

**O-707-18**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION No. 501885  
BY CHRISTOPHER HEMMING  
FOR REVOCATION OF TRADE MARK No. 3230841  
STANDING IN THE NAME OF  
RVX DISTRIBUTION LIMITED**

**AND**

**IN THE CONSOLIDATED MATTER OF APPLICATION No. 3251735  
BY CHRISTOPHER HEMMING  
TO REGISTER THE TRADE MARK  
BLING GRILLZ  
IN CLASSES 14 & 25**

**AND**

**IN THE MATTER OF OPPOSITION THERETO  
UNDER No. 410911 BY  
RVX DISTRIBUTION LIMITED**

## BACKGROUND

1) The following trade mark is registered in the name of RVX Distribution Ltd (hereinafter RVX).

Mark	Number	Date registered	Class	Specification
GRILLZ	3230841	11.08.17	14	Precious metals and their alloys; jewellery, precious stones; horological and chronometric instruments; Costume jewellery; Costume jewelry; Custom jewelry; Facial jewellery; Fake jewellery; Fashion jewellery; Gold; Gold jewellery; Imitation jewellery; Imitation jewellery ornaments; Imitation jewelry; Items of jewellery; Jewellery boxes; Jewellery cases; Jewellery items; Jewellery made from gold; Jewellery made from silver; Jewellery made of crystal; Jewellery made of non-precious metal; Jewellery made of plastics; Jewellery made of plated precious metals; Jewellery made of precious metals; Jewellery made of precious stones; Jewelry; Jewelry boxes; Jewelry boxes not of metal; Jewelry boxes, not of metal; Jewelry boxes, not of precious metal; Jewelry boxes of metal; Jewelry boxes of precious metal; Jewelry boxes of precious metals; Pendants; Personal jewellery; Platinum jewelry; Precious jewellery; Precious jewels; Presentation boxes for jewellery; Silver; Trophies coated with precious metal alloys; Trophies coated with precious metals; Trophies made of precious metal alloys;

				Trophies made of precious metals; Trophies of precious metals.
			25	Clothing, footwear, headgear.
			35	Advertising; business management services; business administration; office functions.

2) By an application dated 20 November 2017 Mr Christopher Hemming (hereinafter CH) applied for the revocation of the registration shown above under the provisions of Section 46(1)(c). CH contends that the term GRILLZ is a generic/ common worldwide descriptive name for teeth jewellery, a cap that is placed over the teeth for decoration in hip-hop fashion culture.

3) On 29 January 2018 RVX filed its counterstatements. It denies the allegation.

4) On 22 August 2017, CH applied to register the trade mark BLING GRILLZ in respect of the following goods:

- In Class 14: Jewellery; Jewellery fashioned from non-precious metals; Jewellery articles; Jewellery being articles of precious metals; Jewellery coated with precious metal alloys; Jewellery coated with precious metals; Jewellery containing gold; Jewellery fashioned from bronze; Jewellery fashioned from non-precious metals; Jewellery fashioned of precious metals; Jewellery for personal wear; Jewellery incorporating pearls; Jewellery made from gold; Jewellery made from silver; Jewellery made of bronze; Jewellery made of crystal; Costume jewellery; Jewellery made of non-precious metal; Jewellery products; Jewellery, including imitation jewellery and plastic jewellery.
- In Class 25: Clothing.

5) The application was examined and accepted, and subsequently published for opposition purposes on 29 September 2017 in Trade Marks Journal No.2017/039.

6) On 28 November 2017 RVX filed a notice of opposition. RVX is the proprietor of the trade mark shown in paragraph one above and it is this mark which is relied upon in the opposition. The opposition is based upon section 5(2)(b) of the Act.

7) On 12 December 2017 CH filed a counterstatement, basically denying all the grounds. It repeats its claim that the mark GRILLZ is generic. CH states that he has been selling under the trade mark BLING BLING ONLINE for 12 years. He contends that RVX do not sell the goods themselves but through a company (M & H Trading) which is located next door to them, and have the same registered officers.

8) Only CH filed evidence. Both parties seek an award of costs in their favour. Neither side wished to be heard. Neither party provided written submissions.

### **CH'S EVIDENCE**

9) Mr Hemming provided a witness statement, dated 13 March 2018, in which he provides the following exhibits:

- CH1: an example of the product supplied by RVX which has an instruction sheet within it which refers to the product as in a descriptive manner such as "1. These Grillz are intended for entertainment purposes only."; "6. You should clean grillz in cold water and dry after use and then store it in the box supplied."
- CH2: copies of pages from the Korean manufacturer of the type of product provided at exhibit CH1 above. This refers to the various versions of gold and silver plated dentures as GRILLZ. However, it is not clear that this was aimed at the UK as it refers to the FDA which is a USA government department.
- CH4: a copy of the RVX website which shows them using the term GRILLZ to refer to their products but it has a registered "®" symbol after every use
- CH5 & 6: Copies of UK websites offering real gold grillz where the term is clearly being used descriptively.
- CH7: A copy of a UK Google search for the term GRILLZ dated 20 February 2018 which shows images of people with gold and decorated dentures which fit over their existing teeth.
- CH8: A copy of a Cosmetic Dentistry guide dated 20 February 2018 which refers to "Dental Grills/Grillz or Fronts: bling tooth jewellery". It mentions that jewellers make

such items which simply push onto a person's existing teeth and are considered a cosmetic addition.

- CH9 & 10: Pages from the Daily Mirror dated July 2013 and the Huffington Post dated August 2015 both of which refer to pop stars wearing a form of jewellery for the teeth known as Grillz or Grills.
- CH11: lyrics from a 2006 song by Nelly which refers to wearing grillz.
- CH13: a copy of an IPO examination letter refusing the term BLING GRILLZ as it was purely descriptive.

10) That concludes my review of the evidence. I now turn to the decision.

## **DECISION**

11) The revocation action is based upon Sections 46(1)(c):

“Section 46(1) of the Act states that:

“The registration of a trade mark may be revoked on any of the following grounds-

(a) ...

(b) .....

(c) that, in consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a product or service for which it is registered.

(d).....

(2) For the purpose of subsection (1) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as is referred to in that

paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made: Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made.

(4) An application for revocation may be made by any person, and may be made to the registrar or to the court, except that –

(a) if proceedings concerning the trade mark in question are pending in the court, the application must be made to the court; and

(b) if in any other case the application is made to the registrar, he may at any stage of the proceedings refer the application to the court.

(5) Where grounds for revocation exist in respect of only some of the goods or services for which the trade mark is registered, revocation shall relate to those goods or services only.

6) Where the registration of a trade mark is revoked to any extent, the rights of the proprietor shall be deemed to have ceased to that extent as from –

(a) the date of the application for revocation, or

(b) if the registrar or court is satisfied that the grounds for revocation existed at an earlier date, that date.”

12) It is clear from the evidence provided that the term GRILLZ is in common use to describe dentures or tooth covers which are made of precious metals and which occasionally also have precious or semi-precious stones embedded within them. They are a fashion accessory or piece of jewellery. Whilst these items began in the hip-hop movement they are now spreading into mainstream consumerism, with iconic pop stars wearing them. I accept that the test is whether the average consumer would be aware, but given the media coverage of such items I believe that the average consumer knows of

these items by the name GRILLZ. I note that despite the very clear claims of CH on this issue and his evidence backing up his claims, RVX has chosen not to provide its own evidence contradicting CH or even to challenge his evidence or to cross examine CH on the issue. It has not shown that it has taken any steps to protect its mark and to deter others in the UK market from using the term. It is clear that the term is being used generically and that a prima facie case that the registered proprietor failed to take steps to prevent this happening has been made out, but not answered. I take into account the comments of Mr Arnold Q.C (as he was) when acting as the Appointed Person in *Extreme* BL/161/07 where he commented on the issue of unchallenged evidence and cross examination:

*“Unchallenged evidence*

33. *Phipson on Evidence* (16th ed) states at paragraph 12-12:

In general a party is required to challenge in cross-examination the evidence of any witness of the opposing party if he wishes to submit to the court that the evidence should not be accepted on that point. The rule applies in civil cases as it does in criminal. In general the CPR does not alter that position.

This rule [sic] serves the important function of giving the witness the opportunity of explaining any contradiction or alleged problem with his evidence. If a party has decided not to cross-examine on a particular important point, he will be in difficulty in submitting that the evidence should be rejected.

However the rule is not an inflexible one...

34. The authority cited in support of this statement of the law is the decision of the House of Lords in *Browne v Dunn* (1894) 6 R 67. The relevant passages from the speeches are set out in the judgment of Hunt J in *Allied Pastoral Holdings v Federal Commissioner of Taxation* (1983) 44 ALR 607, the material parts of which are quoted in the judgment of the Court of Appeal in *Markem Corp v Zipher Ltd* [2005] EWCA Civ 267, [2005] RPC 31 at [59]-[60].

35. In my judgment the learned editors of *Phipson* are correct to say that the rule is not an inflexible one. There are at least two well-established exceptions to it. The first is that, as the speech of Lord Herschell LC in *Browne v Dunn* makes clear, it may not be necessary to cross-examine on a point if the witness has been given full notice of it before making his statement. As I pointed out in *BRUTT Trade Marks* [2007] RPC 19 at [23], this may be significant in registry proceedings where evidence is given sequentially. The second is that a court is not obliged to accept a witness's evidence in the absence of cross-examination if it is obviously incredible: see *National Westminster Bank plc v Daniel* [1993] 1 WLR 1453.

36. Where, however, evidence is given in a witness statement filed on behalf of a party to registry proceedings which is not obviously incredible and the opposing party has neither given the witness advance notice that his evidence is to be challenged nor challenged his evidence in cross-examination nor adduced evidence to contradict the witness's evidence despite having had the opportunity to do so, then I consider that the rule in *Brown v Dunn* applies and it is not open to the opposing party to invite the tribunal to disbelieve the witness's evidence.

37. Despite this, it is not an uncommon experience to find parties in registry hearings making submissions about such unchallenged evidence which amount to cross-examination of the witness in his absence and an invitation to the hearing officer to disbelieve or discount his evidence. There have been a number of cases in which appeals have been allowed against the decisions of hearing officers who have accepted such submissions. Two recent examples where this appears to have happened which were cited by counsel for the proprietor are *Score Draw Ltd v Finch* [2007] EWHC 462 (Ch), [2007] BusLR 864 and *EINSTEIN Trade Mark* (O/068/07). Another recent example is *Scholl Ltd's Application* (O/199/06). I consider that hearing officers should guard themselves against being beguiled by such submissions (which is not, of course, to say that they should assess evidence uncritically)."

13) As it is clear that RVX has not protected its mark it falls that its registration has to be amended. As the term GRILLZ has only become generic in respect of tooth covers or dentures it is clear that these items need to be excluded from the specification which is registered in respect of class 14. I therefore propose to add in the words "none of the

aforesaid including tooth covers or dentures”. This limitation will therefore apply to the whole of the class 14 specification.

14) I next turn to consider the opposition under section 5(2)(b) which reads:

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

(a) .....

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

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

15) An “earlier trade mark” is defined in section 6, the relevant part of which states:

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

(a) a registered trade mark, international trade mark (UK) or Community trade mark 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.”

16) The opponent is relying upon its trade mark shown in paragraph 1 above which is clearly an earlier filed trade mark. The interplay between the date of the instant mark being published (29 September 2017) and the opponent’s mark being registered (11 August 2017) means that the proof of use requirements do not bite.

17) When considering the issue under section 5(2)(b) I take into account the following principles which are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd*

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

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

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

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

### **The average consumer and the nature of the purchasing process**

18) 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.

19) As CH's mark is sought only for, broadly speaking, jewellery and clothing, these are the goods which I must consider here. The average consumer for such goods would be the general UK public including businesses. These types of goods will typically be offered for sale in retail outlets, in brochures and catalogues as well as on the internet. The initial selection is therefore primarily visual. Clearly, some of these items may be researched or discussed with a member of staff. The latter, along with personal recommendations, bring aural considerations into play.

20) Clearly, the average consumer's level of attention will vary considerably depending on the cost and nature of the item at issue. However, to my mind even when selecting routine inexpensive items of clothing such as socks the average consumer will pay attention to considerations such as size, material, colour, design, and even cheap items of jewellery will be considered as to the suitability of the metal (allergic reactions to some metals can be

severe), and design for the person they are intended for. **Overall the average consumer for these types of goods is likely to pay an average degree of attention to the selection of such goods.**

### **Comparison of goods**

21) In *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer*, the CJEU stated at paragraph 23 of its judgement:

“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”.

22) Guidance on this issue has also come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

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

“... 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”.

24) In *Gérard Meric v Office for Harmonisation in the Internal Market (Trade Marks and Designs) OHIM*) case T-133/05, the General Court (“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 T110/01 *Vedial V OHIM France Distribution (HUBERT)* [2002] ECR II-5275, paragraphs 43 and 44; and Case T- 10/03 *Koubi v OHIM – Flabesa (CONFORFLEX)* [2004] ECR II-719, paragraphs 41 and 42).”

25) The specifications of both sides are reproduced below for ease of reference:

CH's specification	RVX's specification
<p>Class 14: Jewellery; Jewellery fashioned from non-precious metals; Jewellery articles; Jewellery being articles of precious metals; Jewellery coated with precious metal alloys; Jewellery coated with precious metals; Jewellery containing gold; Jewellery fashioned from bronze; Jewellery fashioned from non-precious metals; Jewellery fashioned of precious metals; Jewellery for personal wear; Jewellery incorporating pearls; Jewellery made from gold; Jewellery made from silver; Jewellery made of bronze; Jewellery made of crystal; Costume jewellery; Jewellery made of non-precious metal; Jewellery products; Jewellery, including imitation jewellery and plastic jewellery.</p>	<p>Class 14: Precious metals and their alloys; jewellery, precious stones; horological and chronometric instruments; Costume jewellery; Costume jewelry; Custom jewelry; Facial jewellery; Fake jewellery; Fashion jewellery; Gold; Gold jewellery; Imitation jewellery; Imitation jewellery ornaments; Imitation jewelry; Items of jewellery; Jewellery boxes; Jewellery cases; Jewellery items; Jewellery made from gold; Jewellery made from silver; Jewellery made of crystal; Jewellery made of non-precious metal; Jewellery made of plastics; Jewellery made of plated precious metals; Jewellery made of precious metals; Jewellery made of precious stones; Jewellery; Jewelry; Jewelry boxes; Jewelry boxes not of metal; Jewelry boxes, not of metal; Jewelry boxes, not of precious metal; Jewelry boxes of metal; Jewelry boxes of precious metal; Jewelry boxes of precious metals; Pendants; Personal jewellery; Platinum jewelry; Precious jewellery; Precious jewels; Presentation boxes for jewellery; Silver; Trophies coated with precious metal alloys; Trophies coated with precious metals; Trophies made of precious metal alloys; Trophies made of precious metals; Trophies of precious metals.</p>
Class 25: Clothing	Class 25: Clothing, footwear, headgear.

26) It is clear that RVX's specification in both classes encompasses the whole of CH's specification in the same class. **As such the goods above are identical.**

### Comparison of trade marks

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

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

28) The marks of the two parties are as follows:

CH's mark	RVX's mark
<b>BLING GRILLZ</b>	<b>GRILLZ</b>

29) The whole of RVX's mark appears in CH's mark albeit as the second word. However, the first word of CH's mark is a laudatory word "Bling" which has a definition of "Showy", "ostentatious" or "shiny" although it can also mean "expensive". Visually and aurally the marks differ because of the presence of the initial word "bling" in Ch's mark. The other element "grillz" is identical in both marks. Conceptually the only difference is that the word grillz which has a well-known meaning as relating to a gold/silver tooth cover sometimes studded with stones, is, in CH's case preceded by the term bling which means it is shiny, ostentatious or expensive. They have highly similar conceptual meanings. **Overall the marks are similar to a medium to high degree.**

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

30) In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

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

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

31) The word “Grillz” has a well-known meaning in respect of jewellery, but none in respect of clothing. However, the limitation I have included in the specification of RVX means that it does not include tooth covers or dentures as such the mark is inherently distinctive to an average degree in respect of all its goods. No evidence of use was filed and so RVX’s mark cannot enjoy the benefit of enhanced distinctiveness through use.

### **Likelihood of confusion**

32) 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 mark as the more distinctive this trade mark is, 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. Earlier in this decision, I concluded that:

- the average consumer is a member of the general public, who will select the goods by predominantly visual means, although not discounting aural considerations, and that they will pay an average degree of attention to the selection of such goods.
- RVX's mark has an average degree of inherent distinctiveness, but cannot benefit from an enhanced distinctiveness through use.
- The marks are similar to a medium to high degree.
- The goods of the two parties are identical.

33) Taking all of the above into account there is a likelihood of consumers being confused into believing that the goods applied for under the mark in suit and provided by CH are those of RVX or provided by some undertaking linked to it. **The opposition under Section 5(2) (b) succeeds in respect of all the goods in classes 14 and 25.**

## **CONCLUSION**

34) Mark 3230841 will remain upon the register but with an altered specification which will read:

- In Class 14: Precious metals and their alloys; jewellery, precious stones; horological and chronometric instruments; Costume jewellery; Costume jewelry; Custom jewelry; Facial jewellery; Fake jewellery; Fashion jewellery; Gold; Gold jewellery; Imitation jewellery; Imitation jewellery ornaments; Imitation jewelry; Items of jewellery; Jewellery boxes; Jewellery cases; Jewellery items; Jewellery made from gold; Jewellery made from silver; Jewellery made of crystal; Jewellery made of non-precious metal; Jewellery made of plastics; Jewellery made of plated precious metals; Jewellery made of precious metals; Jewellery made of precious stones; Jewelry; Jewelry; Jewelry boxes; Jewelry boxes not of metal; Jewelry boxes, not of

metal; Jewelry boxes, not of precious metal; Jewelry boxes of metal; Jewelry boxes of precious metal; Jewelry boxes of precious metals; Pendants; Personal jewellery; Platinum jewelry; Precious jewellery; Precious jewels; Presentation boxes for jewellery; Silver; Trophies coated with precious metal alloys; Trophies coated with precious metals; Trophies made of precious metal alloys; Trophies made of precious metals; Trophies of precious metals; none of the aforesaid including tooth covers or dentures.

- In Class 25: Clothing, footwear, headgear.
- In Class 35: Advertising; business management services; business administration; office functions.

35) Trade mark application 3251735 will be refused in full.

## **COSTS**

36) As both sides have achieved a measure of success I do not propose to favour either side with an award of costs.

**Dated this 8<sup>th</sup> day of November 2018**

**George W Salthouse**  
**For the Registrar,**  
**the Comptroller-General**