

O/529/18

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION NO. 3222373

BY W.M. LONDON LTD

TO REGISTER AS A TRADE MARK:

MissLondoner

FOR GOODS IN CLASS 25

AND

IN THE MATTER OF THE OPPOSITION THERETO UNDER NO. 409794

BY EMOTION PIXELS LTD

BACKGROUND AND PLEADINGS

1. On 31 March 2017, W.M. London Ltd. ("the Applicant") applied to register "MissLondoner" as a UK trade mark for goods in Class 25, namely: *Clothes*.
2. The application was published for opposition purposes on 14 April 2017. Registration is opposed by Emotion Pixels Ltd ("the Opponent") on the basis of sections 5(2)(b) and 5(4)(a) of the Trade Marks Act 1994 ("the Act").
3. For its section 5(2)(b) claim, the Opponent relies on the registrations detailed in the table below (and in the Annex at the end of this decision). The Opponent relies on all the goods and services under its registrations and claims that MISS LONDONER is very similar to MISSI LONDON, and that there is identity between the parties' goods and services such that there exists the likelihood of confusion on the part of the relevant public, whereby the public "*will believe that the Applicant's goods emanate from the Opponent, or that they are economically linked.*"

UK Trade Mark Number 3101485 for a series of two marks:

"MISSI LONDON" and "missi London"

Filed on 27 March 2015 and registered on 28 August 2015 for goods in Classes 14, 18 and 25 and services in Class 35 (as set out in the **Annex** to this decision)

International registration WE00001292891 designating the EU, applied for on 25 September 2015 for MISSI LONDON, claiming priority based on the above UK trade mark and registered for largely the same goods and services as that UK registration, but with the limitation in Classes 18, 25 and 35 that the goods and services are all for females and other than for sports (as set out in the **Annex** to this decision)

4. For its section 5(4)(a) claim, the Opponent claims to have unregistered rights in the words MISSI LONDON, in which it claims to have significant goodwill and reputation through use throughout the UK since 2010 in relation to "*clothing, footwear, headgear and wholesale and retail services connected with the sale of clothing, footwear and headgear*". The Opponent

claims that “use of the mark applied for would constitute a misrepresentation as consumers may mistake the applicant’s goods for those of the Opponent or may infer that the Opponent in some way endorses or licenses the applicant’s goods. Such use is liable to cause damage to the Opponent, and damage to the distinctive character and repute of the mark is also likely as a result of the misrepresentation, in particular the goods will not have been subjected to the Opponent’s quality control or supervision. Such use is liable to be prevented under the law of passing off.”

5. The Applicant filed a notice of defence and counterstatement, where the Applicant referred to the respective trade marks being different and corrected a reference in the Opponent’s statement of grounds by emphasising that the Applicant’s mark is presented not as two words, but rather as one word. The Applicant’s counterstatement also contained two points that I shall address shortly: firstly, it referred to differences in “market position, product quality and price”, with directions to Applicant’s own social media outlets and website; and, secondly, the Applicant requested that the Opponent provide proof of use of its trade mark in Class 25.

Representation and papers filed

6. Mewburn Ellis LLP acts for the Opponent in these proceedings; the Applicant acts without professional legal representation. Neither party requested an oral hearing and I take this decision based on a careful reading of the papers filed. Both parties filed evidence during the evidence rounds, which I summarise briefly below. The Opponent also filed written submissions in lieu of an oral hearing.

EVIDENCE

The Applicant’s evidence:

7. The evidence filed by the Applicant took the form of a witness statement dated 11 January 2018 by Wenjuan Yang with exhibits WY1 – WY9. Ms Yang is a director of the applicant company and the evidence explains various aspects of the Applicant’s business, including how the company came into being after she graduated with a fashion degree, how it is marketed and examples of its goods and branding. However, the Applicant’s evidence is not relevant to the opposition decision before me. As further explained below, the

assessment of the likelihood of confusion on the part of consumers is made on notional basis, viewed from the perspective of a hypothetical average consumer for the goods specified. Thus, the Court of Justice of the European Union (“the CJEU”) has made clear¹ that when assessing the likelihood of confusion under section 5(2) it is necessary to consider all the circumstances in which the mark applied for might be used if it were registered. Similarly, in *Oakley v OHIM*² it is made clear that consideration of likelihood of confusion is prospective and not to be restricted to the current marketing or trading patterns of the parties:

“...Since the particular circumstances in which the goods covered by the marks are marketed may vary in time, and depending on the wishes of the proprietors of the trade marks, the prospective analysis of the likelihood of confusion between two marks, ... cannot be dependent on the commercial intentions, whether carried out or not – and which are naturally subjective – of the trade mark proprietors ...”

The Opponent’s evidence:

8. The evidence filed by the Opponent took the form of a witness statement dated 13 November 2017 by Rauf Niaz with exhibits RN1 – RN10. Mr Niaz is a director of the opponent company. He states that the mark MISSI LONDON was first used in May 2012 and that it has been in continuous use since in respect of clothing, and wholesale and retail services in connection with clothing. (I note that that date is at odds with the year date given in the statement of grounds.) The mark is licensed to two of his family’s businesses: (i) Missi Limited, which manufactures clothing under the MISSI LONDON mark and which sells wholesale, business to business; and (ii) Missi London Retail Limited, which is a clothing retail business, launched mid-2017. In 2004, through its physical store in Manchester, Missi Limited started selling clothing under the mark “MISSI” - it rebranded as MISSI LONDON in 2012. Mr Riaz states that sales by Missi Limited of clothing under the MISSI LONDON mark now take place through the physical store and its website www.missiclothing.com.
9. Mr Niaz provides in his witness statement turnover figures (wholesale value) under the MISSI LONDON mark for the years 2012 – 2016. The figures given are worldwide, although

¹ See for example at paragraph 66 of its judgment in *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited*, Case C-533/06.

² Case T-116/06 at paragraph 76

Mr Niaz states that at least 70% of the sales are in the UK. The figures range from over 150,000 units / over £1 million in 2012, to over 510,000 units / over £3.5 million in 2015 (a little lower in 2016). Mr Niaz states that goods under the mark have been sold to major retailers such as TK Maxx and Boohoo. He states that considerable investments of time, money and effort have gone into promoting the mark, for example £50,000 on Google Adwords for the wholesale part of the business alone since January 2014.

10. Although the statements in the paragraph above are not supported directly by specific exhibits, various exhibits that are provided demonstrate the actuality of clothing offered under the Missi London brand, for example: photos of its presence at a major womenswear trade exhibition in London in August 2015 (Exhibit RN6); and clothing items for sale on various websites (Exhibit RN4 and RN8) and references to the brand on social media items, including fashion blogs (Exhibit RN10). The Applicant has not challenged the Opponent's evidence.

DECISION

THE SECTION 5(2)(b)) GROUND OF OPPOSITION

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

"... 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."

12. Since the registrations relied on by the Opponent were filed before the Applicant's mark, each is an earlier mark under section 6(1) of the Act. Since neither earlier mark had completed its registration procedure more than five years before the Applicant's mark was published for opposition purposes, they are not subject to the proof of use provisions under section 6A of the Act. Therefore, the Opponent is able to rely for this opposition on all its claimed goods and services under its earlier registrations without having to show use of the

mark in relation to the specified goods or services. (The Applicant was therefore mistaken in its request in its counterstatement for proof of use.)

13. I bear in mind the relevant principles from decisions³ of the EU courts and I will refer to those principles as appropriate.

Comparison of the goods

14. The Applicant has applied to register its mark only in respect of goods in Class 25, namely: *Clothes*. The Opponent has protection for goods in Class 25 that include “Clothing”, albeit that for its international registration those goods are limited to the extent of being for females and other than for sports. Clothing and clothes are clearly synonymous, and it is also clear from case law such as *Meric*⁴ that 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 or vice versa. The Applicant’s goods are clearly identical to goods protected by the Opponent’s registrations.

The average consumer and the purchasing process

15. It is necessary to determine who is the average consumer for the respective goods and how the consumer is likely to select the goods. It must be borne in mind that the average consumer’s level of attention is likely to vary according to the category of goods in question⁵. In *Hearst Holdings Inc*,⁶ Birss J. described the average consumer in these terms:

“60. *The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect ... the relevant person is a legal construct and that the test is to*

³ *Sabel BV v Puma AG*, Case C-251/95; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97; *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97; *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98; *Matratzen Concord GmbH v OHIM*, Case C-3/03; *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P; and *Bimbo SA v OHIM*, Case C-591/12P.

⁴ See paragraph 29 of the judgment of the General Court in *Gérard Meric v Office for Harmonisation in the Internal Market (OHIM)*, Case T- 133/05

⁵ *Lloyd Schuhfabrik Meyer*, Case C-342/97

⁶ *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch)

be applied objectively by the court from the point of view of that constructed person. The word “average” denotes that the person is typical... .”

16. The average consumer for the goods at issue will be the general public at large (notwithstanding that clothing will also be sold wholesale and will to that extent include businesses). In selecting and buying clothes, the average consumer will take account of factors such as finding the right size, considering whether they like the colour, pattern, cut and style. Clothing varies in price, but clothes in general are not especially high-cost items, and whilst not everyday purchases, will be bought with relative frequency. I find that a medium or ordinary level of care will be taken by the average consumer in buying the goods at issue in this case. Businesses buying wholesale may pay a higher level of attention.
17. The average consumer will see the marks used on the goods as labelling or branding or in advertising, where a consumer will browse shelves in shops, search the internet or peruse a catalogue to select the goods. Therefore, I consider the purchase to be a primarily visual one, but aural considerations may also play a part, such as on the basis of word of mouth recommendations, so I also take into account the aural impact of the marks in the assessment.

Comparison of the marks

18. It is clear from *Sabel*⁷ that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. It would therefore be wrong to dissect the trade marks artificially, but it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features that are not negligible and therefore contribute to the overall impressions created by the marks. The marks to be compared are shown below:

⁷ *Sabel BV v Puma AG*, Case C-251/95

Applicant's contested trade mark:	MissLondoner
Opponent's earlier trade mark:	missi London MISSI LONDON

19. The overall impression of the Applicant's mark is that, despite its being presented as one word, it is made up of the two ordinary English words, "Miss" and "Londoner". Each of those elements contributes equally to the overall impression and the two words together tend to form a unit, which is emphasised by (but dependent on) their presentation as a single conjoined word.
20. The overall impression of the Opponent's mark is that it consists of the word "MISSI" – which is not a standard English word – and the famous place name "London". Both words contribute to the overall impression, but the word MISSI is more striking in the overall impression because of its unusual coinage and because of its being the first of the two words, where the second is the less distinctive name of the UK capital city.

Visual similarity

21. Notional and fair use of a word mark allows for changes of upper/lower case to the extent that such changes do not affect the distinctive character of the mark. Visually, therefore, I compare the marks at what I consider their closest intersection, as between Missi London and MissLondoner. The discernible two word components of the parties' marks share significant runs of opening letters – four against five for Miss/Missi and six against eight for London/Londoner. However, I find that the difference of just three letters in this case has a notable visual impact, which (despite the Opponent's submissions to the contrary) would not go unnoticed by the average consumer. Thus, a short but well-known English word is by the addition of a single letter transformed to an unfamiliar, seemingly invented brand word; and the addition of two letters changes the very familiar six-letter place name into the longer, different word indicating a person from or of that city. Whilst this latter analysis overlaps

with conceptual considerations I find the marks are visually similar to a degree that is lowish, and less than medium.

22. I note that the Opponent submits that the comparison could be between “MissiLondon” and MissLondoner”. I find that to conjoin the two words the Opponent’s mark would be a step too far for comparison in this context. However, even if the two words were presented so closely together that they resembled a single word, I do not find that it fundamentally alters my analysis. Even if the middle “i” were made less visually prominent by its abutting the “L”, I would still not assess the visual similarity in those circumstances as above medium.

Aural similarity

23. Despite sharing the opening parts of each of their respective word components, the differences between the marks create striking aural differences. The pattern of syllables is different, with the Opponent’s mark being 2-2 in the form of “miss-ee” “lun-dun”, in contrast to the 1-3 syllabic structure in the Applicant’s mark (“miss-lun-dun-uh”). The marks are readily distinguishable when spoken and are aurally similar to low degree.
24. I make the above findings notwithstanding the loose rule of thumb in case law that the beginnings of words tend to have more visual and aural impact than the ends⁸.

Conceptual similarity

25. The Applicant’s mark carries the clear idea of a young woman from or living in London. The Opponent’s mark suggests a coined brand name – “MISSI” – together with the name of the UK capital city, implying that the brand has some direct connection to that place. That conceptual gap makes the respective marks conceptually different. I acknowledge that “MISSI” is phonetically identical to the dictionary word “missy”, which word derives from ‘miss’ (both referring to a young woman). However, while missi and missy are phonetically equivalent, they are plainly not the same word and (despite the Opponent’s submissions to the contrary) I do not find that the average consumer would immediately recognise ‘missi’

⁸ See for example the ruling of the European Court of Justice in *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02 at paragraphs 81-83; but see too *CureVac GmbH v OHIM*, T-80/08 to the effect that similar beginnings are not necessarily important or decisive.

as being a reference to ‘missy’ (even noting the Opponent’s goods include clothing for females). If I am wrong and it were the case that a significant portion of the notional average consumer would immediately recognise ‘missi’ as being a reference to ‘missy’, then there would be a degree of conceptual overlap. However, I in any case reject the Opponent’s submission that the marks are “*conceptually identical in referring to a young woman, a ‘missi’ or ‘miss’, with the surname London or, more likely, who comes from that city*”. Instead, my finding is that the earlier mark would be understood by the average consumer as a coined brand name (“MISSI”) together with the implication that the brand has some direct connection to that city (such as its headquarters being based there). This is conceptually different from the persona idea of young female Londoner evoked by the unitary nature of the Applicant’s mark.

Distinctive character of earlier trade mark

26. The distinctive character of the earlier mark must be considered. The more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion (*Sabel*). In *Lloyd Schuhfabrik*⁹ the Court of Justice of the European Union (“CJEU”) stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings ...

*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).”*

⁹ *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97

27. The Opponent's trade mark features as the first of its two words, the apparently invented word "MISSI" which I find to be inherently distinctive to a reasonably high degree. The second word of the mark cannot be considered distinctive as it is simply the name of the UK capital city and the average consumer is accustomed to seeing such city names as part of clothing brands. As a whole, I consider the earlier mark has an average degree of inherent distinctiveness.
28. The level of inherent distinctiveness of a trade mark may be enhanced through use in the UK. The witness statement refers to the Opponent having spent £50,000 promoting its wholesale offering on Google Adwords since January 2014 and to millions of pounds of turnover and hundreds of thousands of units sold under the mark. The evidence also shows the brand's promotion at a major trade exhibition in the capital. The evidence would have been strengthened by supporting evidence as to levels of sales and promotional spend and by clearer detail on figures relating solely to the UK. (I also note that there is no indication of market share, but clothing is such a vast sector that I do not find that absence especially damaging to the Opponent.) On the basis of Mr Niaz's unchallenged evidence, I find the use made of the earlier mark will have enhanced its level of distinctiveness, though to what extent I cannot determine.

Conclusion as to likelihood of confusion

29. I now turn to reach a conclusion as to the likelihood of confusion between the parties' marks if they were used in relation to the registered goods I have considered. I make a global assessment of the likelihood of confusion, taking account of all relevant factors.
30. I take due account of some interdependence¹⁰ between the relevant factors, including that a lesser degree of similarity between the marks may be offset by a great degree of similarity between the goods. The goods at issue are identical and the purchasing process will involve primarily visual considerations of the marks, which I have assessed to be visually similar to a degree that is lowish, and less than medium (and in no circumstances above medium). I have also found that the differences between the marks make them aurally similar only to low degree and conceptually different (even if I allow for a conceptual overlap between

¹⁰ See paragraph 17 of the judgment in Canon Case C-39/97.

“Missi” and “Miss”). Despite the visual similarity that arises from the extent of shared letters, the Applicant’s mark evokes a female persona that readily distinguishes it from the Opponent’s mark (where the overall impression is one of a made-up brand name coupled with a famous fashion city). The marks will be understood quite differently in the mind of the average consumer.

31. The average consumer rarely has the chance to make direct comparisons between marks and must instead rely on the imperfect mental picture of the marks, but s/he is deemed reasonably well informed and reasonably circumspect and observant, and in this case would pay (no lower than) a medium or ordinary average level of attention when buying the goods at issue. I take into account that the Opponent’s earlier mark has an average degree of inherent distinctiveness and that the distinctiveness of the mark may have been enhanced through use. Nonetheless, the differences between the parties’ marks lead me to conclude that the average consumer will not mistake one mark for the other, so there will be no direct confusion. Moreover, the differences are such that there will be no association between the marks and no risk that the public might believe that the respective goods come from the same or economically-linked undertakings. There is no likelihood of confusion (direct or indirect) and consequently, **the opposition under section 5(2)(b) of the Act fails.**

THE SECTION 5(4)(a) GROUND OF OPPOSITION

32. Section 5(4) of the Act states:

“A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

(b) [.....]

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark.”

33. It is well established¹¹ that passing off depends upon the existence of (i) goodwill (ii) misrepresentation and (iii) damage. Thus in the *Jif Lemon* case¹², Lord Oliver set out the requirements for establishing a successful passing off right as follows:

“First, he must establish a goodwill or reputation attached to the goods or services which he supplies in the mind of the purchasing public by association with the identifying ‘get-up’ (whether it consists simply of a brand name or a trade description, or the individual features of labelling or packaging) under which his particular goods or services are offered to the public, such that the get-up is recognised by the public as distinctive specifically of the plaintiff’s goods or services.

Secondly, he must demonstrate a misrepresentation by the defendant to the public (whether or not intentional) leading or likely to lead the public to the belief that the goods or services offered by him are the goods or services of the plaintiff.

Thirdly, he must demonstrate that he suffers or, in a *quia timet* action, that he is likely to suffer damage by reason of the erroneous belief engendered by the defendant’s misrepresentation that the source of the defendant’s goods or services is the same as the source of those offered by the plaintiff.”

34. All three elements (goodwill, misrepresentation and damage) are required to succeed in a passing off claim, so an opposition based on section 5(4)(a) grounds invoking passing off will necessarily fail in the absence of any one of those elements. The question of passing off is to be assessed at the date of the application for registration. The first matter for consideration is therefore whether the evidence shows that the Opponent had generated goodwill by 31 March 2017. Case law¹³ has described goodwill as “... *a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start.*”

¹¹ See, for example, summary by Melissa Clarke, sitting as a deputy Judge of the High Court in *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC

¹² *Reckitt & Coleman Products Ltd v Borden* [1990] RPC 341 HL

¹³ *Inland Revenue Commissioners v Muller & Co’s Margarine Ltd* [1901] AC 217 (HOL)

35. I note that in relation to its claimed unregistered rights in MISSI LONDON the Opponent's statement of grounds refers to goodwill and reputation in relation to clothing (etc) through use throughout the UK since 2010. By contrast, Mr Niaz states in his evidence that the rebranding MISSI LONDON occurred in 2012. I will take the date given by Mr Niaz as the applicable date.
36. The evidence in this case shows use of the mark during the period 2012 - 2016 (as may be seen in the turnover figures for those years). The relevant factors and evidential assessment for reputation and goodwill have a good deal in common with those for enhanced distinctiveness (market share, duration and intensity of use, promotional spend etc). For the purposes of this decision I will proceed on the basis that the evidence filed by the Opponent is sufficient to establish goodwill. I therefore proceed to consider the second requirement, namely, whether, if the Applicant were to use its applied-for mark on clothes, there would be a misrepresentation to consumers.
37. The Opponent claims that "*use of the mark applied for would constitute a misrepresentation as consumers may mistake the applicant's goods for those of the Opponent or may infer that the Opponent in some way endorses or licenses the applicant's goods.*" However, in line with the reasons I gave for my finding of no likelihood of confusion under section 5(2)(b) I find that, even assuming that the Opponent's mark had acquired a reputation among a relevant class of persons, the differences between MISSI LONDON and the Applicant's mark are such that there would be no mistaken inference that even identical goods are from the same source or are connected¹⁴.
38. There is one possible difference between the position under trade mark law and the position under passing off law. In *Marks and Spencer PLC v Interflora*¹⁵, Lewinson L.J. cast doubt on whether the test for misrepresentation for passing off purposes came to the same thing as the test for a likelihood of confusion under trade mark law. He pointed out that it is sufficient for passing off purposes that "*a substantial number*" of the relevant public are deceived, which might not mean that the average consumer is confused. As both tests are intended to be normative measures intended to exclude those who are unusually careful or

¹⁴ Halsbury's Laws of England (4th Edition) Vol. 48 (1995 reissue) provides guidance on relevant law in this area at paragraphs 184 to 188. See in particular paragraph 184.

¹⁵ [2012] EWCA (Civ) 1501

careless (per Jacob L.J. in *Reed Executive Plc v Reed Business Information Ltd*¹⁶, it is doubtful whether the difference between the legal tests will (all other factors being equal) produce different outcomes.

39. I therefore reject the Opponent's claim that use of the contested mark would amount to a misrepresentation to the public. Specifically, I do not accept that use of the contested mark in relation to clothes would cause a substantial number of the Opponent's customers or potential customers to believe that the Applicant's goods are provided, endorsed, or economically connected in any other way, to the opponent. **Consequently, the opposition under section 5(4)(a) also fails.**

Costs

40. The opposition has failed and the Applicant is entitled to a contribution towards its costs. My assessment of a contribution towards the cost of the proceedings is based on the guidance in Tribunal Practice Notice 2/2016 and I award the Applicant the sum of £500. The sum is calculated as follows:

Considering Opponent's statement of grounds and preparing a counterstatement:	£200
Considering the Opponent's evidence	£300
Total:	£500

41. I therefore order Emotion Pixels Ltd to pay W.M. London Ltd. the sum of £500 (five hundred pounds) to be paid within fourteen days of the expiry of the appeal period, or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 23rd day of August 2018

Matthew Williams
For the Registrar

¹⁶ [2004] RPC 40)

ANNEX - Opponent's goods and services

UK Trade Mark Number 3101485	
Class	
14	Precious metals and their alloys; jewellery, precious stones; horological and chronometric instruments. Badges (for wear) of precious metal, brooches, buttons, pins and buckles; bracelets, brilliants, all being bracelets and necklaces containing diamonds and semi-precious stones, costume jewellery, chains; jewellery for the hair, hair ornaments and accessories of precious metals and precious stones.
18	Leather and imitations of leather, animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery; trunks, travelling bags, handbags, shoulder bags, sport and leisure bags, backpacks, tote bags, belt bags, beach bags, suit cases, vanity cases, brief cases, key cases and suit carriers; belts; purses, and wallets.
25	Clothing, footwear, headgear; articles of clothing including shirts, denimwear, jeans, knit shirts, jerseys and tank tops, T-shirts, dresses, skirts, trousers, underwear, swimwear, shorts, pants, sweaters, caps, hats, scarves, visors, warm-up suits, sweatshirts, jackets, coats, uniforms, neckties, wristbands and headbands, gloves, socks and hosiery, suspenders; belts.
35	Retail, online retail, mail order and wholesale services connected with the sale of precious metals and their alloys, jewellery, precious stones, horological and chronometric instruments, badges (for wear) of precious metal, brooches, buttons, pins and buckles, bracelets, brilliants, all being bracelets and necklaces containing diamonds and semi-precious stones, costume jewellery, chains, jewellery for the hair, hair ornaments and accessories of precious metals and precious stones, leather and imitations of leather, animal skins, hides, trunks and travelling bags, umbrellas, parasols and walking sticks, whips, harness and saddlery, trunks, travelling bags, handbags, shoulder bags, sport and leisure bags, backpacks, tote bags, belt bags, beach bags, suit cases, vanity cases, brief cases, key cases, passport holders and suit carriers, belts, purses, and wallets, clothing, footwear, headgear, articles of clothing including shirts, denimwear, jeans, knit shirts, jerseys and tank tops, T-shirts, dresses, skirts, trousers, underwear, swimwear, shorts, pants, sweaters, caps, hats, scarves, visors, warm-up suits, sweatshirts, jackets, coats, uniforms, neckties, wristbands and headbands, gloves, socks and hosiery, suspenders, belts.

International registration WE00001292891 designating the EU	
Class	
14	Precious metals and their alloys; jewellery, precious stones; horological and chronometric instruments. Badges (for wear) of precious metal, brooches, buttons, pins and buckles; bracelets, brilliants, all being bracelets and necklaces containing diamonds and semi-precious stones, costume jewellery, chains; jewellery for the hair, hair ornaments and accessories of precious metals and precious stones.
18	Leather and imitations of leather, animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery; trunks, travelling bags, handbags, shoulder bags, backpacks, tote bags, belt bags, beach bags, suit cases, vanity cases, brief cases, key cases and suit carriers; purses and wallets; all for females (all aforementioned other than for sports).
25	Clothing, footwear, headgear; articles of clothing including shirts, denimwear, jeans, knit shirts, jerseys and tank tops, T-shirts, dresses, skirts, trousers, underwear, swimwear, shorts, pants, sweaters, caps, hats, scarves, visors, warm-up suits, sweatshirts, jackets, coats, uniforms, neckties, wristbands and headbands, gloves, socks and hosiery, suspenders; belts; all for females (all aforementioned other than for sports).
35	Retail, online retail, mail order and wholesale services connected with the sale of precious metals and their alloys, jewellery, precious stones, horological and chronometric instruments, badges (for wear) of precious metal, brooches, buttons, pins and buckles, bracelets, brilliants, all being bracelets and necklaces containing diamonds and semi-precious stones, costume jewellery, chains, jewellery for the hair, hair ornaments and accessories of precious metals and precious stones, leather and imitations of leather, animal skins, hides, trunks and travelling bags, umbrellas, parasols and walking sticks, whips, harness and saddlery, trunks, travelling bags, handbags, shoulder bags, backpacks, tote bags, belt bags, beach bags, suit cases, vanity cases, briefcases, key cases, passport holders and suit carriers, belts, purses, and wallets, clothing, footwear, headgear, articles of clothing including shirts, denimwear, jeans, knit shirts, jerseys and tank tops, T-shirts, dresses, skirts, trousers, underwear, swimwear, shorts, pants, sweaters, caps, hats, scarves, visors, warm-up suits, sweatshirts, jackets, coats, uniforms, neckties, wristbands and headbands, gloves, socks and hosiery, suspenders, belts; all for females (all aforementioned other than for sports).