

O/201/20

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3334043
BY LASE MEDICAL LIMITED TO REGISTER**



AND



AS A SERIES OF TWO TRADE MARKS IN CLASS 44

AND

**IN THE MATTER OF OPPOSITION THERETO UNDER NO. 414625
BY MOHAMMED MUHTASEB**

BACKGROUND AND PLEADINGS

1. On 24 August 2018, Lase Medical Limited (“the applicant”) applied to register the series of two trade marks shown on the cover page of this decision in the UK. The application was published for opposition purposes on 7 September 2018 and registration is sought for the services in class 44 shown in paragraph 29.

2. On 7 December 2018, the application was opposed by Mohammed Muhtaseb (“the opponent”). The opposition is based upon Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opponent relies on his earlier UK trade mark 2504457:



3. The mark was applied for on 17 December 2008 and registered on 10 April 2009 in respect of the services in class 44 shown below, all of which the opponent states he is relying on:

Class 44: *Ophthalmic diagnostic services, evaluation, treatment and surgery; refractive lens exchange; presbyopia correction; multifocal, accommodating, piggyback and phakic lens implantation; consultancy, advisory and information services relating to the aforesaid.*

4. The opponent claims that there is a likelihood of confusion because the parties’ respective marks are identical or similar, and the services are identical or similar.

5. The applicant filed a counterstatement denying the claims made and putting the opponent to proof of use of its earlier mark.

6. Both parties filed evidence. The applicant is represented by Newtons Solicitors Limited and the opponent is represented by Urquhart-Dykes & Lord LLP.

7. A hearing took place before me on 14 February 2020. The applicant was represented by Jane Lambert of Counsel, instructed by Newtons Solicitors Limited. The opponent did not attend the hearing but made written submissions in lieu of attendance.

DECISION

8. Section 5(2) of the Act reads as follows:

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

[...]

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

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

9. The mark upon which the opponent relies qualifies as an earlier mark because it was applied for at an earlier date than the applicant’s mark pursuant to section 6 of the Act. The mark completed its registration process more than 5 years before the date of the application in issue in these proceedings and it is subject to proof of use. Although the applicant initially requested that the opponent provides proof of use, it subsequently accepted that the mark has been put to genuine use in connection with the services in respect of which it is registered. In this connection, paragraph 3.2. of the applicant’s written submissions dated 13 August 2019¹ states:

“The applicant does not dispute that the existing mark has been put to genuine use for all the services for which it has been registered provided always that these are ophthalmic services as that phrase is understood by the public and not the extended meaning sought by the opponent”.

¹ Also paragraph 6 of Ms Lambert’s skeleton arguments seemingly accepts genuine use: *“For the purpose of this hearing only and in order to save time and costs, the applicant accepts that the opponent has used his mark in relation to all the services for which it was registered in accordance with section 6 of the Trade Mark Act 1994”.*

10. Given the concession made by the applicant, I would not normally proceed to assess genuine use. However, the extent to which the earlier mark has been used in relation to *Ophthalmic diagnostic services, evaluation, treatment and surgery* is a crucial aspect of the case. This is because the opponent's argument that the services are identical or similar is based on the understanding that *Ophthalmic diagnostic services, evaluation, treatment and surgery* cover oculoplastic surgery, which is a type of surgery that deals with the eyelids and the face. Further, the applicant's concession was made with the caveat that the public would understand the phrase "*ophthalmic services*" as referring to medical services that deal with the diagnosis and treatment of diseases of the eyes and defects of the visual system, rather than in the board sense set out in the opponent's submissions. Consequently, I will proceed to consider the issue of genuine use.

THE EVIDENCE

The Opponent's Evidence in chief

11. The opponent's evidence in chief consists of two witness statements of Mohammed Muhtaseb, dated 13 June 2019.

12. Since the applicant has conceded that the opponent has genuinely used the earlier mark in relation to all of the services for which it is registered, I do not consider it necessary to summarise all of the opponent's evidence, but I will summarise that which is most relevant to the issue I need to decide, namely what is the nature of the services in relation to which the mark has been used.

13. Mr Muhtaseb is a consultant ophthalmic surgeon and works in a hospital in Wales. He has used the earlier mark in relation to his private medical practice. In his first witness statement Mr Muhtaseb provides evidence of use of the earlier mark.

14. Mr Muhtaseb started using the mark 'I LASE' in 2006. In 2007, he registered the domain name www.ilase.co.uk and in 2012 he incorporated a company called 'I Lase Limited'.

15. Mr Muhtaseb confirms the following turnover figures² for services he provided through his company under the earlier mark in the UK:

2012-2013: £122,400

2013-2014: £201,626

2014-2015: £302,805

2015-2016: £344,152

2016-2017: £331,352

2017-2018: £480,598

16. The services have been provided in Cardiff, Swansea and London³.

17. Mr Muhtaseb provides a selection of invoices⁴ dated between 19 April 2010 and 6 January 2013. Nearly all of the invoices are for “*professional consultancy work*”. One of the invoices is for “*treatments I performed at Focus on 15 December 2012*” and amounts to £13,090; the credentials listed below Mr Muhtaseb’s name are “*Consultant Cornea and Refractive Surgeon*”.

18. Mr Muhtaseb provides a copy of his curriculum vitae⁵ as well as web-pages from www.ilase.co.uk⁶ (obtained using the Internet archive the Wayback Machine) and examples of brochures⁷ all of which, he states, show examples of services he has provided during the relevant period, i.e. 8 September 2013 to 7 September 2018. Although the curriculum vitae lists Mr Muhtaseb’s qualifications and experience as a surgeon, it does not establish, without corroborating evidence, that the mark has been used in connection with the services. Web-pages from www.ilase.co.uk, dated 5 November 2013, 15 August 2013 and 4 October 2016, describe the business as a “*refractive surgery and lens implant practice*” and Mr Muthaseb as a “*Consultant Cornea, Cataract and Refractive Surgeon*”. It is said that “*Mr Muhtaseb established i.Lase to meet the demands of patients in the private sector for safe and effective laser*

² Exhibit MM10

³ Exhibits MM3, MM6, MM7, MM8, and MM14

⁴ Exhibit MM11

⁵ Exhibit MM1

⁶ Exhibits MM3, MM6, MM7, MM8, MM9,

⁷ Exhibits MM13-15

eye surgery, as well as cataract and lens implant surgery". Similarly, the brochure which, Mr Muthaseb says, has been shared with patients since 2007 and during the relevant period, describes 'i.Lase' as *"Cornea, Cataract and Laser Eye Surgery"* and *"Cornea, Refractive and Lens Implant Practice"*. Both the webpages are dated 4 October 2016 and the brochures show use of the earlier mark as registered. The webpages describe the treatments available as *"Correction of refractive errors by laser or phakic intraocular lens; cataract extraction and implantation of mono-focal or multifocal intraocular lens; correction of presbyopia by lens and insertion of multifocal intraocular lens"* and provide information on the following eye diseases and treatments: myopia, hyperopia, astigmatism, presbyopia, cataract, keratoconus, corneal swelling, refractive errors, piggyback lenses, laser eye surgery, Phakic intraocular lenses, presbyopia correction, cataract surgery, refractive lens exchange, INTACS inserts, collagen cross linking and corneal grafts. They also include testimonials from Mr Muhtaseb's patients who underwent laser refractive surgery, removal of cataract, lens implant and corneal surgery. One of the webpages dated 21 October 2016 mentions *"wrinkle reduction"* and *"facial aesthetics"* and says that *"Mr Mohammed Muhtased has significant experience in the use of Botulin Toxin Type A to treat blepharospasm and hemi-facial spasm"* and that *"He brings his experience and skills over to the 'i.Lase' facial aesthetics service to offer wrinkle relaxing treatments"*.

19. The second witness statement includes the following:

- **Exhibit MM16:** an extract from Wikipedia about the Rod of Asclepius, a symbol depicting a snake entwined around a rod carried by the Greek god of medicine Asclepius. The exhibit is presented in support of Mr Muhtaseb's statement that he interprets the device element of the applicant's mark to be a representation of the Rod of Asclepius, which is a symbol associated with medicine and healthcare;
- **Exhibit MM17:** an extract from Wikipedia about Plastic Surgery;

- **Exhibits MM18-44:** extracts from Wikipedia about the following: ophthalmology, glaucoma, eye neoplasm, oculoplastic, blepharoplasty, ptosis, canthus, pterygium, injectable fillers, forehead lift, corneal tattooing, orbital cellulitis, distichia, electrolysis, spider veins, microdermabrasion, vision therapy, wrinkles, eye surgery, cataract surgery, refractive surgery, near-sightedness, far-sightedness, astigmatism, presbyopia, keratonconus, fuchs' dystrophy. Mr Muhtaseb point outs that some of the extracts relating to eye diseases and cosmetic surgery mention surgery and laser as treatment options. He also points out that some cosmetic procedures are qualified as medical and some examples of eye surgery mention cosmetic appearance and/or improvement of sight amongst the purpose;
- **Exhibit MM45:** print-outs from the applicant's website. Mr Muhtaseb points out that the applicant's mark is used together with the word medical, i.e. LASE MEDICAL, and that a key part of the services the applicant provides is of a medical nature.

The applicant's evidence

20. The applicant's evidence consists of the witness statement of Ahmed Ali-Khan, who is the applicant's Director, dated 18 August 2019. The first part of Mr Ali-Khan's witness statement contains evidence about the applicant's business generally and Mr Ali-Khan's medical qualifications. I do not consider it necessary to summarise this evidence because it is the mark applied for which is important. However, for context, the applicant offers a range of surgical and non-surgical cosmetic procedures and treatments.

21. Mr Ali-Khan made a number of submissions in his evidence about the similarity between the services offered by the parties (see below). Whilst I do not intend to repeat here everything that Mr Ali-Khan has said, I will bear his submissions in mind. Mr Ali-Khan also states that:

- use of the word LASE by the applicant is an acronym formed from the first initials of his name, his wife's name and their two children's names;
- when Mr Ali-Khan decided to register the mark, he was advised by the UKIPO that the name LASE alone was unlikely to be acceptable;
- until Mr Ali-Khan was notified of the opposition, he was not aware of Mr Muhtaseb or his company;
- ophthalmic surgeons are members of a different Royal College from that to which other surgeons are associated. Most surgeons are members of the Royal College of Surgeons. However, ophthalmic surgeons are members of the Royal College of ophthalmologists;
- Mr Ali-Khan has carried out online searches for 'Lase' and 'i.Lase' which brought up the applicant's and the opponent's company respectively;
- the applicant has never been approached by anyone in relation to problems with eyes or vision. Mr Ali-Khan has never heard of anyone approaching the applicant after having seen an ophthalmologist because the ophthalmologist could not provide what the customer was looking for;
- it is Mr Ali-Khan's opinion that the customers of the applicant are different from those of the opponent;
- the applicant does not intend to provide ophthalmic services.

The opponent's evidence in reply

22. The opponent's evidence in reply consists of the witness statement of Dr Anthony Neil Pawlyn, a trade mark attorney from Urquhart-Dykes & Lord LLP. Mr Pawlyn provides evidence in support of the following contentions:

- in response to Mr Ali-Khan’s submission that ophthalmology is limited to “*diagnosis, treatment and prevention of diseases of the eye and visual system*”, Mr Pawlyn provides extracts from the Royal College of Ophthalmologists showing that surgery is a core element of the registered services and that ophthalmologists are trained to perform eye surgery (**Exhibits ANP46-47**);

- in response to Mr Ali-Khan’s submission that “*ophthalmic services are complementary to other medical services but are not in the same market as other more general medical services*” due to different Royal Colleges being involved, Mr Pawlyn provides the following extracts and publications from the Royal College of Surgeons website:
 - an extract entitled “*About your Procedure*”. It lists eyelid surgery as one of the most common cosmetic surgery procedures (**Exhibit ANP49**);

 - an extract entitled “*Children’s Surgery – A First Class Service*”. It lists ophthalmology as a speciality together with other surgeries, e.g. cardiothoracic surgery, general surgery, etc (**Exhibit ANP50**);

- in response to Mr Ali-Khan’s submissions that “*the opponent’s customers will be seeking services in relation to eye diseases for medical reasons*” and that “*the applicant’s consumers will be looking for solutions to a wide range of problems, in particular cosmetic and beauty issues*” and that “*an individual looking to improve the appearance of their eyes would regard this as a requirement for cosmetic surgery and not a job for an ophthalmologist*”, Mr Pawlyn provides the following:
 - the results of a search for the word “cosmetic” carried out on the Royal College of Ophthalmologists website. The results include articles relating to cosmetic surgery referring to the Royal College of Surgeons as well articles about refractive surgery (which corrects refractive errors and provides freedom from glasses and contact lenses) and oculoplastic surgery (**Exhibit ANP51**);

- two extracts about standards for refractive surgery. One is entitled “*Laser and refractive surgery covered by new GMC guidance on cosmetic surgery*”. It states “*Refractive surgery is primarily functional rather than cosmetic, but both refractive and cosmetic surgical procedures share key attributes setting them apart from other areas of routine medical intervention: they are entirely elective and predominantly self-funded. Accordingly, the GMC has advised that their April 2016 ‘Guidance for Doctors who offer Cosmetic Interventions’ should also apply to refractive surgery*” (**Exhibit ANP52-53**);
- an article entitled “*Oculoplastic Surgery*”. It says that oculoplastic surgery is considered cosmetic and includes brow lift, blepharoplasty, ptosis correction. According to Mr Pawlyn this evidence shows that ophthalmology includes cosmetic purposes as well as medical ones and that there is an overlap between ophthalmic and cosmetic surgery (**Exhibit APN54**).
- in response to the applicant’s submission that the applicant and the opponent are not in competition, Mr Pawlyn provides an extract from the Royal College of Surgeons which talks about the experience a woman who underwent botched eye surgery. It is aimed to demonstrate that surgery for cosmetic purposes is conducted on the eyes (**Exhibit APN55**).

Proof of use

23. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10, Mr Geoffrey Hobbs Q.C. as the Appointed Person summed up the law as being:

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

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

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

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

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

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

vii) In some cases, it may be possible to identify subcategories of goods or services within a general term which are capable of being viewed independently. In such cases, use in relation to only one subcategory will not constitute use in relation to all other subcategories. On the other hand, protection must not be cut down to those precise goods or services in relation to which the mark has been used. This would be to strip the proprietor of

protection for all goods or services which the average consumer would consider to belong to the same group or category as those for which the mark has been used and which are not in substance different from them; *Mundipharma AG v OHIM* (Case T-256/04) ECR II-449; EU:T:2007:46.”

25. The applicant has conceded that there has been genuine use in connection with all of the services for which the mark is registered. The earlier mark is registered for *Ophthalmic diagnostic services, evaluation, treatment and surgery; refractive lens exchange; presbyopia correction; multifocal, accommodating, piggyback and phakic lens implantation; consultancy, advisory and information services relating to the aforesaid* in class 44. The earlier *refractive lens exchange; presbyopia correction; multifocal, accommodating, piggyback and phakic lens implantation*, are specific surgical medical services for people with eye disorders and vision problems so there is no ambiguity in these terms or in the applicant’s concession that there is genuine use in relation to these services. In this connection, whilst the opponent filed evidence that the GMC guidance on cosmetic surgery should apply to refractive surgery, it is also clear that the surgical technique for *refractive lens exchange* is very similar to that used during cataract surgery⁸ and that the treatment is primarily functional rather than cosmetic⁹. However, the problem starts with the earlier *Ophthalmic diagnostic services, evaluation, treatment and surgery* because the opponent seems to contend that ophthalmologists carry out surgery for cosmetic purposes on the eye.

26. Ophthalmology is defined¹⁰ as the scientific study of eyes and their diseases. An ophthalmologist is, therefore, a doctor specializing in the diagnosis and treatment of eye diseases. The evidence shows that Mr Muhtaseb is an ophthalmologist and that his speciality is the treatment of corneal disorders. His company, ‘i.Lase’, is a “*refractive surgery and lens implant practice*” which offers a range of ophthalmic services relating to eye diseases and correction of eyesight, including refractive surgery, lens implants, correction of refractive errors by laser, cataract surgery, correction of presbyopia and collagen cross linking (which is a treatment aimed at strengthening the corneal structure). This is consistent with the dictionary definition of

⁸ Exhibit MM14 page 150

⁹ Exhibit ANP52-53

¹⁰ Cambridge Dictionary (online)

ophthalmology. However, Mr Pawlyn provided evidence to support the argument that ophthalmology includes oculoplastic surgery, a specialty concerned with reconstructive and cosmetic surgery around the eye, including eyelid surgery (blepharoplasty). Even if oculoplastic surgery is a speciality of ophthalmology and is carried out by specialised ophthalmologists¹¹, there is no evidence that Mr Muhtaseb offers those services, his services being limited to medical services for the treatment of eye and vision problems. Furthermore, even if there is a reference in the evidence to Mr Muhtaseb offering Botox injection to relax wrinkles, those services are cosmetic services which are not covered by the specification of the earlier mark. Accordingly, I find that a fair specification which reflects the use made of the earlier mark is:

Class 44: *Ophthalmic diagnostic services, evaluation, treatment and surgery all being in relation to eye diseases and correction of eyesight and none being in relation to oculoplastic surgery; refractive lens exchange; presbyopia correction; multifocal, accommodating, piggyback and phakic lens implantation; consultancy, advisory and information services relating to the aforesaid; all the aforementioned being provided through a single speciality clinic.*

Section 5(2) – case law

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

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

¹¹ Exhibit MM21

(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 impression created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

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

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

(g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings to mind the earlier mark, is not sufficient;

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

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

Comparison of services

28. Although the opposition was initially directed against all of services for which registration is sought, in its written submission of 13 June 2019, the opponent states that the services listed below are no longer objected:

“Advice relating to cosmetics; Advisory services relating to cosmetics; Advisory services relating to diet; Advisory services relating to slimming; Advisory services relating to weight control; Advisory services relating to weight loss; Application of cosmetic products to the body; Application of cosmetic products to the face; Beauty care of feet; Consultancy relating to cosmetics; Consultancy services relating to cosmetics; Consultancy services relating to orthopaedic implants; Consultation services in the field of make-up; Consultation services in the field of weight management; Cosmetic analysis; Cosmetic dentistry; Cosmetic dentistry services; Cosmetic laser treatment of tattoos; Cosmetic laser treatment of toenail fungus; Cosmetic laser treatment of varicose veins; Cosmetic make-up services; Cosmetic skin tanning services for human beings; Cosmetic treatment for the hair; Cosmetic treatment services for the hair; Dental clinic services; Dental consultations; Dental services; Dentistry; Dentistry services; Guidance on nutrition; Gynecology services; Hair replacement; Hair restoration; Hair restoration services; Laser removal of tattoos; Laser removal of toenail fungus; Laser removal of varicose veins; Leasing of medical equipment; Leasing skin care equipment; Liposuction services; Lymphatic drainage services; Lymphodrainage services; Microneedling treatment services; Personal therapeutic services relating to cellulite removal; Personal therapeutic services relating to fat dissolution; Providing information relating to dentistry; Providing medical advice in the field of weight loss; Providing medical information in the field of weight loss; Removal of body cellulite; Rental of equipment for medical purposes; Rental of hospital equipment; Rental of machines and apparatus for use in beauty salons or barbers' shops; Rental of medical and health care equipment; Rental of medical equipment; Rental of medical machines and apparatus; Services for the care of the scalp; Skin tanning service for humans for cosmetic purposes; Teeth whitening services”.

29. Therefore, the services against which the opposition is maintained are as follows (with the unopposed terms highlighted in grey):

Class 44: *Advice relating to cosmetics; Advisory services relating to beauty; Advisory services relating to beauty care; Advisory services relating to beauty treatment; Advisory services relating to cosmetics; Advisory services relating to diet; Advisory services relating to health; Advisory services relating to medical instruments; Advisory services relating to medical problems; Advisory services relating to medical services; Advisory services relating to slimming; Advisory services relating to surgical instruments; Advisory services relating to weight control; Advisory services relating to weight loss; Aesthetician services; Alternative medicine services; Analysis of human tissues for medical treatment; Application of cosmetic products to the body; Application of cosmetic products to the face; Arranging of medical treatment; Beautician services; Beauticians (Services of -); Beauty advisory services; Beauty care; Beauty care for human beings; Beauty care of feet; Beauty care services; Beauty care services provided by a health spa; Beauty consultancy; Beauty consultancy services; Beauty consultation; Beauty consultation services; Beauty counselling; Beauty information services; Beauty salon services; Beauty salons; Beauty spa services; Beauty therapy services; Beauty therapy treatments; Beauty treatment; Beauty treatment services; Beauty treatment services especially for eyelashes; Cellulite treatment services; Cellulitis treatment services; Charitable services, namely providing medical services; Charitable services, namely, providing medical services to needy persons; Clinic (Medical -) services; Clinic services (Medical -); Clinics; Clinics (Medical -); Collation of information in the healthcare sector; Compilation of medical reports; Conducting of medical examinations; Consultancy and information services relating to biopharmaceutical products; Consultancy and information services relating to medical products; Consultancy in the field of body and beauty care; Consultancy provided via the Internet in the field of body and beauty care; Consultancy relating to cosmetics; Consultancy relating to health care; Consultancy services relating to beauty; Consultancy services relating to cosmetics; Consultancy services relating to orthopaedic implants; Consultancy services relating to prosthetic implants; Consultancy services relating to surgery; Consultation services in the field of make-up; Consultation services in the field of weight management; Consultation services relating to beauty care; Consultation services relating to skin care; Consulting services relating to health care; Cosmetic analysis; Cosmetic and plastic surgery; Cosmetic and plastic surgery clinic services;*

Cosmetic body care services; Cosmetic dentistry; Cosmetic dentistry services; Cosmetic electrolysis; Cosmetic electrolysis for the removal of hair; Cosmetic facial and body treatment services; Cosmetic laser treatment for hair growth; Cosmetic laser treatment of skin; Cosmetic laser treatment of spider veins; Cosmetic laser treatment of tattoos; Cosmetic laser treatment of toenail fungus; Cosmetic laser treatment of unwanted hair; Cosmetic laser treatment of varicose veins; Cosmetic make-up services; Cosmetic skin tanning services for human beings; Cosmetic surgery services; Cosmetic treatment; Cosmetic treatment for the body; Cosmetic treatment for the face; Cosmetic treatment for the hair; Cosmetic treatment services for the body, face and hair; Cosmetician services; Cosmetics consultancy services; Dental clinic services; Dental consultations; Dental services; Dentistry; Dentistry services; Depilatory treatment; Dermatological services for treating skin conditions; Dermatology services; Dispensing of pharmaceuticals; Electrolysis for cosmetic purposes; Facial beauty treatment services; Facial treatment services; Guidance on nutrition; Gynecology services; Hair replacement; Hair restoration; Hair restoration services; Health advice and information services; Health care; Health care consultancy services [medical]; Health care services offered through a network of health care providers on a contract basis; Health center services; Health centers; Health centre services; Health centres; Health clinic services; Health clinic services [medical]; Health consultancy; Health counseling; Health counselling; Health farm services [medical]; Health resort services [medical]; Health spa services; Healthcare; Health-care; Healthcare advisory services; Healthcare consultancy services; Healthcare information services; Healthcare services; Health-care services; Hiring of surgical instruments; Hospital services; Hospitals; Hygienic and beauty care; Hygienic and beauty care for human beings; Hygienic and beauty care for humans; Hygienic and beauty care services; Hygienic care for human beings; Information relating to beauty; Information relating to beauty care; Information relating to health; Information services relating to health care; Injectable filler treatments for cosmetic purposes; Issuing of medical reports; Laser hair removal services; Laser removal of spider veins; Laser removal of tattoos; Laser removal of toenail fungus; Laser removal of varicose veins; Laser skin rejuvenation services; Laser skin tightening services; Leasing of medical equipment; Leasing skin care equipment; Liposuction services; Lymphatic drainage services; Lymphodrainage

services; Medical advisory services; Medical and healthcare clinics; Medical and healthcare services; Medical assistance consultancy provided by doctors and other specialized medical personnel; Medical assistance services; Medical care; Medical care and analysis services relating to patient treatment; Medical care services; Medical clinic services; Medical clinics; Medical consultancy services; Medical consultation; Medical consultations; Medical counseling; Medical diagnostic services; Medical evaluation services; Medical examination of individuals; Medical examination of individuals (Provision of reports relating to the -); Medical examinations; Medical health assessment services; Medical information; Medical information (Provision of -); Medical information services; Medical information services provided via the Internet; Medical services; Medical services for the treatment of skin cancer; Medical services for treatment of the skin; Medical spa services; Medical treatment services; Medical treatment services provided by a health spa; Medical treatment services provided by clinics and hospitals; Microdermabrasion services; Microneedling treatment services; Micropigmentation services; Nursing care; Nursing care (Provision of -); Nursing care services; Nursing home services; Nursing, medical; Nursing services; Nursing services (Medical -); Permanent hair removal and reduction services; Personal hair removal services; Personal therapeutic services relating to cellulite removal; Personal therapeutic services relating to fat dissolution; Pharmaceutical advisory services; Pharmaceutical consultation; Pharmaceutical services; Physical examination; Physical examination services; Physician services; Physicians' services; Physiotherapy; Physiotherapy [physical therapy]; Physiotherapy services; Plastic surgery; Plastic surgery services; Preparation of reports relating to health care matters; Preparation of reports relating to medical matters; Private hospital services; Professional consultancy relating to health; Professional consultancy relating to health care; Providing health care information by telephone; Providing health information; Providing information about beauty; Providing information in the field of health via a website; Providing information relating to beauty salon services; Providing information relating to dentistry; Providing information relating to medical services; Providing information relating to physical examinations; Providing laser therapy for treating medical conditions; Providing medical advice in the field of dermatology; Providing medical advice in the field of weight loss; Providing medical

information; Providing medical information in the field of dermatology; Providing medical information in the field of weight loss; Providing medical information in the healthcare sector; Providing medical support in the monitoring of patients receiving medical treatments; Providing news and information in the field of medicine; Provision of health care services; Provision of hygienic and beauty care services; Provision of information relating to medicine; Provision of medical assistance; Provision of medical facilities; Provision of medical information; Provision of medical services; Provision of medical treatment; Provision of nursing care; Removal of body cellulite; Rental of equipment for medical purposes; Rental of hospital equipment; Rental of machines and apparatus for use in beauty salons or barbers' shops; Rental of medical and health care equipment; Rental of medical equipment; Rental of medical machines and apparatus; Services for the care of the face; Services for the care of the scalp; Services for the care of the skin; Services for the preparation of medical reports; Services for the provision of medical care information; Services for the provision of medical facilities; Services of a hair and beauty salon; Skin care salon services; Skin care salons; Skin tanning service for humans for cosmetic purposes; Spa services; Spas; Surgery; Surgery (Cosmetic -); Surgery (Plastic -); Surgical diagnostic services; Surgical treatment services; Technical consultancy services relating to medical health; Teeth whitening services; Telemedicine services; Therapeutic treatment of the body; Therapeutic treatment of the face.

30. The services covered by the earlier mark are:

Class 44: *Ophthalmic diagnostic services, evaluation, treatment and surgery all being in relation to eye diseases and correction of eyesight and none being in relation to oculoplastic surgery; refractive lens exchange; presbyopia correction; multifocal, accommodating, piggyback and phakic lens implantation; consultancy, advisory and information services relating to the aforesaid; all the aforementioned being provided through a single speciality clinic.*

31. When making the comparison, all relevant factors relating to the services in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union (“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.”

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

(a) The respective uses of the respective goods or services;

(b) The respective users of the respective goods or services;

(c) The physical nature of the goods or acts of service;

(d) The respective trade channels through which the goods or services reach the market;

(e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and, in particular, whether they are or are likely to be found on the same or different shelves;

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance, whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

33. In *Gérard Meric v OHIM*, Case T- 133/05, the General Court (“GC”) stated:

“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 fur 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”.

34. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the GC stated that “complementary” means:

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

35. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that:

"... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

36. In *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another*, [2000] F.S.R. 267 (HC), Neuberger J. (as he then was) stated that:

“I should add that I see no reason to give the word “cosmetics” and “toilet preparations” ... anything other than their natural meaning, subject, of course, to the normal and necessary principle that the words must be construed by reference to their context.”

37. In *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. (as he then was) stated that:

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.”

38. Where the services are homogeneous, I will group them together for the purpose of assessment.¹²

39. Advisory services relating to beauty; Advisory services relating to beauty care; Advisory services relating to beauty treatment; Aesthetician services; Beautician services; Beauticians (Services of -); Beauty advisory services; Beauty care; Beauty care for human beings; Beauty care services; Beauty care services provided by a health spa; Beauty consultancy; Beauty consultancy services; Beauty consultation; Beauty consultation services; Beauty counselling; Beauty information services; Beauty salon services; Beauty salons; Beauty spa services; Beauty therapy services; Beauty therapy treatments; Beauty treatment; Beauty treatment services; Beauty treatment services especially for eyelashes; Consultancy in the field of body and beauty care; Consultancy provided via the Internet in the field of body and beauty care; Consultancy services relating to beauty; Consultation services relating to beauty care; Consultation services relating to skin care; Cosmetic body care services; Cosmetic electrolysis; Cosmetic electrolysis for the removal of hair; Cosmetic facial and body treatment

¹² *Separode Trade Mark* BL O-399-10

services; Cosmetic laser treatment for hair growth; Cosmetic laser treatment of skin; Cosmetic laser treatment of spider veins; Cosmetic laser treatment of unwanted hair; Cosmetic treatment; Cosmetic treatment for the body; Cosmetic treatment for the face; cosmetic treatment services for the body and face; Cosmetician services; Cosmetics consultancy services; Depilatory treatment; Electrolysis for cosmetic purposes; Facial beauty treatment services; Facial treatment services; Hygienic and beauty care; Hygienic and beauty care for human beings; Hygienic and beauty care for humans; Hygienic and beauty care services; Hygienic care for human beings; Information relating to beauty; Information relating to beauty care; Injectable filler treatments for cosmetic purposes; Laser hair removal services; Laser removal of spider veins; Laser skin rejuvenation services; Laser skin tightening services; Lymphodrainage services; Microdermabrasion services; Micropigmentation services; Permanent hair removal and reduction services; Personal hair removal services; Providing information about beauty; Providing information relating to beauty salon services; Provision of hygienic and beauty care services; Services of a hair and beauty salon; Skin care salon services; Skin care salons; Services for the care of the face; Therapeutic treatment of the body.

Although the opponent's arguments were, to some extent, difficult to follow, what I understand the opponent is saying in his written submissions is that cosmetic and beauty-related services (1) are identical or similar to the services covered by the earlier mark because they share the same nature, i.e. medical or (2) are not clearly separate from medical services because the same procedures may be used for medical, cosmetic and beauty purposes¹³. In this connection, the opponent refers to the evidence that *"reconstructive surgery is usually performed to improve function, but it may also be done to approximate a normal appearance"*¹⁴ and mentions surgical procedures aimed to lift eyelids and eyebrows, e.g. blepharoplasty and browlift. I reject these submissions. The applied for services listed above are all cosmetic and beauty treatments and procedures which do not involve reconstructive or cosmetic surgery of the eye. Alternatively, the opponent is asking me to compare the applied for services with cosmetic surgery, but this is not what the mark is registered for (to the extent that it has been used). The opponent's ophthalmic services relate to surgery performed solely to treat eye diseases and to correct vision. Applying the criteria laid down in

¹³ Page 17 paragraph 33 of written submissions dated 13 June 2019

¹⁴

Canon, I consider that these services are not similar. The opponent's services are rendered by ophthalmologists and are sought by those with eye diseases or vision problems. The applicant's services are various cosmetic and beauty services rendered by beauty centres and saloons and sought by those who wish to improve their appearance. The specific nature and the purpose of the services are different, the trade channels are different, and the services are not competitive or complementary because the average consumer would not expect the applicant's services to be provided by an ophthalmologist or vice versa. An overlap in users is not enough. Likewise, I reject the submissions that the services are similar simply because they might use the same techniques, i.e. laser. **These services are dissimilar.**

40. I reach the same conclusions for similar reasons in relation to the applied for *Health farm services [medical]; Health resort services [medical]; Health spa services; Medical spa services; Medical treatment services provided by a health spa; Spa services; Spas.* The Oxford English Dictionary (online) does not have a definition for "medical spa", but it defines "spa" and "health spa" as "a commercial establishment offering health and beauty treatment such as steam baths, exercise and massage". I have no information about what medical treatments health farms, health resorts or medical spas offer but my understanding is that they offer treatments and procedures to improve wellbeing and appearance, such as massages and facials, along with other beauty treatments which would normally be provided under the care and direction of a doctor or a nurse, e.g. Botox treatments or derma fillers. The uses and purpose of the services are different, the trade channels are different and there is no competition. Further, I do not consider reconstructive or cosmetic surgery of the eye to be a type of procedure offered by health farms, health resorts or medical spas and the average consumer would not expect these businesses to provide ophthalmic treatments for eye diseases or vision problems, so there is neither identity nor complementarity. **These services are dissimilar.**

41. *Therapeutic treatment of the face.* A normal reading of *Therapeutic treatment of the face* would include skin treatments such as, for example, a facial peel. Contrary to what the opponent suggests, these services are unlikely to be regarded as including reconstructive or cosmetic surgery of the eye. I come, again, to the view that the

services in question are not similar to the opponent's ophthalmic services. **These services are dissimilar.**

42. Dermatological services for treating skin conditions; Dermatology services; Medical services for the treatment of skin cancer; Medical services for treatment of the skin; Providing medical information in the field of dermatology; Providing medical advice in the field of dermatology; Services for the care of the skin. These are medical services provided by dermatologists. Although ophthalmic and dermatology services are both types of medical services, they are provided in different fields by different specialists. Further, the field of dermatology does not have a direct and immediate relationship with the field of ophthalmology. Whilst I recognise that some healthcare clinics provide medical treatments that fall under more than one speciality, the opponent's services are limited to those provided through a single speciality clinic, so the trade channels do not coincide. I come, again, to the view that the services in question are not similar to the opponent's ophthalmic services. **These services are dissimilar.**

43. Physiotherapy; Physiotherapy [physical therapy]; Physiotherapy services. Physiotherapy is defined as "*the treatment of problems of the muscles, joints, or nerves, especially using exercises or by rubbing or moving the affected body parts*"¹⁵. The opponent's claims that these services are similar to the services covered by the earlier mark because they includes vision therapy which involves treatments based around eyes exercise. I disagree. Vision therapy is not a type of physiotherapy and is not provided by physiotherapists. As the opponent's own evidence shows, vision therapy is commonly practiced by orthoptists, optometrists and ophthalmologists¹⁶. The uses, purposes and trade channels are different, and the services are neither complementary nor in competition. I cannot see how these services are similar to the opponent's ophthalmic services. **These services are dissimilar.**

44. Health counseling; Health counselling; Medical counselling. Counselling is the provision of professional assistance and guidance in resolving personal or

¹⁵ Cambridge Online Dictionary

¹⁶ Exhibit MM34

psychological problems. A counsellor is a medical professional who helps patients achieve emotional wellness. Giving the terms *Health counseling; Health counselling; Medical counselling*, their ordinary and natural meaning, I conclude that they refer to medical and health services relating to mental health. The uses, purposes and trade channels are different, and the services are neither competitive nor complementary. **These services are dissimilar.**

45. Alternative medicine services. The term “*Alternative medicine*” refers to a range of medical therapies that are not regarded as orthodox by the medical profession, such as herbalism, naturopathy, and crystal healing. There is no evidence that alternative medicine is used to treat eye diseases or improve vision. There is no similarity in terms of uses, purposes and trade channels and the services are neither complementary nor competitive. **These services are dissimilar.**

46. Advisory services relating to medical instruments; Advisory services relating to surgical instruments; Hiring of surgical instruments. These services are provided by manufacturers and distributors of equipment used in the medical field. The services target doctors, hospitals and healthcare centres, whilst the opponent’s services target those with eye diseases and vision problems, so the users are different, and the services have different purposes and do not share trade channels. Further, the opponent’s consumers will not assume that a provider of ophthalmic services also provides advice on medical equipment or offers services consisting of hiring of surgical instruments. **These services are dissimilar.**

47. Collation of information in the healthcare sector. I have no submission about what these services cover. In my view, the services are administrative services which would involve collection of medical data provided by doctors and hospitals about their patients in order, for example, to make that data available to scientists conducting research or solicitors who need to use the data in personal injury or medical negligence cases. As a consequence, the relevant public of the applicant’s services are scientists or solicitors rather than members of the general public with eye problems. Further, the purpose of the services is different, the trade channels do not coincide, and the services are neither complementary or competitive. **These services are dissimilar.**

48. I reach the same conclusions for similar reasons in relation to the applied for Compilation of medical reports; Issuing of medical reports; Preparation of reports relating to health care matters; Preparation of reports relating to medical matters; Services for the preparation of medical reports; Medical examination of individuals (Provision of reports relating to the -). I have no submissions about what these services cover but, similarly to what I said above, it seems to me that these are services which would be provided by a medical expert or a medico-legal company to solicitors, insurers and claimants. **These services are dissimilar.**

49. Nursing home services. A nursing home is a small private institution providing residential accommodation with health care, especially for elderly people. There is no obvious similarity between those services and the opponent's services. **These services are dissimilar.**

50. Provision of nursing care; Nursing care; Nursing care (Provision of -); Nursing care services; Nursing, medical; Nursing services; Nursing services (Medical -). These services are services provided by a registered qualified nurse. The services will be sought by hospitals and healthcare providers or to assist those with a clinical condition to live independently at home. Whilst an ophthalmologist can avail himself of the assistance of a nurse in the running of his private clinic, it is part and parcel of the services he provides to his patients, not a separate service. The services have different users, uses and purposes, are not provided through the same channels and are neither complementary nor competitive. **These services are dissimilar.**

51. Analysis of human tissues for medical treatment. These are services provided typically by medical laboratories to doctors and hospitals. Whilst I recognise that analysis and treatments have a common general purpose, i.e. to resolve a health issue, there is no evidence that private ophthalmic clinics provide laboratory services for the analysis of human tissues directly to patients, so the end consumers of the services are different. **These services are dissimilar.**

52. Consultancy and information services relating to biopharmaceutical products; Consultancy and information services relating to medical products; Pharmaceutical advisory services; Pharmaceutical consultation; Pharmaceutical services; Dispensing

of pharmaceuticals. The opponent states that an integral part of his ophthalmic services is to provide advice to patients about pharmaceutical products, to prevent, for examples, infections after surgery. I agree. Although pharmacy advice is normally dispensed by pharmacists in a self-standing pharmacy, advice on pharmaceutical products is something that a patient will expect to be made available as part of the opponent's medical services. Further, it is not uncommon for doctors to provide free pharmaceutical samples. Consequently, to the extent that the applicant's services cover advice and consultation on pharmaceutical products and dispensing of pharmaceutical products for the treatment of eye diseases or conditions, there is a similarity in terms of users, purposes and trade channels and a degree of complementarity. **These services are similar to a high degree.**

53. Cosmetic and plastic surgery; Cosmetic and plastic surgery clinic services; Cosmetic surgery services; Plastic surgery; Plastic surgery services; Surgery (Cosmetic -); Surgery (Plastic -). The services in this category include oculoplastic surgery, which is a type of reconstructive and plastic surgery performed around the eye. Even if the services in relation to which the opponent has used the mark do not include oculoplastic surgery, the evidence suggest that ophthalmologists can carry out oculoplastic surgery so there is a degree of complementarity. **In my view, these services are similar to a medium degree.**

54. Advisory services relating to health; Advisory services relating to medical problems; Advisory services relating to medical services; Arranging of medical treatment; Charitable services, namely providing medical services; Charitable services, namely, providing medical services to needy persons; Clinic (Medical -) services; Clinic services (Medical -); Clinics; Clinics (Medical -); Conducting of medical examinations; Consultancy relating to health care; Consultancy services relating to surgery; Consulting services relating to health care; Health advice and information services; Health care; Health care consultancy services [medical]; Health clinic services; Health clinic services [medical]; Health consultancy; Healthcare; Health-care; Healthcare advisory services; Healthcare consultancy services; Healthcare information services; Healthcare services; Health-care services; Information relating to health; Information services relating to health care; Medical advisory services; Medical and healthcare clinics; Medical and healthcare services; Medical assistance

consultancy provided by doctors and other specialized medical personnel; Medical assistance services; Medical care; Medical care and analysis services relating to patient treatment; Medical care services; Medical clinic services; Medical clinics; Medical consultancy services; Medical consultation; Medical consultations; Medical diagnostic services; Medical evaluation services; Medical examination of individuals; Medical examinations; Medical health assessment services; Medical information; Medical information (Provision of -); Medical information services; Medical information services provided via the Internet; Medical services; Medical treatment services; Medical treatment services provided by clinics; Physical examination; Physical examination services; Physician services; Physicians' services; Professional consultancy relating to health; Professional consultancy relating to health care; Providing health care information by telephone; Providing health information; Providing information in the field of health via a website; Providing information relating to medical services; Providing information relating to physical examinations; Providing laser therapy for treating medical conditions; Providing medical information; Providing medical information in the healthcare sector; Providing medical support in the monitoring of patients receiving medical treatments; Providing news and information in the field of medicine; Provision of health care services; Provision of information relating to medicine; Provision of medical assistance; Provision of medical facilities; Provision of medical information; Provision of medical services; Provision of medical treatment; Services for the provision of medical care information; Services for the provision of medical facilities; Surgery; Surgical diagnostic services; Surgical treatment services; Technical consultancy services relating to medical health; Telemedicine services. These services are broad enough to include medical services relating to ophthalmology. **As such, they are identical to the opponent's services (Meric).**

55. Cellulitis treatment services. Cellulitis is defined as an inflammation of cellular tissue. The term includes orbital cellulitis which is an inflammation of the eye tissues behind the orbital septum and falls within the opponent's ophthalmic services¹⁷. **These services are also identical (Meric).**

¹⁷ Exhibit MM29

56. Consultancy services relating to prosthetic implants. These services include consultancy services relating to ocular implants (prosthetic) which fall within the opponent's ophthalmic services. **These services are also identical (Meric).**

57. Health care services offered through a network of health care providers on a contract basis; Health center services; Health centers; Health centre services; Health centres. A health centre is building or establishment housing local medical services or the practice of a group of doctors. Whilst the services are not identical to the opponent's ophthalmic services provided through a single speciality clinic, the ophthalmic services provided by the opponent could also be provided through a network of health care providers on a contract basis and health centres. Whilst the trade channels would be different, the uses, users and purposes of the services would be the same, the services would be in competition and consumer would regard the services as complementary. **These services are similar to a high degree.**

58. Medical treatment services provided by hospitals; Private hospital services; Hospital services; Hospitals. Hospitals provide treatments for all medical needs so one can easily foresee a situation whereby services identical to those offered by the opponent, could be provided through a hospital rather than a single speciality clinic. The uses, users and purposes of the services would be the same, the services would be in competition and consumer would regard the services as complementary. **These services are similar to a high degree.**

Average consumer and the nature of the purchasing act

59. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' services. I must then determine the manner in which the 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.”

60. The average consumers of the parties’ services are members of the general public. The opponent states that the service provider will be selected with an average degree of attention, although it also says that the average consumer will take greater care in (1) checking that the person providing the services has the relevant professional qualifications and (2) deciding whether or not to have the relevant treatments. I do not agree. The relevant consumer’s level of attention must be assessed for the purpose of establishing the likelihood of confusion, i.e. at the point in time when the service provider is selected. The factors which might influence the decision of consumers as to whether to go ahead with the treatment (after the service provider has been selected), are outside the scope of the assessment I need to make. Given the medical nature and likely cost of the services, the provider will, in my view, be selected with a higher than average degree of care and attention. Whilst the marks used in this field will often be encountered visually on marketing material and websites, aural use will also be made when matters are discussed with healthcare practitioners and others in the field. Both visual and aural similarity is thus important.

Comparison of the marks

61. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

62. 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. The respective trade marks are shown below:

Applied for mark (series of two)	Earlier mark
	

The earlier mark

63. The earlier mark consists of the letter ‘i’ followed by a dot and the word ‘Lase’. The letters ‘i’ is written in lower case and the word ‘Lase’ is written in bold in title case in a standard font. The letter ‘i’ is in a smaller font compared to the word ‘Lase’. The letters

are of shades of beige with a shadow applied around them which creates an outline effect. There is also an orbital device around the letters 'La' which makes the word 'Lase' stand out, creating a distance between the letter 'i' and the word 'Lase'. The direction of the orbital device is opposite to that of the letters which are slightly bended on the right.

64. The applicant argues that the words 'Lase' is likely to be understood by the average consumer as short for 'Laser' and is not distinctive because it is descriptive of laser technology used both in surgical and non-surgical treatments. I reject the submission. Firstly, although there is a dictionary definition of 'Lase' as *'verb (intransitive) (of a substance, such as carbon dioxide or ruby) to be capable of acting as a laser'*, the dictionary also indicates that the frequency usage of the word is very low¹⁸. Secondly, although the evidence shows that some ophthalmic treatments might be performed using laser technology, the specification of the earlier mark is not limited in that sense and covers ophthalmic services performed using other technologies which do not include the use of laser. Therefore, while I agree with the opponent that 'Lase' will bring to mind the idea of 'laser', I do not agree that the word is non-distinctive because (1) the word is likely to be perceived as invented and (2) it is not directly descriptive of the services. Consequently, I find that the word 'Lase' in the opponent's mark is distinctive to a slightly below average (but not low) degree.

65. The word 'LASE' catches the eye first and is the most dominant element of the mark because of its size and position. The orbital device and the shading have a visual impact but will be perceived merely as decorative and will have little weight in the overall impression. The letter 'i' is much smaller than the word 'Lase' (which retains an independent significance) and will have less relative weight in the overall impression of the mark. The applicant says that the element 'i.' could be perceived as an abbreviation for 'internet' or 'insert' or even a pun on 'eye'. There is no evidence that 'i.' is a shorten form for 'internet' or 'insert' or that the average consumer would attach that meaning to the letter. In my view, (1) most average consumers encountering the mark in the context of the opponent's services (which relates to medical treatments for eye diseases and vision problems) will most likely see the letter 'i' as a reference to

¹⁸ Collins English Dictionary Online

the (descriptive) word 'eye' given the identical pronunciation and (2) other consumers might see it as a prefix with no clear meaning.

The applied for mark (series of two)

66. The applied for registration consists of a series of two marks. The first mark of the series consists of the word 'LASE' written in standard bold capital letters positioned next to a black stick intertwined by a curvy (almost snake-like) green line. Both the stick and the snake-like line have pointed ends. The colour of the letters is increasingly darker from top to bottom and the snake-like line contains lighter and darker shades of green. The only difference between the first and the second mark in the series is that the second mark is incorporated within a black square background and the letters are white. Both parties accept that the figurative element of the mark represents a stylised version of the 'rod of asclepius', however, in my view, it is most likely that the average consumer will see it as a decorative device with no particular meaning. Whilst the device has a visual impact, given its decorative nature (or symbolic association with the weak concept of medicine and healthcare), it is less distinctive than the word LASE, which is the most distinctive and dominant element of the mark.

Visual similarity

67. Visually, the marks are similar to the extent that they share the word 'Lase'/LASE'. They differ in the colours, in the presence of the device in the applied for mark and in the presence of the letter 'i.' and the orbital device in the earlier mark. Overall, the marks are similar to a medium degree.

Aural similarity

68. Aurally, the figurative elements of the mark will not be articulated. The applied for marks will be pronounced as 'LASE' and the earlier mark will be pronounced as 'EYE-LASE'. The marks are aurally similar to a medium to high degree.

Conceptual similarity

69. Conceptually, the element LASE will convey the same concept in both marks, i.e. that of an invented word which evokes the idea of 'laser'. The device in the applied for marks will convey either no meaning or the idea of a stylised representation of the 'rod of asclepius', which is weak in the context of the services at issue. The letter 'i.' in the earlier mark will convey the descriptive concept of 'eye' or no concept at all. The marks are conceptually similar to a very high degree.

Distinctive character of the earlier trade marks

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

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, paragraph 49).

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

71. The opponent has not pleaded that its mark has acquired enhanced distinctive character, although he has filed some evidence of use. However, for the sake of completeness, I will assess whether the use made of the earlier mark has enhanced its distinctive character. The figures filed by the opponent are not insignificant, however, they are indicative of a small (although successful) business. The opponent seems to operate from three locations and there is no evidence that he employs anyone. There is no evidence of marketing expenditure and no evidence of market share. Consequently, I find that the use shown has not enhanced the distinctiveness of the earlier mark to any extent. Inherently, I have already found that the word 'LASE' is, in itself, distinctive to a below average (but not low) degree. Whilst the other elements of the mark add to its distinctiveness and I consider that the mark as a whole is distinctive to a medium degree, I also bear in mind that it is the distinctiveness of the common element that is the key¹⁹.

Likelihood of confusion

72. In determining whether there is a likelihood of confusion, a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective marks may be offset by a greater degree of similarity between the respective services and vice versa. I must also keep in mind the average consumer for the services, the nature of the purchasing process and the fact that the average consumer rarely has the opportunity to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has retained in his mind.

73. Confusion can be direct or indirect. This distinction was summed up by Mr Iain Purvis Q.C. sitting as the Appointed Person in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

¹⁹ *Kurt Geiger v A-List Corporate Limited*, BL O-075-13

“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.

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

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (“26 RED TESCO” would no doubt be such a case).
- (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as “LITE”, “EXPRESS”, “WORLDWIDE”, “MINI” etc.).
- (c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (“FAT FACE” to “BRAT FACE” for example).”

Services which are not objected and/or dissimilar

74. As the opponent no longer object the services listed below, they can proceed to registration:

Class 44: *Advice relating to cosmetics; Advisory services relating to cosmetics; Advisory services relating to diet; Advisory services relating to slimming; Advisory services relating to weight control; Advisory services relating to weight loss; Application of cosmetic products to the body; Application of cosmetic products to the face; Beauty care of feet; Consultancy relating to cosmetics; Consultancy services relating to cosmetics; Consultancy services relating to orthopaedic implants; Consultation services in the field of make-up; Consultation services in the field of weight management; Cosmetic analysis; Cosmetic dentistry; Cosmetic dentistry services; Cosmetic laser treatment of tattoos; Cosmetic laser treatment of toenail fungus; Cosmetic laser treatment of varicose veins; Cosmetic make-up services; Cosmetic skin tanning services for human beings; Cosmetic treatment for the hair; Cosmetic treatment services for the hair; Dental clinic services; Dental consultations; Dental services; Dentistry; Dentistry services; Guidance on nutrition; Gynecology services; Hair replacement; Hair restoration; Hair restoration services; Laser removal of tattoos; Laser removal of toenail fungus; Laser removal of varicose veins; Leasing of medical equipment; Leasing skin care equipment; Liposuction services; Lymphatic drainage services; Microneedling treatment services; Personal therapeutic services relating to cellulite removal; Personal therapeutic services relating to fat dissolution; Providing information relating to dentistry; Providing medical advice in the field of weight loss; Providing medical information in the field of weight loss; Removal of body cellulite; Rental of equipment for medical purposes; Rental of hospital equipment; Rental of machines and apparatus for use in beauty salons or barbers' shops; Rental of medical and health care equipment; Rental of medical equipment; Rental of medical machines and apparatus; Services for the care of the scalp; Skin tanning service for humans for cosmetic purposes; Teeth whitening services.*

75. Further, some similarity of goods and services is a pre-condition for the application of section 5(2)²⁰. In *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, Lady Justice Arden stated that:

“49..... I do not find any threshold condition in the jurisprudence of the Court of Justice cited to us. Moreover I consider that no useful purpose is served by holding that there is some minimum threshold level of similarity that has to be shown. If there is no similarity at all, there is no likelihood of confusion to be considered. If there is some similarity, then the likelihood of confusion has to be considered but it is unnecessary to interpose a need to find a minimum level of similarity.

76. Given my finding that there is no similarity between the opponent’s services and some of the applied for services, the opposition fails in relation to the services which I found to be dissimilar (which will proceed to registration), namely:

Class 44: *Advisory services relating to beauty; Advisory services relating to beauty care; Advisory services relating to beauty treatment; Aesthetician services; Beautician services; Beauticians (Services of -); Beauty advisory services; Beauty care; Beauty care for human beings; Beauty care services; Beauty care services provided by a health spa; Beauty consultancy; Beauty consultancy services; Beauty consultation; Beauty consultation services; Beauty counselling; Beauty information services; Beauty salon services; Beauty salons; Beauty spa services; Beauty therapy services; Beauty therapy treatments; Beauty treatment; Beauty treatment services; Beauty treatment services especially for eyelashes; Consultancy in the field of body and beauty care; Consultancy provided via the Internet in the field of body and beauty care; Consultancy services relating to beauty; Consultation services relating to beauty care; Consultation services relating to skin care; Cosmetic body care services; Cosmetic electrolysis; Cosmetic electrolysis for the removal of hair; Cosmetic facial and body treatment services; Cosmetic laser treatment for hair*

²⁰ *Waterford Wedgwood plc v OHIM* – C-398/07 P (CJEU)

growth; Cosmetic laser treatment of skin; Cosmetic laser treatment of spider veins; Cosmetic laser treatment of unwanted hair; Cosmetic treatment; Cosmetic treatment for the body; Cosmetic treatment for the face; cosmetic treatment services for the body and face; Cosmetician services; Cosmetics consultancy services; Depilatory treatment; Electrolysis for cosmetic purposes; Facial beauty treatment services; Facial treatment services; Hygienic and beauty care; Hygienic and beauty care for human beings; Hygienic and beauty care for humans; Hygienic and beauty care services; Hygienic care for human beings; Information relating to beauty; Information relating to beauty care; Injectable filler treatments for cosmetic purposes; Laser hair removal services; Laser removal of spider veins; Laser skin rejuvenation services; Laser skin tightening services; Lymphodrainage services; Microdermabrasion services; Micropigmentation services; Permanent hair removal and reduction services; Personal hair removal services; Providing information about beauty; Providing information relating to beauty salon services; Provision of hygienic and beauty care services; Services of a hair and beauty salon; Skin care salon services; Skin care salons; Services for the care of the face; Therapeutic treatment of the body; Health farm services [medical]; Health resort services [medical]; Health spa services; Medical spa services; Medical treatment services provided by a health spa; Spa services; Spas; Therapeutic treatment of the face; Dermatological services for treating skin conditions; Dermatology services; Medical services for the treatment of skin cancer; Medical services for treatment of the skin; Providing medical information in the field of dermatology; Providing medical advice in the field of dermatology; Services for the care of the skin; Physiotherapy; Physiotherapy [physical therapy]; Physiotherapy services; Health counseling; Health counselling; Medical counselling; Alternative medicine services; Advisory services relating to medical instruments; Advisory services relating to surgical instruments; Hiring of surgical instruments; Collation of information in the healthcare sector; Compilation of medical reports; Issuing of medical reports; Preparation of reports relating to health care matters; Preparation of reports relating to medical matters; Services for the preparation of medical reports; Medical examination of individuals (Provision of reports relating to the -); Nursing home services; Provision of nursing care; Nursing care; Nursing care (Provision of -); Nursing care services; Nursing,

medical; Nursing services; Nursing services (Medical -); Analysis of human tissues for medical treatment.

Similar services

77. I will now assess the likelihood of confusion in relation to the services which I found to be similar. I found that some services are identical and others are similar to a medium and high degree. The services will be selected both visually and aurally with a higher than average degree of attention. The marks are visually similar to a medium degree, aurally similarity to a medium to high degree and conceptually similar to a very high degree. The earlier mark is distinctive to a medium degree, and the shared element 'Lase' in the earlier mark is distinctive to a below average (but not low) degree and retains an independent significance within the mark.

78. Having considered all of the above, my conclusion is that notwithstanding the differences, there is a likelihood of confusion within the meaning of section 5(2)(b) of the Act. As noted above, the purchasing process for the services will be both aural and visual. Further, when the earlier mark is spoken, the average consumer will perceive the verbal element 'i.' as 'EYE' and will give it little or no weight in the perception of the mark given that it will see that element as descriptive of the services covered by the mark, all of which relate to medical diagnosis and treatments of eye diseases and vision problems. In that scenario I consider that even taking into account the higher than average level of attention deployed by consumers, there is a risk of direct confusion.

79. I recognise that when the services are selected visually, the differences between the marks are sufficient to avoid consumers confusing the mark directly. However, in my view, the presence in both marks of the dominant word 'LASE' combined with the similarity of the services are sufficient to offset the difference between the marks and there is a likelihood that consumers will conclude that the applied for marks are alternative marks used by the opponent. **There is a likelihood of both direct and indirect confusion.**

80. Finally, I have not lost sight of the fact that the similarity between the opponent's ophthalmic services and the applicant's plastic and cosmetic surgery services is limited to oculoplastic surgery. The issue of partial refusal is dealt in TPN 1/2012. That TPN includes the following:

"In a case where amendment to the specification(s) of goods and/or services is required as the result of the outcome of contested proceedings the Hearing Officer will, where appropriate, adopt one or a combination of the following approaches:

a) Where the proceedings should only succeed in part, or where the proceedings are directed against only some of the goods/services covered by the trade mark and the result can be easily reflected through the simple deletion of the offending descriptions of goods/services, the Hearing Officer will take a "blue pencil" approach to remove the offending descriptions of goods/services. This will not require the filing of a Form TM21 on the part of the owner. If, however, any rewording of the specification is proposed by the owner in order to overcome the objection, then the decision of the Hearing Officer will take that rewording into account subject to it being sanctioned by the Registrar as acceptable from a classification perspective;

b) Where the result cannot be easily reflected through simple deletion, but the Hearing Officer can clearly reflect the result by adding a "save for" type exclusion to the existing descriptions of goods/services, he or she will do so. This will not require the filing of a Form TM21 on the part of the owner. If, however, any rewording of the specification is proposed by the owner in order to overcome the objection, then the decision of the Hearing Officer will take that rewording into account subject to it being sanctioned by the Registrar as acceptable from a classification perspective." (my emphasis)

81. In those circumstances, the text I have highlighted above seems apposite and points towards limiting the following services in the applicant's specification as follows:

Class 44: *Cosmetic and plastic surgery, Cosmetic and plastic surgery clinic services, Cosmetic surgery services, Plastic surgery, Plastic surgery services, Surgery (Cosmetic -), Surgery (Plastic -), save for oculoplastic surgery.*

CONCLUSION

82. The opposition is successful, and the application is refused in relation to the following services:

Class 44: *Consultancy and information services relating to biopharmaceutical products; Consultancy and information services relating to medical products; Pharmaceutical advisory services; Pharmaceutical consultation; Pharmaceutical services; Dispensing of pharmaceuticals; Advisory services relating to health; Advisory services relating to medical problems; Advisory services relating to medical services; Arranging of medical treatment; Charitable services, namely providing medical services; Charitable services, namely, providing medical services to needy persons; Clinic (Medical -) services; Clinic services (Medical -); Clinics; Clinics (Medical -); Conducting of medical examinations; Consultancy relating to health care; Consultancy services relating to surgery; Consulting services relating to health care; Health advice and information services; Health care; Health care consultancy services [medical]; Health clinic services; Health clinic services [medical]; Health consultancy; Healthcare; Health-care; Healthcare advisory services; Healthcare consultancy services; Healthcare information services; Healthcare services; Health-care services; Information relating to health; Information services relating to health care; Medical advisory services; Medical and healthcare clinics; Medical and healthcare services; Medical assistance consultancy provided by doctors and other specialized medical personnel; Medical assistance services; Medical care; Medical care and analysis services relating to patient treatment; Medical care services; Medical clinic services; Medical clinics; Medical consultancy services; Medical consultation; Medical consultations; Medical diagnostic services; Medical evaluation services; Medical examination of individuals; Medical examinations; Medical health assessment services; Medical information; Medical information (Provision of -); Medical information services; Medical information services provided via the Internet;*

Medical services; Medical treatment services; Medical treatment services provided by clinics; Physical examination; Physical examination services; Physician services; Physicians' services; Professional consultancy relating to health; Professional consultancy relating to health care; Providing health care information by telephone; Providing health information; Providing information in the field of health via a website; Providing information relating to medical services; Providing information relating to physical examinations; Providing laser therapy for treating medical conditions; Providing medical information; Providing medical information in the healthcare sector; Providing medical support in the monitoring of patients receiving medical treatments; Providing news and information in the field of medicine; Provision of health care services; Provision of information relating to medicine; Provision of medical assistance; Provision of medical facilities; Provision of medical information; Provision of medical services; Provision of medical treatment; Services for the provision of medical care information; Services for the provision of medical facilities; Surgery; Surgical diagnostic services; Surgical treatment services; Technical consultancy services relating to medical health; Telemedicine services; Cellulitis treatment services; Consultancy services relating to prosthetic implants; Health care services offered through a network of health care providers on a contract basis; Health center services; Health centers; Health centre services; Health centres; Medical treatment services provided by hospitals; Private hospital services; Hospital services; Hospitals.

83. The following services can proceed to registration:

Class 44: *Cosmetic and plastic surgery, Cosmetic and plastic surgery clinic services, Cosmetic surgery services, Plastic surgery, Plastic surgery services, Surgery (Cosmetic -), Surgery (Plastic -), save for oculoplastic surgery; Advice relating to cosmetics; Advisory services relating to cosmetics; Advisory services relating to diet; Advisory services relating to slimming; Advisory services relating to weight control; Advisory services relating to weight loss; Application of cosmetic products to the body; Application of cosmetic products to the face; Beauty care of feet; Consultancy relating to cosmetics; Consultancy services relating to cosmetics; Consultancy services relating to orthopaedic implants; Consultation services in the*

field of make-up; Consultation services in the field of weight management; Cosmetic analysis; Cosmetic dentistry; Cosmetic dentistry services; Cosmetic laser treatment of tattoos; Cosmetic laser treatment of toenail fungus; Cosmetic laser treatment of varicose veins; Cosmetic make-up services; Cosmetic skin tanning services for human beings; Cosmetic treatment for the hair; Cosmetic treatment services for the hair; Dental clinic services; Dental consultations; Dental services; Dentistry; Dentistry services; Guidance on nutrition; Gynecology services; Hair replacement; Hair restoration; Hair restoration services; Laser removal of tattoos; Laser removal of toenail fungus; Laser removal of varicose veins; Leasing of medical equipment; Leasing skin care equipment; Liposuction services; Lymphatic drainage services; Microneedling treatment services; Personal therapeutic services relating to cellulite removal; Personal therapeutic services relating to fat dissolution; Providing information relating to dentistry; Providing medical advice in the field of weight loss; Providing medical information in the field of weight loss; Removal of body cellulite; Rental of equipment for medical purposes; Rental of hospital equipment; Rental of machines and apparatus for use in beauty salons or barbers' shops; Rental of medical and health care equipment; Rental of medical equipment; Rental of medical machines and apparatus; Services for the care of the scalp; Skin tanning service for humans for cosmetic purposes; Teeth whitening services; Advisory services relating to beauty; Advisory services relating to beauty care; Advisory services relating to beauty treatment; Aesthetician services; Beautician services; Beauticians (Services of -); Beauty advisory services; Beauty care; Beauty care for human beings; Beauty care services; Beauty care services provided by a health spa; Beauty consultancy; Beauty consultancy services; Beauty consultation; Beauty consultation services; Beauty counselling; Beauty information services; Beauty salon services; Beauty salons; Beauty spa services; Beauty therapy services; Beauty therapy treatments; Beauty treatment; Beauty treatment services; Beauty treatment services especially for eyelashes; Consultancy in the field of body and beauty care; Consultancy provided via the Internet in the field of body and beauty care; Consultancy services relating to beauty; Consultation services relating to beauty care; Consultation services relating to skin care; Cosmetic body care services; Cosmetic electrolysis; Cosmetic electrolysis for the removal of hair; Cosmetic facial and body treatment services; Cosmetic laser treatment for hair growth; Cosmetic laser treatment of skin;

Cosmetic laser treatment of spider veins; Cosmetic laser treatment of unwanted hair; Cosmetic treatment; Cosmetic treatment for the body; Cosmetic treatment for the face; cosmetic treatment services for the body and face; Cosmetician services; Cosmetics consultancy services; Depilatory treatment; Electrolysis for cosmetic purposes; Facial beauty treatment services; Facial treatment services; Hygienic and beauty care; Hygienic and beauty care for human beings; Hygienic and beauty care for humans; Hygienic and beauty care services; Hygienic care for human beings; Information relating to beauty; Information relating to beauty care; Injectable filler treatments for cosmetic purposes; Laser hair removal services; Laser removal of spider veins; Laser skin rejuvenation services; Laser skin tightening services; Lymphodrainage services; Microdermabrasion services; Micropigmentation services; Permanent hair removal and reduction services; Personal hair removal services; Providing information about beauty; Providing information relating to beauty salon services; Provision of hygienic and beauty care services; Services of a hair and beauty salon; Skin care salon services; Skin care salons; Services for the care of the face; Therapeutic treatment of the body; Health farm services [medical]; Health resort services [medical]; Health spa services; Medical spa services; Medical treatment services provided by a health spa; Spa services; Spas; Therapeutic treatment of the face; Dermatological services for treating skin conditions; Dermatology services; Medical services for the treatment of skin cancer; Medical services for treatment of the skin; Providing medical information in the field of dermatology; Providing medical advice in the field of dermatology; Services for the care of the skin; Physiotherapy; Physiotherapy [physical therapy]; Physiotherapy services; Health counseling; Health counselling; Medical counselling; Alternative medicine services; Advisory services relating to medical instruments; Advisory services relating to surgical instruments; Hiring of surgical instruments; Collation of information in the healthcare sector; Compilation of medical reports; Issuing of medical reports; Preparation of reports relating to health care matters; Preparation of reports relating to medical matters; Services for the preparation of medical reports; Medical examination of individuals (Provision of reports relating to the -); Nursing home services; Provision of nursing care; Nursing care; Nursing care (Provision of -); Nursing care services; Nursing, medical; Nursing services; Nursing services (Medical -); Analysis of human tissues for medical treatment.

COSTS

84. Since both parties have achieved a measure of success, I order that each party should bear their own costs.

Dated this 31st day of March 2020

T Perks

For the Registrar,

the Comptroller-General