

**O-236-19**

**TRADE MARKS ACT 1994  
IN THE MATTER OF APPLICATION Nos. 3261155 & 3261166  
BY THE LIVERPOOL FOOTBALL CLUB AND ATHLETIC GROUNDS LIMITED  
TO REGISTER IN CLASSES 3, 14, 18, 24, 25 & 35  
THE TRADE MARKS**



**AND  
IN THE MATTER OF CONSOLIDATED OPPOSITIONS THERETO  
UNDER Nos. 411520 & 411521 BY  
LOTTO SPORT ITALIA S.p.A**

## **BACKGROUND**

1) On 4 October 2017, The Liverpool Football Club and Athletic Grounds Ltd (hereinafter the applicant) applied to register the two trade marks shown on the front page in respect of the following identical goods and services

In Class 3: Cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices; after-shave lotions; antiperspirant soap; antiperspirants; bath salts; beauty masks; breath freshening sprays; bubble bath; body creams; body wash; cosmetic kits; cosmetics; cosmetic creams; deodorant soap; eau de cologne; hair colourants; hair conditioners; hair dyes; hair lotions; hair spray; hair waving preparations; lipsticks; make-up; mascara; nail polish; nail varnish; perfumes; potpourri; shampoos; shaving lotions; shaving preparations; shaving soap; shower gel; skincare preparations; suntanning preparations; talcum powder; washing preparations.

In Class 14: Jewellery, costume jewellery, precious stones; horological and chronometric instruments, clocks and watches; parts, fittings and accessories for all the aforesaid goods.

In Class 18: Trunks and travelling bags; rucksacks; backpacks; bags; beach bags; belts; briefcases; card cases; cases; garment cases for travel; handbags; holdalls; key cases; keyholders; keyfobs; purses; school bags; shopping bags; sports bags; suitcases; wallets; umbrellas, parasols and walking sticks; parts, fittings and accessories for all the aforesaid goods.

In Class 24: Textiles and textile goods, not included in other classes; bed and table covers; bath linen; bed linen; furniture coverings of textile; curtains of textile or plastic; fabrics; face towels; flags; handkerchiefs of textile; household linen; mattress covers; napkins of textile; pillowcases; place mats of textile; sheets; table linen; towels of textile.

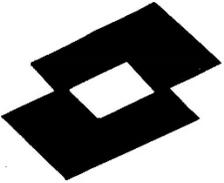
In Class 25: Clothing, footwear, headgear; sports clothing; sports footwear; sports headgear; outerwear; swimwear; underwear; football shirts; football boots; football shorts; football socks; boots; shoes; caps; hats; beanie hats; baseball caps.

In Class 35: Retail and online retail services connected with the sale of cleaning, polishing, scouring and abrasive preparations soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, after-shave lotions, antiperspirant soap, antiperspirants, bath salts, beauty masks, breath freshening

sprays, bubble bath, body creams, body wash, cosmetic kits, cosmetics, cosmetic creams, deodorant soap, eau de cologne, hair colorants, hair conditioners, hair dyes, hair lotions, hair spray, hair waving preparations, lipsticks, make-up, mascara, nail polish, nail varnish, perfumes, potpourri, shampoos, shaving lotions, shaving preparations, shaving soap, shower gel, skincare preparations, suntanning preparations, talcum powder, washing preparations, jewellery, costume jewellery, precious stones, horological and chronometric instruments, clocks and watches, trunks and travelling bags, rucksacks, backpacks, bags, beach bags, belts, briefcases, card cases, cases, garment cases for travel, handbags, holdalls, key cases, keyholders, keyfobs, purses, school bags, shopping bags, sports bags, suitcases, wallets, umbrellas, parasols and walking sticks, textiles and textile goods, bed and table covers, bath linen, bed linen, furniture coverings of textile, curtains of textile or plastic, fabrics, face towels, flags, handkerchiefs of textile, household linen, mattress covers, napkins of textile, pillowcases, place mats of textile, sheets, table linen, towels of textile, clothing, footwear, headgear, sports clothing, sports footwear, sports headgear, outerwear, swimwear, underwear, football shirts, football boots, football shorts, football socks, boots, shoes, caps, hats, beanie hats, baseball caps; organisation, operation and supervision of sales and promotional incentive schemes; loyalty card services; discount card services; advisory, consultancy and information services relating to the aforesaid.

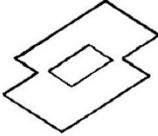
2) The applications were examined and accepted, and subsequently published for opposition purposes on 27 October 2017 in Trade Marks Journal No.2017/043.

3) On 29 January 2018 Lotto Sport Italia S.p.A. (hereinafter the opponent) filed notices of opposition, subsequently amended by letter dated 10 April 2019. The opponent in these consolidated proceedings is the proprietor of the following trade marks:

Mark	Number	Dates of filing & registration	Class	Specification relied upon
 <p>The trade mark consists of the figure of</p>	<p>EU 2109684</p>	<p>28.02.01 13.05.02</p> <p>Seniority date 02.02.85</p>	<p>3</p>	<p>Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices; antiperspirants [toiletries]; bath salts, not for medical purposes;</p>

<p>two partially superimposed diamond shapes forming a rhombus inside.</p>				<p>cotton sticks for cosmetic purposes; cotton wool for cosmetic purposes; incense; mouth washes, not for medical purposes; shampoos; shoemakers' wax; toiletries; decorative transfers for cosmetic purposes; deodorants for personal use; tissues impregnated with cosmetic lotions.</p>
			9	<p>Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data-carriers, recording discs; automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; spectacles; spectacle cases.</p>
			14	<p>Precious metals and their alloys and goods in precious metals, not included in other classes; jewellery and precious stones; horological and chronometric instruments.</p>
			16	<p>Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs;</p>

				stationery; adhesives for stationery or household purposes, artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); playing cards; printers' type; printing blocks; holders for checkbooks [cheque books]; passport holders; wristbands for the retention of writing instruments.
			18	Leather and imitations of leather, and goods made of these materials and not included in other classes: animal skins, hides, trunks and travelling bags, bags, pocket wallets, document holders, umbrellas, parasols and walking sticks; whips, harness and saddlery; attaché cases; backpacks; beach bags; briefcases; card cases [notecases]; chain mesh purses, not of precious metal; game bags [hunting accessory]; handbags; haversacks; leather shoulder belts; muzzles; net bags for shopping; nose bags [feed bags]; pocket wallets; purses; rucksacks; school bags; school satchels; shopping bags; shoulder belts [straps], of leather; umbrella covers; vanity cases [not fitted]; wheeled shopping bags.
			25	Clothing, footwear, headgear; boot uppers; cap peaks; dress shields;

				<p>fittings of metal for shoes and boots; footwear uppers; heelpieces for boots; heelpieces for shoes; heelpieces for boots and shoes; heelpieces for stockings; heels; inner soles; iron fittings for boots; iron fittings for shoes; non-slipping devices for boots; non-slipping devices for shoes; non-slipping devices for boots and shoes; pockets for clothing; ready-made linings [parts of clothing]; shirt fronts; shirt yokes; soles for footwear; studs for football boots [shoes]; tips for footwear; visors [hatmaking]; welts for boots; welts for shoes; welts for boots and shoes.</p>
			28	<p>Games and playthings, gymnastic and sporting articles not included in other classes; decorations for Christmas trees; bladders of balls for games; cricket bags; golf bags, with or without wheels; gut for rackets; guts for rackets; protective paddings [parts of sports suits]; rollers for stationary exercise bicycles; strings for rackets.</p>
	<p>EU 16583619</p>	<p>10.04.17 27.10.17</p> <p>Priority date 26.10.16 Priority country: Italy</p>	3	<p>Perfume, essential oils, cosmetics, hair lotions; Dentifrices; After-shave preparations; Almond milk for cosmetic purposes; Almond oil; Almond soap; Amber [perfume]; Antiperspirant soap; Antiperspirants [toiletries]; Aromatics; Astringents for cosmetic purposes; Badian essence;</p>

			<p>Bath salts, not for medical purposes; Baths (Cosmetic preparations for -); Cosmetic masks; Bergamot oil; Boot cream; Bar soap; Cedarwood (Essential oils of -); Cleansing milk for toilet purposes; Colorants for toilet purposes; Cosmetic kits; Cotton sticks for cosmetic purposes; Cotton wool for cosmetic purposes; Cosmetic creams; Creams for leather; Degreasers, other than for use in manufacturing processes; Deodorant soap; Deodorants for personal use; Depilatories; Detergents, other than for use in manufacturing operations and for medical purposes; Dyes (Cosmetic -); Cologne; Emery; Essential oils; Ethereal essences; Extracts of flowers [perfumes]; Flower perfumes (Bases for -); Gaultheria oil; Geraniol; Hair dye; Incense; Ionone [perfumery]; Jasmine oil; Lavender oil; Lavender water; Essential oils of lemon; Lipstick; Lotions for cosmetic purposes; Make-up; Make-up powder; Make-up preparations; Make-up removing preparations; Mascara; Mint essence [essential oil]; Mint for perfumery; Mouthwashes, not for medical purposes; Musk [perfumery]; Moustache wax; Nail care preparations; Oils for cosmetic purposes; Oils for perfumes and</p>
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			<p>scents; Oils for toilet purposes; Cosmetic pencils; Eyebrow pencils; Perfume; Petroleum jelly for cosmetic purposes; Pomades for cosmetic purposes; Preservatives for leather [polishes]; Rose oil; Perfume water; Shampoo; Shaving preparations; Shaving soap; Shoe polish; Shoe wax; Shoemakers' wax; Skincare cosmetics; Skin whitening creams; Soaps; Soap for foot perspiration; Sunscreen preparations; Tanning preparations; Talcum powder, for toilet use; Tissues impregnated with cosmetic lotions; Toilet water; Toiletry preparations; Transfers (Decorative -) for cosmetic purposes; Wax (Depilatory -).</p>
		9	<p>Optical, measuring and life-saving apparatus and instruments; Goggles; Footwear for preventing accidents, footwear for protecting against radiation and fire; Helmets for motorcyclists; Life belts, jackets and buoys; Anti-glare glasses; Anti-dazzle shades; Clothing especially made for laboratories; Clothing for protection against accidents, irradiation and fire; Clothing for protection against fire; Spectacle cases; Pince-nez chains; Eyeglass cords; Spectacle frames; Spectacles [optics]; Gloves for protection against accidents; Riding helmets; Knee-pads for workers;</p>

				<p>Spectacles [optics]; Eyeglass cords; Protection devices for personal use against accidents; Head protection; Protective helmets for sports; Protective masks; Safety restraints (other than for vehicle seats and sports equipment); Shoes for protection against accidents, irradiation and fire; Lenses for eyeglasses; Clocks (Time -) [time recording devices]; Time recording apparatus; Workmen's protective face-shields.</p>
			14	<p>Alloys of precious metal; Jewels and Precious stones; Horological and chronometric instruments.</p>
			16	<p>Paper and cardboard; Printed matter; Bookbinding material; Photographs [printed]; Stationery; Pastes and other adhesives for stationery or household purposes; Artists' materials; Paint brushes; Typewriters and office requisites (except furniture); Educational materials (excluding apparatus); Plastic materials for packaging; Printing type; Printing blocks; Scrapbooks; Almanacs; Announcement cards [stationery]; Bags [envelopes, pouches] of paper or plastics, for packaging; Booklets; Books; Cards; Catalogues; Wrappers [stationery]; Paper knives [office requisites]; Drawing instruments; Drawing materials; Drawing pens;</p>

				<p>Drawing sets; Squares for drawing; T-squares for drawing; Elastic bands for offices; Envelopes [stationery]; Erasing products; Facial tissues of paper; Files [office requisites]; Folders [stationery]; Fountain pens; Notelets; Paper tissues; Checkbook covers; Musical greeting cards; Tissues of paper for removing make-up; Notebooks; Office requisites; Paint boxes [articles for use in school]; Passport covers; Pen boxes; Pencil holders; Pencil sharpeners, electric or non-electric; Pencils; Penholders; Pens [office requisites]; Postcards; Posters; Rubber erasers; Drafting rulers; School supplies [stationery]; Stands for pens and pencils; Stencils; Tickets; Hygienic paper; Paper towels; Rub down transfers; Wrapping paper; Wristbands for the retention of writing instruments; Writing board erasers; Writing brushes; Writing cases [sets]; Writing cases [stationery]; Writing chalk; Writing instruments; Writing materials; Writing or drawing books; Writing tablets; Writing paper; Writing slates; Xuan paper for Chinese painting and calligraphy.</p>
			18	<p>Leather and imitations of leather; Animal skins; Travelling trunks and travelling bags; Umbrellas, parasols and walking sticks; Whips, harness</p>

			<p>and saddlery; Attache cases; Bags [envelopes, pouches] of leather, for packaging; Bags for campers; Bags for climbers; Sport bags; Straps (Leather -); Beach bags; Boxes of leather or leatherboard; Boxes of vulcanised fibre; Briefbags; Walking sticks; Card cases [notecases]; Cases of leather or leatherboard; Cattle skins; Chain mesh purses; Skins of chamois, other than for cleaning purposes; Furniture coverings of leather; Bags (Game -) [hunting accessories]; Garment bags for travel; Handbags; Haversacks; Imitation leather; Key cases made of leather; Kid; Laces (Leather -); Leather shoulder belts; Leather, unworked or semi-worked; Leatherboard; Moleskin [imitation of leather]; Alpenstocks; Muzzles; Net bags for shopping; Feed bags; Wallets; Purses; Backpacks; Satchels; Shopping bags; Attache cases; Tool bags of leather, empty; Travelling sets [leatherware]; Traveling trunks; Umbrella covers; Valises; Vanity cases, not fitted; Wheeled shopping bags.</p>
		21	<p>Household or kitchen cooking utensils and containers; Combs and sponges; Brushes, except paint brushes; Material for brush-making; Cleaning articles; Articles made of glass,</p>

				<p>Goods of porcelain and earthenware; Boot jacks; Shoe trees; Brush goods; Boot brushes; Comb cases; Combs for the hair (Large-toothed -); Polishing leather; Stands for shaving brushes; Shaving brushes; Shoe horns; Shoe trees; Soap boxes; Toilet cases.</p>
			24	<p>Textiles and Fabrics; Bed covers, table covers; Banners of textile or plastic; Bath linen, except clothing; Bed covers; Bed clothes; Bed linen; Bolting cloth; Brocades; Bunting of textile or plastic; Calico; Printed calico cloth; Chenille fabric; Cheviots [cloth]; Woven fabrics; Cotton fabrics; Quilts; Cushion covers; Crepe [fabric]; Crepon; Damask; Diapered linen; Eiderdowns [down coverlets]; Elastic woven material; Esparto fabric; Fabric of imitation animal skins; Fabrics for textile use; Face towels [made of textile materials]; Felt; Fiberglass fabrics, for textile use; Flags of textile or plastic; Flannel [fabric]; Frieze [cloth]; Dimity; Gauze [cloth]; Gummed cloth, other than for stationery purposes; Haircloth [sackcloth]; Handkerchiefs of textile; Hemp cloth; Hemp fabric; Linens; Jersey [fabric]; Jute fabric; Knitted fabric; Labels of textile; Flax fabrics; Lingerie fabric; Lining fabric for footwear; Linings [textile]; Marabouts</p>

			<p>[cloth]; Textile material; Moleskin [fabric]; Non-woven textile fabrics; Shams; Plastic material [substitute for fabrics]; Ramie fabric; Rayon fabric; Table runners; Sanitary flannel; Textile napkins; Bed sheets; Shrouds; Silk cloth; Silk fabrics for printing patterns; Sleeping bags [sheeting]; Taffeta [cloth]; Napkins, of cloth, for removing make-up; Towels of textile; Travelling rugs [lap robes]; Trellis [cloth]; Tulle; Upholstery fabrics; Velvet; Woollen fabric; Zephyr [cloth].</p>
		25	<p>Clothing, footwear, headgear; Ascots; Babies' pants [clothing]; Bandanas [neckerchiefs]; Bathrobes; Bath sandals; Bath slippers; Swimming caps; Swimming costumes; Swimming trunks; Beachwear; Beach shoes; Belts [clothing]; Berets; Bibs, not of paper; Boas [necklets]; Boot uppers; Boots; Training shoes; Braces for clothing [suspenders]; Brassieres; Breeches; Camisoles; Cap peaks; Caps [headwear]; Chemisettes; Clothing for gymnastics; Clothing of imitations of leather; Leather clothing; Coats; Sashes for wear; Shoulder wraps; Combinations [clothing]; Masquerade costumes; Cuffs; Cyclists' clothing; Detachable collars; Boxer shorts; Dress shields; Robes; Ear muffs [clothing]; Espadrilles; Fishing vests; Fittings of</p>

			<p>metal for footwear and boots; Football boots; Footmuffs, not electrically heated; Footwear uppers; Gowns; Gabardines [clothing]; Gaiters; Goloshes; Girdles; Gloves [clothing]; Gymnastic shoes; Half-boots; Hats; Headbands [clothing]; Headgear; Heelpieces for footwear; Heelpieces for stockings; Heels; Hoods [clothing]; Hosiery; Insoles; Jackets [clothing]; Jumpers; Knitwear [clothing]; Lace boots; Layettes [clothing]; Leggings (trousers); Underwear; Mantillas; Mittens; Belts (Money -) [clothing]; Motorists' clothing; Muffs [clothing]; Neckties; Non-slipping devices for footwear; Outerclothing; Aprons [clothing]; Topcoats; Pyjamas; Paper clothing; Hats (Paper -) [clothing]; Parkas; Pelerines; Pelisses; Petticoats; Pocket squares; Pockets for clothing; Ready-to-wear clothing; Linings (Ready-made -) [parts of clothing]; Sandals; Saris; Scarves; Shirt fronts; Shirt yokes; Shirts; Shoes; Shoulder wraps [clothing]; Shower caps; Maillots; Skirts; Skull caps; Sleep masks; Mules; Slips [underclothing]; Sock suspenders; Socks; Footwear soles; Training shoes; Stocking suspenders; Stockings; Sweat-absorbent stockings; Studs for football boots; Stuff jackets [clothing]; Suits; Sun</p>
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				visors; Sweat-absorbent underwear; Sweaters; Teddies [underclothing]; Tee-shirts; Tights; Tips for footwear; Top hats; Knee-high stockings; Trousers; Turbans; Briefs; Underwear; Uniforms; Veils [clothing]; Waistcoats; Visors; Rainproof clothing; Welts for footwear; Wetsuits for water-skiing; Wimples; Wooden shoes.
			28	Toys and playthings; Gymnastic and sporting articles; Decorations for Christmas trees; Bags especially designed for skis and surfboards; Balls for games; Baseball gloves; Batting gloves [accessories for games]; Bladders of balls for games; Body boards; Body-training apparatus; Boxing gloves; Chest expanders [exercisers]; Climbers' harness; Cricket bags; Elbow guards [sports articles]; Flippers for swimming; Rackets; Fencing gauntlets; Gloves for games; Golf bags, with or without wheels; Golf clubs; Golf gloves; Gut for rackets; Gymnastic articles; Hang gliders; Harness for sailboards; Hockey sticks; Ice skates; In-line roller skates; Knee guards [sports articles]; Supporters (Men's athletic -) [sports articles]; Nets for sports; Paragliders; Fitness exercise machines; Balls for games; Playing balls; Paddings

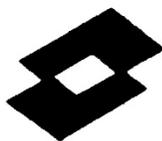
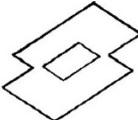
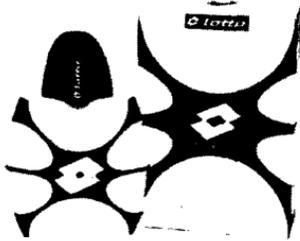
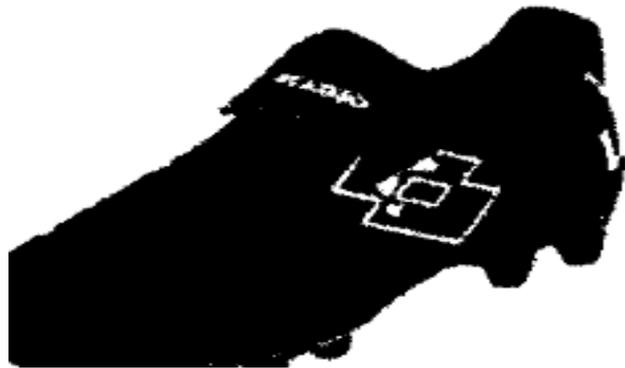
				<p>(Protective -) [parts of sports suits];  Punching bags; Roller skates; Rollers  for stationary exercise bicycles;  Sailboards; Masts for sailboards; Shin  guards [sports articles]; Skateboards;  Skating boots with skates attached;  Spring boards [sports articles];  Stationary exercise bicycles; Strings  for rackets; Surfboards; Surf skis;  Surfboard leashes; Indoor football  tables; Tables for table tennis; Tennis  ball throwing apparatus; Tennis nets;  Waterskis; Belts (Weight lifting -)  [sports articles].</p>
			35	<p>Sale by retail, wholesale, on-line, by  mail order of clothing, sports clothing,  footwear, sports footwear, headgear,  belts; Retailing, wholesaling, online  sale and mail order sale of perfumes,  cosmetics, soaps; Retailing,  wholesaling, online sale and mail  order sale of clocks and watches;  Retailing, wholesaling, online sale  and mail order sale of spectacles,  sunglasses, goggles for sports,  spectacle frames, spectacle cases,  protective and safety clothing and  footwear, protective helmets for  sports; Retailing, wholesaling, online  sale and mail order sale of luggage,  backpacks, bags, bags for sports,  bags for sporting articles; Retailing,  wholesaling, online sale and mail  order sale of stationery; Retailing,</p>

				wholesaling, online sale and mail order sale of gymnastic and sporting articles, balls, shin guards, knee-pads, gloves for sports; Retailing, wholesaling, online sale and mail order sale of household or kitchen utensils and containers; Retailing, wholesaling, online sale and mail order sale of textiles and textile goods, household linen, bed linen, blankets, table linen.
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- a) The opponent relies upon all of the goods and services for which its marks are registered and also claims that it has reputation in all the goods and services for which its marks are registered. The opponent contends that its marks and the marks applied for are very similar and that the goods and services applied for are identical and/or similar to the goods and services for which the earlier marks are registered. As such the marks in suit offend against Section 5(2)(b) of the Act.
- b) The opponent relies only upon its earlier mark 2109684 and claims that use of the marks in suit would take unfair advantage of its mark as the marks/goods and services are identical/similar. Use of the marks in suit would also dilute the distinctiveness of its mark. As such the marks in suit offend against section 5(3) of the Act.
- 4) On 4 April 2018 the applicant filed two counterstatements basically denying all the grounds of opposition. Originally the applicant put the opponent to strict proof of use of its mark 2109684, but in May 2018 it dropped this requirement.
- 5) Both parties filed evidence, and both also seek an award of costs in their favour. The matter came to be heard on 18 April 2019 when Mr Stobbs of Messrs Stobbs represented the applicant; the opponent was represented by Mr Norris of Counsel instructed by Messrs CSY Herts.

## OPPONENT'S EVIDENCE

6) The opponent filed a witness statement, dated 13 July 2018, by Andrea Tomat the President of the opponent company, a position he has held since 1999. He provides a very detailed history of the mark which does not assist my decision. In the statement of grounds, the opponent claims to have reputation in all goods and services which it relies upon in the instant case. These include goods in classes 3, 14, 18, 24, 25 & 35. In addition, in the evidence the opponent showed use of the two marks relied upon, and also other trade marks which are shown in the table below. Mr Tomat provides the dates when these marks were used starting with 1973 and ending with the latest version labelled "present". Also shown below are examples provided by Mr Tomat of how the marks are used.

Numbers	Marks	Goods and services relied upon
UK 1234927 UK1500953 EU 2109684		25 25 3, 14, 18 & 25
EU16583619		3, 14, 18, 24, 25 & 35
1973 	1977 	1999 
PRESENT 	Perfumes 	Bags 
		 <p>The three spots of white in the device mark are actually light reflecting off the device material.</p>
Reads: 2012 WTA Miami winner / Lotto Sport Italia with Champions		

7) Mr Tomat states that the opponent distributes its products in over 110 countries. He also contends that the map at exhibit AT2 shows “that there are a vast number of retailers of Lotto’s products throughout the European Union”. He mentions sponsorships in sport and whilst providing no details mentions a number of names but provides no details of who these people are other than they are tennis players etc. Some names are very recognisable but those all tend to be from the period mid-60s to approximately 2005, such as John Newcome, Boris Becker and Martina Navratilova. Italian soccer players are mentioned but it seems from the posters included in his evidence that these all date from the early 2000s. He also mentions sponsoring various soccer teams in Germany, Spain, Austria, Italy and France as well as Queens Park Rangers in the UK. He also mentions that the company “was” a sponsor of a cycling team in the Tour de France, but does not say when, he also states that the opponent “has” had a relationship with a motorsport team in GP2. He describes his company’s trade marks as follows: “Lotto’s two main trade marks, the word LOTTO and the double field logo have been the subject of long and continuous use.” As mentioned previously he provides examples of the changes made to the brand over the years (see above). He provides the following exhibits:

- AT1: This provides details of the history of the company and includes more details of individuals it apparently sponsors. Clearly some have won recent tennis tournaments, whilst one was a top scorer in an Italian football league. However, it is not clear what the sponsorship consisted of and what mark/s were used and on what. On page 7 of this exhibit is a photograph of what appears to be a soccer player with the double field logo on his kit. It is not clear who this player is or when the photograph was taken, although the page does mention events in tennis and soccer in 2016.
- AT2: This is supposed to be a map showing the locations of stores selling the opponent’s goods in the EU. Unfortunately, it is unclear where these stores are located or how many there are because it is so poorly reproduced.
- AT3: Details of a sponsorship with Queens Park Rangers (QPR) in 2008. The deal for five years was said to be worth £20million. The football club is described as “the struggling League Championship side” and are said to be hopeful that the new owners will “elevate the club to the top division again”. The socks and shorts appear to have just the double field logo whilst the shirt also has the word LOTTO upon it.

- AT4: This consists of a list of teams and players who are/were sponsored by the opponent. Only one of the teams is in the UK (QPR) and this sponsorship ended in 2014. There are no details regarding what mark appeared where on the European teams' kit and nor are there any details of whether the teams are successful or not, or whether they are top flight teams. Similarly, the list of players names does not show a single player in the UK that is sponsored. Again, most of the deals have expired and no details of what the sponsorship consisted of, and what mark was used upon what item of kit is not disclosed.
- AT5: Photographs of shoes for mechanics, but it is not dated, and it is not clear if they were ever sold, or if they were, where and when.
- AT6: A picture of a woman in a swimsuit with a sash stating that she is Miss Sport Lotto 2016.
- AT7: Gross annual turnover figures and marketing figures for the EU. There is no breakdown into goods or services or indeed countries, and no details of what mark they refer to.

Year	Turnover (millions of Euros)	Marketing (millions of Euros)
2010	135	12
2011	120	10
2012	108	10
2013	107	7
2014	106	7
2015	109	8
2016	96	10
2017	94	9

In his witness statement Mr Tomat states: "5(iv) While the vast majority of the products sold by Lotto under and by reference to the double field logo are sports and leisure footwear and clothing, Lotto has gradually expanded the range of goods sold under and by reference to the mark, throughout Europe." He then shows images of bags, watches and perfumes. However, he does not comment on what is sold under reference to the "LOTTO" trade mark.

- AT8-11 Images and mentions on social media.

## **APPLICANT'S EVIDENCE**

8) The applicant filed a witness statement, dated 5 October 2018, by Timothy Carter its Trade Mark Attorney. He merely states his opinion on the issue of confusability and the various grounds of opposition, which does not assist my decision.

## **OPPONENT'S EVIDENCE IN REPLY**

9) The opponent also filed witness statements by its Trade Mark Attorneys Catherine Ayers and Tracey Kaye Crowley, dated 5 December 2018 and 4 December 2018 respectively. They offer their opinions regarding the marks which are not useful to my determination of the issue.

10) That concludes my summary of the evidence filed, insofar as I consider it necessary.

## **DECISION**

11) The first ground of opposition is under section 5(2)(b) which reads:

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

(a) .....

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

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

12) An “earlier trade mark” is defined in section 6, the relevant part of which states:

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

(a) a registered trade mark, international trade mark (UK) or Community trade mark which has a date of application for registration earlier than that of the trade mark

in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks.”

13) The opponent is relying upon its trade marks listed in paragraph 3 above which are clearly earlier trade marks. Given that the mark in suit was published on 27 October 2017, and mark 2109684 was registered on 13 May 2002 it clearly falls foul of the proof of use requirements. Whereas the opponent’s mark 16583619 being registered on 27 October 2017 (with a priority date of 26 October 2016) was not registered for five years at the point that the instant mark was published. However, due to the concession of the applicant (see paragraph 4 above), proof of use is not required.

14) When considering the issue under section 5(2)(b) I take into account the following principles which are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

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

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

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

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

negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

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

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

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

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

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

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

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

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

15) As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods and services. I must then determine the manner in which these goods and services are likely to be selected by the average consumer in the course of trade. 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.”

16) The goods and services at issue in these proceedings are wide ranging incorporating, inter alia, perfume, cosmetics, jewellery and clocks, leather goods and bags, textiles. clothing, footwear and headgear, and the retail and wholesale of same and consultancy services. A great many of these items are for personal use and the average consumer for such goods will be the public at large (including businesses). Such goods will typically be offered for sale in retail outlets, in brochures and catalogues as well as on the internet. The initial selection is therefore primarily visual. I accept that more expensive items of perfume, jewellery. clothing, footwear and headgear etc may, for example, be researched or discussed with a member of staff or be made to measure. The latter, along with personal recommendations, bring aural considerations into play. I note that in *New Look Ltd v OHIM* Cases T-117/03 to T-119/03 and T-171/03, the General Court (GC) said this about the selection of clothing:

“50. Generally in clothes shops customers can themselves either choose the clothes they wish to buy or be assisted by the sales staff. Whilst oral communication in respect of the product and the trade mark is not excluded, the choice of the item of clothing is generally made visually. Therefore, the visual perception of the marks in question will generally take place prior to purchase. Accordingly, the visual aspect plays a greater role in the global assessment of the likelihood of confusion.”

17) In the same case the Court also commented upon the degree of care the average consumer will take when selecting clothing. It said:

“43. It should be noted in this regard that the average consumer’s level of attention may vary according to the category of goods or services in question (see, by analogy, Case C 342/97 *Lloyd Schuhfabrik Meyer* [1999] ECR I-3819, paragraph 26). As OHIM rightly pointed out, an applicant cannot simply assert that in a particular sector the consumer is particularly attentive to

trade marks without supporting that claim with facts or evidence. As regards the clothing sector, the Court finds it comprises goods which vary widely in quality and price. Whilst it is possible that the consumer is more attentive to the choice of mark where he or she buys a particularly expensive item of clothing, such an approach on the part of the consumer cannot be presumed without evidence with regard to all goods in that sector. It follows that that argument must be rejected.”

18) Clearly, the average consumer’s level of attention will vary considerably depending on the cost and nature of the item at issue. However, to my mind even when selecting routine inexpensive items for personal use such as socks/slippers/cap the average consumer will pay attention to considerations such as size, colour, fabric and cost. **Overall the average consumer for these types of goods and services is likely to pay a medium degree of attention to the selection of items of clothing and footwear. I believe that this also holds true for goods such as perfumes, jewellery, watches, suitcases, textiles and other household goods and associated retail services.**

19) A number of these goods and services will also be purchased by businesses. It is normal to assume that businesses take slightly more care in making decisions regarding the purchase of goods and services as their survival may depend upon making the correct choice both economically and for the image of the business. **To my mind, the average business consumer for these types of goods and services is likely to pay at least a medium degree of attention to the selection of items of clothing and footwear. I believe that this also holds true for goods such as perfumes, jewellery, watches, suitcases, textiles and other household goods and associated retail services.**

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

20) 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 of its judgment 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”.

21) In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the GC stated that:

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 Institut 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”.

22) I will first compare the goods and services of the opponent’s mark EU 16583619 which offers the opponent its strongest case in terms of goods and services. The goods and services to be compared are as follows:

Applicant’s specification	Opponent’s specification EU 16583619
<p>Class 3: Cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices; after-shave lotions; antiperspirant soap; antiperspirants; bath salts; beauty masks; breath freshening sprays; bubble bath; body creams; body wash; cosmetic kits; cosmetics; cosmetic creams; deodorant soap; eau de cologne; hair colourants; hair conditioners; hair dyes; hair lotions; hair spray; hair waving preparations; lipsticks; make-up; mascara; nail polish; nail varnish; perfumes; potpourri; shampoos; shaving lotions; shaving preparations; shaving soap; shower gel; skincare preparations; suntanning preparations; talcum powder; washing preparations.</p>	<p>Class 3: Perfume, essential oils, cosmetics, hair lotions; Dentifrices; After-shave preparations; Almond milk for cosmetic purposes; Almond oil; Almond soap; Amber [perfume]; Antiperspirant soap; Antiperspirants [toilettries]; Aromatics; Astringents for cosmetic purposes; Badian essence; Bath salts, not for medical purposes; Baths (Cosmetic preparations for -); Cosmetic masks; Bergamot oil; Boot cream; Bar soap; Cedarwood (Essential oils of -); Cleansing milk for toilet purposes; Colorants for toilet purposes; Cosmetic kits; Cotton sticks for cosmetic purposes; Cotton wool for cosmetic purposes; Cosmetic creams; Creams for leather; Degreasers, other than for use in manufacturing processes; Deodorant soap; Deodorants for personal use; Depilatories; Detergents, other than for use in manufacturing operations and for medical purposes; Dyes (Cosmetic -); Cologne; Emery; Essential oils; Ethereal essences;</p>

	<p>Extracts of flowers [perfumes]; Flower perfumes (Bases for -); Gaultheria oil; Geraniol; Hair dye; Incense; Ionone [perfumery]; Jasmine oil; Lavender oil; Lavender water; Essential oils of lemon; Lipstick; Lotions for cosmetic purposes; Make-up; Make-up powder; Make-up preparations; Make-up removing preparations; Mascara; Mint essence [essential oil]; Mint for perfumery; Mouthwashes, not for medical purposes; Musk [perfumery]; Moustache wax; Nail care preparations; Oils for cosmetic purposes; Oils for perfumes and scents; Oils for toilet purposes; Cosmetic pencils; Eyebrow pencils; Perfume; Petroleum jelly for cosmetic purposes; Pomades for cosmetic purposes; Preservatives for leather [polishes]; Rose oil; Perfume water; Shampoo; Shaving preparations; Shaving soap; Shoe polish; Shoe wax; Shoemakers' wax; Skincare cosmetics; Skin whitening creams; Soaps; Soap for foot perspiration; Sunscreen preparations; Tanning preparations; Talcum powder, for toilet use; Tissues impregnated with cosmetic lotions; Toilet water; Toiletry preparations; Transfers (Decorative -) for cosmetic purposes; Wax (Depilatory -).</p>
	<p>Class 9: Optical, measuring and life-saving apparatus and instruments; Goggles; Footwear for preventing accidents, footwear for protecting against radiation and fire; Helmets for motorcyclists; Life belts, jackets and buoys; Anti-glare glasses; Anti-dazzle shades; Clothing especially made for laboratories; Clothing for protection against accidents, irradiation and fire; Clothing for protection against fire; Spectacle cases; Pince-nez chains; Eyeglass cords; Spectacle frames; Spectacles [optics]; Gloves for protection against accidents; Riding helmets; Knee-pads for workers; Spectacles [optics]; Eyeglass cords; Protection devices for personal use against accidents; Head protection; Protective helmets for sports; Protective masks; Safety restraints (other than for vehicle seats and sports equipment); Shoes for protection against accidents, irradiation</p>

	and fire; Lenses for eyeglasses; Clocks (Time -) [time recording devices]; Time recording apparatus; Workmen's protective face-shields.
Class 14: Jewellery, costume jewellery, precious stones; horological and chronometric instruments, clocks and watches; parts, fittings and accessories for all the aforesaid goods.	Class 14: Alloys of precious metal; Jewels and Precious stones; Horological and chronometric instruments.
	Class 16: Paper and cardboard; Printed matter; Bookbinding material; Photographs [printed]; Stationery; Pastes and other adhesives for stationery or household purposes; Artists' materials; Paint brushes; Typewriters and office requisites (except furniture); Educational materials (excluding apparatus); Plastic materials for packaging; Printing type; Printing blocks; Scrapbooks; Almanacs; Announcement cards [stationery]; Bags [envelopes, pouches] of paper or plastics, for packaging; Booklets; Books; Cards; Catalogues; Wrappers [stationery]; Paper knives [office requisites]; Drawing instruments; Drawing materials; Drawing pens; Drawing sets; Squares for drawing; T-squares for drawing; Elastic bands for offices; Envelopes [stationery]; Erasing products; Facial tissues of paper; Files [office requisites]; Folders [stationery]; Fountain pens; Notelets; Paper tissues; Checkbook covers; Musical greeting cards; Tissues of paper for removing make-up; Notebooks; Office requisites; Paint boxes [articles for use in school]; Passport covers; Pen boxes; Pencil holders; Pencil sharpeners, electric or non-electric; Pencils; Penholders; Pens [office requisites]; Postcards; Posters; Rubber erasers; Drafting rulers; School supplies [stationery]; Stands for pens and pencils; Stencils; Tickets; Hygienic paper; Paper towels; Rub down transfers; Wrapping paper; Wristbands for the retention of writing instruments; Writing board erasers; Writing brushes; Writing cases [sets]; Writing cases [stationery]; Writing chalk; Writing instruments; Writing materials; Writing or drawing books; Writing tablets; Writing paper; Writing slates; Xuan paper for Chinese painting and calligraphy.
Class 18: Trunks and travelling bags; rucksacks; backpacks; bags; beach bags; belts; briefcases; card cases; cases; garment cases for travel; handbags; holdalls; key cases; keyholders; keyfobs; purses; school bags; shopping bags; sports bags; suitcases; wallets; umbrellas, parasols and walking sticks; parts, fittings and accessories for all the aforesaid goods.	Class 18: Leather and imitations of leather; Animal skins; Travelling trunks and travelling bags; Umbrellas, parasols and walking sticks; Whips, harness and saddlery; Attache cases; Bags [envelopes, pouches] of leather, for packaging; Bags for campers; Bags for climbers; Sport bags; Straps (Leather -); Beach bags; Boxes of leather or leatherboard; Boxes of vulcanised fibre; Briefbags; Walking sticks; Card cases [notecases]; Cases of leather or leatherboard; Cattle skins; Chain mesh purses;

	<p>Skins of chamois, other than for cleaning purposes; Furniture coverings of leather; Bags (Game -) [hunting accessories]; Garment bags for travel; Handbags; Haversacks; Imitation leather; Key cases made of leather; Kid; Laces (Leather -); Leather shoulder belts; Leather, unworked or semi-worked; Leatherboard; Moleskin [imitation of leather]; Alpenstocks; Muzzles; Net bags for shopping; Feed bags; Wallets; Purses; Backpacks; Satchels; Shopping bags; Attache cases; Tool bags of leather, empty; Travelling sets [leatherware]; Traveling trunks; Umbrella covers; Valises; Vanity cases, not fitted; Wheeled shopping bags.</p>
	<p>Class 21: Household or kitchen cooking utensils and containers; Combs and sponges; Brushes, except paint brushes; Material for brush-making; Cleaning articles; Articles made of glass, Goods of porcelain and earthenware; Boot jacks; Shoe trees; Brush goods; Boot brushes; Comb cases; Combs for the hair (Large-toothed -); Polishing leather; Stands for shaving brushes; Shaving brushes; Shoe horns; Shoe trees; Soap boxes; Toilet cases. Household or kitchen cooking utensils and containers; Combs and sponges; Brushes, except paint brushes; Material for brush-making; Cleaning articles; Articles made of glass, Goods of porcelain and earthenware; Boot jacks; Shoe trees; Brush goods; Boot brushes; Comb cases; Combs for the hair (Large-toothed -); Polishing leather; Stands for shaving brushes; Shaving brushes; Shoe horns; Shoe trees; Soap boxes; Toilet cases.</p>
<p>Class 24: Textiles and textile goods, not included in other classes; bed and table covers; bath linen; bed linen; furniture coverings of textile; curtains of textile or plastic; fabrics; face towels; flags; handkerchiefs of textile; household linen; mattress covers; napkins of textile; pillowcases; place mats of textile; sheets; table linen; towels of textile.</p>	<p>Class 24: Textiles and Fabrics; Bed covers, table covers; Banners of textile or plastic; Bath linen, except clothing; Bed covers; Bed clothes; Bed linen; Bolting cloth; Brocades; Bunting of textile or plastic; Calico; Printed calico cloth; Chenille fabric; Cheviots [cloth]; Woven fabrics; Cotton fabrics; Quilts; Cushion covers; Crepe [fabric]; Crepon; Damask; Diapered linen; Eiderdowns [down coverlets]; Elastic woven material; Esparto fabric; Fabric of imitation animal skins; Fabrics for textile use; Face towels</p>

	<p>[made of textile materials]; Felt; Fiberglass fabrics, for textile use; Flags of textile or plastic; Flannel [fabric]; Frieze [cloth]; Dimity; Gauze [cloth]; Gummed cloth, other than for stationery purposes; Haircloth [sackcloth]; Handkerchiefs of textile; Hemp cloth; Hemp fabric; Linens; Jersey [fabric]; Jute fabric; Knitted fabric; Labels of textile; Flax fabrics; Lingerie fabric; Lining fabric for footwear; Linings [textile]; Marabouts [cloth]; Textile material; Moleskin [fabric]; Non-woven textile fabrics; Shams; Plastic material [substitute for fabrics]; Ramie fabric; Rayon fabric; Table runners; Sanitary flannel; Textile napkins; Bed sheets; Shrouds; Silk cloth; Silk fabrics for printing patterns; Sleeping bags [sheeting]; Taffeta [cloth]; Napkins, of cloth, for removing make-up; Towels of textile; Travelling rugs [lap robes]; Trellis [cloth]; Tulle; Upholstery fabrics; Velvet; Woollen fabric; Zephyr [cloth].</p>
<p>Class 25: Clothing, footwear, headgear; sports clothing; sports footwear; sports headgear; outerwear; swimwear; underwear; football shirts; football boots; football shorts; football socks; boots; shoes; caps; hats; beanie hats; baseball caps.</p>	<p>Class 25: Clothing, footwear, headgear; Ascots; Babies' pants [clothing]; Bandanas [neckerchiefs]; Bathrobes; Bath sandals; Bath slippers; Swimming caps; Swimming costumes; Swimming trunks; Beachwear; Beach shoes; Belts [clothing]; Berets; Bibs, not of paper; Boas [necklets]; Boot uppers; Boots; Training shoes; Braces for clothing [suspenders]; Brassieres; Breeches; Camisoles; Cap peaks; Caps [headwear]; Chemisettes; Clothing for gymnastics; Clothing of imitations of leather; Leather clothing; Coats; Sashes for wear; Shoulder wraps; Combinations [clothing]; Masquerade costumes; Cuffs; Cyclists' clothing; Detachable collars; Boxer shorts; Dress shields;</p>

Robes; Ear muffs [clothing]; Espadrilles; Fishing vests; Fittings of metal for footwear and boots; Football boots; Footmuffs, not electrically heated; Footwear uppers; Gowns; Gabardines [clothing]; Gaiters; Goloshes; Girdles; Gloves [clothing]; Gymnastic shoes; Half-boots; Hats; Headbands [clothing]; Headgear; Heelpieces for footwear; Heelpieces for stockings; Heels; Hoods [clothing]; Hosiery; Insoles; Jackets [clothing]; Jumpers; Knitwear [clothing]; Lace boots; Layettees [clothing]; Leggings (trousers); Underwear; Mantillas; Mittens; Belts (Money -) [clothing]; Motorists' clothing; Muffs [clothing]; Neckties; Non-slipping devices for footwear; Outerclotthing; Aprons [clothing]; Topcoats; Pyjamas; Paper clothing; Hats (Paper -) [clothing]; Parkas; Pelerines; Pelisses; Petticoats; Pocket squares; Pockets for clothing; Ready-to-wear clothing; Linings (Ready-made -) [parts of clothing]; Sandals; Saris; Scarves; Shirt fronts; Shirt yokes; Shirts; Shoes; Shoulder wraps [clothing]; Shower caps; Maillots; Skirts; Skull caps; Sleep masks; Mules; Slips [underclothing]; Sock suspenders; Socks; Footwear soles; Training shoes; Stocking suspenders; Stockings; Sweat-absorbent stockings; Studs for football boots; Stuff jackets [clothing]; Suits; Sun visors; Sweat-absorbent underwear; Sweaters; Teddies [underclothing]; Tee-shirts; Tights; Tips for footwear; Top hats; Knee-high stockings; Trousers; Turbans; Briefs; Underwear; Uniforms; Veils [clothing]; Waistcoats; Visors; Rainproof clothing; Welts for

	<p>footwear; Wetsuits for water-skiing; Wimples; Wooden shoes.</p>
	<p>Class 28: Toys and playthings; Gymnastic and sporting articles; Decorations for Christmas trees; Bags especially designed for skis and surfboards; Balls for games; Baseball gloves; Batting gloves [accessories for games]; Bladders of balls for games; Body boards; Body-training apparatus; Boxing gloves; Chest expanders [exercisers]; Climbers' harness; Cricket bags; Elbow guards [sports articles]; Flippers for swimming; Rackets; Fencing gauntlets; Gloves for games; Golf bags, with or without wheels; Golf clubs; Golf gloves; Gut for rackets; Gymnastic articles; Hang gliders; Harness for sailboards; Hockey sticks; Ice skates; In-line roller skates; Knee guards [sports articles]; Supporters (Men's athletic -) [sports articles]; Nets for sports; Paragliders; Fitness exercise machines; Balls for games; Playing balls; Paddings (Protective -) [parts of sports suits]; Punching bags; Roller skates; Rollers for stationary exercise bicycles; Sailboards; Masts for sailboards; Shin guards [sports articles]; Skateboards; Skating boots with skates attached; Spring boards [sports articles]; Stationary exercise bicycles; Strings for rackets; Surfboards; Surf skis; Surfboard leashes; Indoor football tables; Tables for table tennis; Tennis ball throwing apparatus; Tennis nets; Waterskis; Belts (Weight lifting -) [sports articles].</p>
<p>Class 35: Retail and online retail services connected with the sale of cleaning, polishing, scouring and abrasive preparations soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, after-shave lotions, antiperspirant soap, antiperspirants, bath salts, beauty masks, breath freshening sprays, bubble bath, body creams, body wash, cosmetic kits, cosmetics, cosmetic creams, deodorant soap, eau de cologne, hair colorants, hair conditioners, hair dyes, hair lotions, hair spray, hair waving preparations, lipsticks, make-up, mascara, nail polish, nail varnish, perfumes, potpourri, shampoos, shaving lotions, shaving preparations, shaving soap, shower gel, skincare preparations, suntanning preparations, talcum powder, washing preparations, jewellery, costume jewellery, precious stones, horological and chronometric instruments, clocks and</p>	<p>Class 35: Sale by retail, wholesale, on-line, by mail order of clothing, sports clothing, footwear, sports footwear, headgear, belts; Retailing, wholesaling, online sale and mail order sale of perfumes, cosmetics, soaps; Retailing, wholesaling, online sale and mail order sale of clocks and watches; Retailing, wholesaling, online sale and mail order sale of spectacles, sunglasses, goggles for sports, spectacle frames, spectacle cases, protective and safety clothing and footwear, protective helmets for sports; Retailing, wholesaling, online sale and mail order sale of luggage, backpacks, bags, bags for sports, bags for sporting articles; Retailing, wholesaling, online sale and mail order sale of stationery; Retailing, wholesaling, online sale and mail order sale of gymnastic and sporting articles, balls, shin guards, knee-pads, gloves for sports; Retailing, wholesaling, online</p>

<p>watches, trunks and travelling bags, rucksacks, backpacks, bags, beach bags, belts, briefcases, card cases, cases, garment cases for travel, handbags, holdalls, key cases, keyholders, keyfobs, purses, school bags, shopping bags, sports bags, suitcases, wallets, umbrellas, parasols and walking sticks, textiles and textile goods, bed and table covers, bath linen, bed linen, furniture coverings of textile, curtains of textile or plastic, fabrics, face towels, flags, handkerchiefs of textile, household linen, mattress covers, napkins of textile, pillowcases, place mats of textile, sheets, table linen, towels of textile, clothing, footwear, headgear, sports clothing, sports footwear, sports headgear, outerwear, swimwear, underwear, football shirts, football boots, football shorts, football socks, boots, shoes, caps, hats, beanie hats, baseball caps; organisation, operation and supervision of sales and promotional incentive schemes; loyalty card services; discount card services; advisory, consultancy and information services relating to the aforesaid.</p>	<p>sale and mail order sale of household or kitchen utensils and containers; Retailing, wholesaling, online sale and mail order sale of textiles and textile goods, household linen, bed linen, blankets, table linen.</p>
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23) Regarding the goods of the two parties on class 3, most of both parties' specifications relate to cosmetics and personal hygiene products. The application does include "Cleaning, polishing, scouring and abrasive preparations" however I regard the following in the opponent's specification to be identical or highly similar "Creams for leather; Degreasers, other than for use in manufacturing processes; Detergents, other than for use in manufacturing operations and for medical purposes; Dyes (Cosmetic -)". To my mind, overall the whole of the applicant's specification is encompassed within that of the opponent. **The goods in class 3 are therefore either identical or if not identical highly similar.**

24) Turning to the class 14 & 18 goods the whole of the applicant's specification in these classes is very obviously encompassed by that of the opponent in the corresponding classes. **The goods in classes 14 & 18 are identical.**

25) Considering the goods in class 24 the term "textiles and fabrics" in the opponent's specification encompasses all of the goods applied for by the applicant. In addition, most of the individual terms are found in both specifications. **The goods in class 24 are identical.**

26) Moving to the class 25 goods, both specification start with the words "clothing, footwear and headgear" followed by items which fall within these broad headings. **As such the goods of the two parties in class 25 are identical.**

27) Lastly, I turn to consider the class 35 services of the two parties. For the most part these basically cover the retail and wholesale of the goods listed in the above specifications. **As such these class 35 services must, given my earlier findings be identical or highly similar.**

28) This leaves the following services in the applicant class 35 specification: "organisation, operation and supervision of sales and promotional incentive schemes; loyalty card services; discount card services; advisory, consultancy and information services relating to the aforesaid". To my mind, any retail outlet will potentially involve "organisation, operation and supervision of sales and promotional incentive schemes; loyalty card services; discount card services". These services must therefore be regarded as identical to the opponent's services in class 35 of "Retail and online retail services". However, such services would not normally include services such as "advisory, consultancy and information services relating to the aforesaid". When one starts to advise others about retailing, discount cards and loyalty schemes then one moves from simple retailing into consultancy which is a different skill set entirely. Therefore, the applicant's specification of "advisory, consultancy and information services relating to the aforesaid" must be considered to be not at all similar nor complementary to the applicant's services and so these services must fail in respect of the opposition under section 5(2)(b).

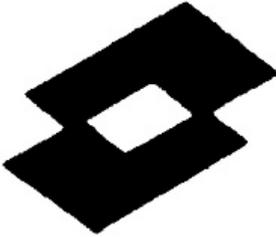
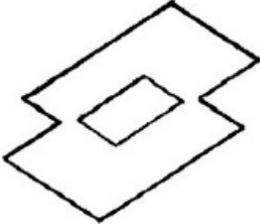
29) When comparing the opponent's specification for trade mark EU 2109684 to that of the marks in suit very similar conclusions are reached. The class 3 goods are identical or highly similar. The goods in classes 14, 18 and 25 are identical. The opponent has no goods similar to those of the applicant in class 24 nor any services similar to the applicant's class 35 services.

## Comparison of trade marks

30) 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 them, 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.”

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

Opponent's trade marks	Applicant's trade mark
EU 2109684 	3261155 
EU16583619 	3261166 

32) The opponent's submissions are:

"13. The marks are comprised of a pair of quadrilateral shapes. They all form a central square of roughly the same size. That central square is in the middle of the image and catches the eye of the consumer. The outline of all the marks form a geometrically shaped number 8. The outline of all the marks also comprise points at the top and bottom and double pointed sides. All the marks have an indentation on each side of each mark, which forms a waist. These features, too, catch the eye.

14. The concept conveyed by both these marks is of a geometrically shaped number 8.

15. One of the marks applied for 3261155 (UK155) has text underneath the logo. This text would be seen by the average consumer but has a reduced level of prominence due to its modest size and location. The first thing that the consumer sees is the logo, and this dominates the impression made. In relation to clothing, the word apparel would be descriptive anyway and would go largely unnoticed by the consumer.

16. Overall, there is a high degree of visual and conceptual similarity. There would be a reduced role for aural similarity, given the nature of the goods and the small size of the text in the 155 mark. Accordingly, in relation to the 155 mark there would be a slightly lower degree of overall similarity."

33) Whilst the applicant contends:

"23. As discussed above, the General Court's decision in *Asics vs Van Lieshout* shows that relatively simple marks consisting of line drawings (as is the case here) may be distinguished on relatively minor differences. In the present case, the Opponent's Outline Logo will be viewed as a crude form of figure 8 whereas the SGG Logo Mark quite clearly consists of two overlapping diamonds creating a third diamond in the middle. The Opponent's Outline Logo also quite clearly consists of one single shape, whereas the SGG Logo Mark consists of two clear separate diamonds which then combine to create a third smaller diamond.

24. Although the cases were concerned with short trade marks, the reasoning in *Yves Saint Laurent v The Zoological Society of London* shows that short/simple are trade marks are capable of being distinguished on relatively minor differences. The same is supported by Part 2, Chapter 2 C Paragraph 4.2 Length of Signs of the EUIPO's Opposition Guidelines.

25. As per *P Ruiz-Picasso and Others v OHIM*, for a conceptual message of a mark to be relevant, the marks in question must be capable of immediate grasp by the average consumer. In this instance, both marks consist of relatively simple line drawings with no obvious meaning in relation to the goods and services to which they are applied. It is therefore not possible to make a conceptual comparison between the marks.

26. It must be assessed whether the combination of all of the factors outlined above leads to a likelihood of confusion. As we know, and as can be seen, this test is multifactorial, these various factors make it clear that there would be no confusion in this case. It is necessary to consider notional and fair use of the Earlier Rights in relation to the goods and services covered by them, and to compare that with the coverage of the Opposed Applications. In this case, the average consumer will be a member of the public looking to purchase everyday items such as clothing, personal products, bags, etc. These are the sort of goods, clothing especially, where consumers will be expecting to make a visual comparison of the respective marks and branding appearing on the items they are looking to purchase. This, along with a number of other factors, play in the Applicant's favour in making the assessment between the respective marks and should be taken into account in the overall assessment of a likelihood of confusion:

- a. The respective marks consist of relatively simple line drawings, such that minor differences will be sufficient to distinguish between them.
- b. The goods in question, especially clothing, are goods that are viewed with specific reference to the trade marks appearing on them. Consumers are well used to comparing these marks and picking out the differences between them (*Lloyd Schuhfabrik Meyer, American Airlines, Inc. v Aigle International, S.A.*).
- c. The evidence of the Opponent does not show that the Opponent's Outline Logo enjoys an enhanced distinctive character or reputation, and there is therefore no increased risk of confusion.
- d. The Witness Statement of Tracy Kaye Crowley shows a number of similar trade marks co-existing in the marketplace at Exhibit TKC 1.

28. Overall, the Applicant submits that there is no likelihood of confusion between the respective marks and that the opposition should be refused on the basis of Section 5(2)(b)."

34) I note that the opponent's submissions do not differentiate between its two marks, but treat them as the "black" and "white" versions of the same mark and refer to them in their evidence as the "double field" logo or marks. Indeed, in its statement of grounds the opponent said: "It will be appreciated that they are used interchangeably, depending on the colour of the surface to which they are applied". Despite this, at the hearing, the opponent contended that I should compare each mark individually to the marks in suit. Given that in its submissions the opponent does not draw any distinction between its own marks, treating them as effectively identical and this was clearly the opponent's view at the time of bringing the action, I do not propose to consider the marks individually as I cannot envisage how I could come to different conclusions. I will therefore refer to the opponent's mark in the singular form.

35) Clearly, the opponent's strongest case is against the applicant's mark 3261166 as this is a device only mark without letters or words, unlike the applicant's 3261155 mark. To my mind, the average consumer will view the opponent's mark as comprising of two interlocking/overlapping rectangles with a rectangular hole in the middle. In contrast the applicant's mark would be seen as two overlapping / interlocking diamonds. Both are relatively simple devices (the opponent's being slightly more complex due to the hole) and both are distinctly different. The contention that both would be seen as a figure "8" is I believe somewhat far-fetched. It is certainly not the first thing that strikes one about either mark, indeed only once I had read the suggestion and then looked again at the marks could I begin to understand what was being suggested. Even then it seemed unnatural and was ignoring the very obvious view that first comes to mind of two rectangles and two diamonds respectively. I also note that the opponent refers to its mark as being a double field device. Visually I consider the marks to be considerably different, there can be no aural comparison as neither mark has any words. Conceptually, the mark in suit is an interlocking diamond device, whereas the opponent's mark is rectangular and so they differ conceptually. **Overall, the marks are quite different and not at all similar.**

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

36) 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-0000, paragraph 49).

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

37) The opponent’s mark is a relatively simple geometric design which has no meaning for the goods and services for which it is registered. The average consumer is used to non-verbal designs being used as trade marks and it must be considered to be **inherently distinctive to at least an average degree**. The opponent has shown no quantifiable use of its mark in the UK on defined goods or services and **so cannot benefit from enhanced distinctiveness**.

### **Likelihood of confusion**

38) 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 trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is also necessary for me to keep in mind the distinctive character of the opponent’s trade mark as the more distinctive the trade mark is, the greater the likelihood of confusion. I must also keep in mind the average consumer for the goods and services, the nature of the purchasing process and the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he has retained in his mind. Earlier in this decision, I concluded that:

- the average consumer for the goods and services is a member of the general public including businesses who will select the goods by predominantly visual means, although I do not

discount aural considerations and that they are likely to pay at least a medium degree of attention to the selection of said goods and services.

- the marks of the two parties are quite different and have no similarity.
- the opponent's mark has at least an average degree of inherent distinctiveness but cannot benefit from an enhanced distinctiveness through use.
- the goods of the two parties fall into two categories; the goods in classes 14, 18, 24 and 25 are identical, whilst the goods in class 3 and the services in class 35 are identical or highly similar.

39) I also consider the issue of indirect confusion, on which subject the opponent contends:

“29. Further in relation to 155 mark (i.e. the one with the text) and the class 25 goods, the particular goods in issue point towards the consumer thinking there is a sub-brand. The General Court held in *Claudia Oberhauser v OHIM*, T-104/01 [2003] ETMR 58 at [49]:

“It must further be observed, with regard to the conditions in which the products in question are marketed, that it is **common in the clothing sector** for the same mark to be configured in various different ways according to the type of product which it designates. It is **also common for the same clothing manufacturer** to use sub-brands, that is to say signs that derive from a principal mark and which share with it a common dominant element, in order to distinguish his various lines from one another (women's, men's, youth). In such circumstances it is conceivable that the targeted public may regard the clothing designated by the conflicting marks as belonging, admittedly, to two distinct ranges of products but as coming, none the less, from the same manufacturer.”(emphasis added)

30. In this case, there is a risk that the consumer thinks the ‘SGG Apparel’ is just a sub-brand resulting from one of its collaborations.”

40) In view of all of the above, and allowing for the concept of imperfect recollection there is no likelihood of consumers being confused, directly or indirectly, into believing that any of the goods and services applied for and provided by the applicant are those of the opponent or provided by an undertaking linked to it. **The opposition under Section 5(2) (b) therefore fails in respect of all the goods and services**

**applied for by the applicant. As the opposition against application 3261166** has failed the obvious corollary is that the opposition against application 3261155 must also fail. This was accepted by the opponent at the hearing.

41) I next turn to the ground of opposition under section 5(3) which reads:

“5. (3) A trade mark which-

(a) is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.”

42) The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, [1999] ETMR 950, Case 252/07, *Intel*, [2009] ETMR 13, Case C-408/01, *Adidas-Salomon*, [2004] ETMR 10 and C-487/07, *L’Oreal v Bellure* [2009] ETMR 55 and Case C-323/09, *Marks and Spencer v Interflora*. The law appears to be as follows:

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

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

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

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

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

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

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

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

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

43) The first hurdle is the issue of reputation as set out at points (a) and (b) above. The onus is upon the opponent to prove that its trade marks enjoy a reputation or public recognition. Earlier in this decision I pointed out that the opponent had failed to provide any evidence of sales of named products, under an identified mark in the UK or even in the EU. The opponent chose to file turnover figures for the whole of the EU under its marks which must include, at least, the mark LOTTO. The figures were for sales of all goods which given the extent of goods for which its marks are registered means that I am not in a position to be sure that the opponent has a reputation for a particular group of goods or services under a particular mark (or even identical marks such as those in the instant case) either in the EU or in the UK. It was entirely within the opponent's gift to provide sales figures for each range of goods and / or services in the UK and/or EU and also individual marketing figures based on countries and/or goods and / or services. The opponent chose not to provide figures which it must possess. The opponent did not provide any invoices for any goods sold within the relevant period, nor did it set out precisely what goods it has sold in the relevant areas during the relevant period. Vague details regarding sponsorship of individuals were provided. However, it is not clear whether it was their kit, boots, clothing or something else that was being sponsored. Nor was it clear whether the sportsmen and women were notable.. Simply providing a list of sportsmen /women names does not suffice to show that the mark in question has been used in the relevant period. **To my mind, the opponent has not shown it has reputation in its mark EU 2109684 and so the ground of opposition fails at the first hurdle.**

44) In case I am wrong on this I will go onto consider whether the public will make a link. In Case C-408/01, *Adidas-Salomon*, the CJEU held that:

“28. The condition of similarity between the mark and the sign, referred to in Article 5(2) of the Directive, requires the existence, in particular, of elements of visual, aural or conceptual similarity (see, in respect of Article 5(1)(b) of the Directive, Case C-251/95 *SABEL* [1997] ECR I-6191, paragraph 23 in fine, and Case C-342/97 *Lloyd Schuhfabrik Meyer* [1999] ECR I-3819, paragraphs 25 and 27 in fine).

29. The infringements referred to in Article 5(2) of the Directive, where they occur, are the consequence of a certain degree of similarity between the mark and the sign, by virtue of which the relevant section of the public makes a connection between the sign and the mark, that is to say, establishes a link between them even though it does not confuse them (see, to that effect, Case C-375/97 *General Motors* [1999] ECR I-5421, paragraph 23).”

45) The level of similarity required for the public to make a link between the marks for the purposes of 5(3) may be less than the level of similarity required to create a likelihood of confusion. In *Intra-Press SAS v OHIM*, Joined cases C-581/13P & C-582/13P, the CJEU stated (at paragraph 72 of its judgment) that:

“The Court has consistently held that the degree of similarity required under Article 8(1)(b) of Regulation No 40/94, on the one hand, and Article 8(5) of that regulation, on the other, is different. Whereas the implementation of the protection provided for under Article 8(1)(b) of Regulation No 40/94 is conditional upon a finding of a degree of similarity between the marks at issue so that there exists a likelihood of confusion between them on the part of the relevant section of the public, the existence of such a likelihood is not necessary for the protection conferred by Article 8(5) of that regulation. Accordingly, the types of injury referred to in Article 8(5) of Regulation No 40/94 may be the consequence of a lesser degree of similarity between the earlier and the later marks, provided that it is sufficient for the relevant section of the public to make a connection between those marks, that is to say, to establish a link between them (see judgment in *Ferrero v OHMI*, C-552/09 P, EU:C:2011:177, paragraph 53 and the case-law cited).”

46) In C-252/07 *Intel Corp* [2008] ECR I-8823 at paragraph 42 the court set out the factors used to assess a link. Those factors include:

the degree of similarity between the conflicting marks;

the nature of the goods or services for which the conflicting marks were registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public;

the strength of the earlier mark’s reputation;

the degree of the earlier mark’s distinctive character, whether inherent or acquired through use;

the existence of the likelihood of confusion on the part of the public.

47) Earlier in this decision I found that the opponent's mark is not similar to the marks sought to be registered by the applicant. I also found that the opponent's goods and services were either identical or highly similar to the goods and services of the applicant. The opponent's mark has an average degree of inherent distinctive character. To my mind, despite the fact that the users and goods and services are the same, if a member of the public or business user saw the applicant's marks they would not link to the opponent. **The ground of opposition under section 5(3) fails.**

## **CONCLUSION**

48) The opposition under sections 5(2)(b) and 5(3) fails in respect of all the goods and services sought to be registered in respect of both the applicant's trade marks.

## **COSTS**

49) As the applicant has succeeded in it is entitled to a contribution towards its costs.

Preparing a statement and considering the other side's statement x 2	£600
Preparing evidence	£400
Considering the other sides evidence	£600
Attendance at the hearing	£1200
<b>TOTAL</b>	<b>£2,800</b>

50) I order Lotto Sport Italia S.p.A. to pay The Liverpool Football Club and Athletic Grounds Ltd the sum of £3,200. This sum to be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 08<sup>th</sup> day of May 2019**

**George W Salthouse**  
**For the Registrar,**  
**the Comptroller-General**