEXTEVO HOLDINGS PTE. LTD.

AND AN APPLICATION FOR A DECLARATION OF INVALIDITY  
UNDER NO. 506301  
BY NEXT RETAIL LIMITED

## **Background and pleadings**

1. On 12 January 2023, NEXTEVO HOLDINGS PTE. LTD. (“Nextevo”) registered the international trade marks shown below (collectively, “the IRs”). With effect from the same date, Nextevo designated the UK as a territory in which it sought to protect the IRs under the terms of the Protocol to the Madrid Agreement.



2. Protection of the IRs was sought (and conferred on 8 July 2023 in respect of the second IR) in respect of the following goods:<sup>1</sup>

Class 23: Carded threads in natural fibres for textile use; carded yarns of hemp for textile use; carded yarns in natural fibres for textile use; chemical fiber base mixed thread and yarn; chemical-fiber threads and yarns for textile use; coir thread and yarn; combed yarns made of natural fibres; cotton thread and yarn; elastic thread and yarn for textile use; heat-stable yarns and threads; hemp thread and yarn; jute thread and yarn; linen thread and yarn; mixed spun threads and yarns; natural yarns; regenerated

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<sup>1</sup> Although the terms are expressed in a slightly different order, the specifications of the IRs cover an identical list of goods.

fiber thread and yarn for textile use; semi-synthetic fiber thread and yarn for textile use; semi-synthetic fiber thread and yarn [chemically treated natural fiber yarn]; synthetic fiber thread and yarn for textile use; textile filaments [threads]; threads and yarns for textile use.

Class 24: Bedroom textile fabrics; coated textiles; coated woven textile materials; composite textile materials; disposable bedding of textile; disposable tablecloths of textile; elastic fabrics for clothing; fabrics being textile piece goods; fabrics being textile goods in roll form; fabrics for textile use; furnishing fabrics being textile piece goods; furniture coverings of textile; gift wrap of textile; hand towels of textile; heat resistant fabrics, other than for insulation; household textile piece goods; kitchen towels [textile]; labels made of textile materials; linings [textile]; non-woven fabrics of natural fibres; non-woven textile fabrics; reinforced fabrics [textile]; sheets [textile]; synthetic textile piece goods; textile fabrics for making into linens; textile fabrics for making into clothing; textile fabrics for making up into household textile articles; textile fabrics for use in the manufacture of towels; textile fabrics for use in the manufacture of curtains; textile fabrics for use in the manufacture of furniture; textile fabrics for use in the manufacture of sportswear; textile fabrics for use in the manufacture of wall coverings; textile piece goods; textiles and substitutes for textiles; waterproof textile fabrics; woven fabrics for making up into articles of clothing.

3. On 13 July 2023, Next Retail Limited (“Next”) opposed the protection of the first IR in the UK. On 14 July 2023, Next made an application for a declaration of invalidity in respect of the second IR pursuant to section 47 of the Trade Marks Act 1994 (“the Act”). The opposition and the application for invalidation are both based on sections

5(2)(b) and 5(3) of the Act, for which Next relies upon the trade marks shown below (collectively, “Next’s marks”).<sup>2</sup>

(i) **NEXT**

UK registration no. 900015594

Filing date: 1 April 1996

Registration date: 19 October 1998

(“Next’s first mark”)


(ii) **NEXT**

UK registration no. 901620434

Filing date: 19 April 2000

Registration date: 2 July 2003

(“Next’s second mark”)

(iii) 

UK registration no. 3607060

Filing date: 22 June 2016

Registration date: 24 December 2021

(“Next’s third mark”)

(iv) 

UK registration no. 917607474

Filing date: 22 June 2016

Registration date: 4 January 2018

(“Next’s fourth mark”)

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<sup>2</sup> Next’s first, second and fourth marks are comparable marks based upon its EUTM nos. 15594, 1620434 and 17607474. On 1 January 2021, in accordance with article 54 of the Withdrawal Agreement between the UK and EU, comparable UK trade marks were automatically created. They are now recorded on the UK register, have the same legal status as if they had been applied for and registered under UK law, and retain their original filing dates. Moreover, under article 59, applications for EUTMs made before the end of the transition period that had received a filing date can form the basis of a UK application with the same filing date, provided they were filed within 9 months of the end of the transition period. Next’s EUTM no. 15568876 was filed on 22 June 2016, whereas Next’s third mark was filed on 9 March 2021. Accordingly, this UK mark was given the same filing date as the corresponding EUTM.

4. Next's marks stand registered for a wide range of goods and services covering 28 classes. Only some of these in classes 20, 24, 25, 27 and 35 are relied upon for the purposes of the opposition and the application for invalidation. These are set out in the annex to this decision.

5. Under section 5(2)(b), Next contends that the IRs are similar to each of its marks and that the parties' goods and services are identical or similar. On this basis, Next submits that there is a likelihood of confusion, including the likelihood of association.

6. Under section 5(3), Next claims that each of its marks enjoys a strong reputation in the UK in respect of the goods and services relied upon. It submits that use of the IRs, without due cause, would take unfair advantage of, and be detrimental to, the repute and distinctive character of its marks. Next also claims that the relevant public will mistakenly believe there is an economic connection between the users of the competing marks, when there is not.

7. Nextevo filed counterstatements, denying the grounds of opposition and invalidation. It denies that the competing marks are sufficiently similar to give rise to a likelihood of confusion or to cause a link to be made in the minds of the relevant public. Nextevo also denies that the parties' goods and services are identical or similar. Finally, Nextevo puts Next to proof of use and reputation in respect of its marks.

8. On 4 June 2024, the proceedings were consolidated pursuant to rule 62(1)(g) of the Trade Marks Rules 2008.

9. Both parties filed evidence. A hearing was requested and held before me, by video conference, on 30 April 2025. Next was represented by Ashton Chantrielle of counsel, instructed by Marks & Clerk LLP. Nextevo has been represented throughout these proceedings by Withers & Rogers LLP but did not attend or file written submissions in lieu.

## **Relevance of EU law**

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

## **Evidence**

11. Next's evidence is given in the witness statements of Ian Blackwell, together with 14 exhibits (IB1-IB14), and Adam Wilson, together with three exhibits (AW1-AW3). Mr Blackwell is the Legal and Compliance Director of Next, a company he has been associated with since May 2007. He provides Next's evidence of use and reputation. Mr Wilson is a Trade Mark Attorney and Associate with Next's professional representatives. His evidence goes to the meaning of the word 'EVO'.

12. Nextevo filed evidence in the form of a witness statement from Lauren Bray and four accompanying exhibits (LEB1-LEB4). Ms Bray is a Trade Mark Attorney with Nextevo's professional representatives. She provides evidence as to the meanings of the words 'next', 'evo' and 'nextevo', examples of words which begin with 'evo-', and examples of third-party use of the word 'next'.

13. I have taken all the evidence into account in reaching my decision and will refer to it below where necessary.

## **Decision**

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

6(1) In this Act an "earlier trade mark" means-

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

(aa) a comparable trade mark (EU) or a trade mark registered pursuant to an application made under paragraph 25 of Schedule 2A which has a valid claim to seniority of an earlier registered trade mark or protected international trade mark (UK) even where the earlier trade mark has been surrendered or its registration has expired; [...]"

15. Section 6A of the Act reads as follows:

“6A(1) This section applies where-

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a), (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.

[...]

(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.

(7) Nothing in this section affects-

(a) the refusal of registration on the grounds mentioned in section 3 (absolute grounds for refusal) or section 5(4) (relative grounds of refusal on the basis of an earlier right), or

(b) the making of an application for a declaration of invalidity under section 47(2) (application on relative grounds where no consent to registration).”

16. The relevant parts of section 47 of the Act read as follows:

“47. (1) [...]

(2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground-

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

[...]

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

[...]

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

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

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

(c) the use conditions are met.

(2B) The use conditions are met if-

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

(i) within the period of 5 years ending with the date of application for the declaration, and

(ii) within the period of 5 years ending with the date of filing of the application for registration of the later trade mark or (where applicable) the date of the priority claimed in respect of that application where, at that date, the five year period within which the earlier trade mark should have been put to genuine use as provided in section 46(1)(a) has expired, or

(b) it has not been so used, but there are proper reasons for non-use.

(2C) 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.

[...]

(2E) 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.

(2F) Subsection (2A) does not apply where the earlier trade mark is a trade mark within section 6(1)(c).

(2G) An application for a declaration of invalidity on the basis of an earlier trade mark must be refused if it would have been refused, for any of the reasons set out in subsection (2H), had the application for the declaration been made on the date of filing of the application for registration of the later trade mark or (where applicable) the date of the priority claimed in respect of that application.

(2H) The reasons referred to in subsection (2G) are-

(a) that on the date in question the earlier trade mark was liable to be declared invalid by virtue of section 3(1)(b), (c) or (d), (and had not yet acquired a distinctive character as mentioned in the words after paragraph (d) in section 3(1));

(b) that the application for a declaration of invalidity is based on section 5(2) and the earlier trade mark had not yet become sufficiently distinctive to support a finding of likelihood of confusion within the meaning of section 5(2);

(c) that the application for a declaration of invalidity is based on section 5(3)(a) and the earlier trade mark had not yet acquired a reputation within the meaning of section 5(3).

[...]

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

(5A) An application for a declaration of invalidity may be filed on the basis of one or more earlier trade marks or other earlier rights provided they all belong to the same proprietor.

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

17. Each of Next’s marks qualifies as an ‘earlier trade mark’ in accordance with the above provisions. Next’s first, second and fourth marks had completed their registration processes more than five years before the UK designation date of the IRs (for the purposes of the opposition) and the date on which the application for invalidation was filed (for the purposes of the invalidation). As such, they are subject to the use provisions set out above. Next’s third mark had not completed its registration process before these dates and, therefore, the use provisions do not apply (in either action).

### **Proof of use**

18. I must first determine whether, or the extent to which, Next’s first, second and fourth marks can be relied upon for the purposes of Next’s claims. 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 Bunderversvereinigung 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 Marken 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].”

19. In accordance with the provisions set out above, the relevant period for this assessment in respect of the opposition is the five-year period ending with the UK designation date of the IRs, i.e. 13 January 2018 to 12 January 2023. In respect of the invalidation, there are two relevant periods. These are (i) the five-year period ending with the filing date of the application for invalidation, i.e. 15 July 2018 to 14 July 2023

and (ii) the five-year period ending with the UK designation date of the IRs, i.e. 13 January 2018 to 12 January 2023.

### **The evidence**

20. Mr Blackwell gives evidence that the trade mark 'NEXT' was first adopted in the UK in 1982. It is said to have been used in relation to a wide range of goods, including furniture, clothing, footwear, headwear, textile products and home furnishings. These goods are said to have been sold online and in physical outlets. In offering such goods for sale, Next is said to have provided retail services to its customers.

21. Mr Blackwell says that Next launched a website for its UK business (next.co.uk) in 1999, every page of which features the 'NEXT' mark. The following figures regarding annual website 'hits' are given:

<b>Year</b>	<b>Website hits</b>
2017	5,633,097,135
2018	4,414,109,343
2019	4,726,430,614
2020	3,628,754,609
2021	4,074,024,438
2022	3,871,306,652
2023	3,876,956,446

22. Mr Blackwell provides a selection of printouts from the website.<sup>3</sup> They were obtained via the Wayback Machine and are dated between 2 February 2019 and 20 March 2023.<sup>4</sup> The printouts show a range of clothing, footwear, headwear, bath towels and mats, bedroom furniture, curtains, rugs, cushions and throws being offered for sale in connection with the word 'NEXT'. In addition to 'NEXT' branded goods, the

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<sup>3</sup> Exhibit IB4

<sup>4</sup> Although the printouts appear to have been obtained in March 2024, the website address at the bottom of each page includes a time stamp. For instance, "[...] 20190907180045 [...]" indicates that the page was crawled by the Wayback Machine at 18:00:45 on 7 September 2019.

printouts show that a range of third-party goods were offered for sale on the website at this time.

23. Mr Blackwell says that Next is one of the largest retailers by sales in the UK, is listed on the London Stock Exchange and is a constituent of the FTSE 100. He provides an extract from the *Financial Times* showing Next Plc's London Stock Exchange profile as of 18 September 2020.<sup>5</sup> The company is described as a UK-based retailer offering clothing, footwear, accessories, beauty and home products, with a market capitalisation of over \$8 billion. According to Mr Blackwell, Next operated 498 retail stores in the UK by 31 January 2020. He provides the following turnover figures for Next Plc:<sup>6</sup>

<b>Year</b>	<b>Turnover (£ billions)</b>
2018	4.1
2019	4.2
2020	4.4
2021	3.6
2022	4.9
2023	5.4

24. In support, Mr Blackwell has evidenced Next Plc's financial accounts for January 2020, January 2022 and January 2023.<sup>7</sup> These confirm the turnover figures above. They also provide more information about the split between online and in-store sales, as well as between 'NEXT' branded goods and third-party branded goods. For example, in the January 2023 report, it states that online sales were around £3 billion and in-store sales around £1.8 billion. That same report indicates that around £1.2 billion was accrued through the (full price) sale of 'NEXT' branded goods, and around £870 million through the (full price) sale of third-party branded goods.

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<sup>5</sup> Exhibit IB5

<sup>6</sup> Mr Blackwell says that Next is a wholly owned subsidiary of Next Holdings Ltd, of which the parent company is Next Plc. Mr Blackwell says that these companies mutually license their trade marks to each other, and has (at Exhibit IB2) provided agreements from 2002, 2006, 2014 and 2016 concerning the licensing of "all trade marks registered and unregistered of which [each company] is the proprietor anywhere in the world" to one another.

<sup>7</sup> Exhibit IB6

25. Mr Blackwell says that Next issues dispatch notices in lieu of invoices to its online and mail-order catalogue customers. A sample of such notices has been provided.<sup>8</sup> These show the sale of shirts, t-shirts, trousers, jumpers, socks, shoes, hats, duvet covers, throws, bed sheets, towels and cushions throughout each year between 2018 and 2022. Some are 'NEXT' branded, whilst others are third-party branded. The customers were based in locations across the UK, including, *inter alia*, Sheffield, Cardiff, Edinburgh, Manchester and London.

26. Mr Blackwell says that Next has spent substantial sums in advertising and publicising its products and services in the UK across multiple media types. He provides the following figures in this regard:

<b>Year</b>	<b>Expenditure (£)</b>
2017	75,826,746
2018	77,516,429
2019	79,647,824
2020	69,304,323
2021	101,886,995
2022	114,513,025
2023	125,315,803

27. Also in evidence are a selection of press articles and third-party publications which refer to Next.<sup>9</sup> Whilst these are noted, they all post-date the relevant period.

28. Mr Blackwell says that, according to Brand Finance Brandirectory, Next has for many years been one of the top 150 most valuable brands in the UK. He provides printouts from Brandirectory,<sup>10</sup> which show the following rankings for Next:

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<sup>8</sup> Exhibit IB7

<sup>9</sup> Exhibit IB8

<sup>10</sup> Exhibit IB9

<b>Year</b>	<b>Ranking</b>
2017	53
2018	60
2019	59
2020	52
2021	52
2022	58

29. Further, Kantar Brandz Most Valuable UK Brands ranked Next at 27 and 24 in 2020 and 2021, respectively, whilst GlobalData ranked it at 36 in the largest online retailers in the world in 2020.<sup>11</sup>

30. Information from Kantar also shows that 'NEXT' held the following share of the clothing, footwear and accessories market in the UK:<sup>12</sup>

<b>Date</b>	<b>Market share (%)</b>
11 February 2018	7.1
10 February 2019	7.2
9 February 2020	7.4
7 February 2021	7.0
6 February 2022	8.9

31. Finally, I note that Mr Blackwell provides extracts of previous decisions in which it was held that Next had demonstrated a reputation and/or enhanced distinctive character through use of its 'NEXT' marks.<sup>13</sup> Whilst the contents of these decisions are noted, it is well established that prior decisions of this Tribunal are not binding on the Registrar. I shall say no more about them.

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<sup>11</sup> Exhibit IB10

<sup>12</sup> Exhibits IB11 and IB12

<sup>13</sup> Exhibits IB13 and IB14

## Sufficient use

32. The evidence demonstrates that Next was consistently amongst the most valuable brands in the UK during the relevant periods, and held an average 7.52% of the clothing, footwear and accessories market in the UK during the relevant periods. Next used its marks on a UK-facing website throughout the relevant periods, and this website had in excess of 20 billion hits during this time. Moreover, Next operated around 500 physical retail stores across the UK during the relevant periods. The dispatch notices demonstrate consistent and geographically widespread sales of 'NEXT' and third-party branded products throughout the relevant periods.

33. The turnover figures given in narrative evidence and the financial reports indicate that around £26 billion was generated in turnover during the relevant periods through the sale of both 'NEXT' and third-party branded products. This figure is clearly substantial. However, the figures are not broken down by reference to the various goods and services, and are provided in connection with the overarching company Next Plc. As Professor Phillip Johnson, sitting as the Appointed Person, stated in *W Sternoff LLC v Peter Kertels*, BL O/0984/25:

26. Where global sales figures are provided for multiple goods sold under one trade mark this is not going to be evidence of use for any of those goods. The sales could all be in relation to good A or all in relation to good B or a split between the two. This is why particularisation is so important as without it the figures provide no evidence of use for either good A or good B. The same applies where the same good is sold under trade mark A and trade mark B.

27. Evidence of sales is only useful for establishing genuine use where it sets out the sales revenue for a particular and identified good (or service) and it is clear that that good or service is sold under the trade mark. Only where there is only one good being sold and it is sold under only one trade mark can global figures be sufficient."

34. This represents an issue for Next in that I cannot ascertain how significant use of the marks was for any of the particular goods and services relied upon. The same

issue arises in respect of the marketing and advertising evidence. The £560 million spent in the UK during the relevant periods is clearly significant, but it has not been broken down. There is also no direct evidence of marketing or advertising activities being conducted.

35. That being said, considering the evidential picture as a whole, I am satisfied that Next has demonstrated that it has attempted to create and maintain a market under the first, second and fourth marks during both relevant periods.

### **Fair specifications**

36. In *Merck KGaA v Merck Sharp & Dohme Corp & Ors* [2017] EWCA Civ 1834, Kitchin LJ (as he then was) set out the approach to be followed when considering partial revocation of a trade mark. The same approach is relevant when framing a fair specification. He said:

“245. First, it is necessary to identify the goods or services in relation to which the mark has been used during the relevant period.

246. Secondly, the goods or services for which the mark is registered must be considered. If the mark is registered for a category of goods or services which is sufficiently broad that it is possible to identify within it a number of subcategories capable of being viewed independently, use of the mark in relation to one or more of the subcategories will not constitute use of the mark in relation to all of the other subcategories.

247. Thirdly, it is not possible for a proprietor to use the mark in relation to all possible variations of a product or service. So care must be taken to ensure this exercise does not result in the proprietor being stripped of protection for goods or services which, though not the same as those for which use has been proved, are not in essence different from them and cannot be distinguished from them other than in an arbitrary way.

248. Fourthly, these issues are to be considered having regard to the perception of the average consumer and the purpose and intended use of the products or services in issue. Ultimately it is the task of the tribunal to arrive at a fair specification of goods or services having regard to the use which has been made of the mark.

249. This approach does strike an appropriate balance. It gives effect to the clear intention of the EU legislature that marks must actually be used or, if not used, be subject to revocation. [...] It is also fair to proprietors for it does not require a proprietor to prove that he has used his mark in relation to all possible variations of the goods or services covered by its registration but only those which are sufficiently distinct to constitute coherent categories or subcategories. I am also satisfied that it gives appropriate protection to the legitimate interest of a proprietor in being able in the future to extend his range of goods or services within the scope of the terms describing the goods or services for which its mark is registered.”

37. This approach was endorsed by the Supreme Court in *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, subject to the proviso that it must be seen in light of more recent guidance by the Court of Justice of the European Union (“CJEU”) that the essential criterion to apply for the purposes of identifying a coherent subcategory of goods and services capable of being viewed independently is their purpose and intended use (for example, *Ferrari SpA v DU*, Joined Cases C-720/18 and C-721/18).

#### Next’s first mark

38. At the hearing, Ms Chantrielle submitted that the evidence demonstrates genuine use in respect of the following goods:

Class 20: Bedding, cushions.

Class 24: Textiles; bed linen; household linen; blankets; quilts; duvet covers; sheets; linen fabrics; curtains; towels and face cloths.

Class 25: Articles of clothing; footwear; headgear.

Class 27: Rugs.

39. There is ample evidence of use of, and a significant market share held by, the mark in respect of *articles of clothing; footwear; headgear* in class 25. Next may rely upon these goods for the purposes of its claims.

40. Whilst the evidence is weaker in respect of *bedding, cushions* in class 20, in that there is no market share information, the evidence shows that cushions and throws were displayed on the website during the relevant periods. Moreover, the dispatch notices demonstrate the sale of duvet covers, throws, bedsheets and cushions within the relevant periods. Next has shown use of *cushions*, and it is my view that *bedding* represents a fair description of Next's use in relation to duvet covers, throws and bedsheets. Both terms may be relied upon by Next for the purposes of its claims.

41. The evidence shows that *rugs*, in class 27, were displayed on the website during the relevant periods. However, there is no evidence that any such goods were actually sold. There are no specific turnover or advertising figures for rugs, and no other documentary evidence has been provided. In my view, the evidence is not sufficient in respect of these goods. They may not be relied upon by Next.

42. That leaves class 24. I understand *bed linen* to refer to textile goods used on a bed, such as sheets, pillowcases and duvet covers. As indicated above, throws appeared on the website during the relevant periods and the dispatch notices demonstrate the sale of duvet covers, throws and bed sheets. The purpose of these goods is the same as other items of bed linen and, to my mind, the average consumer would perceive them as belonging to this category of goods. In my view, *bed linen* represents a fair description and may be relied upon for the purposes of Next's claims.

43. It is my understanding that *household linen* refers to fabric goods used in the home, such as bedding, towels, bathmats and tablecloths. Bath towels, bath mats and throws all appeared on the website during the relevant periods, and the dispatch notices demonstrate the sale of duvet covers, throws, bed sheets and towels. Although

*household linen* includes other types of fabric goods used in the home, it is my view that the range of goods shown in the evidence is sufficient to justify reliance on this category. To my mind, that is how the average consumer would fairly describe them.

44. The evidence demonstrates the sale of throws, duvet covers, bed sheets and towels during the relevant periods. Next may rely upon *blankets, duvet covers, sheets* and *towels* [...] for the purposes of its claims.

45. Although *curtains* were presented on the website during the relevant period, there is no evidence that any such goods were actually sold. There are no specific turnover or advertising figures in respect of curtains. There is also no other documentary evidence. These goods may not be relied upon by Next.

46. There is no evidence relating to *quilts* or [...] *face cloths*. These goods may not be relied upon for the purposes of Next's claims.

47. That leaves *textiles* and *linen fabrics*. It is my impression that these terms cover fabrics which are used to produce finished products, such as, for example, clothing, upholstery and curtains. The natural and ordinary meaning of the terms does not, in my view, cover all finished goods made from these materials. There is no evidence that Next has provided any *textiles* or *linen fabrics* as materials and, as such, they may not be relied upon for the purposes of its claims.

48. In light of the above, I find that a fair specification for Next's first mark is as follows:

Class 20: Bedding, cushions.

Class 24: Bed linen; household linen; blankets; duvet covers; sheets; towels.

Class 25: Articles of clothing; footwear; headgear.

### Next's second mark

49. At the hearing, Ms Chantrielle argued that Next ought to be able to rely upon the following services:

Class 35: Retail services in the fields of clothing, headgear and footwear, household articles, towels, bedding, textiles, furniture, wallpaper and other products for decorating the home.

50. It is clear from the evidence that Next has provided *retail* services. It operated an online retail store throughout the relevant periods, where it sold a range of third-party branded goods in addition to its own. That UK website attracted an extremely large number of hits during the relevant periods. The evidence also demonstrates that Next operated around 500 physical retail outlets in the UK. Moreover, the financial accounts show that Next generated a substantial turnover from both its online and in-store sales, which covered third-party branded goods as well as its own. As for what those services can be said to have been provided in connection with, it is considered that *clothing, headgear, footwear, towels and bedding* should certainly be covered on the basis of the evidence. However, I cannot see any instances of retail services resulting in sales being provided in connection with *furniture or wallpaper*. There is also no evidence of retail services connected with *textiles* (as materials). Finally, I am of the view that *household articles and other products for decorating the home* are far too broad. The majority of the goods in the evidence which would fall within these descriptions are adequately covered by towels and bedding. The exception to this is cushions. As outlined previously, there is also evidence of throws. In the context of retail services, these goods would be described by the average consumer as decorative soft furnishings.

51. Taking all of this into account, I find that a fair specification for Next's second mark is as follows:

Class 35: Retail services in the fields of clothing, headgear and footwear, towels, bedding, and decorative soft furnishings.

Next's fourth mark

52. At the hearing, Ms Chantrielle contended that the evidence demonstrates genuine use in respect of the following goods and services:

Class 24: Textiles and textile goods, not included in other classes; bed linen; household linen; blankets; duvet covers; sheets; linen fabrics; curtains; towels and face cloths; accessories for home and house, namely, curtains of textile.

Class 25: Clothing; footwear; headgear.

Class 35: Retail services, wholesale and franchise services, including those services offered via a general merchandising department store and clothing store, mail order catalogue, online, via television channel, via mobile phone and by direct marketing, presentation of goods on communication media, for retail purposes, provision of an on-line marketplace for buyers and sellers of goods and services, all connected with the sale of the following: furniture, duvets, cushions, mattresses, bedding, curtains and blinds, Textiles and textile goods, bed and table covers, bed linen, household linen, blankets, duvet covers, sheets, linen fabrics, curtains, towels and face cloths, accessories for home and house, namely, wall hangings of textile, curtains of textile, clothing, footwear headgear.

53. For the same reasons given when discussing Next's first mark, I find that Next may rely upon *bed linen; household linen; blankets; duvet covers; sheets; towels [...]* in class 24. In respect of the remaining goods in class 24, there is no evidence that they have been provided, the evidence is not sufficient, or they are adequately covered by the terms listed in the preceding sentence. Next may not rely upon *textiles and textile goods, not included in other classes; linen fabrics; curtains; [...]* *face cloths; accessories for home and house, namely, curtains of textile.*

54. Again, there is ample evidence connected with *clothing; footwear; headgear* in class 25. Next may rely upon these goods.

55. In respect of class 35, I consider that the evidence demonstrates genuine use of the mark for *retail services [...], all connected with the sale of the following: cushions, bedding, bed [...] covers, bed linen, household linen, blankets, duvet covers, sheets, towels [...], clothing footwear, headgear*. As for *furniture, duvets, mattresses, curtains and blinds, Textiles and textile goods, [...] table covers, [...] face cloths, accessories for home and house, namely, wall hangings of textile, curtains of textile*, there is no evidence that they have been provided, the evidence is not sufficient, or they are adequately covered by the terms listed in the preceding sentence. I am also unable to find any instances of Next providing wholesale services or franchise services, or the presentation of goods on communication media as a service to third parties outside of its retail offering. Finally, Next may operate an online retail store, but I do not consider this to be sufficient for the purposes of establishing genuine use in respect of providing a marketplace for buyers and sellers of goods. There is no evidence that Next operates in this way, and no evidence, for instance, of third-party sellers operating their own 'stores' within the 'marketplace' of Next's website.

56. In light of all this, I consider a fair specification for Next's fourth mark to be as follows:

Class 24: Bed linen; household linen; blankets; duvet covers; sheets; towels.

Class 25: Clothing; footwear; headgear.

Class 35: Retail services connected with the sale of cushions, bedding, bed covers, bed linen, household linen, blankets, duvet covers, sheets, towels, clothing, footwear and headgear.<sup>14</sup>

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<sup>14</sup> I have not broadened the scope of protection by removing reference to [...] *including those services offered via a general merchandising department store and clothing store, mail order catalogue, online, via television channel, via mobile phone and by direct marketing* in my description. This part of the specification represents a non-exhaustive list of examples of how the, *inter alia*, retail services may be provided; it does not limit the scope of protection, and I do not consider it necessary to include it.

## **Section 5(2)(b)**

### **Legislation and case law**

57. Sections 5(2)(b) and 5A of the Act state as follows:

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

[...]

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

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

“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.”

58. The following 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:

(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 goods and services**

59. In *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, the CJEU stated, at paragraph 23, that:

“In assessing the similarity of the goods or services concerned, [...] 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.”

60. In *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281, the relevant factors identified by Jacob J (as he then was) for assessing similarity also included the users of the goods and services and the trade channels through which they reach the market.

61. 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 OHIM*, Case T-325/06, the General Court 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.”

62. In *Sanco SA v OHIM*, Case T-249/11, the General Court 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. The purpose of examining whether there is a complementary

relationship between goods and services is to assess whether the relevant public are liable to believe that responsibility for them lies with the same (or an economically connected) undertaking.

63. In *Gérard Meric v OHIM*, Case T- 133/05, the General Court stated that:

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

64. In light of my findings on fair specifications, and taking into account Ms Chantrielle’s submissions at the hearing regarding the goods of Next’s third mark that are relied upon, the goods and services to be compared are as follows:

Nextevo’s goods	Next’s goods and services
Class 23: Carded threads in natural fibres for textile use; carded yarns of hemp for textile use; carded yarns in natural fibres for textile use; chemical fiber base mixed thread and yarn; chemical-fiber threads and yarns for textile use; coir thread and yarn; combed yarns made of natural fibres; cotton thread and yarn; elastic thread and yarn for textile use; heat-stable yarns and threads; hemp thread and yarn; jute thread and yarn; linen thread and yarn; mixed spun threads and yarns; natural yarns; regenerated fiber thread and yarn for textile use; semi-synthetic fiber thread	<u>Next’s first mark</u>  Class 20: Bedding, cushions.  Class 24: Bed linen; household linen; blankets; duvet covers; sheets; towels.  Class 25: Articles of clothing; footwear; headgear.  <u>Next’s second mark</u>  Class 35: Retail services in the fields of clothing, headgear and footwear, towels, bedding, and decorative soft furnishings.

and yarn for textile use; semi-synthetic fiber thread and yarn [chemically treated natural fiber yarn]; synthetic fiber thread and yarn for textile use; textile filaments [threads]; threads and yarns for textile use.

Class 24: Bedroom textile fabrics; coated textiles; coated woven textile materials; composite textile materials; disposable bedding of textile; disposable tablecloths of textile; elastic fabrics for clothing; fabrics being textile piece goods; fabrics being textile goods in roll form; fabrics for textile use; furnishing fabrics being textile piece goods; furniture coverings of textile; gift wrap of textile; hand towels of textile; heat resistant fabrics, other than for insulation; household textile piece goods; kitchen towels [textile]; labels made of textile materials; linings [textile]; non-woven fabrics of natural fibres; non-woven textile fabrics; reinforced fabrics [textile]; sheets [textile]; synthetic textile piece goods; textile fabrics for making into linens; textile fabrics for making into clothing; textile fabrics for making up into household textile articles; textile fabrics for use in the manufacture of towels; textile fabrics for use in the manufacture of curtains; textile fabrics for use in the manufacture of furniture; textile fabrics for use in the manufacture of sportswear;

Next's third mark

Class 20: Cushions; bedding.

Next's fourth mark

Class 24: Bed linen; household linen; blankets; duvet covers; sheets; towels.

Class 25: Clothing; footwear; headgear.

Class 35: Retail services connected with the sale of cushions, bedding, bed covers, bed linen, household linen, blankets, duvet covers, sheets, towels, clothing, footwear and headgear.

textile fabrics for use in the manufacture of wall coverings; textile piece goods; textiles and substitutes for textiles; waterproof textile fabrics; woven fabrics for making up into articles of clothing.	
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### Class 23

65. Nextevo's goods in this class consist of threads and yarns, which are lengths of fibres used for sewing, knitting, weaving and embroidery. Broadly speaking, Next's goods comprise clothing, footwear, headgear, bedding, household linen, and decorative soft furnishings. Although Nextevo's goods may ultimately be used in the manufacture of some of Next's goods, the mere fact that a good is used as a part or component of another is not sufficient, in and of itself, to establish that they are similar.<sup>15</sup> The natures, purposes and methods of use of the respective goods are different; Nextevo's goods consist of lengths of fibres used to create textile materials, whereas Next's goods comprise finished products which will be used to cover or dry the body, cover a bed or decorate a home. There is no evidence that it is typical for any of the respective goods to reach the market through shared trade channels. In the absence of such evidence, it is my view that they are likely to be sold by different undertakings through distinct channels. Even if they do coincide in trade channels, such as in very large retail establishments, for instance, the respective goods are likely to be located in different sections of those outlets. The respective goods are not in competition; a consumer is not likely to select threads or yarns over any of Next's finished products, or vice versa. Although yarns and threads could be considered important to finished products which are made from textiles, the respective goods are not complementary, since consumers are unlikely to believe that responsibility for both lies with the same undertakings. Finally, whilst the respective goods may have overlapping users, any such overlap is at too broad a level to engage any material similarity between them, overall. Taking all of this into account, I find that the respective goods are dissimilar.

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<sup>15</sup> *Les Éditions Albert René v OHIM*, Case T-336/03, paragraph 61

66. I have also considered Next's retail services but have concluded that these do not put it in a more favourable position. This is because they are even further removed from Nextevo's yarns and threads in terms of their natures, purposes and methods of use. Moreover, the respective goods and services are no closer in terms of any of the other relevant factors.

#### Class 24

*Hand towels of textile; kitchen towels [textile]*

67. The above goods fall within the scope of *towels* in class 24 of Next's first mark. As such, they are to be regarded as identical in accordance with *Meric*.

*Sheets [textile]; disposable bedding of textile*

68. These goods are encompassed by *bed linen* and *sheets* in class 24 of Next's first mark. They are identical under the principle outlined in *Meric*.

*Disposable tablecloths of textile*

69. In my view, the above goods are a particular example of *household linen*, which appears in class 24 of Next's first mark. The respective goods are identical under *Meric*.

*Furniture coverings of textile*

70. There is a broad overlap in nature, purpose and method of use between these goods and *blankets* (including throws) and *household linens* in class 24 of Next's first mark in that they are fabric-based soft furnishings which may be placed on furniture for protection or decoration. There is also an overlap in trade channels as they are both likely to be sold in the same home stores; undertakings offering textile furniture coverings (as opposed to upholstery materials) are also likely to offer blankets and other household linens. There is a degree of competition between the respective goods. For example, a consumer may choose to cover a sofa or armchair with a

blanked instead of a furniture covering. There is also likely to be an overlap in user. However, given that the respective goods are not important or indispensable to one another, they are not complementary. Taking all of this into account, I find that there is a medium degree of similarity between the respective goods.

*Gift wrap of textile; labels made of textile materials*

71. The above goods and Next's goods may very broadly overlap in nature in that they may be made from the same, or similar, materials. However, they take different forms, have different purposes, and have different methods of use. There is no evidence that Nextevo's goods typically reach the market through the same trade channels as Next's goods. In the absence of any such evidence, it is my view that they are likely to be sold by different undertakings through distinct outlets. Users may overlap. However, this is based on an extremely large consumer base, i.e. the general public. Given their different purposes, the respective goods are not in competition. Neither are they complementary; they are not important or indispensable to one another, and consumers are unlikely to believe that responsibility for them lies with the same undertakings. To my mind, the broad overlap in nature and the potential for shared users are far too general to engage any meaningful level of similarity between the respective goods, overall. Taking all of the above into account, I find that the respective goods are dissimilar.

*Textiles and substitutes for textiles; bedroom textile fabrics; coated textiles; coated woven textile materials; composite textile materials; fabrics being textile piece goods; fabrics being textile goods in roll form; fabrics for textile use; furnishing fabrics being textile piece goods; heat resistant fabrics, other than for insulation; household textile piece goods; linings [textile]; non-woven fabrics of natural fibres; non-woven textile fabrics; reinforced fabrics [textile]; synthetic textile piece goods; textile fabrics for making into linens; textile piece goods; waterproof textile fabrics; elastic fabrics for clothing; textile fabrics for making into clothing; textile fabrics for making up into household textile articles; textile fabrics for use in the manufacture of towels; textile fabrics for use in the manufacture of curtains; textile fabrics for use in the manufacture of furniture; textile fabrics for use in the manufacture of sportswear; textile fabrics for*

*use in the manufacture of wall coverings; woven fabrics for making up into articles of clothing*

72. These goods consist of fabrics which will be used to produce finished products. Next's goods broadly comprise clothing, footwear, headgear, bedding, household linen, and decorative soft furnishings. Nextevo's goods may, in some circumstances, be used in the manufacture of some of Next's goods. However as outlined previously, the mere fact that a good is used as a part or component of another is not sufficient to establish that they are similar. The natures, purposes and methods of use of the respective goods differ; Nextevo's goods consist of fabric materials, whereas Next's goods comprise finished products which will be used to cover or dry the body, cover a bed or decorate a home. There is no evidence that any of the respective goods typically reach the market through the same trade channels. It is my view that they are likely to be sold by different undertakings through distinct outlets. Even if they are sold in the same outlets, such as in very large retail establishments, for instance, the respective goods are likely to be located in different sections of the same. The respective goods are not in competition; a consumer is not likely to select Nextevo's fabrics over any of Next's finished products, or vice versa. Although fabrics are important to finished products which are made from them, the respective goods are not complementary; consumers are unlikely to believe that responsibility for both lies with the same undertakings. Finally, whilst it is possible that users may overlap, any such overlap is far too general to engage any meaningful similarity between them, overall. Taking all of this into account, I find that the respective goods are dissimilar.

73. For the sake of completeness, I have considered whether Next's retail services improve its position in respect of the goods in this class which I have found to be dissimilar. However, I have concluded that they do not. This is because the respective goods and services are even more removed in terms of their natures, purposes and methods of use. Further, they are no closer in terms of any of the other relevant factors.

#### Conclusion on the goods and services comparison

74. Some degree of similarity between goods and services is necessary to engage the test for likelihood of confusion under section 5(2)(b); if there is no similarity at all, there

is no likelihood of confusion to be considered. My findings above mean that this ground must fail in respect of the following goods of the IRs:

Class 23: Carded threads in natural fibres for textile use; carded yarns of hemp for textile use; carded yarns in natural fibres for textile use; chemical fiber base mixed thread and yarn; chemical-fiber threads and yarns for textile use; coir thread and yarn; combed yarns made of natural fibres; cotton thread and yarn; elastic thread and yarn for textile use; heat-stable yarns and threads; hemp thread and yarn; jute thread and yarn; linen thread and yarn; mixed spun threads and yarns; natural yarns; regenerated fiber thread and yarn for textile use; semi-synthetic fiber thread and yarn for textile use; semi-synthetic fiber thread and yarn [chemically treated natural fiber yarn]; synthetic fiber thread and yarn for textile use; textile filaments [threads]; threads and yarns for textile use.

Class 24: Textiles and substitutes for textiles; bedroom textile fabrics; coated textiles; coated woven textile materials; composite textile materials; elastic fabrics for clothing; fabrics being textile piece goods; fabrics being textile goods in roll form; fabrics for textile use; furnishing fabrics being textile piece goods; gift wrap of textile; heat resistant fabrics, other than for insulation; household textile piece goods; labels made of textile materials; linings [textile]; non-woven fabrics of natural fibres; non-woven textile fabrics; reinforced fabrics [textile]; synthetic textile piece goods; textile fabrics for making into linens; textile fabrics for making into clothing; textile fabrics for making up into household textile articles; textile fabrics for use in the manufacture of towels; textile fabrics for use in the manufacture of curtains; textile fabrics for use in the manufacture of furniture; textile fabrics for use in the manufacture of sportswear; textile fabrics for use in the manufacture of wall coverings; textile piece goods; waterproof textile fabrics; woven fabrics for making up into articles of clothing.

75. Next's claims under section 5(2)(b) may proceed in relation to the remaining goods of the IRs, namely:

Class 24: Hand towels of textile; kitchen towels [textile]; sheets [textile]; disposable bedding of textile; disposable tablecloths of textile; furniture coverings of textile.

76. As all of the findings of similarity with these goods were based upon Next's first mark, and the other marks relied upon by Next are no more similar to the IRs, I will determine this ground on the basis of Next's first mark only. If the ground fails on the basis of Next's first mark, reliance on its other marks will not improve its position.

### **Average consumer**

77. As the authorities indicate, I must determine who the average consumer is for the parties' goods and how they are likely to be selected. The average consumer is deemed to be reasonably well informed, observant and circumspect.<sup>16</sup>

78. In *Iconix*, 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

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<sup>16</sup> *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), paragraph 60

consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;

(d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence;

(e) The average consumer's level of attention varies according to the category of goods or services in question; and

(f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

79. The average consumer of the goods for which I found at least some similarity is likely to be a member of the general public. Overall, the goods are likely to be purchased periodically. The purchasing act will not require an overly considered thought process as, overall, goods such as towels, bed sheets and the like are relatively inexpensive. Nevertheless, the average consumer will consider normal factors such as quality, aesthetic properties, and the materials used when selecting the goods. Taking all of this into account, I find that the average consumer will demonstrate between a low and medium (but not outright low) level of attention during the purchasing process.

80. The goods are typically sold in retail outlets and their online equivalents. They will be self-selected by the average consumer after viewing them on shelves or displays in stores or, if online, after viewing an image of them on a website. The goods may also be selected after viewing an image of them in a catalogue. Therefore, the purchasing process will be predominantly visual in nature. However, I do not discount

aural considerations, given that the average consumer may seek advice from sales assistants or receive word-of-mouth recommendations.

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

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

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

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

82. Registered trade marks possess varying degrees of inherent distinctive character. The degree of distinctiveness is an important factor as it directly relates to whether there is a likelihood of confusion; the more distinctive the earlier mark, the greater the likelihood of confusion.

83. Next's first mark is a word-only mark consisting of the word 'NEXT'. As there are no other elements, the distinctive character of the mark lies in the word itself.

84. I note that Ms Bray has provided what she describes as "some examples of trade mark use of the word/string "next" by third parties in the UK in relation to clothing and/or retail thereof":<sup>17</sup>

(i) Printouts from the websites of Next Level, Firelabel and the Clothing Kings regarding an undertaking trading under the name 'Next Level' in respect of clothing;

(ii) Printouts from the websites of undertakings trading under the name 'GAL NEXT DOOR', 'Next to Nothing', 'NEXTDOOR APPAREL', 'NEXTGEN CLOTHING' and 'Pretty NEXTDOOR';

(iii) Printouts from the Old Spitalfields Market website regarding an undertaking trading under the name 'Little Next Door Clothing';

(iv) A printout from the Lululemon website regarding a top they call the 'Next Move Crop'; and

(v) Printouts from the Under Armour website detailing 'UA Next Academy', a testing facility for young athletes.

85. The purpose of this evidence is not explained in her statement. Further, Nextevo did not file any written submissions or attend the hearing. As such, it is not entirely clear what this evidence is intended to demonstrate. If this evidence was filed to show that the distinctiveness of the word 'NEXT' has been reduced as a result of third-party use, that argument should have been clearly advanced. However, if it had been, I am not satisfied that the evidence is sufficient for that purpose. In *Nude Brands Limited v Stella McCartney Limited and others* [2009] EWHC 2154 (Ch), Floyd J stated:

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<sup>17</sup> Exhibit LEB4

“29. Whilst the use by other traders of the brand name NUDE in relation to perfume may give those traders relative rights to invalidate the mark, it does not give those rights to any defendant. I am not at this stage persuaded that this evidence has a bearing on any absolute ground of invalidity. It certainly does not go as far as establishing ground 7(1)(d) - customary indication in trade. Ground 7(1)(b) is concerned with the inherent character of the mark, not with what other traders have done with it. The traders in question are plainly using the mark as a brand name: so I do not see how this use can help to establish that the mark consists exclusively of signs or indications which may serve to indicate the kind or quality or other characteristics of the goods, and thus support an attack under 7(1)(c).”

86. Even if the plurality of similar names by which individual establishments are known could support the contention that the word ‘NEXT’ has no, or a reduced level of, distinctive character, the evidence is extremely limited. Firstly, much of it is undated or appears to be from after the relevant date. Therefore, it cannot be relied upon as showing the position at the relevant date. In addition, none of the third parties appears to have been trading in relation to the relevant goods for the purposes of the present assessment (those being Next’s goods in class 24 which formed the basis for the findings of similarity between the parties’ goods). Moreover, the vast majority of the evidence does not relate to the word ‘NEXT’ solus; aside from Under Armour’s ‘Next Academy, the word is being used as part of longer phrases with unitary meanings. Most importantly, as Ms Bray herself sets out, these third parties are using the word in a trade mark sense; none is using the word in a generic or descriptive sense. Taking all of this into account, even if such an argument had been properly advanced by Nextevo, I would have rejected it.

87. Ms Bray has also provided dictionary definitions for the word ‘NEXT’.<sup>18</sup> These support my own impression of how the word will be understood, namely as meaning the thing after the present one or immediately after. The word is not descriptive or allusive in relation to the goods relied upon, but it is an ordinary dictionary word.

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<sup>18</sup> Exhibit LEB1

Overall, I find that Next's first mark possesses a medium level of inherent distinctive character.

88. The distinctiveness of a mark can be enhanced as a result of it having been used in the market. I have already assessed the evidence and found that it demonstrates genuine use of Next's first mark for goods in classes 20, 24 and 25. However, the burden for establishing enhanced distinctive character is a much heavier one than for genuine use; it requires a level of knowledge of the mark amongst average consumers leading to the mark having a greater capacity to identify the goods as coming from a particular undertaking, not simply that there has been an attempt to create or maintain a market for goods under the mark.

89. In consideration of all the evidence, I am satisfied that the distinctive character of Next's first mark had been enhanced to a high level at the relevant date of 12 January 2023 in respect of *articles of clothing; footwear; headgear* in class 25. This is based upon the combination of the market share figures, the consistent use of the mark on the website, the high number of hits on the same, the large number of physical stores, and the consistent and geographically widespread sales achieved before the relevant date.

90. However, this finding does not extend to any of the other goods of Next's first mark, including, crucially for the purposes of this ground, those goods in class 24 which formed the basis of the similarity between the parties' goods. Although much of what I have said at paragraph 89 applies equally to the other goods relied upon, there are no details of market share for any other goods. The absence of this information is a particular issue for Next in the present case because, as outlined previously, the turnover and marketing figures have not been broken down. This means that it is not possible to ascertain how significant use of the mark was before the relevant date in respect of any other goods. On the balance of all the evidence, I am not satisfied that the distinctive character of Next's first mark had been enhanced above its inherent characteristics at the relevant date for any other goods.



## Comparison of trade marks

91. It is clear from *Sabel BV v Puma AG*, Case C-251/95, that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. This 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. In *Bimbo SA v OHIM*, Case C-591/12P, the CJEU stated (at paragraph 24 of its judgement) 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.”

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

93. The marks to be compared are as follows:

The first IR	Next's first mark
	NEXT
The second IR	
	

## Overall impressions

94. The first IR is figurative and consists of the word 'NEXTEVO' in a basic typeface, aside from the letter 'O' which is stylised to resemble a piece of fruit. Given its relative size and positioning, as well as the principle that the eye is usually drawn to elements of marks which can be read,<sup>19</sup> it is my view that the overall impression is dominated by the word 'NEXTEVO'. The stylisation, particularly of the letter 'O', also contributes but plays a lesser role.

95. The second IR is figurative and comprises the word 'NEXTEVO' in a basic typeface. The overall impression overwhelmingly lies in the word 'NEXTEVO'. The font, if noticed at all, plays a minimal role.

96. Next's first mark is in word-only format and consists of the word 'NEXT'. As there are no other elements, the overall impression lies in the word itself.

## Visual comparisons

97. The first IR and Next's first mark are visually similar to the extent that they share four letters in the same order, i.e. 'NEXT'. These shared letters comprise the entirety of Next's first mark and appear at the beginning of the first IR, a position which tends to have most impact.<sup>20</sup> Any difference created by the typeface of the letters 'NEXTEV' in the first IR is not significant, since fair and normal use of Next's first mark would cover the same presentation. The competing marks are visually different in that the first IR contains three additional letters, one of which is heavily stylised. Taking into account my assessment of the overall impressions, I find that there is a medium degree of visual similarity between the competing marks.

98. The points of visual similarity and difference discussed above apply equally to the second IR and Next's first mark. However, the letter 'O' in the second IR is not stylised in the same way as it is in the first IR. This increases the overall level of visual similarity

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<sup>19</sup> *Wassen International Ltd v OHIM*, Case T-312/03

<sup>20</sup> *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

between these competing marks to between a medium and high degree (but not outright high).

### Aural comparisons

99. Notwithstanding the heavy stylisation of the letter ‘O’ in the first IR, I am of the view that the letter will still be identified. Therefore, the IRs both consist of three syllables, i.e. “NEXT-EE-VO” or “NEXT-EH-VO”, whereas Next’s first mark consists of one, i.e. “NEXT”. The competing marks share an identical syllable. This forms the entirety of Next’s first mark and appears at the beginning of the IRs, a position which tends to have most impact. The competing marks differ in that the IRs contain an additional two syllables. Overall, I find that there is between a medium and high (but not outright high) degree of aural similarity between the competing marks.

### Conceptual comparisons

100. As outlined above, the word ‘NEXT’ in Next’s first mark is an ordinary dictionary word which will be understood as meaning the thing after the present one or immediately after.

101. Both parties have filed evidence going to the alleged meanings, or lack thereof, of the word ‘NEXTEVO’ in the IRs. For Next, Mr Wilson provides the following:

(i) Printouts from allacronyms.com and definitions.net, which suggest that ‘EVO’ is an abbreviation for the word ‘evolution’;<sup>21</sup>

(ii) A printout from nextevo.one, purportedly Nextevo’s own website, which states “We are the NEXT step in the EVOLution of [...]”;<sup>22</sup> and

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<sup>21</sup> Exhibit AW1

<sup>22</sup> Exhibit AW2

(iii) A decision from the EUIPO (Opposition Division) in which it found that the English-speaking part of the public would see the verbal component 'EVO' as the abbreviation for the word 'evolution'.<sup>23</sup>

102. For Nextevo, Ms Bray provides the following:

(i) Printouts from the Cambridge and Merriam-Webster dictionaries which show that there are no entries therein for the terms 'nextevo' or 'evo';<sup>24</sup> and

(ii) Printouts from the Merriam-Webster dictionary that show 45 words beginning with 'evo' and the 10 most common of these.<sup>25</sup>

103. Although the relevance of Ms Bray's evidence at (ii) is not obvious and has not been explained, it appears from her evidence at (i) that 'NEXTEVO' is not a dictionary defined word. This supports my own perception of the word. On this basis, it is my view that some consumers will perceive the word as an invented word with no immediate meaning. The consequence of this is that the competing marks will be conceptually dissimilar for such consumers.

104. Whilst I place no real weight on Mr Wilson's evidence at (ii) and (iii),<sup>26</sup> and 'EVO' does not appear to be a dictionary word, the printouts referred to at (i) concur with my own understanding of it. In addition, whilst the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details, they will break a mark down into verbal elements which suggest a concrete meaning or resemble words known to them.<sup>27</sup> In light of this, it is considered equally likely that a significant proportion of consumers will, upon encountering the IRs, view the word 'NEXTEVO' as consisting of the common dictionary word 'NEXT' and the word 'EVO'. For these consumers, the word is likely to evoke the phrase 'next evolution', meaning the next

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<sup>23</sup> Exhibit AW3

<sup>24</sup> Exhibit LEB2

<sup>25</sup> Exhibit LEB3

<sup>26</sup> Firstly, the intended meaning behind the IRs or how NEXTEVO markets them to consumers is not determinative. I must consider how the average consumer would immediately perceive the IRs, based upon the marks themselves, and what meanings will be gleaned from them (if any). Moreover, it is well established that decisions of the EUIPO are not binding on the Registrar.

<sup>27</sup> *Usinor SA v OHIM*, Case T-189/05

advancement or stage of development in, for example, a process or technology. For these consumers, the coincidence of the word 'NEXT' creates some conceptual overlap. However, considering the overall meanings conveyed by the competing marks, I find that the degree of conceptual similarity between them is low.

### **Likelihood of confusion**

105. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. One such factor is the interdependency principle, i.e. a lesser degree of similarity between the competing marks may be offset by a greater degree of similarity between the respective goods, and vice versa. As mentioned above, it is necessary for me to keep in mind the distinctive character of Next's mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be mindful that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

106. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings being the same or related.

107. Earlier in this decision, I concluded as follows:

- Some of the parties' goods in class 24 are identical or similar to a medium degree;
- The average consumer of the goods is a member of the general public, who will demonstrate between a low and medium level of attention during the purchasing process;

- The purchasing process will be predominantly visual in nature, though aural considerations have not been excluded;
- Next's first mark possesses a medium level of inherent distinctive character, which has been enhanced to a high level, but not in respect of the relevant goods;
- The overall impression of the first IR is dominated by the word 'NEXTEVO', while the stylisation plays a lesser role;
- The overall impression of the second IR is dominated by the word 'NEXTEVO', whilst the stylisation plays a minimal role (if any);
- The first IR and Next's first mark are visually similar to a medium degree, aurally similar to between a medium and high degree, and either conceptually dissimilar or conceptually similar to a low degree;
- The second IR and Next's first mark are visually and aurally similar to between a medium and high degree, and either conceptually dissimilar or conceptually similar to a low degree.

108. I will conduct the global assessment from the perspective of the significant proportion of consumers who understand the word 'NEXTEVO' in the IRs to be evocative of the phrase 'next evolution'. Given that this results in at least some conceptual overlap, this group of consumers represent Next's best case. If there is no likelihood of confusion for these consumers, there will also be no likelihood of confusion for consumers who, instead, simply perceive 'NEXTEVO' as an invented word with no meaning.

109. I acknowledge that Next's first mark is entirely reproduced at the beginning of the IRs. I also accept that some of the parties' goods are identical and that consumers may demonstrate a lower level of attention during the purchasing process. In addition, there are reasonable levels of visual and aural similarity between the competing

marks, and Next's first mark is reasonably distinctive. Nevertheless, taking all of the above factors into account, it is my view that the differences between the competing marks are likely to be sufficient for the average consumer to distinguish between them and avoid mistaking either of the IRs for Next's first mark. Whilst the stylisation in the IRs may not be accurately recalled, to my mind, the differences between the verbal elements will be. Although the beginnings of trade marks tend to have more impact, that is a general rule which is not necessarily determinative.<sup>28</sup> In the present case, the additional letters in IRs are unlikely to be overlooked; all the letters contribute to their overall impressions, not just the first four. Moreover, as a result of the additional letters, the IRs are nearly twice as long as Next's first mark. I accept that there is no special test for 'short' marks.<sup>29</sup> However, Next's first mark consists of only four letters and, therefore, the three additional letters are more likely to be noticed. Finally, although the coincidence of the word 'NEXT' in the competing marks leads to a degree of conceptual overlap, the overall meaning of the IRs is a unitary one which, albeit featuring the word 'NEXT', is distinct from the word in and of itself. Accordingly, even taking into account the principles of imperfect recollection and interdependency, I find that there is no likelihood of direct confusion.

110. That leaves indirect confusion to be considered. In *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, Mr Iain Purvis QC, sitting as the Appointed Person, explained that:

"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

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<sup>28</sup> See, for example, *CureVac GmbH v OHIM*, Case T-80/08.

<sup>29</sup> *Robert Bosch GmbH v Bosco Brands UK Limited*, BL O/301/20, paragraph 43

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).”

111. These three categories are not exhaustive. Rather, they were intended to be illustrative of the general approach.<sup>30</sup> However, indirect confusion has its limits; such a finding should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark.<sup>31</sup> It has also been emphasised that, where there is no direct confusion, there must be a proper basis for finding indirect confusion.<sup>32</sup>

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<sup>30</sup> As was confirmed by the Court of Appeal in *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207, paragraph 12.

<sup>31</sup> *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

<sup>32</sup> See the Court of Appeal’s comments in *Liverpool Gin Distillery*, paragraph 13.

112. Having regard to all the above factors and principles, I do not believe that the average consumer will assume that Next and Nextevo are economically linked undertakings on the basis of the competing marks. I am not convinced that the average consumer will assume a commercial association, collaboration or licensing agreement between the parties merely because of the shared word/string 'NEXT'. This word is not so strikingly distinctive that the average consumer would assume that only Next would be using it in a trade mark. Whilst Next's first mark is moderately distinctive, the word appears on its own in Next's first mark but as part of the longer word 'NEXTEVO' in the IRs. Even though the group of consumers concerned would view the word 'NEXTEVO' as a combination of the words 'NEXT' and 'EVO', the concept conveyed by the mark is a unitary one meaning the next advancement or stage of development in, for example, a process or technology. As such, there is no sharing of an independent distinctive element which would give rise to this kind of indirect confusion. Moreover, the differences between the competing marks are not simple additions or removals of non-distinctive elements. Neither are the differences consistent with any logical brand extensions with which the average consumer would be familiar. Whilst the added stylisation might be consistent with the use of variant marks with additional decorative embellishments, I can see no reason why an undertaking would add the word 'EVO' to the ordinary dictionary word 'NEXT', resulting in a unitary phrase with a distinct meaning, overall. At the hearing, Ms Chantrielle submitted that the IRs would be perceived as "the sustainable evolution-related company of the main Next company". I do not agree. The word 'evolution' does not immediately denote connotations of sustainability and the goods at issue do not relate to evolution. In any event, to my mind, reaching such a conclusion would involve a degree of analysis that is unlikely to be undertaken by the average consumer upon encountering the IRs. Rather, it is my view that the average consumer, even paying a lower level of attention, will attribute the similarities between the marks as coincidental, i.e. two separate undertakings merely using the same dictionary word. In light of all this, I find that there is no likelihood of indirect confusion, even in respect of identical goods.

113. For the sake of completeness, I record here that my conclusions would have been the same even if I had found that the distinctive character of Next's first mark had been enhanced in respect of the relevant goods. Even if Next's mark was more distinctive, it is my view that the differences between the marks are simply too great to result in

direct confusion occurring and there would still be no “proper basis” for indirect confusion.

## **Conclusion**

114. Next’s claims under section 5(2)(b) are dismissed.

## **Section 5(3)**

### **Legislation and case law**

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

“(3) A trade mark which-

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 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”.

116. Section 5(3A) states:

“(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”.

117. The relevant case law can be found in the following judgments of the CJEU: *General Motors*, Case C-375/97, *Intel*, Case 252/07, *Adidas-Salomon*, Case C-408/01, *L’Oréal v Bellure*, Case C-487/07, *Marks and Spencer v Interflora*, Case C-323/09, and *Environmental Manufacturing LLP v OHIM*, Case C-383/12P. The law appears to be as follows:

(a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors, paragraph 24*.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors, paragraph 26*.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas-Salomon, paragraph 29* and *Intel, paragraph 63*.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel, paragraph 42*.

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel, paragraph 68*; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel, paragraph 79*.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel, paragraphs 76 and 77* and *Environmental Manufacturing, paragraph 34*.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel, paragraph 74*.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oréal v Bellure NV*, paragraph 40.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oréal v Bellure*).

118. The conditions of section 5(3) are cumulative. Firstly, Next must show that its marks are similar to the IRs. Secondly, Next must show that its marks have achieved a level of knowledge, or reputation, amongst a significant part of the public. Thirdly, Next must establish that the public will make a link between the marks, in the sense of its marks being brought to mind by the IRs. Finally, assuming the foregoing conditions have been met, section 5(3) requires that one or more types of damage claimed by Next will occur. It is not necessary for the purposes of section 5(3) that the goods and services are 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.

119. The relevant date for the assessment under this ground is the UK designation date of the IRs, namely 12 January 2023.

## Reputation

120. In *General Motors*, 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.”

121. I have already found that Next’s evidence was sufficient for the purposes of establishing that the distinctive character of its first mark had been enhanced at the relevant date. Whilst I acknowledge that reputation and enhanced distinctive character are different, the nature, factors, and evidence used to prove them are the same.<sup>33</sup> For the same reasons as given at paragraph 89, I am satisfied that Next’s first mark enjoyed a strong reputation in the UK at the relevant date in respect of *articles of clothing; footwear; headgear* in class 25. This is the case despite the global nature of the turnover and marketing figures, particularly considering the share of the market held by Next’s goods for several years before the relevant date. However, I cannot

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<sup>33</sup> *O2 Worldwide Limited v CX02.COM (UK) Limited*, BL O/393/19, paragraph 39

attribute Next's reputation to any of the other goods relied upon for the same reasons as given at paragraph 90.

122. I recognise that my assessment of enhanced distinctive character under section 5(2)(b) was limited to Next's first mark. In light of my prior assessment of the evidence under proof of use, I am satisfied that Next's second mark enjoyed a strong reputation in the UK at the relevant date in respect of *retail services in the fields of clothing, headgear and footwear*. This is on the basis of the market share figures relating to those goods, the consistent use of the mark on the retail website in respect of 'NEXT' and third-party branded goods, the high number of hits on that website, the large number of physical retail stores, and the consistent and geographically widespread sales achieved before the relevant date. I do not consider the evidence to be sufficient for the purposes of establishing a reputation in respect of retail services concerning any other goods. The position in respect of the same is much weaker, particularly considering the absence of market share and specific turnover figures.

123. For the same reasons as given at paragraphs 121 and 122, I find that Next has also established that its fourth mark had a strong reputation at the relevant date in respect of *clothing; footwear; headgear* in class 25 and *retail services connected with the sale of clothing, footwear and headgear* in class 35. However, for the reasons given previously, including those given when discussing proof of use in relation to this mark, I do not consider that this reputation extends to any other goods or services.

124. Finally, at the hearing Ms Chantrielle submitted that Next's third mark had a reputation in respect of *cushions; bedding* in class 20. I do not agree. This is on the basis of the reasons given when discussing whether the distinctive character of Next's first mark had been enhanced in respect of the same goods. In my view, the evidence is not sufficient for establishing a reputation and, as a consequence, this mark may not be relied upon for the purposes of Next's claims under this ground.

## Link

125. As noted above, my assessment of whether the public will make the requisite mental 'link' between the competing marks must take into account all relevant factors. The factors are identified at paragraph 42 of *Intel*. I will take these in turn.

### The degree of similarity between the competing marks

126. I have found that the first IR and Next's first mark are visually similar to a medium degree, aurally similar to between a medium and high degree, and either conceptually dissimilar or conceptually similar to a low degree.

127. I have found that the second IR and Next's first mark are visually and aurally similar to between a medium and high degree, and either conceptually dissimilar or conceptually similar to a low degree.

128. These findings would also apply to Next's second mark, which also consists of the word 'NEXT' with no other elements.

129. Next's fourth mark is figurative and comprises the word 'next' in a basic typeface. The same findings of aural and conceptual similarity are applicable when comparing this mark with the IRs. As for the visual position, although Next's fourth mark contains an additional feature, namely the typeface, this plays a minimal role (if any) in the overall impression. As such, I do not consider that this materially effects the degree of visual similarity between the competing marks. I find that the first IR and Next's fourth mark are visually similar to a medium degree, whilst the second IR and Next's fourth mark are visually similar to between a medium and high degree.

### 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

130. I have already conducted a goods and services comparison for the purposes of Next's claims under section 5(2)(b). However, the reputed goods and services are

different to the goods of Next's first mark which formed the basis for those findings. Accordingly, I will consider the matter afresh.

131. Nextevo's goods in class 23 consist of threads and yarns. In my view, there is no similarity between these goods and the reputed goods (Next's first and fourth marks). The respective goods differ in nature, method of use and purpose, Nextevo's goods being lengths of fibres used for sewing, knitting, weaving and embroidery and the reputed goods being finished articles of clothing, footwear and headgear. They are likely to have different trade channels and be sold by distinct undertakings. They are not in competition. Neither are they complementary; whilst threads and yarns could be considered important to clothing and the like, the relevant public is unlikely to believe that responsibility for both lies with the same undertakings. The goods may share users, though this is likely to be at a very general level. The only connection between the respective goods is that Nextevo's goods may be used as a component part of Next's goods. However, I consider this to be tenuous.

132. There is even less of a connection between these goods and the reputed services (Next's second and fourth marks). The nature, method of use and purpose of these goods and services are entirely different. They are likely to have different trade channels and be provided by distinct undertakings. Clearly, they are not in competition. They are not complementary; threads and yarns are not directly important or indispensable to the provision of Next's retail services and, even if they were, the relevant public is unlikely to believe that responsibility for both lies with the same undertakings. Again, the goods and services may share users, but only at a very general level.

133. Nextevo's goods in class 24 broadly consist of textile-based goods (including towels, sheets, bedding, tablecloths, furniture coverings, gift wrap and labels) and fabrics as materials. To my mind, there is no similarity between these goods and the reputed goods (Next's first and fourth marks). Again, Nextevo's goods differ in nature, method of use and purpose when compared with the reputed finished articles of clothing, footwear and headgear. The respective goods are likely to reach the market through different channels of trade and be sold by distinct undertakings. It is possible that some very large retailers may offer clothing and the like as well as some of

Nextevo's goods, but I do not consider that to be typical in trade. There is no competition between the respective goods. Neither are they complementary. Nextevo's textile-based goods are not important or indispensable to the reputed goods, or vice versa. Some of Nextevo's fabric materials could be said to be important to clothing and the like, but, even still, the relevant public is not likely to believe that responsibility for them both lies with the same undertakings. The goods may share users but, again, only at a very general level. The only real connection between the respective goods is that some of Nextevo's fabric materials may be used as a component part of Next's goods. I consider this to be tenuous.

134. Once more, there is even less of a connection between these goods and the reputed services (Next's second and fourth marks). Clearly, the nature, method of use and purpose of these goods and services differ. They are likely to have different trade channels and be provided by distinct undertakings. Some clothing retailers may also offer Nextevo's fabric-based goods; however, these will be limited to very large retailers which are not representative of what is typical in trade. The goods and services are not in competition. Moreover, since Nextevo's goods are not important or indispensable to the operation of the reputed retail services, they are not complementary. Finally, the respective goods and share users may share users, though only at a very general level.

135. Although many of Nextevo's goods and the reputed goods and services are likely to be purchased by different consumers (manufacturers of finished products, rather than consumers of them), it is possible that they may also be purchased by members of the general public. As it is the public targeted by both parties' marks which is important,<sup>34</sup> I will focus on the overlapping users comprising members of the general public. The relevant section of the public is likely to exhibit between a low and medium level of attention. Visual considerations will dominate the purchasing process, though aural considerations are not excluded.

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<sup>34</sup> See the CJEU's comments about the relevant public in *Intel*, paragraph 33 *et seq.*

### The strength of the earlier mark's reputation

136. Next's first, second and fourth marks enjoy a strong reputation.

### The degree of the earlier mark's distinctive character, whether inherent or acquired through use

137. Next's first mark possesses a medium level of inherent distinctive character. Next's second mark is identical to the first. It also has a medium level of inherent distinctive character. Next's fourth mark contains the same word as its first and second marks. Although it is presented in a particular typeface, it is unremarkable and, therefore, does not materially impact the distinctiveness of the mark. This mark also possesses a medium level of inherent distinctive character. I have found that these marks have a reputation. For the same reasons, I find that their distinctive character has been enhanced to a high level in respect of the reputed goods and services.

### Whether there is a likelihood of confusion

138. I previously found that there is no likelihood of direct or indirect confusion between the word 'NEXT' and either of the IRs, even where the respective goods were identical. Under the present ground, the parties' goods and services are dissimilar. For the same reasons as given at paragraphs 109 and 112, I do not believe that the relevant public would be caused to believe that the user of the IRs is economically connected to the user of Next's marks. Whilst I acknowledge that the provisions of section 5(3) offer additional protection which takes into account the repute and distinctiveness of earlier trade marks, I am not satisfied that the repute and distinctiveness of Next's marks are sufficient to 'bridge the gap' between the parties' goods and services in the context of the aforementioned differences between the word 'NEXT' solus and the IRs.

### Conclusions on link

139. As they represent Next's best case, I will consider the position from the perspective of members of the relevant public who see the word 'NEXTEVO' as evocative of the phrase 'next evolution'. For such members of the relevant public, there

is at least some conceptual overlap. If the requisite mental link is not made between the competing marks by them, neither will it be made by members of the relevant public who, instead, simply perceive 'NEXTEVO' as an invented word with no meaning.

140. I acknowledge that Next's marks have a strong reputation, that they are factually distinctive to a high level, and that the competing marks share the word/string 'NEXT'. Nevertheless, it is my view that Next's marks will not be brought to mind by either of the IRs. The relevant public is likely to perceive the IRs as a phrase with a unitary meaning (the next advancement or stage of development of something). When confronted with the IRs, the relevant public is likely to think of the meaning of this phrase as a whole, rather than Next's marks, particularly in circumstances where the goods and services are dissimilar. In light of this, I find that the relevant public, even when paying a lower level of attention, will not make a mental link between the competing marks. If Next's marks are brought to mind, it is my view that such a link will be too fleeting to result in any consequent damage.

## **Conclusion**

141. Next's claims under section 5(3) are dismissed.

## **Overall outcome**

142. The opposition and application for invalidation under sections 5(2)(b) and 5(3) of the Act have failed. Subject to any appeal against this decision, the first IR will become protected in the UK. The second IR will remain protected in the UK.

## **Costs**

143. Nextevo has been successful and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances, I award Nextevo the sum of **£1,400**, which is calculated as follows:

Considering Next's statements and preparing counterstatements	£700
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Considering Next's evidence and preparing evidence	£700
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144. I order Next Retail Limited to pay NEXTEVO HOLDINGS PTE. LTD. the sum of **£1,400**. 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 the proceedings if any appeal against this decision is unsuccessful.

**Dated this 15th day of May 2026**

**James Hopkins**  
**For the Registrar**

## **Annex**

### **Goods of Next's first mark (registration no. 900015594)**

Class 20: Furniture; beds; bed heads; sofas, sofa beds; chairs; armchairs; tables; pillows; duvets; cushions; mattresses; bedding; parts and fittings for all the aforesaid goods.

Class 24: Textiles; plastic material as a substitute for fabric; bed and table covers; bed linen; table linen; household linen; wall hangings; blankets; quilts; duvets and duvet covers; sheets; pillow cases; bed valances; bed-covers; table cloths; table mats; napkins; linen fabrics; fabric wall coverings; curtains; curtain tie-backs; cushion covers; pelmets; blinds; covers for chairs and sofas; towels and face cloths.

Class 25: Articles of clothing; footwear; headgear.

Class 27: Carpets; rugs; mats and matting; non-textile wall coverings; wall papers; wall paper borders.

### **Services of Next's second mark (registration no. 901620434)**

Class 35: Retail services in the fields of clothing, headgear and footwear, household articles, towels, bedding, textiles, furniture, wallpaper and other products for decorating the home.

### **Goods of Next's first mark (registration no. 3607060)**

Class 20: Furniture; sofas; sofa beds; chairs; armchairs; pillows; cushions; mattresses; bedding; blinds; footstools, upholstered footstools; covers for furniture; parts and fittings for all the aforesaid goods.

## **Goods and services of Next's first mark (registration no. 917607474)**

**Class 24:** Textiles and textile goods, not included in other classes; bed and table covers; plastic material as a substitute for fabric; bed linen; table linen; household linen; wall hangings; blankets; quilts; duvets and duvet covers; sheets; pillow cases; bed valances; bed-covers; table cloths; table mats; napkins; linen fabrics; curtains; curtain tie-backs; cushion covers; pelmets; covers for chairs and sofas; towels and face cloths; accessories for home and house, namely, wall hangings of textile, curtains of textile, shower curtains; tea towels, textile place mats, cork placemats, synthetic placemats; upholstery fabrics; furniture coverings of textile; curtain holders of textile material; curtain linings; picnic blankets; travel rugs; woven fabrics for sofas (upholstery); banners; bath linen, except clothing; bath mitts; bed blankets; blankets for household pets; bunting; coasters [table linen]; covers [loose] for furniture; diaper changing cloths for babies; eiderdowns [down coverlets]; face towels of textile; felt; flags, not of paper; furniture coverings of plastic; handkerchiefs of textile; mattress covers; mosquito nets; place mats, not of paper; sleeping bag liners; table runners; fitted toilet lid covers of fabric; duvets; parts and fittings for all the aforesaid goods.

**Class 25:** Clothing, footwear, headgear; sports clothing; socks; maternity wear; clothing for men, women and children, namely, coats, rain coats, anoraks, parkas, blazers, jackets, cardigans, boleros, sport coats, wind resistant jackets, suits, tuxedos; vests, dresses, evening gowns, jumpers, jerseys, skirts, pants, slacks, trousers, jeans, jean shirts, jump suits, coveralls, flight suits, gym suits, jogging jerseys, blouses, tunics, sweatshirts, t-shirts, tops, halter tops, tank tops, body suits, camisoles, chemises, undershirts, slips, foundation garments, body shapers, bustiers, briefs, boxer shorts, underpants, panties, laundry, lounge wear, night gowns, night shirts, negligees, robes, pyjamas, hosiery, tights, leggings, socks; ties, neckties, bow ties, scarves, shoals, neckerchiefs, gloves, mittens, belts, swimwear, bathing suits, beachwear, beach cover-ups, sarongs; ski wear, ski suits, ski pants, ski gloves, thermal

socks, infant wear, play suits; footwear, namely, shoes, boots, sandals, flip flops, thongs, pool sliders and slippers; headgear namely, hats, caps, headbands, ear warmers; ready-made clothing; clothing of leather or suede; overalls; pullovers; shirts; swimming suits; training suits; jogging suits; mufflers; ear muffs; shawls; lingerie; bras; bodies; sleep sets; waterproof clothing; dancing clothing; shorts; clothing, footwear and headgear for children and babies; clothing, footwear and headgear all for sports and leisurewear; knitwear in the nature of sweaters; footwear in the nature of trainers; joggers, namely jogging suits; hoodies; polo shirts; sweat tops; track suits; leotards; trunks; waistcoats; bridesmaid dresses; ponchos; raincoats; dressing gowns; knickers; basques; stoles; wraps; cravats; kaftans; rompers; fleeces; fleece shirts; windbreakers; aprons; clothing for babies; babies' bibs, not of paper; dinner jackets; braces; babies' sleepsuits; garters; sock suspenders; bandanas [neckerchiefs]; special sporting and gymnastic wear; special sporting and gymnastic footwear; ankle boots; babies' pants [underwear]; bath sandals; bath slippers; bath robes; bathing caps; bathing trunks; swimsuits; beach clothes; beach shoes; berets; boas [necklets]; bodices [lingerie]; boot uppers; boots for sports; breeches for wear; cap peaks; caps [headwear]; clothing for gymnastics; clothing of imitations of leather; collars [clothing]; combinations [clothing]; corselets; corsets [underclothing]; cuffs/wristbands [clothing]; cyclists' clothing; detachable collars; dress shields; fishing vests; fittings of metal for footwear; football shoes/football boots; footmuffs, not electrically heated; footwear uppers; fur stoles; furs [clothing]; gabardines [clothing]; galoshes; gymnastics shoes; half-boots; hat frames [skeletons]; heelpieces for stockings; heelpieces for footwear; heels; hoods [clothing]; jumper dresses; pinafore dresses; lace boots; layettes [clothing]; leg warmers; masquerade costumes; money belts [clothing]; motorists' clothing; neckties; non-slipping devices for footwear; outerclothing; overcoats, topcoats; paper clothing; paper hats [clothing]; petticoats; pockets for clothing; ready-made linings [parts of clothing]; saris; sashes for wear; shirt fronts; shirt yokes; short sleeve shirts; shower caps; ski boots; skorts; skull caps; sleep masks; slippers; inner soles; soles for footwear;

spats; gaiters; sports jerseys; sports shoes; sports singlets; stocking suspenders; stockings; studs for football boots; stuff jackets [clothing]; sweat-absorbent stockings; sweat-absorbent underwear and underclothing; sweat-absorbent socks; teddies [undergarments]; tips for footwear; togas; top hats; trouser straps/gaiter straps; turbans; underwear/underclothing; uniforms; valenki [felted boots]; veils [clothing]; visors [headwear]; welts for footwear; wet suits for water-skiing; wooden shoes; girdles; bra strap extenders; snoods.

Class 27: Carpets; rugs; rug grippers; floor runners; mats and matting; door mats; yoga mats; floor coverings; mats; non-textile wall coverings; wall papers; wall paper borders; decorative wall hangings, not of textile; textile wallpaper; bath mats; linoleum and other materials for covering existing floors; carpet underlay; non-slip mats; vinyl floor coverings; fabric wall coverings; parts and fittings for all the aforesaid goods.

Class 35: Retail services, wholesale and franchise services, including those services offered via a general merchandising department store and clothing store, mail order catalogue, online, via television channel, via mobile phone and by direct marketing, presentation of goods on communication media, for retail purposes, provision of an on-line marketplace for buyers and sellers of goods and services, all connected with the sale of the following: Furniture, sofas, sofa beds, chairs, armchairs, pillows, duvets, cushions, mattresses, bedding, curtains and blinds, covers for furniture, Textiles and textile goods, bed and table covers, plastic material as a substitute for fabric, bed linen, table linen, household linen, wall hangings, blankets, quilts, duvets and duvet covers, sheets, pillow cases, bed valances, bed-covers, table cloths, table mats, napkins, linen fabrics, fabric wall coverings, curtains, curtain tie-backs, cushion covers, pelmets, blinds, covers for chairs and sofas, towels and face cloths, accessories for home and house, namely, wall hangings of textile, curtains of textile, shower curtains, tea towels, textile place mats, cork placemats, leather placemats, synthetic placemats, upholstery fabrics, furniture coverings of textile, curtain holders of textile

material, curtain linings, picnic blankets, travel rugs, woven fabrics for sofas (upholstery), banners, bath linen, except clothing, bath mitts, bed blankets, blankets for household pets, bunting, coasters [table linen], covers [loose] for furniture, diaper changing cloths for babies, eiderdowns [down coverlets], face towels of textile, felt, flags, not of paper, furniture coverings of plastic, handkerchiefs of textile, mattress covers, mosquito nets, place mats, not of paper, sleeping bag liners, table runners, fitted toilet lid covers of fabric, parts and fittings for all the aforesaid goods, Clothing, footwear, headgear, sports clothing, socks, maternity wear, clothing for men, women and children, namely, coats, rain coats, anoraks, parkas, blazers, jackets, cardigans, boleros, sport coats, wind resistant jackets, suits, tuxedos, vests, dresses, evening gowns, jumpers, jerseys, skirts, pants, slacks, trousers, jeans, jean shirts, jump suits, coveralls, flight suits, gym suits, jogging jerseys, blouses, tunics, sweatshirts, t-shirts, tops, halter tops, tank tops, body suits, camisoles, chemises, undershirts, slippers, foundation garments, body shapers, bustiers, briefs, boxer shorts, underpants, panties, laundry, lounge wear, night gowns, night shirts, negligees, robes, pyjamas, hosiery, tights, leggings, socks, ties, neckties, bow ties, scarves, shawls, neckerchiefs, gloves, mittens, belts, swimwear, bathing suits, beachwear, beach cover-ups, sarongs, ski wear, ski suits, ski pants, ski gloves, thermal socks, infant wear, play suits, footwear, namely, shoes, boots, sandals, flip flops, thongs, pool sliders and slippers, headgear namely, hats, caps, headbands, ear warmers, ready-made clothing, clothing of leather or suede, overalls, pullovers, shirts, swimming suits, training suits, jogging suits, mufflers, ear muffs, shawls, lingerie, bras, bodices, sleep sets, waterproof clothing, dancing clothing, shorts, clothing, footwear and headgear for children and babies, clothing, footwear and headgear all for sports and leisurewear, knitwear in the nature of sweaters, footwear in the nature of trainers, joggers, namely jogging suits, hoodies, polo shirts, sweat tops, track suits, leotards, trunks, waistcoats, bridesmaid dresses, ponchos, raincoats, dressing gowns, knickers, basques, stoles, wraps, cravats, kaftans, rompers, fleeces, fleece shirts, windbreakers, aprons, clothing for

babies, babies' bibs, not of paper, babies' diapers of textile, dinner jackets, braces, babies' sleepsuits, garters, sock suspenders, bandanas [neckerchiefs], special sporting and gymnastic wear, special sporting and gymnastic footwear, ankle boots, babies' pants [underwear], bath sandals, bath slippers, bath robes, bathing caps, bathing trunks, swimsuits, beach clothes, beach shoes, berets, boas [necklets], bodices [lingerie], boot uppers, boots for sports, breeches for wear, cap peaks, caps [headwear], clothing for gymnastics, clothing of imitations of leather, collars [clothing], combinations [clothing], corselets, corsets [underclothing], cuffs/wristbands [clothing], cyclists' clothing, detachable collars, dress shields, fishing vests, fittings of metal for footwear, football shoes/football boots, footmuffs, not electrically heated, footwear uppers, fur stoles, furs [clothing], gabardines [clothing], galoshes, gymnastics shoes, half-boots, hat frames [skeletons], heelpieces for stockings, heelpieces for footwear, heels, hoods [clothing], jumper dresses, pinafore dresses, lace boots, layettes [clothing], leg warmers, masquerade costumes, money belts [clothing], motorists' clothing, neckties, non-slipping devices for footwear, outerclothing, overcoats, topcoats, paper clothing, paper hats [clothing], petticoats, pockets for clothing, ready-made linings [parts of clothing], saris, sashes for wear, shirt fronts, shirt yokes, short sleeve shirts, shower caps, ski boots, skorts, skull caps, sleep masks, slippers, inner soles, soles for footwear, spats, gaiters, sports jerseys, sports shoes, sports singlets, stocking suspenders, stockings, studs for football boots, stuff jackets [clothing], sweat-absorbent stockings, sweat-absorbent underwear and underclothing, sweat-absorbent socks, teddies [undergarments], tips for footwear, togas, top hats, trouser straps/gaiter straps, turbans, underwear/underclothing, uniforms, valenki [felted boots], veils [clothing], visors [headwear], welts for footwear, wet suits for water-skiing, wooden shoes, Carpets, rugs, rug grippers, floor runners, mats and matting, door mats, yoga mats, floor coverings, mats, non-textile wall coverings, wall papers, wall paper borders, decorative wall hangings, not of textile, textile wallpaper, bath mats, linoleum and other

materials for covering existing floors, carpet underlay, non-slip mats, vinyl floor coverings, parts and fittings for all the aforesaid goods.