

O-567-17

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NOS. 3091338, 3091342, 3091344 & 3091346
BY BOOHOO.COM UK LIMITED TO REGISTER VARIOUS TRADE MARKS IN
CLASSES 14, 18, 25 & 35**

AND

**IN THE MATTER OF CONSOLIDATED OPPOSITIONS THERETO
UNDER NOS. 404348-404351 BY WE BRAND S.A.R.L.**

BACKGROUND & PLEADINGS

1. On 27 January 2015, Boohom.com UK Limited (“the applicant”) applied to register the trade marks shown below for the goods and services shown in paragraph 25 and Annex A to this decision. The applications were published for opposition purposes on 13 February 2015:

No. 3019338 – WE ARE US & WeAreUs (a series of two);

No. 3091342 - # WE ARE US & #WeAreUs (a series of two);

No. 3091344 – WE ARE & WeAre (a series of two);

No. 3091346 - # WE ARE & #WeAre (a series of two).

2. On 18 May 2015, the applications were opposed in full by WE Brand S.a.r.l. (“the opponent”). The oppositions are based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”), with the opponent relying upon the International Registration designating the European Union (“IREU”) and European Union Trade Marks (“EUTM”) registrations shown below (full details of which can be found in Annex B of this decision):



WE



3. The applicant filed counterstatements in which the basis of the oppositions are denied. It states that:

“2. The respective trade marks are visually, phonetically and conceptually dissimilar.

3. The applicant’s trade marks [are slogans] with an entirely different concept and meaning to the opponent’s trade marks.”

It does, however, admit certain of the opponent’s goods and services are either “identical or similar to the corresponding goods/services in the applicant’s trade mark application”; I shall return to this point below.

4. Following the filing of defences, the proceedings were consolidated. In these proceedings, the opponent is represented by Nucleus IP Limited and the applicant by Wilson Gunn. Although neither party filed evidence, both filed written submissions during the course of the evidence rounds and in lieu of attendance at a hearing; I will refer to these submissions, as necessary, later in this decision.

DECISION

5. The oppositions are based upon section 5(2)(b) of the Act which reads as follows:

“5 (2) A trade mark shall not be registered if because –

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

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

6. An earlier trade mark is defined in section 6 of the Act, which states:

“6. - (1) In this Act an “earlier trade mark” means –

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

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

7. In these proceedings, the opponent is relying upon the three trade marks shown in Annex B, all of which qualify as earlier trade marks under the above provisions. As these earlier trade marks had not been registered for more than five years at the date when the applications were published, they are not subject to proof of use, as per section 6A of the Act. As a consequence, the opponent can rely upon them in relation to all the goods and services it has identified i.e. all the goods and services for which they are registered.

Section 5(2)(b) – case law

8. 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 B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

The principles:

- (a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a 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 trade marks

9. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade 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 trade marks must be assessed by reference to the overall impressions created by them, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union (“CJEU”) stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

10. It would be wrong, therefore, artificially to dissect the trade marks, although it is necessary to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions they create. The trade marks to be compared are:

The opponent's trade marks	The applicant's trade marks
 <p>(which I will refer to as the first trade mark)</p> <p>WE</p> <p>(which I will refer to as the second trade mark)</p>  <p>(which I will refer to as the the third trade mark)</p>	<p>WE ARE US & WeAreUs</p> <p># WE ARE US & #WeAreUs</p> <p>WE ARE & WeAre</p> <p>#WE ARE & #WeAre</p>

11. In reaching the conclusions which follow, I have taken into account (but do not intend to record here) the parties' competing submissions on this aspect of the case.

Distinctive & Dominant Components

The opponent's first trade mark

12. This consists of three two letter combinations i.e. "WE", "IS" and "ME" presented in white in a slightly stylised but unremarkable font and placed one above the other within a black square which acts as a background. Given what, in my experience, is the average consumer's natural inclination to make sense of such combinations, the letters in the opponent's first trade mark will be construed as words which create a unit (the meaning of which is different to the individual words of which it is composed) and in which the word "WE" does not play an independent distinctive role. It will be understood by the average consumer as the phrase "WE IS ME". It is the unit that creates the overall impression and in which the distinctiveness lies.

The opponent's second trade mark

13. This consists of the letters/word "WE" presented in block capital letters. That is the overall impression it will convey and where its distinctiveness lies.

The opponent's third trade mark

14. This consists of two characters. Despite their modest stylisation and the fact that both characters are the same (but are presented in different orientations), they will, in my view, be understood by the average consumer as the letters/word "WE"; that is the overall impression they will convey and where their distinctiveness lies.

The applicant's trade marks

15. The applicant has four applications each consisting of a series of two trade marks. Despite the conjoined nature of the presentation of the second trade marks in the various series i.e. "WeAreUs" and "WeAre", the fact that the words "We", "Are" and "Us"

are presented in title case serves to highlight the fact that, like the first trade mark in the series of which they form part, they are meant to be treated as separate words. The eight trade marks naturally fall into two groups of four i.e. (i) the words “WE ARE US” and their conjoined and hashtag equivalents and (ii) the words “WE ARE” and their conjoined and hashtag equivalents.

16. Like the opponent’s first trade mark, the words “WE ARE US”/”WeAreUs” and “WE ARE”/”WeAre” create units, the meanings of which are different to the individual words of which they are composed. Also like the opponent’s first trade mark, in those units the word “WE/We” does not play an independent distinctive role. The overall impression they convey and their distinctiveness lie in the units they create. I reach the same conclusion in relation to the variants accompanied by a hashtag. Although the presence of the hashtag is unlikely to contribute to the various trade marks’ distinctive characters, it will affect the overall impression they convey by linking the various words to posts on social media platforms.

The comparison with the opponent’s second and third trade marks

17. All of the competing trade marks contain the letters/word “WE”. They are the first or only part of all the trade marks at issue. Irrespective of the presence or absence of the # symbol, there is, in my view, a low degree of visual similarity with the applicant’s “WE ARE US” trade marks and a somewhat higher (but not much higher) degree of visual similarity to its “WE ARE” trade marks.

18. As to the aural comparison, the applicant’s trade marks will be referred to as “WE ARE US” (three syllables), “hashtag WE ARE US” (five syllables), “WE ARE” (two syllables) and “hashtag WE ARE” (four syllables) respectively, whereas the opponent’s trade marks will be referred to as the single syllable word “WE” i.e. the pronoun for the first person plural. That results in a low degree of aural similarity with the applicant’s “WE ARE US” trade marks and a medium degree of aural similarity with the applicant’s

“WE ARE” trade marks. In terms of the variants including a hashtag, the respective degree of similarity will be slightly lower in each case.

19. As I mentioned above, the concept conveyed by the opponent’s trade marks is of the first person plural. As all of the applicant’s trade marks include this concept and as others include the word “US/Us” (also the pronoun for the first person plural), it leads to a medium degree of conceptual similarity between the opponent’s trade marks and all of the trade marks of the applicant. This includes the hashtag variants, the hashtag doing nothing to alter the concept conveyed by the words but simply pointing to the fact they appear as posts on various social media platforms.

The comparison with the opponent’s first trade mark

20. The only word the opponent’s first trade mark has in common with the applicant’s trade marks is, once again, the word “WE”. However, the presence of two additional short words i.e. “IS” and “ME” (the latter of which is also a pronoun) in the opponent’s first trade mark (although undeniably visually and aurally different to the additional words in the applicant’s “WE ARE US”/“WE ARE” trade marks), creates a three word unit which is, irrespective of the presence or absence of the # symbol, in my view, visually similar to the applicant’s “WE ARE US” trade marks to an above average degree and to its “WE ARE” trade marks to a medium degree.

21. Turning to the aural comparison, I have already concluded that the applicant’s trade marks will be referred to as the three or five syllable combinations “WE ARE US” or “hashtag WE ARE US” and two and four syllable combinations “WE ARE” and “hashtag WE ARE” respectively. As the opponent’s first trade mark will be articulated as the three syllable combination “WE IS ME,” the similar aural rhythm it creates results, in my view, in an above average degree of aural similarity to the applicant’s “WE ARE US” trade marks and a medium degree of aural similarity with its “WE ARE” trade marks. In terms of the variants including a hashtag, as above, the respective degree of similarity will be slightly lower in each case.

22. Finally, the conceptual comparison. Although the precise concepts the opponent's first trade mark and the applicant's trade marks convey is difficult to pin down, they all revolve around the juxtaposition of, inter alia, various pronouns. Considered on that basis, the opponent's first trade mark is, in my view, conceptually similar to the applicant's "WE ARE US"/"WE ARE" trade marks to a fairly high and medium degree respectively; as above, the presence of the hashtag does not alter the conceptual meanings conveyed.

The opponent's strongest case

23. Having reached the above conclusions, it is the opponent's first trade mark which, in my view, offers it its strongest case insofar as the competing trade marks are concerned. In its counterstatements, the applicant admitted that certain goods and services in its specifications were identical or similar to the opponent's goods and services in the corresponding classes. Thus in relation to the applicant's goods in classes 14 and 18, that can only relate to the corresponding goods in classes 14 and 18 of the EUTMs upon which the opponent relies. Those EUTMs also contain goods and services in classes 25 and 35 which are identical or similar to some of those for which the applicant seeks registration in the corresponding classes.

24. For reasons which will become clear later in this decision, I intend to proceed on the basis that all of the goods and services in EUTM no. 7209571 are identical or highly similar to all of the goods and services in the applications (that is certainly the case in relation to the applicant's goods in classes 14, 18 and 25). As this trade mark consists of the word "WE" in block capital letters, it is closer to the applicant's trade marks than the stylised version of these letters in no. 11312667. If the opponent is unable to succeed on the basis of EUTM no. 7209571, it will, in my view, be in no better position in relation to the stylised version of the word "WE", the specifications of which, do not, for example, contain goods in class 18. As a consequence of those conclusions, I shall now compare the applicant's goods and services to the goods and services in the IREU upon which the opponent relies.

Comparison of goods and services

25. The goods and services to be compared are as follows:

Opponent's goods and services - IREU	Applicant's goods and services
<p>Class 9 - Software, especially downloadable user programs (apps), including apps for installation on telephones, mobile telephones and communications and wireless communication devices, downloadable music files, downloadable files, downloadable movies; eyewear, including sunglasses; spectacle frames; pouches and cases for eyeglasses.</p> <p>Class 25 - Clothing, footwear, headgear, namely woollen hats, hats and caps; belts.</p> <p>Class 35 - Advertisement; business management; business administration; administrative services; business mediation in the purchase and sale of goods in classes 9 and 25; retail services relating to the goods in classes 9 and 25; the aforesaid services also to be provided electronically, including the internet; management of a customer loyalty program or organization of promotional activities to promote customer loyalty; supervision of customer loyalty.</p>	<p>Class 14 - Jewellery; imitation jewellery; costume jewellery; precious metals; precious and semi-precious stones; rings; earrings; bracelets; ankle bracelets; necklaces; jewellery chains; pendants; jewellery charms; jewellery brooches; ornamental pins; lapel pins; badges of precious metals; tie pins; tie clips; cuff links; decorative boxes of precious metal; jewellery boxes; jewellery cases; horological and chronometric instruments; clocks; watches; watch straps; watch bands and bracelets; key rings [trinkets or fobs]; key rings and key fobs of precious metals; ornaments, figurines, statues and statuettes, and works of art, all of precious metal or coated therewith; parts and fittings for all of the aforesaid goods.</p> <p>Class 18 - Luggage; bags; travelling bags and cases; suitcases; sports bags; athletic bags; kit bags; gym bags; beach bags; garment bags; boot and shoe bags; holdalls; back packs; rucksacks; folding bags and cases; handbags; shoulder bags; tote bags; shopping bags; satchels; pouches; toilet bags; cosmetic bags; jewellery rolls for travel; covers for bags; hat boxes of leather; wallets; purses; card wallets; card cases; credit card holders; key cases; luggage label holders; luggage tags; luggage straps; leather straps; animal skins; hides; umbrellas; parasols;</p>

	<p>walking sticks; parts and fittings for all of the aforesaid goods.</p> <p>Class 25 - Clothing; footwear; headgear; ladieswear; menswear; articles of outer clothing; dresses; skirts; trousers; shorts; jeans; denims; leggings; tops; blouses; shirts; t-shirts; vests; knitwear; sweaters; tank tops; pullovers; sweatshirts; jumpers; jerseys; cardigans; hooded tops; shoulder wraps; sashes and shawls; jackets; coats; overcoats; blazers; waistcoats; suits; ties; underwear; undergarments; hosiery; socks; tights; stockings; suspender belts; lingerie; bras; pants; thongs; camisoles; negligees; corsets; garters; sarongs; nightwear; sleepwear; pyjamas; sleep shirts; night dresses; dressing gowns; bathrobes; belts; braces; suspenders; collars; cuffs; wristbands; headbands; scarves; gloves; mittens; ear muffs; formal evening wear; leisurewear; casualwear; sportswear; sweatpants; track suits; rainwear; waterproof clothing; weatherproof clothing; windcheaters; anoraks; parkas; gaiters; uniforms; swimwear; bathing costumes; bikinis; swimming trunks; bathing caps; body suits; clothing, footwear and headgear for children and babies; layettes; sleep suits; bibs, not of paper; aprons; ready-made clothes linings; footwear; boots; shoes; slippers; sandals; flip-flops; sports shoes; fittings of metal for footwear; headwear; hats; caps; sun visors.</p> <p>Class 35 – see Annex A to this decision.</p>
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The correct approach to the opponent's specifications in classes 25 and 35

The use of the word “namely” in specifications

26. Both parties' specifications include the word “namely”. The Trade Mark Registry's Classification Guide indicates that the word “namely” should be approached in the following manner:

“Including, for example, namely, as well as, in particular, specifically i.e.

While not desirable in specifications since it encourages tautology, such wording should usually not be changed. Such terms are not allowable in Class 35 (with the exception of “namely” see below) for specifications covering retail services as they do not create the legal certainty that is required. However, in other class the terms may be allowed. For example we would allow:

Biocides including insecticides and pesticides Paper articles of stationery in particular envelopes Dairy products namely cheese and butter

Note that specifications including “namely” should be interpreted as only covering the named Goods, that is, the specification is limited to those goods. Thus, in the above “dairy products namely cheese and butter” would only be interpreted as meaning “cheese and butter” and not “dairy products” at large. This is consistent with the definitions provided in Collins English Dictionary which states “namely” to mean “that is to say” and the Cambridge International Dictionary of English which states “which is or are.”

The words “especially” and “including” have no such limiting effect.

27. Insofar as this approach affects the opponent, it means that the specification of its IREU in class 25 i.e. “Clothing, footwear, headgear, namely woollen hats, hats and caps; belts” is to be construed as being limited to: “woollen hats, hats and caps” and

“belts”. That, of course, also impacts on how its “retail services relating to the goods in classes 9 and 25” should be interpreted. As these refer “to the goods” in classes 9 and 25, that can only, in my view, be regarded as a reference to the goods in classes 9 and 25 of the registration in suit. I will approach the comparison with those conclusions in mind.

Comparison of goods and services - case law

28. In the judgment of the CJEU in *Canon*, Case C-39/97, the Court stated at paragraph 23 of its judgment:

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

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

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

whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

30. In *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated:

"... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

31. In *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another*, [2000] F.S.R. 267 (HC), Neuberger J. (as he then was) stated:

"I should add that I see no reason to give the word "cosmetics" and "toilet preparations"... anything other than their natural meaning, subject, of course, to the normal and necessary principle that the words must be construed by reference to their context."

32. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criteria capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the General Court ("GC") stated that "complementary" means:

“...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking”.

33. In *Sanco SA v OHIM*, Case T-249/11, the GC indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. *chicken against transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited* BL-0-255-13:

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes.”

Whilst on the other hand:

“.....it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.”

34. In *Gérard Meric v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* case T-133/05, the GC stated:

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

general category designated by the earlier mark (Case T-104/01 Oberhauser v OHIM – Petit Liberto (Fifties) [2002] ECR II-4359, paragraphs 32 and 33; Case T-110/01 Vedral v OHIM – France Distribution (HUBERT) [2002] ECR II-5275, paragraphs 43 and 44; and Case T-10/03 Koubi v OHIM – Flabesa (CONFORFLEX) [2004] ECR II-719, paragraphs 41 and 42).”

35. In *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. (as he then was) stated:

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

36. In *Gitana SA, v OHIM*, Case T-569/11, the GC stated:

“45. Moreover, in respect of the relationship between the ‘goods in leather and imitations of leather’ in Class 18 covered by the trade mark sought and the goods in Class 25 covered by the earlier mark, it is apparent also from settled case-law that the ‘goods in leather and imitations of leather’ include clothing accessories such as ‘bags or wallets’ made from that raw material and which, as such, contribute, with clothing and other clothing goods, to the external image (‘look’) of the consumer concerned, that is to say coordination of its various components at the design stage or when they are purchased. Furthermore, the fact that those goods are often sold in the same specialist sales outlets is likely to facilitate the perception by the relevant consumer of the close connections between them and support the impression that the same undertaking is responsible for the production of those goods. It follows that some consumers may perceive a close connection between clothing, footwear and headgear in Class 25 and certain ‘goods made of these materials [leather and imitations of leather] and not included in other classes’ in Class 18 which are clothing accessories. Consequently, clothing, shoes and headgear in Class 25 bear more than a slight

degree of similarity to a category of ‘goods made of these materials [leather and imitations of leather] and not included in other classes’ in Class 18 consisting of clothing accessories made of those materials (see, to that effect, *PiraÑAM diseño original Juan Bolaños*, paragraph 42 above, paragraphs 49 to 51; *exē*, paragraph 42 above, paragraph 32; and *GIORDANO*, paragraph 42 above, paragraphs 25 to 27).”

37. In *Compagnie des montres Longines, Francillon SA v OHIM*, Case T-505/12, the GC rejected the argument that sunglasses, jewellery and watches were similar to clothing. The court stated:

“46 In that regard, it must be stated at the outset that the goods which have to be compared in the present case, namely, on the one hand, the ‘optical sunglasses’ and ‘clothing and footwear’ in, respectively, Classes 9 and 25 of the Nice Agreement and, secondly, the various horological and jewellery goods, listed in paragraph 6 above, in Class 14 of that agreement, belong to adjacent market segments.

47 It may also be stated, by analogy with what the Court held in the context of an assessment relating to Article 8(5) of Regulation No 207/2009 in the case which gave rise to the judgment of 27 September 2012 in *El Corte Inglés v OHIM — Pucci International (Emidio Tucci)*, T-373/09, EU:T:2012:500, paragraph 66, that, even though those categories of goods are different, each of them includes goods which are often sold as luxury goods under the famous trade marks of renowned designers and manufacturers. That fact shows that there is a certain proximity between the goods at issue, in particular in the luxury goods sector.

48 Likewise, the Court held, still in the context of an assessment relating to the provision referred to in paragraph 47 above, in paragraph 79 of its judgment of 27 September 2012 in *Pucci International v OHIM — El Corte Inglés (Emidio Tucci)*, T-357/09, EU:T:2012:499, that, in the luxury items sector, goods like glasses, jewellery and watches are also sold under the famous trade marks of renowned designers and manufacturers and that clothing manufacturers are therefore turning

towards the market for those goods. The Court deduced from that there was a certain proximity between the goods at issue.

49 However, notwithstanding the fact that the goods covered by the trade mark application and those protected by the earlier mark, which are referred to in paragraph 46 above, belong to adjacent market segments, it must, in the first place, be held that the Board of Appeal did not err in stating that they differed in their nature, their intended purpose and their method of use.

50 First, the raw materials from which they are manufactured are different, except for some similarities between certain materials which may be used both in the manufacture of optical sunglasses and for certain horological goods or jewellery, such as glass.

51 Secondly, clothing and footwear in Class 25 are manufactured to cover, conceal, protect and adorn the human body. Optical sunglasses are above all produced to make it easier to see, to provide users with a feeling of comfort in certain meteorological conditions and, in particular, to protect their eyes from rays of sunlight. Watches and other horological goods are designed, inter alia, to measure and indicate the time. Lastly, jewellery has a purely ornamental function (see, to that effect, judgment in *nollie*, cited in paragraph 41 above, EU:T:2010:114, paragraph 33 and the case-law cited).

52 In the second place, it must be pointed out that as the nature, intended purpose and method of use of the goods at issue are different, they are neither in competition with each other nor interchangeable.

53 The applicant has not shown that it is typical, notwithstanding the abovementioned differences, for a consumer who, for example, intends to buy himself a new watch or some jewellery, to decide, suddenly, to buy himself, on the contrary, clothing, footwear or optical sunglasses, and vice versa.

54 In that regard, in particular, it must also be stated that the applicant has not proved its claim that, in the luxury and fashion sector, it is generally the trade mark and its prestige among consumers that motivate the consumer's decision to purchase a specific item and not the actual necessity to purchase that item, inter alia for its functionalities and to fulfil a very specific need. Likewise, it is necessary to reject as not proved the applicant's claim that, as the appearance and value of the goods prevail over other factors relating to their nature, consumers in the sector concerned are principally in search not of specific goods, but of satisfaction for their 'hedonistic needs' or that they seek the instant gratification generated by an impulse purchase.

55 Moreover, it must be stated that to accept that such claims are well-founded would be tantamount, in essence, to rendering irrelevant any differentiation between goods which belong to the luxury sector and are protected by the respective marks, since the applicant's theory relating to the impulse purchase aimed at the instant gratification of consumers leads to the conclusion that a likelihood of confusion may actually exist irrespective of the goods concerned, on the sole condition that they all fall within that sector. Such an approach, by which the applicant in actual fact alleges that all the goods at issue are interchangeable, is manifestly contrary to the principle of speciality of marks which the Court must take into account in its analysis in accordance with Article 8(1)(b) of Regulation No 207/2009 and would improperly extend the area of protection of trade marks. For the same reasons, it is necessary to reject as irrelevant the applicant's claim that the goods are interchangeable inasmuch as each of them may be given as a gift and the consumer impulsively chooses one or other of them. To accept such a vague connection would lead to holding that goods which are manifestly different in their nature and intended purpose are similar.

56 What is more, it must be stated that the relevant market within which the abovementioned goods fall cannot be limited to the 'luxury' or 'haute couture' market segment alone and that specific significance cannot, in addition, be

attributed to that market segment in the present case, since the categories of goods protected by the marks at issue are defined in a manner which is sufficiently broad to include both 'consumer' goods falling within a generally affordable price range and certain 'inexpensive' goods. The applicant has not claimed, in relation to the 'basic' goods falling within those market segments, that they are also purchased by consumers acting in an impulsive and hedonistic manner, with the result that those consumers may indiscriminately replace some goods with others.

57 In the third place, it must be pointed out that, by its other arguments, the applicant attempts, in essence, to establish a complementary connection between the goods at issue.

58 It must be borne in mind that, in accordance with the case-law, complementary goods or services are those which are closely connected in the sense that one is indispensable or important for the use of the other in such a way that consumers may think that the same undertaking is responsible for manufacturing those goods or for providing those services. By definition, goods intended for different publics cannot be complementary (see, to that effect, judgment in *Emidio Tucci*, cited in paragraph 48 above, EU:T:2012:499, paragraph 50 and the case-law cited).

59 Furthermore, according to the case-law, aesthetic complementarity between goods may give rise to a degree of similarity for the purposes of Article 8(1)(b) of Regulation No 207/2009. Such aesthetic complementarity must involve a genuine aesthetic necessity, in the sense that one product is indispensable or important for the use of the other and consumers consider it ordinary and natural to use those products together. That aesthetic complementarity is subjective and is determined by the habits and preferences of consumers, to which producers' marketing strategies or even simple fashion trends may give rise (see judgment in *Emidio Tucci*, cited in paragraph 48 above, EU:T:2012:499, paragraph 51 and the case-law cited).

60 However, it is important to point out that the mere existence of aesthetic complementarity between the goods is not sufficient to conclude that there is a similarity between them. For that, the consumers must consider it usual that the goods are sold under the same trade mark, which normally implies that a large number of the producers or distributors of the goods are the same (see judgment in *Emidio Tucci*, cited in paragraph 48 above, EU:T:2012:499, paragraph 52 and the case-law cited).”

38. In *Tony Van Gulck v Wasabi Frog Ltd*, Case BL O/391/14, Mr Geoffrey Hobbs Q.C. as the Appointed Person reviewed the law concerning retail services v goods. He stated (at paragraph 9 of his judgment):

“9. The position with regard to the question of conflict between use of **BOO!** for handbags in Class 18 and shoes for women in Class 25 and use of **MissBoo** for the Listed Services is considerably more complex. There are four main reasons for that: (i) selling and offering to sell goods does not, in itself, amount to providing retail services in Class 35; (ii) an application for registration of a trade mark for retail services in Class 35 can validly describe the retail services for which protection is requested in general terms; (iii) for the purpose of determining whether such an application is objectionable under Section 5(2)(b), it is necessary to ascertain whether there is a likelihood of confusion with the opponent’s earlier trade mark in all the circumstances in which the trade mark applied for might be used if it were to be registered; (iv) the criteria for determining whether, when and to what degree services are ‘*similar*’ to goods are not clear cut.”

39. However, on the basis of the European courts’ judgments in *Sanco SA v OHIM*¹, and *Assembled Investments (Proprietary) Ltd v. OHIM*², upheld on appeal in *Waterford Wedgewood Plc v. Assembled Investments (Proprietary) Ltd*³, Mr Hobbs concluded:

¹ Case C-411/13P

² Case T-105/05, at paragraphs [30] to [35] of the judgment

³ Case C398/07P

- i) Goods and services are not similar on the basis that they are complementary if the complementarity between them is insufficiently pronounced that, from the consumer's point of view, they are unlikely to be offered by one and the same undertaking;
- ii) In making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it is necessary to envisage the retail services normally associated with the opponent's goods and then to compare the opponent's goods with the retail services covered by the applicant's trade mark;
- iii) It is not permissible to treat a mark registered for 'retail services for goods X' as though the mark was registered for goods X;
- iv) The General Court's findings in *Oakley* did not mean that goods could only be regarded as similar to retail services where the retail services related to exactly the same goods as those for which the other party's trade mark was registered (or proposed to be registered).

I will review the matter on a class-by-class basis.

Class 14

40. As the opponent's IREU is not protected in this class, its best case, in my view, lies in its "eyewear, including sunglasses; spectacle frames; pouches and cases for eyeglasses" in class 9, "woollen hats, hats and caps" and "belts" in class 25 and "retail services relating to the goods in classes 9 and 25" in class 35. As the above case law makes clear, there is no similarity between goods in class 25 and the applicant's goods in class 14. Similarly, I detect nothing in the court's decision to suggest that the opponent's goods I have identified in class 9 are to be regarded as similar to the applicant's goods in class 14. As to the opponent's retail services, as I mentioned

above, these specifically relate “to the goods” in classes 9 and 25. Construed on that basis and having applied the case law mentioned above, I see no reason why the opponent’s retail services should be regarded as similar to the applicant’s goods in class 14 and, as a consequence, I find there is no similarity between such goods and services.

Class 18

41. As the case law above makes clear: “clothing, shoes and headgear in Class 25 bear more than a slight degree of similarity to a category of ‘goods made of these materials [leather and imitations of leather] and not included in other classes’ in Class 18 consisting of clothing accessories made of those materials.” It further explains that: “it is apparent also from settled case-law that the ‘goods in leather and imitations of leather’ include clothing accessories such as ‘bags or wallets’ made from that raw material and which, as such, contribute, with clothing and other clothing goods, to the external image (‘look’) of the consumer concerned, that is to say coordination of its various components at the design stage or when they are purchased.”

42. Given the overlap in, at least, the nature, intended purpose, method of use and trade channels, the opponent’s “pouches and cases for eyeglasses” in class 9 and the retailing of such goods in class 35 are, in my view, similar to the applicant’s “pouches” (and parts and fittings for such goods) to at least a medium degree. The opponent’s “hats” in class 25 (which would include hats for women) and the retailing of such goods are to be regarded as being similar to a degree to the applicant’s “bags”, “handbags”, “shoulder bags” and “purses” (and parts and fitting for such goods) to the extent that all of the items contribute to “the external image of the consumer”. There is, however, no similarity with any of the other goods in the applicant’s specification in class 18 and the opponent’s goods and services.

Class 25

43. The opponent's specification in this class consists of "woollen hats, hats and caps" and "belts". Such goods are, in my view, identical (either literally or on the *Meric* principle) to the following goods in the applicant's specifications: "suspender belts", "belts", "headgear", "bathing caps", "headgear for children and babies", "headwear", "hats", "caps", "sun visors" and, given the similarity in, inter alia, their nature, intended purpose, methods of use and trade channels, highly similar to: "braces", "suspenders" and "headbands".

44. As the following terms in the applications are broad enough to include the opponent's goods in class 25, they are also to be regarded as identical on the *Meric* principle i.e. "clothing"; "ladieswear"; "menswear"; "articles of outer clothing"; "formal evening wear"; "leisurewear;" "casualwear"; "sportswear"; "rainwear"; "waterproof clothing"; "weatherproof clothing" and "clothing for children and babies."

45. All of the remaining goods in the applicant's specifications are items of outerclothing, underclothing or footwear of one sort or another. The users of such goods are the same as those of the opponent's goods in class 25, their physical nature (i.e. what they are made of) and their intended purpose (i.e. to cover or adorn the body) may be identical or at least reasonably similar to the opponent's goods in class 25. In addition, the channels of trade through which the goods are likely to pass (i.e. at the manufacturing, wholesale and retail levels) are likely to be the same and, in my experience, even in department stores such goods are likely to be sold in either the same area or in relatively close proximity to those of the opponent in class 25. Drawing those conclusions together results in at least a low degree of similarity between all of the remaining goods mentioned above and the opponent's goods in class 25. In addition, there is at least a low degree of similarity between the opponent's retail services in relation to its named goods in class 25 and all of the applicant's goods in class 25 and a medium degree of similarity with those goods in the applicant's specifications I have concluded are identical or highly similar.

Class 35

46. The opponent's retail services relating to the named goods in classes 9 and 25 are either identical to the applicant's "Retail services, electronic shopping retail services, mail order retail services and shop retail services, all connected with..." (the identical goods in classes 9 and 25 – included below) or, in my view, similar to a medium degree to the retailing of the additional goods (shown below):

computer software and programs, computer games, software applications, electronic publications, audio and/or video recordings, CDs, DVDs, electronic storage media, memory cards, eyewear, glasses, spectacles and sunglasses, cases, chains, straps, cords, lenses and frames for spectacles and sunglasses, panty hose, tights, elasticated stockings, pages downloaded from the internet (in paper format), bags, handbags, shoulder bags, pouches, purses, clothing, footwear, headgear, ladieswear, menswear, articles of outer clothing, dresses, skirts, trousers, shorts, jeans, denims, leggings, tops, blouses, shirts, t-shirts, vests, knitwear, sweaters, tank tops, pullovers, sweatshirts, jumpers, jerseys, cardigans, hooded tops, shoulder wraps, sashes and shawls, jackets, coats, overcoats, blazers, waistcoats, suits, ties, underwear, undergarments, hosiery, socks, tights, stockings, suspender belts, lingerie, bras, pants, thongs, camisoles, negligees, corsets, garters, sarongs, nightwear, sleepwear, pyjamas, sleep shirts, night dresses, dressing gowns, bathrobes, belts, braces, suspenders, collars, cuffs, wristbands, headbands, scarves, gloves, mittens, ear muffs, formal evening wear, leisurewear, casualwear, sportswear, sweatpants, track suits, rainwear, waterproof clothing, weatherproof clothing, windcheaters, anoraks, parkas, gaiters, uniforms, swimwear, bathing costumes, bikinis, swimming trunks, bathing caps, body suits, clothing, footwear and headgear for children and babies, layettes, sleep suits, bibs, not of paper, aprons, footwear, boots, shoes, slippers, sandals, flip-flops, sports shoes, fittings of metal for footwear, headwear, hats, caps, sun visors, hairbands and slides, belt clasps, blouse, clothing and shoe fasteners, hat ornaments, shoe laces.

47. I also find that: (i) the applicant's "organisation, operation and supervision of loyalty programmes and of sales and promotional incentive schemes" is identical to the opponent's "management of a customer loyalty program or organization of promotional activities to promote customer loyalty; supervision of customer loyalty, (ii) "advertising" is identical to "advertising" and, (iii) as "marketing" and "promotional services" in the applications would encompass the opponent's "advertising", such services are identical on the *Meric* principle. As the applicant's "trade fairs" and "organisation of fashion shows for commercial or promotional purposes" are all geared towards making an undertakings goods and/or services known to a wider audience, they are, in my view, similar to "advertising" (which has, inter alia, the same intended purpose) to at least a medium degree. Finally, the applicant's "information, advisory and consultancy services" are, self-evidently, highly similar to the services to which they relate.

48. As to the applicant's remaining retail services (which relate to a wide range of goods unrelated to the opponent's named goods or its related retail services), having once again applied the relevant case law, I find no similarity between any of the remaining retail services in the applicant's specifications and the opponent's goods and services.

The average consumer and the nature of the purchasing act

49. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods and services; I must then determine the manner in which these goods and services are likely to be selected by the average consumer in the course of trade. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

"60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant

person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

50. In its decision in *New Look Limited v OHIM*, joined cases T-117/03 to T-119/03 and T-171/03, the GC stated:

“50. The applicant has not mentioned any particular conditions under which the goods are marketed. Generally in clothes shops customers can themselves either choose the clothes they wish to buy or be assisted by the sales staff. Whilst oral communication in respect of the product and the trade mark is not excluded, the choice of the item of clothing is generally made visually. Therefore, the visual perception of the marks in question will generally take place prior to purchase. Accordingly the visual aspect plays a greater role in the global assessment of the likelihood of confusion.”

51. The average consumer of the goods at issue is a member of the general public. Although the comments in *New Look* were made in the context of a trade in clothing, as the goods at issue will, in my experience, be obtained in much the same way i.e. by self-selection from the shelves of a bricks and mortar retail outlet or from the equivalent pages of a website or catalogue, visual considerations are likely to dominate the selection process. That said, as such goods may also be the subject of, for example, word-of-mouth recommendations or oral requests to sales assistants, aural considerations must not be forgotten. As to the degree of care the average consumer will display when selecting such goods, the cost of the goods at issue can vary considerably. Contrast, for example, the relatively low degree of attention paid to the selection of an inexpensive pair of socks in class 25 with that paid to the selection of a designer chronograph in class 14. However, as many of the goods at issue may be used to adorn the average consumer’s person or contribute to a coordinated look, I would expect the average consumer to be alive to factors such as cost, size, colour,

material and compatibility with other items of, for example, clothing, all of which suggests they will pay at least a normal degree of attention to the selection of many of the goods at issue.

52. As to the services in class 35, these fall into two categories i.e. retail services connected with a wide range of goods (for which the average consumer will be a member of the general public) and a range of business related services such as advertising, management, organisation and supervision of loyalty schemes etc. for which the average consumer is more likely to be a business user selecting on behalf of a commercial undertaking.

53. While the retail services at issue are, in my experience, most likely to be selected having considered, inter alia, websites, advertisements and signage on the high street (indicating the importance of visual considerations), aural considerations will also play their part, for example, in the form of word-of-mouth recommendations. As to the degree of care with which such services may be selected, in my experience, the average consumer is likely to be mindful of a range of considerations such as the breadth of goods/brands stocked, customer reviews, delivery times/costs and in relation to a bricks and mortar outlet, proximity to their home, opening times, parking etc. all of which suggest at least a normal degree of attention will be paid to the selection of such services.

54. In the absence of submissions to the contrary, I would expect a business user wishing to engage an undertaking to provide the business-related services to consult, for example, appropriate business orientated publications and websites and to seek advice from colleagues and third parties with relevant knowledge or experience, all of which points to a mixture of visual and aural considerations but, as is most often the case, with visual considerations likely to be the most significant feature. As to the degree of care such an average consumer will pay during the selection process, as the selection of such services are likely to be of considerable importance to the well-being of a commercial undertaking and as any purchasing decision made in relation to such

services is likely to involve not insignificant financial outlay (and may also involve, for example, meetings with potential suppliers and entering into contracts), I would expect the average business user to pay a fairly high degree of attention to the selection of the services at issue.

Distinctive character of the earlier trade marks

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

56. As the opponent has filed no evidence of any use it may have made of the earlier trade marks upon which it relies, I have only their inherent characteristics to consider. In its submissions filed in lieu of a hearing, the applicant stated:

“3. The standard word WE is of low distinctiveness and the opponent’s registration will therefore have only a very narrow scope of protection.”

57. While the word “WE” does not describe the goods and services for which the opponent’s second and third trade marks are registered, as a very common English language word with which the average consumer will be very familiar, I find that the opponent’s second and, despite its modest stylisation, third trade marks have a relatively low degree of inherent distinctive character. That, of course, does not apply to the opponent’s first trade mark in which the word “WE” forms part of a unit. As the

meaning of that unit is, in my view, difficult to unpack, the opponent's first trade mark is possessed of a fairly high degree of inherent distinctive character.

Likelihood of confusion

58. In *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, Lady Justice Arden stated that:

“49..... I do not find any threshold condition in the jurisprudence of the Court of Justice cited to us. Moreover I consider that no useful purpose is served by holding that there is some minimum threshold level of similarity that has to be shown. If there is no similarity at all, there is no likelihood of confusion to be considered. If there is some similarity, then the likelihood of confusion has to be considered but it is unnecessary to interpose a need to find a minimum level of similarity.”

59. In relation to those goods and services which I have found not to be similar there can be no likelihood of confusion. Thus the opposition fails in relation to the following goods and services:

Class 14 - Jewellery; imitation jewellery; costume jewellery; precious metals; precious and semi-precious stones; rings; earrings; bracelets; ankle bracelets; necklaces; jewellery chains; pendants; jewellery charms; jewellery brooches; ornamental pins; lapel pins; badges of precious metals; tie pins; tie clips; cuff links; decorative boxes of precious metal; jewellery boxes; jewellery cases; horological and chronometric instruments; clocks; watches; watch straps; watch bands and bracelets; key rings [trinkets or fobs]; key rings and key fobs of precious metals; ornaments, figurines, statues and statuettes, and works of art, all of precious metal or coated therewith; parts and fittings for all of the aforesaid goods.

Class 18 - Luggage; travelling bags and cases; suitcases; sports bags; athletic bags; kit bags; gym bags; beach bags; garment bags; boot and shoe bags;

holdalls; back packs; rucksacks; folding bags and cases; tote bags; shopping bags; satchels; toilet bags; cosmetic bags; jewellery rolls for travel; covers for bags; hat boxes of leather; wallets; card wallets; card cases; credit card holders; key cases; luggage label holders; luggage tags; luggage straps; leather straps; animal skins; hides; umbrellas; parasols; walking sticks; parts and fittings for all of the aforesaid goods.

Class 35 – the services shown in Annex C to this decision.

60. In determining whether there is a likelihood of confusion, a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is also necessary for me to keep in mind the distinctive character of the opponent's trade marks as the more distinctive they are, the greater the likelihood of confusion. I must also keep in mind the average consumer for the goods and services, the nature of the purchasing process and the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he has retained in his mind.

61. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one trade mark for the other, while indirect confusion is where the average consumer realises the trade marks are not the same but puts the similarity that exists between the trade marks/goods and services down to the responsible undertakings being the same or related.

The opponent's second trade mark – WE in block capital letters

62. Earlier in this decision I explained that I intended to proceed on the basis that all of the goods and services in this registration are identical or highly similar to all of the goods and services in the applications. I then went on to conclude that this trade mark

was (i) visually similar to the applicant's trade marks to at best a somewhat higher than low degree, aurally similar to at best a medium degree and conceptually similar to a medium degree.

63. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), Arnold J. considered the impact of the CJEU's judgment in *Bimbo*, Case C-591/12P, on the court's earlier judgment in *Medion v Thomson*. He stated:

“18 The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.

19 The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

20 The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another

component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).

21 The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors.”

64. As I explained earlier, in my view, the word “WE” does not play an independent distinctive role in any of the applicant’s trade marks. Rather, it merely contributes to the units they create. Notwithstanding the degree of visual, aural and conceptual similarity I have identified between the competing trade marks, I see absolutely no reason why a consumer paying an average degree of attention to the selection of (what I have assumed is the identical or highly similar goods and services at issue) would be confused into thinking that the trade marks of the applicant are in any way connected to the opponent, simply because of the mere presence in them of the weakly distinctive word “WE”. Even, if I proceed on the basis that identical goods and services are involved and the average consumer will pay only a low degree of attention during the selection process to all of the goods and services at issue (thus making them more prone to the effects of imperfect recollection), there is still, in my view, no likelihood of either direct or indirect confusion between the opponent’s second trade mark and any of the applicant’s trade marks. As a consequence of those conclusions, the opposition based upon the opponent’s second trade mark fails and is dismissed accordingly.

Conclusion in relation to the opponent’s third trade mark

65. Having reached the above conclusion in relation to the opponent’s second trade mark, for the reasons explained earlier, it follows that the opposition based upon the opponent’s third trade mark also fails.

Conclusion in relation to the opponent's first trade mark

66. Earlier in this decision, I concluded that the opponent's first trade mark was visually similar to the applicant's "WE ARE US" trade marks (including the hashtag and conjoined variants) to an above average degree, aurally similar to at least a slightly lower than above average degree and conceptually similar to a fairly high degree. I further concluded, that in relation to the applicant's "WE ARE" trade marks (including the hashtag and conjoined variants), the opponent's first trade mark was visually similar to a medium degree, aurally similar to at least a slightly lower than medium degree and conceptually similar to a medium degree. I further concluded that certain goods and services in the applications were either identical or similar (to varying degrees) to goods and services in the opponent's specifications.

67. In reaching a conclusion, I begin by reminding myself that I have concluded that the average consumer for specific services in class 35 will be a business user paying a fairly high degree of attention during the selection process (making them less prone to the effects of imperfect recollection). However, keeping the interdependency principle firmly in mind i.e. where a greater degree of similarity in the competing trade marks can offset a lower degree of similarity in the goods and services (and vice versa), I am satisfied that a consumer paying even a fairly high degree of attention during the selection process to the identical and similar goods and services shown below is likely imperfectly to recall the opponent's first fairly highly distinctive trade mark and the applicant's "WE ARE US" trade marks (including the hashtag variants) leading to at the very least a likelihood of indirect confusion. I reach the same conclusion in relation to the applicant's "WE ARE" trade marks (including the hashtag variants);

Class 18 – “bags”, “handbags”, “shoulder bags”, “pouches” and “purses” and “parts and fittings for all the aforesaid goods”.

Class 25 - Clothing; footwear; headgear; ladieswear; menswear; articles of outer clothing; dresses; skirts; trousers; shorts; jeans; denims; leggings; tops; blouses;

shirts; t-shirts; vests; knitwear; sweaters; tank tops; pullovers; sweatshirts; jumpers; jerseys; cardigans; hooded tops; shoulder wraps; sashes and shawls; jackets; coats; overcoats; blazers; waistcoats; suits; ties; underwear; undergarments; hosiery; socks; tights; stockings; suspender belts; lingerie; bras; pants; thongs; camisoles; negligees; corsets; garters; sarongs; nightwear; sleepwear; pyjamas; sleep shirts; night dresses; dressing gowns; bathrobes; belts; braces; suspenders; collars; cuffs; wristbands; headbands; scarves; gloves; mittens; ear muffs; formal evening wear; leisurewear; casualwear; sportswear; sweatpants; track suits; rainwear; waterproof clothing; weatherproof clothing; windcheaters; anoraks; parkas; gaiters; uniforms; swimwear; bathing costumes; bikinis; swimming trunks; bathing caps; body suits; clothing, footwear and headgear for children and babies; layettes; sleep suits; bibs, not of paper; aprons; ready-made clothes linings; footwear; boots; shoes; slippers; sandals; flip-flops; sports shoes; fittings of metal for footwear; headwear; hats; caps; sun visors.

Class 35 - Retail services, electronic shopping retail services, mail order retail services and shop retail services, all connected with the sale of computer software and programs, computer games, software applications, electronic publications, audio and/or video recordings, CDs, DVDs, electronic storage media, memory cards, eyewear, glasses, spectacles and sunglasses, cases, chains, straps, cords, lenses and frames for spectacles and sunglasses; panty hose, tights and elasticated stockings, pages downloaded from the internet (in paper format), bags, handbags, shoulder bags, pouches, purses, clothing, footwear, headgear, ladieswear, menswear, articles of outer clothing, dresses, skirts, trousers, shorts, jeans, denims, leggings, tops, blouses, shirts, t-shirts, vests, knitwear, sweaters, tank tops, pullovers, sweatshirts, jumpers, jerseys, cardigans, hooded tops, shoulder wraps, sashes and shawls, jackets, coats, overcoats, blazers, waistcoats, suits, ties, underwear, undergarments, hosiery, socks, tights, stockings, suspender belts, lingerie, bras, pants, thongs, camisoles, negligees, corsets, garters, sarongs, nightwear, sleepwear, pyjamas, sleep

shirts, night dresses, dressing gowns, bathrobes, belts, braces, suspenders, collars, cuffs, wristbands, headbands, scarves, gloves, mittens, ear muffs, formal evening wear, leisurewear, casualwear, sportswear, sweatpants, track suits, rainwear, waterproof clothing, weatherproof clothing, windcheaters, anoraks, parkas, gaiters, uniforms, swimwear, bathing costumes, bikinis, swimming trunks, bathing caps, body suits, clothing, footwear and headgear for children and babies, layettes, sleep suits, bibs, not of paper, aprons, ready-made clothes linings, footwear, boots, shoes, slippers, sandals, flip-flops, sports shoes, fittings of metal for footwear, headwear, hats, caps, sun visors, hairbands and slides, belt clasps, blouse, clothing and shoe fasteners, shoe laces; organisation, operation and supervision of loyalty programmes and of sales and promotional incentive schemes; advertising; marketing; promotional services; trade fairs; organisation of fashion shows for commercial or promotional purposes; information, advisory and consultancy services in relation to all of the aforesaid.

Overall conclusion

68. Subject to any successful appeal, the applications will be allowed to proceed to registration in respect of the goods and services shown in paragraph 59 and Annex C but will be refused in respect of the goods and services in paragraph 67.

Costs

69. Although both parties have achieved a measure of success, the applicant has been more successful than the opponent (retaining all of the goods in class 14 and the vast majority of the goods and services in classes 18 and 35). Awards of costs in proceedings commenced prior to 1 July 2016 are governed by Annex A of Tribunal Practice Notice (“TPN”) 4 of 2007. Using the TPN mentioned as a guide, but keeping in mind the consolidated nature of these proceedings and making a “rough and ready” reduction to reflect the measure of the opponent’s success, I award costs to the applicant on the following basis:

Considering the Notices of opposition and
preparing counterstatements: £300

Written submissions: £200

Total: £500

70. I order WE Brand S.A.R.L. to pay to Boohoo.com UK Limited the sum of **£500**. This sum is 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 13th day of November 2017

C J BOWEN

For the Registrar

The applicant's services in class 35

Class 35 - Retail services, electronic shopping retail services, mail order retail services and shop retail services, all connected with the sale of soaps, cosmetics, perfumery, essential oils, eau de parfum, eau de toilette, cologne, fragrances and fragrance products for personal use, massage oils, hair lotions, cosmetic preparations for skin care, skin care cosmetics, skin care preparations, preparations for the bath and shower, shower gel, bath gels, scented body lotions and creams, scented moisturising skin cream, moisturisers, body lotions and creams, moisturising creams, scented skin soap, body oil, face make-up, lip make-up, cheek make-up, face powder, face glitter, lipstick, lip gloss, non-medicated lip balm, lip pencils, perfumed shimmer sticks, eye shadow, eye pencils, mascara, eye make-up, eyeliners, eye creams, eye gels, eye balms, highlighter, cleansers, toners, clarifiers, exfoliators, foundation make-up, blusher, compacts, make-up remover, fragrance sachets, room fragrances, beauty care preparations, beauty care products, beauty creams, beauty tonics for application to the body, beauty tonics for application to the face, non-medicated beauty preparations, non-medicated skin care beauty products, skin care products for personal use, namely, face, eye and lip moisturisers, face and skin creams, lotions and serums, anti-aging treatments, foundation for the face, hair care products, shampoo, hair conditioners, hair gel, hair spray, nail care preparations, nail polish, nail strengtheners, nail polish remover, shaving cream, shaving gel, after-shave preparations, after-shave lotion, depilatory preparations, personal deodorant, antiperspirants, potpourri, sun tanning preparations, cosmetic preparations for skin tanning, artificial tanning preparations, artificial nails, artificial eyelashes, paints, varnishes and lacquers, candles, bougies, night lights, cutlery, spoons, razors, curling tongs, manicure tweezers, manicure scissors, depilating tweezers, nail files, nail clippers, hair clippers, ice tongs, manicure sets, scissors, sugar tongs, chopping knives and instruments or appliances for cutting vegetables, electrically heated curlers, electrically heated hair straighteners, computers, covers and cases for computers, computer software and programs, computer games, software applications, electronic publications, mobile phones, covers and cases for mobile phones and tablets, audio and/or video recordings, CDs, DVDs, electronic storage media, memory cards, cameras, covers and cases for cameras, eyewear, glasses, spectacles and sunglasses, cases, chains, straps, cords, lenses and frames for spectacles and sunglasses, magnets, digital photograph frames, baby comforters, panty-hose, tights and elastic stockings, feeding bottles, teats and valves for feeding bottles, drawsheets, soothing or teething rings, articles for infants, articles for use during pregnancy, apparatus for lighting, apparatus for heating, apparatus for cooking, apparatus for ventilating, apparatus for sanitary purposes, lampshades, lamp bases, fireplaces, portable fireplaces, simulated fireplaces, grates, hearths, baby carriages,

covers for baby carriages, bicycles, hoods for baby carriages, safety seats and supports designed for transporting infants and children in vehicles, trolleys, baggage trolleys, vehicles, jewellery, imitation jewellery, costume jewellery, precious metals, precious and semi-precious stones, rings, earrings, bracelets, ankle bracelets, necklaces, jewellery chains, pendants, jewellery charms, jewellery brooches, ornamental pins, lapel pins, badges of precious metals, tie pins, tie clips, cuff links, decorative boxes of precious metal, jewellery boxes, jewellery cases, horological and chronometric instruments, clocks, watches, watch straps, watch bands and bracelets, key rings, trinkets or fobs, key rings and key fobs of precious metals, ornaments, figurines, statues and statuettes, works of art, printed matter, pages downloaded from the Internet (in paper format), books, periodical publications, photograph albums, photograph stands, catalogues, boxes of paper or cardboard for documents, stationery, posters, diaries, calendars, brochures, paper, cardboard, photographs, wrapping and packing materials, artists' materials, address and note pads, albums, water-colours, paper and plastic bags, book ends, bookmarks, writing instrument holders, writing materials and instruments, confetti, crucifixes, transfers, erasers, embroidery patterns, clothes patterns, engravings, files, leaflets or folders, greetings cards, hat boxes, personal organisers and pages for the same, book jackets, knitting patterns or designs, labels, cards, notebooks, patterns for making clothes, paper table cloths, paper napkins, paper tissues, etchings, packing ribbons and tapes, stands for writing instruments, paper table linen, paper containers, magazines, decalcomanias, pencil cases, pencils, pens, paperweights, writing paper, envelopes, binders, packaging, newsletters, packing paper, writing pads, passport holders, pictures, tissues of paper for removing make-up, wrapping paper, bags of paper or plastic for packaging, boxes of paper or card or plastic for packaging, stands for pens, stands for pencils, wrapping paper, luggage, bags, travelling bags and cases, suitcases, sports bags, athletic bags, kit bags, gym bags, beach bags, garment bags, boot and shoe bags, holdalls, back packs, rucksacks, folding bags and cases, handbags, shoulder bags, tote bags, shopping bags, satchels, pouches, toilet bags, cosmetic bags, jewellery rolls for travel, covers for bags, hat boxes of leather, wallets, purses, card wallets, card cases, credit card holders, key cases, luggage label holders, luggage tags, luggage straps, leather straps, animal skins, hides, umbrellas, parasols, walking sticks, furniture, cushions and pillows, picture frames, cutlery boxes, coat hangers, figurines, wall plaques, mirrors, baskets, cabinet work, clothes hooks, coat stands, curtain hooks, curtain rails, curtain rings, curtain rods, curtain rollers, curtain tie-backs, embroidery frames, fans for personal use, bed fittings, door fittings, furniture fittings, window fittings, magazine racks, mattresses, mirror tiles, screens, statues of wood, wax, plaster or plastic, wickerwork, writing desks, picture frames, picture stands, wicker baskets, furniture trimmings, billboards and display units, bolsters, framing battens, filing cabinets, coat and hat pegs, clothes-pegs, plastic packing containers, cradles, clothes covers, decorative bead curtains, drinking straws, pedestals for flower

pots, flower stands (floral arrangements), screens, head rests (furniture), non-metallic boards and panels for keys, removable sink coverings, mobiles (decorative objects), non-metallic name plates, dressers, playpens for babies, trays, ornaments and statuettes, wooden or plastic boxes, bedding, non-metallic household and kitchen baskets, non-metallic fittings and trimmings for furniture, doors and windows, non-metallic cases, cabinets and chests, curtains used as interior blinds, non-metallic screens for furniture, shelves for furniture and storage space in the form of shelves, non-metallic and non-textile wall plaques, sofas and armchairs, butchers tables, tableware, glassware, porcelain, stoneware, chinaware, ceramic and pottery ware, tea services and coffee services, ornaments, baskets, candlesticks, candle holders and candelabras, coasters, napkin holders, household, kitchen and cooking utensils and containers as well as parts and equipment for the same, vacuum containers, crockery, drinking vessels, combs, sponges, brushes, cleaning materials, raw or semi-processed glass, bowls, basins, tools and utensils for kitchen use which are not made of precious metals, drinking containers, bootjacks, shoetrees, bottle openers, bottles, breadbaskets, breadboards, cheeseboards, chopping boards, butter dishes, cake moulds, manual coffee grinders and non-electrical coffee filters, coffee services not made of precious metals, non-electrical coffee-makers not made of precious metals, frying pans, lids for frying pans, cooking pots, ice buckets, corkscrews, cosmetic utensils, cruets and oil and vinegar sets not made of precious metals, egg cups, cups, beakers and tumblers, pitchers, saucers, dishes, sauce and gravy boats all made of materials other than precious metals, fruit bowls, glasses (containers), soap dispensers and holders, bottles, flower pots, flower-pot covers, fly whisks, non-electrical fruit squeezers and garlic presses for household use, funnels, refuse bins, jars, gloves and graters for domestic use, non-electrical spice mills, non-metallic money boxes, cooking moulds and stands, nail brushes, napkin rings and holders not made from precious metals, hand salt and pepper mills, mustard pots, perfume sprays and atomizers, powder cases not made of precious metals, powder puffs, trouser presses, dustbins, saltcellars not made of precious metals, shoehorns, spice sets, tea services and teapots all made of materials other than precious metals, devices for maintaining the shape of ties, toilet bags, toilet-paper dispensers, tooth- brushes, trays or baskets for domestic use and not made of precious metals, insulated bottles and flasks, vases not made of precious metals, worked and semi-worked glass, porcelain, china, earthenware or glass ornaments, statuettes, pomanders, aerosol dispensers for non-medical use, soap and sweet boxes and tins not made of precious metals, non-electrical percolators for domestic use, candlesticks not made of precious metals, decanter stands other than those made of paper or fabric, cake dishes not made of precious metals, decanters not made of precious metals, porcelain and china knobs, yarns and threads for textile use, tents, woven products, textiles, furnishing fabrics in the piece, household textile articles, curtains, towels, beach towels, valances, sheets, duvet covers, bath and bed linen,

table and household linen, bed blankets, cloths and covers, bed spreads, coasters, eiderdowns, handkerchiefs, labels, mats of textile, mattress covers, fabric products, printed fabrics, textile fabrics, pillow cases, pillow shams, quilts, runners, sleeping bags, table cloths, wall hangings, bed sheets, quilt covers, blinds, mattress protectors, blankets, throws, cushion covers, duvets, face cloths, face flannels, mattress covers, pyjama cases, table covers, table linen, textile seat covers for furniture, textile covers for hot water bottles, underblankets, wall coverings, wall decorations, cloths in pieces or in rolls, coasters of textile, place mats of textile, travellers' rugs of textile, travelling rugs, lap rugs, napkins of textile, serviettes of textile, furniture covers, household linen, bed clothes, covers for eiderdowns, blinds of textile, face towels of textile, textile tissues for removing make up, flannels, travelling rugs, for cots, dish cloths, mosquito nets, flags, banners, handkerchiefs of textile, clothing, footwear, headgear, ladieswear, menswear, articles of outer clothing, dresses, skirts, trousers, shorts, jeans, denims, leggings, tops, blouses, shirts, t-shirts, vests, knitwear, sweaters, tank tops, pullovers, sweatshirts, jumpers, jerseys, cardigans, hooded tops, shoulder wraps, sashes and shawls, jackets, coats, overcoats, blazers, waistcoats, suits, ties, underwear, undergarments, hosiery, socks, tights, stockings, suspender belts, lingerie, bras, pants, thongs, camisoles, negligees, corsets, garters, sarongs, nightwear, sleepwear, pyjamas, sleep shirts, night dresses, dressing gowns, bathrobes, belts, braces, suspenders, collars, cuffs, wristbands, headbands, scarves, gloves, mittens, ear muffs, formal evening wear, leisurewear, casualwear, sportswear, sweatpants, track suits, rainwear, waterproof clothing, weatherproof clothing, windcheaters, anoraks, parkas, gaiters, uniforms, swimwear, bathing costumes, bikinis, swimming trunks, bathing caps, body suits, clothing, footwear and headgear for children and babies, layettes, sleep suits, bibs, not of paper, aprons, ready-made clothes linings, footwear, boots, shoes, slippers, sandals, flip-flops, sports shoes, fittings of metal for footwear, headwear, hats, caps, sun visors, badges, rosettes of textile materials, patches, buttons, ribbons and braid, hairbands and slides, belt clasps, blouse, clothing and shoe fasteners, hairgrips, hair and shoe ornaments, sewing thimbles, hat ornaments, shoe laces, numerals or letters for marking linen, hairnets, brooches and buckles, haberdashery, lace, embroidery, ribbons, braids, tapes, trimmings particularly cards, fringes and frills, artificial flowers, false hair, porcelain and china buttons, lanyards for wear, wall and floor coverings, rugs, carpets, straw mats, mats and matting, wallpaper and non-textile wall hangings, ceiling paper, borders for decorating walls, toys, games, mobiles, dolls and accessories therefor, dolls' beds, dolls' clothes, dolls' houses, puzzles, playthings and accessories therefor, gymnastic and sporting articles and parts and fittings therefor, amusement articles, Christmas tree decorations, fun and theatrical masks, novelties, playing cards, flowers and natural plants, seeds, bulbs, plantlets and seedlings, young plants, young cuttings or wild stock, dried plants and flowers as well as wreaths, garlands and displays made up from them, nuts, fresh fruit, wreaths made of natural or dried flowers, pine and fir

cones; organisation, operation and supervision of loyalty programmes and of sales and promotional incentive schemes; advertising; marketing; promotional services; trade fairs; organisation of fashion shows for commercial or promotional purposes; information, advisory and consultancy services in relation to all of the aforesaid.

The opponent's trade marks/goods and services

IREU no. 1243721 for the trade mark (shown below) which designated the EU on 9 January 2015 (claiming an International Convention priority date of 22 October 2014 from an earlier filing in the Benelux) and for which protection in the EU was granted on 25 February 2016:



It is protected for the following goods and services:

Class 9 - Software, especially downloadable user programs (apps), including apps for installation on telephones, mobile telephones and communications and wireless communication devices, downloadable music files, downloadable files, downloadable movies; eyewear, including sunglasses; spectacle frames; pouches and cases for eyeglasses.

Class 25 - Clothing, footwear, headgear, namely woollen hats, hats and caps; belts.

Class 35 - Advertisement; business management; business administration; administrative services; business mediation in the purchase and sale of goods in classes 9 and 25; retail services relating to the goods in classes 9 and 25; the aforesaid services also to be provided electronically, including the internet; management of a customer loyalty program or organization of promotional activities to promote customer loyalty; supervision of customer loyalty.

EUTM no. 7209571 for the trade mark **WE** which was applied for on 3 September 2008 and entered in the register on 22 June 2010. It is registered for the following goods and services:

Class 3 - Soaps, perfumery, essential oils, cosmetics, hair lotions.

Class 9 - Spectacles including sunglasses; spectacle frames; cases and containers for spectacles.

Class 14 - Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewellery, precious stones; horological and chronometric instruments including watches.

Class 18 - Leather and imitations of leather, and goods made of these materials and not included in other classes; umbrellas and parasols; trunks and travelling bags; bags not included in other classes.

Class 25 - Clothing, footwear, headgear.

Class 35 - Business mediation in the purchase and sale, including within the framework of retailing, of soaps, perfumery, essential oils, cosmetics, hair lotion, eyewear, including sunglasses, optical frames, cases and containers for spectacles, precious metals and their alloys and products made from the aforesaid materials or coated therewith, jewellery, costume jewellery, precious stones, clocks and chronometrical instruments, including watches, leather and imitation leather and products made from the aforesaid materials, umbrellas and parasols, trunks and suitcases, bags, clothing, footwear, headgear; the aforesaid services also offered via electronic channels, including the internet.

EUTM no. 11312667 for the trade mark shown below which was applied for on 1 November 2012 and entered in the register on 1 April 2013:



It is registered for the following goods and services:

Class 9 - Spectacles including sunglasses; spectacle frames; cases and containers for spectacles.

Class 14 - Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewellery, precious stones; horological and chronometric instruments including watches.

Class 35 - Advertising; business management; business administration; office functions; retail business services and the bringing together of cosmetics, perfumery, glasses, jewellery, leather products, clothing and clothing accessories and shoes, for the benefit of third parties in order to give consumers the possibility to examine and buy these products; sale promotion; business mediation in the purchase and sale of products; business mediation services in the trading of products to wholesalers; office functions in the field of drafting and closing of franchise agreements regarding the before mentioned services; the aforesaid services also offered via electronic channels, including the Internet.

Annex C

The applicant's services in class 35 in relation to which the opposition fails

Class 35 - Retail services, electronic shopping retail services, mail order retail services and shop retail services, all connected with the sale of soaps, cosmetics, perfumery, essential oils, eau de parfum, eau de toilette, cologne, fragrances and fragrance products for personal use, massage oils, hair lotions, cosmetic preparations for skin care, skin care cosmetics, skin care preparations, preparations for the bath and shower, shower gel, bath gels, scented body lotions and creams, scented moisturising skin cream, moisturisers, body lotions and creams, moisturising creams, scented skin soap, body oil, face make-up, lip make-up, cheek make-up, face powder, face glitter, lipstick, lip gloss, non-medicated lip balm, lip pencils, perfumed shimmer sticks, eye shadow, eye pencils, mascara, eye make-up, eyeliners, eye creams, eye gels, eye balms, highlighter, cleansers, toners, clarifiers, exfoliators, foundation make-up, blusher, compacts, make-up remover, fragrance sachets, room fragrances, beauty care preparations, beauty care products, beauty creams, beauty tonics for application to the body, beauty tonics for application to the face, non-medicated beauty preparations, non-medicated skin care beauty products, skin care products for personal use, namely, face, eye and lip moisturisers, face and skin creams, lotions and serums, anti-aging treatments, foundation for the face, hair care products, shampoo, hair conditioners, hair gel, hair spray, nail care preparations, nail polish, nail strengtheners, nail polish remover, shaving cream, shaving gel, after-shave preparations, after-shave lotion, depilatory preparations, personal deodorant, antiperspirants, potpourri, sun tanning preparations, cosmetic preparations for skin tanning, artificial tanning preparations, artificial nails, artificial eyelashes, paints, varnishes and lacquers, candles, bougies, night lights, cutlery, spoons, razors, curling tongs, manicure tweezers, manicure scissors, depilating tweezers, nail files, nail clippers, hair clippers, ice tongs, manicure sets, scissors, sugar tongs, chopping knives and instruments or appliances for cutting vegetables, electrically heated curlers, electrically heated hair straighteners, computer covers and cases for computers, mobile phone covers and cases for mobile phones and tablets, cameras, covers and cases for cameras, magnets, digital photograph frames, baby comforters, feeding bottles, teats and valves for feeding bottles, drawsheets, soothing or teething rings, articles for infants, articles for use during pregnancy, apparatus for lighting, apparatus for heating, apparatus for cooking, apparatus for ventilating, apparatus for sanitary purposes, lampshades, lamp bases, fireplaces, portable fireplaces, simulated fireplaces, grates, hearths, baby carriages, covers for baby carriages, bicycles, hoods for baby carriages, safety seats and supports designed for transporting infants and children in vehicles, trolleys, baggage trolleys, vehicles,

jewellery, imitation jewellery, costume jewellery, precious metals, precious and semi-precious stones, rings, earrings, bracelets, ankle bracelets, necklaces, jewellery chains, pendants, jewellery charms, jewellery brooches, ornamental pins, lapel pins, badges of precious metals, tie pins, tie clips, cuff links, decorative boxes of precious metal, jewellery boxes, jewellery cases, horological and chronometric instruments, clocks, watches, watch straps, watch bands and bracelets, key rings, trinkets or fobs, key rings and key fobs of precious metals, ornaments, figurines, statues and statuettes, works of art, printed matter, books, periodical publications, photograph albums, photograph stands, catalogues, boxes of paper or cardboard for documents, stationery, posters, diaries, calendars, brochures, paper, cardboard, photographs, wrapping and packing materials, artists' materials, address and note pads, albums, water-colours, paper and plastic bags, book ends, bookmarks, writing instrument holders, writing materials and instruments, confetti, crucifixes, transfers, erasers, embroidery patterns, clothes patterns, engravings, files, leaflets or folders, greetings cards, hat boxes, personal organisers and pages for the same, book jackets, knitting patterns or designs, labels, cards, notebooks, patterns for making clothes, paper table cloths, paper napkins, paper tissues, etchings, packing ribbons and tapes, stands for writing instruments, paper table linen, paper containers, magazines, decalcomanias, pencil cases, pencils, pens, paperweights, writing paper, envelopes, binders, packaging, newsletters, packing paper, writing pads, passport holders, pictures, tissues of paper for removing make-up, wrapping paper, bags of paper or plastic for packaging, boxes of paper or card or plastic for packaging, stands for pens, stands for pencils, wrapping paper, luggage, travelling bags and cases, suitcases, sports bags, athletic bags, kit bags, gym bags, beach bags, garment bags, boot and shoe bags, holdalls, back packs, rucksacks, folding bags and cases, tote bags, shopping bags, satchels, toilet bags, cosmetic bags, jewellery rolls for travel, covers for bags, hat boxes of leather, wallets, card wallets, card cases, credit card holders, key cases, luggage label holders, luggage tags, luggage straps, leather straps, animal skins, hides, umbrellas, parasols, walking sticks, furniture, cushions and pillows, picture frames, cutlery boxes, coat hangers, figurines, wall plaques, mirrors, baskets, cabinet work, clothes hooks, coat stands, curtain hooks, curtain rails, curtain rings, curtain rods, curtain rollers, curtain tie-backs, embroidery frames, fans for personal use, bed fittings, door fittings, furniture fittings, window fittings, magazine racks, mattresses, mirror tiles, screens, statues of wood, wax, plaster or plastic, wickerwork, writing desks, picture frames, picture stands, wicker baskets, furniture trimmings, billboards and display units, bolsters, framing battens, filing cabinets, coat and hat pegs, clothes-pegs, plastic packing containers, cradles, clothes covers, decorative bead curtains, drinking straws, pedestals for flower pots, flower stands (floral arrangements), screens, head rests (furniture), non-metallic boards and panels for keys, removable sink coverings, mobiles (decorative objects), non-metallic name plates, dressers, playpens for babies, trays, ornaments and statuettes, wooden or plastic

boxes, bedding, non-metallic household and kitchen baskets, non-metallic fittings and trimmings for furniture, doors and windows, non-metallic cases, cabinets and chests, curtains used as interior blinds, non-metallic screens for furniture, shelves for furniture and storage space in the form of shelves, non-metallic and non-textile wall plaques, sofas and armchairs, butchers tables, tableware, glassware, porcelain, stoneware, chinaware, ceramic and pottery ware, tea services and coffee services, ornaments, baskets, candlesticks, candle holders and candelabras, coasters, napkin holders, household, kitchen and cooking utensils and containers as well as parts and equipment for the same, vacuum containers, crockery, drinking vessels, combs, sponges, brushes, cleaning materials, raw or semi-processed glass, bowls, basins, tools and utensils for kitchen use which are not made of precious metals, drinking containers, bootjacks, shoetrees, bottle openers, bottles, breadbaskets, breadboards, cheeseboards, chopping boards, butter dishes, cake moulds, manual coffee grinders and non-electrical coffee filters, coffee services not made of precious metals, non-electrical coffee-makers not made of precious metals, frying pans, lids for frying pans, cooking pots, ice buckets, corkscrews, cosmetic utensils, cruets and oil and vinegar sets not made of precious metals, egg cups, cups, beakers and tumblers, pitchers, saucers, dishes, sauce and gravy boats all made of materials other than precious metals, fruit bowls, glasses (containers), soap dispensers and holders, bottles, flower pots, flower-pot covers, fly whisks, non-electrical fruit squeezers and garlic presses for household use, funnels, refuse bins, jars, gloves and graters for domestic use, non-electrical spice mills, non-metallic money boxes, cooking moulds and stands, nail brushes, napkin rings and holders not made from precious metals, hand salt and pepper mills, mustard pots, perfume sprays and atomizers, powder cases not made of precious metals, powder puffs, trouser presses, dustbins, saltcellars not made of precious metals, shoehorns, spice sets, tea services and teapots all made of materials other than precious metals, devices for maintaining the shape of ties, toilet bags, toilet-paper dispensers, tooth-brushes, trays or baskets for domestic use and not made of precious metals, insulated bottles and flasks, vases not made of precious metals, worked and semi-worked glass, porcelain, china, earthenware or glass ornaments, statuettes, pomanders, aerosol dispensers for non-medical use, soap and sweet boxes and tins not made of precious metals, non-electrical percolators for domestic use, candlesticks not made of precious metals, decanter stands other than those made of paper or fabric, cake dishes not made of precious metals, decanters not made of precious metals, porcelain and china knobs, yarns and threads for textile use, tents, woven products, textiles, furnishing fabrics in the piece, household textile articles, curtains, towels, beach towels, valances, sheets, duvet covers, bath and bed linen, table and household linen, bed blankets, cloths and covers, bed spreads, coasters, eiderdowns, handkerchiefs, labels, mats of textile, mattress covers, fabric products, printed fabrics, textile fabrics, pillow cases, pillow shams, quilts, runners, sleeping bags, table cloths, wall hangings, bed sheets,

quilt covers, blinds, mattress protectors, blankets, throws, cushion covers, duvets, face cloths, face flannels, mattress covers, pyjama cases, table covers, table linen, textile seat covers for furniture, textile covers for hot water bottles, underblankets, wall coverings, wall decorations, cloths in pieces or in rolls, coasters of textile, place mats of textile, travellers' rugs of textile, travelling rugs, lap rugs, napkins of textile, serviettes of textile, furniture covers, household linen, bed clothes, covers for eiderdowns, blinds of textile, face towels of textile, textile tissues for removing make up, flannels, travelling rugs, for cots, dish cloths, mosquito nets, flags, banners, handkerchiefs of textile, badges, rosettes of textile materials, patches, buttons, ribbons and braid, hairgrips, hair and shoe ornaments, sewing thimbles, hat ornaments, numerals or letters for marking linen, hairnets, brooches and buckles, haberdashery, lace, embroidery, ribbons, braids, tapes, trimmings particularly cards, fringes and frills, artificial flowers, false hair, porcelain and china buttons, lanyards for wear, wall and floor coverings, rugs, carpets, straw mats, mats and matting, wallpaper and non-textile wall hangings, ceiling paper, borders for decorating walls, toys, games, mobiles, dolls and accessories therefor, dolls' beds, dolls' clothes, dolls' houses, puzzles, playthings and accessories therefor, gymnastic and sporting articles and parts and fittings therefor, amusement articles, Christmas tree decorations, fun and theatrical masks, novelties, playing cards, flowers and natural plants, seeds, bulbs, plantlets and seedlings, young plants, young cuttings or wild stock, dried plants and flowers as well as wreaths, garlands and displays made up from them, nuts, fresh fruit, wreaths made of natural or dried flowers, pine and fir cones; information, advisory and consultancy services in relation to all of the aforesaid.