

O/0786/23

TRADE MARKS ACT 1994

IN THE MATTER OF REGISTRATION NO. UK00003636421

IN THE NAME OF PAT MCGRATH COSMETICS LLC

FOR THE FOLLOWING TRADE MARK:

**SKINFUSION**

**SkinFusion**

(SERIES OF 2)

IN CLASSES 3, 41, 42 AND 44

AND IN THE MATTER OF AN APPLICATION FOR A DECLARATION OF  
INVALIDITY THERETO

UNDER NO. 504732

BY LEGART FORSCHUNGSATELIER GMBH

## BACKGROUND AND PLEADINGS

1. Pat McGrath Cosmetics LLC (“the proprietor”) is the owner of the series of trade marks shown on the cover page of this decision. The contested mark was filed on 4 May 2021 and registered on 29 October 2021. The contested mark stands registered for the goods and services shown in paragraph 39 below.

2. On 29 March 2022, Legart Forschungsatelier GmbH (“the applicant”) applied for a declaration of invalidity against the contested mark based upon sections 47 and 5(2)(a) of the Trade Marks Act 1994 (“the Act”). The applicant relies upon the following trade mark:

SKINFUSION

UKTM no. 905154001<sup>1</sup>

Filing date 28 July 2006; registration date 29 August 2007

3. The applicant relies upon all goods and services for which the earlier mark is registered, as set out in the Annex to this decision. The applicant claims that the marks are identical and that the goods and services are similar, with the result that there is a likelihood of confusion.

4. The proprietor filed a counterstatement denying the claims made and requesting proof of use of the earlier mark.

5. The proprietor is represented by Basck Limited and the applicant is represented by Jens Liesegang.

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<sup>1</sup> On 1 January 2021, the UK left the EU after the expiry of the transition period. Under Article 54 of the Withdrawal Agreement, the Registry created comparable UK trade marks for all rights holders with an existing EUTM. As a result of the applicant having an EUTM being protected as at the end of the Implementation Period, a comparable UK trade mark was automatically created. The comparable trade mark shown here is now recorded on the UK trade mark register, has the same legal status as if it had been applied for and registered under UK law, and retains its original filing dates.

6. Both parties filed evidence in chief. The applicant filed evidence in reply. Neither party requested a hearing, and only the proprietor filed written submissions in lieu. This decision is taken following a careful perusal of the papers.

## **EVIDENCE AND SUBMISSIONS**

7. The applicant filed evidence in the form of the witness statement of Frank W. Legart dated 16 August 2022, which is accompanied by 12 exhibits (LP1 to LP12). Mr Legart is the Managing Director of the applicant. His evidence goes to the use of the earlier mark.

8. The applicant's evidence in chief was accompanied by undated written submissions filed on 29 September 2022.

9. The proprietor filed evidence in chief in the form of the witness statement of Christian Bunke dated 17 January 2023, which is accompanied by 5 exhibits. Mr Bunke is the representative of the proprietor.

10. The proprietor's evidence in chief was accompanied by written submissions dated 17 January 2023.

11. The applicant filed evidence in reply in the form of the witness statement of Ina Dimsky-Legart dated 29 March 2023, which is accompanied by 7 exhibits (LP13 to LP19).

12. The proprietor filed written submissions in lieu dated 28 April 2023.

## **RELEVANCE OF EU LAW**

13. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

## **PRELIMINARY ISSUE**

14. In its counterstatement, the proprietor made reference to the fact that it has multiple marks registered which have SKIN- as a prefix. The proprietor claims that it has a 'family' of trade marks. For the avoidance of doubt, the fact that the proprietor's mark may be part of a 'family' of marks (I have no evidence to support this) is not a defence to an invalidation under section 5(2)(a). The proprietor could have relied upon this to seek to invalidate the applicant's mark if it considers that it has earlier rights which pre-date those of the applicant. However, it has not done so. Consequently, I will not consider this line of argument any further.

## **DECISION**

15. Section 5 of the Act has application in invalidation proceedings by virtue of section 47 of the Act. Section 47 of the Act reads as follows:

"47. (1) [...]

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

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

(b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied,

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

(2ZA) [...]

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

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

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

(c) the use conditions are met.

(2B) The use conditions are met if –

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

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

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

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

(2C) For these purposes –

(a) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the

form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

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

(2D)-(2DA) [Repealed]

(2E) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.

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

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

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

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

(b) that the application for a declaration of invalidity is based on section 5(2) and the earlier trade mark had not yet become sufficiently distinctive

to support a finding of likelihood of confusion within the meaning of section 5(2);

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

(3) [...]

(4) [...]

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

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

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

16. Section 5(2)(a) of the Act states:

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

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

(b) [...]

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

17. By virtue of its earlier filing date, the trade mark upon which the applicant relies qualifies as an earlier trade mark pursuant to section 6 of the Act. As the earlier mark had completed its registration process more than 5 years before the application for a declaration of invalidity, it is subject to proof of use pursuant to section 6A of the Act.

### **Proof of use**

18. I will begin by assessing whether there has been genuine use of the earlier mark. As explained in the above legislation, there are two relevant periods. The first is the period of 5 years ending with the date of the application for invalidity i.e. 30 March 2017 to 29 March 2022, and the second is the period of 5 years ending with the filing date of the contested mark i.e. 5 May 2016 to 4 May 2021.

19. In *Walton International Ltd & Anor v Verweij Fashion BV* [2018] EWHC 1608 (Ch) Arnold J (as he then was) summarised the law relating to genuine use as follows:

“114. [...] The CJEU has considered what amounts to “genuine use” of a trade mark in a series of cases: Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, *La Mer* (cited above), Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bunderversvereinigung Kamaradschaft ‘Feldmarschall Radetsky’* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], [2013] ETMR 16, Case C-609/11 P *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], [2014] ETMR, Case C-141/13 P *Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089] and Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434], [2017] Bus LR 1795.

115. The principles established by these cases may be summarised as follows:

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

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

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Leno* at [29]; *Centrotherm* at [71]. Accordingly, affixing of a trade mark on goods as a label of quality is not genuine use unless it guarantees, additionally and simultaneously, to consumers that those goods come from a single undertaking under the control of which the goods are manufactured and which is responsible for their quality: *Gözze* at [43]-[51].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14] and [22]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71]; *Reber* at [29].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark,

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

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72] and [76]-[77]; *Leno* at [55].

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

20. Section 100 of the Act states that:

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

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

22. Because the earlier mark is a comparable mark, paragraph 9 of Part 1, Schedule 2A of the Act is also relevant. This provision means that use in the EU will be relevant for any part of the relevant periods which fall prior to IP Completion Day (i.e. 31 December 2020). For those parts of the relevant periods which fall after that date, only use in the UK will be relevant.

23. Mr Legart gives evidence that the applicant has been using its mark in the EU since 2004 for “moisturizing gels, hyaluron and vitamin C cosmetic serum for skin care”. I understand “hyaluron” to be a type of serum.<sup>2</sup> During the entirety of the relevant periods, these products have been sold in packaging bearing the sign SKINFUSION.<sup>3</sup> The applicant started selling these products on Amazon in November 2020.<sup>4</sup> It appears that these sales were directed towards the German market (a German flag appears in the top righthand corner of the page provided and information is provided in what appears to be German) and there is no evidence to suggest that any promotional activities were directed to the UK public or that goods were offered via the UK Amazon webpage.

24. Mr Legart gives evidence that the applicant’s products have been promoted in three magazines. One of these was published in 2015 and so is prior to both relevant periods. The second and third were published in “2017” and “March 2017” and so would have fallen within the earlier of the relevant periods, but it is unclear whether they would have fallen within the later of the two. These all appear to be German magazines.

25. There is some discrepancy in the turnover figures provided by the applicant’s two witnesses:

<b>Mr Legart’s “approximate” turnover figures:</b>		<b>Ms Dimsky-Legart’s “exact” turnover figures:</b>	
2017	€25,000	2017	€20,911.86
2018	€11,000	2018	€8,788.82

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<sup>2</sup> Exhibit LP4

<sup>3</sup> Exhibits LP2 and LP3

<sup>4</sup> Exhibit LP5

2019	€8,000	2019	€3,184.84
2020	€16,000	2020	€16,809.57
2021	€222,000	2021	€193,905.27

26. I agree with the proprietor that it is entirely unsatisfactory that the applicant has provided what appear to be inflated approximate turnover figures (with the exception of 2020) in Mr Legart’s witness statement. No explanation is provided as to how this discrepancy arose. Further, I note that Ms Dimsky-Legart states that Exhibit LP14 sets out the applicant’s turnover. These figures appear the same as those provided above for 2017, 2018 and 2019. However, for 2020 the figure is €6,302.80 and for 2021 the figure is €4,639.46. It is not clear to me why these figures are different. I can only assume it relates to Ms Dimsky-Legart’s reference to the turnover figures provided in Exhibit 14 relating to cosmetics sold “directly to customers”. Mr Legart noted in his statement that the applicant has also sold its products through hotel beauty spas, and perhaps this is the point of distinction. In any event, the position is far from clear and so I will carry out my assessment on the basis of the lower figures. Neither witness has provided any information about what proportion (if any) of the turnover figures for 2021 relate to sales made in the UK market.

27. The applicant’s witnesses have provided various invoices relating to sales of goods sold under the mark SKINFUSION.<sup>5</sup> I note that these invoices also relate to products sold under other marks, and I have discounted those goods. I also note that one invoice is duplicated in the evidence of both witnesses. I am not entirely clear on some of the information contained within the invoices because they are in German and no explanation is provided by the witnesses, nor has an official translation been supplied. Further, some of the invoices display quantities in what appear to be 1,000s (e.g. 5,000, 1,000). However, taking into account what appear to be the unit price and the total price figures displayed next to them, this cannot be 1,000s of units. When comparing the figures provided in the duplicated invoice, it appears that these are single figures. Consequently, I will proceed on the basis that these refer to individual units i.e. 5,000 = 5 units.

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<sup>5</sup> Exhibits LP9 and LP14 to LP18

28. The invoices themselves are dated between 2017 and 2022. Some of the invoices are dated outside both relevant periods; some only fall within one of them. The majority of the invoices dated 2021 are addressed to customers in countries outside of the UK and, consequently, will not be relevant. However, of those that are relevant to one (or both) of the relevant periods, and that are addressed to customers in the relevant jurisdictions, I note that they are predominantly addressed to customers located in Germany, but also include sales to customers in the UK and Austria. I note that some of the goods covered by the invoices are testers or have been given away for free, and I have discounted those from my assessment. It is not possible to identify what some of the goods are from the descriptions given. However, of those I can identify, the invoices include sales of goods such as eye cream, serum, anti-wrinkle cream, detox oil and body oil. However, the vast majority of the sales relate to serums.

29. The applicant's mark has clearly been used as registered.<sup>6</sup> There are certainly issues with the applicant's evidence. I also accept the proprietor's position that the market in question is significant in size.<sup>7</sup> However, on balance, taking into account the (exact) turnover figures (using the lower of the two figures where there are discrepancies) and the sales to customers located in different member states over a number of years (albeit predominantly in Germany), I am satisfied that there is sufficient evidence to justify genuine use in the EU in relation to serums for use on the skin during the relevant period.

30. I must now consider whether, or the extent to which, the evidence shows use of the earlier mark in relation to the goods and services relied upon. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10, Mr Geoffrey Hobbs Q.C. (as he then was) as the Appointed Person summed up the law as being:

“In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of

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<sup>6</sup> *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12

<sup>7</sup> See the witness statement of Mr Bunke and accompanying exhibits.

the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned.”

31. In *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch), Mr Justice Carr summed up the law relating to partial revocation as follows:

“iii) Where the trade mark proprietor has made genuine use of the mark in respect of some goods or services covered by the general wording of the specification, and not others, it is necessary for the court to arrive at a fair specification in the circumstance, which may require amendment; *Thomas Pink Ltd v Victoria’s Secret UK Ltd* [2014] EWHC 2631 (Ch) (“Thomas Pink”) at [52].

iv) In cases of partial revocation, pursuant to section 46(5) of the Trade Marks Act 1994, the question is how would the average consumer fairly describe the services in relation to which the trade mark has been used; *Thomas Pink* at [53].

v) It is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do. For example, in *Pan World Brands v Tripp Ltd* (Extreme Trade Mark) [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally; *Thomas Pink* at [53].

vi) A trade mark proprietor should not be allowed to monopolise the use of a trade mark in relation to a general category of goods or services simply because he has used it in relation to a few. Conversely, a proprietor cannot reasonably be expected to use a mark in relation to all possible variations of the particular goods or services covered by the registration. *Maier v Asos Plc* [2015] EWCA Civ 220 (“Asos”) at [56] and [60].

vii) In some cases, it may be possible to identify subcategories of goods or services within a general term which are capable of being viewed independently. In such cases, use in relation to only one subcategory will not

constitute use in relation to all other subcategories. On the other hand, protection must not be cut down to those precise goods or services in relation to which the mark has been used. This would be to strip the proprietor of protection for all goods or services which the average consumer would consider to belong to the same group or category as those for which the mark has been used and which are not in substance different from them; *Mundipharma AG v OHIM* (Case T-256/04) ECR II-449; EU:T:2007:46.”

32. Clearly, the applicant has provided no evidence of use to support its services in classes 42 and 44. In my view, the only possible terms in the applicant’s specification to which the use shown could relate are “cosmetic preparations for skincare” and “cosmetics”. However, these are clearly very broad terms. It would not, in my view, be appropriate to allow the applicant to rely upon these broader terms when use has been shown in relation to a much narrower sub-category. I also do not consider that it would be appropriate to narrow the specification down to the exact serum types shown in the evidence. Consequently, I consider “serums for skincare” to be a fair specification.

### **Section 5(2)(a) – case law**

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

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the

imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

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

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

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

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

(g) a lesser degree of similarity between the goods or services may be offset by a 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 to mind the earlier mark, is not sufficient;

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

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

### **Identity of the marks**

34. Both marks in the proprietor's series of marks consist of the conjoined words SKINFUSION (presented either in upper or title case). The earlier mark consists of the word SKINFUSION (in upper case). Protection of a word mark covers use of that mark in differing presentations (including differing casing). Consequently, the marks are plainly identical.

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

35. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the Court of Justice of the European Union ("CJEU") stated that:

"22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, 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).”

36. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods and services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it.

37. I will begin by assessing the inherent distinctiveness of the earlier mark. The applicant’s mark consists of the conjoined words SKINFUSION. Given that the applicant’s goods are skincare products, I consider this mark to be allusive. It is distinctive to between a low and medium degree, at best.

38. The applicant has not pleaded that the distinctive character of its mark has been enhanced through use. However, as it has filed evidence of use, I will make a finding for completeness. The relevant market for assessing enhanced distinctiveness is the UK market. I have no information regarding advertising spend in the UK, the turnover figures are not broken down to specify sales made in the UK and I have no market share information. The information relating to the UK market is very limited and the information that I do have is far from sufficient to establish that the distinctiveness of the mark has been enhanced through use.

### **Comparison of goods and services**

39. Bearing in mind my findings above, the competing goods and services are as follows:

<b>Applicant’s goods</b>	<b>Proprietor’s goods</b>
<u>Class 3</u> Serums for skincare.	<u>Class 3</u> Cosmetics; makeup
	<u>Class 41</u>

	<p>Education; Entertainment; Training; Education services, namely training in the form of courses, exhibitions, seminars, workshops relating to beauty arts, makeup, healthcare and/or beauty care; Entertainment and training related to beauty arts; Beauty arts instruction; Instruction in cosmetic beauty; Arranging, organizing and conducting exhibitions, conferences and shows and seminars relating to beauty and/or makeup; Education and training services relating to beauty and/or makeup; Educational services in the nature of beauty schools; Education and training in the field of healthcare and/or beautycare; Publishing of printed matter and electronic publications relating to beauty and/or makeup; Provision of on-line publications (not downloadable); Publication of teaching materials and articles; Organization of fashion shows for entertainment purposes.</p> <p><u>Class 42</u></p> <p>Scientific and technological services and research and design relating thereto; Design of cosmetics; Design of cosmetics formulas; Design of cosmetic packaging; Research of cosmetics; Laboratory research in the field of cosmetics; Cosmetics research; Scientific research relating to cosmetics;</p>
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	<p>Testing of cosmetics; Inspection of cosmetics; Laboratory analysis in the field of cosmetics.</p> <p><u>Class 44</u></p> <p>Services of a makeup artist; Beauty consultancy services; Beauty care services; Healthcare services; Hygienic and beauty care for humans; Hygienic services; Personal well-being treatments in the field of body and beauty care; Beauty salons; Beauty salon services; Provision of beauty treatments; Advice relating to cosmetics; Aromatherapy; Beauty care; Beauty care for human beings; Beauty consultancy; Beauty spa services; Beauty treatment; Consultancy in the field of body and beauty care; Consultancy relating to cosmetics; Cosmetic makeup services; Facial beauty treatment services; Hairdressing salon services; Hygienic and beauty care; Information relating to beauty; Makeup services; Makeup consultation services; Makeup application services; Makeup consultation services provided on-line or in-person; On-line makeup consultation services; Permanent makeup services; Providing information about beauty; Tattooing.</p>
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40. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the CJEU in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

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

41. Guidance on this issue has also come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and, in particular, whether they are or are likely to be found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance, whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

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

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category,

designated by trade mark application (Case T-388/00 *Institut for 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.”

43. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the GC stated that “complementary” means:

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

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

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

Whilst on the other hand:

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

45. I note the proprietor's submission that although certain parts of the parties' specifications may appear to overlap, the different nature of their respective businesses mean that the goods and services would be directed at different users and sold through different trade channels. Whilst that may be the case in practice, I am required to assess the similarity of the goods and services based upon a notional assessment of the parties' specifications. This includes all of the ways in which the terms listed might be used/sold. The parties' specific activities are not relevant to that assessment (with the exception of the proof of use findings made above).

### Class 3

46. "Serums for skincare" in the applicant's specification falls within the broader term "cosmetics" in the proprietor's specification. Consequently, they are identical on the principle outlined in *Meric*.

47. I am not convinced that serums would fall within the category of "makeup" in the proprietor's specification. To my mind, makeup relates to goods such as lipstick, foundation, eye shadow etc. However, they would clearly be sold through the same trade channels, to the same users. They overlap in method of use in that they would all be applied to the skin, and they share a purpose in that they are used to improve the user's appearance. The nature of the goods may overlap to a degree. Consequently, I consider them to be similar to between a medium and high degree.

### Class 41

*Education; Training; Education services, namely training in the form of courses, exhibitions, seminars, workshops relating to beauty arts, makeup, healthcare and/or beauty care; [...] Training related to beauty arts; Beauty arts instruction; Instruction in cosmetic beauty; Arranging, organizing and conducting exhibitions, conferences and shows and seminars relating to beauty and/or makeup; Education and training services relating to beauty and/or makeup; Educational services in the nature of beauty schools; Education and training in the field of healthcare and/or beautycare.*

48. These services all include education/training in the field of beauty/cosmetics. Clearly, there may be an overlap in user. However, the nature, method of use and purpose of the goods and services will all clearly differ. The applicant submits that there is an overlap in trade channels because:

“The broad nature of the services could include beauty tips such as how to apply cosmetic preparation. These services are actually provided by the manufacturers of the aforementioned goods in class 3 since this is a way of capturing the attention of consumers and of building up a loyal customer base (brand loyalty). Indeed, such goods often contain a reference to a website for example in order for the consumers to glean more information on how to make the most of their appearance or to get the best products etc.”

49. Firstly, I note that the applicant has provided evidence to support this.<sup>8</sup> This shows that one business sells both skincare products and offers online lessons on how to apply products and another offers both skincare products and offers consultations regarding what products would be best for the user. The latter of these services is not, in my view, educational. Whilst the former undoubtedly is an educational-type service, the fact that only one provider can be shown to offer such a cross-over (and it is a provider with a significant reputation, Estee Lauder) does not seem to indicate that it is common for such an overlap in trade channels to exist in the market. Secondly, I am not convinced that all of the terms in the proprietor’s specification would include the services that the applicant suggests. For example, “arranging, organizing and conducting exhibitions, conferences and shows and seminars relating to beauty and/or makeup” would not include the sort of online short instructional videos/sessions that the applicant is describing. Thirdly, even if I accept that companies that sell a range of cosmetics might provide tips on how they might be used together or how best to apply them, the applicant has demonstrated genuine use for “serums for skincare” only. I am not convinced that a business that sells “serums for skincare” only would also provide educational/training courses on how to use those or other cosmetic products. Consequently, I consider it unlikely that there will be any meaningful overlap in trade channels.

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<sup>8</sup> Exhibits LP10 and LP11

50. Even if I am wrong in that finding, any overlap in trade channels is likely to be minimal. The goods and services are not in competition, given their differing purposes. I also do not consider them to be complementary within the meaning of the case law. Consequently, taking all of the above factors into account, I consider the goods and services to be dissimilar. If I am wrong in this finding, they are similar to only a very low degree.

*Entertainment; Entertainment [...] related to beauty arts.*

51. Again, I acknowledge that there may be an overlap in user. However, the nature, method of use and purpose of the goods and services clearly differ. I consider it unlikely that there is any overlap in trade channels, and I have no evidence before me to convince me otherwise. The goods and services are not in competition, nor are they complementary. Consequently, I consider the goods and services to be dissimilar.

*Publishing of printed matter and electronic publications relating to beauty and/or makeup; Provision of on-line publications (not downloadable); Publication of teaching materials and articles.*

52. I accept that the user of these services may overlap with the user of the applicant's goods. However, these are completely different in nature, method of use and purpose to the applicant's goods. Publication services are normally provided by specialist businesses. Even where the subject matter of the publications is in the same or similar field to those of the applicant's goods, I have no evidence to suggest that there is any overlap in trade channels with businesses producing/selling "serums for skincare". The goods and services are neither in competition, nor are they complementary. Consequently, I consider the goods and services to be dissimilar.

*Organization of fashion shows for entertainment purposes.*

53. I accept that consumers of the applicant's goods may also purchase the proprietor's services. However, the nature, method of use and purpose of the goods and services clearly differ. I have no evidence before me to suggest that a business

producing/selling “serums for skincare” would also be responsible for organising fashion shows. I consider it unlikely that there is any meaningful overlap in trade channels. The goods and services are neither in competition, nor complementary. Consequently, I consider them to be dissimilar.

#### Class 42

54. In my view, the proprietor’s services are likely to be used by businesses/professionals in the cosmetic/beauty industry who are looking to formulate a new product or ensure that existing products meet certain requirements. This will be different to the user of the applicant’s goods, which will be members of the general public. The method of use, nature and purpose of the goods and services clearly differ. I have no evidence before me to suggest an overlap in trade channels and I can see no reason why there would be. The goods and services are neither in competition, nor complementary. Consequently, I consider them to be dissimilar.

#### Class 44

*Services of a makeup artist; Beauty consultancy services; Beauty care services; Hygienic and beauty care for humans; Hygienic services; Personal well-being treatments in the field of body and beauty care; Beauty salons; Beauty salon services; Provision of beauty treatments; Advice relating to cosmetics; Aromatherapy; Beauty care; Beauty care for human beings; Beauty consultancy; Beauty spa services; Beauty treatment; Consultancy in the field of body and beauty care; Consultancy relating to cosmetics; Cosmetic makeup services; Facial beauty treatment services; Hygienic and beauty care; Information relating to beauty; Makeup services; Makeup consultation services; Makeup application services; Makeup consultation services provided on-line or in-person; On-line makeup consultation services; Providing information about beauty.*

55. In my view, these are all services that may be provided through the same trade channels to the same users as the applicant’s “serums for skincare”. It is not uncommon for beauty salons/spas to sell both services and the goods that they use in the course of providing those services. Similarly, cosmetic brands often provide

services by which you can have a consultation with a make up artist/skin care specialist to discuss the products that would be most suitable for the user. The nature, purpose and method of use of the goods and services differ. They are not in competition, but they are complementary. Consequently, I consider them to be similar to a medium degree.

*Permanent makeup services.*

56. These are services which apply permanent make up to the customer. They are, in my experience, typically provided by specialist businesses, and I have no evidence to suggest that there would be an overlap in trade channels with the applicant's goods. The users will clearly overlap. However, the purpose, method of use and nature of the goods and services clearly differ. I do not consider them to be in competition or complementary. Consequently, I consider them to be dissimilar. If I am wrong in this finding, then they are similar to only a very low degree.

*Healthcare services.*

57. These are services aimed at supporting the health of the user or offering treatments for particular ailments. Consequently, they differ in nature, method of use and purpose to the applicant's goods. The user could clearly overlap. I see no obvious point of overlap in trade channels, nor do I have any evidence to support such a finding. They are neither in competition, nor complementary. Consequently, I consider the goods and services to be dissimilar.

*Hairdressing salon services.*

58. These services would clearly overlap in user with the applicant's goods. However, the nature, method of use and purpose would differ. I can see no reason why there would be an overlap in trade channels, given that the applicant's goods are for skincare purposes and the proprietor's services are for hair care purposes. There is no evidence before me to support such a finding. I do not consider the goods and services to be in competition, nor are they complementary. Consequently, I consider them to be dissimilar.

### *Tattooing.*

59. These are specialist services, provided through specialist trade channels. I can see no reason why there would be an overlap with the applicant's goods, nor do I have any evidence to support such a finding. Clearly, the users could overlap. However, the nature, method of use and purpose of the goods and services are different. They are neither in competition, nor are they complementary. Consequently, I consider them to be dissimilar.

60. There must be some degree of similarity between the goods and services in order for there to be a likelihood of confusion. Consequently, for those goods and services that I have found to be dissimilar, the application for invalidation must fail.

### **The average consumer and the nature of the purchasing act**

61. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods and services. I must then determine the manner in which the goods and services are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J (as he then was) described the average consumer in these terms:

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

62. The average consumer for the goods and services will be predominantly members of the general public, although I recognise that it may include professionals in the

cosmetics field (such as beauticians and make up artists). The goods and services will vary in frequency and cost of purchase, but factors such as suitability for skin type, aesthetics, and experience of service providers are likely to be taken into account. The proprietor submits that there is a high degree of brand-loyalty amongst cosmetic users and that this means that a high level of attention will be paid. The applicant submits that the level of attention will vary from average (or medium) to high. As both parties seem to agree that a high degree of attention will be paid in some circumstances, I will conduct the comparison on that basis.

63. The goods and services are likely to be selected following perusal of signage on websites, packaging, advertisements and/or physical premises. Consequently, I consider the purchasing process to be predominantly visual. However, I do not discount an aural component to the purchase, given that advice may be sought from retail assistants and word-of-mouth recommendations may be made.

### **Likelihood of confusion**

64. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. 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. The first is the interdependency principle i.e. a lesser degree of similarity between the respective goods and services may be offset by a greater degree of similarity between the respective marks and vice versa. As I mentioned above, it is necessary for me to keep in the mind the distinctive character of the earlier mark, the average consumer for the goods and services 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.

65. I have found as follows:

- a) The goods and services vary from being similar to a very low degree to identical (except where I have found them to be dissimilar).
- b) The average consumer is a member of the general public or a professional in the field of cosmetics (such as a beautician or make up artist).
- c) I will conduct the comparison on the basis that a high degree of attention is being paid.
- d) The purchasing process will be predominantly visual, although I do not discount an aural component to the purchase.
- e) The marks are identical.
- f) The earlier mark is inherently distinctive to between a low and medium degree.

66. The relatively low degree of inherent distinctiveness is a factor in favour of the proprietor. However, in my view, this is outweighed by the identity of the marks and the degree of similarity of the majority of the goods and services that I have found to be similar. Even where a high degree of attention is being paid, I do not consider that this will assist in avoiding one mark being confused for the other, because they are identical and there is no point of difference to enable the consumer to distinguish between them. In my view, where the marks are used on goods that are similar to at least a medium degree, I consider there to be a likelihood of direct confusion.

67. Where the goods are similar to only a very low degree (at best), I consider that the distance between the goods and services will be sufficient to offset the identity of the marks, and there will be no likelihood of confusion.

## **CONCLUSION**

68. The application for invalidation is successful in relation to the following goods and services, for which the registration is deemed never to have been made:

Class 3      Cosmetics; makeup.

Class 44      Services of a makeup artist; Beauty consultancy services; Beauty care services; Hygienic and beauty care for humans; Hygienic services; Personal well-being treatments in the field of body and beauty care; Beauty salons; Beauty salon services; Provision of beauty treatments; Advice relating to cosmetics; Aromatherapy; Beauty care; Beauty care for human beings; Beauty consultancy; Beauty spa services; Beauty treatment; Consultancy in the field of body and beauty care; Consultancy relating to cosmetics; Cosmetic makeup services; Facial beauty treatment services; Hygienic and beauty care; Information relating to beauty; Makeup services; Makeup consultation services; Makeup application services; Makeup consultation services provided on-line or in-person; On-line makeup consultation services; Providing information about beauty.

69. The application for invalidation is unsuccessful in relation to the following goods and services, for which the proprietor's mark can remain registered:

Class 41      Education; Entertainment; Training; Education services, namely training in the form of courses, exhibitions, seminars, workshops relating to beauty arts, makeup, healthcare and/or beauty care; Entertainment and training related to beauty arts; Beauty arts instruction; Instruction in cosmetic beauty; Arranging, organizing and conducting exhibitions, conferences and shows and seminars relating to beauty and/or makeup; Education and training services relating to beauty and/or makeup; Educational services in the nature of beauty schools; Education and training in the field of healthcare and/or beautycare; Publishing of printed matter and electronic publications relating to beauty and/or makeup; Provision of on-line publications (not downloadable); Publication of teaching materials and articles; Organization of fashion shows for entertainment purposes.

Class 42 Scientific and technological services and research and design relating thereto; Design of cosmetics; Design of cosmetics formulas; Design of cosmetic packaging; Research of cosmetics; Laboratory research in the field of cosmetics; Cosmetics research; Scientific research relating to cosmetics; Testing of cosmetics; Inspection of cosmetics; Laboratory analysis in the field of cosmetics.

Class 44 Healthcare services; Hairdressing salon services; Permanent makeup services; Tattooing.

### **COSTS**

70. As both parties have enjoyed an equal degree of success, I decline to make an award of costs.

**Dated this 16th day of August 2023**

**S WILSON**

**For the Registrar**

## ANNEX

### Class 3

Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices; paintstripper; preparations for cleaning waste pipes; make-up removing preparations; astringent for cosmetic purposes; alum stones (antiseptic); amber (perfume); antistatic preparations for household purposes; antiperspirants (toiletries); breath-freshening sprays; ethereal essences; essential oils; cedarwood (essential oils of-); citron (essential oils of-); eyebrow cosmetics; eyebrow pencils; soaps for brightening textiles; cake flavourings [essential oils]; bath salts, not for medical purposes; beard dyes; moustache wax; bergamot oil; pumice stones; cream for whitening the skin; laundry bleach; bleaches for cosmetic use; bleaching salts; bleaching soda; extracts of flowers (perfumes); polish for furniture and flooring; floor wax; colour-brightening chemicals for household purposes (for laundry use); deodorants for personal use; disinfectant soaps; deodorant soap; detergents other than for use in manufacturing operations and for medical purposes; diamantine (abrasive); compressed air in cans for cleaning and dust removal; scented wood; preparations for perfuming linen; scented water; Bleach; paint-stripping preparations; depilatory preparations; depilatory wax; decalcifying and descaling preparations and means for domestic use; laundry blueing; colorants for toilet purposes; paint removing preparations; cosmetic dyes; greases for cosmetic purposes; degreasers (other than for use in manufacturing processes); varnish-removing preparations; stain removers; gaultheria oil; geraniol; shining preparations (polish); laundry glaze; starch glaze for laundry purposes; glass cloths; glass cloth; smoothing preparations [starching]; pumice stone; bases for flower perfumes; hair dyes; hair spray; hair wash preparations; hair lotions; cosmetic creams; cosmetic preparations for skincare; heliotropin; ionone (perfumery); ionone (perfumery); adhesives for affixing false hair; adhesives for cosmetic purposes; adhesives for affixing false eyelashes; eau-de-Cologne; corundum (abrasive); cosmetics; cosmetic kits; cosmetic pencils; cosmetic preparations for baths; cosmetic preparations for slimming purposes; cleaning chalk; artificial nails; false eyelashes; lacquer-removing preparations; lacquer-removing preparations; lavender water; leather bleaching preparations; creams for leather; preservatives for leather (polishes); lipsticks; solvents for floor wax (cleansers); lotions

for cosmetic purposes; make-up; almond milk for cosmetic purposes; almond milk for cosmetic purposes; almond oil; medicated soaps; carbides of metal (abrasives); leaf shine compositions for plants; musk (perfumery); mouth washes (not for medical purposes); nail polish; nail care preparations; washing soda, for cleaning; soda lye; neutralizers for permanent waving; oils for cosmetic purposes; oils for cosmetic purposes; hair-waving preparations; oils for perfumes and scents; perfumery goods; perfumes; pastes for razor strops; mint for perfumery; mint essence; aromatics (essential oils); flavourings for beverages (essential oils); polishing creams; polishing preparations; denture polishes; polishing paper; jewellers' rouge; polishing stones; waxes (polishing); pomades for cosmetic use; potpourris (fragrances); dry cleaning preparations; furbishing preparations; quillaia bark for washing; shaving preparations; shaving soaps; shaving stones (antiseptic); after-shave; fumigation preparations (perfumes); windscreen cleaning liquids; cleansing milk for toilet purposes; cleaning preparations; preparations for cleaning dentures; oils for cleaning purposes; shaving soap; rust removing preparations; anti-skid liquids for floors; anti-skid wax for floors; safrol; volatile alkali (ammonia) (detergent); sandpaper; whiting; Abrasive and grinding preparations; abrasives; abrasive paper; make-up; make-up preparations; make-up powder; emery; emery cloth; emery paper; sandcloth; tailors'wax; beauty masks; shoe polish and creams; shoe wax; cobbler's wax; shoemakers'wax; anti-perspirant soap; soaps; soap for foot perspiration; shampoos; silicon carbide (abrasive); sun-tanning preparations (cosmetics); starch for laundry purposes; badian essence; talcum powder for toilet use; wallpaper cleaning preparations; terpenes (essential oils); turpentine, for degreasing; oil of turpentine for degreasing; cosmetic preparations for animals; shampoos for pets; toiletries; toilet soaps; soap for foot perspiration; tripoli stone for polishing; tissues impregnated with cosmetic lotions; petroleum jelly for cosmetic purposes; volcanic ash for cleaning; laundry wax; bluing for laundry; laundry soaking preparations; washing preparations; hydrogen peroxide for cosmetic purposes; cotton wool for cosmetic purposes; cotton sticks for cosmetic purposes; fabric softeners; incense; cosmetic preparations for eyelashes; mascara; tooth bleaching gel; dentifrices; decorative transfers for cosmetic purposes.

#### Class 42

Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer

hardware and software; legal services; updating of computer software; updating of Internet pages; architectural consultancy; consultancy with regard to the design of homepages and Internet pages; Telecommunications engineering consultancy; industrial property consultancy; providing computer programs on data networks; operating an Internet search engine; biological research; consultancy in the field of computers; Computer software consulting; systems analysis; computer systems design; data management on servers; computer software design; homepage and webpage design; certification agency services (trust centres), namely issuing and management of digital codes and/or digital signatures; architecture; building, namely the technical preparation of building projects; chemistry services; computer programming; graphic-design services; draftsman's services; industrial design; interior design services; dress-design services; physics research; technical measuring and testing; packaging design services; litigation services; chemists services; engineering; virus protection; digital image processing; chemical analysis; technical tests and checks; oil prospecting; technical measuring; scientific experiments; authenticating works of art; editing, formatting and transfer of data on to blank CDs (premastering); EDP consultancy; calibration (measuring); furnishings consultancy; electronic data security; electronic data storage services; development of usage concepts with regard to technical matters (facility management); research and development (for others); calculating emissions and immissions; determining concentrations of hazardous materials; computer programming; creation of web pages; analysis for oil-field exploitation; computer animation; geological survey; oil field surveys; surveying; scientific reports; bacteriological research; chemical research; cosmetic research; technical research; mechanical research; geological research; geological prospecting; design and maintenance of websites for third parties; film, television and video licensing; hardware and software consultancy; cloud seeding; implementation of computer programs on networks; installation and maintenance of software for Internet access; installation of computer programs; integrative consultancy for individuals and businesses (mediation); calibration and function testing of measuring apparatus; configuring computer networks by means of software; construction drafting; conversion of computer programs and data (other than physical alteration); conversion of data or documents from physical to electronic media; webpage design; copying of computer programs; land surveying; performance monitoring and analysis of network operations; licensing of computer software (legal services); licensing of software;

licensing of industrial property rights; material testing; textile testing; legal research services; research, research in databases and on the Internet, for others; computer software installation and maintenance; research physics; quality control; editing of Internet sites (support services); registration of domain names; arbitration services; server administration; security services for protection against illegal network access; social science consultancy; voice mail; urban planning; Styling (industrial design); technical consultancy; technical project studies; technical project management in the field of electronic data processing; testing the roadworthiness of vehicles; checking of digital signatures; oil-well testing; intellectual property watching services; environmental protection consultancy; environmental assessment services; underwater exploration; allocating and registering of domain names; issuance of licenses to industrial property rights and copyrights; rental and maintenance of memory space for websites, for others (hosting); computer software rental; hiring out data-processing equipment; rental of storage space on the Internet; rental of web servers; rental of web servers; arranging and leasing access time to computer databases; providing of legal know-how (franchising); providing of technical expertise (franchising); copyright management; maintenance of computer software; material testing; weather forecasting; recovery of computer data; scientific research; cloud seeding; certification services; providing memory capacity for external use (web-housing); providing web space (web-hosting); providing of memory space on the Internet.

#### Class 44

Medical services; hygienic and beauty care for human beings or animals; agriculture, horticulture or forestry services; out-patient services; aromatherapy services; tree surgery; pharmacy advice; saunas; sun-tanning studios (hygienic and beauty care); public baths for hygiene purposes; Hospices; pet grooming; Turkish baths; landscape architecture; blood bank services; midwife services; health clinics; pharmacy; Medical services; blood-donation services; chiropractics; Flower arranging; hairdressing salons; landscape gardening services; hospitals; landscape architecture services; medical laboratory services; opticians' services; services of a psychologist; rehabilitation centres; healthcare; veterinary services; dentistry; plant nurseries; rest homes; rest homes; medical clinic services; medical clinics; sanatoriums; beauty-salon services; aerial and surface spreading of fertilizers and other agricultural chemicals;

medical and clinical examinations; massages; providing courses of withdrawal treatment for addicts; nutrition consultation; facility management or infrastructural building management, namely maintenance of green spaces; Gardening; horticulture; hygienic and beauty care; health consultancy; hair implantation; in-vitro fertilisation; nursing (medical); wreath making; artificial insemination services; landscape gardening; manicuring; physiotherapy; plastic surgery; psychosocial care; maintenance of turf; vermin exterminating (for agriculture); Nursing homes; tattooing; teledoctor services; therapeutic and medical care and support; animal grooming; animal breeding; weed killing; farming equipment rental; rental of medical equipment; renting of sanitary facilities.