

O/448/22

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NUMBER 3399958

BY

INVICTUS GAMES FOUNDATION

TO REGISTER THE FOLLOWING TRADE MARK (SERIES OF TWO)

IN CLASS 25

**INVICTUS**  
**INVICTUS**

AND

OPPOSITION THERETO UNDER NUMBER 417696

BY

INVICTA S.P.A.

## Background and Pleadings

1. On 16 May 2019, Invictus Games Foundation (“the Applicant”) applied to register in the UK the trade mark (series of two) as displayed on the front cover page for ‘*clothing, footwear and headgear*’ in class 25. It was accepted and published in the Trade Marks Journal on 14 June 2019.

2. On 16 September 2019, Invicta S.p.A. (“the Opponent”) issued opposition proceedings against the application under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). It relies on its earlier International Trade Mark Registration designating the EU (“IR”) under no.1201001 for the mark INVICTA, filed on 13 December 2013 and registered on 23 April 2018 claiming a priority date of 14 November 2013.<sup>1</sup> For the purposes of its opposition it relies on all of the goods and services of its registration in classes 9,16, 25 and 35 (as set out in full in the annex).

3. The Opponent claims that on account of the close similarity between the marks and identity of the goods, there exists a likelihood of confusion on the part of the public. In particular in its statement of grounds accompanying its form TM7, the Opponent argues that “the degree of stylisation in the applied for marks is so slight that each... would be regarded by members of the relevant purchasing public as essentially consisting solely of the plain word INVICTUS.” It is contended that the respective marks are closely similar to each other sharing the same first six letters INVICT- and differing only in their respective endings. It is said that those different endings are insufficient to distinguish the marks reliably because they are “minor in nature and also because they are likely to be understood as constituting alternative versions (e.g. masculine and feminine) of the same Latin-derived word”. Furthermore, the contested goods in class 25 are all identical to the Opponent’s goods in class 25.

4. The Applicant filed a defence and counterstatement denying the claims made. The Applicant argues that such is its significant international repute in organising the INVICTUS GAMES (an international sporting competition), that the general public in

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<sup>1</sup> Although the UK has left the EU and the IR relied upon by the Opponent now enjoys protection in the UK, the IR remains the relevant right in these proceedings. That is because the opposition proceedings commenced and the application was filed before the end of the Implementation Period and, under the transitional provisions of the Trade Marks (Amendment etc.) (EU Exit) Regulations 2019, I am obliged to decide the opposition on the basis of the law as it stood at the date of the application.

the UK would immediately associate the terms INVICTUS GAMES and INVICTUS with the Applicant and its patron the Duke of Sussex so that no confusion would arise. Furthermore, it is contended that consumers expect a charity and an organiser of a sporting event to promote its activities through the sale of merchandise and to manufacture clothing in relation to that event. It refutes that confusion would arise as between the two marks, given the visual and aural differences arising from the stylisation and the different endings of the respective marks. Conceptually it is said that the earlier mark has no meaning whereas INVICTUS denotes the Applicant to the relevant public. Furthermore, it argues that the parties have coexisted on the market without any incidents of confusion arising as between them.

5. The Opponent relies upon its IR which qualifies as an earlier trade mark under section 6 of the Act. It completed its registration process no more than five years before the filing date of the respective application and consequently there is no requirement to prove use pursuant to section 6A of the Act. The Opponent may, consequently, rely upon the goods and services of its registration in its entirety without having to prove use.

6. Both parties are professionally represented, the Opponent by Bromhead Johnson LLP and the Applicant by Clifford Chance LLP. During the evidence rounds both parties filed evidence and submissions. The parties requested to be heard on the matter, that hearing took place before me on 3 March 2022, via video conference. Mr Andrew Lomas of One Essex Court chambers, instructed by Clifford Chance LLP, appeared on behalf of the Applicant. Mr Ross Manaton of Bromhead Johnson LLP appeared on behalf of the Opponent. Both parties filed skeleton arguments prior to the hearing.

7. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Trade Marks Act relied on in these proceedings are derived from an EU Directive. That is why this decision continues to refer to the case law of the EU courts on trade mark matters.

## **Evidence**

8. I do not propose to outline the parties' evidence or submissions in full here, but I have read and considered their contents and have taken them into account when

reaching my decision. A summary of the salient points is set out below, to which I shall refer, where necessary, later in my decision.

#### Opponent's evidence

9. The Opponent did not file initial evidence in chief, preferring to file submissions dated 31 July 2021.

#### The Applicant's evidence

10. The Applicant filed submissions dated 14 October 2021, together with the witness statement of Mr Samuel Peter Newell of the same date, accompanied by twelve exhibits marked CSPN 1 and SPN1-SPN11. The purpose of his evidence, it is said, is to demonstrate the “extensive and consistent use of ‘INVICTUS’” in respect of clothing since 2014,<sup>2</sup> and additionally to establish the Applicant’s claim to a reputation in the mark. In support of this, the evidence consists of “high profile media articles”, many of which are “accompanied by pictures of the Duke of Sussex wearing branded merchandise”. Mr Newell also produces “BBC viewing figures” of the televised broadcast of the games.<sup>3</sup> It is said that this material is evidence of “a high degree of awareness of the Applicant and its activities amongst the public in the UK”.

11. The Applicant’s evidence mainly consists of articles taken from various media publications to include The Daily Mail, The Times, The Independent, The Scotsman, Hello magazine and British Vogue promoting the sporting event the INVICTUS GAMES. The articles reference the words “the Invictus Games” in the body of the text and include photographs of individuals wearing various articles of clothing, mainly t-shirts and polo shirts bearing the mark as reproduced below. These individuals include various celebrities, the Duke and Duchess of Sussex, athletes, volunteers, and those related to the organisation of the event.



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<sup>2</sup> SPN1-3; SPN 6-7; SPN9-10

<sup>3</sup> CSPN1

12. Only three references are made to the first applied for mark in the series, without the word GAMES, where the mark appears as slogans on banners and t-shirts in a word only form, namely “I AM THE INVICTUS BABY”, “ I AM INVICTUS” and “WE ARE INVICTUS”.<sup>4</sup>

13. Exhibit SPN1 consists of a screenshot taken from the Applicant’s website [www.invictus-games-foundation.teemill.com](http://www.invictus-games-foundation.teemill.com), dated 12 October 2021, displaying t-shirts and hoodies/sweatshirts for sale in pounds sterling. Mr Newell states that whilst the screenshot was taken in preparation of his statement, “to the best of his knowledge and belief it is consistent with the activities of the Applicant at the date of the application”.

14. The Invictus Games have been held in various cities to include London in 2014, Orlando in 2016, Toronto in 2017 and Sydney in 2018. The games were broadcast to the UK by the BBC on each occasion. It is said that each event attracted an audience of millions in the UK. A breakdown of the viewing figures are produced at CSPN1.

15. The Helen Rollason award was presented to the Invictus Games competitors at the Annual Sports Personality of the Year awards in 2014. A copy screenshot of the press coverage of the programme taken from the BBC’s website is produced dated 14 December 2014.<sup>5</sup>

#### Opponent’s evidence in reply

16. The Opponent filed evidence in reply in the form of a witness statement by Ross Manaton dated 4 January 2022 together with one exhibit marked RTM1. The purpose of the statement was to produce a screenshot of an article taken from the online version of the publication “Central Fife Times and Advertiser”, dated 30 May 2017, said to show an incident of confusion where a mistaken reference is made to “Invicta games” rather than Invictus Games in the heading of the article.

### **Preliminary Issues**

#### Confidentiality

17. By way of letter dated 3 November 2021, the Applicant requested that the contents of exhibit CSPN 1 be treated as confidential from the public. No objection was raised

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<sup>4</sup> SPN2, SPN4 and SPN10

<sup>5</sup> SPN4

by the Opponent and the confidential order was granted on 16 November 2021. At the hearing, it came to light that due to an administrative error the order dated 16 November 2021 inadvertently attached confidentiality to all of the Applicant's exhibits, no request having been made in this regard. Following clarification at the hearing, all parties agreed that the confidentiality request only extended to exhibit CSPN1 and that the remaining exhibits did not need to remain confidential. The general viewing figures contained within the body of Mr Newell's statement at paragraphs 12,15,17 and 19 were not subject to confidentiality and therefore if and where appropriate, reference will be made to these details.

#### Variation of the mark in use

18. Throughout the evidence and submissions the Applicant refers to the mark at issue as the Device mark and the mark as set out in the evidence as the Logo mark (as reproduced below):

“Logo Mark”



19. The Applicant argues that the evidence shows that it produces clothing displaying the device mark in various forms, including as part of composite marks (i.e. the logo mark). Such arguments are normally put forward when assessing the form of the mark for the purposes of establishing proof of use. In the decision before me, however, the assessment is to be undertaken on a notional and fair basis of the marks at issue as they appear on the register and not how they are actually used on the market. The comparison will therefore be undertaken as between the applied for mark (as set out on the front cover page) and the word only earlier mark and not any other variation put forward by the Applicant. The Logo mark is not the mark as applied for and therefore it will have no relevance to the decision in suit in so far as the mark comparison assessment.

### Reputation of the later mark

20. The Applicant claims that as a result of its marks being included within the composite Logo mark and the reputation it holds, when seeing the applied for marks, consumers will recognise them as ones associated with the Applicant which is sufficient to distinguish between the marks at issue. I note that the General Court (“GC”) has consistently held that the reputation of the later mark is in principle irrelevant to the assessment of the likelihood of confusion with an earlier mark.<sup>6</sup> In *Associazione Calcio Milan SpA (AC Milan) v EUIPO*<sup>7</sup> it upheld a decision of the Board of Appeal of the EUIPO to refuse registration of a composite trade mark which included the word MILAN. It rejected the Applicant’s argument that the Board of Appeal had failed to take into account in the context of the assessment of the likelihood of confusion, the high reputation of the sign constituting the mark applied for and of the football club AC Milan. The General Court stated that:

“113. ....with regard to the applicant’s argument based on the reputation of the mark applied for in Germany, it should be noted, as EUIPO rightly pointed out, that only the reputation of the earlier mark, and not that of the mark applied for, must be taken into account in order to assess whether the similarity of the goods designated by the two marks is sufficient to give rise to a likelihood of confusion (see, to that effect, judgment of 3 September 2009, *Aceites del Sur-Coosur v Koipe*, C-498/07 P, EU:C:2009:503, paragraph 84 and the case-law cited). That case-law is in line with the objective of Article 8(1)(b) of Regulation No 207/2009, which is to provide adequate protection for the proprietors of earlier rights against subsequent applications for identical or similar European Union trade marks (judgment of 29 January 2019, *The GB Foods v EUIPO – Yatecomeré (YATEKOMO)*, T-336/17, not published, EU:T:2019:840, paragraph 49).

114. Therefore, the applicant’s argument based on the alleged reputation of the mark applied for is entirely irrelevant.”

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<sup>6</sup> *The GB Foods SA v OHIM*, Case T-336/17, *Mayer Naman v OHIM*, Case T-498/10 and *Agatha Ruiz de la Prada de Sentmenat v OHIM*, Case T-522/08.

<sup>7</sup> T-353/20

21. However in *Lionel Andrés Messi Cuccittini v EUIPO*<sup>8</sup> the Court of Justice of the European Union (“CJEU”) rejected the argument that the GC was wrong to take into account the notoriety of Lionel Messi as a factor in the assessment of the likelihood of confusion. In rejecting the submissions it stated:

“44. In so far as JM-EV criticizes the General Court for disregarding Article 8(1)(b) of Regulation No 207/2009 by considering, in paragraph 62 of the judgment under appeal, that there was account of the notoriety of Mr Messi Cuccittini in the context of the assessment of the likelihood of confusion, within the meaning of that provision, it should be recalled that, according to settled case-law of the Court, the existence of a likelihood of confusion in the mind of the public must be assessed globally taking into account all the relevant factors of the case.

45. According to equally settled case-law, the overall assessment of the likelihood of confusion must, as regards the visual, phonetic, or conceptual similarity of the signs at issue, be based on the overall impression produced by them, taking into account, in particular, of their distinctive and dominant elements.

46. In the context of that overall assessment, the reputation of the earlier mark is, admittedly, a relevant factor for the purposes of assessing the likelihood of confusion.

47. However, as the Court has held, account must also be taken of the possible notoriety of the person applying for his name to be registered as a trade mark, since that reputation may obviously , have an influence on the perception of the mark by the relevant public (see, to that effect, judgment of 24 June 2010, *Becker v Harman International Industries*, C-51/09 P, paragraph 37 ).

48. It follows that the General Court was right to consider, in paragraph 62 of the judgment under appeal, that the notoriety of Mr Messi Cuccittini constituted

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<sup>8</sup> Joined cases C-449/18P & C-474/18P

a relevant factor in order to establish a difference at the conceptual level between the term 'Messi' and the term 'Massi'."

22. The decision in *Messi* appears to suggest a narrow exception to the rule in *Associazione Calcio Milan*, namely that the reputation of the later mark only comes into play in the confusion assessment, in such cases where the notoriety of a famous person may influence the perception of the later mark by the relevant public. However, whilst the settled caselaw appears to only focus on names of famous people there is no reason why it couldn't apply to organisations with a well-known conceptual meaning but only in so far as the conceptual comparison assessment.<sup>9</sup> The relevance of the later mark's reputation was discussed by Mr Allan James, the Registrar's Hearing Officer, in *Extinction Rebellion* where he stated:<sup>10</sup>

"As Mr Phillip Harris, as the Appointed Person, explained in *Retail Royalty Company v Harringtons Clothing Limited* the reputation of a sign as a trade mark is not usually relevant to its conceptual meaning, which is to be derived from the ordinary meaning(s) of the word(s) or sign at the relevant date, i.e. the meaning(s) that can usually be found in dictionaries. This applies to the earlier mark as well as the later mark. So, for example, when comparing the conceptual similarity between BATMAN and BATSMAN (both for printed publications) it was appropriate to take into account that BATMAN is a well-known fictional character from Gotham City, whereas BATSMAN historically describes what is now called a batter in cricket. There was no suggestion that the secondary meaning of BATMAN as a trade mark for comic books was relevant to the conceptual similarity between the marks. There are two reasons why the acquired reputation of a sign as a trade mark is irrelevant. Firstly, taking account of the trade mark meaning of the earlier mark when assessing the degree of conceptual similarity between it and the later mark would be 'double counting'. This is because the reputation of the earlier mark is already taken into account as a factor which may increase the likelihood of confusion as part of the required evaluation of its distinctive character. Secondly, and more fundamentally, the assessments required under sections 5(2) and 5(3) of the

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<sup>9</sup> *This Ain't Rock N' Roll Limited v Jason and Christopher Kingsley*; TM Extinction Rebellion O/214/22

<sup>10</sup> O/214/22 para 52

Act necessarily requires the tribunal to assume that both marks will be used as trade marks and that average consumers will recognise them as such. Therefore, the public's existing recognition of one or both of the marks as trade marks adds nothing to the evaluation of the conceptual similarity between them."

23. I shall return to consider the Applicant's reputation at the relevant point, later in my decision.

## **Decision**

24. Section 5(2)(b) of the Act states 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".

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

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

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

- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.

### **Comparison of the goods**

26. When conducting a goods and services comparison, I am guided by the decision in *Gérard Meric v Office for Harmonisation in the Internal Market (OHIM)*, Case T-133/05, where the GC stated that:

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

27. Whilst the Opponent relies upon all the goods and service of its registration, at the hearing and in its submissions, it focussed only on those goods in class 25. I shall therefore adopt the same approach and focus the comparison only between the respective parties’ goods as set out below:

<b>The Applicant’s goods</b>	<b>The Opponent’s goods</b>
Class 25: Clothing, footwear and headgear.	Class 25: Articles of clothing, footwear, headgear; active wear, sportswear, namely trousers, sport suits, shorts; swimwear, bathing suits, bikinis, slippers, swimsuit shorts, swimming caps; pareos, bras, ponchos; underwear, namely bodies, boxers, T-shirts, tank tops, bras, culottes, leotards, shorts, slippers, thongs; leather wear and lounge bathrobes, nightdresses, pajamas; apparel of any design and nature made from fabrics of any nature, namely, pants, trousers, work clothing and work overalls, jeans, shorts, jackets, coats, waistcoats, overcoats, raincoats, hosiery, knitwear, sweaters, cardigans, fleece tops and bottoms, jumpers, twin sets, woven shirts; dresses, training and track suits, bodies, shirts, plush shirts,

	<p>polo shirts, nightshirts for men, T-shirts, undershirts, cut and sew tops, dresses, skirts, trousers-skirts, gowns; socks; dressing gowns; bands; balaclavas, scarves, silk scarves, neck and face masks (bands); gloves and mittens, ski gloves; headwear, namely hats, caps, bandanas, basques, visors, wrist bands; belts and ties; footwear, shoes, dress shoes, sneakers, boots, chaps, sandals, slippers, sport and athletic shoes, studded shoes, mountaineering shoes; ski boots and trekking boots, gaiters, heeled shoes, bands for protecting face and ear from cold.</p>
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28. It is common ground and I do not consider that it was a contentious issue, at the hearing, that the Applicant's goods namely *clothing, footwear and headgear* are self-evidently identical to the Opponent's *Articles of clothing, footwear, headgear*. It is not necessary, therefore, to undertake a comparison between the Opponent's remaining goods and services of its registration, as this will not place it in any stronger position.

### **Average consumer and the purchasing process**

29. When considering the opposing trade marks I must determine, first of all, who the average consumer is for the goods and the method of selecting these goods. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. It must also be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods in question.

30. 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 word “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

31. At the hearing, both parties agreed that the goods in question were directed at the general members of the public and again nothing turns on this point. Mr Lomas, however, indicated that the selection process was not limited to viewing swing tags and labels of the actual physical clothing at retail premises where, perhaps, a lower degree of attention would be undertaken. He suggested that increasingly goods are purchased online, particularly the Applicant’s goods, and therefore visual considerations would be brought to the fore, by the inspection of the goods on screen and by the reading of the whole mark.

32. Mr Manaton did not disagree, merely reiterating his submissions in his skeleton argument, namely that the average consumer is a member of the public at large, with no special characteristics beyond an ordinary general member of the public.

33. I agree generally with the parties. The goods in question, taking a notional and fair assessment, are ones purchased from both a physical retail outlet and their online equivalents. I do not consider that one particular forum overrides the other and they are equally likely to be channels from which the goods are purchased. I bear in mind the decision in *New Look Limited v OHIM*,<sup>11</sup> and agree with Mr Lomas that visual considerations dominate the purchasing process, particularly where the goods are purchased online. However, I cannot discount an oral component, when the goods are selected from actual premises, where assistance is sought from sales staff. Acknowledging that clothing, footwear and headgear vary considerably in price from the mass-produced items with a low-price tag, to expensive designer goods, on the whole they are neither particularly frequent nor infrequent purchases when compared to consumables and cars, for example. Such things as price, quality, fit and style are taken into account in the purchasing process; often the goods are tried on in store before the final selection is made. Overall, taking all factors into account I consider that the level of attention in the selection process is not at its lowest or particularly

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<sup>11</sup> joined cases T-117/03 to T-119/03 and T-171/03

high. This leads to, in my view, an average level of attention being paid during the purchasing process.

### Comparison of the marks

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

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

35. It would be wrong, therefore, to dissect the trade marks artificially, although it is necessary to consider 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 trade marks.

36. The marks to be compared are as follows:

Opponent's mark	Applicant's mark (series of two)
INVICTA	INVICTUS / INVICTUS

### Overall Impressions

37. The Opponent's mark is a word only mark in capital letters. The overall impression resides in the totality of the word.

38. The Applicant's first mark in the series, is for the word INVICTUS presented in grey in a slightly stylised typeface, in capitals. The middle letter "I" is presented in a different

typeface to the other remaining letters. The second mark in the series, is also for the same word INVICTUS but is presented on a black rectangle. The lettering in this version has the same typeface throughout. Mr Manaton argued that it is the word INVICTUS which is the dominant and distinctive element in each of the Applicant's marks. The Applicant does not address the stylisation of its mark or the overall impression directly, merely arguing that the "device mark" is the distinctive element in its "LOGO mark" and that the contested marks are dissimilar. As stated earlier in my decision, since I am only able to undertake the comparison between the applied for mark and the earlier mark, any reference to the LOGO mark shall have no bearing on the overall impression of the marks or the mark comparison.

39. I agree with the Opponent, that it is the word INVICTUS which dominates the Applicant's series of two marks and in which the overall impression resides. The black rectangle in the second mark in the series, plays a limited role as it merely acts as a background. Little weight will also be given to the use of the colour grey in both marks or the different type face of the middle letter "I" in the first mark in the series, as a result of its position in the middle of the word.

### **Visual Comparison**

40. In light of my assessment of the overall impression of the Applicant's marks, little turns on the black rectangle which will be perceived as a background and therefore I shall initially undertake the comparison by assessing the Opponent's mark against the Applicant's first mark in the series. If it becomes necessary to do so, I shall return to the position and consider the second mark in the series, later in my decision.

41. Both marks share the identical first six letters namely 'INVICT', differing only in their endings; the letter 'A' as opposed to the letters 'US'. The Applicant's mark also differs by the use of the colour grey and the middle letter "I" which is in a different typeface to the remaining letters. I do not consider that much turns on these differences taking into account the overall impression of the later marks given the position of the character in the middle of the word and that the earlier mark (being a word only mark) may be presented in any standard typeface or colour.<sup>12</sup> Overall, weighing up the differences and similarities and given that as a general rule, the

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<sup>12</sup> *La Superquimica v EUIPO*, case T-24/17

beginning of marks have greater visual impact than their endings<sup>13</sup> I consider that the marks are visually highly similar.

### **Aural Comparison**

42. Mr Lomas suggested in his skeleton argument, and at the hearing, that as a result of the marks ending in different suffixes it “radically differentiates the sounds of the marks in suit from each other; a hard ‘-a’ versus a soft ‘-us’”. Mr Manaton disagreed and submitted that the pronunciation of the marks would be “dominated by the INVICT-element” which has “a strong and striking sound pattern, which is followed by the far less dominant respective endings -US and -A”.

43. I am more persuaded by Mr Manaton’s arguments in this regard and consider that the Opponent’s mark will be pronounced as IN-VICT-AH whereas the Applicant’s mark will be pronounced as IN-VICT-US. No pronunciation will be afforded to the stylisation and no different emphasis will be given to the letter “I” in the middle of the Applicant’s mark by virtue of its presentation in a different typeface. The word will be read in its entirety. Both marks are three syllables long and in each the first two syllables will be pronounced identically. The difference lies only in the last syllable, an ‘AH’ sound as opposed to an ‘US’ sound.

44. Given that as a general rule, the beginnings of marks tend to have more aural emphasis than their endings and whilst I accept this is not true in every situation, the fact that both marks commence with the identical first two syllables weighs in favour of a greater degree of similarity than difference. Overall I consider that the aural similarities between the marks are high.

### **Conceptual comparison**

45. The Applicant submits that the marks are conceptually dissimilar. At the hearing Mr Lomas argued that “such is the fame and repute of Prince Harry, Duke of Sussex, that conceptually INVICTUS will now automatically bring to mind the Applicant, Royalty and/or wounded injured and sick servicemen and servicewomen.” In relation to the

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<sup>13</sup> *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

earlier mark it was submitted that “INVICTA is a meaningless word that will be taken by a member of the public to be a generic form of branding not associated with the Applicant.” The Opponent refutes this, arguing that “both INVICTUS and INVICTA are likely to be regarded by a significant portion of members of the relevant purchasing public as masculine and feminine forms of the Latin adjective having the stem INVICT- and meaning “unconquered”; conceptually, therefore, the marks are virtually identical. Among those members of the relevant purchasing public who may be uncertain of the precise meaning of the word in Latin, a substantial proportion would nevertheless recognise the Latin look and feel of the respective words and connect them with each other.”

46. In effect, the Applicant argues that such is the repute of the Invictus Games to the average consumer in the UK, that when seeing the mark INVICTUS solus for clothing footwear and headgear it will automatically and with no further thought process, bring to mind the meaning as suggested by Mr Lomas. The Applicant argues that the word INVICTUS solus is a shorthand version for or synonymous with the INVICTUS GAMES. I reject this argument, however. The evidence produced when referring to the sporting event itself is the combination of the word INVICTUS with the word GAMES. There is little evidence filed and what has been filed is insufficient, for me to conclude that members of the general public have been educated into associating the figurative mark INVICTUS solus with the Applicant, the Games or the Duke of Sussex, or more particularly as a badge of origin for the provision of clothing, footwear and headgear. There are only three references in Mr Newell’s statement of the use of INVICTUS solus and I agree with Mr Manaton, that when used in this way they will be seen by the relevant consumer as slogans rather than as a trade mark to denote trade origin.<sup>14</sup>

47. There is no evidence of any sales having been made for any of the applied for goods bearing the later mark. Therefore, consumers upon seeing photographs of individuals (including the Duke of Sussex) wearing clothing displaying the Logo mark, would in my view, perceive them as nothing more than promotional material for the sporting event itself or clothing worn by the athletes/competitors/volunteers which

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<sup>14</sup> Exhibit SPN2 “I AM THE INVICTUS BABY” on a baby’s t shirt dated 9.8.14; SPN4 on a banner displaying “I AM INVICTUS” during the broadcast of the Sport Personality programme where Prince Harry presented an award 14.12.2014 and SPN10 t shirt worn by an athlete “We ARE INVICTUS” 23 October 2018.

have been sponsored and offered free of charge by a third party, rather than as the trade mark of an undertaking trading in the goods. The evidence does not establish that the Applicant commercially exploits the mark for the goods applied for or the use demonstrated would be viewed in the economic sector concerned as having maintained or created a share in the market for such goods. The screenshot of the Applicant's website offering goods for sale is dated after the relevant date (16 May 2019) and therefore is of little assistance.

48. I remind myself that the conceptual comparison is not between INVICTUS GAMES and INVICTA but INVICTUS (stylised) versus INVICTA. From the evidence filed I am unable to conclude that consumers when seeing the figurative word INVICTUS solus would transpose any reputation in the Invictus Games to the applied for mark and automatically associate it with the Applicant or bring to mind the association with "Prince Harry, Royalty and servicemen and women" as has been suggested. There is no evidence before me to suggest that this is the case. When assessing the conceptual similarity of two marks this is usually done without reference to the goods and services in question and therefore the arguments put forward by the Applicant do not assist it greatly in the conceptual comparison assessment.<sup>15</sup> Any reputation held by the Applicant has firstly not been demonstrated to be held in the mark in suit but, in a different mark altogether and secondly, is not shown to be for clothing, footwear and headgear.

49. In any event for a conceptual message to be relevant it must be capable of immediate grasp by the average consumer.<sup>16</sup> I do not consider that a significant proportion of consumers when first seeing the mark INVICTUS would automatically and without any further thought process equate it with the INVICTUS GAMES and a mark associated with the Applicant. Whilst it is reasonable to conclude that some consumers may, I do not consider that this would equate to a significant proportion of the relevant public.

50. Irrespective of this, as set out in *Extinction Rebellion*<sup>17</sup> the reputation of an applied for mark will only be relevant in so far as it can be proven that consumers are educated

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<sup>15</sup> Mr Philip Johnson, sitting as the AP in *Vinifedos Emiliana SA v Consorzio Tutela Vini Emilia, (2) Chiari 1860 – Pr.I.V.I Srl And (3) Medici Ermete E Figli Srl O/054/22*.

<sup>16</sup> *Ruiz Picasso v OHIM* [2006] e.c.r.-I-643; [2006] E.T.M.R 29.

<sup>17</sup> O/214/22

as to the different meaning beyond the meaning of the word itself. It was argued that this assessment is fact dependent. I do not consider that the Applicant's evidence has supported its claim in this regard. When assessing the degree of conceptual similarity between trade marks, it is the ordinary meaning attributed to the words, by the relevant public, at the relevant date, which is important.

51. The Opponent's mark may be perceived in a number of ways. I agree with Mr Manaton that there is a proportion of the public who will understand that it is a Latin word meaning unconquered or equally as a word derived from the Latin but where its exact meaning is unknown. The Applicant's mark will produce similar perceptions. Therefore, whichever concept is brought to mind by the consumer it will apply equally to both marks, as a result of the common letters INVICT. Where the meaning is known the marks are conceptually similar to a high degree, if not identical. I accept, however, that there may some, who perceive the mark as an invented word or as a Latin word where its exact meaning is unknown. Where the marks are regarded in this way, then no conceptual comparison is possible, and they will be conceptually neutral. In my view these meanings are more likely to be the ones attributed to the marks by a significant proportion of the relevant public. As argued by the Applicant and as I have already accepted, there may be some consumers who perceive the later mark as having an association with the sporting event the Invictus Games, but I do not consider that this group would be a significant proportion especially in light of the evidence filed and for the reasons I have already outlined. If this association is made, it will only be by a small minority and an insufficient proportion for the purposes of the assessment.

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

52. Registered trade marks possess varying degrees of inherent distinctive character. Those marks that are regarded as descriptive of the goods will possess a low degree of distinctiveness. Conversely invented words with no association to the goods are highly distinctive. The more distinctive the earlier mark (either per se or by the use that has been made of it) the greater the likelihood of confusion.<sup>18</sup>

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<sup>18</sup> *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)

53. 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).

54. The Opponent has not filed evidence to support a claim of enhanced distinctive character, and therefore I only have the inherent position to consider. As outlined the Opponent’s mark will be recognised as the Latin word for unconquered or an invented word or recognised as a Latin word where the exact meaning is unknown. Irrespective of whichever meaning is attributed to the earlier mark, it is not an ordinary, everyday, dictionary word, nor one that is used in common parlance. Where the Opponent’s mark will be regarded as invented or recognised as a Latin word but where its meaning is unknown it will retain the highest degree of inherent distinctive character. Even if the meaning of the mark is known, I still do not consider that this diminishes the distinctive character of the mark as it is an unusual word and has no connection to the goods. It is neither allusive nor descriptive of clothing, footwear and headgear. On this basis I would still regard its inherent distinctive character as high.

### **Likelihood of confusion**

55. When considering whether there is a likelihood of confusion between the marks I must consider whether there is direct confusion, where one mark is mistaken for the other or whether there is indirect confusion where the similarities between the marks lead the consumer to believe that the respective goods and services originate from the same or a related source.

56. A number of factors must also be borne in mind when undertaking the assessment of confusion. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity

between the respective goods and vice versa. As I mentioned above, it is also necessary for me to keep in mind a global assessment of all relevant factors when undertaking the comparison and that the purpose of a trade mark is to distinguish the goods and services of one undertaking from another. In doing so, I must consider that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind. Mr James Mellor, as the Appointed Person, directed that a common sense approach should be undertaken in any assessment where “every comparison must be conducted according to the approach laid down in the CJEU case law and every comparison will depend on its own facts” applying “the well-established propositions for assessing the visual, aural and conceptual similarities.”<sup>19</sup>

57. There are two types of confusion; direct confusion where one mark is mistaken for the other and indirect confusion where the respective similarities between the marks lead consumers to believe that the respective goods and services originate from the same or related undertaking.

58. Earlier in my decision I found the respective goods are self-evidently identical. The goods will be selected via visual means using an average level of attention, no higher or lower than the norm for such goods. I did not discount aural considerations, however. The earlier mark is inherently distinctive to a high degree. The marks are visually and aurally highly similar. Conceptually depending on whether consumers perceive the words INVICTUS/INVICTA as meaning unconquered, or as invented words/words derived from the Latin, where the exact meaning is unknown, the marks are conceptually highly similar, if not identical, or conceptually neutral.

59. Taking account of these conclusions, I remind myself that I must assess the matter as to how the marks are perceived on first impressions and from the perspective of the consumer’s immediate and instinctive reaction to the marks on first encounter.<sup>20</sup>

60. Bearing in mind the principle of imperfect recollection, in my view, average consumers are unlikely to recall the difference in the endings between the letter ‘A’ as

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<sup>19</sup> *Robert Bosch GmbH v Bosco Brands UK Limited*, BL O/301/20

<sup>20</sup> *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

opposed to the letters 'US' given that greater visual and aural emphasis is likely to be placed at the beginning of the words.

61. I acknowledge that I must consider all the factors in the global assessment and each case must be determined on its own merits.<sup>21</sup> Notwithstanding the claimed reputation of the Applicant in the organisation of a sporting event, under the name Invictus Games, the Opponent's mark is highly distinctive, and this combined with high visual, aural and conceptual similarities will work in the Opponent's favour. Given that clothing is generally purchased with an average level of attention, I consider that the distinctiveness of the earlier mark combined with the shared common letters INVICT will lead consumers to imperfectly recall or mistake the marks one for the other. The difference arising as a result of the stylisation and colour used in the application is insufficient for consumers to distinguish between them especially where the respective goods are identical. Given that consumers rarely have a chance to compare marks side by side, I am satisfied that the shared structure and letter pattern underpinning the respective marks by way of the prefix INVICT is such that the marks will be imperfectly recalled. There is sufficient visual, aural and conceptual commonality between the marks for consumers to directly confuse and mistake one for the other. This leads me to conclude that there is a likelihood of direct confusion.

### **No evidence of actual confusion and honest concurrent use**

62. Mr Lomas argues that the Opponent has failed to provide any evidence of actual confusion between the marks other than "1 piece of evidence taken from the Five Times published in 2017." It argues that the reference to 'Invicta Games' is evidently a mistake (typo) rather than evidence of confusion as the article itself refers to the 'Invictus Games Foundation' and the 'Invictus Games'. It is said that "this is an important distinction as confusion is a particular mindset required of the average consumer, whereas a mistake (by definition) is caused by lack of knowledge."<sup>22</sup>

63. Mr Lomas conceded in his skeleton argument and at the hearing, that "the assessment of likelihood of confusion under section 5(2)(b) is to be carried out on the basis of normal and fair use of the parties' marks across the breadth of their respective

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<sup>21</sup> *Ella Shoes Ltd v Hachette Filipacchi Presse S.A.* Ian Purvis AP on Appeal O/277/12

<sup>22</sup> Skeleton argument 1 March 2022 paras 22-27

specifications to the extent these are in suit, i.e. evidence of actual confusion is not required per se.”<sup>23</sup> He also contended that “the absence of any actual evidence of confusion is germane as it points to a period of honest concurrent use”.

64. Caselaw suggests, however, that whether there is or is not actual confusion is of little or no significance, as it does not necessarily reflect the actual position regarding whether the average consumer would be aware of the respective marks on the market nor whether the consumer has been consistently exposed to them side by side in comparable market environments.<sup>24</sup> The absence of confusion is unlikely to be a determinative factor therefore, as it may be as a result of differences extraneous to the earlier mark.<sup>25</sup> It is not necessary, therefore, for the Opponent to provide evidence of actual confusion as the assessment must be based on an objective test of all the relevant factors.

65. In addition, whilst the Applicant put forward a defence of honest concurrent use, for this to be relevant the Applicant must show that the relevant public has shown itself able to distinguish between goods, bearing the marks in question, without any confusion as to trade origin. The focus of the Applicant’s evidence has, however, not been on the marks in issue, but namely a different mark altogether. Furthermore, the Opponent did not file any evidence of the use it has made of its mark, therefore even if I were to consider the earlier mark against the Applicant’s Logo mark, there is no way of telling how consumers would view these marks, nor whether they have learned to tell the difference between them, as I simply am not in a position to assess the matter.

66. In *Extinction Rebellion*, the Hearing Officer considered the conflicting views of the CJEU and GC in so far as the reputation of the later mark and its relevance to the likelihood of confusion assessment. He stated:

“59.....Where the earlier mark is unused, or used over a short period of time, or on a small scale, or in a different sector of the market, the likelihood of confusion with the later mark remains untested. In these circumstances, the use and ‘reputation’ of the later mark is indeed irrelevant. Further where the

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<sup>23</sup> Para 15 of skeleton arguments

<sup>24</sup> *Compass Publishing BV v Compass Logistics Ltd* [2004] RPC 41

<sup>25</sup> *The European Limited v The Economist Newspaper Ltd* [1998] FSR 283

later mark has been used on a more extensive scale than the earlier mark, it will do the applicant for registration no good to argue that the public will, or already do, confuse the goods/services marketed under the earlier mark with goods/services marketed under its own better-known mark. [so called wrong way round confusion]. This is because in *Comic Enterprises Ltd v Twentieth Century Fox Film Corp*<sup>26</sup> the Court of Appeal.. held that even “wrong way round” confusion infringes the rights of the proprietor of the earlier mark under section 10 of the Act. Therefore, it also constitutes a likelihood of confusion for the purposes of section 5 of the Act.”

67. This is the position in the decision in suit. Furthermore, the exceptional circumstances outlined in *Budejovicky Budvar NP v Anheuser-Busch Inc*,<sup>27</sup> and those factors in *Victoria Plum Ltd v Victorian Plumbing Ltd*<sup>28</sup> are not present in the case before me. There has been no evidence produced that the parties have existed side by side, given that the Opponent did not file evidence of use, and what impact that has had on the behaviour of consumers for me to be able to accurately assess the argument put forward by the Applicant. Since there has been no evidence filed by the Opponent for me to compare, this argument is redundant. I therefore reject the Applicant’s claim of honest concurrent use.

## **Conclusion**

68. My decision has focussed on the first mark in the series, following my assessment regarding the impact of the black rectangle on the overall impression of the second mark in the series. I do not consider, however, that the Applicant will be in any stronger position in relation to the word INVICTUS being presented on this black rectangle. Whilst this element may reduce the degree of visual similarity between the respective marks slightly, I do not consider it will impact significantly nor will it have a bearing on the aural or conceptual comparison. My outcome would be the same, therefore, with or without the presence of the black rectangle.

69. The opposition under section 5(2)(b) of the Act succeeds in full. Subject to any successful appeal, the application shall be refused registration.

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<sup>26</sup> [2016] EWCA Civ 41

<sup>27</sup> Case C-482/09, EU:C:2011:605

<sup>28</sup> [2016] EWHC 2911

## Costs

70. As the Opponent has been successful it is entitled to a contribution toward its costs. Award of costs in proceedings are based upon the scale as set out in Tribunal Practice Note (TPN) 2 of 2016. At the hearing, Mr Lomas on behalf of the Applicant asked whether any cost award could be made to the Access to Justice Foundation since both he and his instructing solicitors were acting pro bono. Being unfamiliar with this practice and it not having been raised prior to the hearing, I invited both parties to file submissions, within 14 days of the hearing, as to the position and what impact this would have on any costs award. I was originally of the view that this would only impact upon the enforcement of any costs award and not whether an award of costs should be made per se.

71. Subsequently, the Opponent filed a request asking for a cost order to be made in the normal way. Nothing further was received from the Applicant. It is my view that no reason was advanced by the Applicant to deviate from the normal practice of awarding costs to the successful party on a contributory basis. The opposition was correctly brought, and the Applicant chose to defend the proceedings throughout. I consider that nothing has been raised that would impact on me making an award of costs in the Opponent's favour.

72. Consequently, applying the guidance in TPN 2/2016, I award costs to the Opponent on the following basis:

Preparing an opposition and statement of grounds:	£200
Preparing initial submissions and evidence in reply <sup>29</sup> and considering the Applicant's evidence	£500
Preparing for and attending a hearing including drafting skeleton arguments	£800

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<sup>29</sup> The Opponent's evidence in reply consisted of 1 page and was purely to submit an exhibit into evidence which it claimed demonstrated confusion on one occasion. I take into account the scant nature of the evidence filed and award costs accordingly.

Official Fee	£100
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<b>Total</b>	<b>£1600</b>
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73. I order Invictus Games Foundation to pay Invicta S.p.A. the sum of £1600 as a contribution towards its costs. This sum is to be paid within 21 days of the expiry of the appeal period or within 21 days of the final determination of this case, if any appeal against the decision is unsuccessful.

Dated this 24<sup>th</sup> day of May 2022

Leisa Davies  
For the Registrar

## **Annex**

Opponent's goods and services.

**Class 9:** Optical apparatus and instruments, eyeglasses, sunglasses, spectacles, spectacles frames, goggles for sports; protection devices for personal use against accidents, irradiation and fire; cases for electronic diaries, for photographic apparatus, for glasses, for compact discs, DVD and video cassettes, for laptops, for telephones and mobile telephones, for smartphones; covers for mobile telephones, for smartphones, for tablet computers and for electronic and/or computer products; calculating machines; pocket calculators; cases for calculators; USB flash drivers.

**Class 16:** Printed matter, including stationery articles, decalcomanias (transfers), bookmarkers, tickets, tag labels, cards, business cards, greetings cards, invitations, stickers, gift voucher, writing or drawing books, diaries, block note pads; posters, calendars, photographs; printed publications, books, periodicals, manuals and handbooks, magazines, newspapers, newsletters, catalogues, brochures and pamphlets; articles for the correspondence, including writing papers and envelopes; sets of stationery material, articles and instruments for writing and drawing, namely pens, ball-point pens, fountain pens, felt-tip markers, permanent markers, highlighters, markers for underlining, rollerball pens, fine tip pens; pencils, chalk, crayons, cases for pens and for drawing, daily and weekly planners, ring covers, folders for drawing, loose-leaf binders, gift wrapping paper, shopping bags of paper, plastic materials for packaging.

**Class 25:** Articles of clothing, footwear, headgear; active wear, sportswear, namely trousers, sport suits, shorts; swimwear, bathing suits, bikinis, slippers, swimsuit shorts, swimming caps; pareos, bras, ponchos; underwear,

namely bodies, boxers, T-shirts, tank tops, bras, culottes, leotards, shorts, slippers, thongs; leather wear and lounge bathrobes, nightdresses, pajamas; apparel of any design and nature made from fabrics of any nature, namely, pants, trousers, work clothing and work overalls, jeans, shorts, jackets, coats, waistcoats, overcoats, raincoats, hosiery, knitwear, sweaters, cardigans, fleece tops and bottoms, jumpers, twin sets, woven shirts; dresses, training and track suits, bodies, shirts, plush shirts, polo shirts, nightshirts for men, T-shirts, undershirts, cut and sew tops, dresses, skirts, trousers-skirts, gowns; socks; dressing gowns; bands; balaclavas, scarves, silk scarves, neck and face masks (bands); gloves and mittens, ski gloves; headwear, namely hats, caps, bandanas, basques, visors, wrist bands; belts and ties; footwear, shoes, dress shoes, sneakers, boots, chaps, sandals, slippers, sport and athletic shoes, studded shoes, mountaineering shoes; ski boots and trekking boots, gaiters, heeled shoes, bands for protecting face and ear from cold.

Class 35: Retailing, wholesaling and online sales relating to optical apparatus and instruments, eyeglasses, sunglasses, spectacles, spectacles frames, goggles for sports, protection devices for personal use against accidents, irradiation and fire, cases for electronic diaries, for photographic apparatus, for glasses, for compact discs, DVD and video cassettes, for laptops, for telephones and mobile telephones, for smartphones, covers for mobile telephones, for smartphones, for tablet computers and for electronic and/or computer products, calculating machines, pocket calculators, cases for calculators, USB flash drivers, printed matter, including stationery articles, decalcomanias (transfers), bookmarkers, tickets, tag labels, cards, business cards, greetings cards, invitations, stickers, gift voucher, writing or drawing books, diaries, block note pads, posters, calendars, photographs, printed publications, books, periodicals, manuals and handbooks, magazines, newspapers, newsletters, catalogues, brochures and pamphlets, articles for the correspondence, including writing papers and envelopes, sets of

stationery material, articles and instruments for writing and drawing, namely pens, ball-point pens, fountain pens, felt-tip markers, permanent markers, highlighters, markers for underlining, rollerball pens, fine tip pens, pencils, chalk, crayons cases for pens and for drawing, daily and weekly planners, ring covers, folders for drawing, loose-leaf binders, gift wrapping paper, shopping bags of paper, plastic materials for packaging, rucksacks, backpacks, school bags, shoulder bags for carrying infants, bags, shopping bags, travelling bags and duffel bags for travel, bags and holdalls for sports, handbags, bags for campers, beach bags, backpacks for hiking and climbing, satchels, briefcases, pocket wallets, purses, key cases, hip bags, suitcases, umbrellas, trunks, walking sticks, overnight suitcases, vanity cases, sample bags, garment bags for clothing, wheeled bags, wheeled backpacks and wheeled suitcases, articles of clothing, footwear, headgear, active wear, sportswear, namely trousers, sport suits, shorts, swimwear, bathing suits, bikinis, slippers, swimsuit shorts, swimming caps, pareos, bras, ponchos, underwear, namely bodies, boxers, T-shirts, tank tops, bras, culottes, leotards, shorts, slippers, thongs, leather wear and lounge wear, bathrobes, nightdresses, pajamas, apparel of any design and nature made from fabrics of any nature, namely, pants, trousers, work clothing and work overalls, jeans, shorts, jackets, coats, waistcoats, overcoats, raincoats, hosiery, knitwear, sweaters, cardigans, fleece tops and bottoms jumpers, twin sets, woven shirts, dresses, training and track suits, bodies, shirts, plush shirts, polo shirts, nightshirts for men, T-shirts, undershirts, cut and sew tops, dresses, skirts, trousers-skirts, gowns, socks, dressing gowns, bands, balaclavas, scarves, silk scarves, neck and face masks (bands), gloves and mittens, ski gloves, headwear, namely hats, caps, bandanas, basques, visors, wrist bands, belts and ties, footwear, shoes, dress shoes, sneakers, boots, chaps, sandals, slippers, sport and athletic shoes, studded shoes, mountaineering shoes, ski boots and trekking boots, gaiters, heeled shoes, bands for protecting face and ear from cold, skis, protective padding for the practice of sports, namely shin guards, knee pads, elbow pads, gloves for sports, namely for football, soccer, hockey, rugby, golf, bicycle and motorcycle, bob-sleighs, sleighs

(sports articles), roller skates, games, toys, skateboards (recreational equipment), ski and surf boards, parachutes for paragliding, paragliders, hang gliders.