

O/504/18

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION NO. 3252767 BY
SIAN PRYCE AND SOPHIE NEDRICK
TO REGISTER:**



AS A TRADE MARK IN CLASS 25

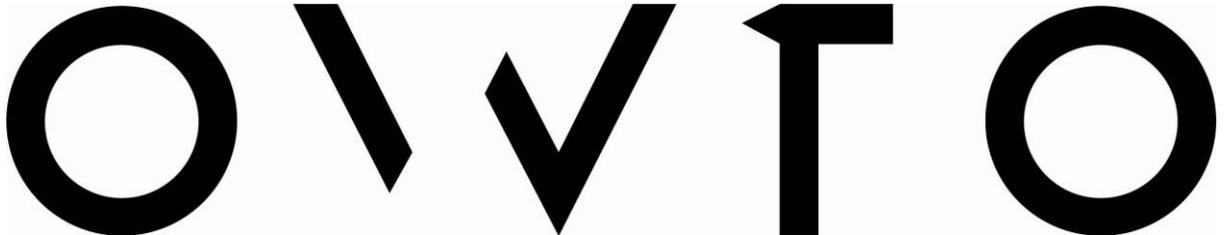
AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 410988 BY**

WINGTSUN GMBH & CO KG

Background and pleadings

1. Sian Pryce and Sophie Nedrick (the applicants) applied to register the trade mark shown below in the UK on 25 August 2017.



It was accepted and published in the Trade Marks Journal on 8 September 2017 in respect of goods proper to Class 25. A list of the goods covered by the specification can be found in **Annex A**.

2. WingTsun GmbH & Co, KG (the opponent) opposes the trade mark on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (the Act). This is on the basis of its earlier European Union (formerly Community) Trade Mark 000607465:

EWTO

This mark was applied for on 5 August 1997 and registered on 2 February 1999. The following goods are relied upon in this opposition:

Leisurewear and sportswear.

3. The opponent argues that the respective goods are identical or similar and that the marks are phonetically and visually highly similar, leading to a high likelihood of confusion.
4. The applicants filed a counterstatement denying the claims made and requesting that the opponent provides proof of use of its earlier trade mark relied upon. A list of the goods that were the subject of this request can be found in **Annex B**.

5. The opponent filed evidence in these proceedings. This will be summarised to the extent that it is considered necessary.
6. Both sides filed written submissions which will not be summarised but will be referred to as and where appropriate during this decision. No hearing was requested and so this decision is taken following a careful perusal of the papers.
7. The applicants in their written submissions referred to “without prejudice” discussions between the parties. In line with long-standing legal principle, I have disregarded this information in reaching my decision.
8. In these proceedings, the opponent is represented by Marks & Clerk LLP and the applicants are unrepresented.

Relevant dates

9. The opponent’s earlier mark had been registered for more than five years on the date on which the contested application was published. It is, therefore, subject to proof of use provisions under section 6A of the Act, and the applicants have requested such proof. The opponent has made a statement that it has made genuine use in the EU, including the UK, in the relevant period of the goods upon which it is relying. The relevant period for these purposes is the five years prior to and ending on the date of publication of the contested application: 9 September 2012 to 8 September 2017. The relevant date for the purposes of section 5(2)(b) is the date the application was filed: 25 August 2017.

Opponent’s evidence

10. The opponent’s evidence comes from Mr Keith-Ronald Kernspecht, managing director of WingTsun GmbH & Co KG. His witness statement is dated 22 March 2018.
11. Mr Kernspecht provides a brief history of the company. He founded the European WingTsun Organisation (“the Organisation”) in 1978 for the promotion,

dissemination and practice of WingTsun, a martial art. The opponent's trade mark was first registered in Germany in 1992 for "printed matter, namely instructional and teaching materials in the form of books and magazines; Sporting articles". In 1997, a Community Trade Mark was registered, and this covered, among other goods and services, "leisurewear and sportswear". In 2001, WingTsun GmbH & Co KG was formed.

12. The witness statement describes the company's distribution channels. Sportswear and leisurewear are sold only to members of the Organisation, through an online shop, by email or telephone or through martial arts schools. Mr Kernspecht states that clothing is supplied to approximately 1000 WingTsun schools, but he does not state whether this is the total number of WingTsun schools in Europe or give membership figures for the Organisation.
13. The exhibits contain a list of the leisurewear and sportswear products sold by the company, a copy of a catalogue bearing the date March 2014 and a series of pictures of the various goods. The final exhibit is a set of invoices from customers in 8 EU Member States (Austria, Belgium, Bulgaria, Cyprus, UK, Italy, the Netherlands, and Spain), bearing dates from 11 April 2013 to 7 March 2017.¹ These show the individual goods ordered, the quantities and the price charged.
14. Mr Kernspecht provides turnover figures for the last 5 years for the products bearing the mark. However, as well as the goods under consideration, the mark also covers "printed matter, namely instructional and teaching materials in the form of books and magazines; sporting articles". He explains that "sporting articles" includes goods such as shin pads. The estimated percentage share for leisurewear and sportswear is around 64%. The turnover figures are split between Austria and "Germany and abroad".

¹ The names and addresses of these customers have been redacted, apart from the city and country.

	Germany and abroad	Austria
2013	€535.535,99	€58.351,92
2014	€493.383,87	€54.241,75
2015	€545.479,81	€51.610,60
2016	€582.906,98	€58.496,62
2017 (until August)	€345.609,60	€29.989,02

15. Figures for the advertising budget are not split by product type. Mr Kernspecht claims that “all the booklets, brochures and poster [sic] show members of the EWTO wearing the association’s sportswear and leisurewear”. Although the catalogue has been supplied as evidence, there are no pictures of people wearing the clothing.

Proof of use

16. Section 6A of the Act states that:

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

(3) The use conditions are met if -

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

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

(4) For these purposes -

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

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

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

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

17. In *The London Taxi Corporation Limited v Frazer-Nash Research Limited & anr*, [2016] EWHC 52, Arnold J summarised the principles guiding the assessment of whether there has been genuine use of a trade mark. These principles are drawn from the following case law: *Ansul BV v Ajax Brandbeveiliging BV* (Case C-40/01), *La Mer Technology Inc v Laboratoires Goemar SA* (Case C-259/02), *Sunrider Corp v OHIM* (Case C-416/04 P), *Verein Radetzky-Orden v Bundesvereinigung Kameradschaft “Feldmarschall Radetzky”* (Case C-442/07), *Silberquelle GmbH v Maselli-Strickmode GmbH* (Case C-495/07), *Leno Merken BV v Hagelkruis Beheer BV* (Case C-149/11), *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* (Case C-609/11), *P Reber Holding & Co KG v OHIM* (Case C-141/13):

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

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

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

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

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

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the

territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56].

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

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].²

18. The onus is on the opponent, as the proprietor of the earlier mark, to show use. Section 100 of the Act states that:

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.

19. An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each individual piece of evidence shows use by itself.³

20. The opponent's trade mark is an EU trade mark. In *Leno Merken BV v Hagelkruis Beheer BV*, C-149/11, the Court of Justice of the European Union (CJEU) noted that:

² Paragraph 219.

³ *New Yorker SHK Jeans GmbH & Co KG v OHIM*, T-415/09.

It should, however, be observed that ... the territorial scope of the use is not a separate condition for genuine use but one of the factors determining genuine use, which must be included in the overall analysis and examined at the same time as other such factors. In that regard, the phrase “in the Community” is intended to define the geographical market serving as the reference point for all consideration of whether a Community trade mark has been put to genuine use.⁴

21. Whether the use shown is sufficient for this purpose will depend on whether there has been real commercial exploitation of the EUTM, in the course of trade, sufficient to create or maintain a market for the goods and/or services at issue in the Union during the relevant five-year period. In making this assessment, I am required to consider all relevant factors (see the sixth principle summarised by Arnold J, paragraph 17 above).
22. Before beginning this assessment, I note that the promotional material and images of clothing provided as evidence show the registered mark used in conjunction with a device, as below:



23. In *Colloseum Holdings AG v Levi Strauss & Co.*, C-12/12, which concerned the use of one mark with, or as part of, another mark, the CJEU found that:

32. ... the “use” of a mark, in its literal sense, generally encompasses both its independent use and its use as part of another mark taken as a whole or in conjunction with that other mark.

...

35. ... a registered trade mark that is used only as part of a composite mark or in conjunction with another mark must continue to be perceived as

⁴ Paragraph 36.

indicative of the origin of the product at issue for that use to be covered by the term “genuine use” within the meaning of Article 15(1).

24. In *Hypen GmbH v EUIPO*, T-146/15, the General Court set out the following approach to the assessment of whether the addition of components is likely to alter the form of the registered mark to a material extent:

29. ... account must be taken of the intrinsic qualities and, in particular, the greater or lesser degree of distinctive character of the [registered] mark used solely as part of a complex trade mark or jointly with another mark. The weaker the distinctive character, the easier it will be to alter it by adding a component that is itself distinctive, and the more the mark will lose its ability to be perceived as an indication of the origin of the good. The reverse is also true (judgment of 24 September 2015, *Klement v OHIM – Bullerjan (Form of an oven)*, T-317/14, not published, EU:T:2015:689, paragraph 33).

...

31. It must also be remembered that, in order for the second subparagraph of Article 15(1)(a) of Regulation No. 207/2009 to apply, the additions to the registered mark must not alter the distinctive character of the mark in the form in which it was registered, in particular because of their ancillary position in the sign and their weak distinctive character (judgment of 21 June 2012, *Fruit of the Loom v OHIM – Blueshore Management (FRUIT)*, T-514/10, not published, EU:T:2012:316, paragraph 38).

25. In my view, the addition of the device does not alter the distinctive character of the mark in the form in which it was registered. The word “EWTO” is clear and is at the beginning of the composite mark. I find that the mark used is an acceptable variant of the registered mark.

26. I will now proceed with assessing whether there has been genuine use of the mark. As I have said in paragraph 4, the applicants have requested proof of use

for the items listed in Annex B. The opponent is relying on the broader term “Leisurewear and sportswear”.

27. In *Thomas Pink Ltd v Victoria’s Secret UK Ltd* [2014] EWHC 2631 (Ch), Birss J stated that:

It is not the task of the court to describe the use in the narrowest terms possible unless that is what the average consumer would do (*YouView TV v Total* [2012] EWHC 3158 (Ch) per Floyd J). Thus, for example, in *Pan World Brands v Tripp* [2008] RPC 2 (Extreme) the Appointed Person (Richard Arnold Q.C. as he then was) held that use in relation to holdalls justified a registration for luggage generally.⁵

28. In *Maier & anr v ASOS plc & anr* [2015] EWCA Civ 220, Kitchin LJ noted the considerations that need to be balanced and set out an approach to resolving them:

56. ... On the one hand, a proprietor should not be allowed to monopolise the use of a trade mark in relation to a general category of goods or services simply because he has used it in relation to a few of them. The mark should remain registered only in respect of those goods and services for which it has been used.

...

60. Conversely, however, a proprietor cannot reasonably be expected to use his mark in relation to all possible variations of the particular goods or services covered by the registration.

61. These competing considerations are to be resolved by taking into account the breadth of the categories of goods for which the mark is registered and the extent to which those categories are described in general

⁵ Paragraph 53.

terms. If those categories are sufficiently broad so as to allow the identification within them of various sub-categories which are capable of being viewed independently then proof of use in relation to only one or more of those sub-categories will not constitute use of the mark in relation to all the other sub-categories. But if it is not possible to make a meaningful division of the particular category in relation to which use of the mark has been established then proof of use will suffice for the whole of that category.

29. It is possible to divide the category into “Leisurewear” and “Sportswear”. The opponent has provided evidence of marketing products in both these categories. The distinction between the two may not always be clear-cut. While there are goods that are likely to be worn in only one scenario, other items (such as T-shirts) can be worn both for sport and leisure.
30. Even if the average consumer would make further subdivisions (tops, trousers, shorts, footwear), the opponent has provided evidence of use on all these types of goods. I am now required to assess whether this evidence is sufficient.
31. While the opponent has provided turnover and advertising figures, these do not distinguish between the goods in question and other goods. Although no breakdown has been given, Mr Kernspecht states that 64% of the figures are attributable to the goods under consideration. The applicants have not challenged this figure.
32. Taking the evidence as a whole, I consider that the opponent has provided sufficient evidence of genuine use of an acceptable variant of the trade mark.

Decision

33. Section 5(2)(b) of the Act states that:

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.

Case law

34. The following principles are gleaned from the decisions of the courts of the European Union in *Sabel BV v Puma AG* (Case C-251/95), *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* (Case C-39/97), *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV* (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-334/05 P) and *Bimbo SA v OHIM* (Case C-519/12 P):

- (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. The average consumer is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks

bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

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

Comparison of goods

35. Some of the contested goods, i.e. leisurewear and sportswear, are identical to the goods on which the opposition is based. For reasons of procedural economy, the Tribunal will not undertake a full comparison of the goods listed in Annex A. The examination of the opposition will proceed on the basis that the contested goods are identical to those covered by the earlier trade mark. If the opposition

fails, even where the goods are identical, it follows that the opposition will also fail where the goods are only similar.

The average consumer and the nature of the purchasing act

36. In *Hearst Holdings Inc & anr v A.V.E.L.A. & ors* [2014] EWHC 439 (Ch), Birss J described the average consumer in these terms:

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.⁶

37. The average customer of sportswear and leisurewear is a member of the general public. Such goods are likely to be purchased at a medium level of frequency and the cost can vary quite markedly. The market provides options to suit most budgets. The consumer will, for the most part, encounter the marks visually, by browsing through products in a sports or general clothes shop, catalogues or using the internet. In my view, they will be paying an average amount of care and attention.

Comparison of marks

38. It is clear from *Sabel BV v Puma AG*, C-251/95, (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

⁶ Paragraph 60.

distinctive and dominant components. In *Bimbo SA v OHIM*, C-591/12 P, the CJEU stated 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.⁷

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

40. The respective marks are shown below:

EWTO	
Earlier trade mark	Contested trade mark

41. The applicants' mark consists of the letters "OWTO" in a stylised form. The second stroke of the "W" is missing and the first and third are shorter than the fourth. The left-hand bar of the "T" is also missing, replaced with a triangle pointing towards the stylised "W". The mark is presented in bold letters. In my view, the overall impression is of the word "OWTO" presented in an unusual manner.

⁷ Paragraph 34.

42. The opponent's mark consists of the word "EWTO". The word is in a standard font with no stylisation and is presented in capital letters.⁸ The overall impression of the opponent's mark rests in just that word.
43. The opponent claims that the marks are visually very similar and that the stylisation of the applicants' mark is "not particularly distinctive to render the trade mark sufficiently different". I have considered the similarities and differences between the marks. The words are the same length and the last three letters are the same and in the same order, while the first is different. The earlier mark is in a standard font, while the contested mark is stylised with some parts of the letters missing. The letters are also spaced out. In my view, this is eye-catching. I consider there to be some similarity between the two marks, but to a very low degree.
44. In its written submission, the opponent claims that the marks are aurally very similar because the letters E and O are both vowels. The opponent's mark would be articulated as "YEW-TO", while the applicants' mark would be articulated as "OW-TO". The vowel sounds are different, although the rest of the word is the same. In my view, there is a medium degree of aural similarity between the marks.
45. The average consumer is likely to think that the words have been invented. They have no meaning in the English language. The marks are conceptually neutral so there is no comparison to be made.

Distinctive character of the earlier trade mark

46. Having compared the marks, it is necessary to determine the distinctive character of the earlier mark, in order to make an assessment of the likelihood of confusion. In *Lloyd Schuhfabrik Meyer v Klijsen Handel BV*, C-342/97, the CJEU stated that:

⁸ Registration of a trade mark in capital letters covers use in lower case, as stated by Professor Ruth Annand, sitting as the Appointed Person, in *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17.

22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

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

47. When considering whether the mark has acquired enhanced distinctiveness, I am required to take into account its use within the UK, rather than the EU. The opponent has not submitted sufficient evidence relating to use within the UK, such as sales figures and expenditure on promotional activities, for me to be able to make such an assessment. I will therefore consider only the question of inherent distinctiveness.

48. Earlier in this decision, in paragraph 45, I found that the average consumer would be likely to think that the word has been invented. It does not allude to the goods and so its inherent distinctiveness is high.

Conclusions on likelihood of confusion

49. Deciding whether there is a likelihood of confusion is not a scientific process. Rather, it is a matter of considering all the factors, weighing them and looking at their combined effect, in the light of the authorities set out earlier in this decision. As the CJEU stated in *Canon Kabushiki Kaisa v Metro-Goldwyn-Mayer Inc* (C-39/97):

A global assessment of the likelihood of confusion implies some interdependence between the relevant factors, and in particular a similarity between the trade marks and between these goods or services. Accordingly, a lesser degree of similarity between these goods or services may be offset by a greater degree of similarity between the marks, and vice versa. The interdependence of these factors is expressly mentioned in the tenth recital of the preamble to the Directive, which states that it is indispensable to give an interpretation of the concept of similarity in relation to the likelihood of confusion, the appreciation of which depends, in particular, on the recognition of the trade mark on the market and the degree of similarity between the mark and the sign and between the goods or services identified.⁹

50. The examination of the opposition has been undertaken on the basis that the contested goods are identical to those covered by the earlier trade mark. These goods will, as I have already noted in paragraph 37, be selected by the customer themselves from a shop, catalogue or website. In such scenarios, the visual comparison has more weight than the aural. In *New Look Limited v OHIM*, T-117/03 to T-119/03 and T-171/03, the General Court stated that:

... it should be noted that in the global assessment of the likelihood of confusion, the visual, aural or conceptual aspects of the opposing signs do not always have the same weight. It is appropriate to examine the objective conditions under which the marks may be present on the market (*BUDMEN*, paragraph 57). The extent of the similarity or difference between the signs

⁹ Paragraph 17.

may depend, in particular, on the inherent qualities of the signs or the conditions under which the goods or services covered by the opposing signs are marketed. If the goods covered by the mark in question are usually sold in self-service stores where consumers choose the product themselves and must therefore rely primarily on the image of the trade mark applied to the product, the visual similarity between the signs will as a general rule be more important. If on the other hand the product covered is primarily sold orally, greater weight will usually be attributed to any aural similarity between the signs.¹⁰

51. The General Court also found that the beginnings of words tend to have more visual (and aural) impact than the ends (see paragraph 81 of *El Corte Inglés SA v OHIM*, Cases T-183/02 and T-184/02). I note that the words in this case were longer than the words under consideration in these proceedings; however, where short words are concerned, this is all the more likely to have more impact. The marks are relatively short, and a change in one letter is a change of a quarter of the mark.¹¹ Where short words have a different initial letter, this is an important point of dissimilarity. Furthermore, it is important also to consider the visual impact of the stylisation of the contested mark. I found that this would be likely to catch the eye of the consumer and makes a significant contribution to the overall impression of the mark.

52. Weighing all the factors with the relative importance of the visual comparison and the very low degree of visual similarity between the marks, I find that there is no likelihood of confusion between the marks.

53. Given my finding that there is no likelihood of confusion between the marks for identical goods, it follows that there is no likelihood of confusion for similar goods, and the opposition fails.

¹⁰ Paragraph 49.

¹¹ See the comments of Mr Iain Purvis QC, sitting as the Appointed Person, in *Hachette Filipacchi Presse S.A. v Ella Shoes Limited*, BL O/277/12, paragraph 20.

Conclusion

54. The opposition has failed. The application can proceed to registration in respect of all the goods listed in the application.

Costs

55. The applicants have been successful. As they are self-represented, the Tribunal invited them to complete and return a proforma indicating the time spent on various activities associated with the proceedings. As the applicants have not provided such information, I make no award as a contribution towards the cost of the proceedings.

Dated this 15th day of August 2018

Clare Boucher

**Clare Boucher
For the Registrar,
The Comptroller-General**

Annex A

Goods and Services Covered by the Applicants' Mark

Adhesive bras; After ski boots; Aikido suits; Aikido uniforms; Albs; Aloha shirts; American football bibs; American football pants; American football shirts; American football shorts; American football socks; Anglers' shoes; Ankle boots; Ankle socks; Anklets [socks]; Anoraks; Anoraks [parkas]; Anti-perspirant socks; Anti-sweat underclothing; Anti-sweat underwear; Après-ski boots; Apres-ski shoes; Aprons; Aprons [clothing]; Aqua shoes; Arm warmers [clothing]; Army boots; Articles of clothing; Articles of clothing for theatrical use; Articles of clothing made of hides; Articles of clothing made of leather; Articles of outer clothing; Articles of sports clothing; Articles of underclothing; Ascots; Ascots (ties); Athletic clothing; Athletic footwear; Athletic shoes; Athletic tights; Athletic uniforms; Athletics footwear; Athletics hose; Athletics shoes; Athletics vests

Babies' clothing; Babies' outerclothing; Babies' pants [clothing]; Babies' pants [underwear]; Babies' undergarments; Babushkas; Baby bodysuits; Baby boots; Baby bottoms; Baby clothes; Baby doll pyjamas; Baby layettes for clothing; Baby pants; Baby sandals; Baby tops; Balaclavas; Ball gowns; Ballet shoes; Ballet slippers; Ballet suits; Ballroom dancing shoes; Bandanas; Bandanas [neckerchiefs]; Bandeaux [clothing]; Barber smocks; Baseball caps; Baseball caps and hats; Baseball hats; Baseball shoes; Baseball uniforms; Baselayer bottoms; Baselayer tops; Basic upper garment of Korean traditional clothes [Jeogori]; Basketball shoes; Basketball sneakers; Bath robes; Bath sandals; Bath shoes; Bath slippers; Bathing caps; Bathing costumes; Bathing costumes for women; Bathing drawers; Bathing suit cover-ups; Bathing suits; Bathing suits for men; Bathing trunks; Bathrobes; Bathwraps; Beach clothes; Beach clothing; Beach cover-ups; Beach footwear; Beach hats; Beach robes; Beach shoes; Beach wraps; Beachwear; Beanie hats; Beanies; Bed jackets; Bed socks; Belts [clothing]; Belts for clothing; Belts made from imitation leather; Belts made of leather; Belts made out of cloth; Belts (Money -) [clothing]; Belts of textile; Berets; Bermuda shorts; Bib overalls for hunting; Bib shorts; Bib tights; Bibs, not of paper; Bikinis; Blazers; Bloomers; Blouses; Blouson jackets; Blousons; Board shorts; Boardshorts; Boas; Boas [clothing]; Boas [necklets];

Boaters; Bobble hats; Bodices; Bodices [lingerie]; Bodies [clothing]; Bodies [underclothing]; Body linen [garments]; Body stockings; Body suits; Body warmers; Bodysuits; Boiler suits; Boleros; Bolo ties; Bolo ties with precious metal tips; Bomber jackets; Bonnets; Bonnets [headwear]; Boot cuffs; Boot uppers; Bootees (woollen baby shoes); Booties; Boots; Boots for motorcycling; Boots for sport; Boots for sports; Boots (Ski -); Bottoms [clothing]; Bow ties; Bowling shoes; Bowties; Boxer briefs; Boxer shorts; Boxing shoes; Boxing shorts; Boy shorts [underwear]; Boys' clothing; Bra straps; Bra straps [parts of clothing]; Braces for clothing; Braces for clothing [suspenders]; Braces [suspenders]; Bralettes; Bras; Brassieres; Breeches; Breeches for wear; Bridal garters; Bridal gowns; Bridesmaid dresses; Bridesmaids wear; Briefs; Briefs [underwear]; Bucket caps; Burnouses; Bushjackets; Bustiers; Bustle holder bands for obi (obiage); Bustles for obi-knots (obiage-shin); Button down shirts; Button-front aloha shirts;

Caftans; Cagoules; Camiknickers; Camisoles; Camouflage gloves; Camouflage jackets; Camouflage pants; Camouflage; Camouflage vests; Canvas shoes; Cap peaks; Cap visors; Capelets; Capes; Capes (clothing); Caps; Caps being headwear; Caps [headwear]; Caps (Shower -); Caps with visors; Car coats; Cardigans; Cargo pants; Cashmere clothing; Cashmere scarves; Casual clothing; Casual footwear; Casual shirts; Casual trousers; Casualwear; Chaps; Chaps (clothing); Chasubles; Chefs' hats; Chefs' whites; Chemise tops; Chemises; Chemisettes; Cheongsams (Chinese gowns); Children's clothing; Childrens' clothing; Children's footwear; Children's headwear; Children's outerclothing; Children's wear; Chino pants; Choir robes; Christening gowns; Christening robes; Cleats for attachment to sports shoes; Climbing boots; Climbing boots [mountaineering boots]; Climbing footwear; Cloaks; Clogs; Cloth bibs; Cloth bibs for adult diners; Clothes; Clothes for sport; Clothes for sports; Clothing; Clothing for babies; Clothing for children; Clothing for cycling; Clothing for cyclists; Clothing for fishermen; Clothing for gymnastics; Clothing for horse-riding [other than riding hats]; Clothing for infants; Clothing for leisure wear; Clothing for martial arts; Clothing for skiing; Clothing for sports; Clothing for wear in judo practices; Clothing for wear in wrestling games; Clothing layettes; Clothing made of fur; Clothing made of imitation leather; Clothing made of leather; Clothing of imitations of leather; Clothing of leather; Coats; Coats for men; Coats for women; Coats made of cotton; Coats of denim; Coats (Top -); Cocktail dresses; Collar

guards for protecting clothing collars; Collar liners for protecting clothing collars; Collar protectors; Collared shirts; Collars; Collars [clothing]; Collars for dresses; Combative sports uniforms; Combinations [clothing]; Corduroy pants; Corduroy shirts; Corduroy trousers; Corselets; Corsets; Corsets [clothing, foundation garments]; Corsets [foundation clothing]; Corsets [underclothing]; Costumes; Costumes for use in children's dress up play; Costumes for use in role-playing games; Costumes (Masquerade -); Cotton coats; Coveralls; Coverups; Cover-ups; Cowls [clothing]; Cravates; Cravats; Crew neck sweaters; Crinolines; Crop tops; Cuffs; Culotte skirts; Culottes; Cummerbunds; Cycling caps; Cycling Gloves; Cycling pants; Cycling shoes; Cycling shorts; Cycling tops; Cyclists' clothing;

Dance clothing; Dance costumes; Dance shoes; Dance slippers; Deck shoes; Deck-shoes; Denim coats; Denim jackets; Denim jeans; Denim pants; Denims [clothing]; Desert boots; Detachable collars; Detachable neckpieces for kimonos (haneri); Dinner jackets; Dinner suits; Disposable slippers; Disposable underwear; Donkey jackets; Down jackets; Down vests; Drawers [clothing]; Dress pants; Dress shields; Dress shirts; Dress shoes; Dress suits; Dresses; Dresses for evening wear; Dresses for infants and toddlers; Dresses made from skins; Dressing gowns; Driving gloves; Driving shoes; Dry suits; Duffel coats; Dungarees; Dust coats;

Ear muffs; Ear muffs [clothing]; Ear warmers; Earbands; Embossed heels of rubber or of plastic materials; Embossed soles of rubber or of plastic materials; Espadrilles; Esparto shoes or sandals; Esparto shoes or sandles; Evening coats; Evening dresses; Evening gowns; Evening suits; Evening wear; Exercise wear; Eye masks;

Fabric belts; Fabric belts [clothing]; Fake fur hats; Fancy dress costumes; Fascinator hats; Fashion hats; Fedoras; Fezzes; Figure skating clothing; Fingerless gloves; Fingerless gloves as clothing; Fishermen's jackets; Fishing boots; Fishing clothing; Fishing footwear; Fishing headwear; Fishing jackets; Fishing shirts; Fishing smocks; Fishing vests; Fishing waders; Fitted swimming costumes with bra cups; Fittings of metal for boots and shoes; Fittings of metal for footwear; Flat caps; Flat shoes; Fleece shorts; Fleece tops; Fleece vests; Fleeces; Flip-flops; Flip-flops for use as footwear; Flying suits; Foam pedicure slippers; Folk costumes; Foot volleyball shoes; Football boots; Football boots (Studs for -); Football jerseys; Football shirts; Football shoes; Footless socks; Footless tights; Footmuffs, not electrically heated; Footwear;

Footwear [excluding orthopedic footwear]; Footwear (Fittings of metal for -); Footwear for men; Footwear for snowboarding; Footwear for sport; Footwear for sports; Footwear for track and field athletics; Footwear for use in sport; Footwear for women; Footwear made of vinyl; Footwear made of wood; Footwear (Non-slipping devices for -); Footwear not for sports; Footwear soles; Footwear (Tips for -); Footwear uppers; Footwear (Welts for -); Formal evening wear; Formalwear; Foulards [clothing articles]; Foundation garments; Frames (Hat -) [skeletons]; Frock coats; Full-length kimonos (nagagi); Functional underwear; Fur cloaks; Fur coats; Fur coats and jackets; Fur hats; Fur jackets; Fur muffs; Fur stoles; Furs [clothing];

Gabardines; Gabardines [clothing]; Gaiter straps; Gaiters; Galoshes; Garments for protecting clothing; Garrison caps; Garter belts; Garters; Gauchos; Gilets; Girdles; Girdles [corsets]; Girls' clothing; Gloves; Gloves as clothing; Gloves [clothing]; Gloves for apparel; Gloves for cyclists; Gloves including those made of skin, hide or fur; Gloves with conductive fingertips that may be worn while using handheld electronic touch screen devices; Golf caps; Golf footwear; Golf pants, shirts and skirts; Golf shirts; Golf shoes; Golf shorts; Golf skirts; Golf trousers; Goloshes; Gowns; Gowns for doctors; Greatcoats; G-strings; Guernseys; Gussets for bathing suits [parts of clothing]; Gussets for footlets [parts of clothing]; Gussets for leotards [parts of clothing]; Gussets for stockings [parts of clothing]; Gussets for tights [parts of clothing]; Gussets for underwear [parts of clothing]; Gussets [parts of clothing]; Gym boots; Gym shorts; Gym suits; Gymnastic shoes; Gymshoes; Gymwear;

Hairdressing capes; Half-boots; Halloween costumes; Halter tops; Handball shoes; Handwarmers [clothing]; Haneri [detachable neckpieces for kimonos]; Hat frames [skeletons]; Hats; Hats (Paper -) [clothing]; Head bands; Head scarves; Head sweatbands; Head wear; Headbands; Headbands against sweating; Headbands [clothing]; Headbands for clothing; Headdresses [veils]; Headgear; Headgear for wear; Headscarfs; Headscarves; Headshawls; Headsquares; Headwear; Heavy coats; Heavy jackets; Heel inserts; Heel pieces for shoes; Heel pieces for stockings; Heelpieces for footwear; Heelpieces for stockings; Heels; High rain clogs (ashida); High-heeled shoes; Hiking boots; Hiking shoes; Hockey shoes; Hooded pullovers; Hooded sweatshirts; Hooded tops ;Hoods; Hoods [clothing]; Horse-riding boots;

Horse-riding pants; Hosiery; Hunting boot bags; Hunting boots; Hunting jackets; Hunting pants; Hunting shirts; Hunting vests;

Infant clothing; Infant wear; Infants' boots; Infants' clothing; Infants' footwear; Infants' shoes; Infants' trousers; Infantwear; Inner socks for footwear; Inner soles; Innersocks; Insoles; Insoles for footwear; Insoles for shoes and boots; Insoles [for shoes and boots]; Intermediate soles;

Jacket liners; Jackets; Jackets being sports clothing; Jackets [clothing]; Jackets (Stuff -) [clothing]; Japanese footwear of rice straw (waraji); Japanese kimonos; Japanese sleeping robes (nemaki); Japanese sleeping robes [nemaki]; Japanese split-toed work footwear (jikatami); Japanese style clogs and sandals; Japanese style sandals of felt; Japanese style sandals of leather; Japanese style sandals (zori); Japanese style socks (tabi); Japanese style socks (tabi covers); Japanese style wooden clogs (geta); Japanese toe-strap sandals (asaura-zori); Japanese traditional clothing; Jeans; Jerkins; Jerseys; Jerseys [clothing]; Jockstraps [underwear]; Jodhpurs; Jogging bottoms; Jogging bottoms [clothing]; Jogging outfits; Jogging pants; Jogging sets [clothing]; Jogging shoes; Jogging suits; Jogging tops; Judo suits; Judo uniforms; Jump Suits; Jumper dresses; Jumper suits; Jumpers; Jumpers [pullovers]; Jumpers [sweaters]; Jumpsuits;

Kaftans; Karate suits; Karate uniforms; Kendo outfits; Kerchiefs; Kerchiefs [clothing]; Khakis; Kilts; Kimonos; Knee warmers [clothing]; Knee-high stockings; Knickerbockers; Knickers; Knit jackets; Knit shirts; Knitted baby shoes; Knitted caps; Knitted clothing; Knitted gloves; Knitted underwear; Knitwear; Knitwear [clothing]; Knot caps; Korean outer jackets worn over basic garment [Magoja]; Korean topcoats [Durumagi]; Korean traditional women's waistcoats [Baeja];

Laboratory coats; Lace boots; Ladies' boots; Ladies' clothing; Ladies' dresses; Ladies' footwear; Ladies' outerclothing; Ladies' sandals; Ladies' suits; Ladies' underwear; Ladies wear; Layette; Layette [clothing]; Leather belts [clothing]; Leather clothing; Leather (Clothing of -); Leather (Clothing of imitations of -); Leather coats; Leather garments; Leather headwear; Leather jackets; Leather pants; Leather shoes; Leather slippers; Leather suits; Leather waistcoats; Leg warmers; Leggings [leg warmers]; Leggings [trousers]; Legwarmers; Leg-warmers; Leisure clothing;

Leisure footwear; Leisure shoes; Leisure suits; Leisure wear; Leisurewear; Leotards; Light-reflecting coats; Light-reflecting jackets; Linen (Body -) [garments]; Linen clothing; Lingerie; Linings (Ready-made -) [parts of clothing]; Liveries; Long jackets; Long johns; Long sleeve pullovers; Long sleeved vests; Long-sleeved shirts; Lounge pants; Loungewear; Lounging robes; Low wooden clogs (hiyori-geta); Low wooden clogs (koma-geta); Low wooden clogs [koma-geta]; Lumberjackets;

Mackintoshes; Maillots; Maillots [hosiery]; Maniples; Mankinis; Mantillas; Mantles; Martial arts uniforms; Masks (Sleep -); Masquerade costumes; Maternity bands; Maternity clothing; Maternity dresses; Maternity leggings; Maternity lingerie; Maternity pants; Maternity shirts; Maternity shorts; Maternity sleepwear; Maternity smocks; Maternity tops; Maternity underwear; Maternity wear; Men's and women's jackets, coats, trousers, vests; Men's dress socks; Men's sandals; Men's socks; Men's suits; Men's underwear; Menswear; Metal fittings for Japanese style wooden clogs; Millinery; Miniskirts; Miters [hats]; Mitres [hats]; Mittens; Mitts [clothing]; Moccasins; Mock turtleneck shirts; Mock turtleneck sweaters; Mock turtlenecks; Moisture-wicking sports bras; Moisture-wicking sports pants; Moisture-wicking sports shirts; Money belts [clothing]; Monokinis; Morning coats; Motorcycle gloves; Motorcycle jackets; Motorcycle rain suits; Motorcycle riding suits; Motorcyclist boots; Motorcyclists' clothing; Motorcyclists' clothing of leather; Motorists' clothing; Mountaineering boots; Mountaineering shoes; Mufflers; Mufflers [clothing]; Mufflers [neck scarves]; Muffs; Muffs [clothing]; Mules; Muumuus;

Nappy pants [clothing]; Neck scarfs [mufflers]; Neck scarves; Neck scarves [mufflers]; Neck tubes; Neckbands; Neckerchiefs; Neckerchieves; Neckties; Neckwear; Negligees; Night gowns; Night shirts; Nightcaps; Nightdresses; Nightgowns; Nighties; Nightshirts; Nightwear; Non-slipping devices for footwear; Nurse dresses; Nurse overalls; Nurse pants; Nurses' uniforms;

Oilskins [clothing]; One-piece clothing for infants and toddlers; One-piece playsuits; One-piece suits; Open-necked shirts; Outer clothing; Outer soles; Outerclimbing; Outerclimbing for boys; Outerclimbing for girls; Outerclimbing for men; Outerwear; Overalls; Overalls for infants and toddlers; Overcoats; Overshirts; Overshoes; Overtrousers; Over-trousers;

Padded pants for athletic use; Padded shirts for athletic use; Padded shorts for athletic use; Pajama bottoms; Pajamas; Pajamas (Am.); Pantaloon; Pantie-girdles; Panties; Pants; Pants (Am.); Pantsuits; Pantyhose; Pantyhose; Paper aprons; Paper clothing; Paper hats [clothing]; Paper hats for use as clothing items; Paper hats for wear by chefs; Paper hats for wear by nurses; Pareos; Pareus; Parkas; Party hats [clothing]; Pea coats; Peaked headwear; Peaks (Cap -); Pedal pushers; Pedicure sandals; Pedicure slippers; Peignoirs; Pelerines; Pelisses; Petticoats; Petti-pants; Pinafore dresses; Pinafores; Pique shirts; Pirate pants; Plastic aprons; Plastic baby bibs; Plastic slippers; Platform shoes; Play suits; Playsuits [clothing]; Pleated skirts for formal kimonos (hakama); Plimsolls; Plus fours; Plush clothing; Pocket kerchiefs; Pocket squares; Pocket squares [clothing]; Pockets for clothing; Polar fleece jackets; Polo boots; Polo knit tops; Polo neck jumpers; Polo shirts; Polo sweaters; Ponchos; Pop socks; Pram suits; Printed t-shirts; Protective metal members for shoes and boots; Pullovers; Pullstraps for shoes and boots; Pumps [footwear]; Puttees and gaiters; Pyjamas; Pyjamas [from tricot only];

Quilted jackets [clothing]; Quilted vests;

Rain boots; Rain coats; Rain hats; Rain jackets; Rain ponchos; Rain shoes; Rain suits; Rain trousers; Rain wear; Raincoats; Rainproof clothing; Rainproof jackets; Rainshoes; Rainwear; Ramie shirts; Rash guards; Ready-made clothing; Ready-made linings [parts of clothing]; Ready-to-wear clothing; Referees uniforms; Removable collars; Replica football kits; Reversible jackets; Riding boots; Riding gloves; Riding Gloves; Riding jackets; Riding shoes; Riding trousers; Robes; Robes (Bath -); Roll necks [clothing]; Romper suits; Rompers; Ruanas; Rubber fishing boots; Rubber shoes; Rubber soles for jikatabi; Rubbers [footwear]; Rugby boots; Rugby jerseys; Rugby shirts; Rugby shoes; Rugby shorts; Rugby tops; Running shoes; Running Suits; Running vests;

Sabots; Safari jackets; Sailing wet weather clothing; Sailor suits; Salopettes; Sandal-clogs; Sandals; Sandals and beach shoes; Sarees; Saris; Sarongs; Sash bands for kimono (obi); Sashes for wear; Scarfs; Scarves; School uniforms; Scrimmage vests; Sedge hats (suge-gasa); Serapes; Shampoo capes; Shawls; Shawls and headscarves; Shawls and stoles; Shawls [from tricot only]; Sheepskin coats; Sheepskin jackets; Shell jackets; Shell suits; Shields (Dress -); Shift dresses; Shirt

fronts; Shirt yokes; Shirt-jacs; Shirts; Shirts and slips; Shirts for suits; Shoe covers, other than for medical purposes; Shoe inserts for non-orthopedic purposes; Shoe soles; Shoe soles for repair; Shoe straps; Shoe uppers; Shoes; Shoes for casual wear; Shoes for foot volleyball; Shoes for infants; Shoes for leisurewear; Shoes soles for repair; Shoes with hook and pile fastening tapes; Short overcoat for kimono (haori); Short petticoats; Short sets [clothing]; Short trousers; Shortalls; Shorts; Shorts [clothing]; Short-sleeve shirts; Short-sleeved or long-sleeved t-shirts; Short-sleeved shirts; Short-sleeved T-shirts; Shoulder scarves; Shoulder straps for clothing; Shoulder wraps; Shoulder wraps [clothing]; Shoulder wraps for clothing; Shower caps; Silk clothing; Silk scarves; Silk ties; Singlets; Skating outfits; Ski and snowboard shoes and parts thereof; Ski balaclavas; Ski boot bags; Ski boots; Ski gloves; Ski hats; Ski jackets; Ski pants; Ski suits; Ski suits for competition; Ski trousers; Ski wear; Skiing shoes; Skirt suits; Skirts; Skorts; Skull caps; Slacks; Sleep masks; Sleep shirts; Sleeping garments; Sleepsuits; Sleepwear; Sleeved jackets; Sleeveless jackets; Sleeveless jerseys; Sliding shorts; Slip-on shoes; Slipovers; Slipovers [clothing]; Slipper socks; Slipper soles; Slippers; Slippers made of leather; Slips; Slips [clothing]; Slips [underclothing]; Slips [undergarments]; Small hats; Smocks; Smoking jackets; Snap crotch shirts for infants and toddlers; Sneakers; Sneakers [footwear]; Snoods [scarves]; Snow boarding suits; Snow boots; Snow pants; Snow suits; Snowboard boots; Snowboard gloves; Snowboard jackets; Snowboard mittens; Snowboard shoes; Snowboard trousers; Snowsuits; Soccer bibs; Soccer boots; Soccer shirts; Soccer shoes; Sock suspenders; Socks; Socks and stockings; Socks for infants and toddlers; Socks for men; Soles for footwear; Soles for japanese style sandals; Soles [Inner]; Spats; Sport shirts; Sport shoes; Sport stockings; Sports [Boots for -]; Sports bras; Sports caps; Sports caps and hats; Sports clothing; Sports clothing [other than golf gloves]; Sports footwear; Sports headgear [other than helmets]; Sports jackets; Sports jerseys; Sports jerseys and breeches for sports; Sports over uniforms; Sports overuniforms; Sports pants; Sports shirts; Sports shirts with short sleeves; Sports shoes; Sports singlets; Sports socks; Sports vests; Sports wear; Sportswear; Stiffeners for boots; Stiffeners for shoes; Stocking suspenders; Stockings; Stockings (Heel pieces for -); Stockings [sweat-absorbent]; Stockings (Sweat-absorbent -); Stoles; Stoles (Fur -); Strapless bras; Strapless brassieres; Straps (Gaiter -); Stretch pants; String fasteners for haori (haori-himo); Studs for football boots; Stuff jackets; Stuff jackets [clothing]; Suede

jackets; Suit coats; Suits; Suits (Bathing -); Suits made of leather; Suits of leather; Sun hats; Sun visors; Sun visors [headwear]; Sundresses; Sunsuits; Surfwear; Suspender belts; Suspender belts for men; Suspender belts for women; Suspenders; Suspenders [braces]; Swaddling clothes; Sweat bands; Sweat bands for the head; Sweat bands for the wrist; Sweat bottoms; Sweat pants; Sweat shirts; Sweat shorts; Sweat suits; Sweat-absorbent socks; Sweat-absorbent stockings; Sweat-absorbent underclothing; Sweat-absorbent underclothing [underwear]; Sweat-absorbent underwear; Sweatbands; Sweaters; Sweatjackets; Sweatpants; Sweatshirts; Sweatshorts; Sweatsuits; Swim briefs; Swim shorts; Swim suits; Swim trunks; Swim wear for gentlemen and ladies; Swimming caps; Swimming caps [bathing caps]; Swimming costumes; Swimming suits; Swimming trunks; Swimsuits; Swimwear; Synthetic fur stoles;

Tabards; Taekwondo suits; Taekwondo uniforms; Tail coats; Tam o'shanter; Tams; Tank tops; Tank-tops; Tap pants ;Tap shoes; Tartan kilts; Teddies; Teddies [underclothing]; Teddies [undergarments]; Tee-shirts; Tennis dresses; Tennis pullovers; Tennis shirts; Tennis shoes; Tennis shorts; Tennis skirts; Tennis socks; Tennis sweatbands; Tennis wear; Theatrical costumes; Thermal clothing; Thermal headgear; Thermal socks; Thermal underwear; Thermally insulated clothing; Thobes; Thong sandals; Thongs; Three piece suits [clothing]; Ties; Ties [clothing]; Tightening-up strings for kimonos (datejime); Tights; Tips for footwear; Toe boxes; Toe straps for Japanese style sandals [zori]; Toe straps for Japanese style wooden clogs; Toe straps for zori [Japanese style sandals]; Togas; Tongues for shoes and boots; Top coats; Top hats; Topcoats; Tops; Tops [clothing]; Toques [hats]; Track and field shoes; Track pants; Track suits; Tracksuit bottoms; Tracksuit tops; Tracksuits; Trainers; Trainers [footwear]; Training shoes; Training suits; Trekking boots; Trench coats; Trenchcoats; Trews; Triathlon clothing; Trouser socks; Trouser straps; Trousers; Trousers for children; Trousers for sweating; Trousers of leather; Trousers shorts; Trunks; Trunks (Bathing -); Trunks [underwear]; T-shirts; Tube tops; Tunics; Turbans; Turtleneck pullovers; Turtleneck shirts; Turtleneck sweaters; Turtleneck tops; Turtlenecks; Tutus; Tuxedo belts; Tuxedos; Twin sets;

Umpires uniforms; Under garments; Under shirts; Underarm gussets [parts of clothing]; Underclothes; Underclothing; Underclothing (Anti-sweat -); Underclothing for women; Undergarments; Underpants; Underpants for babies; Undershirts; Undershirts for kimonos (juban); Undershirts for kimonos (koshimaki); Undershirts for kimonos [koshimaki]; Underskirts; Underwear; Underwear (Anti-sweat -); Underwear for women; Uniforms; Uniforms for commercial use; Uniforms for nurses; Union suits; Unitards; Uppers (Footwear -); Uppers for Japanese style sandals; Uppers of woven rattan for Japanese style sandals; Ushankas [fur hats];

Valenki [felted boots]; Veils; Veils [clothing]; Vest tops; Vests; Vests (Fishing -); Visors; Visors [clothing]; Visors [hatmaking]; Visors [headwear]; V-neck sweaters; Volleyball jerseys; Volleyball shoes;

Waders; Waist belts; Waist cinchers; Waist strings for kimonos (koshihimo); Waistbands; Waistcoats; Walking boots; Walking breeches; Walking shoes; Walking shorts; Warm up suits; Warm-up jackets; Warm-up pants; Warm-up suits; Warm-up tops; Water socks; Waterpolo caps; Waterproof boots; Waterproof boots for fishing; Waterproof capes; Waterproof clothing; Waterproof jackets; Waterproof outerclothing; Waterproof pants; Waterproof shoes; Waterproof suits for motorcyclists; Waterproof trousers; Water-resistant clothing; Waterskiing suits; Weather resistant outer clothing; Weatherproof clothing; Weatherproof jackets; Weatherproof pants; Wedding dresses; Wedding gowns; Wellington boots; Wellingtons; Welts for footwear; Wet suits; Wet suits for surfing; Wet suits for water-skiing; Wet suits for water-skiing and sub-aqua; Wet suits for windsurfing; Wetsuit gloves; Wetsuits; Wetsuits for surface watersports; Wetsuits for surfing; Wetsuits for water-skiing; White coats for hospital use; Wimples; Wind coats; Wind jackets; Wind pants; Wind resistant jackets; Wind suits; Wind vests; Windcheaters; Wind-jackets; Windproof clothing; Windproof jackets; Wind-resistant jackets; Wind-resistant vests; Windshirts; Winter boots; Winter coats; Winter gloves; Women's ceremonial dresses; Women's foldable slippers; Womens' outerclothing; Women's shoes; Women's suits; Womens' underclothing; Womens' undergarments; Women's underwear; Wooden bodies for Japanese style clogs; Wooden main bodies of Japanese style wooden clogs; Wooden shoes; Wooden shoes [footwear]; Wooden supports of Japanese style wooden clogs; Woolen clothing; Woollen socks; Woollen tights; Woolly hats;

Work boots; Work clothes; Work overalls; Work shoes; Working overalls; Woven clothing; Woven shirts; Wrap belts for kimonos (datemaki); Wraps [clothing]; Wrist bands; Wrist warmers; Wristbands; Wristbands [clothing];

Yashmaghs; Yashmaks; Yoga bottoms; Yoga pants; Yoga shirts; Yoga shoes; Yokes (Shirt -);

Zoot suits; Zori.

Annex B

Goods and services subject to the request for “proof of use”

The applicants requested proof of use of the opponent’s trade mark on the following goods (other than martial arts):

Articles of sports clothing; Athletic clothing; Athletic footwear; Athletic shoes; Athletic tights; Athletic uniforms; Athletic footwear; Athletic hose; Athletics shoes; Athletics vests;

Boots for sport; Boots for sports; Boxing shoes; Boxing shorts;

Clothes for sport; Clothes for sports;

Exercise wear;

Footwear for sport; Footwear for sports; Footwear for use in sport; Functional underwear;

Gym boots; Gym shorts; Gym suits; Gymnastic shoes; Gymshoes; Gymwear;

Head sweatbands; Headbands against sweating;

Jackets being sports clothing;

Moisture-wicking sports shirts;

Padded shirts for athletic use; Padded shorts for athletic use;

Sport shirts; Sport shoes; Sport stockings; Sports [Boots for -]; Sports bras; Sports caps; Sports caps and hats; Sports clothing; Sports clothing [other than golf gloves]; Sports footwear; Sports headgear [other than helmets]; Sports jackets; Sports jerseys; Sports jerseys and breeches for sports; Sports over uniforms; Sports overuniforms; Sports pants; Sports shirts; Sports shirts with

short sleeves; Sports shoes; Sports singlets; Sports socks; Sports vests; Sports wear; Sportswear; Sweat bands; Sweat bands for the head; Sweat bands for the wrist;

Training shoes; Training suits.