

O/0561/26

TRADE MARKS ACT 1994

IN THE MATTER OF UK TRADE MARK APPLICATION NUMBER 4087800

BY

OPTIMAL HYDRATION LIMITED

TO REGISTER THE FOLLOWING TRADE MARK:

OH-2

IN CLASS 11, 21 and 37

AND

IN THE OPPOSITION THERETO

UNDER NUMBER 452315

BY 02 WORLDWIDE LIMITED

BACKGROUND & PLEADINGS

1. On 15 August 2024, Optimal Hydration Limited (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the UK (“the contested mark”). The contested mark was published for opposition purposes in the Trade Marks Journal on 1 November 2024 in respect of the following goods and services:

Class 11

Apparatus and installations for lighting, heating, cooling, steam generating, cooking, drying, ventilating, water supply and sanitary purposes; apparatus for water supply purposes; apparatus for sanitary purposes; machines for purifying water; distillation machines for purifying solvents; apparatus for purifying water; distillation apparatus for purifying solvents; water filters; apparatus for purifying liquids; apparatus for filtering water; water filtration apparatus; membranes for the filtration of water; filter apparatus for water supply installations; installations for water filtering; water treatment filters; water purification filters; installations for water filtration; filter boxes for water purification; filtering apparatus for fluids; filters for drinking water; filters for use with apparatus for water supply; filters for water purifiers; domestic water filtering apparatus; domestic water filtering units; drinking water filters; filtering devices, including, filters, filter cartridges, filter media, filter housings for domestic and commercial use; hydrogen water machines; hydrogen water generation apparatus; water ionizers; water ionization apparatus; reverse osmosis filtration units [water treatment equipment]; ultraviolet water purification units.

Class 21

Household or kitchen utensils and containers; water bottles; water bottles, sold empty; drinking bottles for sports; reusable water bottles; insulated water bottles; water containers; portable water dispensers; water purification bottles; household water filtration pitchers; hydration packs; collapsible water bottles; thermal insulated containers for water; travel mugs; glass water bottles; cookware and tableware, except forks, knives and spoons; combs and sponges; brushes, except paintbrushes; brush-making materials; articles for cleaning

purposes; unworked or semi-worked glass, except building glass; glassware, porcelain and earthenware.

Class 37

Installation, maintenance and repair services; installation, maintenance, and repair of water purification apparatus; installation and maintenance of water treatment systems; repair services for water purification machines; technical support services for water filtration systems; consultancy services relating to the installation of water purification systems; servicing of water purification equipment; providing information relating to the installation of water filtration systems; emergency repair services for water treatment equipment.

2. On 3 February 2025, the contested mark was opposed in its entirety by 02 Worldwide Limited (“the opponent”). The opposition was initially brought under sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”). However, in its email dated 9 July 2025 the opponent confirmed that it would not be pursuing its claim under section 5(3), and the opposition would proceed in respect of section 5(2)(b) only.
3. The opponent relies upon the following four trade marks (together “the earlier marks”):

- (i) Trade mark number: UK00004007285 (the “285 mark”)
Filing date: 26 January 2024
Registration date: 7 June 2024
Relying on the services listed in Annex 1 of this decision.
Representation:



- (ii) Trade mark number: UK00003765932 (the “932 mark”)

Filing date: 15 March 2022

Registration date: 5 August 2022

Relying on the services listed in Annex 2 of this decision.

Representation:

O₂

- (iii) Trade mark number: UK00004006663 (the “663 mark”)

Filing date: 25 January 2024

Registration date: 31 May 2024

Relying on the services listed in Annex 3 of this decision.

Representation:

O2

- (iv) Trade mark number: UK00003587066 (the “066 mark”)¹

Filing date: 29 January 2021

Registration date: 1 October 2021

Priority Date: 7 January 2020

Relying on the services listed in Annex 4 of this decision.

Representation:

O₂

4. 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 –

¹ This mark was filed pursuant to Article 59 of the Withdrawal Agreement between the United Kingdom and the European Union and the EU filing date was 07/01/2020.

(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.

5. The marks identified in paragraph 3 qualify as earlier trade marks under the above provisions. It is noted that the earlier marks had not been protected for more than five years at the date of the application for the contested mark and so, in accordance with section 6A of the Act, the marks are not subject to proof of use. Consequently, the opponent may rely on all of the goods and services listed in annexes 1 to 4 of this decision for the purpose of this opposition.
6. The opponent submits that the marks in issue are highly similar (or “at the very least” similar to a medium degree) “on the basis of phonetic, visual and conceptual comparisons”, and that the goods and services in issue are “identical or highly similar”. Consequently, the opponent submits that “there exists a likelihood of confusion on the part of the public, including a likelihood of association with the earlier mark.” The opponent therefore requests that the application is refused in its entirety.
7. The applicant filed a counterstatement denying the claims made against it. Specifically, the applicant submits that the marks in issue are “neither identical nor similar”, and the applicant denies that the goods and services in issue are identical or similar as they “differ in nature, purpose, and intended consumer, and are not likely to be encountered in the same commercial context”. The applicant therefore denies that there is any likelihood of confusion on the part of the average consumer. Consequently, the applicant requests that the opposition should be dismissed in full and that an award of costs should be made in its favour.
8. The opponent is represented by Stobbs, and the applicant is represented by Trade Mark Wizards Limited. In this case, neither party filed evidence. No hearing was requested, and only the opponent filed written submissions in lieu of a hearing. This decision is therefore taken following a careful consideration of the

papers that have been filed by the parties, which will not be summarised but will be referred to as and where appropriate during this decision.

9. 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.

DECISION

Section 5(2)(b)

10. This opposition is based upon section 5(2)(b) of the Act which stipulates the following:

“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”.

11. Section 5A of the Act stipulates that 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.”
12. 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

13. The opponent opposes the applicant's registration of the contested mark in respect of the goods and services listed in paragraph 1 of this decision. The opponent submits in general terms that its goods and services are identical or similar to all of the applicant's goods and services.² However, in its submissions the opponent either does not identify which of its own goods and services it considers to be comparable to each of the applicant's goods and services (save in respect of a few examples), or the opponent identifies multiple goods and services in its earlier marks' specification that it considers to be similar or identical to a particular good or service within the applicant's specification. In the circumstances, where no comparator has been identified by the opponent, I consider that a reasonable approach would be for me to identify what I consider to be the closest terms and carry out the comparison on that basis.³ Further, in the interest of brevity, where multiple comparators have been identified, whilst I have given due consideration to all of the opponent's submissions, given the

² As is confirmed in Q8 on pages 7, 19, 29 and 38 of the Notice of Opposition.

³ On this point, I also refer to the decision of Dr Brian Whitehead, sitting as the Appointed Person, in *Monty Co Group SL v Monty Finance UK Limited*, BL O/0924/24

significant number of goods and services contained in the parties' specifications, I have only outlined what I consider to be the opponent's best case for the purposes of my comparison of the goods and services. Of course, identity or similarity only needs to be established between the applicant's goods and services and some of the opponent's goods and services. If identity or similarity cannot be established on the opponent's best case, then there can be no basis for a finding of similarity or identity between the remaining goods and services in issue.

14. As discussed above, the applicant denies that the goods and services in issue are identical or similar as they differ in nature, purpose, and intended consumer, and are not likely to be encountered in the same commercial context.
15. As a preliminary point, it should be noted that section 60A of the Act provides that goods and services are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification⁴, or dissimilar on the ground that they appear in different classes under the Nice Classification.
16. In *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.*,⁵ the Court of Justice of the European Union ("CJEU") stated (at paragraph 23) that, when making the comparison, "all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary".
17. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case⁶, for assessing similarity were:
 - a. The uses of the respective goods and services;

⁴ "Nice Classification" means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957.

⁵ Case C-39/97

⁶ [1996] R.P.C. 281

- b. The users of the respective goods and services;
 - c. The physical nature of the goods and services;
 - d. The respective trade channels through which the goods and services reach the market;
 - e. In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
 - f. The extent to which the respective goods and services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods in the same or different sectors.
18. In *Gérard Meric v Office for Harmonisation in the Internal Market*,⁷ the General Court (“GC”) confirmed that even if goods are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):
- “29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM- Educational Services* (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark.”
19. As per the case of *Separode*,⁸ I also bear in mind that it is permissible to group the goods and/or services together, for the purpose of comparison, where they are sufficiently comparable to be assessable in essentially the same way for the same reasons.

⁷ Case T- 133/05

⁸ BL O/399/10, Mr Geoffrey Hobbs QC, sitting as the Appointed Person

20. I will deal first with a comparison of the contested mark's specification and the specification for the earlier 285 mark.

Class 11

Apparatus and installations for lighting [...]

21. I compare the applicant's above referenced goods with the opponent's class 37 "installation of lighting apparatus". In comparing goods with services there is, of course, a difference between the nature of a good and the nature of a service, which also affects the method of use comparison.
22. These compared goods and services overlap in general purpose, that being to assist with the provision of lighting, albeit their specific purpose differs, with the specific purpose of the applicant's above referenced goods being to provide illumination, and the specific purpose of the opponent's services being to enable the lighting apparatus to be set up and functional.
23. I also consider there to be an overlap in distribution channels as electricians will provide both the applicant's goods and the opponent's compared services, or lighting retailers will also generally offer optional additional installation services for an additional fee when you purchase the lighting goods. The applicant's lighting apparatus/installations are also clearly important to/indispensable from the actual installation services of that apparatus (and vice-versa), and consumers would believe that responsibility for the compared goods and services derive from the same undertaking. Accordingly, I do consider there to be an element of complementarity between these compared goods and services. I also consider there to be an overlap in the users of these compared goods and services, that being members of the general public. Further, I note that the applicant's above referenced term is extremely broad and can include the installation of basic light fittings or more complex work requiring re-wiring. I do accept, therefore, that consumers may purchase some of the lighting apparatus/installations (particularly when it comes to basic light fittings) and choose to install it themselves, rather than instructing an electrician on their behalf. Accordingly, I

do consider there to be an element of competition between the compared goods and services.

24. Overall, I consider the applicant's above referenced goods to be similar to a medium degree to the opponent's class 37 "installation of lighting apparatus".

Apparatus and installations for [...] water supply and sanitary purposes; apparatus for water supply purposes; apparatus for sanitary purposes;

25. I compare the applicant's above referenced goods with the opponent's class 37 "installation of plumbing". By virtue of this being a comparison of goods against services, these clearly differ in nature and method of use.
26. However, I do consider there to be an overlap in general purpose, that being to assist with the provision of water supply and sanitation, albeit their specific purpose differs, with the specific purpose of the applicant's above referenced goods being to provide water and sanitation, and the specific purpose of the opponent's compared service being to install the systems that perform those same functions. I also consider there to be an overlap in user, being members of the general public.
27. These compared goods and services also overlap in distribution channels as consumers would be able to purchase the applicant's above referenced goods from plumbing companies, as well as instructing those same companies to provide the opponent's compared installation services. The applicant's above referenced goods are also clearly important to/indispensable from the actual installation services of that apparatus (and vice-versa), and consumers would believe that responsibility for the compared goods and services derive from the same undertaking. Accordingly, I do consider these compared goods and services to be complementary. Further, I note that the applicant's above referenced term is extremely broad and can include the installation of basic water system apparatus (for example, under-sink water filters) or more complex work that requires plumber intervention for regulatory purposes. I do accept, therefore, that consumers may purchase some of the applicant's above referenced goods

and choose to install them themselves, rather than instructing a professional on their behalf. Accordingly, I do consider there to be an element of competition between the compared goods and services.

28. Weighing up all of the above, I consider the applicant's above referenced goods to be similar to a medium degree to the opponent's class 37 "installation of lighting apparatus".

Apparatus and installations for [...] heating [...], steam generating [...]

29. I compare the applicant's above referenced goods with the opponent's class 37 "installation of heating apparatus". By virtue of this being a comparison of goods against services, these clearly differ in nature and method of use. However, I do consider there to be an overlap in general purpose, that being to assist with the provision of heating, albeit their specific purpose differs, with the specific purpose of the applicant's above referenced goods being to generate heat/steam, and the specific purpose of the opponent's compared service being to install the systems that perform those same functions. I also consider there to be an overlap in user, that being members of the general public.
30. These compared goods and services also overlap in distribution channels as consumers would be able to purchase the applicant's above referenced goods from heating engineering companies, as well as instructing those same companies to provide the opponent's compared installation services. The applicant's above referenced goods are also clearly important to/indispensable from the actual installation services of that apparatus (and vice-versa), and consumers would believe that responsibility for the compared goods and services derives from the same undertaking. Further, I note that the applicant's above referenced term is extremely broad and can include the installation of basic heating apparatus (for example the hanging of radiators) or more complex work. I do accept, therefore, that consumers may purchase some of the applicant's above referenced goods and choose to install it themselves, rather than instructing a professional to carry out the opponent's service on their behalf.

Accordingly, I do consider there to be an element of competition between the compared goods and services.

31. Weighing up all of the above, I consider the applicant's above referenced goods to be similar to a medium degree to the opponent's class 37 "installation of heating apparatus".

Apparatus and installations for [...] cooking [...]

32. I compare the applicant's above referenced goods with the opponent's class 37 "installation of cooking appliances". Once again, by virtue of this being a comparison of goods against services, these clearly differ in nature and method of use. However, I do consider there to be an overlap in general purpose, that being to allow users to cook, albeit their specific purpose differs, with the specific purpose of the applicant's above referenced goods being to enable cooking, and the specific purpose of the opponent's compared service being to install, for example, the cooker itself and to allow it to be used. I also consider there to be an overlap in user, that being members of the general public, and distribution channels, as the undertakings you purchase the applicant's goods from (i.e., home appliance retailers), will generally provide installation and fitting services for an additional fee. The applicant's above referenced goods are also clearly important to/indispensable from the actual installation services of that apparatus (and vice-versa), and consumers would believe that responsibility for the compared goods and services derive from the same undertaking. Accordingly, I do consider these compared goods and services to be complementary. Further, I note that the applicant's above referenced term is extremely broad and can include the installation of basic plug-in electric cookers or gas cookers which will need to be installed by a gas engineer. I do accept, therefore, that consumers may purchase some of the applicant's above referenced goods and choose to install it themselves, rather than instructing a professional to carry out the opponent's installation services on their behalf. Accordingly, I do consider there to be an element of competition between the compared goods and services.

33. Weighing up all of the above, I consider the applicant's above referenced goods to be similar to a medium degree to the opponent's class 37 "installation of cooking appliances".

Apparatus and installations for [...] ventilating [...]

34. I compare the applicant's above referenced goods with the opponent's class 37 "installation of ventilating apparatus". Once again, by virtue of this being a comparison of goods against services, these clearly differ in nature and method of use.
35. I consider there to be an overlap in distribution channels as, for example, consumers may purchase the ventilation apparatus/installations from the electrician employed to carry out the installation services. I also consider there to be an overlap in user, being members of the general public. These compared goods and services are also complementary as they are clearly important to/indispensable from one another, and consumers would believe that responsibility for the compared goods and services derives from the same undertaking. However, without evidence being provided to suggest otherwise, I do not consider that consumers would fit ventilation apparatus themselves. Accordingly, I can see no basis for finding these compared goods and services to be competitive.
36. Weighing up all of the above, I consider the applicant's above referenced goods to be similar to a medium degree to the opponent's class 37 "installation of ventilating apparatus".

Apparatus and installations for [...] drying [...]

37. I compare the applicant's above referenced goods with the opponent's class 37 "installation of drying apparatus". Once again, by virtue of this being a comparison of goods against services, these differ in nature and method of use. Having said that, I consider there to be an overlap in user, being members of the general public. I also, once again, consider there to be an overlap in general

purpose (to assist with drying). However, the compared goods and services clearly differ in specific purpose, with the specific purpose of the applicant's above referenced goods being to dry something (for example, clothes), and the specific purpose of the opponent's compared services being to install the systems that perform that function.

38. The compared goods and services overlap in distribution channels as, for example, the electrical company you purchase the applicant's above referenced goods from will generally provide fitting/installations services for an additional fee. I also consider these compared goods to be complementary as they are clearly important to/indispensable from one another, and consumers would believe that responsibility for them derives from the same undertaking. Further, I note that the applicant's above referenced term is extremely broad and can include the installation of, for example, condenser dryers which are simple to install. Consequently, consumers may purchase such drying apparatus and choose to install it themselves, without instructing a third party to undertake the opponent's compared services on their behalf. Accordingly, I do consider there to be an element of competition between the compared goods and services.
39. Weighing up all of the above, I consider the applicant's above referenced goods to be similar to a medium degree to the opponent's class 37 "installation of drying apparatus".

Apparatus and installations for [...] cooling [...]

40. I compare the applicant's above referenced goods with the opponent's class 37 "installation of refrigerating apparatus" services.
41. These compared goods and services differ in nature and method of use. Whilst there is a superficial overlap in purpose (that being to assist with making a cooling system functional), their specific purpose differs. The specific purpose of the applicant's above referenced goods being to cool, and the specific purpose of the opponent's compared services being to install that cooling apparatus and to make it operational.

42. I consider there to be an overlap in user, and trade channels, as the suppliers of the cooling/refrigeration apparatus will generally provide an installation/fitting service for that apparatus for an additional fee. I also consider the cooling/refrigeration apparatus to be important to and indispensable from the opponent's compared installation services, and that consumers would believe that the undertaking providing the opponent's services was responsible for the cooling apparatus that had been installed. Accordingly, I do consider these compared goods and services to be complementary. Further, I note that the applicant's above referenced term is extremely broad and can include the installation of simple portable air conditioners (which are effectively plug-in devices). I do accept, therefore, that consumers may purchase some of the applicant's above referenced goods and install them themselves rather than instructing a professional to provide the opponent's services on their behalf. Accordingly, I do consider there to be an element of competition between the compared goods and services.
43. Overall, I consider these compared goods and services to be similar to a medium degree.

Machines for purifying water; apparatus for purifying water; water filters; apparatus for purifying liquids; apparatus for filtering water; water filtration apparatus; membranes for the filtration of water; filter apparatus for water supply installations; installations for water filtering; water treatment filters; water purification filters; installations for water filtration; filter boxes for water purification; filtering apparatus for fluids; filters for drinking water; filters for use with apparatus for water supply; filters for water purifiers; domestic water filtering apparatus; domestic water filtering units; drinking water filters; filtering devices, including, filters, filter cartridges, filter media, filter housings for domestic and commercial use; hydrogen water machines; hydrogen water generation apparatus; water ionizers; water ionization apparatus; reverse osmosis filtration units [water treatment equipment]; ultraviolet water purification units.

44. All of the applicant's above referenced goods are types of water purification/filtration apparatus. I compare these to the opponent's class 37 "installation of plumbing".
45. Once again, these differ in nature and method of use. There is an overlap in general purpose, that being to assist with the provision of sanitised, potable water systems. However, their specific purpose differs, with the specific purpose of the applicant's above referenced goods being to purify/filter the water, and the specific purpose of the opponent's compared services being to install the water systems, which will include the installation of the applicant's above referenced goods.
46. I consider there to be an overlap in user and trade channels. This is because these compared goods and services would all be used by homeowners/businesses, and the undertakings providing the plumbing services will generally also provide the applicant's above referenced goods. The compared goods and services are important to one another, and I do consider that consumers would believe that responsibility for them derives from the same undertaking. Accordingly, I do consider these compared goods and services to be complementary. I do also consider that consumers may purchase the applicant's above referenced goods and fit them themselves, rather than employing a plumber to carry out the opponent's services on their behalf. I therefore appreciate that there is a level of competition between the compared goods.
47. Noting all of the above, I consider these compared goods and services to be similar to a medium degree.

Distillation machines for purifying solvents; distillation apparatus for purifying solvents;

48. I consider the closest comparator to the applicant's above referenced terms to be the opponent's class 37 "installation of plumbing". Once again, by virtue of this being a comparison of goods and services, they clearly differ in nature and method of use. The purpose of the compared goods and services also differs,

with the purpose of the applicant's goods being to purify solvents, and the purpose of the opponent's compared services being to establish water/sanitary infrastructures in buildings.

49. It is also my understanding that the applicant's above referenced goods are specialised technical devices used to separate and purify liquids. Unlike the applicant's various types of water purification/filter apparatus referenced in paragraphs 44 to 47 above (and without evidence being provided to suggest otherwise), it is my understanding that the applicant's above referenced goods are normally used for the purpose of chemical solvent purification (rather than to purify water), and that they are generally used in industrial/laboratory environments, rather than domestically. Consequently, I consider these compared goods and services to differ in user and trade channels, with the applicant's above referenced goods being used by industrial operators, laboratories, and being sold by specialised industrial equipment suppliers, and the opponent's compared services being used by members of the general public and being provided by plumbers.
50. Without evidence being provided to support such a finding, I see no basis for finding the compared goods and services to be complementary or competitive. Accordingly, I find the applicant's above referenced goods to be dissimilar to the opponent's "installation of plumbing".

Class 21

Combs and sponges; brushes, except paintbrushes; articles for cleaning purposes;

51. I compare the applicant's above referenced goods with the opponent's class 37 "fur cleaning and repair" and "leather cleaning and repair" services. Once again, as this is a comparison of goods against services, these clearly differ in nature and method of use. I also do not consider there to be an overlap in trade channels as, without evidence to the contrary, I see no basis for finding that you would purchase the applicant's above referenced goods from the same entities undertaking the opponent's cleaning services. Further, while cleaning tools could

be used to clean leather or fur, without evidence being provided to the contrary, I do not find these compared goods and services to be indispensable from one another. I therefore see no basis for finding these goods to be complementary. However, I do accept that there is a superficial overlap in purpose and user, that being to assist members of the general public with cleaning.

52. I also appreciate that the applicant's above referenced goods could be purchased by consumers to carry out the cleaning of their fur and leather items themselves, instead of instructing an undertaking to carry out the cleaning service on their behalf. Accordingly, I do accept that there is a level of competition between the compared goods and services.

53. Noting all of the above, I consider these goods and services to be similar to a low degree.

Brush-making materials;

54. As discussed above, whilst the opponent confirmed in its Notice of Opposition that it wished to challenge all of the goods and services in each of the contested marks' specification, it only provided submissions comparing the similarity or asserting identity in respect of a relatively small number of the goods and services in issue. Accordingly, in the absence of full submissions, I confirmed in paragraph 13 above that I believed a fair approach would be for me to identify which of the opponent's terms in its specification I considered to be the closest comparator to each of the applicant's opposed terms. Having said that, in respect of the applicant's above referenced term, I am unable to identify any meaningful comparison with any of the terms in the opponent's earlier 285 mark's specification. On this point, I refer to the case of *SmartX* TM,⁹ wherein Mr Iain Purvis K.C., sitting as the Appointed Person, addressed the issue of an opponent's failure to identify similarity in respect of long specifications. Mr Purvis K.C. said:

⁹ BL O/0911/24

“28. [...] it is for the Opponent to put forward the combinations of goods on which it relies for similarity (or identity). If it fails to identify a particular combination, it cannot expect the Hearing Officer to do the job for it. The approach [...] would place an intolerable burden on Hearing Officers in cases of this nature in which there will be thousands of potential combinations of goods which could be relied on, and for each combination a slightly different argument for similarity could be made.”

55. Further on in this decision, Mr Purvis K.C. stated:

“31(v). In fact (as I have pointed out) the Hearing Officer went beyond the written submissions in making findings of similarity in respect of a number of groups of goods on the basis of arguments which had not been raised by the Opponent. If the Applicant had complained about this by way of an Appeal, there would probably have been a good argument that he had been the victim of procedural unfairness. But this has of course not happened and to this extent the Opponent has benefited from the Hearing Officer’s generosity. However, it would obviously be perverse to say that the Hearing Officer ought therefore to have taken every other unpleaded and unargued point in the Opponent’s favour.”

56. I do not consider that the case law cited above means that I must dismiss any level of similarity between all of the goods and services in issue in circumstances where the opponent has failed to provide such submissions. However, the takeaway from *SmartX* is that it would be unfair for me to go through all of the opponent’s goods and services in issue in the earlier 285 mark’s specification in order to assess each and every combination of goods and services in circumstances where I cannot reasonably identify the closest comparator. Accordingly, in the light of the above, without submissions to suggest otherwise, I find the applicant’s above referenced goods to be dissimilar to all of the goods and services in issue in the earlier 285 mark’s specification.

Household or kitchen utensils and containers; water bottles; water bottles, sold empty; drinking bottles for sports; reusable water bottles; insulated water bottles; water containers; portable water dispensers; water purification bottles; household water

filtration pitchers; hydration packs; collapsible water bottles; thermal insulated containers for water; travel mugs; glass water bottles; cookware and tableware, except forks, knives and spoons; unworked or semi-worked glass, except building glass; glassware, porcelain and earthenware.

57. All of the applicant's above referenced goods are household/kitchen-related goods, and I compare these with the opponent's class 37 "Installation of kitchen appliances".
58. Once again, as this is a comparison of goods against services, these differ in nature and method of use, and I see no basis for finding them to be competitive. These compared goods and services also differ in purpose, with the purpose of the applicant's above referenced goods being for use in the consumption of food or liquid handling, and the purpose of the opponent's compared service being to install kitchen related equipment.
59. Whilst I appreciate that the compared terms are broad and could include a wide range of kitchen goods, water containers or the installation of various types of kitchen appliances, without evidence being provided to suggest otherwise, I do not consider there to be any overlap in trade channels. I also do not consider these goods and services to be important to or indispensable from one another. Without evidence being provided to support such a finding, I do not therefore consider these compared goods and services to be complementary.
60. I do appreciate that there is a superficial overlap in user, that being general consumers. However, I do not consider this alone to be a sufficient basis for reaching a finding of similarity, and I am conscious of the judgment of Iain Purvis KC in *Unicorn Studio Inc v Veronese* in which he stipulated that "any finding of similarity in the end requires the exercise of common sense and requires the hearing officer to stand back and consider the overall question" rather than by engaging "in a box-ticking exercise, asking how many of the factors identified in *TREAT* or in *Canon* could be said to have been satisfied".¹⁰ Consequently, I

¹⁰ [2024] EWHC 1098 (Ch) - paragraph 24

consider the applicant's above referenced goods to be dissimilar to the opponent's "Installation of kitchen appliances".

Class 37

Installation, maintenance and repair services;

61. The opponent submits that the applicant's above referenced services are identical to its various types of class 37 installation and repair services (for example, its "Installation, maintenance and repair of telecommunications installations"). The applicant's above referenced services are extremely broad and not limited in any way. Consequently, I do consider that it would incorporate all types of installation, maintenance and repair services, and that the opponent's various installation, maintenance and repair services are therefore identical to the applicant's above referenced services in line with the principle established in *Meric*.

Installation, maintenance, and repair of water purification apparatus; installation and maintenance of water treatment systems; repair services for water purification machines; technical support services for water filtration systems; consultancy services relating to the installation of water purification systems; servicing of water purification equipment; providing information relating to the installation of water filtration systems; emergency repair services for water treatment equipment.

62. It is noted that the opponent submits that all of the above referenced services are "identical" to the opponent's various types of installation and repair services in class 37 "by virtue of being identically worded or being for broader terms". However, I do not agree with this. This is because none of the applicant's above referenced terms appear identically in the opponent's specification. I also consider the above referenced terms (and all of the opponent's class 37 terms) to be too specific to be deemed wide enough to encompass each other. Accordingly, I do not consider the applicant's above referenced terms to be identical in line with the principle established in *Meric* to those contained in the opponent's specification. Instead, I consider the closest comparator of the

applicant's above referenced terms to be the opponent's "repair of sanitary installations" and "information and advisory services relating to the aforesaid services".

63. These compared services overlap in nature given that they are all technical in nature and are linked to sanitary/water systems. I also consider there to be an overlap in purpose, that being to ensure the proper functioning of sanitary/water-related systems. Their method of use and users also overlap as all of these services are delivered to members of the general public by technicians/engineers. Accordingly, there is also an overlap in trade channels as all of these services will be provided by plumbers/water treatment companies.
64. Noting all of the above, I consider these compared services to be similar to a high degree.
65. I now compare the contested mark's specification and the specification for the earlier 932 mark:

Class 11

Apparatus and installations for lighting, heating, cooling, steam generating, cooking, drying, ventilating, water supply and sanitary purposes;

66. The applicant's above referenced term appears identically in the opponent's earlier 932 marks' specification. These goods are therefore self-evidently identical.

Water filters; apparatus for filtering water; water filtration apparatus; membranes for the filtration of water; filter apparatus for water supply installations; installations for water filtering; water treatment filters; water purification filters; installations for water filtration; filter boxes for water purification; filtering apparatus for fluids; filters for drinking water; filters for use with apparatus for water supply; filters for water purifiers; domestic water filtering apparatus; domestic water filtering units; drinking water filters; filtering devices, including, filters, filter cartridges, filter media, filter housings for

domestic and commercial use; reverse osmosis filtration units [water treatment equipment].

67. All of the applicant's above referenced goods are types of domestic water filters. I therefore consider that these would fall within the opponent's wider term "drinking water (filters for-)". Accordingly, I consider these compared goods to be identical in line with the principle established in *Meric*.

Apparatus for water supply purposes; Apparatus for sanitary purposes;

68. I consider that the applicant's above referenced goods fall within the opponent's wider term "Apparatus and installation for lighting, heating, cooling, steam generating, cooking, drying, ventilating, water supply and sanitary purposes", and that these goods are therefore identical in line with the principle established in *Meric*.

Machines for purifying water; apparatus for purifying water; apparatus for purifying liquids; hydrogen water machines; hydrogen water generation apparatus; water ionizers; water ionization apparatus; ultraviolet water purification units.

69. I consider all of the applicant's above referenced goods to be types of water treatment apparatus or water supply related apparatus. I therefore consider them to fall within the opponent's wider term "apparatus and installation for [...] water supply and sanitary purposes", and to be identical in line with the principle established in *Meric*.

Distillation machines for purifying solvents; distillation apparatus for purifying solvents.

70. I compare the applicant's above referenced goods with the opponent's class 11 term "apparatus and installation for [...] water supply and sanitary purposes".
71. As discussed in paragraphs 48 to 50 above, without evidence being provided to suggest otherwise, it is my understanding that the applicant's above referenced goods are normally used for the purpose of chemical solvent purification (rather

than to purify water), and that they are generally used in industrial/laboratory environments. Accordingly, I find that the nature, user, method of use and purpose of these compared goods differs. I also consider there to be a difference in trade channels, with the applicant's above referenced goods being provided by industrial equipment suppliers, and the opponent's compared goods being provided by construction suppliers or plumbing companies.

72. Without any evidence being provided to suggest otherwise, I can also see no basis for finding these compared goods to be competitive or complementary. Accordingly, I find these compared goods to be dissimilar.

Class 21

Household or kitchen utensils and containers; cookware and tableware, except forks, knives and spoons; combs and sponges; brushes, except paintbrushes; brush-making materials; articles for cleaning purposes; unworked or semi-worked glass, except building glass; glassware, porcelain and earthenware.

73. The applicant's above referenced terms all appear identically in the opponent's earlier 932 mark's specification. These goods are therefore self-evidently identical.

Water bottles; water bottles, sold empty; drinking bottles for sports; reusable water bottles; insulated water bottles; water containers; portable water dispensers; water purification bottles; household water filtration pitchers; hydration packs; collapsible water bottles; thermal insulated containers for water; travel mugs; glass water bottles;

74. I consider all of the applicant's above referenced goods to be types of household liquid containers. Accordingly, I consider that they would all fall within the opponent's wider term "household or kitchen [...] containers", and that they are identical in line with the principle established in *Meric*.

Class 37

Installation, maintenance and repair services; installation, maintenance, and repair of water purification apparatus; installation and maintenance of water treatment systems; repair services for water purification machines; technical support services for water filtration systems; consultancy services relating to the installation of water purification systems; servicing of water purification equipment; providing information relating to the installation of water filtration systems; emergency repair services for water treatment equipment.

75. All of the above referenced services would include services relating to the installation, maintenance and repair of water systems, and I therefore compare these to the opponent's class 11 "apparatus and installations for [...] water supply and sanitary purposes".
76. These differ in nature and method of use by virtue of this being a comparison of goods against services. Whilst they overlap in purpose at a general level (given that they all assist in providing a functioning potable water supply), their specific purpose differs, as the specific purpose of the opponent's goods is to supply and sanitise water, and the specific purpose of the applicant's services is to install or assist with the maintenance of the water system.
77. Having said that, these compared goods overlap in user (being members of the general public) and trade channels, as the undertaking providing the applicant's above referenced services will also generally provide the opponent's compared goods. The compared goods and services are also important to/indispensable from one another, and I consider that users would believe that the same undertaking is responsible for the compared goods and services. Accordingly, I find these compared goods and services to be complementary. Further, as discussed above, I note that the opponent's compared term is extremely broad and can include, for example, basic under sink water filters which are fairly simple to install. Accordingly, consumers may choose to install this apparatus themselves, rather than instructing a professional to undertake the opponent's services on their behalf. Accordingly, I consider there to be an element of competition between the compared goods and services.

78. Noting all of the above, I find the applicant's above referenced services to be similar to a medium degree to the opponent's "apparatus and installations for [...] water supply and sanitary purposes".
79. I now compare the contested mark's specification and the specification for the earlier 633 mark:

Class 11

Apparatus and installations for lighting, heating, cooling, steam generating, cooking, drying, ventilating, water supply and sanitary purposes

80. I compare the applicant's above referenced goods with the opponent's class 21 "cookware and tableware". As a preliminary point, by virtue of its classification, whilst the applicant's above term appears broad, it does not include cooking utensils that do not have an integrated heat source. The applicant's above referenced term is therefore limited to electrical or gas-powered apparatus (for example, ovens, hobs and cookers), whereas the opponent's compared goods would not include power operated cooking apparatus (such as pots, pans and plates). These compared goods clearly therefore differ in physical nature and method of use, and they would not be competitive.
81. Having said that, these goods overlap in purpose, that being to assist with cooking. They also overlap in user (that being the general public) and trade channels, as they can all be purchased from kitchenware shops, and even in large supermarkets some of the applicant's above referenced goods (such as microwaves) would be located in the same homeware section of those supermarkets as the opponent's compared goods.
82. Noting all of the above, I consider these compared goods to be similar to a medium degree.

Apparatus for water supply purposes;

83. I note that the applicant's above referenced goods are not limited to, for example, drinking water. Given the ordinary meaning of the words "apparatus for water supply purposes" I consider this to include any apparatus which assists with the supply of water, and I compare this to the opponent's class 21 "sprinkling devices".
84. These compared goods overlap at a superficial level in purpose (that being to assist with the supply and distribution of water). However, their specific purpose differs, with the specific purpose of the applicant's above referenced goods being to supply and distribute water within the water system, and the specific purpose of the opponent's compared good being to disperse water over, for example, plants or grass. The method of use for these goods also differs. Consequently, I also do not consider these compared goods to be competitive, nor do I see any basis for finding these goods to be complementary.
85. Having said that, I do consider these compared goods to overlap in user (that being members of the general public) and trade channels (as they may all be purchased from home improvement retailers. Noting all of the above, I therefore find these compared goods to be similar to a low degree.

Apparatus for sanitary purposes; machines for purifying water; distillation machines for purifying solvents; apparatus for purifying water; distillation apparatus for purifying solvents; water filters; apparatus for purifying liquids; apparatus for filtering water; water filtration apparatus; membranes for the filtration of water; filter apparatus for water supply installations; installations for water filtering; water treatment filters; water purification filters; installations for water filtration; filter boxes for water purification; filtering apparatus for fluids; filters for drinking water; filters for use with apparatus for water supply; filters for water purifiers; domestic water filtering apparatus; domestic water filtering units; drinking water filters; filtering devices, including, filters, filter cartridges, filter media, filter housings for domestic and commercial use; hydrogen water machines; hydrogen water generation apparatus; water ionizers; water

ionization apparatus; reverse osmosis filtration units [water treatment equipment]; ultraviolet water purification units.

86. In respect of the applicant's above referenced terms, I am, once again, unable to identify any meaningful comparison with any of the terms in the opponent's earlier 663 mark's specification. Accordingly, without submissions to suggest otherwise, I find the applicant's above referenced goods to be dissimilar to all of the goods in issue in the opponent's earlier 633 marks' specification.

Class 21

Household or kitchen utensils and containers; cookware and tableware, except forks, knives and spoons; unworked or semi-worked glass, except building glass; glassware, porcelain and earthenware. Combs and sponges; brushes, except paintbrushes; brush-making materials; articles for cleaning purposes;

87. All of the above referenced terms appear identically in the applicant's specification and in the opponent's 663 mark's specification. These goods are, therefore, self-evidently identical.

Water bottles; water bottles, sold empty; drinking bottles for sports; reusable water bottles; insulated water bottles; water containers; portable water dispensers; water purification bottles; household water filtration pitchers; hydration packs; collapsible water bottles; thermal insulated containers for water; travel mugs; glass water bottles;

88. For the same reasons outlined in paragraph 74 above, I consider the applicant's above referenced goods to be identical to the opponent's "household or kitchen utensils and containers" in line with the principle established in *Meric*.

Class 37

Installation, maintenance and repair services; installation, maintenance, and repair of water purification apparatus; installation and maintenance of water treatment systems; repair services for water purification machines; technical support services for water filtration systems; consultancy services relating to the installation of water purification

systems; servicing of water purification equipment; providing information relating to the installation of water filtration systems; emergency repair services for water treatment equipment.

89. All of the above referenced services may include the installation and maintenance of water filtration/purification/treatment systems. I compare these to the opponent's class 21 "sprinklers". Once again, as this is a comparison of goods and services, they differ in nature and method of use. They overlap at a very superficial level in purpose given that they all assist with the distribution of water. However, their specific purpose differs greatly, with the specific purpose of the applicant's above referenced service being to install and maintain a treated and purified water system, and the specific purpose of the opponent's good being to distribute water, largely for gardening purposes. They also overlap at a superficial level in user given that they would all be utilised by members of the general public. However, I see no basis for finding them to be competitive or complementary. The compared goods and services are not important to or indispensable from one another, and they serve different functions. These compared goods and services also differ in trade channels, with the applicant's above referenced services being provided by skilled professionals (such as plumbers and water engineers) and the opponent's good being purchasable from homeware stores or gardening retailers.
90. Whilst the superficial overlap in user and general purpose is noted, I do not consider this to be a sufficient basis for finding similarity, and I am once again reminded of the comments of Iain Purvis KC in *Unicorn Studio Inc v Veronese* referenced in paragraph 60 above. Noting all of the above, I find these compared services and goods to be dissimilar.
91. I now compare the contested mark's specification and the specification for the earlier 066 mark:

Class 11

Apparatus and installations for lighting, heating, cooling, steam generating, cooking, drying, ventilating, water supply and sanitary purposes; apparatus for water supply purposes; apparatus for sanitary purposes.

92. The applicant's above referenced terms appear identically in both the applicant's specification and the opponent's earlier 066 mark's specification. Once again, these goods are self-evidently identical.

Water filters; apparatus for filtering water; water filtration apparatus; membranes for the filtration of water; filter apparatus for water supply installations; installations for water filtering; water treatment filters; water purification filters; installations for water filtration; filter boxes for water purification; filtering apparatus for fluids; filters for drinking water; filters for use with apparatus for water supply; filters for water purifiers; domestic water filtering apparatus; domestic water filtering units; drinking water filters; filtering devices, including, filters, filter cartridges, filter media, filter housings for domestic and commercial use; reverse osmosis filtration units [water treatment equipment].

93. As discussed above, I consider all of the applicant's above referenced goods to be types of water filters, and I, once again, compare these goods with the opponent's "drinking water (filters for-)". For the same reasons outlined in paragraph 67 above, I consider these goods to be identical in line with the principle established in *Meric*.

Machines for purifying water; apparatus for purifying water; apparatus for purifying liquids; hydrogen water machines; hydrogen water generation apparatus; water ionizers; water ionization apparatus; ultraviolet water purification units.

94. As discussed above, I consider the applicant's above referenced goods to be types of water treatment apparatus and I, once again, compare these goods with the opponent's "apparatus and installation for [...] water supply and sanitary purposes". For the same reasons outlined in paragraph 69 above, I consider

these compared goods to be identical in line with the principle established in *Meric*.

Distillation machines for purifying solvents; Distillation apparatus for purifying solvents.

95. As discussed above, I consider the closest comparator to the applicant's above referenced goods to be the opponent's apparatus and installation for [...] water supply and sanitary purposes". However, for the same reasons outlined in paragraphs 70 to 72 above, I consider these compared goods to be dissimilar.

Class 21

Household or kitchen utensils and containers; cookware and tableware, except forks, knives and spoons; combs and sponges; brushes, except paintbrushes; brush-making materials; articles for cleaning purposes; unworked or semi-worked glass, except building glass; glassware, porcelain and earthenware.

96. All of the applicant's above referenced goods appear identically in both the applicant's specification and the opponent's earlier 066 mark's specification. These goods are, therefore, self-evidently identical.

Water bottles; water bottles, sold empty; drinking bottles for sports; reusable water bottles; insulated water bottles; water containers; portable water dispensers; water purification bottles; household water filtration pitchers; hydration packs; collapsible water bottles; thermal insulated containers for water; travel mugs; glass water bottles;

97. I compare the applicant's above referenced goods with the term "household or kitchen [...] containers" which is contained in the opponent's earlier 066 mark's specification. For the same reason outlined in paragraph 74 above, I consider these compared goods to be identical.

Class 37

Installation, maintenance and repair services;

98. I compare the applicant's above referenced services with the opponent's "machinery installation, maintenance and repair". I consider that the opponent's compared services would fall within the applicant's wider above referenced services, and that these services are therefore identical in line with the principle established in *Meric*.

Installation, maintenance, and repair of water purification apparatus; installation and maintenance of water treatment systems; repair services for water purification machines; technical support services for water filtration systems; consultancy services relating to the installation of water purification systems; servicing of water purification equipment; providing information relating to the installation of water filtration systems; emergency repair services for water treatment equipment.

99. I compare the applicant's above referenced services with the opponent's class 37 "repair of sanitary installations" and "information and advisory services relating to the aforesaid services". All of the applicant's above referenced services are repair, installation or maintenance services relating to water systems, and their associated consultancy services. I consider these compared services to overlap in nature and purpose. They also overlap in method of use and trade channels, as they all involve technical intervention and specialist expertise from engineers, plumbers and technicians. Further, I also consider them to overlap in user, being members of the general public. Given the overlap in user and purpose, I also consider there to be competition between the compared services.

100. Overall, I therefore consider these compared services to be similar to a high degree.

101. As some degree of similarity between the goods and services is required for a successful claim under section 5(2)(b) of the Act, the opponent's opposition must

fail in respect of those goods and services that I have found to be dissimilar.¹¹ However, I will consider whether there is a likelihood of confusion or association on the part of the average consumer in respect of the goods and services in issue which I have deemed to be similar or identical, and therefore whether the opposition succeeds in respect of those goods and services under section 5(2)(b) of the Act.

Average consumer and the purchasing act

102. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods and services in question (see *Lloyd Schuhfabrik Meyer*¹²).

103. In *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

- a. Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;
- b. The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;
- c. The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant

¹¹ *eSure Insurance v Direct Line Insurance* [2008] ETMR 77 CA

¹² Case C-342/97

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.

104. The goods and services for which I have found identity or similarity are broad in nature. As a consequence, I consider there to be two types of average consumers (members of the general public and business consumers).

105. Generally, the goods and services in issue will be purchased/engaged visually, with both types of consumers considering visual advertising and websites. The selection process will, therefore, likely be predominantly a visual one. However, I note that there may also be verbal recommendations, and that the aural component of the selection process cannot therefore be ignored, albeit, even in the circumstances where that are verbal recommendations I consider it unlikely that the average consumers will not view the trade marks in issue prior to a purchase of the goods and services being made.

106. Given their broad nature, the cost and frequency of purchase of the goods and services in issue is likely to vary considerably. I also consider that the level of attention consumers are likely to pay during the purchasing process will vary fairly significantly. By way of example, a member of the general public selecting an inexpensive kitchen utensil will pay a low degree of attention during the

purchasing process, whereas either a member of the general public or a business user wishing to engage a plumber or water engineer to install a water system in their home or at their business will be considerably more expensive. Overall, in any event, I consider that the level of attention that is likely to be paid by both types of consumers will vary from between a low to high level during the purchasing process.

Comparison of marks

107. It is clear from *Sabel BV v Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in *Bimbo SA v OHIM*,¹³ 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.”

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

109. The respective trade marks are shown below:

¹³ Case C-591/12P

Earlier marks	Contested mark
The 285 mark: 	
The 932 mark: 	
The 663 mark: 	
The 066 mark: 	

110. As discussed above, the opponent submits that overall the marks in issue are similar to a high degree (or to at least a medium degree). Specifically, the opponent submits that the marks in issue are visually “similar to a medium extent” on the basis that “the only difference with the [earlier marks] is the additional “H” element (and the addition of a hyphen which is not particularly distinctive) that does not serve to detract significantly from the clear similarity with O2”, and

aurally identical given “that all marks would be pronounced as “OH-TWO”. The opponent’s submissions in respect of the conceptual similarity between the marks is not particularly clear, but the opponent appears to be submitting that insofar as the contested mark could be understood as “oxygen”, then the marks are similar conceptually. However, if the contested mark is not understood as “Oxygen”, “then there would be no meaning, and therefore no conceptual analysis is possible”.

111. By contrast, the applicant submits that the marks in issue are “neither identical nor similar” to the earlier marks. Specifically, the applicant submits that the “presence of the hyphen and the use of the letters “OH” as a word element create a clearly distinguishable visual structure”, and that “Aurally and conceptually, the marks are also dissimilar and convey different overall impressions to the relevant public”.

Overall Impression:

112. The earlier 633 mark is a word mark containing the characters “O” and “2”. I consider that the average consumer will identify the characters “O2” as the chemical symbol for oxygen. Consequently, I am of the view that these characters hang together and will be viewed as a unit. There are no other elements which contribute to the 633 mark, so the overall impression of the 633 mark rests in the combination of the characters themselves.

113. The other earlier marks in issue (namely the 285 mark, the 932 mark and 066 mark) are all figurative marks which also contain the characters “O2”. However, the 2 in each of these earlier marks is in a subscript. Whilst I appreciate that the “O” element of each of the earlier marks is presented in a larger font, and that the beginning of marks tend to have more visual and aural impact,¹⁴ I consider that these characters are likely to be perceived as the chemical symbol for an oxygen molecule and that both characters therefore hang together and form a unit, and that the overall impression of these earlier marks rests in the

¹⁴ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

combination of the characters themselves. I do not consider the additional stylisation of any of these earlier marks to be remarkable. They all utilise a fairly standard typeface, albeit the earlier 285 mark and 066 mark are in a bold typeface, whereas the 932 mark is not, and the 066 mark is in a dark blue font, whereas the 285 mark and 932 mark are in a black font. I therefore consider that the slight variations in presentation between these three earlier marks plays a very limited role in the overall impression of these marks.

114. The contested mark is a word mark containing the word “OH” and letter “2”, separated by a hyphen. Although, once again, I appreciate that the beginning of marks tend to have more visual impact,¹⁵ in this instance, the contested mark is short (being just 4 characters and 3 letters in length) and, consequently, I do not consider that the positioning of the letters within the mark has any real bearing on the respective elements’ dominance on the overall impression of the mark. Accordingly, it is my view that neither element dominates and, as the mark contains no other elements, the overall impression rests equally in the word and number combination.

Comparison with the contested mark:

THE 285 MARK, 932 MARK AND 066 MARK:

115. Visually, save for slight variations in typecase (which I have found plays a very limited role in all of the above referenced earlier marks’ overall impression), all of the above referenced marks are presented the same. The opponent’s above referenced marks and the contested mark overlap in their first letter (“O”) and final character (“2”). However, the contested mark also has an additional (“H”) and hyphen in the centre of the mark, which are not present in the earlier marks. The above referenced earlier marks are all presented in a bold typeface, and the “2” in these earlier marks is presented in a subscript. However, as discussed above, I consider this stylisation to play a very limited role in the earlier marks. I also note that the contested mark is a word mark which therefore protects its use

¹⁵ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

of the characters (“OH-2”) in any normal font, including upper and lower-case letters, or any customary combination of those characters.¹⁶ Weighing up all of the above, I consider the above referenced earlier marks to be visually similar to the contested mark to a medium degree.

116. Aurally, as discussed above, I consider that the above referenced earlier marks will all be perceived as the chemical symbol for oxygen. However, I consider that a significant proportion of average consumers would still pronounce the two characters in all of these earlier marks. Accordingly, when spoken, the above referenced earlier marks will be pronounced by a significant proportion of average consumers as “OH-TOO”.
117. In respect of the contested mark, I consider that there will be a group of average consumers who will simply pronounce each letter and the number “2” separately, namely as (“O-H-2”). For that group of average consumers, whilst the compared marks overlap in their first and final syllable, the contested mark will have an additional syllable in the middle which is not present in the earlier marks. Accordingly, for that group of average consumers, the compared marks will be similar to a medium degree.
118. Having said that, I also consider that the presence of the hyphen in the contested mark will result the mark being pronounced by a significant proportion of average consumers as two syllables, with the “OH” and “2” elements being pronounced separately, and these elements will be pronounced as “OH-TOO”. Consequently, for that proportion of average consumers, I find the compared marks to be aurally identical.
119. I now turn to a conceptual comparison of these marks. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU, including *Ruiz Picasso v OHIM*.¹⁷ The assessment must, therefore, be made from the point of view of the average consumer.

¹⁶ LA Superquímica v European Union Intellectual Property Office (EUIPO), Case T-24/17 – paragraph 39

¹⁷ [2006] ECR I-643; [2006] E.T.M.R

120. As discussed above, I consider that the conceptual meaning the average consumer will identify from the characters “O2” will be the chemical symbol for oxygen. Given that it is so limited, I do not consider that the stylisation of the above referenced earlier marks provide any additional conceptual meaning.
121. The contested mark is made up of three elements. As discussed above, I consider that there will be a group of average consumers who read the contested mark as simply the letters “O”, “H” and the number “2”. For that group of average consumers, as they will only perceive one of the marks as having a conceptual meaning, the marks will be conceptually neutral.
122. However, I also consider that a significant proportion of average consumers will perceive the “OH” element of the contested mark as the commonly used interjection used to express immediate emotions, reactions or feelings. I consider that the hyphen in the contested mark will be given no conceptual meaning beyond being seen as a separation of the “OH” and “2” elements, and the “2” in the contested mark will simply be perceived as a referenced to the number. Accordingly, for that proportion of average consumers, given the differing conceptual meanings I have found would be attributable to both of the compared marks, I find the marks to be conceptually dissimilar.

The 663 mark:

123. Visually, the opponent’s above referenced mark and the contested mark overlap in their first letter (“O”) and final character (“2”). However, the contested mark also has an additional (“H”) and hyphen in the centre of the mark, which are not present in the earlier mark. Weighing up all of the above, I consider the marks to be visually similar to a medium degree.
124. Aurally, both characters in the earlier mark will be pronounced, forming two syllables and pronounced as “OH-TOO”. As discussed above, I consider that there will be a group of average consumers that pronounce each letter and the number “2” in the contested mark separately, namely as (“O-H-2”). For that group of average consumer, for the same reasons outlined in paragraph 117 above, I find the compared marks to be aurally similar to a medium degree.

125. Having said that, I do also consider that there will be a significant proportion of average consumers that perceive the contested mark as “OH” and “2”. Accordingly, for the same reasons outlined in paragraph 118 above, I consider that this proportion of average consumers will pronounce the earlier 633 mark and the contested mark as “OH-TOO” and therefore to be aurally identical.
126. Conceptually, even though the “2” in the earlier 663 mark is not presented in a subscript, I still consider that the meaning attributable to the earlier 932 mark by the average consumer from the combination of the “O” and “2” characters will be the same as that outlined in paragraph 120 above. Accordingly, in respect of the group of average consumers that I consider will perceive the contested mark as referenced in paragraph 121 above, the compared marks will be conceptually neutral.
127. However, in respect of the significant proportion of average consumers that I consider will perceive the contested marks as referenced in paragraph 122 above, the compared marks are conceptually dissimilar.

Distinctive character of the earlier trade mark

128. In *Lloyd Schuhfabrik Meyer* 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 C108/97 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).”

129. Whilst the distinctiveness of a mark may be enhanced as a result of it being used in the market, in this instance the opponent has provided no evidence to support such a finding. Consequently, I have only the inherent position to consider.
130. Distinctiveness is a scale along which marks of various types sit. A mark which is allusive of the goods/services will have less distinctive character than one that is not; dictionary words will also be less distinctive than words which are entirely fanciful. However, all will turn on the particular facts. For example, there are “invented” words which are really just composites of two allusive words and only distinctive as a result, and dictionary words which are more or less common than others.
131. The opponent submits the earlier marks are “highly” inherently distinctive in relation to the goods and services in issue “due to the fact that they are molecular and atomic symbols respectively for oxygen and consist of the elements O and 2”.
132. As discussed above, I consider that all of the earlier marks will be understood as a referenced to the universally known chemical symbol for oxygen. I do not consider this to be descriptive or allusive of most of the opponent’s goods and services. Though, I do consider it to be one of the most commonly known and identifiable chemical symbols. Accordingly, I find the earlier marks to have a medium level of inherent distinctive character for most of the opponent’s goods and services. However, I do consider the chemical symbol of oxygen to be allusive of the earlier marks’ “apparatus and installation for ventilating” goods and

“installation of ventilating apparatus” services. These goods and services appear in the earlier 285 mark, 932 mark and 066 marks’ specifications. Accordingly, for this limited number of goods and services, I consider the earlier 285 mark, 932 mark and 066 marks to have a low level of inherent distinctive character.

Likelihood Of Confusion

133. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, whilst 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/services down to the responsible undertakings being the same or related.
134. 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 (see *Sabel*¹⁸). The first is the interdependency principle i.e., a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa (see *Canon*¹⁹). It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods, and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.
135. Save for those goods and services that I have found to be dissimilar, I have found the applicant’s goods and services to be identical or similar to between a low and high degree to the opponent’s goods and services. I have also found all of the earlier marks to be visually similar to a medium degree, and that a significant proportion of average consumer would consider the compared marks to be aurally identical and conceptually dissimilar or neutral, and that all of the earlier marks have between a low and medium degree of inherent distinctive character.

¹⁸ C-251/95, para 22

¹⁹ C-39/97, para 17

136. I have identified that the average consumer for the goods in issue will be members of the general public and business consumers, who will demonstrate between a low and high level of attention during the purchasing process. I have also identified that the purchasing process for the goods and services in issue will be primarily visual in nature, though aural considerations cannot be excluded.
137. Weighing up all of the above and notwithstanding the principle of imperfect recollection, I consider that there are sufficient visual and conceptual differences (for a significant proportion of average consumers) between the marks to avoid them being mistakenly recalled as each other. I make this decision with due consideration of my finding that some of the goods and services in issue are highly similar or identical, and the interdependency principle, as I believe the visual and conceptual differences (again, for a significant proportion of average consumers) between the marks in issue outweigh the level of similarity or identity between the goods and services.
138. Whilst I appreciate that I have found the contested mark and all of the earlier marks to be aurally identical, I note that visual, aural and conceptual similarity do not always carry the same weight. For instance, where goods and services are purchased by primarily visual means, greater weight will be attributed to the visual similarities or differences.²⁰ In this case, given that the purchasing act is likely to be predominantly visual in nature, the visual differences between the competing marks are of particular importance as consumers are unlikely to select the services without sight of the marks.
139. Whilst I appreciate that all of the marks begin and end with the same characters, and that the beginnings of marks tend to have more visual and aural impact than the ends,²¹ I note that this is not always the case, and I am conscious that all of the marks in issue are short marks. I therefore consider that the visual differences between the marks will be more apparent and, as a consequence, the contested

²⁰ *New Look v OHIM* T-117/03 to T-119/03 and T-171/03

²¹ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

mark and earlier marks are unlikely to be recalled as one another. In the light of the above, I do not consider there to be a likelihood of direct confusion.

140. Accordingly, I will go on now to consider whether the average consumer, having recognised that the marks are different, considers the common element of all of the marks (the word “O” and number “2”) and determines, through a mental process, that the marks are related and originate from the same, or an economically linked undertaking.

141. Indirect confusion was described in the following terms by Iain Purvis KC, sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*:²²

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

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

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

²² BL O/375/10

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).”

142. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal.²³ I recognise that a finding of indirect confusion 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; this is mere association not indirect confusion.²⁴ The Court of Appeal has also emphasised that, where there is no direct confusion, there must be a “proper basis” for finding indirect confusion.²⁵

143. Noting the above, I also do not consider there to be a likelihood of indirect confusion between any of the earlier marks and the contested mark. The additional “H” and hyphen in the contested mark are not insignificant when presented in such a short mark (being just 4 characters in length). As outlined above, I consider that these elements hang together with the “O” and “2” element and play equal roles within the overall impression of the contested mark. The addition of these elements also results in the contested mark having an independent unitary conceptual meaning to that of the earlier marks. I can see no basis for finding that the average consumer would perceive the addition of these elements to be a logical or consistent brand extension or sub-brand of the

²³ Liverpool Gin Distillery and others v Sazerac Brands, LLC and others [2021] EWCA Civ 1207

²⁴ Duebros Limited v Heirler Cenovis GmbH, BL O/547/17

²⁵ Liverpool Gin Distillery and others v Sazerac Brands, LLC and others [2021] EWCA Civ 1207

earlier marks, or vice-versa, nor can I see any alternative basis for reaching a finding of indirect likelihood of confusion in this instance.

CONCLUSION

144. The opposition fails in its entirety, and the contested mark may, subject to any successful appeal of my decision, proceed to registration for all of the goods and services it has been applied for.

COSTS

145. As the applicant has been successful, it is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances, I award the applicant the sum of £250 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Preparing a Notice of Defence & Counterstatement:	£250
<u>Total:</u>	<u>£250</u>

146. I therefore order 02 Worldwide Limited to pay Optimal Hydration Limited the sum of £250. The above sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 30th day of June 2026

B Hartland

For the Registrar

Annex 1

Specification relied upon for the 285 mark:

Class 37

Building construction; installation, maintenance and repair of telecommunications installations, communications networks, computer networks and data networks; installation, maintenance and repair of telecommunications apparatus and equipment; installation, maintenance and repair of computer hardware; electric appliance installation and repair; machinery installation, maintenance and repair; photographic apparatus repair; telephone installation and repair; vehicle maintenance; vehicle breakdown repair services; aircraft repair; repair, namely, locksmithing [repair], office machine repair, radio repair, repair of alarms, repair of bags, repair of cameras, repair of facsimile machines, repair of footwear, repair of lighting apparatus, repair of machines, repair of optical instruments, repair of radio equipment, repair of sanitary installations, repair of spectacles, repair of surgical apparatus, repair of telephone apparatus, repair of tools, repair of toys or dolls, repair of ventilating apparatus, tyre repair; automobile repair; bicycle repair; boiler repair; building repair; car repair; clothing repair; repair of communications network; computer repair; fur care and repair; fur cleaning and repair; furniture repair; house building and repair; leather cleaning and repair; lock repair services; pump repair; refrigerator repair services; repair information; repair of automobiles; repair of building equipment; repair of building machines; repair of buildings; repair of clothing; repair of computers; repair of construction equipment; repair of cooking apparatus; repair of drying apparatus; repair of electrical equipment; repair of electronic apparatus; repair of furniture; repair of hand tools; repair of heating apparatus; repair of industrial machinery; repair of jewellery; repair of land vehicles; repair of lifts; repair of locks; repair of luggage; repair of medical devices; repair of plumbing; repair of pumps; repair of refrigerating apparatus; repair of roofing; repair of security locks; repair of sports equipment; repair of television apparatus; repair of upholstery; repair of vacuum cleaners; roofing repair; shoe repair; window repair; clock installation; electrical installation services; installation of audiovisual equipment; installation of bathing apparatus; installation of carpets; installation of communication equipment; installation of cooking appliances; installation of drying apparatus; installation of electrical wiring; installation of elevators; installation of engines; installation of fire alarms; installation of floor tiles; installation

of furniture; installation of heating apparatus; installation of kitchen appliances; installation of lighting apparatus; installation of plumbing; installation of refrigerating apparatus; installation of roofing; installation of satellite dishes; installation of security systems; installation of security alarms; maintenance and service of security alarms; maintenance and service of security systems; installation of telephone equipment; installation of ventilating apparatus; installation of windows; installing floor tiles; information and advisory services relating to the aforesaid services; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services provided over a telecommunications network.

Annex 2

Specification relied upon for the 932 mark:

Class 11

Apparatus and installation for lighting, heating, cooling, steam generating, cooking, drying, ventilating, water supply and sanitary purposes; refrigerating apparatus; anti-glare devices for vehicles [lamp fittings]; aquarium filtration apparatus; drinking water (filters for-); lamp shades; lampshade holders; light diffusers; lighters; lighters (gas-); sockets for electric lights; tanning apparatus [sun beds]; toilet seats; ultraviolet ray lamps, not for medical purposes; filters for air conditioning; parts and fittings for all the aforesaid goods.

Class 21

Household or kitchen utensils and containers; cookware and tableware, except forks, knives and spoons; combs and sponges; brushes, except paintbrushes; brush-making materials; articles for cleaning purposes; unworked or semi-worked glass, except building glass; glassware, porcelain and earthenware; steelwool; appliances for removing make-up [non-electric]; aquaria (indoor -); aquarium hoods; attracting and killing insects (electric devices for -); bird baths; bird-cages; birdcages; burners (perfume-); cages for household pets; candelabra [candlesticks]; candlesticks; cosmetic utensils; deodorising apparatus for personal use; feeding troughs; feeding troughs for animals; floss for dental purposes; fly catchers [traps or whisks]; fly swatters; gardening gloves; gloves (gardening-); gloves (polishing-); gloves for household purposes; indoor aquaria; indoor terrariums [plant cultivation]; indoor terrariums [vivariums]; insect traps; insects (electric devices for attracting and killing-); litter boxes [trays] for pets; litter trays [for pets]; non-electric appliances for removing make-up; make-up removing appliances; mangers for animals; mangers for livestock; menu card holders; mouse traps; nest eggs [artificial]; nest eggs, artificial; nozzles for sprinkler hose; nozzles for watering cans; perfume burners; perfume sprayers; perfume vaporizers; pets (cages for household -); pets (litter boxes [trays] for -); poultry rings; powder compacts; powder compacts, not of precious metal; powder puffs; rat traps; rats traps; rings for birds; roses for watering cans; sacred vessels, not of precious metal; sprinklers; sprinklers for watering flowers and plants; sprinkling devices; syringes for watering flowers and plants; tanks [indoor aquaria]; plant

cultivation terrariums (indoor -); terrariums (indoor -); traps (insect -); traps (rat -); litter trays for pets; troughs for livestock; watering cans; watering devices; aquarium hoods; indoor aquaria; indoor terrariums [vivariums]; tanks [indoor aquaria]; terrariums (indoor -); sugar tongs; tea cosies; parts and fittings for all the aforesaid goods.

Annex 3

Specification relied upon for the 663 mark:

Class 21

Household or kitchen utensils and containers; cookware and tableware, except forks, knives and spoons; bags for microwave cooking; microwave cooking (bags for-); combs and sponges; brushes, except paintbrushes; brush-making materials; articles for cleaning purposes; unworked or semi-worked glass, except building glass; glassware, porcelain and earthenware; steelwool; appliances for removing make-up [non-electric]; aquaria (indoor -); attracting and killing insects (electric devices for -); bird baths; bird-cages; birdcages; burners (perfume-); cages for household pets; candelabra [candlesticks]; candlesticks; cosmetic utensils; deodorising apparatus for personal use; feeding troughs; feeding troughs for animals; floss for dental purposes; fly catchers [traps or whisks]; fly swatters; gardening gloves; gloves (gardening-); gloves (polishing-); gloves for household purposes; indoor terrariums [plant cultivation]; indoor terrariums [vivariums]; insect traps; insects (electric devices for attracting and killing-); litter boxes [trays] for pets; litter trays [for pets]; non-electric appliances for removing make-up; make-up removing appliances; mangers for animals; mangers for livestock; menu card holders; mouse traps; nest eggs [artificial]; nest eggs, artificial; nozzles for sprinkler hose; nozzles for watering cans; perfume burners; perfume sprayers; perfume vaporizers; pets (cages for household -); pets (litter boxes [trays] for -); poultry rings; powder compacts; powder compacts, not of precious metal; powder puffs; rat traps; rats traps; rings for birds; roses for watering cans; sacred vessels, not of precious metal; sprinklers; sprinklers for watering flowers and plants; sprinkling devices; syringes for watering flowers and plants; tanks [indoor aquaria]; plant cultivation terrariums (indoor -); terrariums (indoor -); traps (insect -); traps (rat -); litter trays for pets; troughs for livestock; watering cans; watering devices; aquarium hoods; indoor aquaria; sugar tongs; parts and fittings for all the aforesaid goods.

Annex 4

Specification relied upon for the 066 mark:

Class 11

Apparatus and installation for lighting, heating, cooling, steam generating, cooking, drying, ventilating, water supply and sanitary purposes; refrigerating apparatus; acetylene flares; acetylene generators; air valves for steam heating installations; anti-splash tap nozzles; anti-glare devices for vehicles [lamp fittings]; aquarium filtration apparatus; atomic piles; barbecue grills (lava rocks for use in-); bath fittings; bath fittings (hot air-); boiler pipes [tubes] for heating installations; brackets for gas burners; carbon for arc lamps; chimney blowers; chimney flues; chimneys (lamp-); chromatography apparatus [for industrial purposes]; coils [parts of distilling, heating or cooling installations]; dampers [heating]; diffusers (light-); disposable sterilization pouches; distillation apparatus; distillation columns; drinking water (filters for-); economizers (fuel-); expansion tanks for central heating installations; faucets for pipes (am); feeding apparatus for heating boilers; filters [parts of household or industrial installations]; filters for drinking water; fire bars; fittings (bath-); fittings, shaped, for furnaces; fittings, shaped, for ovens; flare stacks for use In the oil Industry; flues for heating boilers; fountains; fountains (ornamental-); framework of metal for ovens; friction lighters for igniting gas; fuel economisers; furnace grates; furnaces (loading apparatus for-); furnaces (shaped fittings for-); gas burners (brackets for-); gas condensers [other than parts of machines]; gas heat generators [installations]; gas lighters; gas scrubbers [parts of gas installations]; generators (acetylene-); heat generators (gas-) [installations]; grates (furnace-); hot air bath fittings; humidifiers for central heating radiators; kiln furniture [supports]; lamp casings; lamp chimneys; lamp glasses; lamp globes; lamp mantles; lamp reflectors; lamp shades; lampshade holders; lava rocks for use in barbecue grills; level controlling valves in tanks; light diffusers; lighters; lighters (gas-); loading apparatus for furnaces; mixer taps for water pipes; nozzles (anti-splash tap-); nuclear fuel and nuclear moderating material (installations for processing-); nuclear reactors; oil-scrubbing apparatus; ornamental fountains; oven fittings made of fireclay; ovens (shaped fittings for-); pipe line cocks [spigots]; pipes [parts of sanitary installations]; polymerisation installations; pouches (disposable sterilization-); processing installations for fuel and nuclear moderating material; purification installations for sewage; radiator caps; reactors (nuclear-);

refining towers for distillation; reflectors (lamp-); regulating and safety accessories for gas apparatus; regulating and safety accessories for water apparatus; scrubbers [parts of gas installations]; seats (toilet-); sewage (purification installations for-); sockets for electric lights; stacks (flare-) for use in oil refineries; structural plates for ovens; tanning apparatus [sun beds]; taps [cocks, spigots] [faucets (am)] for pipes; taps [faucets]; thermostatic valves [parts of heating installations]; toilet seats; ultraviolet ray lamps, not for medical purposes; valves (level controlling-) in tanks; valves (thermostatic-) [parts of heating installations]; vehicles (anti-dazzle devices for-) [lamp fittings]; washers for water taps; water-pipes for sanitary installations; anti-dazzle devices for automobiles [lamp fittings]; automobiles (anti-dazzle devices for) [lamp fittings]; filters for air conditioning; parts and fittings for all the aforesaid goods; Ash boxes (Furnace -); Ash conveyor installations, automatic; Ash pits for furnaces; Furnace ash boxes.

Class 21

Household or kitchen utensils and containers; cookware and tableware, except forks, knives and spoons; combs and sponges; brushes, except paintbrushes; brush-making materials; articles for cleaning purposes; unworked or semi-worked glass, except building glass; glassware, porcelain and earthenware; steelwool; appliances for removing make-up [non-electric]; aquaria (indoor -); aquarium hoods; attracting and killing insects (electric devices for -); bird baths; bird-cages; birdcages; burners (perfume-); cages for household pets; candelabra [candlesticks]; candlesticks; cosmetic utensils; deodorising apparatus for personal use; feeding troughs; feeding troughs for animals; floss for dental purposes; fly catchers [traps or whisks]; fly swatters; gardening gloves; gloves (gardening-); gloves (polishing-); gloves for household purposes; indoor aquaria; indoor terrariums [plant cultivation]; indoor terrariums [vivariums]; insect traps; insects (electric devices for attracting and killing-); litter boxes [trays] for pets; litter trays [for pets]; non-electric appliances for removing make-up; make-up removing appliances; mangers for animals; mangers for livestock; menu card holders; mouse traps; nest eggs [artificial]; nozzles for sprinkler hose; nozzles for watering cans; perfume burners; perfume sprayers; perfume vaporizers; pets (cages for household -); pets (litter boxes [trays] for -); poultry rings; powder compacts; powder compacts, not of precious metal; powder puffs; rat traps; rats traps; rings for birds; roses for watering cans; sacred vessels, not of precious metal;

sprinklers; sprinklers for watering flowers and plants; sprinkling devices; syringes for watering flowers and plants; tanks [indoor aquaria]; plant cultivation terrariums (indoor -); terrariums (indoor -); traps (insect -); traps (rat -); troughs for livestock; watering cans; watering devices; sugar tongs; cosies (tea-); tea cosies; parts and fittings for all the aforesaid goods.

Class 35

Advertising; business management; business administration; office functions; organisation, operation and supervision of loyalty and incentive schemes; retail services and online retail services connected with the sale of scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus for recording, transmission or reproduction of sound or images; retail services and online retail services connected with the sale of magnetic data carriers, recording discs, compact discs, DVDs and other digital recording media, mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment, computers, computer software, fire-extinguishing apparatus, apparatus for the transmission of sound and image, telecommunications apparatus, mobile telecommunication apparatus, mobile telecommunications handsets; retail services and online retail services connected with the sale of digital telecommunication apparatus and instruments, digital tablets, computer hardware, computer application software, computer software downloadable from the Internet, recorded computer software, software applications, mobile software applications, downloadable applications for multimedia devices, computer games, computer game software, computer games programs, PDAs (Personal Digital Assistants); retail services and online retail services connected with the sale of pocket PCs, mobile telephones, laptop computers, telecommunications network apparatus, drivers software for telecommunications networks and for telecommunications apparatus, protective clothing, protective helmets, televisions, headphones, global positioning system [GPS] apparatus, satellite navigation devices, computer software recorded onto CD Rom, SD-Cards (secure digital cards), glasses, spectacle glasses, sunglasses; retail services and online retail services connected with the sale of protective glasses and cases therefor, contact lenses, cameras, camera lenses, MP3

players, audio tapes, audio cassettes, audio discs, audio-video tapes, audio-video cassettes, audio-video discs, video tapes, video cassettes, video discs, CDs, DVDs, downloadable electronic publications, downloadable image files, downloadable music files, mouse mats, magnets, mobile telephone covers, mobile telephone cases; retail services and online retail services connected with the sale of hands free kits for phones, magnetic cards, encoded cards, mobile phone application software, software for telecommunication, software for the processing of financial transactions, electronic notice boards, electric batteries, battery chargers, security alarms, security cameras, security warning apparatus, security control apparatus, security surveillance apparatus, computer software for security purposes; retail services and online retail services connected with the sale of computer software for insurance purposes, SIM cards, aerials, alarms, electric cables, chemistry apparatus and instruments, recorded computer operating programs, computer peripheral devices, data processing apparatus, diagnostic apparatus, not for medical purposes, distance measuring apparatus, distance recording apparatus, downloadable ring tones for mobile phones, electronic tags for goods; retail services and online retail services connected with the sale of electronic tags for goods, eyepieces, goggles for sports, magnetic identity cards, intercommunication apparatus, loudspeakers, magnetic data media, mathematical instruments, modems, electric monitoring apparatus, television apparatus, testing apparatus not for medical purposes, telecommunication transmitters, paper, cardboard, printed matter, photographs, stationery; retail services and online retail services connected with the sale of office requisites, instructional and teaching material, packaging material, educational equipment, writing implements, writing instruments, writing materials, books, catalogues, cards, instruction manuals, magazines, mail order catalogues, newspapers, pamphlets, periodical publications, calendars, diaries, labels, maps, printed publications, postcards, posters, printed tariffs, printed forms; retail services and online retail services connected with the clothing, footwear, headgear, household or kitchen utensils and containers, cookware, tableware, food cooking equipment, cutlery, cleaning articles, gardening articles, jewellery, horological and chronometric instruments, musical instruments, apparatus for lighting, textiles, household textile articles, furniture, furnishing, bags, luggage, toiletries, cosmetics, pharmaceutical preparations, cleaning preparations; retail services and online retail services connected with the sale of bags, luggage, games and playthings, gymnastic articles, sporting articles, sporting equipment, meat, fish,

poultry, game, food, foodstuffs, confectionery, desserts, baked goods, delicatessen products, fruit, flowers, coffee, tea, cocoa, sugar, rice, beers, mineral waters, aerated waters and other non-alcoholic drinks, alcoholic beverages, matches, tobacco; retail services and online retail services relating to interactive touch screen terminals, selfie sticks [hand-held monopods], smart rings, smartphones, smartwatches, automobile accessories, automobile parts, vehicles, fuels, building materials, metal hardware, electronic components, recorded content; business management of retail outlets; arranging subscriptions to telecommunications for others; compilation and systemisation of information into computer databases; compilation of statistics; cost price analysis; arranging of competitions for advertising purposes; recruitment services; employment recruitment; employment consultancy; employment agencies; providing employment information; providing employment information in connection with youth programme schemes; commercial administration of the licensing of the goods and services of others; commercial information and advice for consumers [consumer advice shop]; opinion polling; personnel recruitment; price comparison services; procurement services for others [purchasing goods and services for other businesses]; rental of advertising space; rental of advertising time on communication media; sales promotion for others; sponsorship search; negotiation of business contracts for others; information and advisory services relating to the aforesaid services; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

Class 37

Building construction; installation, maintenance and repair of telecommunications installations, communications networks, computer networks and data networks; installation, maintenance and repair of telecommunications apparatus and equipment; installation, maintenance and repair of computer hardware; electric appliance installation and repair; machinery installation, maintenance and repair; photographic apparatus repair; telephone installation and repair; vehicle maintenance; vehicle breakdown repair services; aircraft repair; repair, namely, locksmithing [repair], office machine repair, radio repair, repair of alarms, repair of bags, repair of cameras, repair of facsimile machines, repair of footwear, repair of lighting apparatus, repair of machines, repair of optical instruments, repair of radio equipment, repair of sanitary

installations, repair of spectacles, repair of surgical apparatus, repair of telephone apparatus, repair of tools, repair of toys or dolls, repair of ventilating apparatus, tyre repair; automobile repair; bicycle repair; boiler repair; building repair; car repair; clothing repair; repair of communications network; computer repair; fur care and repair; fur cleaning and repair; furniture repair; house building and repair; leather cleaning and repair; lock repair services; pump repair; refrigerator repair services; repair information; repair of automobiles; repair of building equipment; repair of building machines; repair of buildings; repair of clothing; repair of computers; repair of construction equipment; repair of cooking apparatus; repair of drying apparatus; repair of electrical equipment; repair of electronic apparatus; repair of furniture; repair of hand tools; repair of heating apparatus; repair of industrial machinery; repair of jewellery; repair of land vehicles; repair of lifts; repair of locks; repair of luggage; repair of medical devices; repair of plumbing; repair of pumps; repair of refrigerating apparatus; repair of roofing; repair of security locks; repair of sports equipment; repair of television apparatus; repair of upholstery; repair of vacuum cleaners; roofing repair; shoe repair; window repair; clock installation; electrical installation services; installation of audiovisual equipment; installation of bathing apparatus; installation of carpets; installation of communication equipment; installation of cooking appliances; installation of drying apparatus; installation of electrical wiring; installation of elevators; installation of engines; installation of fire alarms; installation of floor tiles; installation of furniture; installation of heating apparatus; installation of kitchen appliances; installation of lighting apparatus; installation of plumbing; installation of refrigerating apparatus; installation of roofing; installation of satellite dishes; installation of security systems; installation of security alarms; maintenance and service of security alarms; maintenance and service of security systems; installation of telephone equipment; installation of ventilating apparatus; installation of windows; installing floor tiles; information and advisory services relating to the aforesaid services; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services provided over a telecommunications network.