

**O-245-19**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. 3281981 BY JOLLEY GOOD LTD TO  
REGISTER:**



**AS A TRADE MARK IN CLASS 25**

**AND**

**IN THE MATTER OF OPPOSITION THERETO UNDER NO. 412329  
BY SAMSOE & SAMSOE HOLDING A/S**

## Background & Pleadings

1. On 11 January 2018, Jolley Good Ltd (“the applicant”) applied to register the above trade mark for the following goods in Class 25:

*Adhesive bras; After ski boots; Aikido suits; Aikido uniforms; Albs; Aloha shirts; American football bibs; American football pants; American football shirts; American football shorts; American football socks; Anglers' shoes; Ankle boots; Ankle socks; Anklets [socks]; Anoraks; Anoraks [parkas]; Anti-perspirant socks; Anti-sweat underclothing; Anti-sweat underwear; Après-ski boots; Apres-ski shoes; Aprons; Aprons [clothing]; Aqua shoes; Arm warmers [clothing]; Army boots; Articles of clothing; Articles of clothing for theatrical use; Articles of clothing made of hides; Articles of clothing made of leather; Articles of outer clothing; Articles of sports clothing; Articles of underclothing; Ascots; Ascots (ties); Athletic clothing; Athletic footwear; Athletic shoes; Athletic tights; Athletic uniforms; Athletics footwear; Athletics hose; Athletics shoes; Athletics vests; Babies' clothing; Babies' outerclothing; Babies' pants [clothing]; Babies' pants [underwear]; Babies' undergarments; Babushkas; Baby bibs [not of paper]; Baby bodysuits; Baby boots; Baby bottoms; Baby clothes; Baby doll pyjamas; Baby layettes for clothing; Baby pants; Baby sandals; Baby tops; Balaclavas; Ball gowns; Ballet shoes; Ballet slippers; Ballet suits; Ballroom dancing shoes; Bandanas; Bandanas [neckerchiefs]; Bandannas; Bandeaux [clothing]; Barber smocks; Baseball caps; Baseball caps and hats; Baseball hats; Baseball shoes; Baseball uniforms; Baselayer bottoms; Baselayer tops; Basic upper garment of Korean traditional clothes [Jeogori]; Basketball shoes; Basketball sneakers; Bath robes; Bath sandals; Bath shoes; Bath slippers; Bathing caps; Bathing costumes; Bathing costumes for women; Bathing drawers; Bathing suit cover-ups; Bathing suits; Bathing suits for men; Bathing trunks; Bathrobes; Bathwraps; Beach clothes; Beach clothing; Beach cover-ups; Beach footwear; Beach hats; Beach robes; Beach shoes; Beach wraps; Beachwear; Beanie hats; Beanies; Bed jackets; Bed socks; Belts [clothing]; Belts for clothing; Belts made from imitation leather; Belts made of leather; Belts made out of cloth; Belts (Money -) [clothing]; Belts of textile; Berets; Bermuda shorts; Bib overalls for hunting; Bib shorts; Bib tights; Bibs, not of paper; Bibs, sleeved, not of paper; Bikinis; Blazers; Bloomers; Blouses; Blouson jackets; Blousons; Blue jeans; Board shorts; Boardshorts; Boas; Boas [clothing]; Boas [necklets]; Boaters; Bobble hats; Bodices; Bodices [lingerie]; Bodies [clothing]; Bodies [underclothing]; Body linen [garments]; Body stockings; Body suits; Body warmers; Bodysuits; Boiler suits; Boleros; Bolo ties; Bolo ties with precious metal tips; Bomber jackets; Bonnets; Bonnets [headwear]; Boot cuffs; Boot uppers; Bootees (woollen baby shoes); Booties; Boots; Boots for motorcycling; Boots for sport; Boots for sports; Boots (Ski -); Bottoms [clothing]; Bow ties; Bowling shoes; Bowties; Boxer briefs; Boxer shorts; Boxing*

shoes; Boxing shorts; Boy shorts [underwear]; Boys' clothing; Bra straps; Bra straps [parts of clothing]; Braces as suspenders; Braces for clothing; Braces for clothing [suspenders]; Braces [suspenders]; Bralettes; Bras; Brassieres; Breeches; Breeches for wear; Bridal garters; Bridal gowns; Bridesmaid dresses; Bridesmaids wear; Briefs; Briefs [underwear]; Bucket caps; Burnouses; Bushjackets; Bustiers; Bustle holder bands for obi (obiage); Bustles for obi-knots (obiage-shin); Button down shirts; Button-front aloha shirts; Caftans; Cagoules; Camiknickers; Camisoles; Camouflage gloves; Camouflage jackets; Camouflage pants; Camouflage shirts; Camouflage vests; Canvas shoes; Cap peaks; Cap visors; Capelets; Capes; Capes (clothing); Caps; Caps being headwear; Caps [headwear]; Caps (Shower -); Caps with visors; Car coats; Cardigans; Cargo pants; Cashmere clothing; Cashmere scarves; Casual clothing; Casual footwear; Casual jackets; Casual shirts; Casual trousers; Casual wear; Casualwear; Chaps; Chaps (clothing); Chasubles; Chefs' hats; Chefs' whites; Chemise tops; Chemises; Chemisettes; Cheongsams (Chinese gowns); Children's clothing; Childrens' clothing; Children's footwear; Children's headwear; Children's outerclothing; Children's wear; Chino pants; Choir robes; Christening gowns; Christening robes; Cleats for attachment to sports shoes; Climbing boots; Climbing boots [mountaineering boots]; Climbing footwear; Cloaks; Clogs; Cloth bibs; Cloth bibs for adult diners; Clothes; Clothes for sport; Clothes for sports; Clothing; Clothing for babies; Clothing for children; Clothing for cycling; Clothing for cyclists; Clothing for fishermen; Clothing for gymnastics; Clothing for horse-riding [other than riding hats]; Clothing for infants; Clothing for leisure wear; Clothing for martial arts; Clothing for men, women and children; Clothing for skiing; Clothing for sports; Clothing for wear in judo practices; Clothing for wear in wrestling games; Clothing layettes; Clothing made of fur; Clothing made of imitation leather; Clothing made of leather; Clothing of imitations of leather; Clothing of leather; Coats; Coats for men; Coats for women; Coats made of cotton; Coats of denim; Coats (Top -); Cocktail dresses; Collar guards for protecting clothing collars; Collar liners for protecting clothing collars; Collar protectors; Collared shirts; Collars; Collars [clothing]; Collars for dresses; Combative sports uniforms; Combinations [clothing]; Corduroy pants; Corduroy shirts; Corduroy trousers; Corselets; Corsets; Corsets [clothing, foundation garments]; Corsets [foundation clothing]; Corsets [underclothing]; Costumes; Costumes for use in children's dress up play; Costumes for use in role-playing games; Costumes (Masquerade -); Cotton coats; Coveralls; Coverups; Cover-ups; Cowls [clothing]; Cravates; Cravats; Crew neck sweaters; Crinolines; Crop tops; Cuffs; Culotte skirts; Culottes; Cumberbunds; Cycling caps; Cycling Gloves; Cycling pants; Cycling shoes; Cycling shorts; Cycling tops; Cyclists' clothing; Dance clothing; Dance costumes; Dance shoes; Dance slippers; Deck shoes; Deck-shoes; Denim coats; Denim jackets; Denim jeans; Denim pants; Denims [clothing]; Desert boots; Detachable collars; Detachable neckpieces for kimonos (haneri); Dinner jackets; Dinner suits; Disposable slippers; Disposable underwear; Donkey

*jackets; Down jackets; Down vests; Drawers as clothing; Drawers [clothing]; Dress pants; Dress shields; Dress shirts; Dress shoes; Dress suits; Dresses; Dresses for evening wear; Dresses for infants and toddlers; Dresses made from skins; Dressing gowns; Driving gloves; Driving shoes; Dry suits; Duffel coats; Duffle coats; Dungarees; Dust coats; Ear muffs; Ear muffs [clothing]; Ear warmers; Earbands; Earmuffs; Embossed heels of rubber or of plastic materials; Embossed soles of rubber or of plastic materials; Espadrilles; Esparto shoes or sandals; Esparto shoes or sandals; Evening coats; Evening dresses; Evening gowns; Evening suits; Evening wear; Exercise wear; Eye masks; Fabric belts; Fabric belts [clothing]; Fake fur hats; Fancy dress costumes; Fascinator hats; Fashion hats; Fedoras; Fezzes; Figure skating clothing; Fingerless gloves; Fingerless gloves as clothing; Fishermen's jackets; Fishing boots; Fishing clothing; Fishing footwear; Fishing headwear; Fishing jackets; Fishing shirts; Fishing smocks; Fishing vests; Fishing waders; Fitted swimming costumes with bra cups; Fittings of metal for boots and shoes; Fittings of metal for footwear; Flat caps; Flat shoes; Fleece pullovers; Fleece shorts; Fleece tops; Fleece vests; Fleeces; Flip-flops; Flip-flops for use as footwear; Flying suits; Foam pedicure slippers; Folk costumes; Foot volleyball shoes; Football boots; Football boots (Studs for -); Football jerseys; Football shirts; Football shoes; Footless socks; Footless tights; Footmuffs, not electrically heated; Footwear; Footwear [excluding orthopedic footwear]; Footwear (Fittings of metal for -); Footwear for men; Footwear for men and women; Footwear for snowboarding; Footwear for sport; Footwear for sports; Footwear for track and field athletics; Footwear for use in sport; Footwear for women; Footwear made of vinyl; Footwear made of wood; Footwear (Non-slipping devices for -); Footwear not for sports; Footwear soles; Footwear (Tips for -); Footwear uppers; Footwear (Welts for -); Formal evening wear; Formal wear; Formalwear; Foulards [clothing articles]; Foundation garments; Frames (Hat -) [skeletons]; Frock coats; Full-length kimonos (nagagi); Functional underwear; Fur cloaks; Fur coats; Fur coats and jackets; Fur hats; Fur jackets; Fur muffs; Fur stoles; Furs [clothing]; Gabardines; Gabardines [clothing]; Gaiter straps; Gaiters; Galoshes; Garments for protecting clothing; Garrison caps; Garter belts; Garters; Gauchos; Gilets; Girdles; Girdles [corsets]; Girls' clothing; Gloves; Gloves as clothing; Gloves [clothing]; Gloves for apparel; Gloves for cyclists; Gloves including those made of skin, hide or fur; Gloves with conductive fingertips that may be worn while using handheld electronic touch screen devices; Golf caps; Golf clothing, other than gloves; Golf footwear; Golf pants, shirts and skirts; Golf shirts; Golf shoes; Golf shorts; Golf skirts; Golf trousers; Goloshes; Gowns; Gowns for doctors; Greatcoats; G-strings; Guernseys; Gussets for bathing suits [parts of clothing]; Gussets for footlets [parts of clothing]; Gussets for leotards [parts of clothing]; Gussets for stockings [parts of clothing]; Gussets for tights [parts of clothing]; Gussets for underwear [parts of clothing]; Gussets [parts of clothing]; Gym boots; Gym shorts; Gym suits; Gymnastic shoes; Gymshoes; Gymwear; Hairdressing capes; Half-boots; Halloween costumes; Halter tops; Handball shoes;*

*Handwarmers [clothing]; Haneri [detachable neckpieces for kimonos]; Hat frames [skeletons]; Hats; Hats (Paper -) [clothing]; Head bands; Head scarves; Head sweatbands; Head wear; Headbands; Headbands against sweating; Headbands [clothing]; Headbands for clothing; Headdresses [veils]; Headgear; Headgear for wear; Headscarfs; Headscarves; Headshawls; Headsquares; Headwear; Heavy coats; Heavy jackets; Heel inserts; Heel pieces for shoes; Heel pieces for stockings; Heelpieces for footwear; Heelpieces for stockings; Heels; High rain clogs (ashida); High-heeled shoes; Hiking boots; Hiking shoes; Hockey shoes; Hooded pullovers; Hooded sweat shirts; Hooded sweatshirts; Hooded tops; Hoodies; Hoods; Hoods [clothing]; Horse-riding boots; Horse-riding pants; Hosiery; House coats; Housecoats; Hunting boot bags; Hunting boots; Hunting jackets; Hunting pants; Hunting shirts; Hunting vests; Imitation leather dresses; Infant clothing; Infant wear; Infants' boots; Infants' clothing; Infants' footwear; Infants' shoes; Infants' trousers; Infantwear; Inner socks for footwear; Inner soles; Innersocks; Insoles; Insoles for footwear; Insoles for shoes and boots; Insoles [for shoes and boots]; Intermediate soles; Jacket liners; Jackets; Jackets being sports clothing; Jackets [clothing]; Jackets (Stuff -) [clothing]; Japanese footwear of rice straw (waraji); Japanese kimonos; Japanese sleeping robes (nemaki); Japanese sleeping robes [nemaki]; Japanese split-toed work footwear (jikatabi); Japanese style clogs and sandals; Japanese style sandals of felt; Japanese style sandals of leather; Japanese style sandals (zori); Japanese style socks (tabi); Japanese style socks (tabi covers); Japanese style wooden clogs (geta); Japanese toe-strap sandals (asaura-zori); Japanese traditional clothing; Jeans; Jerkins; Jerseys; Jerseys [clothing]; Jockstraps [underwear]; Jodhpurs; Jogging bottoms; Jogging bottoms [clothing]; Jogging outfits; Jogging pants; Jogging sets [clothing]; Jogging shoes; Jogging suits; Jogging tops; Judo suits; Judo uniforms; Jump Suits; Jumper dresses; Jumper suits; Jumpers; Jumpers [pullovers]; Jumpers [sweaters]; Jumpsuits; Kaftans; Karate suits; Karate uniforms; Kendo outfits; Kerchiefs; Kerchiefs [clothing]; Khakis; Kilts; Kimonos; Knee warmers [clothing]; Knee-high stockings; Knickerbockers; Knickers; Knit jackets; Knit shirts; Knit tops; Knitted baby shoes; Knitted caps; Knitted clothing; Knitted gloves; Knitted tops; Knitted underwear; Knitwear; Knitwear [clothing]; Knot caps; Korean outer jackets worn over basic garment [Magoja]; Korean topcoats [Durumagi]; Korean traditional women's waistcoats [Baeja]; Laboratory coats; Lace boots; Ladies' boots; Ladies' clothing; Ladies' dresses; Ladies' footwear; Ladies' outerclothing; Ladies' sandals; Ladies' suits; Ladies' underwear; Ladies wear; Layette; Layette [clothing]; Leather belts [clothing]; Leather clothing; Leather (Clothing of -); Leather (Clothing of imitations of -); Leather coats; Leather dresses; Leather garments; Leather headwear; Leather jackets; Leather pants; Leather shoes; Leather slippers; Leather suits; Leather waistcoats; Leg warmers; Leggings [leg warmers]; Leggings [trousers]; Legwarmers; Leg-warmers; Leisure clothing; Leisure footwear; Leisure shoes; Leisure suits; Leisure wear; Leisurewear; Leotards; Light-reflecting coats; Light-reflecting jackets; Linen*

*(Body -) [garments]; Linen clothing; Lingerie; Linings (Ready-made -) [parts of clothing]; Liveries; Long jackets; Long johns; Long sleeve pullovers; Long sleeved vests; Long-sleeved shirts; Lounge pants; Loungewear; Lounging robes; Low wooden clogs (hiyori-geta); Low wooden clogs (koma-geta); Low wooden clogs [koma-geta]; Lumberjackets; Mackintoshes; Maillots; Maillots [hosiery]; Maniples; Mankinis; Mantillas; Mantles; Martial arts uniforms; Masks (Sleep -); Masquerade costumes; Maternity bands; Maternity clothing; Maternity dresses; Maternity leggings; Maternity lingerie; Maternity pants; Maternity shirts; Maternity shorts; Maternity sleepwear; Maternity smocks; Maternity tops; Maternity underwear; Maternity wear; Men's and women's jackets, coats, trousers, vests; Men's clothing; Men's dress socks; Men's sandals; Men's socks; Men's suits; Men's underwear; Menswear; Metal fittings for Japanese style wooden clogs; Millinery; Miniskirts; Miters [hats]; Mitres [hats]; Mittens; Mitts [clothing]; Moccasins; Mock turtleneck shirts; Mock turtleneck sweaters; Mock turtlenecks; Moisture-wicking sports bras; Moisture-wicking sports pants; Moisture-wicking sports shirts; Money belts [clothing]; Monokinis; Morning coats; Motorcycle gloves; Motorcycle jackets; Motorcycle rain suits; Motorcycle riding suits; Motorcyclist boots; Motorcyclists' clothing; Motorcyclists' clothing of leather; Motorists' clothing; Mountaineering boots; Mountaineering shoes; Mufflers; Mufflers as neck scarves; Mufflers [clothing]; Mufflers [neck scarves]; Muffs; Muffs [clothing]; Mules; Muumuus; Nappy pants [clothing]; Neck scarfs [mufflers]; Neck scarves; Neck scarves [mufflers]; Neck tubes; Neckbands; Neckerchiefs; Neckerchieves; Neckties; Neckwear; Negligees; Night gowns; Night shirts; Nightcaps; Nightdresses; Nightgowns; Nighties; Nightshirts; Nightwear; Non-slip socks; Non-slipping devices for footwear; Nurse dresses; Nurse overalls; Nurse pants; Nurses' uniforms; Oilskins [clothing]; One-piece clothing for infants and toddlers; One-piece playsuits; One-piece suits; Open-necked shirts; Outer clothing; Outer soles; Outerclimbing; Outerclimbing for boys; Outerclimbing for girls; Outerclimbing for men; Outerwear; Overalls; Overalls for infants and toddlers; Overcoats; Overshirts; Overshoes; Overtrousers; Over-trousers; Padded pants for athletic use; Padded shirts for athletic use; Padded shorts for athletic use; Pajama bottoms; Pajamas; Pajamas (Am.); Pantaloons; Pantie-girdles; Panties; Pants; Pants (Am.); Pantsuits; Panty hose; Pantyhose; Paper aprons; Paper clothing; Paper hats [clothing]; Paper hats for use as clothing items; Paper hats for wear by chefs; Paper hats for wear by nurses; Pareos; Pareus; Parkas; Party hats [clothing]; Pea coats; Peaked caps; Peaked headwear; Peaks (Cap -); Pedal pushers; Pedicure sandals; Pedicure slippers; Peignoirs; Pelerines; Pelisses; Petticoats; Petti-pants; Pinafore dresses; Pinafores; Pique shirts; Pirate pants; Plastic aprons; Plastic baby bibs; Plastic slippers; Platform shoes; Play suits; Playsuits [clothing]; Pleated skirts for formal kimonos (hakama); Plimsolls; Plus fours; Plush clothing; Pocket kerchiefs; Pocket squares; Pocket squares [clothing]; Pockets for clothing; Polar fleece jackets; Polo boots; Polo knit tops; Polo neck jumpers; Polo shirts; Polo sweaters; Ponchos; Pop socks;*

*Pram suits; Printed t-shirts; Protective metal members for shoes and boots; Pullovers; Pullstraps for shoes and boots; Pumps [footwear]; Puttees and gaiters; Pyjamas; Pyjamas [from tricot only]; Quilted jackets [clothing]; Quilted vests; Rain boots; Rain coats; Rain hats; Rain jackets; Rain ponchos; Rain shoes; Rain slickers; Rain suits; Rain trousers; Rain wear; Raincoats; Rainproof clothing; Rainproof jackets; Rainshoes; Rainwear; Ramie shirts; Rash guards; Ready-made clothing; Ready-made linings [parts of clothing]; Ready-to-wear clothing; Referees uniforms; Removable collars; Replica football kits; Reversible jackets; Riding boots; Riding gloves; Riding Gloves; Riding jackets; Riding shoes; Riding trousers; Robes; Robes (Bath -); Roll necks [clothing]; Roller shoes; Romper suits; Rompers; Ruanas; Rubber fishing boots; Rubber shoes; Rubber soles for jikatabi; Rubbers [footwear]; Rugby boots; Rugby jerseys; Rugby shirts; Rugby shoes; Rugby shorts; Rugby tops; Running shoes; Running Suits; Running vests; Sabots; Safari jackets; Sailing wet weather clothing; Sailor suits; Salopettes; Sandal-clogs; Sandals; Sandals and beach shoes; Sarees; Saris; Sarongs; Sash bands for kimono (obi); Sashes for wear; Scarfs; Scarves; School uniforms; Scrimmage vests; Sedge hats (suge-gasa); Serapes; Shampoo capes; Shawls; Shawls and headscarves; Shawls and stoles; Shawls [from tricot only]; Sheepskin coats; Sheepskin jackets; Shell jackets; Shell suits; Shields (Dress -); Shift dresses; Shirt fronts; Shirt yokes; Shirt-jacs; Shirts; Shirts and slips; Shirts for suits; Shoe covers, other than for medical purposes; Shoe inserts for non-orthopedic purposes; Shoe soles; Shoe soles for repair; Shoe straps; Shoe uppers; Shoes; Shoes for casual wear; Shoes for foot volleyball; Shoes for infants; Shoes for leisurewear; Shoes soles for repair; Shoes with hook and pile fastening tapes; Short overcoat for kimono (haori); Short petticoats; Short sets [clothing]; Short trousers; Shortalls; Shorts; Shorts [clothing]; Short-sleeve shirts; Short-sleeved or long-sleeved t-shirts; Short-sleeved shirts; Short-sleeved T-shirts; Shoulder scarves; Shoulder straps for clothing; Shoulder wraps; Shoulder wraps [clothing]; Shoulder wraps for clothing; Shower caps; Shrugs; Silk clothing; Silk scarves; Silk ties; Singlets; Skating outfits; Ski and snowboard shoes and parts thereof; Ski balaclavas; Ski boot bags; Ski boots; Ski gloves; Ski hats; Ski jackets; Ski pants; Ski suits; Ski suits for competition; Ski trousers; Ski wear; Skiing shoes; Skirt suits; Skirts; Skorts; Skull caps; Slacks; Sleep masks; Sleep pants; Sleep shirts; Sleeping garments; Sleepsuits; Sleepwear; Sleeved jackets; Sleeveless jackets; Sleeveless jerseys; Sleeveless pullovers; Sliding shorts; Slip-on shoes; Slipovers; Slipovers [clothing]; Slipper socks; Slipper soles; Slippers; Slippers made of leather; Slips; Slips [clothing]; Slips [underclothing]; Slips [undergarments]; Small hats; Smocks; Smoking jackets; Snap crotch shirts for infants and toddlers; Sneakers; Sneakers [footwear]; Snoods [scarves]; Snow boarding suits; Snow boots; Snow pants; Snow suits; Snowboard boots; Snowboard gloves; Snowboard jackets; Snowboard mittens; Snowboard shoes; Snowboard trousers; Snowsuits; Soccer bibs; Soccer boots; Soccer shirts; Soccer shoes; Sock suspenders; Socks; Socks and stockings; Socks for*

*infants and toddlers; Socks for men; Soles for footwear; Soles for japanese style sandals; Soles [Inner]; Spats; Sport coats; Sport shirts; Sport shoes; Sport stockings; Sports [Boots for -]; Sports bras; Sports caps; Sports caps and hats; Sports clothing; Sports clothing [other than golf gloves]; Sports footwear; Sports headgear [other than helmets]; Sports jackets; Sports jerseys; Sports jerseys and breeches for sports; Sports over uniforms; Sports overuniforms; Sports pants; Sports shirts; Sports shirts with short sleeves; Sports shoes; Sports singlets; Sports socks; Sports vests; Sports wear; Sportswear; Stiffeners for boots; Stiffeners for shoes; Stocking suspenders; Stockings; Stockings (Heel pieces for -); Stockings [sweat-absorbent]; Stockings (Sweat-absorbent -); Stoles; Stoles (Fur -); Strapless bras; Strapless brassieres; Straps (Gaiter -); Stretch pants; String fasteners for haori (haori-himo); Studs for football boots; Stuff jackets; Stuff jackets [clothing]; Suede jackets; Suit coats; Suits; Suits (Bathing -); Suits made of leather; Suits of leather; Sun hats; Sun visors; Sun visors [headwear]; Sundresses; Sunsuits; Surf wear; Surfwear; Suspender belts; Suspender belts for men; Suspender belts for women; Suspenders; Suspenders [braces]; Swaddling clothes; Sweat bands; Sweat bands for the head; Sweat bands for the wrist; Sweat bottoms; Sweat jackets; Sweat jackets; Sweat pants; Sweat shirts; Sweat shorts; Sweat suits; Sweat-absorbent socks; Sweat-absorbent stockings; Sweat-absorbent underclothing; Sweat-absorbent underclothing [underwear]; Sweat-absorbent underwear; Sweatbands; Sweaters; Sweatjackets; Sweatpants; Sweatshirts; Sweatshorts; Sweatsuits; Swim briefs; Swim caps; Swim shorts; Swim suits; Swim trunks; Swim wear for children; Swim wear for gentlemen and ladies; Swimming caps; Swimming caps [bathing caps]; Swimming costumes; Swimming suits; Swimming trunks; Swimsuits; Swimwear; Synthetic fur stoles; Tabards; Taekwondo suits; Taekwondo uniforms; Tail coats; Tam o'shanter; Tams; Tank tops; Tankinis; Tank-tops; Tap pants; Tap shoes; Tartan kilts; Teddies; Teddies [underclothing]; Teddies [undergarments]; Tee-shirts; Tennis dresses; Tennis pullovers; Tennis shirts; Tennis shoes; Tennis shorts; Tennis skirts; Tennis socks; Tennis sweatbands; Tennis wear; Theatrical costumes; Thermal clothing; Thermal headgear; Thermal socks; Thermal underwear; Thermally insulated clothing; Thobes; Thong sandals; Thongs; Three piece suits [clothing]; Ties; Ties [clothing]; Tightening-up strings for kimonos (datejime); Tights; Tips for footwear; Toe boxes; Toe straps for Japanese style sandals [zori]; Toe straps for Japanese style wooden clogs; Toe straps for zori [Japanese style sandals]; Togas; Tongues for shoes and boots; Top coats; Top hats; Topcoats; Tops; Tops [clothing]; Toques [hats]; Track and field shoes; Track jackets; Track pants; Track suits; Tracksuit bottoms; Tracksuit tops; Tracksuits; Traction attachments for footwear; Trainers; Trainers [footwear]; Training shoes; Training suits; Trekking boots; Trench coats; Trenchcoats; Trews; Triathlon clothing; Trouser socks; Trouser straps; Trousers; Trousers for children; Trousers for sweating; Trousers of leather; Trousers shorts; Trunks; Trunks (Bathing -); Trunks [underwear]; T-shirts; Tube tops; Tunics; Turbans; Turtleneck pullovers; Turtleneck*

shirts; Turtleneck sweaters; Turtleneck tops; Turtlenecks; Tutus; Tuxedo belts; Tuxedos; Twin sets; Umpires uniforms; Under garments; Under shirts; Underarm gussets [parts of clothing]; Underclothes; Underclothing; Underclothing (Anti-sweat -); Underclothing for women; Undergarments; Underpants; Underpants for babies; Undershirts; Undershirts for kimonos (juban); Undershirts for kimonos (koshimaki); Undershirts for kimonos [koshimaki]; Underskirts; Underwear; Underwear (Anti-sweat -); Underwear for women; Uniforms; Uniforms for commercial use; Uniforms for nurses; Union suits; Unitards; Uppers (Footwear -); Uppers for Japanese style sandals; Uppers of woven rattan for Japanese style sandals; Ushankas [fur hats]; Valenki [felted boots]; Veils; Veils [clothing]; Vest tops; Vests; Vests (Fishing -); Vests for use in barber shops and salons; Visors; Visors [clothing]; Visors [hatmaking]; Visors [headwear]; V-neck sweaters; Volleyball jerseys; Volleyball shoes; Waders; Waist belts; Waist cinchers; Waist strings for kimonos (koshihimo); Waistbands; Waistcoats; Waistcoats [vests]; Walking boots; Walking breeches; Walking shoes; Walking shorts; Warm up suits; Warm-up jackets; Warm-up pants; Warm-up suits; Warm-up tops; Water socks; Waterpolo caps; Waterproof boots; Waterproof boots for fishing; Waterproof capes; Waterproof clothing; Waterproof jackets; Waterproof outerclothing; Waterproof pants; Waterproof shoes; Waterproof suits for motorcyclists; Waterproof trousers; Water-resistant clothing; Waterskiing suits; Weather resistant outer clothing; Weatherproof clothing; Weatherproof jackets; Weatherproof pants; Wedding dresses; Wedding gowns; Wellington boots; Wellingtons; Welts for footwear; Wet suits; Wet suits for surfing; Wet suits for water-skiing; Wet suits for water-skiing and sub-aqua; Wet suits for windsurfing; Wetsuit gloves; Wetsuits; Wetsuits for surface watersports; Wetsuits for surfing; Wetsuits for water-skiing; White coats for hospital use; Wimples; Wind coats; Wind jackets; Wind pants; Wind resistant jackets; Wind suits; Wind vests; Windcheaters; Wind-jackets; Windproof clothing; Windproof jackets; Wind-resistant jackets; Wind-resistant vests; Windshirts; Winter boots; Winter coats; Winter gloves; Women's ceremonial dresses; Women's clothing; Women's foldable slippers; Womens' outerclothing; Women's shoes; Women's suits; Womens' underclothing; Womens' undergarments; Women's underwear; Wooden bodies for Japanese style clogs; Wooden main bodies of Japanese style wooden clogs; Wooden shoes; Wooden shoes [footwear]; Wooden supports of Japanese style wooden clogs; Woolen clothing; Woollen socks; Woollen tights; Woolly hats; Work boots; Work clothes; Work overalls; Work shoes; Working overalls; Woven clothing; Woven shirts; Wrap belts for kimonos (datemaki); Wraps [clothing]; Wrist bands; Wrist warmers; Wristbands; Wristbands [clothing]; Yashmaghs; Yashmaks; Yoga bottoms; Yoga pants; Yoga shirts; Yoga shoes; Yokes (Shirt -); Zoot suits; Zori.

The application was published for opposition purposes on 2 February 2018.

2. On 30 April 2018, the application was opposed in full by Samsøe & Samsøe Holding A/S (“the opponent”). The opposition is based upon sections 5(1) / 5(2)(a) / 5(2)(b)<sup>1</sup> of the Trade Marks Act 1994 (“the Act”), in relation to which the opponent relies upon the following trade mark, which has a priority date of 24 June 2013, designated the EU for protection on 22 November 2013, and upon which protection was conferred on 16 January 2015:

International Registration (“IR”) 1193789:



The opponent indicates that it wishes to rely upon all goods and services for which its mark is registered, namely:

*Class 3: Soaps; perfumery, essential oils, cosmetics.*

*Class 18: Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; bags purses, trunks and travelling bags; umbrellas and parasols.*

*Class 25: Clothing, footwear, headgear.*

*Class 35: Advertising; retail services, including online, in the field of clothing, footwear, leather and imitations of leather and goods made of these materials, perfumery.*

3. In its statement of grounds, the opponent submits that the identity (or at least the high similarity) between the respective marks and their specifications will result in a likelihood of confusion, particularly in light of the enhanced distinctiveness and significant reputation enjoyed by its earlier mark.

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<sup>1</sup> The opponent originally pleaded sections 5(1)/5(2)(a)/5(2)(b) and 5(3) and 5(4)(a). However, in the interest of procedural economy and cost efficiency, it withdrew ss. 5(3) and 5(4)(a) during the evidence rounds. This decision will consider the remaining grounds only.

4. The applicant filed a counterstatement denying the basis of the opposition, specifically that the competing marks are identical or similar.

5. The opponent in these proceedings is represented by Penningtons Manches LLP and the applicant is not legally represented. Only the opponent participated in the evidence rounds, filing both evidence and submissions. Neither party elected to request a hearing, though the opponent filed written submissions in lieu. This decision is taken following a careful reading of all the papers which I will refer to, as necessary.

## Evidence

6. Alongside written submissions, the opponent filed by way of evidence a witness statement from Ms Holly Jane Strube of Penningtons Manches dated 15 November 2018 and supporting exhibit HJS1 (collectively “Annex 1”) and (at “Annex 2”) copies of three EUIPO decisions and one UKIPO decision.

7. Exhibit HJS1 comprises three undated screenshots taken from the applicant’s website<sup>2</sup>, which show individuals (particularly sportspeople) wearing clothing bearing the applied for mark. Ms Strube explains that the exhibit is filed to support the opponent’s claim that the average consumer is unlikely to place any material significance on the orientation of the respective marks’ bisecting lines, all the more so when goods bearing the mark are rotated or viewed from an angle. The opponent has circled the applicant’s mark within the screenshots, as shown:



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<sup>2</sup> <http://next-goalwins.com/>

8. Enclosed at Annex 2 is UKIPO decision O/163/00 and EUIPO decisions relating to oppositions B2060690, B2624610 and B2608415. In each case, a likelihood of confusion was deemed to exist, for various reasons, and the decisions are selected by the opponent “by way of analogy and example”<sup>3</sup>. Whilst I do not propose to summarise these decisions here, they will be borne in mind.

## **DECISION**

### **Identity of the marks**

9. As sections 5(1) and 5(2)(a) have been pleaded, the identity of the marks is a matter which must first be determined. When it comes to the identity, or indeed the similarity, of the respective marks, the applicant submits the following:

“UK00003281981 is uniquely identifiable as a NEXT GOAL WINS Apparel Limited trade mark which simplistically uses the stylise O used in the approved trade mark UK00003146066 and proposed trade mark UK00003281977 which depicts the centre circle of a football pitch and which forms the essence of the NEXT GOAL WINS brand.

UK00003281981 has unique differentiating geometric characteristics that are entirely consistent with existing approved NEXT GOAL WINS trade mark UK00003146066 (See Annex 2) and which significantly differentiate from the opponent TM 1193789 (see Annex 1).”

10. The opponent maintains that the marks are identical, on the following grounds:

“10. ...the Applicant’s Mark is identical to the Opponent’s Mark because it reproduces (without any material modification or addition) all the elements constituting the Opponent’s Mark, namely a circle bisected by a straight line that extends beyond the border of the circle in equal measure at either end. In particular, but without limitation, the Opponent submits that:

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<sup>3</sup> See paragraph 21 of the written submissions filed alongside the opponent’s evidence

10.1 any visual differences between the marks/signs (namely the thickness of the lines, the angle of the bisecting line and the angled ends of the bisecting line) are... so insignificant that they are unlikely to go unnoticed by the average consumer of the goods in question;

10.2 both marks/signs are proportionately identical and generate the same overall impression. None of the alleged differences are capable of “significantly” differentiating the respective marks/signs, or indeed distinguishing them to any perceptible extent;

10.3 the average consumer, upon viewing the Applicant’s Mark (for example, on an item of clothing), is unlikely to (be able to) notice or place any material significance/reliance on the rotation or angle of the mark/bisecting line, all the more so, when the relevant goods are themselves rotated or viewed from an angle as illustrated by the evidence included in Exhibit HJS1 to the Witness Statement of Holly Jane Strube dated 15 November 2018; and

10.4 conceptually speaking, both marks/signs will be perceived as a symbol comprising a circle bisected by a straight line that extends beyond the border of the circle in equal measure at either end. The Applicant’s apparent reference to the Applicant’s Mark depicting “*the centre circle of a football pitch*”, whilst strictly speaking not entirely relevant to the proceedings, could of course also be applied to the Opponent’s Mark.”<sup>4</sup>

11. Before proceeding to consider the marks’ identity, I find it necessary to respond to the applicant’s reference to what appear to be two additional trade marks, specifically United Kingdom Trade Mark (“UKTM”) 3146066 and UKTM 3281977. Whilst it may be so that the presentation of the contested mark is consistent with the applicant’s existing brand or brand strategy, this is of no material relevance to these proceedings and can have no bearing on their outcome. Marketing strategies are subject to change<sup>5</sup> and the opposition must be determined objectively based solely on the trade marks at issue. Consequently, I place no weight on the applicant’s argument regarding the

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<sup>4</sup> See page 3 of the opponent’s written submissions filed in lieu of a hearing

<sup>5</sup> *Devinlec Développement Innovation Leclerc SA v OHIM*, Case C-171/06P

relationship between its marks as a collective and, particularly, how the contested mark is likely to be identified.

12. In *S.A. Société LTJ Diffusion v. Sadas Vertbaudet SA* [2003] FSR 34, the Court of Justice of the European Union (“CJEU”) considered what constitutes an identical trade mark. It said:

“50. The criterion of identity of the sign and the trade mark must be interpreted strictly. The very definition of identity implies that the two elements compared should be the same in all respects. Indeed, the absolute protection in the case of a sign which is identical with the trade mark in relation to goods or services which are identical with those for which the trade mark is registered, which is guaranteed by Article 5(1)(a) of the directive, cannot be extended beyond the situations for which it was envisaged, in particular, to those situations which are more specifically protected by Article 5(1)(b) of the directive.

51. There is therefore identity between the sign and the trade mark where the former reproduces, without any modification or addition, all the elements constituting the latter.

52. However, the perception of identity between the sign and the trade mark must be assessed globally with respect to an average consumer who is deemed to be reasonably well informed, reasonably observant and circumspect. The sign produces an overall impression on such a consumer. That consumer only rarely has the chance to make a direct comparison between signs and trade marks and must place his trust in the imperfect picture of them that he has kept in his mind. Moreover, his level of attention is likely to vary according to the category of goods or services in question (see, to that effect, *Case C 342/97 Lloyd Schuhfabrik Meyer* [1999] ECR I 3819, paragraph 26).

53. Since the perception of identity between the sign and the trade mark is not the result of a direct comparison of all the characteristics of the elements compared, insignificant differences between the sign and the trade mark may go unnoticed by an average consumer.

54. In those circumstances, the answer to the question referred must be that Article 5(1)(a) of the directive must be interpreted as meaning that a sign is identical with the trade mark where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they may go unnoticed by an average consumer.”

13. In *Compass Publishing BV v Compass Logistics Ltd* [2004] EWHC 520 (Ch), the Court held that “Compass Logistics” was not identical to “Compass” as the differences between the two would be identified without difficulty by the average consumer. Laddie J. went on to explain that identity applied in cases where the marks are so close that one could be considered a counterfeit of the other. He said:

“...identity still exists where the marks look and sound identical save to the eye or ear of an expert. Differences which ordinary members of the public will not notice, save by close side-by-side comparison or the pronunciation of a 1940’s BBC news reader, can be ignored. Where such small differences exist, in the market place the mark and sign are identical.

There is nothing in *LTJ* or *Reed* to suggest that noticeable differences should be ignored because they have only limited trade mark significance. To avoid infringement, the addition must not only be more than insignificant (see *LTJ* paras. 53 and 54) but it must have trade mark impact.”

14. In the current case, both marks are figurative representations, presented in black, of what is likely to be perceived as a circle (or a letter ‘O’, though I find this less likely), each with a straight line struck through the centre. In both marks, the line which passes through the circle is roughly twice as high as the circle itself and its central positioning splits the shape symmetrically into two identically sized semi-circles. In the opponent’s mark, the line is positioned vertically, whereas the line in the applicant’s mark is diagonally positioned, beginning in the top left of the mark and graduating towards the bottom right. In the opponent’s mark, the lines bear fairly rough edges and small dots are erratically placed along the perimeters, creating a somewhat distressed effect. In

contrast, the lines in the applicant's mark are refined with straight, precise edges. The widths of the shapes' lines are also greater in the applicant's mark.

15. In my view, the differences between the marks, though not vast, are sufficient to preclude their identity. Whilst I accept that consumers may overlook the difference in the effects applied to the marks, one being precise and the other distressed, the variation in the marks' alignment (specifically the orientation of the intersecting line) is unlikely to be overlooked and would not only be acknowledged by those consumers deliberately undertaking a side by side comparison. I note the opponent's comments, and its evidence, regarding the effect of viewing the applicant's mark at a rotated angle (bringing the alignment closer to that of the opponent's mark), however, this is purely speculative, and the assessment of identity must be made on the basis of the marks as they appear on the register, as they were intended to be regarded. All things considered, in light of the identified differences, I do not find the marks to be identical in accordance with the relevant case law.

16. The opponent's opposition under sections 5(1) and 5(2)(a) must therefore fail at the first hurdle as each relies upon a finding of identical marks.

### **Section 5(2)(b)**

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

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

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

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

18. An earlier trade mark is defined in section 6 of the Act, which states:

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

(a) a registered trade mark, international trade mark (UK), Community trade mark or international trade mark (EC) 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,

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

19. Given its filing date, the opponent’s mark qualifies as an earlier trade mark under the provisions outlined above. In accordance with section 6A of the Act, as it had not been protected for more than five years prior to the publication date of the applicant’s mark, the opponent’s mark is not subject to the proof of use provisions. Consequently, the opponent is entitled to rely upon all goods and services identified in its Notice of Opposition.

### **Section 5(2)(b) - Case law**

20. The following principles are gleaned from the decisions of the courts of the European Union 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.

### **The principles:**

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

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

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

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

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

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

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

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

(i) mere association, in the strict sense that the later mark brings 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.

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

21. The goods under opposition can be found at paragraph 1 of this decision (all those for which the applicant seeks registration) and the goods and services relied upon by the opponent can be viewed at paragraph 2 (all those for which its earlier mark is registered).

22. The following goods are listed in both parties' specifications and are, therefore, literally identical:

*Clothing, footwear, headgear (class 25)*

23. The General Court ("GC") provided further guidance as to when goods (or services) can be considered identical (where not literally so) in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05 It 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".

24. To my mind, all goods for which the applicant seeks registration are either directly captured within the ambit of the opponent's *clothing, footwear and headgear*, or are closely associated to one (or more) of the terms. Those which I consider to be identical under the *Meric* principle are listed at Appendix 1 of this decision.

25. When it comes to assessing the similarity of the applicant's remaining goods, I am guided by the relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, which were:

- (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.

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

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

27. Furthermore, in *Sanco SA v OHIM*, Case T-249/11, the GC indicated that goods and services may be regarded as 'complementary', and therefore similar to a degree,

in circumstances where the nature and purpose of the respective goods and services are very different, i.e. *chicken* against *transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods or services is to assess whether the relevant public are liable to believe that responsibility for the goods or services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited*, BL-0-255-13:

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

Whilst on the other hand:

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

28. For comparative purposes I will, where appropriate, group related goods together in accordance with the *Separode Trade Mark* decision, BL O-399-10 (AP), which said:

“The determination must be made with reference to each of the different species of goods listed in the opposed application for registration; if and to the extent that the list includes goods which are sufficiently comparable to be assessable for registration in essentially the same way for essentially the same reasons, the decision taker may address them collectively in his or her decision.”

***Bra straps; Bra straps [parts of clothing]; Bustle holder bands for obi (obiage); Bustles for obi-knots (obiage-shin); Collar guards for protecting clothing collars; Collar liners for protecting clothing collars; Collar protectors; Collars; Collars [clothing]; Collars for dresses; Cuffs; Detachable collars; Dress shields; Gussets for bathing suits [parts of clothing]; Gussets for footlets [parts of clothing]; Gussets for leotards [parts of clothing]; Gussets for stockings [parts of clothing]; Gussets for tights [parts of clothing]; Gussets for underwear [parts of clothing]; Gussets [parts of clothing]; Heel pieces for stockings; Heelpieces***

**for stockings; Pockets for clothing; Removable collars; Sash bands for kimono (obi); Shirt yokes; Shoulder straps for clothing; Stockings (Heel pieces for -); Straps (Gaiter -); String fasteners for haori (haori-himo); Tightening-up strings for kimonos (datejime); Underarm gussets [parts of clothing]; Waist strings for kimonos (koshihimo)**

29. Given that the above goods are not necessarily ready-to-wear items, I do not find they are encompassed by the opponent's *clothing* and I find it unlikely that consumers would naturally describe them as such. They are, nonetheless, fundamental components of various items of clothing. On the basis that, to my knowledge, the majority of eligible consumers purchase ready-to-wear clothing (as opposed to individual components), there is likely to be a distinction in the immediate consumers of the respective goods; clothing (at large) likely to appeal to the general public and its components to a narrower demographic comprised of consumers intending to assemble clothes themselves, either for personal or professional purposes. The core use of the goods is different to the extent that the above goods are used to *make* clothing whereas *clothing* itself, meaning the finished article, is used to cover and protect the body. Though the goods may not, in all cases, be sold in any real proximity, given the relationship between the above and clothing (at large), there is likely to be a coincidence in the respective trade channels and, to a degree, in the goods' physical nature, to ensure compatibility. Fulfilling different roles, the goods are not likely to be competitive with one another, though there is an opportunity for complementarity and it would not be unusual for consumers to believe that they are produced by the same manufacturer. Weighing all factors, and keeping in mind that one good being a component of the other is not sufficient for a finding of similarity<sup>6</sup>, I conclude that the goods are similar to a medium degree.

**Boot cuffs; Boot uppers; Cleats for attachment to sports shoes; Embossed heels of rubber or of plastic materials; Embossed soles of rubber or of plastic materials; Fittings of metal for boots and shoes; Fittings of metal for footwear; Footwear (Fittings of metal for -); Football boots (Studs for -); Footwear soles; Footwear (Tips for -); Footwear uppers; Footwear (Welts for -); Heel inserts; Heel**

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<sup>6</sup> *Les Éditions Albert René v OHIM*, Case T-336/03

***pieces for shoes; Heelpieces for footwear; Heels; Inner soles; Insoles; Insoles for footwear; Insoles for shoes and boots; Insoles [for shoes and boots]; Intermediate soles; Metal fittings for Japanese style wooden clogs; Non-slipping devices for footwear; Outer soles; Protective metal members for shoes and boots; Pullstraps for shoes and boots; Rubber soles for jikatabi; Shoe covers, other than for medical purposes; Shoe inserts for non-orthopedic purposes; Shoe soles; Shoe soles for repair; Shoe straps; Shoe uppers; Ski and snowboard shoes [parts thereof]; Slipper soles; Soles for footwear; Soles for Japanese style sandals; Soles [Inner]; Stiffeners for boots; Stiffeners for shoes; Studs for football boots; Tips for footwear; Toe boxes; Toe straps for Japanese style sandals [zori]; Toe straps for Japanese style wooden clogs; Toe straps for zori [Japanese style sandals]; Tongues for shoes and boots; Traction attachments for footwear; Uppers (Footwear -); Uppers for Japanese style sandals; Uppers of woven rattan for Japanese style sandals; Welts for footwear; Wooden bodies for Japanese style clogs; Wooden main bodies of Japanese style wooden clogs; Wooden supports of Japanese style wooden clogs;***

30. I apply much of the same reasoning (as in my previous comparison) to the above selection of goods, though these have an equivalent relationship with the opponent's *footwear*. Whilst I find it unlikely that the above goods would be described directly as 'footwear', they are inarguably components for (a variety of) footwear. There is likely to be a similarity in the goods' manufacturers and a correlation in their trade channels. There may be occasions whereby the components are sold alongside the finished article; insoles, for example, are often available for purchase from an establishment selling shoes, though I accept this will not always be the case. There will, again, be a degree of similarity in the physical nature of the goods to ensure compatibility between the components and the finished article. That said, there is a likely distinction in the goods' respective consumers and use and the goods are not competitive. As before, there may be an opportunity for complementarity, though not all goods are, to my knowledge, strictly indispensable. On balance, I find they are similar to a medium degree.

***Cap peaks; Cap visors; Frames (Hat -) [skeletons]; Hat frames [skeletons]; Peaks (Cap -)***

31. Again, I find much of the same reasoning applicable to a comparison between the above goods, being components of either caps or hats, and the opponent's *headgear*, which of course incorporates both caps and hats. There is likely to be a degree of similarity in the goods' physical nature and in the respective trade channels. It would appear reasonable for consumers to assume that the same entity would produce both, though whilst one good is a component of the other and is therefore important for its use<sup>7</sup>, the goods may not be consistently indispensable. The goods are unlikely to coincide in use or immediate consumers, they are unlikely to be sold alongside one another and they are not competitive. On balance, the goods are similar to a medium degree.

### ***Hunting boot bags; Ski boot bags***

32. The opponent's mark is registered for *footwear*. The above goods are essentially accessories for storing a specific style of footwear. Aside from the possibility for coincidence in their users and channels of trade, I see no further opportunity for any tangible similarity between the goods. There is likely to be a marked distinction in their physical nature, they differ in their use and they are not competitive. That said, there may be a degree of complementarity in play and consumers could expect the same undertaking to produce and provide both footwear (in this case hunting boots or ski boots) and the bespoke storage to accompany it, in which case it seems likely that the goods would be sold alongside one another in the relevant establishment. I find the goods to be similar to a low degree.

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

33. As the case law above indicates, it is necessary for me to determine who the average consumer is for the goods at issue. I must then determine the manner in which these goods 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*

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<sup>7</sup> *Boston Scientific Ltd*

*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.”

34. I bear in mind the decision of the GC in *New Look Ltd v Office for the Harmonization in the Internal Market (Trade Marks and Designs)*, Joined cases T117/03 to T-119/03 and T-171/03 (“*New Look*”), in which it commented:

"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 that 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.”

35. With regard to the selection process, I refer also to the following passage from *New Look*:

“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."

36. The average consumer of the goods at issue in these proceedings is likely to be a member of the general public, though some may be purchased primarily by professionals in the textile industry, specifically those manufacturing wearable goods. To my knowledge, the goods are, in any case, usually the subject of self-selection from traditional high street retail outlets, catalogues and websites. For that reason, and as the above case law indicates, visual considerations are likely to play the largest role in the selection process. I do not, however, discount aural considerations as, in my experience, it would not be unusual for sales assistants, for example, to provide advice or recommendations to consumers orally.

37. The goods at issue are, at least generally, purchased fairly frequently. The cost of clothing, footwear and headgear can vary considerably, from very expensive designer ranges to those sold by budget brands. Presumably, the same can be said of their components. Regardless of expense, when making their selection, consumers are likely to consider factors such as sizing, compatibility, comfort and quality. On balance, I find it likely that an average degree of attention will be applied to the purchasing process, slightly higher than average when approached from a professional perspective.

### **Comparison of trade marks**

38. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by them, bearing in mind their distinctive and dominant components. The CJEU stated in its judgment in *Bimbo SA v OHIM*<sup>8</sup> that:

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<sup>8</sup> Case C-591/12P

“34. ...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.”

39. 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 they create. I bear in mind each party's submissions regarding the marks' similarity and will refer to them, only where necessary.

40. The trade marks to be compared are displayed in the table below:

Opponent's trade mark	Applicant's trade mark
	

41. Both marks are figurative representations of what is essentially a circle and an intersecting straight line. In each mark, the overall impression lies solely in the representation as a whole, with neither the circle nor the line likely to be viewed as the dominant element.

### **Visual comparison**

42. The visual similarities between the marks are clear. Each comprises a black circle with a straight line (also in black) crossing through the centre, with equal proportions exposed either side. The differences, as far as I can tell, extend to the thickness and precision of the lines in each mark, the mottled effect applied to the opponent's mark

(compared to the applicant's) and the orientation of the bisecting lines, one vertically positioned and the other diagonally so. Still, given that the marks' overall impressions lie in the representations as a whole and that their fundamental elements are essentially the same, I find the respective marks to be visually similar to a high degree.

### **Aural comparison**

43. The correct approach to conducting an aural comparison of figurative marks was clarified by the GC in *Dosenbach-Ochsner AG Schuhe und Sport v OHIM*, Case T-424/10, in which it stated:

“46. A figurative mark without word elements cannot, by definition, be pronounced. At the very most, its visual or conceptual content can be described orally. Such a description, however, necessarily coincides with either the visual perception or the conceptual perception of the mark in question. Consequently, it is not necessary to examine separately the phonetic perception of a figurative mark lacking word elements and to compare it with the phonetic perception of other marks.”

44. Whilst I have considered the possibility for consumers to view each mark as a modified letter 'O', and consequently articulate them as such, I do not consider this a likely possibility. In my view, the striking line in both marks serves to minimise the likelihood of either 'circle' being viewed by the average consumer as a specific letter. On that basis, and in light of the preceding case law, it is clearly not necessary for me to assess any aural similarity between the marks.

### **Conceptual comparison**

45. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM* [2006] e.c.r.-I-643; [2006] E.T.M.R 29. The assessment must, therefore, be made from the point of view of the average consumer.

46. As shown in the parties' submissions (at paragraphs 9-10 of this decision), the opponent considers that both marks are likely to be seen predominantly as geometrical symbols comprising the same elements. In response to the applicant's assertion that the contested mark conveys the concept of a football pitch, the opponent submits that the same could be said of its earlier mark (due to the identity or similarity in their makeup).

47. Whilst I am willing to accept that the applicant may have intended its mark to be conceptually interpreted as a football pitch, I must consider the concepts likely to be evoked by the respective marks from the perspective of the average consumer for the goods at issue. In doing so, I am not convinced that the applicant's mark will be viewed as a football pitch. Instead, I am of the view that neither mark is likely to evoke a tangible concept. I find it more probable that each will be viewed purely as a combination of two ordinary geometric elements; a circle and a line, with the latter struck through the centre of the former. On the basis that consumers will fail to attribute a specific concept to either mark, I conclude that the conceptual position is neutral.

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

48. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public. 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).”

49. Although the opponent claims that its earlier mark has acquired an enhanced degree of distinctive character by virtue of the use made of it<sup>9</sup>, in the absence of any evidence relating directly to the use of the earlier mark, I am unable to reach such a conclusion. Consequently, I have only the inherent distinctive character of the earlier mark to consider. I note that the opponent lists the inherent distinctiveness of its mark *per se* as one of the factors weighing toward a likelihood of confusion and an indication that a broader scope of protection should be awarded.

50. The earlier mark has no verbal element but consists only of a geometric shape, specifically a combination of a straight line and a circle. When considered in respect of the class 25 goods for which it is registered, I do not find the mark to be in any way descriptive, allusive or suggestive of the goods themselves or of their characteristics. That said, the elements of which the mark is comprised are unlikely to be perceived by the average consumer as particularly unusual or remarkable. On balance, I find the earlier mark to possess a medium degree of inherent distinctive character.

### **Likelihood of confusion**

51. 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

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<sup>9</sup> See paragraph 5 of the opponent’s statement of grounds

similarity between the respective goods and vice versa. As indicated above, it is also necessary for me to keep in mind the distinctive character of the opponent's trade mark, as the more distinctive it is, the greater the likelihood of confusion.

52. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one trade mark for the other, while indirect confusion is where the average consumer realises the trade marks are not the same but puts the similarity that exists between the trade marks and goods down to the responsible undertakings being the same or related.

53. Earlier in this decision I reached the following conclusions:

- Some of the competing goods are identical, some are similar to a medium degree and some are similar to a low degree;
- The average consumer is a member of the general public or a clothing manufacturer. Visual considerations are likely to dominate the selection process, though aural considerations are also relevant;
- At least an average degree of attention is likely to be paid to the selection of goods (slightly higher than average for the professional consumer);
- There is a high degree of visual similarity between the marks;
- The aural similarity between the marks cannot be assessed and the conceptual position is neutral;
- The opponent's trade mark is inherently distinctive to a medium degree.

54. I take note of the comments made by Mr Iain Purvis Q.C., as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, where he explained that:

“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.””

55. To make the assessment, I must adopt the global approach advocated by the case law, whilst taking account of each of the above conclusions. I will also bear in mind that the average consumer rarely has the chance to make direct comparisons between trade marks and must, instead, rely upon the imperfect picture of them retained in its mind.

56. I will consider the likelihood of confusion, at least initially, on the basis that the competing goods share only a low degree of similarity. I keep in mind while making the assessment that visual interactions are likely to dominate the selection process and that I have found the visual similarity between the marks to be of a high degree. Whilst a side by side comparison of the marks would likely enable consumers to identify the differences between the two, this is not how the marks are naturally encountered. Consumers are likely to recall that the earlier mark comprises a circle with an intersecting straight line and, upon interaction with the later mark, will recognise that it comprises what are essentially the same elements, but not necessarily the 35 degree difference in their respective orientations (although I maintain that this is sufficient to preclude mark identity). The differences in the effect applied to each mark and in the width of their constructive lines are also likely to go unnoticed, given the impact of imperfect recollection. To my mind, this would result in all consumers, even those applying a level of attention which is higher than average, becoming susceptible to the effects of direct confusion; they will mistake one mark for the other. Their confusion will only be exacerbated by a lack of any aural or conceptual distinctions which may allow them to readily differentiate between the two.

57. If I am incorrect in my finding of direct confusion, I briefly consider the opportunity for indirect confusion. In my view, the marks’ core, common elements are, in essence, identical, and will be so apparent, even to consumers paying a low level of attention, that they will be driven to conclude that the marks, at least, originate from the same

undertaking. The variation in orientation, if recognised, could merely be interpreted as a stylistic development applied to the earlier mark; it is not entirely unusual for proprietors to make small amendments to the visual elements or characteristics of their existing marks as part of an evolutionary branding strategy.

58. Given that I have found a likelihood of confusion where the goods are similar to a low degree and where the level of attention applied is slightly higher than average, it naturally follows that confusion will be engaged where the similarity between the goods is greater and the degree of attention is lower. Indeed, such a finding is stronger when it comes to the goods which have a medium degree of similarity, and even stronger still (with confusion inevitable) for the identical goods. Effectively, the opposition succeeds in its entirety.

## **Conclusion**

**59. The opposition has succeeded and, subject to any successful appeal, the application will be refused.**

## **Costs**

60. As the opponent has been successful, it is entitled to a contribution toward its costs. Cost awards in proceedings are governed by Annex A of Tribunal Practice Notice (“TPN”) 2 of 2016. Applying the guidance in that TPN, I award costs to the opponent on the following basis:

Official fee (form TM7):	£100 <sup>10</sup>
Preparing a Notice of Opposition and reviewing the counterstatement:	£200
Preparing evidence and written submissions:	£500

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<sup>10</sup> I note that the opponent incurred an official fee of £200 with its form TM7 but later withdrew the ss.5(3) and 5(4)(a) grounds. Had the opposition initially been pleaded solely on the basis of s. 5(2)(b), as it has been decided, the official fee would have amounted to £100 only and this is all I am prepared to reimburse.

**Total:**

**£800**

**61. I order Jolley Good Ltd to pay Samsøe & Samsøe Holding A/S the sum of £800. This sum is 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 10<sup>th</sup> day of May 2019**

**Laura Stephens**

**For the Registrar**

## **Appendix 1**

**The following goods of the application are encompassed by the opponent's clothing:**

*Adhesive bras; Aikido suits; Aikido uniforms; Albs; Aloha shirts; American football bibs; American football pants; American football shirts; American football shorts; American football socks; Ankle socks; Anklets [socks]; Anoraks; Anoraks [parkas]; Anti-perspirant socks; Anti-sweat underclothing; Anti-sweat underwear; Aprons; Aprons [clothing]; Arm warmers [clothing]; Articles of clothing; Articles of clothing for theatrical use; Articles of clothing made of hides; Articles of clothing made of leather; Articles of outer clothing; Articles of sports clothing; Articles of underclothing; Ascots; Ascots (ties); Athletic clothing; Athletic tights; Athletic uniforms; Athletics hose; Athletics vests; Babies' clothing; Babies' outerclothing; Babies' pants [clothing]; Babies' pants [underwear]; Babies' undergarments; Babushkas; Baby bibs [not of paper]; Baby bodysuits; Baby bottoms; Baby clothes; Baby doll pyjamas; Baby layettes for clothing; Baby pants; Baby tops; Ball gowns; Ballet suits; Bandanas; Bandanas [neckerchiefs]; Bandannas; Bandeaux [clothing]; Barber smocks; Baseball uniforms; Baselayer bottoms; Baselayer tops; Basic upper garment of Korean traditional clothes [Jeogori]; Bath robes; Bathing costumes; Bathing costumes for women; Bathing drawers; Bathing suit cover-ups; Bathing suits; Bathing suits for men; Bathing trunks; Bathrobes; Bathwraps; Beach clothes; Beach clothing; Beach cover-ups; Beach robes; Beach shoes; Beach wraps; Beachwear; Bed jackets; Bed socks; Belts [clothing]; Belts for clothing; Belts made from imitation leather; Belts made of leather; Belts made out of cloth; Belts (Money -) [clothing]; Belts of textile; Bermuda shorts; Bib overalls for hunting; Bib shorts; Bib tights; Bibs, not of paper; Bibs, sleeved, not of paper; Bikinis; Blazers; Bloomers; Blouses; Blouson jackets; Blousons; Blue jeans; Board shorts; Boardshorts; Boas; Boas [clothing]; Boas [necklets]; Bodices; Bodices [lingerie]; Bodies [clothing]; Bodies [underclothing]; Body linen [garments]; Body stockings; Body suits; Body warmers; Bodysuits; Boiler suits; Boleros; Bolo ties; Bolo ties with precious metal tips; Bomber jackets; Bottoms [clothing]; Bow ties; Bowties; Boxer briefs; Boxer shorts; Boxing shorts; Boy shorts [underwear]; Boys' clothing; Braces as suspenders; Braces for clothing; Braces for clothing [suspenders]; Braces [suspenders]; Bralettes; Bras; Brassieres; Breeches; Breeches for wear; Bridal gowns; Bridesmaid dresses; Bridesmaids wear; Briefs; Briefs [underwear]; Burnouses; Bushjackets; Bustiers; Button down shirts; Button-front aloha shirts; Caftans; Cagoules; Camiknickers; Camisoles; Camouflage gloves; Camouflage jackets; Camouflage pants; Camouflage shirts; Camouflage vests; Capelets; Capes; Capes (clothing); Car coats; Cardigans; Cargo pants; Cashmere clothing; Cashmere scarves; Casual clothing; Casual footwear; Casual jackets; Casual shirts; Casual trousers; Casual wear; Casualwear; Chaps; Chaps (clothing); Chasubles; Chefs' whites; Chemise tops; Chemises; Chemisettes; Cheongsams (Chinese gowns); Children's clothing; Childrens' clothing; Children's outerclothing; Children's wear; Chino pants; Choir robes; Christening gowns; Christening robes; Cloaks; Cloth bibs; Cloth bibs for adult diners;*

*Clothes; Clothes for sport; Clothes for sports; Clothing; Clothing for babies; Clothing for children; Clothing for cycling; Clothing for cyclists; Clothing for fishermen; Clothing for gymnastics; Clothing for horse-riding [other than riding hats]; Clothing for infants; Clothing for leisure wear; Clothing for martial arts; Clothing for men, women and children; Clothing for skiing; Clothing for sports; Clothing for wear in judo practices; Clothing for wear in wrestling games; Clothing layettes; Clothing made of fur; Clothing made of imitation leather; Clothing made of leather; Clothing of imitations of leather; Clothing of leather; Coats; Coats for men; Coats for women; Coats made of cotton; Coats of denim; Coats (Top -); Cocktail dresses; Collared shirts; Collars [clothing]; Combative sports uniforms; Combinations [clothing]; Corduroy pants; Corduroy shirts; Corduroy trousers; Corselets; Corsets; Corsets [clothing, foundation garments]; Corsets [foundation clothing]; Corsets [underclothing]; Costumes; Costumes for use in children's dress up play; Costumes for use in role-playing games; Costumes (Masquerade -); Cotton coats; Coveralls; Coverups; Cover-ups; Cowls [clothing]; Cravates; Cravats; Crew neck sweaters; Crinolines; Crop tops; Culotte skirts; Culottes; Cumberbunds; Cycling Gloves; Cycling pants; Cycling shorts; Cycling tops; Cyclists' clothing; Dance clothing; Dance costumes; Denim coats; Denim jackets; Denim jeans; Denim pants; Denims [clothing]; Detachable neckpieces for kimonos (haneri); Dinner jackets; Dinner suits; Disposable underwear; Donkey jackets; Down jackets; Down vests; Drawers as clothing; Drawers [clothing]; Dress pants; Dress shirts; Dress shoes; Dress suits; Dresses; Dresses for evening wear; Dresses for infants and toddlers; Dresses made from skins; Dressing gowns; Driving gloves; Dry suits; Duffel coats; Duffle coats; Dungarees; Dust coats; Evening coats; Evening dresses; Evening gowns; Evening suits; Evening wear; Exercise wear; Fabric belts; Fabric belts [clothing]; Fancy dress costumes Figure skating clothing; Fingerless gloves; Fingerless gloves as clothing; Fishermen's jackets; Fishing clothing; Fishing jackets; Fishing shirts; Fishing smocks; Fishing vests; Fishing waders; Fitted swimming costumes with bra cups; Fleece pullovers; Fleece shorts; Fleece tops; Fleece vests; Fleeces; Flying suits; Folk costumes; Football jerseys; Football shirts; Footless socks; Footless tights; Formal evening wear; Formal wear; Formalwear; Foulards [clothing articles]; Foundation garments; Frock coats; Full-length kimonos (nagagi); Functional underwear; Fur cloaks; Fur coats; Fur coats and jackets; Fur hats; Fur jackets; Fur muffs; Fur stoles; Furs [clothing]; Gabardines; Gabardines [clothing]; Gaiter straps; Gaiters; Galoshes; Garments for protecting clothing; Garter belts; Garters; Gauchos; Gilets; Girdles; Girdles [corsets]; Girls' clothing; Gloves; Gloves as clothing; Gloves [clothing]; Gloves for apparel; Gloves for cyclists; Gloves including those made of skin, hide or fur; Gloves with conductive fingertips that may be worn while using handheld electronic touch screen devices; Golf clothing, other than gloves; Golf footwear; Golf pants, shirts and skirts; Golf shirts; Golf shorts; Golf skirts; Golf trousers; Goloshes; Gowns; Gowns for doctors; Greatcoats; G-strings; Guernseys; Gym boots; Gym shorts; Gym suits; Gymwear; Hairdressing capes; Halloween costumes; Halter tops; Handwarmers [clothing]; Haneri [detachable neckpieces for kimonos]; Heavy coats; Heavy jackets; Hooded pullovers; Hooded sweat shirts; Hooded*

sweatshirts; Hooded tops; Hoodies; Hoods; Hoods [clothing]; Horse-riding pants; Hosiery; House coats; Housecoats; Hunting jackets; Hunting pants; Hunting shirts; Hunting vests; Imitation leather dresses; Infant clothing; Infant wear; Infants' clothing; Infants' trousers; Infantwear; Inner socks for footwear; Innersocks; Jacket liners; Jackets; Jackets being sports clothing; Jackets [clothing]; Jackets (Stuff -) [clothing]; Japanese kimonos; Japanese sleeping robes (nemaki); Japanese sleeping robes [nemaki]; Japanese style socks (tabi); Japanese style socks (tabi covers); Japanese traditional clothing; Jeans; Jerkins; Jerseys; Jerseys [clothing]; Jockstraps [underwear]; Jodhpurs; Jogging bottoms; Jogging bottoms [clothing]; Jogging outfits; Jogging pants; Jogging sets [clothing]; Jogging suits; Jogging tops; Judo suits; Judo uniforms; Jump Suits; Jumper dresses; Jumper suits; Jumpers; Jumpers [pullovers]; Jumpers [sweaters]; Jumpsuits; Kaftans; Karate suits; Karate uniforms; Kendo outfits; Kerchiefs; Kerchiefs [clothing]; Khakis; Kilts; Kimonos; Knee warmers [clothing]; Knee-high stockings; Knickerbockers; Knickers; Knit jackets; Knit shirts; Knit tops; Knitted clothing; Knitted gloves; Knitted tops; Knitted underwear; Knitwear; Knitwear [clothing]; Korean outer jackets worn over basic garment [Magoja]; Korean topcoats [Durumagi]; Korean traditional women's waistcoats [Baeja]; Laboratory coats; Ladies' clothing; Ladies' dresses; Ladies' outerclothing; Ladies' suits; Ladies' underwear; Ladies wear; Layettes; Layettes [clothing]; Leather belts [clothing]; Leather clothing; Leather (Clothing of -); Leather (Clothing of imitations of -); Leather coats; Leather dresses; Leather garments; Leather jackets; Leather pants; Leather suits; Leather waistcoats; Leg warmers; Leggings [leg warmers]; Leggings [trousers]; Legwarmers; Legwarmers; Leisure clothing; Leisure suits; Leisure wear; Leisurewear; Leotards; Light-reflecting coats; Light-reflecting jackets; Linen (Body -) [garments]; Linen clothing; Lingerie; Linings (Ready-made -) [parts of clothing]; Liveries; Long jackets; Long johns; Long sleeve pullovers; Long sleeved vests; Long-sleeved shirts; Lounge pants; Loungewear; Lounging robes; Lumberjackets; Mackintoshes; Maillots; Maillots [hosiery]; Maniples; Mankinis; Mantles; Martial arts uniforms; Masquerade costumes; Maternity bands; Maternity clothing; Maternity dresses; Maternity leggings; Maternity lingerie; Maternity pants; Maternity shirts; Maternity shorts; Maternity sleepwear; Maternity smocks; Maternity tops; Maternity underwear; Maternity wear; Men's and women's jackets, coats, trousers, vests; Men's clothing; Men's dress socks; Men's socks; Men's suits; Men's underwear; Menswear; Miniskirts; Mittens; Mitts [clothing]; Moccasins; Mock turtleneck shirts; Mock turtleneck sweaters; Mock turtlenecks; Moisture-wicking sports bras; Moisture-wicking sports pants; Moisture-wicking sports shirts; Money belts [clothing]; Monokinis; Morning coats; Motorcycle gloves; Motorcycle jackets; Motorcycle rain suits; Motorcycle riding suits; Motorcyclists' clothing; Motorcyclists' clothing of leather; Motorists' clothing; Mufflers; Mufflers as neck scarves; Mufflers [clothing]; Mufflers [neck scarves]; Muffs; Muffs [clothing]; Mules; Muumuus; Nappy pants [clothing]; Neck scarfs [mufflers]; Neck scarves; Neck scarves [mufflers]; Neck tubes; Neckbands; Neckerchiefs; Neckerchieves; Neckties; Neckwear; Negligees; Night gowns; Night shirts; Nightdresses; Nightgowns; Nighties; Nightshirts; Nightwear; Non-slip socks; Nurse dresses; Nurse

overalls; Nurse pants; Nurses' uniforms; Oilskins [clothing]; One-piece clothing for infants and toddlers; One-piece playsuits; One-piece suits; Open-necked shirts; Outer clothing; Outerclotthing; Outerclotthing for boys; Outerclotthing for girls; Outerclotthing for men; Outerwear; Overalls; Overalls for infants and toddlers; Overcoats; Overshirts; Overtrousers; Over-trousers; Padded pants for athletic use; Padded shirts for athletic use; Padded shorts for athletic use; Pajama bottoms; Pajamas; Pajamas (Am.); Pantaloons; Pantie-girdles; Panties; Pants; Pants (Am.); Pantsuits; Pantyhose; Pantyhose; Paper aprons; Paper clothing; Pareos; Pareus; Parkas; Pea coats; Pedal pushers; Peignoirs; Pelerines; Pelisses; Petticoats; Petti-pants; Pinafore dresses; Pinafores; Pique shirts; Pirate pants; Plastic aprons; Plastic baby bibs; Plastic slippers; Play suits; Playsuits [clothing]; Pleated skirts for formal kimonos (hakama); Plus fours; Plush clothing; Pocket kerchiefs; Pocket squares; Pocket squares [clothing]; Polar fleece jackets; Polo knit tops; Polo neck jumpers; Polo shirts; Polo sweaters; Ponchos; Pop socks; Pram suits; Printed t-shirts; Pullovers; Puttees and gaiters; Pyjamas; Pyjamas [from tricot only]; Quilted jackets [clothing]; Quilted vests; Rain coats; Rain hats; Rain jackets; Rain ponchos; Rain slickers; Rain suits; Rain trousers; Rain wear; Raincoats; Rainproof clothing; Rainproof jackets; Rainwear; Ramie shirts; Rash guards; Ready-made clothing; Ready-made linings [parts of clothing]; Ready-to-wear clothing; Referees uniforms; Replica football kits; Reversible jackets; Riding gloves; Riding Gloves; Riding jackets; Riding trousers; Robes; Robes (Bath -); Roll necks [clothing]; Romper suits; Rompers; Ruanas; Rugby jerseys; Rugby shirts; Rugby shorts; Rugby tops; Running Suits; Running vests; Safari jackets; Sailing wet weather clothing; Sailor suits; Salopettes; Sarees; Saris; Sarongs; Sashes for wear; Scarfs; Scarves; School uniforms; Scrimmage vests; Sedge hats (suge-gasa); Serapes; Shampoo capes; Shawls; Shawls and stoles; Shawls [from tricot only]; Sheepskin coats; Sheepskin jackets; Shell jackets; Shell suits; Shields (Dress -); Shift dresses; Shirt fronts; Shirt-jacs; Shirts; Shirts and slips; Shirts for suits; Short overcoat for kimono (haori); Short petticoats; Short sets [clothing]; Short trousers; Shortalls; Shorts; Shorts [clothing]; Short-sleeve shirts; Short-sleeved or long-sleeved t-shirts; Short-sleeved shirts; Short-sleeved T-shirts; Shoulder scarves; Shoulder wraps; Shoulder wraps [clothing]; Shoulder wraps for clothing; Shrugs; Silk clothing; Silk scarves; Silk ties; Singlets; Skating outfits; Ski gloves; Ski hats; Ski jackets; Ski pants; Ski suits; Ski suits for competition; Ski trousers; Ski wear; Skirt suits; Skirts; Skorts; Slacks; Sleep pants; Sleep shirts; Sleeping garments; Sleepsuits; Sleepwear; Sleeved jackets; Sleeveless jackets; Sleeveless jerseys; Sleeveless pullovers; Sliding shorts; Slipovers; Slipovers [clothing]; Slipper socks; Slips; Slips [clothing]; Slips [underclothing]; Slips [undergarments]; Small hats; Smocks; Smoking jackets; Snap crotch shirts for infants and toddlers; Snoods [scarves]; Snow boarding suits; Snow pants; Snow suits; Snowboard gloves; Snowboard jackets; Snowboard mittens; Snowboard trousers; Snowsuits; Soccer bibs; Soccer boots; Soccer shirts; Socks; Socks and stockings; Socks for infants and toddlers; Socks for men; Sport coats; Sport shirts; Sport stockings; Sports bras; Sports clothing; Sports clothing [other than golf gloves]; Sports jackets; Sports jerseys; Sports jerseys and breeches

*for sports; Sports over uniforms; Sports overuniforms; Sports pants; Sports shirts; Sports shirts with short sleeves; Sports singlets; Sports socks; Sports vests; Sports wear; Sportswear; Stocking suspenders; Stockings; Stockings [sweat-absorbent]; Stockings (Sweat-absorbent -); Stoles; Stoles (Fur -); Strapless bras; Strapless brassieres; Stretch pants; Stuff jackets; Stuff jackets [clothing]; Suede jackets; Suit coats; Suits; Suits (Bathing -); Suits made of leather; Suits of leather; Sundresses; Sunsuits; Surf wear; Surfwear; Suspender belts; Suspender belts for men; Suspender belts for women; Suspenders; Suspenders [braces]; Swaddling clothes; Sweat bands; Sweat bands for the wrist; Sweat bottoms; Sweat jackets; Sweat jackets; Sweat pants; Sweat shirts; Sweat shorts; Sweat suits; Sweat-absorbent socks; Sweat-absorbent stockings; Sweat-absorbent underclothing; Sweat-absorbent underclothing [underwear]; Sweat-absorbent underwear; Sweatbands; Sweaters; Sweatjackets; Sweatpants; Sweatshirts; Sweatshorts; Sweatsuits; Swim briefs; Swim shorts; Swim suits; Swim trunks; Swim wear for children; Swim wear for gentlemen and ladies; Swimming costumes; Swimming suits; Swimming trunks; Swimsuits; Swimwear; Synthetic fur stoles; Tabards; Taekwondo suits; Taekwondo uniforms; Tail coats; Tank tops; Tankinis; Tank-tops; Tap pants; Tartan kilts; Teddies; Teddies [underclothing]; Teddies [undergarments]; Tee-shirts; Tennis dresses; Tennis pullovers; Tennis shirts; Tennis shorts; Tennis skirts; Tennis socks; Tennis sweatbands; Tennis wear; Theatrical costumes; Thermal clothing; Thermal socks; Thermal underwear; Thermally insulated clothing; Thobes; Three piece suits [clothing]; Ties; Ties [clothing]; Tights; Top coats; Topcoats; Tops; Tops [clothing Track jackets; Track pants; Track suits; Tracksuit bottoms; Tracksuit tops; Tracksuits; Training suits; Trench coats; Trenchcoats; Trews; Triathlon clothing; Trouser socks; Trouser straps; Trousers; Trousers for children; Trousers for sweating; Trousers of leather; Trousers shorts; Trunks; Trunks (Bathing -); Trunks [underwear]; T-shirts; Tube tops; Tunics; Turtleneck pullovers; Turtleneck shirts; Turtleneck sweaters; Turtleneck tops; Turtlenecks; Tutus; Tuxedo belts; Tuxedos; Twin sets; Umpires uniforms; Under garments; Under shirts; Underclothes; Underclothing; Underclothing (Anti-sweat -); Underclothing for women; Undergarments; Underpants; Underpants for babies; Undershirts; Undershirts for kimonos (juban); Undershirts for kimonos (koshimaki); Undershirts for kimonos [koshimaki]; Underskirts; Underwear; Underwear (Anti-sweat -); Underwear for women; Uniforms; Uniforms for commercial use; Uniforms for nurses; Union suits; Unitards; Vest tops; Vests; Vests (Fishing -); Vests for use in barber shops and salons; V-neck sweaters; Volleyball jerseys; Waders; Waist belts; Waist cinchers; Waistbands; Waistcoats; Waistcoats [vests]; Walking breeches; Walking shorts; Warm up suits; Warm-up jackets; Warm-up pants; Warm-up suits; Warm-up tops; Water socks; Waterproof capes; Waterproof clothing; Waterproof jackets; Waterproof outerclothing; Waterproof pants; Waterproof suits for motorcyclists; Waterproof trousers; Water-resistant clothing; Waterskiing suits; Weather resistant outer clothing; Weatherproof clothing; Weatherproof jackets; Weatherproof pants; Wedding dresses; Wedding gowns; Wet suits; Wet suits for surfing; Wet suits for water-skiing; Wet suits for water-skiing and*

*sub-aqua; Wet suits for windsurfing; Wetsuit gloves; Wetsuits; Wetsuits for surface watersports; Wetsuits for surfing; Wetsuits for water-skiing; White coats for hospital use; Wind coats; Wind jackets; Wind pants; Wind resistant jackets; Wind suits; Wind vests; Windcheaters; Wind-jackets; Windproof clothing; Windproof jackets; Wind-resistant jackets; Wind-resistant vests; Windshirts; Winter coats; Winter gloves; Women's ceremonial dresses; Women's clothing; Womens' outerclothing; Women's suits; Womens' underclothing; Womens' undergarments; Women's underwear; Woolen clothing; Woollen socks; Woollen tights; Woolly hats; Work clothes; Work overalls; Working overalls; Woven clothing; Woven shirts; Wrap belts for kimonos (datemaki); Wraps [clothing]; Wrist bands; Wrist warmers; Wristbands; Wristbands [clothing]; Yoga bottoms; Yoga pants; Yoga shirts; Yokes (Shirt -); Zoot suits;*

**The following goods of the application are encompassed by the opponent's footwear:**

*After ski boots; Anglers' shoes; Ankle boots; Après-ski boots; Apres-ski shoes; Aqua shoes; Army boots; Athletic footwear; Athletic shoes; Athletics footwear; Athletics shoes; Baby boots; Baby sandals; Ballet shoes; Ballet slippers; Ballroom dancing shoes; Baseball shoes; Basketball shoes; Basketball sneakers; Bath sandals; Bath shoes; Bath slippers; Beach footwear; Beach shoes; Boaters; Bootees (woollen baby shoes); Booties; Boots; Boots for motorcycling; Boots for sport; Boots for sports; Boots (Ski -); Bowling shoes; Boxing shoes; Canvas shoes; Children's footwear; Climbing boots; Climbing boots [mountaineering boots]; Climbing footwear; Cycling shoes; Dance shoes; Dance slippers; Deck shoes; Deck-shoes; Desert boots; Disposable slippers; Dress shoes; Driving shoes; Espadrilles; Esparto shoes or sandals; Esparto shoes or sandles; Fishing boots; Fishing footwear; Flat shoes; Flip-flops; Flip-flops for use as footwear; Foam pedicure slippers; Foot volleyball shoes; Football boots; Football shoes; Footwear; Footwear [excluding orthopedic footwear]; Footwear for men; Footwear for men and women; Footwear for snowboarding; Footwear for sport; Footwear for sports; Footwear for track and field athletics; Footwear for use in sport; Footwear for women; Footwear made of vinyl; Footwear made of wood; Footwear not for sports; Golf footwear; Golf shoes; Goloshes; Gym boots; Gymnastic shoes; Gymshoes; Half-boots; Handball shoes; High rain clogs (ashida); High-heeled shoes; Hiking boots; Hiking shoes; Hockey shoes; Horse-riding boots; Hunting boots; Infants' boots; Infants' footwear; Infants' shoes; Japanese footwear of rice straw (waraji); Japanese split-toed work footwear (jikatabi); Japanese style clogs and sandals; Japanese style sandals of felt; Japanese style sandals of leather; Japanese style sandals (zori); Japanese style wooden clogs (geta); Japanese toe-strap sandals (asaura-zori); Jogging shoes; Lace boots; Ladies' boots; Ladies' footwear; Ladies' sandals; Leather shoes; Leather slippers; Leisure footwear; Leisure shoes; Low wooden clogs (hiyori-geta); Low wooden clogs (koma-geta); Low wooden clogs [koma-geta]; Men's sandals; Moccasins;*

*Motorcyclist boots; Mountaineering boots; Mountaineering shoes; Mules; Pedicure sandals; Pedicure slippers; Plastic slippers; Platform shoes; Plimsolls; Pumps [footwear]; Rain boots; Rain shoes; Rainshoes; Riding boots; Riding shoes; Rubber fishing boots; Rubber shoes; Rubbers [footwear]; Rugby boots; Rugby shoes; Running shoes; Sabots; Sandal-clogs; Sandals; Sandals and beach shoes; Shoes; Shoes for casual wear; Shoes for foot volleyball; Shoes for infants; Shoes for leisurewear; Shoes with hook and pile fastening tapes; Ski and snowboard shoes; Ski boots; Slip-on shoes; Slippers; Slippers made of leather; Sneakers; Sneakers [footwear]; Snow boots; Snowboard boots; Snowboard shoes; Soccer boots; Soccer shoes; Sport shoes; Sports [Boots for -]; Sports footwear; Sports shoes; Tap shoes; Tennis shoes; Thong sandals; Thongs; Track and field shoes; Trainers; Trainers [footwear]; Training shoes; Trekking boots; Valenki [felted boots]; Volleyball shoes; Walking boots; Walking shoes; Waterproof boots; Waterproof boots for fishing; Waterproof shoes; Wellington boots; Wellingtons; Winter boots; Women's foldable slippers; Women's shoes; Wooden shoes; Wooden shoes [footwear]; Work boots; Work shoes; Yoga shoes; Zori.*

**The following goods of the application are encompassed by the opponent's *headgear*:**

*Babushkas; Balaclavas; Baseball caps; Baseball caps and hats; Baseball hats; Bathing caps; Beach hats; Beanie hats; Beanies; Berets; Bobble hats; Bonnets; Bonnets [headwear]; Bucket caps; Caps; Caps being headwear; Caps [headwear]; Caps (Shower -); Caps with visors; Chefs' hats; Children's headwear; Cycling caps; Ear muffs; Ear muffs [clothing]; Ear warmers; Earbands; Earmuffs; Eye masks; Fake fur hats; Fascinator hats; Fashion hats; Fedoras; Fezzes; Fishing headwear; Flat caps; Fur hats; Garrison caps; Golf caps; Hats; Hats (Paper -) [clothing]; Head bands; Head scarves; Head sweatbands; Head wear; Headbands; Headbands against sweating; Headbands [clothing]; Headbands for clothing; Headdresses [veils]; Headgear; Headgear for wear; Headscarfs; Headscarves; Headshawls; Headsquares; Headwear; Knot caps; Leather headwear; Mantillas; Masks (Sleep -); Millinery; Miters [hats]; Mitres [hats]; Nightcaps; Paper hats [clothing]; Paper hats for use as clothing items; Paper hats for wear by chefs; Paper hats for wear by nurses; Party hats [clothing]; Peaked caps; Peaked headwear; Rain hats; Sedge hats (suge-gasa); Headscarves; Shower caps; Ski balaclavas; Ski hats; Sleep masks; Small hats; Sports caps; Sports caps and hats; Sports headgear [other than helmets]; Sun hats; Sun visors; Sun visors [headwear]; Sweat bands for the head; Swimming caps; Swimming caps [bathing caps]; Tam o'shanter; Tams; Thermal headgear; Top hats; Toques [hats]; Turbans; Ushankas [fur hats]; Veils; Veils [clothing]; Visors; Visors [clothing]; Visors [hatmaking]; Visors [headwear]; Waterpolo caps; Wimples; Woolly hats; Yashmaghs; Yashmaks.*