

BL O/1023/23

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003705353

BY EBEBEK MAĞAZACILIK A.Ş.

TO REGISTER THE TRADE MARK:



IN CLASSES 12, 16, 20, 24 AND 35

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 433048

BY DREAMS LIMITED

BACKGROUND AND PLEADINGS

1. On 3 March 2020, EBEBEK MAĞAZACILIK A.Ş. (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the European Union. The applicant subsequently applied for the same mark in the UK on 30 September 2021. In accordance with Article 59 of the Withdrawal Agreement between the UK and the European Union, by filing an application for the same mark in the UK within nine months of the end of the transition period, the applicant’s mark is deemed to have the same filing and priority date as the EU mark. Therefore, the deemed priority date of the application in these proceedings is considered to be 3 March 2020.

2. The application was partially opposed by Dreams Limited (“the opponent”) on 28 March 2022. The opposition is based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and is directed against the following goods and services of the application:

Class 20 Furniture, made of any kind of material; mattresses; pillows; air mattresses and cushions, not for medical purposes, water beds; mirrors; bouncing chairs for babies, playpens for babies, cradles, infant walkers; display boards, frames for pictures and paintings, identification plates, identification tags, nameplates, identification labels made of wood or synthetic materials; packaging containers of wood or plastics, casks for use in transportation or storage, barrels, storage drums, tanks, boxes, storage containers, transportation containers, chests, loading pallets and closures for the aforementioned goods, of wood or plastics; furniture fittings, of wood or synthetic materials, opening and closing mechanisms of wood or synthetic materials; ornaments and decorative goods of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, beeswax, plastic or plaster namely figurines, holiday ornaments for walls, sculptures, trophies; kennels, nesting boxes and beds for household pets; portable ladders and mobile boarding stairs of wood or synthetic materials; bamboo curtains, roller indoor blinds [for interiors], slatted indoor blinds, strip

curtains, bead curtains for decoration, curtain hooks, curtain rings, curtain tie-backs, curtain rods.

Class 24 Woven or non-woven textile fabrics; textile goods for household use, not included in other classes: curtains, bed covers, sheets (textile), pillowcases, blankets, quilts, towels; flags, pennants, labels of textile; swaddling blankets; sleeping bags for camping.

Class 35 The bringing together, for the benefit of others, of a variety of goods, namely, bicycles and their bodies, handlebars and mudguards for bicycles, vehicle seats, head-rests for vehicle seats: safety seats for children, for vehicles, seat covers for vehicles, vehicle covers (shaped), sun-blinds adapted for vehicles, luggage carriers for vehicles, bicycle and ski carriers for cars, saddles for bicycles or motorcycles, air pumps for vehicles, for inflating tires, baby carriages, wheelchairs, pushchairs, paper and cardboard, paper and cardboard for packaging and wrapping purposes, cardboard boxes, paper towels, toilet paper, paper napkins, plastic materials for packaging and wrapping purposes, printing blocks and types, bookbinding material, printed publications, printed matter, books, magazines, newspapers, bill books, printed dispatch notes, printed vouchers, calendars, posters, photographs [printed], paintings, stickers [stationery], postage stamps, stationery, office stationery, instructional and teaching material [except furniture and apparatus], writing and drawing implements, artists' materials, paper products for stationery purposes, adhesives for stationery purposes, pens, pencils, erasers, adhesive tapes for stationery purposes, cardboard cartons [artists' materials], writing paper, copying paper, paper rolls for cash registers, drawing materials, chalkboards, painting pencils, watercolors [paintings], paint rollers and paintbrushes for painting, furniture, made of any kind of material, mattresses, pillows, air mattresses and cushions, not for medical purposes, water beds, mirrors, rocking chairs for babies, playpens for babies, cradles, infant walkers, display boards, frames for pictures and paintings, identification plates, identification tags, nameplates, identification labels made of wood or synthetic materials,

packaging containers of wood or plastics, casks for use in transportation or storage, barrels, storage drums, tanks, boxes, storage containers, transportation containers, chests, loading pallets and closures for the aforementioned goods, of wood or plastics, small hardware goods of wood or synthetic materials included in this class, furniture fittings, of wood or synthetic materials, opening and closing mechanisms of wood or synthetic materials, ornaments and decorative goods of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, beeswax, plastic or plaster namely figurines, holiday ornaments for walls, sculptures, trophies, kennels, nesting boxes and beds for household pets, portable ladders and mobile boarding stairs of wood or synthetic materials, bamboo curtains, roller indoor blinds [for interiors], slatted indoor blinds, strip curtains, bead curtains for decoration, curtain hooks, curtain rings, curtain tie-backs, curtain rods, enabling customers to conveniently view and purchase those goods, such services may be provided by retail stores, wholesale outlets, by means of electronic media or through mail order catalogues.

3. Under section 5(2)(b), the opponent relies upon the following trade marks:

DREAMS

Comparable UK trade mark (EU) registration no. UK00917963494

Filing date 1 October 2018; Registration date 15 February 2019.

(“The First Earlier Mark”)



Comparable UK trade mark (EU) registration no. UK00918191994

Filing date 4 February 2020; Registration date 24 June 2020.

(“The Second Earlier Mark”)

DREAM BIGGER

UK registration no. UK00003453941

Filing date 24 December 2019.

Registration date 20 March 2020.

(“The Third Earlier Mark”)

LITTLE BIG DREAMS

UK registration no. UK00003273795

Filing date 29 November 2017.

Registration date 25 May 2018.

(“The Fourth Earlier Mark”)

4. The opponent relies upon all of its class 20, 24 and 35 goods and services for which its earlier marks are registered, as contained in the Annex to this decision.

5. As shown above, the opposition is based upon the opponent’s First and Second Earlier Comparable UK trade marks (EU),¹ and its Third and Fourth Earlier Marks, claiming that there is a likelihood of confusion because the marks are highly similar and the goods and services are identical.

6. The applicant filed a counterstatement denying the claims made.

7. A hearing took place before me on 15 August 2023. The opponent was represented by Mr Philip Harris of Lane IP Limited. Albeit not present at the hearing, the applicant is represented by Baron Warren Redfern. I make this decision having taken full account of all the papers, referring to them below as necessary.

¹ Following the end of the transition period of the UK’s withdrawal from the EU, all EU trade marks (“EUTM”) registered before 1 January 2021 were recorded as comparable trade marks in the UK trade mark register (and as a consequence, have the same legal status as if they had been applied for and registered under UK law). A ‘comparable trade mark (EU)’ retains the same filing date, priority date (if applicable) and registration date of the EUTM from which it derives.

RELEVANCE OF EU LAW

8. 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 on 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.

DECISION

Section 5(2)(b)

9. Section 5(2)(b) reads as follows:

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

(a)...

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

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

10. The First Earlier Mark had completed its registration process more than five years before the relevant date (the priority date of the applicant’s mark). Accordingly, the use provisions at s.6A of the Act do apply. However, as the applicant did not request that the opponent prove use of its mark, it is entitled to rely upon all of its goods and services without demonstrating that it has used its First Earlier Mark.

11. The Second, Third and Fourth Earlier Marks had not completed their registration process more than five years before the relevant date. Accordingly, the use provisions

at s.6A of the Act do not apply. The opponent may rely on all of the goods and services it has identified without demonstrating that it has used the marks.

12. I note that at the hearing, Mr Harris confirmed that the First Earlier Mark and the Fourth Earlier Mark are the opponent's best case. I will therefore continue my assessments based on those registrations only. I will come back to the Second and Third Earlier Marks if necessary later in my decision.

Section 5(2)(b) case law

13. In making this decision, I bear in mind the following principles 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 great degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

14. The competing goods and services are as follows:

Opponent's goods and services	Applicant's goods and services
<p data-bbox="193 246 794 286">The First Earlier Mark</p> <p data-bbox="193 302 794 342"><u>Class 20</u></p> <p data-bbox="193 358 794 1003">Furniture; bedroom furniture; mirrors; beds; water beds; divans; bedsteads; headboards; bedding, other than bed linen; pillows; mattresses; open spring and pocket spring mattresses; memory foam and latex mattresses; futons; air cushions and air pillows; air mattresses; bed casters not of metal; bed fittings not of metal; chairs; armchairs; cabinets; chests of drawers; desks; footstools; cots and cradles; parts and fittings for all the aforesaid goods.</p> <p data-bbox="193 1070 794 1111"><u>Class 24</u></p> <p data-bbox="193 1126 794 1608">Textiles; fabrics and textiles for beds and furniture; bed linen; duvets; bed covers; bed blankets, bed clothes; covers for duvets; mattress covers; covers for pillows and pillow cases; covers for cushions; bedspreads; covers for hot water bottles; furniture coverings of textile; quilts; parts and fittings for all the aforesaid goods.</p> <p data-bbox="193 1675 794 1715"><u>Class 35</u></p> <p data-bbox="193 1731 794 2004">Retail services relating to the sale of bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, non-medicated soaps,</p>	<p data-bbox="798 246 1399 286"><u>Class 20</u></p> <p data-bbox="798 302 1399 2004">Furniture, made of any kind of material; mattresses; pillows; air mattresses and cushions, not for medical purposes, water beds; mirrors; bouncing chairs for babies, playpens for babies, cradles, infant walkers; display boards, frames for pictures and paintings, identification plates, identification tags, nameplates, identification labels made of wood or synthetic materials; packaging containers of wood or plastics, casks for use in transportation or storage, barrels, storage drums, tanks, boxes, storage containers, transportation containers, chests, loading pallets and closures for the aforementioned goods, of wood or plastics; furniture fittings, of wood or synthetic materials, opening and closing mechanisms of wood or synthetic materials; ornaments and decorative goods of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, beeswax, plastic or plaster namely figurines, holiday ornaments for walls, sculptures, trophies; kennels, nesting boxes and beds for household pets; portable ladders and mobile boarding stairs of wood or synthetic materials; bamboo curtains, roller indoor blinds [for interiors], slatted indoor blinds, strip</p>

<p>perfumery, essential oils, non-medicated cosmetics, non-medicated hair lotions, scents, fragrances, oils for perfumes and scents, perfumeries, room scenting sprays, scented fabric refresher sprays, scented linen sprays, scented oils, scented room sprays, air fragrance preparations; Retail services relating to the sale of air fragrance reed diffusers, air fragrancing preparations, aromatics for fragrances, cleaning and fragrancing preparations, Cushions filled with fragrant substances, cushions impregnated with fragrant substances, fragrance for household purposes, fragrance preparations, fragrance refills for non-electric room fragrance dispensers, fragrance sachets, refills for electric room fragrance dispensers, room fragrances, room fragrancing products; Retail services relating to the sale of Scientific, measuring, checking (supervision), life-saving and teaching apparatus and instruments, data processing equipment, computer software, computer hardware, mobiles apps, downloadable software applications, wearable monitors, monitoring instruments, monitoring apparatus, other than for medical purposes, monitoring units [electric], electronic sensors, bio-sensors, movement sensors; Retail services</p>	<p>curtains, bead curtains for decoration, curtain hooks, curtain rings, curtain tie-backs, curtain rods.</p> <p>Class 24</p> <p>Woven or non-woven textile fabrics; textile goods for household use, not included in other classes: curtains, bed covers, sheets (textile), pillowcases, blankets, quilts, towels; flags, pennants, labels of textile; swaddling blankets; sleeping bags for camping.</p> <p>Class 35</p> <p>The bringing together, for the benefit of others, of a variety of goods, namely, bicycles and their bodies, handlebars and mudguards for bicycles, vehicle scats, head-rests for vehicle scats: safety seats for children, for vehicles, scat covers for vehicles, vehicle covers (shaped), sun-blinds adapted for vehicles, luggage carriers for vehicles, bicycle and ski carriers for cars, saddles for bicycles or motorcycles, air pumps for vehicles, for inflating tires, baby carriages, wheelchairs, pushchairs, paper and cardboard, paper and cardboard for packaging and wrapping purposes, cardboard boxes, paper towels, toilet paper, paper napkins, plastic materials for packaging and wrapping purposes, printing blocks and</p>
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<p>relating to the sale of sensors for scientific use to be worn by a human to gather human biometric data, electronic tracking apparatus and instruments, wearable activity trackers, measuring apparatus and instruments, computer software in the field of tracking, monitoring and analysing of sleep, movement and heart rate, electronic devices for tracking, monitoring and analysing of sleep, movement and heart rate [other than for medical use]; Retail services relating to the sale of mobiles apps in the field of tracking, monitoring and analysing of sleep, movement and heart rate, downloadable software applications in the field of tracking, monitoring and analysing of sleep, movement and heart rate; Retail services relating to the sale of medical and surgical apparatus and instruments, namely medical devices for sensing, measuring, diagnostic and treatment purposes in the field of sleep including wearable medical devices to be worn while sleeping, Pulse rate monitors, medical devices for measuring sleep, precision sensors for medical use, sensor apparatus for medical use; Retail services relating to the sale of apparatus for lighting, lighting, light bulbs, lamps and light sources, lighting connected to alarm clocks, luminaires, controllable</p>	<p>types, bookbinding material, printed publications, printed matter, books, magazines, newspapers, bill books, printed dispatch notes, printed vouchers, calendars, posters, photographs [printed], paintings, stickers [stationery], postage stamps, stationery, office stationery, instructional and teaching material [except furniture and apparatus], writing and drawing implements, artists' materials, paper products for stationery purposes, adhesives for stationery purposes, pens, pencils, erasers, adhesive tapes for stationery purposes, cardboard cartons [artists' materials], writing paper, copying paper, paper rolls for cash registers, drawing materials, chalkboards, painting pencils, watercolors [paintings], paint rollers and paintbrushes for painting, furniture, made of any kind of material, mattresses, pillows, air mattresses and cushions, not for medical purposes, water beds, mirrors, rouncing chairs for babies, playpens for babies, cradles, infant walkers, display boards, frames for pictures and paintings, identification plates, identification tags, nameplates, identification labels made of wood or synthetic materials, packaging containers of wood or plastics, casks for use in transportation or storage, barrels, storage drums, tanks, boxes, storage</p>
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<p>light sources and lighting apparatus, filters for lighting appliances; Retail services relating to the sale of horological and chronometric instruments, clocks, alarm clocks, electronic alarm clocks, alarm clocks which use light to wake-up users, alarm clocks with in-built lights; Retail services relating to the sale of furniture, bedroom furniture, mirrors, beds, water beds, divans, bedsteads, headboards, bedding, pillows, mattresses, open spring and pocket spring mattresses, memory foam and latex mattresses, futons, air cushions and air pillows, air mattresses, sleeping bags, bed casters not of metal, bed fittings not of metal, chairs, armchairs, cabinets, chests of drawers, desks, footstools, cots and cradles; Retail services relating to the sale of household or kitchen utensils and containers, articles for cleaning purposes, scent sprays [atomizers], air fragrancing apparatus, aerosol dispensers, not for medical purposes, perfume burners, perfume vaporizers, perfume sprayers, plug-in diffusers for mosquito repellents, plug-in diffusers for air fragrancing; Retail services relating to the sale of textiles, fabrics and textiles for beds and furniture, bed linen, duvets, bed covers, bed blankets, bed clothes, covers for duvets, mattress covers,</p>	<p>containers, transportation containers, chests, loading pallets and closures for the aforementioned <u>goods, of wood or plastics, small hardware goods of wood or synthetic materials included in this class</u>, furniture fittings, of wood or synthetic materials, opening and closing mechanisms of wood or synthetic materials, ornaments and decorative goods of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, beeswax, plastic or plaster namely figurines, holiday ornaments for walls, sculptures, trophies, kennels, nesting boxes and beds for household pets, portable ladders and mobile boarding stairs of wood or synthetic materials, bamboo curtains, roller indoor blinds [for interiors], slatted indoor blinds, strip curtains, bead curtains for decoration, curtain hooks, curtain rings, curtain tie-backs, curtain rods, enabling customers to conveniently view and purchase those goods, such services may be provided by retail stores, wholesale outlets, by means of electronic media or through mail order catalogues.</p>
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covers for pillows and pillow cases, covers for cushions, bedspreads, covers for hot water bottles, pyjama cases, furniture coverings of textile, eiderdowns, quilts, parts and fittings for all the aforesaid goods; all the aforesaid provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; information, advisory and consultancy services relating to all of the aforesaid.

The Fourth Earlier Mark

Class 20

Furniture; nursery furniture; cots; cribs; cradles; beds, foam beds; carry cots; travel cots, pop up travel cots; mattresses; bedding; pillows; children's sleeping mats; furniture; tables; cupboards, drawers; dressers; baby changing stations; seating; chairs, folding chairs, folding chairs made of foam; chairs for nursing mothers; rocking chairs; chairs for children; high chairs; swinging chairs; bouncing chairs; bean bags; playpens; changing mats; sleeping mats; bolsters, pillows, cushions, support wedges; window blinds, blackout blinds, sun shades; beanbags; shelving, mirrors, picture frames and photograph frames.

15. When making the comparison, all relevant factors relating to the goods 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.”

16. Guidance on this issue has 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

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

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

18. I bear in mind the following applicable principles of interpretation from *Sky v Skykick* [2020] EWHC 990 (Ch), paragraph 56 (wherein Lord Justice Arnold, in the course of his judgment, set out a summary of the correct approach to interpreting broad and/or vague terms):

“(1) General terms are to be interpreted as covering the goods or services clearly covered by the literal meaning of the terms, and not other goods or services.

(2) In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms.

(3) An unclear or imprecise term should be narrowly interpreted as extending only to such goods or services as it clearly covers.

(4) A term which cannot be interpreted is to be disregarded.”

Class 20

Furniture, made of any kind of material; mattresses; pillows, not for medical purposes.

19. As admitted in the applicant’s counterstatement, *furniture, mattresses and pillows*, in its specification are identical or similar to the opponent’s goods in all four of its registration.

Cushions, not for medical purposes.

20. The applicant's above term is self-evidently identical to "cushions" in the Fourth Earlier Mark's specification.

Air mattresses, not for medical purposes.

21. The applicant's above goods fall within the broader category of "mattresses" in the Fourth Earlier Mark's specification. They are identical on the principle outlined in *Meric*.

Water beds.

22. The applicant's above goods fall within the broader category of "beds" in the Fourth Earlier Mark's specification. They are identical on the principle outlined in *Meric*.

Frames for pictures and paintings.

23. The opponent's "picture frames and photograph frames" in the Fourth Earlier Mark's specification falls within the applicant's above broader category. They are identical on the principle outlined in *Meric*.

Mirrors; cradles.

24. The above terms appear identically in the applicant's and Fourth Earlier Mark's specifications.

Bouncing chairs for babies.

25. The applicant's above term is self-evidently identical to "bouncing chairs" in the Fourth Earlier Mark's specification.

Playpens for babies.

26. The applicant's above term is self-evidently identical to "playpens" in the Fourth Earlier Mark's specification.

Roller indoor blinds [for interiors]; slatted indoor blinds.

27. The applicant's above goods fall within the broader category of "window blinds" in the Fourth Earlier Mark's specification. They are identical on the principle outlined in *Meric*.

Furniture fittings, of wood or synthetic materials, opening and closing mechanisms of wood or synthetic materials.

28. The applicant's above goods are self-evidently identical to "furniture; parts and fittings for all of the aforesaid goods" in the First Earlier Mark's specification.

Boxes, storage containers, chests, the aforementioned goods, of wood or plastics.

29. The applicant's above goods are those which are found in the user's home, and are used to store their belongings. I therefore consider that these goods fall within the broader category of "furniture" in the First and Fourth Earlier Marks' specification. They are identical on the principle outlined in *Meric*. However, if I am wrong in this finding, the goods overlap in trade channels, nature, purpose, method of use and user, making them similar to a high degree.

Bamboo curtains; strip curtains, bead curtains for decoration.

30. I consider that the applicant's above goods are similar to the Fourth Earlier Mark's "window blinds". The goods overlap in method of use, purpose and user, as they all cover windows in order to block out the sun/light. The goods will overlap in distribution channels, being sold in the sale aisle or department of a home retail store. The goods are also in competition because you could use one or the other to achieve the same result. Consequently, the goods are similar to between a medium and high degree.

Infant walkers.

31. I consider that the applicant's above goods are similar to the Fourth Earlier Mark's "nursery furniture", which would cover cots, changing tables and wardrobes. The

goods do not overlap in nature and method of use, however, they will overlap in trade channels and purpose, as they are all goods which are designed to be used for babies and infants, and would be found in a children's nursery. The goods are not complementary nor in competition. I consider that they are similar to between a low and medium degree.

Curtain hooks, curtain rings, curtain tie-backs, curtain rods.

32. As established in paragraph 30 above, I have found similarity between curtains and blinds. In this instance, I therefore consider that the best comparison for the applicant's above goods, which are all accessories for curtains, will be with the Fourth Earlier Mark's "window blinds". However, the goods do not overlap in method of use or purpose, nor are they in competition, as the applicant's accessories are either used to hang curtains up, or to tie them back. The goods are clearly not complementary. Albeit they may still overlap in distribution channels, and will share the same user, I do not consider that this is enough to establish similarity between them. I consider that the goods are dissimilar.

Ornaments and decorative goods of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, beeswax, plastic or plaster namely figurines, holiday ornaments for walls, sculptures.

33. Mr Harris at the hearing states that the applicant's above goods are similar to the Fourth Earlier Mark's "furniture" on the basis that furniture stores will offer all of the goods for sale. I agree that the goods can all be sold in furniture stores, and they can also be sold in general retail stores, but the goods would be sold in different aisles. I also note that there will be an overlap in user. However, the goods clearly do not overlap in nature, method of use and purpose because furniture encompasses larger objects which are used for either sitting or lying on, or putting things on or in. The applicant's goods are used for purely decorative purposes. I note that some of the applicant's ornaments could be put on/displayed on the opponent's furniture, but this cannot be used to establish similarity. The goods are neither in competition, nor are they complementary, as they are neither important nor indispensable to one another, and I do not consider that the consumer would expect the goods to originate from the

same undertaking. I therefore do not consider that the above is enough to establish similarity. The goods are dissimilar.

Trophies.

34. Mr Harris also stated at the hearing that trophies were similar to the Fourth Earlier Mark's "furniture" on the basis that furniture stores offer all of the goods for sale. However, I do not have any evidence or compelling arguments before me that furniture stores, or general retail undertakings, also sell trophies. I consider that trophies would be sold by undertakings which only specialise in selling trophies, or those which specialise in engraving. The goods clearly do not overlap in nature, purpose and method of use. They are neither in competition nor complementary. The user may overlap, but this is not enough on its own to establish similarity. I therefore consider that the goods are dissimilar.

Display boards.

35. Mr Harris draws me to an EUIPO decision (B 3 138 221) in which it was said that "furniture" would encompass office furniture, which would then in turn encompass display boards. However, I disagree with this line of reasoning. This is on the basis that furniture covers larger items which are used for either sitting or lying on, or putting things on or in. This would include goods such as tables, chairs, wardrobes and beds. Display boards are fixed or hung on a wall, and therefore, I consider that they are fixtures or accessories. On this basis the applicant's goods do not overlap in nature, method of use, purpose or trade channels with the opponent's furniture. Nor are they in competition nor complementary. Therefore, I consider that the goods are dissimilar.

Identification plates, identification tags, nameplates, identification labels made of wood or synthetic materials.

36. At the hearing, Mr Harris stated that the above goods are similar to "bed fittings not of metal" in the First Earlier Mark's specification because they are "plates that, like any fitting, can go on to a bed". Furthermore, Mr Harris went on to state that the above goods are "commonplace items that go with furniture" because nameplates tell "you

what is behind a particular door, which is in a particular drawer and so on. They are effectively parts and fittings of furniture”. I therefore consider that Mr Harris is stating that the above goods are also similar to the opponent’s “furniture, parts and fittings for all of the aforesaid goods” in the First Earlier Mark’s specification.

37. However, I disagree with the above reasoning. Parts and fittings of furniture, (and bed fittings), are essential to putting the furniture together and the subsequent functioning of the goods. The applicant’s goods are simply items which can be affixed to furniture. They do not affect the function of the furniture, and they are not a necessary piece for furniture to be put together. Therefore, I do not consider that the goods overlap in nature, method of use or purpose. I do not consider that the goods will overlap in trade channels. Nor are they complementary nor in competition. The goods are dissimilar.

Packaging containers of wood or plastics, casks for use in transportation or storage, barrels, storage drums, tanks, transportation containers, loading pallets and closures for the aforementioned goods, of wood or plastics.

38. Mr Harris argues that the applicant’s above goods are all items of “furniture” and that “the mere fact that it is for transportation does not mean it is not used within a domestic or furniture-based environment”. However, I disagree. The sole purpose of the applicant’s goods is that they are used for transporting goods. There is no evidence before me to conclude that these goods are used on a domestic basis, nor that they are items of furniture which would be found permanently in a user’s home. The applicant’s goods are also not sold in furniture stores. They clearly do not overlap in trade channels, nature, method of use and purpose with the opponent’s furniture. They are neither in competition nor complementary. The goods are clearly dissimilar.

Kennels, nesting boxes and beds for household pets.

39. At the hearing, Mr Harris stated that the applicant’s above goods were accepted by the EUIPO as similar to “furniture” because “they are part of what goes into making a home”. However, as highlighted by *Sky v Skykick* above, I consider that this would be interpreting the term “furniture” too widely. At the hearing, Mr Harris kept referring

to the idea that the applicant's goods are "furnishings" to establish similarity between the goods. However, "furnishings" as a term is completely different to "furniture". Furnishings covers a much broader set of goods such as furniture, carpets, curtains, ornaments, and any decorations such as pictures and mirrors. Furniture simply encompasses large objects, like tables, chairs, beds, wardrobes, chests and draws, which are used to be sat or laid on, by people, or to store their belongings. I therefore do not consider that the applicant's goods are items of furniture. I note that the goods may all be sat or laid upon, however, the opponent's goods are used by people and the applicant's goods are used by pets. To that extent, the goods do not overlap in purpose or nature. The goods may be distributed by general retail stores, but they would not be sold in the sale aisle. They are neither in competition nor complementary. I consider that the goods are dissimilar.

Portable ladders and mobile boarding stairs of wood or synthetic materials.

40. I consider that the applicant's above goods are dissimilar to all of the goods contained within the opponent's First and Fourth Earlier Marks' specifications. The applicant submits that the nature, users, points of sale and trade channels are all different to the opponent's goods, and that they are neither in competition nor complementary. I agree with all of the above, however, I acknowledge that there may be an overlap in user, but this is not enough on its own to establish similarity. The goods are dissimilar.

Class 24

Bed covers.

41. The above term appears identically in the applicant's specification and in the First Earlier Mark's specification.

Blankets; swaddling blankets.

42. The applicant's above goods are self-evidently identical to "bed blankets" in the First Earlier Mark's specification.

Pillowcases.

43. The applicant's above goods are self-evidently identical to "covers for pillows and pillow cases" in the First Earlier Mark's specification.

Quilts.

44. The applicant's above goods are self-evidently identical to "quilts" in the First Earlier Mark's specification.

Woven or non-woven textile fabrics

45. The applicant's above goods are self-evidently identical to "textiles" in the First Earlier Mark's specification.

Textile goods for household use, not included in other classes.

46. The applicant's above goods falls within the broader categories of "textiles" and "fabrics and textiles for beds and furniture" in the First Earlier Mark's specification. They are identical on the principle outlined in *Meric*.

Sheets (textile).

47. The applicant's above goods falls within the broader categories of "textiles" and "fabrics and textiles for beds and furniture" in the First Earlier Mark's specification. They are identical on the principle outlined in *Meric*.

Sleeping bags for camping.

48. I consider that the applicant's above goods are similar to the Fourth Earlier Mark's "sleeping mats". The goods overlap in user, nature, and purpose, as they are all used for camping, or sleeping outside of the users home, as an alternative to sleeping on a bed. The method of use differs slightly as you sleep on top of a sleeping mat, which is

similar to a thin mattress, and you sleep within a sleeping bag, which fully encases the user. The goods will overlap in trade channels as outdoor and camping undertakings would sell both goods. The goods may also, to some extent, be in competition. Therefore, taking all of the above into account, I consider that the goods are similar to between a medium and high degree.

Curtains.

49. I consider that the same comparison applies in paragraph 30 above. The goods are similar to between a medium and high degree.

Towels; flags, pennants, labels of textile.

50. The best case comparison with the applicant's above goods are the First Earlier Mark's "textiles", which are the raw materials used to make the applicant's items. However, I note that as set out in *Les Éditions Albert René v OHIM*,² it is stated that just because a particular good is used as a part, element or component of another, it should not result in a finding of identity/similarity between those goods. Albeit that does not mean that there can never be similarity between such goods where there is overlap in the factors identified in *Treat*. In this instance, the goods may to some extent overlap in nature, however, they do not overlap in method of use or purpose. The trade channels and users will differ because the opponent's goods will be used to manufacture the applicant's items for household purposes and/or interior decoration, which will then go on to be sold in department stores and retail outlets to the general public. I do not consider that the goods are in competition nor complementary. In particular, there is no evidence of traders selling textiles to the public for making up into towels etc. I therefore consider that the goods are dissimilar.

Class 35

51. In *Oakley, Inc v OHIM*, Case T-116/06, at paragraphs 46-57, the General Court ("GC") held that although retail services are different in nature, purpose and method

² Case T-336/03

of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree.

52. In *Tony Van Gulck v Wasabi Frog Ltd*, Case BL O/391/14, Mr Geoffrey Hobbs Q.C. as the Appointed Person reviewed the law concerning retail services v goods. He stated (at paragraph 9 of his judgment):

“9. The position with regard to the question of conflict between use of BOO! for handbags in Class 18 and shoes for women in Class 25 and use of MissBoo for the Listed Services is considerably more complex. There are four main reasons for that: (i) selling and offering to sell goods does not, in itself, amount to providing retail services in Class 35; (ii) an application for registration of a trade mark for retail services in Class 35 can validly describe the retail services for which protection is requested in general terms; (iii) for the purpose of determining whether such an application is objectionable under Section 5(2)(b), it is necessary to ascertain whether there is a likelihood of confusion with the opponent’s earlier trade mark in all the circumstances in which the trade mark applied for might be used if it were to be registered; (iv) the criteria for determining whether, when and to what degree services are ‘similar’ to goods are not clear cut.

53. However, on the basis of the European courts’ judgments in *Sanco SA v OHIM*³, and *Assembled Investments (Proprietary) Ltd v. OHIM* Case T-105/05⁴, upheld on appeal in *Waterford Wedgwood Plc v. Assembled Investments (Proprietary) Ltd*, Case C-398/07P, Mr Hobbs concluded:

(i) Goods and services are not similar on the basis that they are complementary if the complementarity between them is insufficiently pronounced that, from the consumer’s point of view, they are unlikely to be offered by one and the same undertaking;

³ Case C-411/13P

⁴ paragraphs [30] to [35] of the judgment

- ii) In making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it is necessary to envisage the retail services normally associated with the opponent's goods and then to compare the opponent's goods with the retail services covered by the applicant's trade mark;
- iii) It is not permissible to treat a mark registered for 'retail services for goods X' as though the mark was registered for goods X;
- iv) The General Court's findings in Oakley did not mean that goods could only be regarded as similar to retail services where the retail services related to exactly the same goods as those for which the other party's trade mark was registered (or proposed to be registered).

The bringing together, for the benefit of others, of a variety of goods, namely, furniture, made of any kind of material, mattresses, pillows, air mattresses and cushions, not for medical purposes, water beds, mirrors, rouncing chairs for babies, playpens for babies, cradles, infant walkers, boxes, storage containers, chests, furniture fittings, of wood or synthetic materials, opening and closing mechanisms of wood or synthetic materials, enabling customers to conveniently view and purchase those goods, such services may be provided by retail stores, wholesale outlets, by means of electronic media or through mail order catalogues.

54. I consider that the applicant's above services are self-evidently identical to "retail services relating to the sale of furniture, bedroom furniture, mirrors, beds, water beds, divans, bedsteads, headboards, bedding, pillows, mattresses, open spring and pocket spring mattresses, memory foam and latex mattresses, futons, air cushions and air pillows, air mattresses, sleeping bags, bed casters not of metal, bed fittings not of metal, chairs, armchairs, cabinets, chests of drawers, desks, footstools, cots and cradles" in the opponent's First Earlier Marks' specification.

The bringing together, for the benefit of others, of a variety of goods, namely, frames for pictures and paintings, such services may be provided by retail stores, wholesale outlets, by means of electronic media or through mail order catalogues.

55. I consider that the applicant's above services are similar to "retail services relating to the sale of [...] mirrors [...]" in the opponent's First Earlier Marks' specification. I consider that there is an overlap in nature, method of use, purpose and user as they are all (retail) services which provide the users with either frames for pictures/paintings or mirrors, which are all fixtures or accessories which are hung to the wall. I consider that these services would most likely be provided by the same undertakings, including general home stores, or DIY retail outlets, and therefore overlap in distribution channels. I therefore consider that the services are similar to a high degree.

The bringing together, for the benefit of others, of a variety of goods, namely, bamboo curtains, roller indoor blinds [for interiors], slatted indoor blinds, strip curtains, bead curtains for decoration, enabling customers to conveniently view and purchase those goods, such services may be provided by retail stores, wholesale outlets, by means of electronic media or through mail order catalogues.

56. I consider that the applicant's services have limited overlap with "retail services relating to the sale of furniture, bedroom furniture, mirrors, beds, water beds, divans, bedsteads, headboards, bedding, pillows, mattresses, open spring and pocket spring mattresses, memory foam and latex mattresses, futons, air cushions and air pillows, air mattresses, sleeping bags, bed casters not of metal, bed fittings not of metal, chairs, armchairs, cabinets, chests of drawers, desks [...]" in the opponent's First Earlier Marks' specification. I consider that the (retail) services will overlap in nature and method of use. There may also be some overlap in distribution channels because a general retail undertaking, home store or DIY retail outlet, may sell all of the parties goods. However, they are neither in competition nor complementary. I therefore consider that the services are similar to a medium degree.

57. In paragraph 27 above I found that the applicant's *roller indoor blinds [for interiors]* and *slatted indoor blinds* are identical to the opponent's "window blinds" in its Fourth Earlier Mark's specification. I have also found in paragraph 30 above that the applicant's *bamboo curtains*, *strip curtains*, and *bead curtains for decoration* are similar to "window blinds" in the opponent's Fourth Earlier Mark's specification to between a medium and high degree. The applicant's above services are retail and wholesale services connected with the sale of those goods. As highlighted in *Oakley*

above, the GC held that although retail services are different in nature, purpose and method of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree. In this case, the applicant's retail and wholesale blind and curtain services relate to the sale of the opponent's class 20 blind goods in its Fourth Earlier Marks' specification. Applying the guidance from *Oakley*, I find that the blind goods and blind services are similar to a medium degree, and the blind goods and curtain services are similar to between a low and medium degree.

The bringing together, for the benefit of others, of a variety of goods, namely, safety seats for children, for vehicles, baby carriages, pushchairs, enabling customers to conveniently view and purchase those goods, such services may be provided by retail stores, wholesale outlets, by means of electronic media or through mail order catalogues.

58. The applicant's above services are similar to the opponent's "retail services relating to the sale of cots and cradles" in its Fourth Earlier Marks' specification. I consider that there is an overlap in nature and user, as they all (retail) services which sell and provide goods in relation to children. I also consider that there would be an overlap in trade channels as the same undertaking would provide both services. I therefore consider that the services are similar to a medium degree.

59. For the sake of completeness, I also consider that the applicant's above services are similar to the Fourth Earlier Mark's "chairs for children" and "carry cots". The goods and services will overlap in trade channels and user, and are complementary. Applying the guidance from *Oakley*, I consider that the goods and services are similar to a medium degree.

The bringing together, for the benefit of others, of a variety of goods, namely, bicycles and their bodies, handlebars and mudguards for bicycles, vehicle seats, head-rests for vehicle seats: seat covers for vehicles, vehicle covers (shaped), sun-blinds adapted for vehicles, luggage carriers for vehicles, bicycle and ski carriers for cars, saddles for bicycles or motorcycles, air pumps for vehicles, for inflating tires, wheelchairs, enabling customers to conveniently view and purchase those goods, such services

may be provided by retail stores, wholesale outlets, by means of electronic media or through mail order catalogues.

60. I do not see any clear similarity between the applicant's above services and the opponent's class 35 services in its Fourth Earlier Mark's specification, as none of the aforesaid are in relation to vehicles, their accessories and wheelchairs. The services do not overlap in nature, purpose or trade channels, especially as the applicant's above services would be provided by specialist vehicle undertakings. The services are neither in competition nor complementary. There may be some overlap in method of use and user, however, I do not consider that this is enough to establish similarity between them. The services are dissimilar.

61. I also do not see any clear similarity between the applicant's above services and the opponent's class 20 and 24 goods, as none of the aforesaid are in relation to vehicles, their accessories and wheelchairs. They do not overlap in nature, method of use, purpose or trade channels. They are neither in competition nor complementary. If there is an overlap in user, this is not enough on its own to establish similarity. The goods and services are dissimilar.

The bringing together, for the benefit of others, of a variety of goods, namely, paper and cardboard, paper and cardboard for packaging and wrapping purposes, cardboard boxes, paper towels, toilet paper, paper napkins, plastic materials for packaging and wrapping purposes, printing blocks and types, bookbinding material, printed publications, printed matter, books, magazines, newspapers, bill books, printed dispatch notes, printed vouchers, calendars, posters, photographs [printed], paintings, stickers [stationery], postage stamps, stationery, office stationery, instructional and teaching material [except furniture and apparatus], writing and drawing implements, artists' materials, paper products for stationery purposes, adhesives for stationery purposes, pens, pencils, erasers, adhesive tapes for stationery purposes, cardboard cartons [artists' materials], writing paper, copying paper, paper rolls for cash registers, drawing materials, chalkboards, painting pencils, watercolors [paintings], paint rollers and paintbrushes for painting, enabling customers to conveniently view and purchase those goods, such services may be provided by

retail stores, wholesale outlets, by means of electronic media or through mail order catalogues.

62. I do not see any clear similarity between the applicant's above services and the opponent's class 35 services, as none of the aforesaid are in relation to paper goods, stationary and painting materials. The services do not overlap in nature and purpose. They are neither in competition nor complementary. However, there may be an overlap in trade channels to the extent that the (retail) services may all be provided by general retail stores. However, finding similarity on that basis would defeat the object of requiring applicant's for retail services to specify the goods to which the services relate to as this acts as an important mechanism to avoid unnecessary conflicts between trade marks. I therefore do not consider that this is enough to establish similarity between the class 35 services. I consider that they are dissimilar.

63. I also do not consider that the applicant's above services and the opponent's class 20 and 24 goods are similar, as none of the aforesaid are in relation to paper goods, stationary and painting materials. They do not overlap in nature, method of use, purpose or trade channels. They are neither in competition nor complementary. If there is an overlap in user, this is not enough on its own to establish similarity. Therefore, I consider that the opponent's goods and the applicant's services are dissimilar.

The bringing together, for the benefit of others, of a variety of goods, namely, identification plates, identification tags, nameplates, identification labels made of wood or synthetic materials, packaging containers of wood or plastics, casks for use in transportation or storage, barrels, storage drums, tanks, transportation containers, loading pallets and closures for the aforementioned goods, of wood or plastics, small hardware goods of wood or synthetic materials included in this class, enabling customers to conveniently view and purchase those goods, such services may be provided by retail stores, wholesale outlets, by means of electronic media or through mail order catalogues.

64. I do not consider that similarity can be established with the applicant's above services and the opponent's class 35 services relating to the goods specified in paragraphs 36 to 38. They do not overlap in nature or purpose. The services also do

not overlap in trade channels as specialist undertakings would provide the applicant's above services (such as transportation undertakings). They are neither in competition nor complementary. If there is an overlap in user, this is not enough on its own to establish similarity. The services are dissimilar.

65. In paragraphs 36 to 38 above, I did not find any similarity with the applicant's goods and the opponent's goods in classes 20 and 24. I therefore do not consider that the applicant's above services in relation to these goods will have any overlap with the opponent's goods. They clearly differ in nature, method of use, purpose and trade channels. They are neither in competition nor complementary. They are dissimilar.

The bringing together, for the benefit of others, of a variety of goods, namely, display boards, ornaments and decorative goods of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, beeswax, plastic or plaster namely figurines, holiday ornaments for walls, sculptures, trophies, kennels, nesting boxes and beds for household pets, portable ladders and mobile boarding stairs of wood or synthetic materials, curtain hooks, curtain rings, curtain tie-backs, curtain rods, enabling customers to conveniently view and purchase those goods, such services may be provided by retail stores, wholesale outlets, by means of electronic media or through mail order catalogues.

66. I do not consider that similarity can be established with the applicant's above services and the opponent's class 35 services in its First Earlier Mark's specification. The services do not overlap in nature and purpose. They are neither in competition nor complementary. However, there may be an overlap in trade channels to the extent that the (retail) services may all be provided by general retail stores. However, finding similarity on that basis would defeat the object of requiring applicant's for retail services to specify the goods to which the services relate to as this acts as an important mechanism to avoid unnecessary conflicts between trade marks. I therefore do not consider that this is enough to establish similarity between the parties services. They are consequently dissimilar.

67. As highlighted by paragraphs 32 to 35, and 39 to 40 above, I also did not find any similarity with the applicant's goods and the opponent's goods. I therefore do not

consider that the applicant's above services in relation to these goods will have any overlap with the opponent's class 20 and 24 goods. They do not overlap in trade channels, nature, method of use, or purpose. The goods and services are not in competition nor complementary. I consider that the goods and services are dissimilar.

68. It is a prerequisite of section 5(2)(b) that the goods and services be identical or at least similar. The opposition will, therefore, fail in respect of the goods and services that I have found to be dissimilar.⁵

69. The opposition under section 5(2)(b) fails for the following goods and services:

Class 20 Display boards, identification plates, identification tags, nameplates, identification labels made of wood or synthetic materials; packaging containers of wood or plastics, casks for use in transportation or storage, barrels, storage drums, tanks, transportation containers, loading pallets and closures for the aforementioned goods, of wood or plastics; ornaments and decorative goods of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, beeswax, plastic or plaster namely figurines, holiday ornaments for walls, sculptures, trophies; kennels, nesting boxes and beds for household pets; portable ladders and mobile boarding stairs of wood or synthetic materials, curtain hooks, curtain rings, curtain tie-backs, curtain rods.

Class 24 Towels; flags, pennants, labels of textile.

Class 35 The bringing together, for the benefit of others, of a variety of goods, namely, bicycles and their bodies, handlebars and mudguards for bicycles, vehicle seats, head-rests for vehicle seats: seat covers for vehicles, vehicle covers (shaped), sun-blinds adapted for vehicles, luggage carriers for vehicles, bicycle and ski carriers for cars, saddles for bicycles or motorcycles, air pumps for vehicles, for inflating tires,

⁵ *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

wheelchairs, paper and cardboard, paper and cardboard for packaging and wrapping purposes, cardboard boxes, paper towels, toilet paper, paper napkins, plastic materials for packaging and wrapping purposes, printing blocks and types, bookbinding material, printed publications, printed matter, books, magazines, newspapers, bill books, printed dispatch notes, printed vouchers, calendars, posters, photographs [printed], paintings, stickers [stationery], postage stamps, stationery, office stationery, instructional and teaching material [except furniture and apparatus], writing and drawing implements, artists' materials, paper products for stationery purposes, adhesives for stationery purposes, pens, pencils, erasers, adhesive tapes for stationery purposes, cardboard cartons [artists' materials], writing paper, copying paper, paper rolls for cash registers, drawing materials, chalkboards, painting pencils, watercolors [paintings], paint rollers and paintbrushes for painting, display boards, identification plates, identification tags, nameplates, identification labels made of wood or synthetic materials, packaging containers of wood or plastics, casks for use in transportation or storage, barrels, storage drums, tanks, transportation containers, loading pallets and closures for the aforementioned goods, of wood or plastics, small hardware goods of wood or synthetic materials included in this class, ornaments and decorative goods of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, beeswax, plastic or plaster namely figurines, holiday ornaments for walls, sculptures, trophies, kennels, nesting boxes and beds for household pets, portable ladders and mobile boarding stairs of wood or synthetic materials, curtain hooks, curtain rings, curtain tie-backs, curtain rods, enabling customers to conveniently view and purchase those goods, such services may be provided by retail stores, wholesale outlets, by means of electronic media or through mail order catalogues.

70. For the sake of completeness, the Second and Third Earlier Marks specifications do not put the opponent in any better position. I will not, therefore, consider the Second and Third Earlier Marks any further.

The average consumer and the nature of the purchasing act

71. 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 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.”

72. The average consumer for the goods and services will be members of the general public. The goods and services are likely to vary in cost and frequency of purchase, for example, the price of cushions will be relatively low and purchased frequently, but the purchase of furniture is likely to be infrequent, with the price of the goods relatively high. Regardless, the average consumer will take various factors into consideration such as the cost, quality, materials used, location and the suitability of the goods and services for the user's needs. Therefore, the level of attention paid during the purchasing process will be medium.

73. The goods are likely to be obtained by self-selection from the shelves of a retail outlet, or online equivalent, and the services are likely to be purchased following perusal of signage on premises frontage. I also consider that the goods and services may be purchased following perusal of advertisements. Visual considerations are, therefore, likely to dominate the selection process. However, I do not discount that there may also be an aural component to the purchase through advice sought from a sales assistant or representative.


Comparison of the trade marks

74. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade 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 trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU stated, at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

75. It would be wrong, therefore, to artificially dissect the trade marks, 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.

76. The respective trade marks are shown below:

Opponent's trade mark	Applicant's trade mark
<p data-bbox="357 1615 632 1671">DREAMS</p> <p data-bbox="368 1693 620 1720">("the First Earlier Mark")</p> <p data-bbox="320 1800 667 1928">LITTLE BIG DREAMS</p> <p data-bbox="357 1955 632 1982">("the Fourth Earlier Mark")</p>	

Overall impression

77. The First Earlier Mark consists of the word DREAMS. There are no other elements to contribute to the overall impression which lies in the word itself.

78. The Fourth Earlier Mark consists of the words LITTLE BIG DREAMS. The overall impression of the mark lies in the combination of these elements.

79. The applicant's mark consists of the patchwork-style bright teal and light-pink owl device, which is winking. In the light pink belly of the owl is the word "Little" in a large pink typeface, followed by the word "Dreams" in a large bright teal typeface. A registered trademark "R" symbol appears next to the word "Dreams". I note that the opponent argues that the "R" symbol indicates that the word "Dreams" is a separate and "stand-alone element having trade mark significance within the mark". However, it is not clear whether the symbol relates just to the word "Dreams", to the phrase "Little Dreams" or to the mark as a whole. I consider that the average consumer could interpret it in all three different ways and therefore I do not consider that the opponent's argument holds any weight. I also consider that due to its size, being so small, it is going to play a lesser role in the overall impression of the mark. Underneath the word "Dreams" is the word "ebebek" in a light blue typeface, next to what is described by the applicant as the brown mother and child motif. I consider that as the mother and child motif element is very small, it is unlikely the consumer will recognise it as a mother and child. It is noted that the average consumer views marks without analysis of their details. Therefore, it is likely that the motif will simply be seen as an abstract swirl device. Furthermore, although the eye is naturally drawn to the element of the mark that can be read, given the size of the owl device, which is the largest part of the mark, I consider that it plays a roughly equal role in the overall impression with the words "Little Dreams", which are the second largest elements of the mark. I also consider that due to the small size and the positioning at the bottom of the mark, the "ebebek" and swirl device elements will play lesser roles.

Visual Comparison

The First Earlier Mark and the applicant's mark

80. The First Earlier Mark, DREAMS, is fully replicated as the second word in the applicant's mark, which is presented in a large teal typeface. The First Earlier Mark is a word mark, and therefore registration of these covers use in any standard typeface, including presenting the marks in upper and lower-case. These act as visual points of similarity. However, the first word of the applicant's mark is "Little" presented in a large pink typeface, and the third word of the mark, presented in the smallest blue typeface, is the word "ebebek". This is presented next to a brown abstract swirl device, with all of the elements presented on a bright teal and light-pink patchwork owl device. These all act as visual points of difference. However, I also note that as the belly of the owl is presented in a light pink colour, that the word "Little" which is also presented in pink, stands out less than the word "Dreams" which is presented in a bright teal colour. I therefore consider that this, in combination with the words "Little" and "Dreams" being presented in different colours, means that the word "Dreams" stands out more in the applicant's mark. Thus, taking all of the above into account, I consider that the marks are visually similar to between a low and medium degree.

The Fourth Earlier Mark and the applicant's mark

81. The same comparison applies in paragraph 80 above, however, the first words of both marks are the word "LITTLE". This is an additional point of visual similarity. I also bear in mind that the average consumer tends to pay more attention to the beginning of the marks.⁶ Consequently, the marks are visually similar to a medium degree.

Aural Comparison

The First Earlier Mark and the applicant's mark

82. The First Earlier Mark, DREAMS, will be given its ordinary dictionary pronunciation. The words LITTLE and DREAMS in the applicant's mark will also be given their ordinary dictionary pronunciation. I note that the patchwork owl and abstract swirl devices in the applicant's mark will not be articulated, and I also consider that as it is so much smaller in size, the "ebebek" element will most likely not be articulated either.

⁶ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

The beginning of the marks differ aurally, however, as they overlap in the word DREAMS, they are aurally similar to a medium degree.

83. If the consumer was to articulate the “ebebek” element, I consider that it will most likely be pronounced as EB-EB-EK at the end of the mark. Consequently, the First Earlier Mark and the applicant’s mark would be aurally similar to between a low and medium degree.

The Fourth Earlier Mark and the applicant’s mark

84. The beginning of the Fourth Earlier Mark and the applicants marks overlap aurally, as they both start with the word LITTLE. They also both aurally end with the word DREAMS, with the only difference being the pronunciation of the word BIG in the middle of the Fourth Earlier Mark. Consequently, the marks are aurally similar to between a medium and high degree.

85. However, if the consumer articulates the “ebebek” element at the end of the applicant’s mark, the marks are aurally similar to a medium degree.

Conceptual Comparison

The First Earlier Mark and the applicant’s mark

86. The First Earlier Mark consists of the word DREAMS, which would be recognised and understood by the average consumer as an imaginary series of events in your mind which you experience when you sleep. This concept is also conveyed by the applicant’s mark.

87. The first word in the applicant’s mark is the ordinary dictionary word “Little”, followed by the word “Dreams”. The word “Dreams” will be assigned the same concept above. I also note that the word “Little” describes the size of the dream. Therefore, the words as a whole conveys the concept of dreams that are not big, i.e. smaller dreams. The opponent submits that due to the cartoon graphics, which I assume is mainly referring to the patchwork owl device, that “LITTLE DREAMS is clearly intended to

refer to a DREAMS product for younger consumers/children". I agree that as the owl device is presented in a juvenile way, in a patchwork effect, with the use of the bright teal and light pink colours. I consider that this element may affirm that the dreams which are little in size are being dreamt by little people (i.e. children).

88. I also consider that as owls are creatures of the night, this reinforces, to some extent, the concept of dreams, which are normally had when you go to sleep at night. I note that the applicant's mark also has the "ebebek" element which will be recognised as an invented word with no meaning and the abstract brown swirl device will not convey any particular meaning. Regardless, as both marks share the concept of dreams, I consider that they are conceptually similar to a medium degree.

The Fourth Earlier Mark and the applicant's mark

89. The same comparison applies in paragraphs 86 to 88 above, however, I note that the conceptual message of the Fourth Earlier Mark, LITTLE BIG DREAMS, is slightly less clear. The words LITTLE and BIG juxtapose each other, however, they both are ordinary dictionary words which describe the size of the "DREAMS". As the marks clearly overlap in the words LITTLE and DREAMS, I consider that they are conceptually similar to between a medium and high degree.

Distinctive character of the earlier trade mark

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

"22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C108/97 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 promotion of 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).”

91. 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, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

92. As the opponent has not filed any evidence to show that the distinctiveness of its marks have been enhanced through use, I only have the inherent position to consider.

93. The First Earlier Mark consists of the word DREAMS. I consider that for some of the goods, including furniture (which would include beds, bed frames etc.), mattresses, pillows, cushions, blankets, quilts, sleeping bags, bed covers, curtain and blinds, and the class 35 the bringing together, for the benefit of others, the aforesaid mentioned goods, the mark is somewhat allusive or suggestive. On this basis, the First Earlier Mark is inherently distinctive to between a low and medium degree. However, for the remaining terms, where the word DREAMS is neither descriptive nor allusive, the First Earlier Mark is inherently distinctive to a medium degree.

94. The Fourth Earlier Mark, LITTLE BIG DREAMS, still contains the word dreams, which for the goods and services listed in paragraph 85 is still somewhat allusive or suggestive. The words “LITTLE” and “BIG” describe the size of the dreams. On this basis, the Fourth Earlier Mark is still inherently distinctive to between a low and medium degree. However, as highlighted above, for the remaining terms, where the

word DREAMS is neither descriptive nor allusive, the Fourth Earlier Mark is inherently distinctive to a medium degree.

Likelihood of confusion

95. 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. This includes 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. It is necessary for me to keep in 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.

The First Earlier Mark (“DREAMS”)

96. The following factors must be considered to determine if a likelihood of confusion can be established:

- I have found the marks to be visually similar to between a low and medium degree.
- I have found the marks to be aurally similar to a medium degree, or between a low and medium degree, depending on how the applicant’s mark is pronounced.
- I have found the marks to be conceptually similar to a medium degree.

- I have found the opponent's mark to be inherently distinctive to between a low and medium degree for the goods and services where DREAMS is somewhat allusive, and inherently distinctive to a medium degree whether DREAMS is not allusive of the remaining goods and services.
- I have identified the average consumer for the goods to be the general public who will select the goods and services primarily by visual means, although I do not discount an aural component.
- I have concluded that a medium degree of attention will be paid during the purchasing process for the goods and services.
- I have found the applicant's similar goods/services vary from being identical to similar to between a low and medium degree to the opponent's goods and services.

97. Taking all of the factors listed in paragraph 97 into account, bearing in mind the principle of imperfect recollection, I am satisfied that the marks are unlikely to be mistakenly recalled or misremembered as each other. The beginning of the marks tend to make more of an impact than the ends. I therefore consider it unlikely that the average consumer would overlook the word LITTLE at the beginning of the applicant's mark. I also consider that there may be a proportion of consumers who would not overlook the patchwork owl device which is the biggest element of the applicant's mark. Consequently, I do not consider there to be a likelihood of direct confusion.

98. It now falls to me to consider the likelihood of indirect confusion. Indirect confusion was described in the following terms by Iain Purvis Q.C., sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

"16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later

mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.”

99. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Arnold LJ agreed, pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

100. I recognise that the word DREAMS for some of the goods and services is somewhat allusive, and therefore the First Earlier Mark is inherently distinctive to between a low and medium degree. However, in *L’Oréal SA v OHIM, Case C-235/05 P*, the CJEU confirmed that weak distinctive character of the earlier trade mark does not preclude a likelihood of confusion.

101. As highlighted above, the beginning of the marks tend to make more of an impact than the ends. However, I bear in mind that in *Bristol Global Co Ltd v EUIPO, T-194/14*, the GC held that there was a likelihood of confusion between AEROSTONE (slightly stylised) and STONE if both marks were used by different undertakings in relation to identical goods (land vehicles and automobile tyres). This was despite the fact that the beginnings of the marks were different. The common element – STONE – was sufficient to create the necessary degree of similarity between the marks as wholes for the opposition before the EUIPO to succeed.

102. I consider that the shared common use of the word DREAMS in both marks will lead the average consumer to conclude that the marks originate from the same or economically linked undertakings.

103. The addition of the word “Little” is neither the dominant nor distinctive element of the applicant’s mark as it simply describes the size of the dream. The word “ebebek” and the abstract swirl device are so small that they could be imperfectly misremembered. I note that the patchwork owl device, which is the background/largest element of the applicant’s mark is not particularly distinctive because, as noted above, owls are creatures of the night, and therefore reinforces the concept of sleep and dreams. I also note that the owl is presented in a juvenile way, in a patchwork style, in bright teal and light pink colours, which alongside the use of the word “Little”, suggests that the goods and services are specifically aimed at younger people, i.e. children. Furthermore, I note that a clear distinction between the words “Little Dreams” has been made through the use of colour; presenting the word “Little” in pink and “Dreams” in bright teal. I consider that this reinforces the fact that consumers are more likely to see the applicant’s mark as a variation of the earlier DREAMS mark, especially as the word “Dreams” stands out more against the light pink background. Therefore, taking all of the above into account, I consider that the average consumer will see the applicant’s mark as a sub-brand of the opponent’s mark, specifically being used on goods and services which are aimed at children.

104. I consider there to be a likelihood of indirect confusion.

The Fourth Earlier Mark (“LITTLE BIG DREAMS”)

105. The following factors must be considered to determine if a likelihood of confusion can be established:

- I have found the marks to be visually similar to a medium degree.
- I have found the marks to be aurally similar to between a medium and high degree, or to a medium degree, depending on how the applicant’s mark is pronounced.
- I have found the marks to be conceptually similar to between a medium and high degree.
- I have found the opponent’s mark to be inherently distinctive to between a low and medium degree for the goods and services where DREAMS is somewhat

allusive, and inherently distinctive to a medium degree whether DREAMS is not allusive of the remaining goods and services.

- I have identified the average consumer for the goods to be the general public who will select the goods and services primarily by visual means, although I do not discount an aural component.
- I have concluded that a medium degree of attention will be paid during the purchasing process for the goods and services.
- I have found the applicant's similar goods/services vary from being identical to similar to between a low and medium degree to the opponent's goods.

106. I bear in mind that the average consumer rarely has the chance to make direct comparisons between trade marks and, instead, must rely upon the imperfect picture of them retained in its mind (imperfect recollection).

107. Both marks start with the word LITTLE (with the beginning of the marks having more impact than the ends), and end in the word DREAMS. I therefore consider that the word BIG in the middle of the applicant's mark will be easily overlooked or forgotten by the average consumer. I also consider that, albeit a bigger background element of the mark, as the patchwork owl device alludes to the user of the goods (i.e. children) and is a concept which is connected to the idea of sleep and dreams, it might not be recalled by a significant proportion of average consumers. I also consider that the word "ebebek" and the abstract swirl device are so small that they could easily be forgotten or overlooked. Consequently, I consider that there is a likelihood of direct confusion.

108. I also consider that there is a likelihood of indirect confusion, on the basis of imperfect recollection. I am of the view that if the average consumer recognises and remembers the patchwork owl background device, which is the biggest element of the applicant's mark, that they are still likely to imperfectly recall the differences between the words LITTLE BIG DREAMS and LITTLE DREAMS. I consider that as the word BIG is in the middle of the opponent's mark, and does not provide a significant conceptual hook in order to differentiate them (especially as both the words LITTLE and BIG describe the size of the dreams), that the words LITTLE BIG DREAMS and LITTLE DREAMS could easily be imperfectly recalled as one another. As highlighted

in paragraph 107 above, the word “ebebek” and the abstract swirl device are so small in size, and placed at the end of the mark, that they could be forgotten or overlooked.

109. Therefore, it is my view that the average consumer will view the applicant’s mark as an alternative mark being used on identical or similar goods and services, by the same or economically linked undertaking as the user of the Fourth Earlier Mark, perhaps being an updated version of the same mark and therefore indicative of re-branding. I consider that it is not uncommon for undertakings re-brand themselves from time to time to accommodate changes in marketing considerations. Consequently, I consider there to be a likelihood of indirect confusion.

CONCLUSION

110. The opposition is partially successful in respect of the following goods and services, for which the application is refused:

Class 20 Furniture, made of any kind of material; mattresses; pillows; air mattresses and cushions, not for medical purposes, water beds; mirrors; bouncing chairs for babies, playpens for babies, cradles, infant walkers; boxes, storage containers, chests, the aforementioned goods, of wood or plastics; frames for pictures and paintings, furniture fittings, of wood or synthetic materials, opening and closing mechanisms of wood or synthetic materials; bamboo curtains, roller indoor blinds [for interiors], slatted indoor blinds, strip curtains, bead curtains for decoration.

Class 24 Woven or non-woven textile fabrics; textile goods for household use, not included in other classes: curtains, bed covers, sheets (textile), pillowcases, blankets, quilts, swaddling blankets; sleeping bags for camping.

Class 35 The bringing together, for the benefit of others, of a variety of goods, namely, safety seats for children, for vehicles, baby carriages, furniture, made of any kind of material, mattresses, pillows, air mattresses and cushions, not for medical purposes, water beds, mirrors, rouncing chairs

for babies, playpens for babies, cradles, infant walkers, boxes, storage containers, chests, furniture fittings, of wood or synthetic materials, opening and closing mechanisms of wood or synthetic materials, enabling customers to conveniently view and purchase those goods, bamboo curtains, roller indoor blinds [for interiors], slatted indoor blinds, strip curtains, bead curtains for decoration, enabling customers to conveniently view and purchase those goods, such services may be provided by retail stores, wholesale outlets, by means of electronic media or through mail order catalogues.

111. The application can also proceed to registration in respect of the following goods and services, for which the opposition has been unsuccessful:

Class 20 Display boards, identification plates, identification tags, nameplates, identification labels made of wood or synthetic materials; packaging containers of wood or plastics, casks for use in transportation or storage, barrels, storage drums, tanks, transportation containers, loading pallets and closures for the aforementioned goods, of wood or plastics; ornaments and decorative goods of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, beeswax, plastic or plaster namely figurines, holiday ornaments for walls, sculptures, trophies; kennels, nesting boxes and beds for household pets; portable ladders and mobile boarding stairs of wood or synthetic materials, curtain hooks, curtain rings, curtain tie-backs, curtain rods.

Class 24 Towels; flags, pennants, labels of textile.

Class 35 The bringing together, for the benefit of others, of a variety of goods, namely, bicycles and their bodies, handlebars and mudguards for bicycles, vehicle seats, head-rests for vehicle seats: seat covers for vehicles, vehicle covers (shaped), sun-blinds adapted for vehicles, luggage carriers for vehicles, bicycle and ski carriers for cars, saddles for bicycles or motorcycles, air pumps for vehicles, for inflating tires,

wheelchairs, paper and cardboard, paper and cardboard for packaging and wrapping purposes, cardboard boxes, paper towels, toilet paper, paper napkins, plastic materials for packaging and wrapping purposes, printing blocks and types, bookbinding material, printed publications, printed matter, books, magazines, newspapers, bill books, printed dispatch notes, printed vouchers, calendars, posters, photographs [printed], paintings, stickers [stationery], postage stamps, stationery, office stationery, instructional and teaching material [except furniture and apparatus], writing and drawing implements, artists' materials, paper products for stationery purposes, adhesives for stationery purposes, pens, pencils, erasers, adhesive tapes for stationery purposes, cardboard cartons [artists' materials], writing paper, copying paper, paper rolls for cash registers, drawing materials, chalkboards, painting pencils, watercolors [paintings], paint rollers and paintbrushes for painting, display boards, identification plates, identification tags, nameplates, identification labels made of wood or synthetic materials, packaging containers of wood or plastics, casks for use in transportation or storage, barrels, storage drums, tanks, transportation containers, loading pallets and closures for the aforementioned goods, of wood or plastics, small hardware goods of wood or synthetic materials included in this class, ornaments and decorative goods of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, beeswax, plastic or plaster namely figurines, holiday ornaments for walls, sculptures, trophies, kennels, nesting boxes and beds for household pets, portable ladders and mobile boarding stairs of wood or synthetic materials, curtain hooks, curtain rings, curtain tie-backs, curtain rods, enabling customers to conveniently view and purchase those goods, such services may be provided by retail stores, wholesale outlets, by means of electronic media or through mail order catalogues.

112. The application can proceed to registration in respect of the following goods and services for which the opposition was not directed against:

Class 12 Bicycles and their bodies; handlebars and mudguards for bicycles; vehicle seats; head-rests for vehicle seats; safety seats for children, for vehicles; seat covers for vehicles; vehicle covers (shaped); sun-blinds adapted for vehicles; luggage carriers for vehicles; bicycle and ski carriers for cars; saddles for bicycles or motorcycles; air pumps for vehicles, for inflating tires; baby carriages, wheelchairs, pushchairs.

Class 16 Paper and cardboard; paper and cardboard for packaging and wrapping purposes, cardboard boxes; paper towels; toilet paper; paper napkins; plastic materials for packaging and wrapping purposes; printing blocks and types; bookbinding material; printed publications; printed matter; books, magazines, newspapers, bill books, printed dispatch notes, printed vouchers, calendars; posters; photographs [printed]; paintings; stickers [stationery]; postage stamps; stationery, office stationery, instructional and teaching material [except furniture and apparatus]; writing and drawing implements; artists' materials; paper products for stationery purposes; adhesives for stationery purposes, pens, pencils, erasers, adhesive tapes for stationery purposes, cardboard cartons [artists' materials], writing paper, copying paper, paper rolls for cash registers, drawing materials, chalkboards, painting pencils, watercolors [paintings]; paint rollers and paintbrushes for painting.

CONCLUSION

113. The applicant has enjoyed a greater degree of success in the opposition and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 2/2016. I will make an appropriate reduction in the award of costs made to reflect the applicant's only partial success. In the circumstances, I award the applicant the sum of **£150** as a contribution towards the costs of the proceedings. The sum is calculated as follows:

Considering the Notice of opposition and
preparing a Counterstatement

£150

Total

£150

114. I therefore order Dreams Limited to pay EBEBEK MAĞAZACILIK A.Ş. the sum of £150. This sum is to 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 31st day of October 2023

L FAYTER

For the Registrar

ANNEX

The First Earlier Mark

Class 20

Furniture; bedroom furniture; mirrors; beds; water beds; divans; bedsteads; headboards; bedding, other than bed linen; pillows; mattresses; open spring and pocket spring mattresses; memory foam and latex mattresses; futons; air cushions and air pillows; air mattresses; bed casters not of metal; bed fittings not of metal; chairs; armchairs; cabinets; chests of drawers; desks; footstools; cots and cradles; parts and fittings for all the aforesaid goods.

Class 24

Textiles; fabrics and textiles for beds and furniture; bed linen; duvets; bed covers; bed blankets, bed clothes; covers for duvets; mattress covers; covers for pillows and pillow cases; covers for cushions; bedspreads; covers for hot water bottles; furniture coverings of textile; quilts; parts and fittings for all the aforesaid goods.

Class 35

Retail services relating to the sale of bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, non-medicated soaps, perfumery, essential oils, non-medicated cosmetics, non-medicated hair lotions, scents, fragrances, oils for perfumes and scents, perfumeries, room scenting sprays, scented fabric refresher sprays, scented linen sprays, scented oils, scented room sprays, air fragrance preparations; Retail services relating to the sale of air fragrance reed diffusers, air fragrancing preparations, aromatics for fragrances, cleaning and fragrancing preparations, Cushions filled with fragrant substances, cushions impregnated with fragrant substances, fragrance for household purposes, fragrance preparations, fragrance refills for non-electric room fragrance dispensers, fragrance sachets, refills for electric room fragrance dispensers, room fragrances, room fragrancing products; Retail services relating to the sale of Scientific, measuring, checking (supervision), life-saving and teaching apparatus and instruments, data processing equipment, computer software, computer hardware, mobiles apps, downloadable software applications, wearable monitors, monitoring instruments, monitoring apparatus, other than for medical purposes, monitoring units [electric], electronic sensors, bio-sensors, movement sensors; Retail services relating to the sale

of sensors for scientific use to be worn by a human to gather human biometric data, electronic tracking apparatus and instruments, wearable activity trackers, measuring apparatus and instruments, computer software in the field of tracking, monitoring and analysing of sleep, movement and heart rate, electronic devices for tracking, monitoring and analysing of sleep, movement and heart rate [other than for medical use]; Retail services relating to the sale of mobiles apps in the field of tracking, monitoring and analysing of sleep, movement and heart rate, downloadable software applications in the field of tracking, monitoring and analysing of sleep, movement and heart rate; Retail services relating to the sale of medical and surgical apparatus and instruments, namely medical devices for sensing, measuring, diagnostic and treatment purposes in the field of sleep including wearable medical devices to be worn while sleeping, Pulse rate monitors, medical devices for measuring sleep, precision sensors for medical use, sensor apparatus for medical use; Retail services relating to the sale of apparatus for lighting, lighting, light bulbs, lamps and light sources, lighting connected to alarm clocks, luminaires, controllable light sources and lighting apparatus, filters for lighting appliances; Retail services relating to the sale of horological and chronometric instruments, clocks, alarm clocks, electronic alarm clocks, alarm clocks which use light to wake-up users, alarm clocks with in-built lights; Retail services relating to the sale of furniture, bedroom furniture, mirrors, beds, water beds, divans, bedsteads, headboards, bedding, pillows, mattresses, open spring and pocket spring mattresses, memory foam and latex mattresses, futons, air cushions and air pillows, air mattresses, sleeping bags, bed casters not of metal, bed fittings not of metal, chairs, armchairs, cabinets, chests of drawers, desks, footstools, cots and cradles; Retail services relating to the sale of household or kitchen utensils and containers, articles for cleaning purposes, scent sprays [atomizers], air fragrancing apparatus, aerosol dispensers, not for medical purposes, perfume burners, perfume vaporizers, perfume sprayers, plug-in diffusers for mosquito repellents, plug-in diffusers for air fragrancing; Retail services relating to the sale of textiles, fabrics and textiles for beds and furniture, bed linen, duvets, bed covers, bed blankets, bed clothes, covers for duvets, mattress covers, covers for pillows and pillow cases, covers for cushions, bedspreads, covers for hot water bottles, pyjama cases, furniture coverings of textile, eiderdowns, quilts, parts and fittings for all the aforesaid goods; all the aforesaid provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by

means of telecommunications; information, advisory and consultancy services relating to all of the aforesaid.

The Second Earlier Mark

Class 20

Furniture; bedroom furniture; mirrors; beds; water beds; divans; bedsteads; headboards; bedding, other than bed linen; pillows; mattresses; open spring and pocket spring mattresses; memory foam and latex mattresses; futons; air cushions and air pillows; air mattresses; bed casters not of metal; bed fittings not of metal; chairs; armchairs; cabinets; chests of drawers; desks; footstools; cots and cradles; parts and fittings for all the aforesaid goods.

Class 24

Textiles; fabrics and textiles for beds and furniture; bed linen; duvets; bed covers; bed blankets, bed clothes; covers for duvets; mattress covers; covers for pillows and pillow cases; covers for cushions; bedspreads; furniture coverings of textile; quilts; parts and fittings for all the aforesaid goods.

Class 35

Retail services connected with the sale of furniture, bedroom furniture, beds, water beds, sofa beds, divans, bedsteads, headboards, bedding, pillows, mattresses, open spring and pocket spring mattresses, memory foam and latex mattresses, futons, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; retail services connected with the sale of air cushions and air pillows, air mattresses, sleeping bags, bed casters not of metal, bed fittings not of metal, chairs, armchairs, cabinets, chests of drawers, desks, footstools, cots and cradles, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; retail services connected with the sale of textiles, fabrics and textiles for beds and furniture, bed linen, duvets, bed covers, bed blankets, covers for duvets, mattress covers, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding superstore, online via the Internet or other interactive

electronic platforms, via mail order or catalogues or by means of telecommunications; retail services connected with the sale of covers for pillows and pillow cases, covers for cushions, bedspreads, furniture coverings of textile, eiderdowns, quilts, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; information, advisory and consultancy services relating to all of the aforesaid.

The Third Earlier Mark

Class 20

Furniture; bedroom furniture; mirrors; beds; water beds; divans; bedsteads; headboards; bedding, other than bed linen; pillows; mattresses; open spring and pocket spring mattresses; memory foam and latex mattresses; futons; air cushions and air pillows; air mattresses; bed casters not of metal; bed fittings not of metal; chairs; armchairs; cabinets; chests of drawers; desks; footstools; cots and cradles; parts and fittings for all the aforesaid goods.

Class 24

Textiles; fabrics and textiles for beds and furniture; bed linen; duvets; bed covers; bed blankets, bed clothes; covers for duvets; mattress covers; covers for pillows and pillow cases; covers for cushions; bedspreads; furniture coverings of textile; quilts; parts and fittings for all the aforesaid goods.

Class 35

Retail services connected with the sale of furniture, bedroom furniture, beds, water beds, sofa beds, divans, bedsteads, headboards, bedding, pillows, mattresses, open spring and pocket spring mattresses, memory foam and latex mattresses, futons, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; retail services connected with the sale of air cushions and air pillows, air mattresses, sleeping bags, bed casters not of metal, bed fittings not of metal, chairs, armchairs, cabinets, chests of drawers, desks, footstools, cots and cradles, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding superstore, online via the Internet or other

interactive electronic platforms, via mail order or catalogues or by means of telecommunications; retail services connected with the sale of textiles, fabrics and textiles for beds and furniture, bed linen, duvets, bed covers, bed blankets, covers for duvets, mattress covers, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; retail services connected with the sale of covers for pillows and pillow cases, covers for cushions, bedspreads, furniture coverings of textile, eiderdowns, quilts, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; information, advisory and consultancy services relating to all of the aforesaid.

The Fourth Earlier Mark

Class 20

Furniture; nursery furniture; cots; cribs; cradles; beds, foam beds; carry cots; travel cots, pop up travel cots; mattresses; bedding; pillows; children's sleeping mats; furniture; tables; cupboards, drawers; dressers; baby changing stations; seating; chairs, folding chairs, folding chairs made of foam; chairs for nursing mothers; rocking chairs; chairs for children; high chairs; swinging chairs; bouncing chairs; bean bags; playpens; changing mats; sleeping mats; bolsters, pillows, cushions, support wedges; window blinds, blackout blinds, sun shades; beanbags; shelving, mirrors, picture frames and photograph frames.