

O-332-18

**TRADE MARKS ACT 1994**

**IN THE MATTER OF THE APPLICATION BY  
CHERRYANDJERRYLIMITED  
UNDER NO 3191091 FOR THE TRADE MARK**

**DG Fashion**

**AND**

**IN THE MATTER OF OPPOSITION NO. 408960 THERETO**

**BY**

**DOUGLAS & GRAHAME LIMITED**

## Background and pleadings

1) On 13 October 2016 cherryandjerrylimited (“the Applicant”) applied to register the following trade mark (“the opposed mark”) in the UK:

### DG Fashion

It was accepted and published for opposition purposes in the Trade Marks Journal on 6 January 2017 for the goods in Class 25 which are shown in the annex to this decision.

2) The application is opposed by Douglas & Grahame Limited (“the Opponent”) under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”), for the purposes of which it relies upon the following two earlier UK trade mark registrations:

**UK registration no. 2177137A** was filed on 12 September 1998 and completed its registration procedure on 18 June 1999 for the following series of two marks:



The goods relied on by the Opponent under registration no. 2177137A are *articles of outer clothing, but not including footwear or headgear* in Class 25.

**UK registration no. 2177137B** was filed on 12 September 1998 and completed its registration procedure on **28 July 2000** for the following series of four marks:



The goods relied on by the Opponent under registration no. 2177137B are *articles of outer clothing, all for men and boys, but not including footwear or headwear* in Class 25.

3) The significance of the above dates is that both series of marks relied on by the Opponent constitute earlier marks in accordance with section 6 of the Act and both are subject to the proof of use conditions contained in section 6A of the Act, since their respective registration procedures were completed more than five years before the publication of the Applicant's mark.

4) The Opponent claims that because of similarity between the opposed mark and the earlier two series of marks and identity or similarity between the goods of the opposed mark and those of the respective earlier series of marks there exists a likelihood of confusion. The Applicant filed a counterstatement, in which it denied that the requirements of section 5(2)(b) of the Act are satisfied. It also put the Opponent to proof of use in respect of the goods relied on under both earlier series of marks. The period during which use must be proved ("the relevant period") is 7 January 2012 to 6 January 2017. Both the Opponent and the Applicant filed evidence and submissions but neither side requested a hearing. The Applicant filed additional written submissions in lieu of attendance at a hearing. I therefore give this decision after a careful review of all the papers before me. The Opponent is represented by Ansons. The Applicant is represented by C.M Atif & Co.

### **The Opponent's evidence**

5) In a witness statement of 11 September 2017 Ms. Cherrie Ann Stewart states that she is a trade mark attorney acting for the Opponent's representatives. She appends, as Exhibit ANS01, an excerpt from an online dictionary defining the word "fashion" as "a popular or the latest style of clothing, hair, decoration, or behaviour", together with the results of Google searches limited to the UK for the words FASHION and CLOTHING. She also appends, as Exhibit ANS02, a number of extracts from the websites of various retail outlets evidencing the sale of clothing, headgear and footwear for both sexes by the same undertaking.

6) In a witness statement of 21 August 2017 Mr. Donald Finlay states that he is the Managing Director of the Opponent. Stating that the trade mark “DG's” is used in connection with a range of articles of clothing for men, he appends, as Exhibit DF01, images of labels and tags used on DG's branded clothing together with some images of clothing showing these labels and tags in use. He also appends as Exhibit DF02 copies of sample invoices issued in the five years preceding the publication of the opposed application, showing sales of the Opponent’s menswear articles along with images of the products for the corresponding call numbers on the invoices. Mr Finlay states that the goods are sold wholesale to in excess of 200 customers throughout the United Kingdom, are thereafter sold through a variety of retail outlets, and that in excess of 400 undertakings stock products sold under the “DG's” mark in the UK. He appends as Exhibit DF03 print-outs of pages from third party websites, showing sale of the Opponent’s goods bearing the “DG’s” mark. He further states that “Sales of DG's branded clothing in excess of GB£75,000 were made during the last financial year”.

### **The Applicant’s evidence**

7) In a witness statement of 29 November 2017 Mr. Chaudhry Salman Atif states that he is the legal representative acting on behalf of the Applicant. He states that he has found evidence of at least three trademarks owned by three different undertakings which use the “DG” element, along with evidence of their use in the UK. Exhibit CSAOI contains

- An excerpt from the register showing registration no. WO845608 protecting the following sign in the name of Dolce & Gabbana Trademarks S.r.l. for, amongst other items, clothing, footwear and headgear in Class 25:



This is followed by 6 pages of screenshots downloaded on 29 November 2017 from the website <http://dolcegabbana.com> showing the letters DG in various

formats being used as belt badges and buckles or as designer logos on articles of menswear offered at prices in sterling.

- An excerpt from the register showing registration no. WO1100452 protecting the following sign in the name of Dress Gallery for, amongst other items, a range of clothing, footwear and headgear in Class 25:



DRESS  
gallery

This is followed by 6 pages of undated screenshots downloaded from the website [www.yoox.com](http://www.yoox.com) showing the above sign being used on the labels of articles of womenswear offered at prices in sterling.

- An excerpt from the register showing registration no. EU1372762 protecting the following sign in the name of Sonu Gangaram Balani Balani and Suresh Kumar Karnani Premchand for, amongst other items, clothing, footwear and headgear in Class 25:

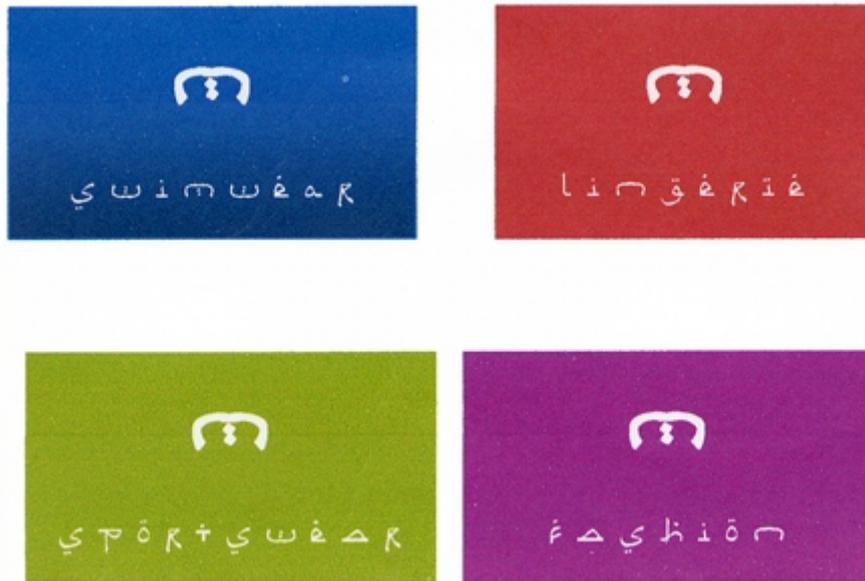
DG

*DOGGINI*

This is followed by 2 pages of screenshots downloaded on 29 November 2017 from the website [ebay.co.uk](http://ebay.co.uk) showing men's shorts described as "Mens DG ¾ board shorts ..... New without tags ... Starting bid: £7.00 ..... Brand: DG Doggini".

8) In support of the Applicant's contention that the word "fashion" can be distinctive for goods in Class 25 Mr Atif includes in Exhibit CSA02:

- An excerpt from the register showing registration no. UK 2527485 protecting clothing, footwear and headgear in Class 25 for the following series of marks:



- Further excerpts from the register showing registrations protecting the signs “WM Fashion” and “5 Fashion” for items of clothing footwear and headgear in Class 25, together with material downloaded from the internet on 29 November 2017 to show use of them.

Finally, in Exhibit CSA3 Mr Atif includes an article and excerpts from reports to support his contention that the fashion goods industry is segmented by price in the UK.

9) In a witness statement of 29 November 2017 of Mr. Mohammed Amjad states: “I am an assistant at cherryandjerry Limited (“the Applicant”) and have authority on behalf of the Applicant to make this statement .... The Applicant’s intention is that the all [*sic*] goods sold under the “DG Fashion” Trademark will be sold online only. The Applicant will also clarify in all product descriptions on the website that the “DG Fashion” products and brand are in no way similar or affiliated with Douglas and Grahame Limited/DG’s ..... The goods the Applicant intends to sell will be good quality goods. However, they will not be considered high-end/designer goods and thus will not be in competition with the Opponent’s goods”.

## The law on proof of use

10) Section 6A of the Act reads as follows:

6A. - (1) This section applies where -

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a),  
(b) or (ba) in relation to which the conditions set out in section 5(1), (2)  
or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed  
before the start of the period of five years ending with the date of  
publication.

(2) In opposition proceedings, the registrar shall not refuse to register the  
trade mark by reason of the earlier trade mark unless the use conditions are  
met.

(3) The use conditions are met if -

(a) within the period of five years ending with the date of publication of  
the application the earlier trade mark has been put to genuine use in  
the United Kingdom by the proprietor or with his consent in relation to  
the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper  
reasons for non- use.

(4) For these purposes -

(a) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and

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

(5) In relation to a European Union trade mark or international trade mark (EC), any reference in subsection (3) or (4) to the United Kingdom shall be construed as a reference to the European Union.

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

11) In *The London Taxi Corporation Limited v Frazer-Nash Research Limited & Ecotive Limited*, [2016] EWHC 52, Arnold J. summarised (at paragraph 217) the case law on genuine use of trade marks. He said:

“I would now summarise the principles for the assessment of whether there has been genuine use of a trade mark established by the case law of the Court of Justice, which also includes Case C-442/07 *Verein Radetsky-Order v Bunderversvereinigung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I-9223 and Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], [2014] ETMR 7, as follows:

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

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

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29].

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

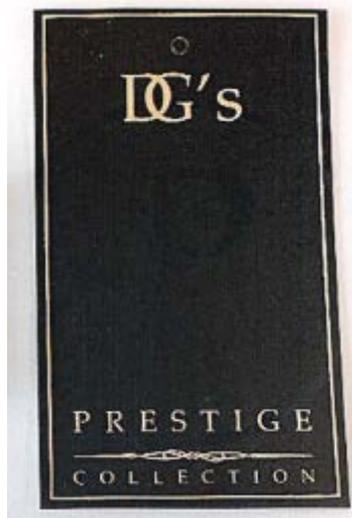
(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at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

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

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

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

12) The uses of the Opponent’s mark illustrated in the evidence consist exclusively of those protected by registration no. 2177137B, the great majority of them in the form including the possessive S, as shown below on a label for the Opponent’s “Prestige” collection:



13) The Opponent’s evidence contains no break-down of sales figures for the relevant period, but Mr Finlay states that “Sales of DG's branded clothing in excess of GB £75,000 were made during the last financial year”. In other words, the figure relates to the period from 6 April 2016 to 5 April 2017. This largely coincides with the final year of the relevant period, which ended on 6 January 2017. The figures may be very

small in terms of what must be an enormous UK market for menswear, but they are not insignificant. The purpose of the requirement for genuine use is not to assess commercial success or to review the economic strategy of an undertaking, nor is it intended to restrict trade mark protection to the case where large scale commercial use has been made of the marks<sup>1</sup> I must be satisfied that there has been real commercial exploitation of the mark on the market for the relevant goods.

14) The picture that emerges from the invoices in Exhibit DF02, from the images of labelling in Exhibit DF01 and from the screenshots of third party websites offering the Opponent's goods for sale in Exhibit DF02, taken together with the information and sales figure given by Mr Finlay in his witness statement, is of an enterprise with a fairly strong foothold of sales of the following articles of male clothing under the earlier mark: jackets, trousers, pullovers and cardigans. Stepping back and viewing the evidence as a whole, I am satisfied that in respect of those goods there has been genuine use of the earlier mark in registration no. 2177137B in the UK during the relevant period.

### **A fair specification**

15) In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10, Mr Geoffrey Hobbs Q.C, sitting as the Appointed Person, summed up the law on framing a fair specification as follows:

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

16) My task in considering what would constitute a fair specification is not to cut the Opponent's protection down to those precise goods or services in relation to which the

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<sup>1</sup> *Sunrider v OHIM – Espadafor Caba (VITAFRUIT)* – T-203/02, paragraph 38 and the case-law cited.

mark has been used. This would be to strip the proprietor of protection for all goods which the average consumer would consider belong to the same group or category as those for which the mark has been used and which are not in substance different from them<sup>2</sup>. But conversely, if the average consumer would consider that the goods for which the mark has been used form a series of coherent categories or sub-categories then the registration must be limited accordingly. In his witness statement Mr. Finlay states that “The trade mark “DG's” is used in connection with a range of articles of clothing for men”, and the evidence filed by the Opponent does not show any use of the mark on clothing for boys. I have found that the Opponent has made genuine use of its mark on men’s casual jackets, trousers, pullovers and cardigans. Accordingly, I consider the following to be a fair specification:

*Class 25: Articles of casual outer clothing, all for men, but not including footwear or headwear.*

## **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) The following principles are gleaned from the decisions of the Court of Justice of the European Union (“CJEU”) 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

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<sup>2</sup> See on this Carr J's summary of the General Court's decision in *Mundipharma AG v OHIM* (Case T-256/04) at paragraph 47 of his decision in *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch).

C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

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

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

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

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

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

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

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

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

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

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

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

### **Comparison of goods**

19) In assessing whether there is a likelihood of confusion I must make my comparison of the goods on the basis of the principles laid down in the case law. In the judgment of the CJEU in *Canon*, Case C-39/97, the court stated at paragraph 23 of its judgment that:

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

20) The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

a) The respective users of the respective goods or services;

b) The physical nature of the goods or acts of services

c) The respective trade channels through which the goods or services reach the market

d) 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;

e) 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.

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

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by the trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark (Case T-104/01 *Oberhauser v OHIM — Petit Liberto (Fifties)* [2002] ECR II-4359, paragraphs 32 and 33; Case T-110/01 *Vedial v OHIM – France Distribution (HUBERT)* [2002] ECR II-5275, paragraphs 43 and 44; and Case T-10/03 *Koubi v OHIM — Flabesa (CONFORFLEX)* [2004] ECR II-719, paragraphs 41 and 42)”.

22) When it comes to understanding what terms used in specifications mean and cover, the guidance in the case-law is to the effect that “in construing a word used in a trade mark specification, one is concerned with how the product is, as a practical matter, regarded for the purposes of the trade”<sup>3</sup> and that I must also bear in mind that

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<sup>3</sup>*British Sugar Plc v James Robertson & Sons Limited (Treat)* [1996] R.P.C. 281

words should be given their natural meaning within the context in which they are used; they cannot be given an unnaturally narrow meaning<sup>4</sup>.

23) I will make the comparison with reference to the Applicant's goods. I will go through them term by term, but grouping them where it is useful and reasonable to do so<sup>5</sup>. Since the goods relied on by the Opponent consist of only one item – namely *articles of casual outer clothing, all for men, but not including footwear or headwear* in Class 25 – I shall refer to them for convenience simply as “the Opponent's goods”.

24) The Opponent's goods are covered by the Applicant's *Casualwear; Clothes; Clothing; Clothing for leisure wear*, these goods are identical under the guidance in *Meric*.

25) The Opponent points out that all clothing, whether for males or females and for whatever age, has the same purpose: to provide protection from the elements, to comply with social norms and to reflect the wearer's personality. While stylistically clothing aimed at males may, in the main, differ from that aimed at women, the same materials and method of manufacture are used and, in many cases, the same items of clothing are produced for each gender, i.e. jumpers, trousers, coats, jackets, etc. While some retail outlets offer for sale clothing, headgear and footwear for one sex only, a large number of undertakings offer clothing, headgear and footwear for both males and females of varying ages.

26) I agree with these submissions. While the specification I have allowed the Opponent is admittedly limited to *articles of casual outer clothing, all for men, but not including footwear or headwear*, clothing for women and girls have the same use, serve the same purpose, have the same nature and are sold through many of the same trade channels. Moreover, items such as football or golf shirts, jogging suits, etc., which would once have been regarded as specialist sportswear, can be found in high street clothes outlets sold alongside other items of casual streetwear<sup>6</sup>. The

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<sup>4</sup> *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another* [2000] FSR 267

<sup>5</sup> See the comments of the Appointed Person in Separode BL O-399-10

<sup>6</sup> This process was succinctly noted back in 2004 by Jacob J (as he then was) in paragraph 4 of his decision in *Animal Trade Mark* [2003] EWHC 1589 (Ch): “...One does not need evidence to know that,

boundaries between casual clothing and more formal clothing are more fluid than they once were, and so are the contexts in which clothes are worn. Moreover, it is nowadays not unusual to find items of casual and formal clothing supplied under the same mark. There is a high degree of similarity between the Opponent's goods and the following goods of the Applicant:

*Aprons; Aprons [clothing]; Articles of clothing made of hides; Articles of clothing made of leather; Ascots; Ascots (ties); Baby doll pyjamas; Babushkas; Balaclavas; Ball gowns; Cardigans; Cashmere clothing; Cashmere scarves; Casual shirts; Casual trousers; Children's clothing; Childrens' clothing; Clothing for children; Coats; Coats for men; Denim jackets; Denim jeans; Denims [clothing]; Dinner jackets; Dinner suits; Dresses; Dress shirts; Dress suits; Dresses for evening wear; Dresses made from skins; Dungarees; Exercise wear; Fashion hats; Football jerseys; Football shirts; Footless socks; Footless tights; Footmuffs, not electrically heated; Girls' clothing; Gloves; Gloves [clothing]; Gloves for cyclists; Golf pants, shirts and skirts; Golf shirts; Golf shorts; Golf skirts; Golf trousers; Gowns; Jackets; Jackets being sports clothing; Jackets [clothing]; Jeans; Jerkins; Jerseys; Jogging sets [clothing]; Jogging suits; Jogging tops; Jump Suits; Jumpers; Jumpers [pullovers]; Jumpers [sweaters]; Jumpsuits; Ladies' dresses; Ladies' outerclothing; Ladies' suits; Ladies' underwear; Leather belts [clothing]; Leather clothing; Leather (Clothing of -); Leather (Clothing of imitations of -); Leather coats; 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; Light-reflecting coats; Linen (Body -) [garments]; Linen clothing; Lingerie; Long jackets; Long johns; Long sleeve pullovers; Long-sleeved shirts; Long sleeved vests; Nightdresses; Nightgowns; Nighties; Nightwear; Pajama bottoms; Pajamas; Pajamas (Am.); Pantaloon; Pants; Polo knit tops; Polo neck jumpers; Polo shirts; Polo sweaters; Pullovers; Pyjamas [from tricot only]; Rain coats; Rain suits; Rain*

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for instance "Fred Perry" garments, although originally specifically for tennis are now common casual wear. Indeed sportswear, or names associated with sports, is often now just part of the clothes of people you see every day in the street. Popular other examples, not so much associated with a particular sport, are "Nike" and "Adidas" ..."

*wear; Rainproof clothing; Rainproof jackets; Rainwear; Ready-made clothing; Ready-to-wear clothing; Rugby jerseys; Rugby shirts; Rugby shorts; Rugby tops; Running Suits; Running vests; Sarees; Scarves; School uniforms; Shift dresses; Shirt fronts; Shirts; Shirts for suits; Tee-shirts; Thermal clothing; Ties [clothing]; Tights; Visors; Visors [clothing]; Walking shorts; Warm-up jackets; Warm-up pants; Warm-up suits; Warm-up tops; Yoga bottoms; Yoga pants; Yoga shirts.*

27) Some uniforms may be supplied through specialist channels but others, such as school uniforms, will be sold alongside other normal everyday wear. Uniforms share the same nature as clothing in general, and there is a strong overlap in users. I consider that there is at least a medium degree of similarity between the Opponent's goods and the following goods of the Applicant:

*Nurse dresses; Nurse overalls; Nurse pants; Nurses' uniforms; Uniforms; Uniforms for commercial use; Uniforms for nurses.*

28) I acknowledge that the highly specialised needs of babies means that the nature and purpose of babies' clothing differ to some degree from those of older children and adults; on the other hand items of babies' clothing are often sold through the same channels of trade, and in some cases under the same mark, as those of older children and adults. I consider that there is a medium degree of similarity between the Opponent's goods and the following goods of the Applicant:

*Babies' clothing; Babies' pants [clothing]; Babies' pants [underwear]; Babies' undergarments; Baby bodysuits; Baby bottoms; Baby bunting [clothing]; Baby clothes; Baby layettes for clothing; Baby pants; Baby tops; Clothing for babies; Infant wear; Infantwear; Infants' clothing; Infants' trousers.*

29) I consider that the following goods consist of articles likely to be used specifically for the purpose of sport, rather than also serving as casual streetwear in the way that some sports clothing does, as I have described in paragraph 26 above. The following goods share the same basic nature and are purchased by the same people as the Opponent's goods, but they have a more specialised purpose, and they may be sold

through different specialist channels of trade. There is a medium degree of similarity between the Opponent's goods and the following goods of the Applicant:

*Articles of sports clothing; Athletic clothing; Athletics vests; Clothes for sport; Clothes for sports; Clothing for cycling; Clothing for gymnastics; Figure skating clothing; Gym shorts; Gym suits; Gymwear; Judo suits; Motorcycle gloves; Motorcycle jackets; Motorcycle rain suits; Motorcycle riding suits; Motorcyclist boots; Tennis dresses; Tennis pullovers; Tennis shirts; Tennis shorts; Tennis skirts; Tennis wear; Volleyball jerseys;*

30) Footwear, headgear and clothing serve the same basic purpose; all are intended for wear by humans, all serve as protection from the elements and as articles of fashion, and all are as such often found in the same departments of large department stores and in the same retail outlets. Although footwear in particular is sometimes sold in separate retail outlets, consumers, when seeking to purchase clothes, will normally expect to find footwear and headgear in the same department or shop and vice versa. Moreover, many manufacturers and designers will design and produce footwear and/or headgear as well as clothing. Retail outlets regularly provide clothing, footwear and headgear under the same trade mark. Moreover, in the same way as I have already described in paragraph 26, some items of sporting footwear and headgear also serve as casual streetwear. I bear in mind the comments of the General Court in *Giordano Enterprises Ltd v Office for OHIM* at paragraph 20:

“As the Court has held in previous cases, in view of the sufficiently close links between the respective purposes of ‘clothing’ and ‘footwear’, which are identifiable in particular by the fact that they belong to the same class, and the specific possibility that they can be produced by the same operators or sold together, it may be concluded that those goods may be linked in the mind of the relevant public.”

The Court concluded that:

“...‘clothing’ and ‘footwear’ must therefore be regarded as similar within the meaning of Article 8(1)(b) Regulation No. 40/94”.

31) Taking all this into account there is therefore at least a medium level of similarity between the Opponent's goods and the following goods of the Applicant:

*After ski boots, Ankle boots, Après-ski boots; Apres-ski shoes; Ballroom dancing shoes; Casual footwear; Children's footwear; Dance shoes; Dance slippers; Dress shoes; Footwear; Footwear [excluding orthopedic footwear]; Footwear (Fittings of metal for -); Footwear for men; Footwear for men and women; Golf footwear; Golf shoes; Hiking shoes; Inner socks for footwear; Jogging shoes; Lace boots; Ladies' boots; Ladies' footwear; Leather shoes; Leather slippers; Leisure footwear; Leisure shoes; Rain boots; Rain shoes; Rainshoes; Rubber soles for jikatabi; Rubbers [footwear]; Running shoes; Sandals; Sandals and beach shoes; Shoe covers, other than for medical purposes; Shoe inserts for non-orthopedic purposes; Shoe uppers; Shoes; Shoes for casual wear; Shoes for leisurewear; Shoes with hook and pile fastening tapes; Tennis shoes; Walking boots; Walking shoes; Yoga shoes.*

32) I consider that the following goods consist of articles likely to be used specifically for the purpose of sport, rather than also serving as casual streetwear in the way that some sports footwear does. These goods share the same basic nature and are purchased by the same people, but their purpose is not quite the same, and they may be sold through different specialist channels of trade. There is a low degree of similarity between the Opponent's goods and the following goods of the Applicant:

*Anglers' shoes; Athletic footwear; Athletic shoes; Athletics shoes; Children's footwear; Climbing boots; Climbing boots [mountaineering boots]; Climbing footwear; Footwear for snowboarding; Footwear for sport; Football boots; Football boots (Studs for -); Football shoes; Gym boots; Gymnastic shoes; Gymshoes; Hockey shoes; Polo boots; Rugby boots; Rugby shoes; Volleyball shoes.*

33) The highly specialised needs of babies means that the nature and purpose of babies' footwear differ to some degree from those of older children and adults; on the other hand items of babies' footwear are often sold through the same channels of trade

as those of older children and adults. I consider that there is a low degree of similarity between the Opponent's goods and the following goods of the Applicant:

*Infants' boots; Infants' footwear; Infants' shoes; Shoes for infants;*

34) For the reasons I have already given above in paragraph 30 I consider that there is a medium degree of similarity between the Opponent's goods and the following goods of the Applicant:

*Children's headwear; Leather headwear; Rain hats.*

35) The following items share the same basic nature as the Opponent's goods, and there may be some user overlap, but they have a more specialised function, and may be sold through different specialist channels of trade. There is a low degree of similarity between the Opponent's goods and the following goods of the Applicant:

*Articles of clothing for theatrical use; Ballet shoes; Ballet slippers; Ballet suits; Fancy dress costumes; Laboratory coats.*

36) The Applicant's *Paper clothing* and *Paper aprons* are either novelty goods or serve a temporary protective function, to be thrown away after use, and are very different in nature from the textile products which constitute the Opponent's goods. They serve a different purpose and are normally sold through different trade channels. They have only very low, if any, similarity with the Opponent's goods.

### **The average consumer and the purchasing process**

37) The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer, Case C-342/97*. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

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

38) The goods at issue are clothing, footwear and headgear. The average consumer of these goods is normally a member of the general public. The Applicant submits that the prices of the Opponent’s goods as disclosed in its evidence “would suggest that the Opponent’s goods are towards the high-end of the fashion market”, and contends in its counterstatement that “The average consumer in high-end goods will also exhibit a high level of attention and take time before buying, thereby negating the likelihood of any confusion”. Price is of no relevance to my consideration of who the average consumer might be. As the General Court stated in *Bang & Olufsen A/S v OHIM*, Case T-460/05:

“According to the case-law, the price of the product concerned is also immaterial as regards the definition of the relevant public, since price will also not be the subject of the registration (Joined Cases T-324/01 and T-110/02 *Axions and Belce v OHIM* (Brown cigar shape and gold ingot shape) [2003] ECR II-1897, paragraph 36).”

39) I also bear in mind the decision of the General Court in *New Look Ltd v Office for the Harmonization in the Internal Market (Trade Marks and Designs)*, Joined cases T-117/03 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. It follows that that argument must be rejected.”

40) According to the case-law, the section of the public which has the lowest level of attention must be taken into consideration in assessing of the likelihood of confusion<sup>7</sup>. With regard to the selection process I also bear in mind the following passage of the General Court’s decision in *New Look*:

“53. 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.”

41) The selection process for the goods is therefore primarily visual, though I do not discount the fact that there may be an aural element, given that, for example, some articles may be selected with the assistance of a sales assistant. The goods may be purchased on the high street, online or by mail order, and the level of attention paid will be reasonable, the consumer paying the attention necessary to obtain, for example, the correct size, colour and fit.

### **Comparison of the marks**

42) It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual

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<sup>7</sup> See to that effect *Kido v OHIM* — Amberes (SCORPIONEXO), T 152/08, at paragraph 40

similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

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

The opposed mark	The earlier series of marks UK registration no. 2177137B
<p><b>DG Fashion</b></p>	<div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;">  </div> <div style="text-align: center;">  </div> </div> <div style="display: flex; justify-content: space-around; align-items: center; margin-top: 20px;"> <div style="text-align: center;">  </div> <div style="text-align: center;">  </div> </div>

44) The Applicant contends that other marks containing the element “DG” are being used on the market, and that this limits the distinctiveness of the Opponent’s marks. In support of this contention it files in Exhibit CSA01 the evidence of the three third party marks reproduced in paragraph 7 above. In my view the figurative “G” in

registration no. WO1100452 is so highly stylised as not to be immediately recognisable as the letter G. The “DG” element in the other two third party registrations, however, is immediately apparent. In registration EU1372762 it is accompanied by other distinctive word and graphic elements. Registration WO845608 consists simply of the letters “DG” with minimal stylisation.

45) The Applicant points out that it has provided evidence not merely of the state of the register but also of actual use of third party marks containing the element “DG” on the UK market. This evidence is in fact very limited. In the case of registration WO845608 it consists of 6 pages of screenshots downloaded on 29 November 2017 from the website <http://dolcegabbana.com> showing the letters DG in various formats being used as belt badges and buckles or as designer logos on articles of menswear. Sweaters are priced, for example, at £775 and £825. This can be compared with prices ranging from £39.99 pullovers to £59.99 cardigans shown in the Opponent’s evidence as being charged for the Opponent’s goods by retailers. In the case of registration WO1100452 the evidence consists of 6 pages of undated screenshots downloaded from the website [www.yoox.com](http://www.yoox.com) showing the sign in question being used on the labels of articles of womenswear reduced from £104 and £109.99 to £47 and £35 respectively. In the case of registration EU1372762 the evidence consists of 2 pages of screenshots downloaded on 29 November 2017 from the website [ebay.co.uk](http://ebay.co.uk) offering “Mens DG ¾ board shorts .....Starting bid £7 ... New without tags ... A brand-new, unused and unworn item that is not in its original retail packaging .... Brand: DG Dognini”.

46) The evidence shows that offers of goods of third parties under marks which included a “DG” element were being made to UK consumers on the internet on (at least in two cases) 29 November 2017. It does not establish for how long and in what quantities goods had been offered under these respective marks on the UK market. It falls a very long way short of establishing that by the time the Applicant applied for the opposed mark UK consumers in the same sectors of the clothing market had been exposed to marks including a “DG” element to such an extent that the distinctiveness of that element had been diluted, or that the average consumer had been educated to distinguish between marks of different proprietors containing that element.

47) The Applicant contends that “what distinguishes the Opponent’s trademark from all other trademarks on the market is the (‘s) since the “DG” element lacks distinctiveness”. In my judgement, however, the fact that the average consumer is used to seeing a possessive S used in brand names or tacked on to them in popular usage both in the clothing sector and more generally (Levi’s, Sainsbury’s, Cadbury’s, etc.) severely diminishes its significance as a distinguishing factor in the perception of the relevant public in this case. The Opponent observes that the Applicant fails to take into account that that one of the Opponent’s earlier trade mark registrations is for a series of four marks which includes figurative forms of the marks DG and DG’s. It draws my attention to the following statement in the IPO’s Manual of Trade Marks Practice: “A series of marks means a number of trade marks which resemble each other as to their material particulars and differ only as a matter of non-distinctive character which would not affect the identity of the trade mark”. The Applicant points out that in *Bongrain SA’s Trade Mark Application* [2003] EWCH 531 (Ch) it was held that the Manual is only a guide and is not a substitute for the statutory test. This is, of course, correct. Nevertheless, it has persuasive force and in this instance confirms me in my view that the “s” element does not play a distinctive role in the Opponent’s mark.

48) In support of the Applicant’s contention that the word "fashion" can be distinctive for goods in Class 25 Mr Atif includes in Exhibit CSA02 of his witness statement the excerpts from the register described or shown in paragraph 8 above. The marks in question, however, all contain distinctive elements in addition to the word “fashion”. For example, registration no. UK 2527485 is for a series of four marks, reproduced in four different colours respectively, in which the letter M, represented in a very distinctive manner, appears above four different descriptive words – swimwear, lingerie, sportswear and fashion – represented respectively in the in the four marks in a correspondingly distinctive script. The other two registrations protect the signs “WM Fashion” and “5 Fashion”. Moreover, in the examples of use of these marks provided in the same exhibit the word “fashion” is clearly used as a descriptor - for example, on pages 33-34 of Exhibit CSA02 in the phrases “shop fashion deals” and “fashion outlet store”, and on page 37 “fashion leader”, “fashion wholesale”, “latest fashion”, “must have fashion items”, etc.

49) When applied to goods in Class 25 the word “fashion” is descriptive in a laudatory way, indicating that they are in vogue or in the prevailing styles. The letter combination “DG” is not descriptive or allusive in any way of goods in Class 25, and I have already explained why I do not consider its distinctiveness to have been diluted. “DG” is the dominant and distinctive element of the opposed mark. I have already explained why I do not consider that the “s” in the Opponent’s mark plays a distinctive role. The script used is perfectly conventional. The interlinking of the letters D and G adds a mildly figurative element which makes some contribution to the overall impression of the mark. The distinctive weight of the earlier mark, however, clearly lies heavily on the letter combination “DG”, which manifestly constitutes its dominant element.

50) Although not negligible in the overall visual impression of the mark, forming, as it does, a considerable part of its length, the word FASHION is descriptive of goods covered by the opponent’s specification and will be immediately perceived as such. It will therefore receive limited attention from the average consumer when the mark is encountered visually, the focus lying heavily on the distinctive initial combination DG. Moreover, there is a rough rule of thumb in the settled case law that the consumer normally attaches more importance to the beginnings of word marks. This is no more than a rule of thumb. Each case must be considered on its merits. My assessment must take account of the overall impression created by the marks<sup>8</sup>. In this case I consider it a useful guide. The interlinking of the letters D and G and the ‘s contribute to the overall visual impression of the earlier mark, but their role is minor in comparison with the visual impact of the letter combination DG as such. Overall, there is a reasonably high degree of visual similarity between the marks.

51) Both marks will be pronounced conventionally, the initial DG of both marks being supplemented by the addition of the word FASHION in the opposed mark and a final S sound in the earlier mark. Aurally, I think it likely that the word FASHION may well not normally be spoken in trade because it will be perceived as descriptive, and the mark can be referred to more simply by its distinctive element DG, reducing the difference to the final S sound of the earlier mark. Even if the word FASHION is

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<sup>8</sup> See Case T-438/07 *Spa Monopole, compagnie fermière de Spa SA/NV v OHIM* at paragraph 23.

included in oral use, however, I consider that there is still overall a reasonably high degree of aural similarity between the marks.

52) Similarly, the word FASHION adds a conceptual element not explicitly present in the earlier mark but, being descriptive, its impact on the attention of the consumer will be limited in comparison with the heavily dominant and distinctive DG with which the mark begins. Apart from the screenshot of the retailer D.V. Townend & Co. on page 47 of the Opponent's evidence where, under the heading "DG's (Douglas & Grahame)", some background information is given on the Opponent's business, I have no evidence that the average consumer will see the letter combination DG as standing for anything in particular, so its conceptual significance will be that of the letter combination itself, present in both marks. Whether consumers see DG as also standing for Douglas & Grahame or simply see the letter combination as such, however, there is a reasonably high degree of conceptual similarity between the marks overall.

### **The distinctiveness of the earlier mark**

53) The degree of distinctiveness of the earlier mark must be assessed. This is because the more distinctive the earlier mark, either on the basis of inherent qualities or because of use made, the greater the likelihood of confusion (see *Sabel BV v. Puma AG*, paragraph 24). 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).”

54) The Opponent has not claimed that the distinctiveness of its earlier mark has been materially enhanced through use. This leaves the question of inherent distinctive character. I have already found that the final “s” plays no distinctive role, and that the contribution of the interlinking of the letters D and G is a minor one. The distinctive weight of the earlier mark lies heavily on the letter combination DG, which is in no way descriptive or allusive of the relevant goods. Overall, the mark has a medium degree of distinctiveness.

### **Likelihood of Confusion**

55) The factors assessed so far have a degree of interdependency (*Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, paragraph 17), a global assessment of them must be made when determining whether there exists a likelihood of confusion (*Sabel BV v. Puma AG*, paragraph 22). However, there is no scientific formula to apply. It is a matter of considering the relevant factors from the viewpoint of the average consumer and determining whether they are likely to be confused. There may be a likelihood of confusion if a significant proportion of the relevant public is confused<sup>9</sup>.

56) In paragraph two of his witness statement Mr Amjad states:

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<sup>9</sup> See the comments of Floyd LJ in *JW Spear & Sons Ltd & Others v Zynga Inc* [2015] EWCA Civ 290 at paragraph 37 and of Kitchen LJ in *Comic Enterprises Ltd v Twentieth Century Fox Film Corporation* [2016] EWCA Civ 41, where he considered the judgment of the Court of Appeal in *Interflora Inc v Marks and Spencer plc* [2015] EWCA Civ 1403, [2014] FSR 10.

“The Applicant’s intention is that the all [sic] goods sold under the “DG Fashion” Trademark will be sold online only. The Applicant will also clarify in all product descriptions on the website that the “DG Fashion” products and brand are in no way similar or affiliated with Douglas and Grahame Limited/DG’s”.

An intention to sell only online with a disclaimer is a matter of current business strategy. In making my assessment of the likelihood of confusion current use and business strategy are irrelevant to the notional comparison I have to make, for the reasons explained by the Court of First Instance (now the General Court) in *Devinlec Développement Innovation Leclerc SA v OHIM* Case T- 147/03):

“104. Consideration of the objective circumstances in which the goods covered by the marks are marketed is fully justified. The examination of the likelihood of confusion which the OHIM authorities are called on to carry out is a prospective examination. Since the particular circumstances in which the goods covered by the marks are marketed may vary in time and depending on the wishes of the proprietors of the trade marks, the prospective analysis of the likelihood of confusion between two marks, which pursues an aim in the general interest, that is, the aim that the relevant public may not be exposed to the risk of being misled as to the commercial origin of the goods in question, cannot be dependent on the commercial intentions, whether carried out or not, and naturally subjective, of the trade mark proprietors.”

Consequently, I am required to consider the likelihood of confusion “in all the circumstances in which the mark applied for might be used if it were to be registered<sup>10</sup>.” A statement of intention on the part of the present proprietor of the opposed mark that it will market its goods only online and with a disclaimer is therefore irrelevant to the assessment I have to make.

57) I have found varying degrees of similarity between the goods of the competing marks. I have found that the earlier mark has a medium degree of distinctive

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<sup>10</sup> See Case C-533/06, O2 Holdings v Hutchison 3G UK at paragraph 66

character, that it has a reasonably high degree of visual, aural and conceptual similarity with the opposed mark, that the selection process for the goods will be primarily visual (though I do not discount the fact that there may be an aural element), and that average consumer will pay a reasonable level of attention. The distinctive letter combination DG will be remembered. Bearing in mind the descriptive nature of the word FASHION in the Applicant's mark, the lack of significance of the possessive S, and the modest nature of the stylisation represented by the interlinking of the letters in the opposed mark, however, I think it likely that a significant proportion of the relevant public will not retain these elements in the memory and will directly confuse the marks. Even where these differences are noticed and remembered, however, the average consumer will not attribute distinctive significance to them. He or she will simply assume them to represent variant marks of the same or a related undertaking. Bearing in mind that a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, I find that there will be either direct or indirect confusion even in respect of those goods which I have found to have a low degree of similarity. It follows that there will also be confusion where the degree of similarity of the goods is greater.

## **Outcome**

58) The opposition succeeds in respect of all the goods of the Applicant's specification in Class 25, except those shown below.

The opposition fails in respect of the following goods of the Applicant's specification in Class 25; the opposed mark may proceed to registration in respect of these goods only, in so far as they are not opposed in other proceedings:

*Class 25: Paper clothing; Paper aprons*

## **Costs**

59) The Opponent has been almost entirely successful and is entitled to a contribution towards its costs. I hereby order cherryandjerrylimited to pay Douglas & Grahame Limited the sum of £1,400. This sum is calculated as follows:

Opposition fee	£100
Preparing a statement and considering the other side's statement	£400
Preparing evidence and considering the other side's evidence	£500
Written submissions	£400

This sum should 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 31st day of May 2018**

**Martin Boyle  
For the Registrar,  
The Comptroller-General**

## ANNEX

### The goods for which the Applicant applies for protection

**Class 25:** After ski boots;Anglers' shoes;Ankle boots;Après-ski boots;Apres-ski shoes;Aprons;Aprons [clothing];Articles of clothing for theatrical use;Articles of clothing made of hides;Articles of clothing made of leather;Articles of sports clothing;Ascots;Ascots (ties);Athletic clothing;Athletic footwear;Athletic shoes;Athletics shoes;Athletics vests;Babies' clothing;Babies' pants [clothing];Babies' pants [underwear];Babies' undergarments;Babushkas;Baby bodysuits;Baby bottoms;Baby bunting [clothing];Baby clothes;Baby doll pyjamas;Baby layettes for clothing;Baby pants;Baby tops;Balaclavas;Ball gowns;Ballet shoes;Ballet slippers;Ballet suits;Ballroom dancing shoes;Cardigans;Cashmere clothing;Cashmere scarves;Casual footwear;Casual shirts;Casual trousers;Casualwear;Children's clothing;Childrens' clothing;Children's footwear;Children's headwear;Climbing boots;Climbing boots [mountaineering boots];Climbing footwear;Clothes;Clothes for sport;Clothes for sports;Clothing;Clothing for babies;Clothing for children;Clothing for cycling;Clothing for gymnastics;Clothing for leisure wear;Coats;Coats for men;Dance shoes;Dance slippers;Denim jackets;Denim jeans;Denims [clothing];Dinner jackets;Dinner suits;Dress shirts;Dress shoes;Dress suits;Dresses;Dresses for evening wear;Dresses made from skins;Dungarees;Exercise wear;Fancy dress costumes;Fashion hats;Figure skating clothing;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;Girls' clothing;Gloves;Gloves [clothing];Gloves for cyclists;Golf footwear;Golf pants, shirts and skirts;Golf shirts;Golf shoes;Golf shorts;Golf skirts;Golf trousers;Gowns;Gym boots;Gym shorts;Gym suits;Gymnastic shoes;Gymshoes;Gymwear;Hiking shoes;Hockey shoes;Infant wear;Infants' boots;Infants' clothing;Infants' footwear;Infants' shoes;Infants'

trousers;Infantwear;Inner socks for footwear;Jackets;Jackets being sports clothing;Jackets [clothing];Jeans;Jerkins;Jerseys;Jogging sets [clothing];Jogging shoes;Jogging suits;Jogging tops;Judo suits;Jump Suits;Jumpers;Jumpers [pullovers];Jumpers [sweaters];Jumpsuits;Laboratory coats;Lace boots;Ladies' boots;Ladies' dresses;Ladies' footwear;Ladies' outerclothing;Ladies' suits;Ladies' underwear;Leather belts [clothing];Leather clothing;Leather (Clothing of -);Leather (Clothing of imitations of -);Leather coats;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;Light-reflecting coats;Linen (Body -) [garments];Linen clothing;Lingerie;Long jackets;Long johns;Long sleeve pullovers;Long sleeved vests;Long-sleeved shirts;Motorcycle gloves;Motorcycle jackets;Motorcycle rain suits;Motorcycle riding suits;Motorcyclist boots;Nightdresses;Nightgowns;Nighties;Nightwear;Nurse dresses;Nurse overalls;Nurse pants;Nurses' uniforms;Pajama bottoms;Pajamas;Pajamas (Am.);Pantaloons;Pants;Paper aprons;Paper clothing;Paper hats [clothing];Party hats [clothing];Polo boots;Polo knit tops;Polo neck jumpers;Polo shirts;Polo sweaters;Pullovers;Pyjamas [from tricot only];Rain boots;Rain coats;Rain hats;Rain shoes;Rain suits;Rain wear;Rainproof clothing;Rainproof jackets;Rainshoes;Rainwear;Ready-made clothing;Ready-to-wear clothing;Rubber soles for jikatabi;Rubbers [footwear];Rugby boots;Rugby jerseys;Rugby shirts;Rugby shoes;Rugby shorts;Rugby tops;Running shoes;Running Suits;Running vests;Sandals;Sandals and beach shoes;Sarees;Scarves;School uniforms;Shift dresses;Shirt fronts;Shirts;Shirts for suits;Shoe covers, other than for medical purposes;Shoe inserts for non-orthopedic purposes;Shoe uppers;Shoes;Shoes for casual wear;Shoes for infants;Shoes for leisurewear;Shoes with hook and pile fastening tapes;Tee-shirts;Tennis dresses;Tennis pullovers;Tennis shirts;Tennis shoes;Tennis shorts;Tennis skirts;Tennis wear;Thermal clothing;Ties [clothing];Tights;Uniforms;Uniforms for commercial use;Uniforms for nurses;Visors;Visors [clothing];Volleyball jerseys;Volleyball shoes;Walking boots;Walking shoes;Walking shorts;Warm-up jackets;Warm-up pants;Warm-up suits;Warm-up tops;Yoga bottoms;Yoga pants;Yoga shirts;Yoga shoes.

