

O-466-12

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO 2571044
IN THE NAME OF LYST LTD**

AND

**OPPOSITION THERETO UNDER NO 101937
BY LIST TRADE-MARK SRL**

Background

1. Application No 2571044 seeks registration of the trade mark LYST and stands in the name of Lyst Ltd (the applicant). It has a filing date of 2 February 2011. Following an amendment to delete certain goods and services from the application, registration is now sought for the following goods and services:

Class 3

Soaps, cosmetics, perfumery, hair lotions, essential oils.

Class 9

Sunglasses; spectacles; spectacle frames; spectacle cases; computer hardware and software; electronic games for use on computers, mobile phones, smartphones and other mobile devices; applications for use on computers, mobile phones, smartphones and other mobile devices; social media and/or social networking applications; applications and software for allowing data collection, data retrieval, and sharing of data with others electronically; downloadable electronic publications; parts and fittings for all the aforesaid goods.

Class 35

The bringing together for the benefit of others, of a variety of goods, namely, one or more of the following types of goods: clothing and footwear, cosmetics, jewellery, fashion accessories, leather goods, luggage, bags and eyewear, enabling customers to conveniently purchase those goods and services from an Internet web site or by means of telecommunications or by means of a global network or by mail order catalogue or from a retail store; advertising and advertisement services; provision of advertising space through computer networks and websites; distribution of advertising material and dissemination of advertising messages; providing a searchable online advertising guide featuring the goods of third party sellers; business information services; electronic shopping retail services connected with one or more of the following types of goods: clothing and footwear, cosmetics, jewellery, fashion accessories, leather goods, luggage, bags and eyewear; provision of online advertising space for sellers and buyers to advertise, market and solicit goods and conclude sales transactions; providing evaluative feedback and ratings of sellers' goods, the value and price of sellers' goods, buyers' and sellers' performance, delivery, and overall experience in connection therewith; providing a searchable online evaluation database for buyers and sellers; customer loyalty services and customer club services for commercial, promotional and advertising purposes; promoting the goods and services of others; auctioning; auctioneering services; assistance with purchasing goods and services, for others; searching for data in computer files, for others; demonstration of goods; distribution of samples; commercial information agency services; import and export agencies; assistance with the procurement of goods and services, for others; compilation and systemisation of data into computer databases; online advertising on the Internet and other global computer network systems; market analysis; marketing research; presentation of goods on communication media, for retail purposes; rental of publicity material; rental of advertising space; renting out of advertising time in communication media; computerised online ordering of consumer goods.

Class 36

Issuing loyalty and gift cards; provision and arranging of payment protection insurance; management of customer accounts and mail order accounts; provision of information relating to the aforesaid.

Class 38

Operating web-blogs; providing on-line forums, interactive bulletin boards and interactive communication services; transmission of information, messages, text, data, multimedia content, videos and images by electronic means; online facilities for hosting, sharing, organising and conducting online meetings, gatherings, forums, chatrooms, journals, blogs and interactive discussions; organising and providing online community forums for users to post, search, watch, share, critique, rate and comment on goods and services; electronic transmission of data and information; provision of online shopping and fashion consultancy portals; provision of information relating to the aforesaid.

Class 42

Computer services; hosting of digital content on the Internet.

Class 45

Online social networking services; provision of information relating to online shopping, fashion and fashion accessories; consultancy services relating to fashion and/or fashion accessories, all provided both online and/or in person; product reviews and product information sharing.

2. Following publication of the application in the *Trade Marks Journal*, on 18 February 2011, notice of opposition was filed by List Trade-Mark S.R.L. (the opponent"). The opposition is founded on grounds under sections 5(2)(b) and 5(3) of the Act and is directed only at those goods and services which I have underlined above.

3. The opponent relies on the following Community Trade Mark ("CTM") insofar as it is registered for the following goods:

Mark CTM 2593549	Filing/ registration date	Goods relied upon
	26 February 2002/ 17 January 2005	Class 14 Jewellery Class 18 Leather and imitations of leather, goods made from these materials and not included in other classes; travelling bags Class 25 Clothing; footwear; headgear

4. The applicant filed a counterstatement in which it denies the claims made. It puts the opponent to proof of use of its mark in respect of all goods relied upon.

5. Both parties filed evidence and written submissions and the matter came before me for a hearing on 6 September 2012. The applicant was represented by Mr Guy Hollingsworth of counsel instructed by Nabarro LLP, its legal representatives in these proceedings. The opponent was represented by Ms Fiona Clark of counsel, instructed by Dehns.

Decision

6. The first ground of opposition is founded on section 5(2)(b) of the Act which states:

—~~5~~(2) A trade mark shall not be registered if because -

(a) ...

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

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

7. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

—~~6~~(1) In this Act an —~~ear~~lier trade mark” means -

(a) a registered trade mark, international trade mark (UK) or Community trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,

(b)

(c)

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

8. The opponent relies on the CTM set out at paragraph 3 above. It is an earlier mark within the meaning of section 6(1) of the Act. In its counterstatement, the applicant requested that the opponent prove use of its mark and, as the earlier mark relied upon by the opponent was registered more than five years prior to the date the application was published, the requirements of Section 6A of the Act are relevant to this earlier mark. Section 6A of the Act reads:

—6A(1) This section applies where-

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

there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

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-

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)

(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.

(7)....”

9. Also of relevance is section 100 of the Act which states:

—400. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

10. The relevant period in which the opponent is required to prove use of its mark is 19 February 2006 to 18 February 2011. The guiding principles to be applied in determining whether there has been genuine use of a mark are set out in *Ansul BV v Ajax Brandbeveiliging BV* [2003] RPC 40 and *Laboratoire de la Mer Trade Mark* [2006] FSR 5. From these cases it is clear that:

- genuine use entails use that is not merely token. It must also be consistent with the essential function of a trade mark, that is to say to guarantee the identity of the origin of goods or services to consumers or end users (*Ansul*, paragraph 36);
- the use must be 'on the market' and not just internal to the undertaking concerned (*Ansul*, paragraph 37);
- it must be with a view to creating or preserving an outlet for the goods or services (*Ansul*, paragraph 37);
- the use must relate to goods or services already marketed or about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns (*Ansul*, paragraph 37);
- all the facts and circumstances relevant to determining whether the commercial exploitation of the mark is real must be taken into account (*Ansul*, paragraph 38);
- the assessment must have regard to the nature of the goods or services, the characteristics of the market concerned and the scale and frequency of use (*Ansul*, paragraph 39);
- but the use need not be quantitatively significant for it to be deemed genuine (*Ansul*, paragraph 39);
- an act of importation could constitute putting goods on the market (*Laboratoire de la Mer*, paragraph 25 referring to the earlier reasoned order of the ECJ);
- there is no requirement that the mark must have come to the attention of the end user or consumer (*Laboratoire de la Mer*, paragraphs 32 and 48);
- what matters are the objective circumstances of each case and not just what the proprietor planned to do (*Laboratoire de la Mer*, paragraph 34);
- the need to show that the use is sufficient to create or preserve a market share should not be construed as imposing a requirement that a significant market share has to be achieved (*Laboratoire de la Mer*, paragraph 44).

11. I must also keep in mind the guidance in *Thomson Holidays Ltd v Norwegian Cruise Lines Ltd* [2003] RPC 32, in relation to determining what constitutes a fair specification, namely:

—Bmfrey J in *Decon* suggested that the court's task was to arrive at a fair specification of goods having regard to the use made. I agree, but the court still has the difficult task of deciding what is fair. In my view the task should be carried out so as to limit the specification so that it reflects the circumstances of the particular trade and the way that the public would perceive the use”.

12. In *Animal Trade Mark* [2004] FSR 19, Jacob J held:

—The reason for bringing the public perception in this way is because it is the public which uses and relies upon trade marks. I do not think there is anything technical about this: the consumer is not expected to think in a pernickety way because the average consumer does not do so. In coming to a fair description the notional average consumer must, I think, be taken to know the purpose of the description. Otherwise they might choose something too narrow or too wide. Thus, for instance, if there has only been use for three-holed razor blades imported from Venezuela (Mr T.A. Blanco White's brilliant and memorable example of a narrow specification) “three-holed razor blades imported from Venezuela” is an accurate description of the goods. But it is not one which an average consumer would pick for trade mark purposes. He would surely say “razor blades” or just “razors”. Thus the “fair description” is one which would be given in the context of trade mark protection. So one must assume that the average consumer is told that the mark will get absolute protection (“the umbra”) for use of the identical mark for any goods coming within his description and protection depending on confusability for a similar mark or the same mark on similar goods (“the penumbra”). A lot depends on the nature of the goods—are they specialist or of a more general, everyday nature? Has there been use for just one specific item or for a range of goods? Are the goods on the High Street? And so on. The whole exercise consists in the end of forming a value judgment as to the appropriate specification having regard to the use which has been made.”

13. Also of relevance are the comments of the Court of First Instance in *Reckitt Benckiser (España) SL v OHIM*, Case T-126/03 where it said:

—It follows from the provisions cited above that, if a trade mark has been registered for a category of goods or services which is sufficiently broad for it to be possible to identify within it a number of sub-categories capable of being viewed independently, proof that the mark has been put to genuine use in relation to a part of those goods or services affords protection, in opposition proceedings, only for the sub-category or sub-categories to which the goods or services for which the trade mark has actually been used belong. However, if a trade mark has been registered for goods or services defined so precisely and narrowly that it is not possible to make any significant sub-divisions within the category concerned, then the proof of genuine use of the mark for the goods or services necessarily covers the entire category for the purposes of the opposition.

Although the principle of partial use operates to ensure that trade marks which have not been used for a given category of goods are not rendered unavailable, it must not, however, result in the proprietor of the earlier trade

mark being stripped of all protection for goods which, although not strictly identical to those in respect of which he has succeeded in proving genuine use, are not in essence different from them and belong to a single group which cannot be divided other than in an arbitrary manner. The Court observes in that regard that in practice it is impossible for the proprietor of a trade mark to prove that the mark has been used for all conceivable variations of the goods concerned by the registration. Consequently, the concept of ‘part of the goods or services’ cannot be taken to mean all the commercial variations of similar goods or services but merely goods or services which are sufficiently distinct to constitute coherent categories or sub-categories.”

14. I also note the comments of Mr Geoffrey Hobbs Q.C. sitting as the appointed person, in *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited* BL O/345/10, where he stated:

–However, that does not appear to me to alter the basic nature of the required approach. As to that, I adhere to the view that I have expressed in a number of previous decisions. 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.”

The opponent’s evidence

15. The opponent’s evidence takes the form of a witness statement by Ruben Dell’Ariccia. Sig Dell’Ariccia is CEO of the opponent company, having been in its employ since 2000. He states he is fully conversant with the English language.

16. Sig Dell’Ariccia states that the opponent was founded in Rome in 1991. It designs, manufactures and sells women’s attire. It trades in Europe, Asia and North America. As far as its European trade is concerned, it sells its wares through its own stores and through concessions in Italy, with two in the Czech Republic and one each in Portugal, Slovakia, Cyprus and Bulgaria. He states the opponent has sold its products in a number of other countries within Europe (e.g. Austria, France, Greece and Spain) though he does not give any further information about how these sales are made. He states that at the date of his witness statement (26 September 2011), the opponent had no trade in the UK though it had plans to do so. He gives no details of those plans.

17. Sig Dell’Ariccia states that in the 5 years preceding the publication date of the application, the opponent has used both its earlier mark and, more broadly, what he refers to as the “plain word List” in relation to jewellery, bags, belts, gloves, clothing, footwear, headgear and coat collars.

18. Sig Dell’Ariccia gives the following details of total annual turnover of what he calls “LIST branded products” as sold in the EU as follows:

Year	Approx amount €
2006	22.8m
2007	22.1m
2008	15m
2009	14.7m
2010	14.8m

19. The above figures are not broken down in terms of the respective goods on which use is claimed and would seem to cover goods not relied on in these proceedings as the opponent's evidence shows it has also sold goods such as perfumes, sunglasses and keyrings. At RDA2, Sig Dell'ArICCia provides more detailed turnover figures for goods sold between 2006 and 2010. For each year there is a list of items sold in particular countries which includes countries outside the EU. Each year's list differs from the other (both in terms of the goods and the countries listed) but it is clear from each of them that the opponent's main area of trade is in respect of clothing with its main market being Italy.

20. At RDA 5.1 to RDA 5.4 Sig Dell'ArICCia exhibits a number of invoices, credit notes and what are said to be 'transport documents' for the years 2007 to 2010 respectively. Each bears the earlier mark and the handwritten translation written on them indicates that they refer to a variety of goods such as 'dress', 'bag', 'brooch', 'hats', 'shoes' and 'belt' as well as others with which I am not familiar e.g. 'caban'. The goods are identified by code number and name or number (e.g. a dress which appears under '2700160 Alison', (see page 170 of RDA 5.1) and a belt that appears under '280224AN/40' see page 233 of RDA 5.2) and some, but not all, show the material from which the article is made.

21. Sig Dell'ArICCia states that advertising has taken place throughout the EU via fashion shows, presentations, public relations and VIP events though he gives no further details of when or where these may have taken place or who might have attended such events. He states there has also been promotion by way of print advertising and editorials including the company's own LIST COLLEZIONE magazine and via celebrity endorsements. Again, no details are given of where and to whom such publications may have been issued nor are any details given of the endorsements.

22. Sig Dell'ArICCia gives the following details of advertising and marketing expenditure:

Year	Amount (euros)
2006	637,037
2007	503,256
2008	249,714
2009	133,538
2010	105,890

23. At RDA6 is a breakdown of this expenditure which is split between figures for 'online magazines investment', 'bill posters and press expenses', 'catalogues and models and expenses' and 'events and sponsorship'.

24. Sig Dell'Aricecia exhibits the following examples of advertising and marketing materials:

RDA7: LIST Collection Brochure Fall/Winter 2006. This is a booklet of a collection of photographs of what I take to be models, in various outfits. Whilst the brochure contains neither text of any sort nor prices, it shows the mark LIST on the front and back covers.

RDA8: LIST Collection Brochure Summer 2007 which takes the form of a slim hard- backed book. Much of the advertising text within the brochure is in Italian but the mark LIST can be seen on various pages.

RDA9: LIST Collection Brochure bearing the handwritten date of Spring/Summer 2008. This is another booklet of a collection of photographs of what I take to be models, in various outfits. Other than the occasional word across some of the photographs (e.g. arrogant, modern, bijoux) the brochure contains no text though the word LIST appears on the front cover.

No information is given as to where, how many or to whom these brochures may have been issued.

25. Sig Dell'Aricecia also exhibits the following:

RDA10.1: LIST Magazine Autumn/Winter 2009-2010.

RDA10.2: LIST Magazine Spring/Summer 2010

RDA10.3: LIST Magazine Autumn/Winter 2010-2011

These three exhibits consist of glossy magazines. Whilst the text on the cover is in Italian, many of the articles appear in Italian and English. Each bears the word LIST, both on the cover and within the magazine and each shows goods from the opponent as well as those of other traders. No details are provided of where, how many or to whom these magazines may have been issued.

26. Sig Dell'Aricecia states that the LIST clothing brand has become well-known globally and is known in the fashion industry in the UK. In support of this he exhibits RDA11 which is the LIST Magazine Autumn/Winter 2011-2012 with a certified translation into English of the front page. At page 1151 of the exhibit is an article which reports on awards promoted by Retail Leisure International Magazine. The opponent was awarded the 'Rising Star of Retail' award. The article reports that a number of awards have been given by "magazine experts" to a number of companies around the world involved in the "retail & leisure sector, with special consideration given to retail, shopping centres, hotels and spas, travel and global expos". Whilst no indication is given on when the award ceremony itself was held, the magazine bears the date of July 2011. The ceremony took place at the National History Museum in London. No indication is given of who might have attended that ceremony or that the awards are recognised by or within the fashion industry itself, whether in the UK or elsewhere.

Findings of fact in relation to the proof of use

27. In its skeleton argument, the applicant refers me to the opinion of the Advocate General in the case of *Leno Merken BV v Hagelkruis Beheer BV* Case 149/11, and submits that the opponent's evidence of use –insufficient to amount to genuine use in the Community having regard to the nature and size of the market". I note that the Advocate General concluded that:

—Article 15(1) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark must be interpreted as meaning that (i) use of a Community trade mark within the borders of a single Member State is not, of itself, necessarily sufficient to constitute genuine use of that trade mark, but (ii) it is possible that, when account is taken of all relevant facts, use of a Community trade mark within an area corresponding with the territory of a single Member State will constitute genuine use in the Community.

Genuine use in the Community within the meaning of Article 15(1) of Regulation No 207/2009 is use that, when account is taken of the particular characteristics of the relevant market, is sufficient to maintain or create market share in that market for goods and services covered by the Community trade mark."

28. The opponent relies on its mark in relation to *jewellery*. Whilst the evidence filed suffers from a number of flaws as set out above, the brochures and magazines show various items of jewellery within them. The invoices etc. and turnover figures set out in exhibit RDA2 show sales in relation to bracelets, necklaces and brooches during the relevant period. By far the vast majority of sales are said to have been made in Italy though sales have been made in other countries with the EU. And, whilst I do not know the extent of those sales in terms of their relationship either to the market share or to the opponent's overall turnover in any given year, they are sales which I consider sufficient to maintain or create a market share. I am satisfied that the opponent has proven use of its mark in relation to these goods. Whilst bracelets, necklaces and brooches are distinct items, they are all items of jewellery. I consider the term *jewellery* to be a fair specification for the use made of the mark and it is the one which I will take into consideration in my decision.

29. The opponent also relies on its mark in relation to *leather and imitations of leather, goods made of these materials and not included in other classes; travelling bags* and I will go on to consider these further.

30. Leather and imitations of leather are piece goods. The opponent has not provided any evidence of any use on such goods. Having failed to prove use in relation to these goods, the opponent is not entitled to rely on them in these proceedings.

31. As for *goods made of leather and imitations of leather*, the invoices etc. show sales of leather keycases and bags. 'Bags' is a broad term which would include goods as diverse as e.g. sports bags, shopping bags, handbags and toilet bags but there is no evidence of use in relation to such a wide range of goods. Indeed, the brochures and magazines within the evidence show the opponent to have offered

only handbags and this would accord with Sig Dell'Ariccia's statement that the opponent's business interests are in women's attire'. The only other evidence which I can see which relates to leather goods, refers to sales of leather belts, which would not come within the specification relied on here as they are not goods which are proper to class 18. There is no specific evidence to show what use may have been made of the mark in relation to any goods made of imitations of leather. Taking the evidence as a whole, I am satisfied that the mark has been used in relation to leather handbags and leather keycases which I consider to be a fair specification which I will take into consideration in my decision

32. *Travelling bags* are, self-evidently, a type of bag, however, as indicated above, no evidence of use has been filed in respect of such goods and I find the opponent is not entitled to rely on them in these proceedings.

33. Finally, the opponent relies on its mark in relation to *clothing, footwear, headgear*. Despite the flaws in the evidence, there is no doubt that the opponent has used its mark in relation to each of these goods in the relevant period, however, that use has been shown only in relation to such goods for women (again, in line with Sig Dell'Ariccia's statement that the opponent sells women's attire). *Clothing, footwear and headgear all for women* is a fair specification for the use made and one which I will take into account in my decision.

The objection under section 5(2)(b) of the Act

34. In determining the question under Section 5(2)(b), I take into account the guidance provided by the European Court of Justice (CJEU) in *Sabel v Puma AG* [1998] R.P.C. 199, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] R.P.C. 117, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* [2000] F.S.R 77, *Marca Mode CV v Adidas AG* [2000] E.T.M.R.723, *Medion AG v Thomson Multimedia Sales Germany & Austria GmbH* C-120/04 and *Shaker di Laudato & C. Sas v OHIM* C-334/05 (Limoncello), as cited with approval in *Och-Ziff Management Europe Ltd and Oz Management LP v Och Capital LLP, Union Investment Management Ltd and Ochoki* [2010] EWCH 2599 (Ch). It is clear from these cases that:

- (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, in certain circumstances, be dominated by one or more of its components;
- (f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks causes the public to wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

The relevant consumer and the nature of the purchasing process

35. Each of the respective goods is a general consumer item used by the public at large. They are goods which are widely available on the high street, by mail order and online. Whilst the goods of each class may be sold through specialist traders (e.g. jewellery through a jewellery store, headgear through a milliner, spectacles through an optician) they are also goods that will be sold in a department store or supermarket, albeit, most likely, in different parts of those stores. The applicant's services are wide-ranging. Some, such as *the bringing together for the benefit of others, of a variety of goods...* are services such as will be used by the general public and may be available online, by mail order or on the high street. Others, such as *advertising and advertisement services*, which also may be accessed in the real or virtual world, will be used by the general public or by businesses and still others, such as *market analysis* and *marketing research* will be used by businesses. Whilst some of these services, such as *the bringing together for the benefit of others...* may be accessed on a regular basis with little particular thought being paid to them, others such as obtaining insurance will be bought less frequently and will involve a

degree of care in their purchase. In all cases, the visual aspect of the purchase is likely to predominate though not to the extent that the other aspects can be ignored.

Comparison of goods and services

36. In *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 28, Jacob J gave advice as to how similarity should be assessed. He identified the following factors to be taken into account:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.”

37. Subsequently, in *Canon Kabushiki Kaisha v MGM Inc* the CJEU stated:

—23In assessing the similarity of the goods or services concerned.....all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, *inter alia*, their nature, intended purpose and their method of use and whether they are in competition with each other or are complementary.”

38. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-325/06 the General Court stated:

—82It is true that goods are complementary if there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking (see, to that effect, Case T-169/03 *Sergio Rossi v OHIM- Sissi Rossi (SISSI ROSSI)* [2005] ECR II-685, paragraph 60, upheld on appeal in Case C-214/05P *Rossi v OHIM* [2006] ECR I-7057; Case T-364/05, *Saint-Gobain Pam v OHIM –Promamsa (PAM PLUVIAL)* [2007] ECR II-757, paragraph 94; and Case T-443/05 *El Corte Inglés v OHIM –Bolaños Sabri (PiraNam diseño original Juan Bolaños)* [2007] ECR-1-0000, paragraph 48).”

39. In *Gérard Meric v OHIM*, Case T-133/05, the General Court said:

—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 when 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).”

40. Finally, in *Avnet Incorporated v Isoact Ltd* [1998] FSR 16, Jacob J stated:

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

41. Taking account of my earlier findings as to the extent to which use of the earlier mark has been proved, the goods and services to be compared are:

Earlier mark	Application
Class 14: Jewellery	Class 3: Soaps, cosmetics, perfumery, hair lotions, essential oils
Class 18: Leather handbags and leather keycases	Class 9: Sunglasses; spectacles; spectacle frames; spectacle cases Class 35: The bringing together for the benefit of others, of a variety of goods, namely, one or more of the following types of goods:
Class 25: Clothing, footwear, headgear all for women	clothing and footwear, cosmetics, jewellery, fashion accessories, leather goods, luggage, bags and eyewear, enabling customers to conveniently purchase those goods and services from an Internet web site or by means of telecommunications or by means of a global network or by mail order catalogue or from a retail store; advertising and advertisement services; provision of advertising space through computer networks and websites; distribution of advertising material and dissemination of advertising messages; providing a searchable online advertising guide featuring the goods of third party sellers; business information services; electronic shopping retail services connected with one or more of the following types of goods: clothing and footwear, cosmetics, jewellery, fashion accessories, leather goods, luggage, bags and

	<p>eyewear; provision of online advertising space for sellers and buyers to advertise, market and solicit goods and conclude sales transactions; providing evaluative feedback and ratings of sellers' goods, the value and price of sellers' goods, buyers' and sellers' performance, delivery, and overall experience in connection therewith; providing a searchable online evaluation database for buyers and sellers; customer loyalty services and customer club services for commercial, promotional and advertising purposes; promoting the goods and services of others; auctioning; auctioneering services; assistance with purchasing goods and services, for others; searching for data in computer files, for others; demonstration of goods; distribution of samples; commercial information agency services; import and export agencies; assistance with the procurement of goods and services, for others; compilation and systemisation of data into computer databases; online advertising on the Internet and other global computer network systems; market analysis; marketing research; presentation of goods on communication media, for retail purposes; rental of publicity material; rental of advertising space; renting out of advertising time in communication media; computerised online ordering of consumer goods.</p> <p>Class 36: Issuing loyalty and gift cards; provision and arranging of payment protection insurance; management of customer accounts and mail order accounts; provision of information relating to the aforesaid.</p> <p>Class 38: Transmission of information, messages, text, data, multimedia content, videos and images by electronic means; provision of online shopping and fashion consultancy portals; provision of information relating to the aforesaid.</p> <p>Class 45: Provision of information relating to online shopping, fashion and fashion accessories; consultancy services relating to fashion and/or fashion accessories, all provided both online and/or in person; product reviews and product information sharing.</p>
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42. The opponent submits that the respective goods are similar. It says:

–Sunglasses and spectacles are items which are influenced by fashion trends and sunglasses in particular are likely to be regarded as fashion accessories and to be part of a particular “look” and thereby complement particular outfits in aesthetic terms”.

43. Accepting that the degree of similarity —is less in the case of the class 3 goods than those in Class 9”, the opponent goes on to say:

—the position is essentially the same in relation to the Class 3 goods. It is well-known that fashion houses often sell perfumes and/or scented products of various kinds”.

44. In support of its claims, the opponent refers me to the decision of the Registrar in *QS by Oliver* [1999] RPC 520 and submits that the respective goods are similar because they are —often sold through the same stores or websites, promoted and advertised in the same magazines (even on the same pages) and directed to the same consumer”. The case referred to considered the similarity or otherwise of goods in classes 18 (being handbags and purses) and 25 (being clothing). The Hearing Officer considered handbags and purses to be ‘clothing accessories’. Finding the position “finely balanced” he determined that the respective goods were —close enough to be considered similar”. Whilst I agree that handbags/purses can be considered as accessories to clothing and that there is a relatively close relationship between them and clothing, I do not consider, absent specific evidence on the point, that the same can be said in relation to the specified goods in class 3 and 9. Whilst there may be some designers who produce both clothing and e.g. perfume and/or sunglasses, there is no evidence that this is the norm or a widespread practice in the trade. As found by the Hearing Officer in the case of *Womanity O/389/12*:

—As the evidence suggests, it is not uncommon for fashion designers (and their brands) to extend their businesses by putting their names (and brands) to perfume. However, it cannot be right, simply because businesses expand their product ranges, that the goods so expanded are automatically considered similar to the goods from which they have expanded. It is therefore necessary to fully consider the tests advocated by the jurisprudence.”

I will compare the respective goods before me in line with the principles set out above.

45. *Jewellery* is used by members of the general public as an adornment to the body. Whilst *Soaps, cosmetics, perfumery, hair lotions and essential oils* can, in a general sense, also be used by a member of the general public on the body, the uses differ in that these latter goods will be applied directly to the skin or hair in order to e.g. improve its tone or condition rather than being worn on the person as decoration. The uses and natures of the respective goods differ as do the trade channels through which they reach the market. One will not be a substitute for the other and they are not complementary goods. The respective goods are dissimilar.

46. Neither do I consider *jewellery* to be similar goods to *sunglasses, spectacles, spectacle frames and spectacle cases*. Whilst each of these respective goods can be worn by members of the general public, *sunglasses* and *spectacles* are used to protect or improve the eyesight, whereas *jewellery* is worn as a decoration. The uses therefore differ. I have no evidence that the same companies commonly manufacture both jewellery and sunglasses etc. In my view, the trade channels by which they reach the market differ and, where the goods are sold in the same store, they will appear in different parts of that store. The respective goods are not in competition nor are they complementary. The respective goods are dissimilar. *Spectacle frames* and *spectacle cases* are also dissimilar goods to those of the opponent. Again, their

users may overlap, but their uses, natures and channels of trade differ, they are not in competition with each other and they are not complementary goods.

47. *Leather handbags* and *leather keycases* are dissimilar goods to each of the goods for which registration is applied. Whilst, again, they may have the same users, the uses, nature and trading channels of the respective goods self-evidently differ and they are not in competition nor are they complementary.

48. *Clothing, footwear, headgear all for women* are all items of apparel. Whilst most of the goods of the application in both classes 3 and 9 may also be worn in a general sense, the natures and purpose of the respective goods differ as do the trade channels by which they reach the market. The respective goods are not in competition nor are they complementary. The respective goods are dissimilar.

49. In respect of the services of the application, the opponent submits:

—...retail services (through whatever medium they may be provided) in relation to clothing and other fashion items are closely similar services to the goods relied upon by the Opponent. Many fashion brands are sold through dedicated retail outlets where the fashion brand is also used in relation to the retail services provided at that store. Retail services of this kind may including (sic) the provision of loyalty cards, payment protection insurance, customers accounts, information services (such as the provision of services comparing their own goods with those of third parties) and the like.”

50. In making the comparison of the opponent’s goods with the applicant’s retail services in class 35, I note the comments of the Court of First Instance (now the General Court) in *Oakley, Inc v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-116/06. In that case the conflict was between an earlier mark which was registered for goods in classes 18 and 25 and a later mark which had been registered for ~~Retail and wholesale services, including on-line retail store services; retail and wholesale of eyewear, sunglasses, optical goods and accessories, clothing, headwear, footwear, watches, timepieces, jewellery, decals, posters, athletic bags, backpacks and knapsacks and wallets~~”. The GC upheld OHIM’s decision that the goods in classes 18 and 25 were similar to ~~etail and wholesale of eyewear, sunglasses, optical goods and accessories, clothing, headwear, footwear, watches, timepieces, jewellery, decals, posters, athletic bags, backpacks and knapsacks, and wallets~~” as there was a complementary relationship between the retailing of the goods and the goods themselves. The Court said:

—54Clearly, in the present case, the relationship between the retail services and the goods covered by the earlier trade mark is close in the sense that the goods are indispensable to or at the very least, important for the provision of those services, which are specifically provided when those goods are sold. As the Court held in paragraph 34 of *Praktiker Bau-und Heimwerkermärkte*, paragraph 17 above, the objective of retail trade is the sale of goods to consumers, the Court having also pointed out that that trade includes, in addition to the legal sales transaction, all activity carried out by the trader for the purpose of encouraging the conclusion of such a transaction. Such

services, which are provided with the aim of selling certain specific goods, would make no sense without the goods.”

51. In line with that finding, I consider the opponent's goods to be similar to the following services of the applicant in class 35:

The bringing together for the benefit of others, of a variety of goods, namely, one or more of the following types of goods: clothing and footwear, jewellery, fashion accessories, leather goods, bags, enabling customers to conveniently purchase those goods and services from an Internet web site or by means of telecommunications or by means of a global network or by mail order catalogue or from a retail store; electronic shopping retail services connected with one or more of the following types of goods: clothing and footwear, jewellery, fashion accessories, leather goods, bags; presentation of goods on communication media, for retail purposes; computerised online ordering of consumer goods.

I find the opponent's goods to be dissimilar to the following services of the applicant in class 35:

The bringing together for the benefit of others, of a variety of goods, namely one or more of the following types of goods: cosmetics, luggage, and eyewear enabling customers to conveniently purchase those goods and services from an Internet web site or by means of telecommunications or by means of a global network or by mail order catalogue or from a retail store; electronic shopping retail services connected with one or more of the following types of goods: cosmetics, luggage and eyewear.

52. I go on to consider the remaining services as appear in class 35 of the application and deal first with *advertising and advertisement services; provision of advertising space through computer networks and websites; distribution of advertising material and dissemination of advertising messages; providing a searchable online advertising guide featuring the goods of third party sellers; provision of online advertising space for sellers and buyers to advertise, market and solicit goods and conclude sales transactions; promoting the goods and services of others; online advertising on the Internet and other global computer network systems; rental of publicity material; rental of advertising space; renting out of advertising time in communication media.*

53. These are not retail services as such but are distinct services, the core meaning of which is the provision of advertising and promotion facilities. They will be provided to or for third parties. I consider them to be dissimilar to each of the opponent's goods as the uses and nature of them differ and they are neither in competition nor complementary.

54. *Business information services and commercial information agency services* are services by which, self-evidently, information of a business or commercial nature is provided whilst *market analysis* and *marketing research* are services which analyse and research the commercial markets and provide information on the results found. They are each specialised services most likely to be used by other businesses.

Providing evaluative feedback and ratings of sellers' goods, the value and price of sellers' goods, buyers' and sellers' performance, delivery, and overall experience in connection therewith and providing a searchable online evaluation database for buyers and sellers are services which provide information about goods, services and their sellers or providers. In respect of all of these services, whilst their users may overlap, their uses and nature differ to each of the opponent's goods and they are neither in competition nor complementary to those goods. The respective goods and services are dissimilar.

55. *Auctioning and auctioneering services* are specialised services by which a member of the general public or a business offers for sale single or multiple items. The services provide the facilities for the seller to offer his goods or services for sale, most often to the highest bidder. The users may overlap but they have different natures and uses to those of the opponent's goods and they are neither in competition nor complementary to those goods. The respective goods and services are dissimilar.

56. *Customer loyalty services; and customer club services for commercial, promotional and advertising purposes* are services which e.g. identify, provide and manage incentive schemes which themselves are intended to enable a business to gain or retain customers and maintain revenue from those customers. *Searching for data in computer files, for others and compilation and systemisation of data into computer databases* are services by which information is input, organised and retrieved from a computer. *Import and export agencies* are services which enable businesses to bring in goods from or move goods to other countries. *Demonstration of goods and distribution of samples* are services used to show e.g. how particular goods work or what they look like. Again, the respective users may overlap but they are each services which have different uses and natures to those of the opponent's goods and are neither in competition with nor complementary to those goods. The respective goods and services are dissimilar.

57. That leaves *assistance with purchasing goods and services, for others; and assistance with the procurement of goods and services, for others*. They are very specific services by which a middle-man acts between a potential purchaser and a seller (though the middle-man may also be employed by that seller in the guise of a personal shopper) to allow the potential purchaser to e.g. identify and locate suitable goods or services or obtain the best deal. The users may overlap but they are each services which have different uses and natures to those of the opponent's goods and are neither in competition with nor complementary to those goods. The respective goods and services are dissimilar.

58. The applicant's services in class 36 are *issuing loyalty and gift cards; provision and arranging of payment protection insurance; management of customer accounts and mail order accounts; provision of information relating to the aforesaid*. They are each a service used in the course of trade to generate, maintain or manage income for a business and have different uses and natures to those of the opponent's goods and are neither in competition with nor complementary to those goods. The respective goods and services are dissimilar.

59. The applicant's services in class 38 include *transmission of information, messages, text, data, multimedia content, videos and images by electronic means*. Provided electronically, these are transmission services in the nature of telecommunications. The *provision of information relating to* these services are services which, self-evidently, provide information. Whilst the users may overlap, the uses and natures of these services differ from those of the opponent's goods and the respective goods and services are neither in competition nor complementary and are dissimilar.

60. The *provision of information relating to online shopping, fashion and fashion accessories; consultancy services relating to fashion and/or fashion accessories, all provided both online and/or in person; product reviews and product information sharing* are services which allow a business better to reach potential customers and provide the end user with information. The respective users may overlap but the uses and natures of these services differ from those of the opponent's goods and the respective goods and services are not in competition nor are they complementary. The respective goods and services are dissimilar.

Comparison of marks

61. It is well established that the average consumer is considered to be reasonably well informed, circumspect and observant but perceives trade marks as wholes and does not pause to analyse their various details. In addition, the average consumer rarely has the chance to make direct comparisons between trade marks but must, instead, rely on the imperfect picture of them he may have kept in mind. In reaching a conclusion on similarity, I must identify what I consider to be the distinctive and dominant elements of the respective trade marks and, with that conclusion in mind, I must go on to compare the respective trade marks from the visual, aural and conceptual perspectives.

62. I set out below the marks to be compared:

Earlier mark	Applicant's mark
LIST	LYST

Each of the respective marks consists of a single word made up of four letters. They share the first, third and fourth of those letters but differ in respect of the second letter. The earlier mark is not presented, as is the case with the mark for which registration is applied, in plain block capitals but the degree of stylisation is minimal and is unlikely to be noticed. As single words in unremarkable font, neither mark has any dominant or distinctive elements, the distinctiveness of each lies in its whole.

63. From a visual perspective, whilst the letters I and Y are visually different there is a fairly high degree of similarity between the respective marks given the commonality and order of the letters L, S and T within each of them. From an aural perspective, the marks are identical, the letters I and Y lending the same vowel sound to each mark.

64. The word LIST is an ordinary, everyday, dictionary word. The word has a number of meanings including ‘a selvage’ or ‘tolean’ but is most likely to be understood by the average consumer as referring to an item by item record of something as in e.g. a shopping list. LYST does not, as far as I have been made aware, have any meaning in English and may lead some to think it a word of unknown meaning which would lead to there being conceptual distance between the respective marks. For others, it may bring the word LIST to mind, in which case the respective marks would be identical from the conceptual perspective.

The distinctiveness of the earlier mark

65. The distinctive character of a trade mark can be appraised only, first, by reference to the goods or services in respect of which it has been acquired and, secondly, by reference to the way it is perceived by the relevant public (see *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In determining the distinctive character of a trade mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the trade mark to identify the goods and services for which it has been registered as coming from a particular undertaking and thus to distinguish those goods and services from those of other undertakings (see *Windsurfing Chiemsee v Huber and Attenburger* Joined Cases C-108/97 and C-109/97 [1999] ETMR 585).

66. In its submissions, the applicant states that LIST —is a word which is liable to be used in connection with clothing and other goods relied upon by the Opponent: for example, on a *shopping list* or on a *price list*”. It has filed evidence, at DP1 to DP5, in support of its claim that there is a —propensity for the word LIST to be used in connection with the goods relied upon by the Opponent”.

67. The exhibits are filed under a witness statement of David Parrish, solicitor with Nabarro LLP the applicant’s legal representatives in these proceedings. Each of the exhibits show the first few pages of the results of an internet search carried out by Mr Parrish for the words —*ist clothing*”, —*ist jewellery*”, “*list footwear*”, —*ist headgear*” and —*ist bags*” respectively. The results were downloaded on 29 November 2011. Some of the results do not show the word LIST at all. Others show it in conjunction with other elements such as —*Black list clothing*” —*Aist jewellery*”. Still others refer to it in the usual sense of a list e.g. —*list clothing factories from all around the world*”, —*Expedition equipment list. Clothing: Boots with ankle support*” and —*Product list> headgear.an alternative to the infant bonnet*”.

68. Whilst the evidence shows the word ‘list’ used in connection with a range of goods, including those relied on by the opponent, this is, perhaps, unsurprising. As I indicated above, the word LIST is used to denote an item by item record of something. It is not uncommon for people to make or use a list as an aide memoir or source of information and such a list would, most often, be referred to by the subject matter appearing in it e.g. shopping list —a list of what shopping is needed; packing list - a list of clothing and other articles needed for a particular purpose; product list — a list of goods sold by a company. Absent further context as part of a longer sentence, the word is somewhat meaningless in relation to specific goods or services. The evidence provided does not persuade me that the word is of weak distinctive character in relation to the relevant goods. Whilst I accept that use has

been made of the mark, the evidence of that use suffers from a number of flaws which I have set out above and is such that I cannot be satisfied that the use made of it has had any material effect on the level of distinctiveness of the mark. As a normal dictionary word it is, in my view, a word with an average degree of inherent distinctive character.

Likelihood of confusion

69. In determining whether there is a likelihood of confusion, a number of factors have to be borne in mind. The first is the interdependency principle whereby a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. I also have to factor in the distinctive character of the earlier marks as the more distinctive they are, the greater the likelihood of confusion. I must also keep in mind the average consumer for the goods and services, the nature of the purchasing process and the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely on the imperfect picture of them he has retained in mind.

70. Earlier in this decision I found that the respective marks share a fairly high degree of visual similarity and are aurally identical. I found that, for some average consumers they will be conceptually distant whilst, for others, there will be conceptual identity. I found the earlier mark to have an average degree of inherent distinctive character which has not been enhanced through its use. Taking all matters into account and on a global comparison I find that there is a likelihood of confusion in relation to the following services which I have found to be similar to the goods of the earlier mark for which use was proved:

The bringing together for the benefit of others, of a variety of goods, namely, one or more of the following types of goods: clothing and footwear, jewellery, fashion accessories, leather goods, bags, enabling customers to conveniently purchase those goods and services from an Internet web site or by means of telecommunications or by means of a global network or by mail order catalogue or from a retail store; electronic shopping retail services connected with one or more of the following types of goods: clothing and footwear, jewellery, fashion accessories, leather goods, bags; presentation of goods on communication media, for retail purposes; computerised online ordering of consumer goods.

71. All other goods and services I found to be dissimilar. Consequently, I find that there is no likelihood of confusion in relation to those goods and services.

The objection under section 5(3) of the Act

72. Section 5(3) of the Act states:

— A trade mark which—

(a) is identical with or similar to an earlier trade mark shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United

Kingdom (or, in the case of a Community trade mark, in the European Community) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.

73. A positive finding under section 5(3) of the Act does not rely on the similarity of the respective goods or services although it can be a factor in whether a link is established and whether the relevant heads of damage arise. In order to be successful in an opposition based on section 5(3) of the Act, however, the opponent must prove that its earlier mark has a reputation. Reputation in this context means that the earlier trade mark is known by a significant part of the public concerned with the goods or services covered by that mark (see paragraph 26 of the CJEU's judgment in *General Motors Corp. V Yplon SA (CHEVY)* [1999] ETMR 122). The Court stated:

—27n examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking promoting it.”

74. As I have commented above, the evidence filed by the opponent has a number of flaws. There is some evidence of turnover and promotional spend, however, there is nothing which allows me to apportion this to the goods on which the opponent has proven use. There is no evidence that the earlier mark is known by a significant part of the public concerned and neither is there any evidence of market share. The objection founded upon section 5(3) of the Act fails.

Summary

75. The opposition succeeds under section 5(2)(b) of the Act in relation only to the following services in class 35 as applied for:

The bringing together for the benefit of others, of a variety of goods, namely, one or more of the following types of goods: clothing and footwear, jewellery, fashion accessories, leather goods, bags, enabling customers to conveniently purchase those goods and services from an Internet web site or by means of telecommunications or by means of a global network or by mail order catalogue or from a retail store; electronic shopping retail services connected with one or more of the following types of goods: clothing and footwear, jewellery, fashion accessories, leather goods, bags; presentation of goods on communication media, for retail purposes; computerised online ordering of consumer goods.

Costs

76. Whilst the opposition has succeeded in respect of the above services, it has failed in respect of all other goods and services and in my view the applicant is entitled to an award of costs in its favour. Taking into account the extent to which the opposition has succeeded, I make the award on the following basis:

Preparing a statement and considering the opponent's statement:	£300
Preparing evidence and considering the opponent's evidence:	£600
Preparation for and attendance at hearing:	£300
Total:	£1200

77. I order List Trade-Mark SRL to pay Lyst Limited the sum of £1200. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 26th day of November 2012

**Ann Corbett
For the Registrar
The Comptroller-General**