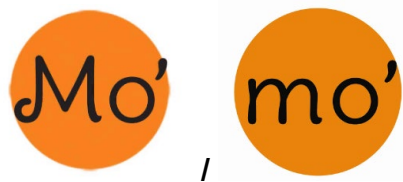


O/870/22

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3605523
IN THE NAME OF MOMINERAL UK LTD FOR THE TRADE MARKS**



IN CLASSES 3, 16, 18, 21, 24, 30, 35 & 43

AND

**OPPOSITION THERETO UNDER NO. 426320
BY MULTIOPTICAS SOCIEDAD COOPERATIVA**

Background and pleadings

1. Momineral UK Ltd (“the applicant”) applied to register the trade marks  /  (series of two)¹ with the application number 3605523 in the UK on 5 March 2021. It was accepted and published in the Trade Marks Journal on 21 May 2021. Amendments have been made to the goods and services since the application was filed, and the current version of the specification is provided at Annex A to this decision.

2. On 20 August 2021, MULTIOPTICAS SOCIEDAD COOPERATIVA (“the opponent”) filed an opposition partially opposing the trade mark on the basis of Section 5(2)(a), 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”). The goods against which the opposition is directed are set out later in this decision. The opposition under section 5(2)(b) and 5(3) is based on all of the earlier UK comparable trade marks set out in the table below. A reputation is claimed in respect of the goods and services in classes 9, 35 and 44 only. The opposition based on section 5(2)(a) is based upon the word mark set out on the top row of the table only, and the opposition based on section 5(2)(a) and 5(2)(b) rely on all of the goods and services identified in the table below.

Registration number	Trade Mark	Filing/Registration date	Goods and services relied upon
UK00917547142	MO	30 November 2017/14 May 2018	Class 3: Eyeglass lens cleaning solutions; Wiping cloth impregnated with a cleaning preparation for cleaning eye glasses.
			
UK00918065180		16 May 2019/29 October 2019	
UK00918065184		16 May 2019/29 October 2019	Class 5: Solutions for rinsing contact lenses;

¹ The application was originally filed as a series of three, but it was reduced to a series of two on 14 May 2021. The amendments were published in the Trade Mark Journal dated 6 August 2021.

UK00918065191		16 May 2019/29 October 2019	Disinfectants for contact lenses; Contact lens wetting solutions. Class 9: Glasses, sunglasses and contact lenses; Spectacle lenses; Optical glasses; Correcting lenses [optics]; Containers for contact lenses; Frames for spectacles and sunglasses; Spectacle cases; Eyeglass lanyards; Pince-nez chains; Clip-on sunglasses; Opticians' goods; Adapters for connecting telephones to hearing aids; Optical apparatus and instruments. Class 35: Wholesaling, retailing in shops and via global computer networks of eyeglasses, sunglasses and contact lenses, lenses for eyeglasses, optical lenses,
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			correcting lenses (optics), containers for contact lenses, frames for eyeglasses and sunglasses, eyeglass cases, eyeglass cords, eyeglass chains, clip-on sunglasses for eyeglasses, optical goods for eyesight, adapters for connecting telephones to hearing aids, optical apparatus and instruments. Class 44: Opticians' services; Fitting of optical lenses; Fitting of contact lenses; eye sight testing; Hearing tests; Fitting of hearing aids; Ophthalmological services.
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3. By virtue of their earlier filing dates, the above marks constitute earlier marks in accordance with section 6 of the Act.

4. In respect of the opposition based on section 5(2)(a) and 5(2)(b) of the Act, the opponent argues that the respective goods and services are identical or highly similar. The opponent argues under 5(2)(a) that the marks are identical and under section 5(2)(b) that the marks are similar, and that there is a likelihood of confusion on the basis of both grounds. The opponent also argues that its earlier "...MO registration through use is highly distinctive for eyewear, eye care products, fashion goods and

fashion accessories...” and that as such the likelihood of confusion is increased further.

5. In respect of the opposition based on section 5(3) of the Act, the opponent submits it has been trading under the mark MO since 1977 and holds a substantial reputation as a result of the extensive and longstanding use and significant promotional activity in respect of the same. The opponent argues the applicant’s use of the mark would take unfair advantage of the distinctiveness and reputation of the earlier mark, in addition to being detrimental to the same based on the potential for poor quality goods. In addition, the opponent argues that the use of the mark would diminish the distinctive character of the earlier mark.

6. The applicant filed a counterstatement denying the claims made. The applicant denies that the mark relied upon under the 5(2)(a) ground is identical to the contested marks and denies similarity between the marks and the respective goods² in respect of the opposition based on section 5(2)(b). The applicant denies that the opponent has a reputation under the mark in the UK and denies that the marks are identical or similar in respect of the opposition based on section 5(3) of the Act.

7. Both sides filed evidence in these proceedings. No hearing was requested and neither party filed written submissions in lieu of a hearing. This decision is taken following a careful perusal of the papers.

8. The applicant is represented in these proceedings by LawBriefs Ltd. The opponent is represented by FR Kelly.

9. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon in these proceedings are derived from an EU Directive. That is why this decision continues to refer to EU trade mark law.

² Which I take to refer to the earlier respective goods and services.

Preliminary issues

10. The applicant has filed evidence in these proceedings in the form of a witness statement in the name of Omolara Olufunke Tayo-Sobajo, the Director of the applicant since 2014. The witness statement introduces 6 exhibits, namely Exhibit TS1 – Exhibit TS6. These exhibits have all been considered. Within the statement, Ms Tayo-Sobajo states that the applicant’s website has been live since at least the 18 September 2015, and that there have been no instances of confusion to date. Exhibit TS3 provides a page of the applicant’s website from the archive site WayBack Machine, although I note the date of the archived page does not appear to be shown on the exhibit.

11. In *Roger Maier and Another v ASOS*, [2015] EWCA Civ 220, Kitchen L.J. stated that:

“80.the likelihood of confusion must be assessed globally taking into account all relevant factors and having regard to the matters set out in *Specsavers* at paragraph [52] and repeated above. If the mark and the sign have both been used and there has been actual confusion between them, this may be powerful evidence that their similarity is such that there exists a likelihood of confusion. But conversely, the absence of actual confusion despite side by side use may be powerful evidence that they are not sufficiently similar to give rise to a likelihood of confusion. This may not always be so, however. The reason for the absence of confusion may be that the mark has only been used to a limited extent or in relation to only some of the goods or services for which it is registered, or in such a way that there has been no possibility of the one being taken for the other. So there may, in truth, have been limited opportunity for real confusion to occur.”

12. Whilst I note the applicant states it has made some use of its mark since 2015, the extent of this use is not clear, and the evidence of convincing side by side use on the market is lacking. In light of the lack of evidence provided by the applicant showing the extent of its use, I do not find the argument that there has been a lack of confusion to date to be convincing. It is not clear whether this is simply due to the limited use of the applicant, or due to the opponent’s marks having not been used in the same territory

as the applicant. I do not, therefore, consider this argument to hold any weight in this instance.

Proof of use

13. None of the earlier marks relied upon had been registered for over five years at the time that the application was filed. The marks are therefore not yet subject to proof of use provisions in accordance with section 6A of the Act. The opponent may therefore rely upon the full list of goods and services as pleaded.

Decision

Section 5(2)(a)

14. Section 5(2)(a) of the Act is as follows:

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

(a) it is identical with an earlier trade mark and is to be registered for goods or services 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. Section 5A states:

“Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”³

16. In *S.A. Société LTJ Diffusion v. Sadas Vertbaudet SA*, Case C-291/00, the Court of Justice of the European Union (“CJEU”) held that:

³ This section also applies to sections 5(2)(b) and 5(3) of the Act.

“54... a sign is identical with the trade mark where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they may go unnoticed by an average consumer.”

17. The marks to be compared are as follows:

Earlier mark	Contested mark
MO	

18. I consider that the earlier mark is a word mark and as such fair and notional use of the mark allows for it to be presented in a range of standard fonts or colours. However, it is my view that the combination of the orange circle around the marks, in addition to the use of the apostrophe signifying the word ‘Mo’/’mo’ has been shortened both add to the overall impression of the contested marks as a whole. It is my view that these elements would not go unnoticed by the average consumer, and I therefore do not consider the marks to be identical.

19. As it is a requirement for marks to be identical in order for an opposition based on section 5(2)(a) to succeed, the opposition based on 5(2)(a) must fail.

Section 5(2)(b)

20. Section 5(2)(b) of the Act is 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”.

Likelihood of confusion (standard case law)

21. The following principles 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.

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 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 might believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

22. The goods and services for comparison are as follows:

Earlier goods and services	Contested goods
Class 3: Eyeglass lens cleaning solutions; Wiping cloth impregnated with a cleaning preparation for cleaning eye glasses.	Class 3: Eye cosmetics; Cosmetic eye pencils; Cosmetic eye gels; Eye makeup; Eyelid doubling makeup; Eye makeup remover; Eyes make-up; Eye make-up; Eye make-up remover; Eye make-up removers;

Class 5: Solutions for rinsing contact lenses; Disinfectants for contact lenses; Contact lens wetting solutions.	Eye-concealers; Eye cream; Eye creams; Eye lotions; Eye wrinkle lotions; Eye pencils; Eye pencils; Eye shadow; Eye-shadow; Eye gels; Eye stylers; Eye sticks; Eye shadows; Eye gel; Under eye correctors; Eye correction serum; Eye brightening correctors; Under-eye enhancers; Gel eye masks; Cosmetics for eye-lashes; cosmetics for eye-brows; Cosmetic preparations for eye lashes; Fragrance sashes for eye pillows; Colour cosmetics for the eyes; Eye compresses for cosmetic purposes; Creams (non-medicated) for the eyes; Skin, eye and nail care preparations; Gel eye patches for cosmetic purposes; Cosmetics in the form of eye shadow; Cosmetic creams for firming skin around eyes; Eyebrow mascara; Long lash mascaras; Eyeliners; Eyeliner; Eyeliner pencils; Liquid eyeliners; Eye liner; Liners [cosmetics] for the eyes.
Class 9: Glasses, sunglasses and contact lenses; Spectacle lenses; Optical glasses; Correcting lenses [optics]; Containers for contact lenses; Frames for spectacles and sunglasses; Spectacle cases; Eyeglass lanyards; Pince-nez chains; Clip-on sunglasses; Opticians' goods; Adapters for connecting telephones to hearing aids; Optical apparatus and instruments.	Class 18: Cosmetic purses; Cosmetic bags; Makeup bags; Make-up boxes; Make-up bags; Make-up cases; Make-up bags sold empty; Make-up cases sold empty; Pouches for holding make-up, keys and other personal items.
Class 35: Wholesaling, retailing in shops and via global computer networks of eyeglasses, sunglasses and contact lenses, lenses for eyeglasses, optical lenses, correcting lenses (optics), containers for contact lenses, frames for eyeglasses and sunglasses, eyeglass cases, eyeglass cords, eyeglass chains, clip-on sunglasses for eyeglasses, optical goods for eyesight, adapters for connecting telephones to hearing aids, optical apparatus and instruments.	

Class 44: Opticians' services; Fitting of optical lenses; Fitting of contact lenses; eye sight testing; Hearing tests; Fitting of hearing aids; Ophthalmological services.	Class 21: Cosmetics applicators; Cosmetic utensils; Cosmetic sponges; Cosmetic spatulas; Cosmetic brushes; Cosmetics brushes; Holders for cosmetics; Dispensers for cosmetics; Applicators for cosmetics; Cosmetic powder compacts; Racks for cosmetics; Cosmetic bags [fitted]; Containers for cosmetics; Hair combs; Hair brushes; Hair tinting brushes; Electric hair combs; Makeup sponge holders; Brushes; Brushes (except paint brushes); Brushes and brush-making articles; Applicator sticks for applying makeup; Washing brushes; Dish brushes; Eyeliner brushes; Tongue brushes; Nail brushes; Clothes brushes; Eyebrow brushes; Cleaning brushes; Brush holders; Dishwashing brushes; Toilet brushes; Mopping brushes; Bottle brushes; Shaving brushes; Eyelash brushes; Brushes (Dishwashing -); Exfoliating brushes; Tooth brushes; Floor brushes; Scrubbing brushes; Shoe brushes; Lip brushes; Mascara brushes; Lawn brushes; Brushes for footwear; Footwear (Brushes for -); Brushes for pets; Brush-making materials; Toilet brush holders;
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	Washing-up brushes; Carpet-cleaning brushes; Tooth brush cases; Bottle cleaning brushes; Electric tooth brushes; Brushes for cleaning; Holders for brushes; Tongue cleaning brushes; Shaving brush stands; Brush making materials; Hair for brushes; Toilet brush sets; Handles for brushes; Shaving brush holders; Pot cleaning brushes; Brushes (except paintbrushes); Brushes, except paintbrushes; Feeding bottle brushes; Lamp-glass brushes; Skin cleansing brushes; Make-up brushes; Household utensils for cleaning, brushes and brush-making materials; Stands for shaving brushes; Brushes for personal hygiene; Vegetable brushes with peelers; Tooth brushes, non-electric; Brushes for feeding bottles; Brushes for household purposes; Brushes for household use; Material for brush-making; Stands for tooth brushes; Body sponges; Body cleanser holders; Body cleanser dispensers; Body scrubbing puffs; Make-up sponges; Eye make-up applicators; Make-up artist belts; Make-up removing appliances; Electric make-up removing appliances; Applicator sticks for applying make-up;
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	Applicators for applying eye make-up; Appliances for removing make-up, electric; Facial sponges for applying make-up; Non-electric make-up removing appliances; Appliances for removing make-up, non-electric; Brushes for washing up; Powder compacts; Powder puffs; Powder compacts [cases]; Powder compacts [empty]; Powder compacts, empty. Class 24: Textile napkins for removing makeup; Cloth napkins for removing makeup; Make-up pads of textile for removing make-up; Make-up pads of textile; Cloths for removing make-up; Make-up (Napkins for removing -) [cloth]; Cloth napkins for removing make-up; Textiles for making up into articles of clothing; Textile piece goods for making-up into clothing; Textile piece goods for making-up into towels; Woven fabrics for making up into articles of clothing; Textile fabrics for making up into household textile articles; Make-up removal cloths [textile], other than impregnated with cosmetics; Make-up removal towels [textile] other than impregnated with cosmetics; Make-up removal wipes [textile] other than impregnated with
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	cosmetics; Make-up removal towels [textile] other than impregnated with toilet preparations; Make-up removal wipes [textile] other than impregnated with toilet preparations; Make-up removal cloths [textile], other than impregnated with toilet preparations; Face towels; Face cloths; Textile face towels; Face cloths of towelling; Face towels of textile; Face cloths of textile; Face towels of textiles; Household linen, including face towels; Face towels [made of textile materials].
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23. In the judgment of the CJEU in *Canon*, Case C-39/97, the court stated at paragraph 23 of its judgment that:

“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”.

24. 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 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.

25. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion 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 goods may be considered “complementary” where:

“...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”.

26. It is obvious that where two specifications contain identical terms, or different terms both with identical meanings, the goods should be considered identical. In addition, in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, the GC stated that:

“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 trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or

where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

Class 3

27. The opponent relies upon the same goods and services under all of its earlier marks. Within its submissions, the opponent argues that the earlier goods and services are similar to the contested goods and services “...by complementarity...” The opponent states that there will be shared trade channels and users, and that some of the goods may, including those in class 3 & 24 may be considered as fashion accessories and be sold in the same stores.

28. I note firstly that I do not consider cosmetic eye products applied for by the applicant in class 3 to share any similarity with the opponent’s earlier goods. I note the opponent also holds goods in class 3, but I do not consider *Eyeglass lens cleaning solutions; Wiping cloth impregnated with a cleaning preparation for cleaning eye glasses* to share a similar purpose, method of use, or producers, and I do not consider these to be complementary or in competition. I do not consider users to be shared beyond the fact that both sets of goods will be used by the general public. I also do not consider the trade channels to be shared beyond the fact that these goods may both be stocked by the same general stores, or in some instances, in larger pharmacies. I note that the opponent’s goods and the applicant’s cosmetic goods may both take the form of a liquid, but I find this true for a huge range of dissimilar goods, and I find it very likely that if this is the case the liquids will be packaged very differently. I note that it is not a requirement for goods (or services) to be featured in the same class in order for a level of similarity to be found between them, however considering the relevant factors, I also see no reason to find any of the opponent’s other goods or services relied upon similar to the applicant’s cosmetic products in class 3. I therefore find all of the applicant’s class 3 goods dissimilar to the opponent’s goods with the exception of:

[...] eye [...] care preparations

29. I note that the applicant's class 3 [...] *eye [...] care preparations* is a broad term and will include goods such as drops for the treatment of dry eyes for use by those wearing contact lenses. The users therefore may be shared with those using *solutions for rinsing contact lenses* and *disinfectants for contact lenses* relied upon in the opponent's class 5. In addition, it is also likely that producers and trade channels will be shared, and the goods will be located near each other in larger stores and may be sold together in specialist stores or opticians. There may also be a limited overlap in nature, in that the goods will likely comprise liquids that are safe for use in eyes. The intended purpose of the goods will differ, as will the method of use. The goods will not be complementary or in competition with one another. Overall, I find there to be a low level of similarity between these goods.

Class 18

30. I note applicant's class 18 goods include *pouches for holding make-up, keys and other personal items*, in addition to goods for holding make up including *cosmetic purses; cosmetic bags; makeup bags; make-up boxes; make-up bags; make-up cases; make-up bags sold empty; make-up cases sold empty*. It is my view *pouches for holding [...] other personal items* will not include pouches for glasses as such, which fall into class 9.⁴ However, these goods are all pouches, boxes, cases and small bags for holding small personal items including those named such as make-up, cosmetics and keys. I note that broadly there will be an overlap in the intended purposes to the opponent's *spectacle cases* as all of the goods will be used to protect and safely store the consumers personal items either at home or when transporting these within another bag on the move. However, I note the specific intended purpose will differ, in that the opponent's goods are for storing spectacles and the applicant's goods are for storing other personal and cosmetic items. I also note there will be some overlap in nature, with all of the goods being small structured of soft fabric or leather items with an opening, although there may be a difference in the specific shape of the

⁴ In *Altecnic Ltd's Trade Mark Application* [2002] RPC 34 (COA) the Court of Appeal decided that "*the Registrar is entitled to treat the Class number in the application as relevant to the interpretation of the scope of the application, for example, in the case of an ambiguity in the list of the specification of goods.*"

goods. The users will be shared to the extent that the goods may be aimed at the general public. I find it likely that the trade channels will be shared, and whilst spectacle cases will often be sold alongside spectacles, I also note they may be sold alongside other small cases and pouches as part of a range offered by the same entity and may also be placed in the same accessories department of stores as the applicant's goods. The goods will not be complementary. The goods will not be competition, with consumers purchasing the goods for different purposes. Overall, considering all of the factors, I find the goods to be similar to at least a low degree.

Class 21

31. I note the application covers *cosmetic bags [fitted]; holders for cosmetics; and containers for cosmetics*; in class 21. I find these to be similar to the opponent's *spectacle cases* for the same reasons outlined in respect of the class 18 goods above.

32. Whilst I note that the class 21 goods also include items such as *Tooth brush cases* and *Brush Holders*, I find these goods less likely to share a nature with the opponent's sunglass cases, and I find it unlikely they will be produced by the same entities or share trade channels. Whilst there may be an overlap in purpose in the sense that they are all for storing goods, and whilst they may both be used by members of the general public, I do not find this to be sufficient for a finding of similarity in respect of these goods in this instance.

33. I find no reason to consider the rest of the applicant's goods in class 21 similar to the opponent's earlier goods and services. I do not find any similarity beyond the fact that users may be the general public, and very general trade channels may be shared. I consider the applicant's remaining class 21 goods to be dissimilar to the opponent's earlier goods and services.

Class 24

34. The applicant's class 24 goods include the following:

Textile napkins for removing makeup; Cloth napkins for removing makeup; Make-up pads of textile for removing make-up; Make-up pads of textile; Cloths for removing make-up; Make-up (Napkins for removing -) [cloth]; Cloth napkins for removing make-up; Make-up removal cloths [textile], other than impregnated with cosmetics; Make-up removal towels [textile] other than impregnated with cosmetics; Make-up removal wipes [textile] other than impregnated with cosmetics; Make-up removal towels [textile] other than impregnated with toilet preparations; Make-up removal wipes [textile] other than impregnated with toilet preparations; Make-up removal cloths [textile], other than impregnated with toilet preparations.

35. All of the above are cloths, towels and textiles for make-up removal. I find these to have a different intended purpose to the opponent's goods *wiping cloth impregnated with a cleaning preparation for cleaning eye glasses* on the basis that one is for removing make-up and the other is for cleaning glasses, and although I accept that very broadly both are used for cleaning, to my mind cleaning a person and cleaning an object are very different tasks. I acknowledge that to a small degree there will be some similarity in the nature of the goods, all being wipes or cloths, but the earlier goods will be impregnated with cleaning preparations for glasses and overall there will therefore be significant differences between the nature of the goods. The users will not be shared beyond the extent that both goods may be used by the general public. The goods are not in competition and are not complementary. Whilst the goods may be found in the same general stores or pharmacies, they are unlikely to be located near each other. Overall, I find the very general similarities between the goods is not enough to find that they are similar for the purpose of my assessment.

36. Considering all of the relevant factors, I find no reason to consider the applicant's remaining goods in class 24 similar to the opponent's earlier goods or services. I therefore find all of the applicant's class 24 goods to be dissimilar to the opponent's earlier goods and services.

37. In order for an opposition to succeed on the basis of section 5(2)(b) of the Act, there must be some similarity between the goods or services. I therefore find that the opposition under section 5(2)(b) fails in respect of all goods other than those below:

Class 3: [...] eye [...] care preparations

Class 18: Cosmetic purses; Cosmetic bags; Makeup bags; Make-up boxes; Make-up bags; Make-up cases; Make-up bags sold empty; Make-up cases sold empty; Pouches for holding make-up, keys and other personal items.

Class 21: cosmetic bags [fitted]; holders for cosmetics and containers for cosmetics

Comparison of marks

38. The opponent has relied upon five earlier marks within this opposition. All of the earlier marks rely on an identical specification of goods and services. It is clear that the marks that are most similar to the contested marks are the two marks displaying the letters ‘MO’ in full, those being registration number 917547142 for the word mark

MO (“the word mark”) and registration number 918065173 for the mark  (“the stylised mark”). Having considered the evidence, I do not find the opponent will be at a disadvantage if I consider its most similar marks only at this stage, and this is how I intend to proceed. If I find it necessary to do so, I will then return to consider the opponent’s remaining earlier marks, and if they will have any impact on the outcome of this decision.

39. 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 the marks, 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.”

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

41. The respective trade marks are shown below:

Earlier Trade Marks	Contested trade marks
MO	
	

42. The earlier word mark comprises the two letters ‘MO’ only. The combination of the two letters is where the overall impression of the mark resides.

43. The earlier stylised mark comprises the two letters ‘MO’ with an accent over the letter O. This is the most dominant element in the mark. The black rectangle boarder appears to be a simple stylistic choice and plays only a minimal role in the overall impression of the mark.

44. Both contested marks comprise the letters ‘MO’ followed by an apostrophe. This is the dominant element of each of the contested marks. The round orange background and the slightly stylised font play a smaller role in the overall impression of the marks.

Visual comparison

45. The earlier word mark may be used in a range of colours and fonts and in upper and lower case, and so the use of the stylised fonts and upper and lower case lettering in the later marks does little to differentiate them visually. It is also true that the earlier mark may be displayed in colour on a coloured background, although the exact choice of a circular orange element does create a point of visual difference between the marks. The main point of visual difference between the marks resides in the addition of the apostrophe in the later marks. Overall, both contested marks are visually similar to a high degree to the earlier word mark.

46. The earlier stylised mark may be displayed in a range of colours, and it would be within the fair and notional use of the same to use an orange colour for the rectangular background. The use of colour within the contested marks therefore makes little difference visually. The second contested mark displays the letters 'mo' in lower case and uses an apostrophe. The earlier stylised mark also uses these letters in lower case but makes use of an accent over the 'o'. The fonts used differ slightly and one makes use of a rectangular background and one a circular shape, but overall the differences between the marks are very small. I find the second contested mark to be visually similar to the earlier mark to a high degree.

47. The first contested mark shares all of the same similarities, with the exception of the use of a lower case 'm'. In this mark, the 'm' is displayed in upper case lettering. Overall, the first contested mark is also visually similar to the earlier stylised mark to a high degree.

Aural comparison

48. It is my view that the English consumer will pronounce all of the marks identically as 'MOW'. An accent above an 'o' is not used in the English language, and as such the UK consumer is unlikely to be aware of the impact this should have on the pronunciation of the same. It is my view that the UK consumer is therefore likely to pronounce the mark as it reads it in English and would not change the pronunciation

of the earlier stylised mark based on the use of the accent. All of the marks are therefore aurally identical.

Conceptual comparison

49. Conceptually, the earlier marks are most likely to appear to the UK consumer to have no meaning. The earlier stylised mark is likely to be considered a foreign word. Neither hold a concept that will be immediately grasped by the consumer.

50. The contested marks both include an apostrophe that is commonly used in the English language to indicate letters are missing from a word. The use of the letters 'MO' followed by the apostrophe will likely indicate to the consumer that 'MO' is short for a longer word. It is my view that for some consumers, this may convey the concept of a 'moment', i.e. a short period of time. For others, this may be considered as slang for 'moustache'. However, with no additional elements of the mark to help convey the correct meaning or put the marks into context, I find there will also be a significant group of consumers who will realise the marks may be a shortened version of another word, but will not connect them to a particular word, and to whom there will therefore be no graspable concept. I also note that both parties have agreed within their submissions that the marks are conceptually neutral. I therefore find the marks to be conceptual neutral.

Average consumer and the purchasing act

51. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

52. 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.”

53. The average consumer of the class 9, 18 and 21 goods such as spectacle cases and make-up cases will primarily be members of the general public. The general public will pay attention to the size, practicality and aesthetics of these goods; however, it is my view there is no reason for the level of attention paid to be particularly high. I consider that a medium degree of attention will be paid.

54. In respect of the eye-care preparations, whilst I note these will not be pharmaceutical products as such, I do consider that they may be purchased by both professional consumers such as opticians, and the general public. Considering these goods are for caring for the eyes, which are naturally very sensitive, it is my view the general public may pay a slightly elevated level of attention to the same, at an above medium level. The professional consumer is likely to pay a fairly high degree of attention in respect of these goods, due to the increased liability they will face when recommending or providing these goods to their patients.

55. The goods are likely to be primarily purchased visually, either online or in physical retail stores or pharmacies. However, I acknowledge that aural assistance may be sought from shop assistants, and verbal recommendations may be made from professionals to patients. In addition, professional consumers may place orders over the phone. For these reasons, I cannot completely discount the aural considerations.

Distinctive character of the earlier trade marks

56. 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 *WindsurfingChiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).”

57. The earlier word mark is the two letter word MO. I do not find this to be descriptive or allusive of the goods, and it is my view it will convey no particular meaning to the consumer. However, whilst it will be attributed no meaning, I do not consider the short and relatively simple two letter combination MO to hold a higher than medium level of distinctiveness.

58. The earlier stylised mark will appear to be a short foreign word, to which the consumer will not attribute a particular meaning. I find the inherent distinctive character of this mark to be above medium, due to its foreign characteristics making it appear more unusual than the simple two letter combination MO alone.

59. The opponent has filed evidence of use of its mark, and as such I must consider if the distinctiveness of the earlier marks has been enhanced by virtue of the use made of the same. I remind myself that when considering whether the distinctiveness of earlier marks has been enhanced, it is the perception of the UK consumer that is paramount.

60. The opponent's evidence has been filed in the form of a witness statement in the name of Maria Isabel Escudero Perez, a Spanish solicitor and legal director of the Spanish solicitor firm representing the opponent. Ms Perez's statement introduces 7 exhibits, namely Exhibit MIEP1 to Exhibit MIEP7. I note the following comments made by Ms Perez in her witness statement:

11. MÓ branded products and services are accessed by consumers in Spain via the Multiópticas website www.multipoticas.es. International consumers can view products via the website www.moeyewear.com, which is in English and is accessible in the UK.

...

19. The Opponent has participated at various international trade fairs with the aim of offering their products globally. For example: Multiópticas participated at MIDO in Milan, Vision Expo East in New York, Opti in Munich and Silmo in Paris. Multiópticas currently sells its MÓ branded products in the US, Canada, Czech Republic, Germany, France and has plans to open physical stores in the UK.

61. I have not been provided with any UK specific sales or marketing figures. It is clear that an international website which is accessible in the UK is not sufficient to show that the distinctiveness of the earlier marks will have been enhanced for UK consumers. There are currently no physical retail stores in the UK, and with consideration to all of the evidence provided, it is my view that the evidence does not suffice to show that the distinctiveness of the earlier marks will have been increased through the use of the same.

GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion

62. Prior to reaching a decision under Section 5(2)(b), I must first consider all relevant factors, including those as set out within the principles A-K at paragraph 21 of this decision. I must view the likelihood of confusion through the eyes of the average consumer, 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 they have kept in their mind. I must consider the level of attention paid by the relevant consumer, and consider the impact of the visual, aural and conceptual similarities of the marks by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. I must consider that the level of distinctive character held by the earlier marks will have an impact on the likelihood of confusion, and that the distinctiveness of the common elements is key.⁵ I must keep in mind that a lesser degree of similarity between the goods and services may be offset by a

⁵ See *Kurt Geiger v A-List Corporate Limited*, BL O-075-13, in which Mr Iain Purvis Q.C. as the Appointed Person pointed out that the level of 'distinctive character' is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar.

greater degree of similarity between the marks, and vice versa. I must also consider that both the degree of attention paid by the average consumer and how the goods are selected will have a bearing on how likely the average consumer is to be confused.

63. I consider at this point that there are two types of confusion that I may find. The first type of confusion is direct confusion. This occurs where the average consumer mistakenly confuses one trade mark for another. The second is indirect confusion. This occurs where the average consumer notices the differences between the marks, but due to the similarities between the common elements, they believe that both products derive from the same or economically linked undertakings.⁶

64. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, Mr James Mellor Q.C. (as he then was), as the Appointed Person, stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark. This is mere association not indirect confusion.

65. I found both contested marks to be visually similar to a high degree and to be aurally identical to both earlier marks. I found the marks to be conceptually neutral. I found a low level of similarity between some of the goods. I found the general public as consumers will pay a medium or above medium degree of attention to the goods, whereas the level of attention paid by professional consumers will be higher. I also found the earlier word mark to hold a medium level of inherent distinctive character, and the earlier stylised mark to hold an above medium level of distinctive character, but that this had not been enhanced through use. With consideration to all of the factors, and keeping in mind the consumers imperfect recollection, it is my view that for at least a significant portion of consumers, particularly those who attribute no conceptual meaning to the contested marks, there will be a likelihood of direct confusion between the same, where there is some similarity between the goods.

66. I also consider, for completeness, the likelihood of indirect confusion between the marks. It is my view that in respect of the earlier word mark, should the consumers

⁶ *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10

notice the differences between the marks by way of the additional apostrophe and the orange circle, they would be likely to believe that this is simply a very slightly stylised version of the same mark. I therefore find there is also a likelihood of indirect confusion between the marks.

67. The opposition based on section 5(2)(b) of the Act succeeds in respect of the goods where some similarity has been found, as follows:

Class 3: [...] eye [...] care preparations

Class 18: Cosmetic purses; Cosmetic bags; Makeup bags; Make-up boxes; Make-up bags; Make-up cases; Make-up bags sold empty; Make-up cases sold empty; Pouches for holding make-up, keys and other personal items.

Class 21: cosmetic bags [fitted]; holders for cosmetics and containers for cosmetics

68. As I have found the opposition will succeed based on two out of five of the opponent's earlier marks in respect of all of the goods I have found to be similar, the opponent will not be in a better position if I am to consider its three further registrations relied upon. I therefore do not find it necessary to consider these earlier rights under section 5(2)(b).

Section 5(3)

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

“(3) A trade mark which-

(a) is identical with or similar to an earlier trade mark, [...] shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be

detrimental to, the distinctive character or the repute of the earlier trade mark”.

70. As the earlier trade mark is a comparable mark, paragraph 10 of Part 1, Schedule 2A of the Act is relevant. It reads:

“10.— (1) Sections 5 and 10 apply in relation to a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the reputation of a comparable trade mark (EU) falls to be considered in respect of any time before IP completion day, references in sections 5(3) and 10(3) to—

(a) the reputation of the mark are to be treated as references to the reputation of the corresponding EUTM; and

(b) the United Kingdom include the European Union”.

71. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, Case 252/07, *Intel*, Case C-408/01, *Adidas-Salomon*, Case C-487/07, *L’Oreal v Bellure* and Case C-323/09, *Marks and Spencer v Interflora* and Case C383/12P, *Environmental Manufacturing LLP v OHIM*. The law appears to be as follows.

(a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Saloman*, paragraph 29 and *Intel*, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel, paragraph 42*

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel, paragraph 68*; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel, paragraph 79*.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel, paragraphs 76 and 77* and *Environmental Manufacturing, paragraph 34*.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel, paragraph 74*.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV, paragraph 40*.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

72. An opposition based on section 5(3) of the Act can only be successful via the establishment of several individual elements, the cumulation of which must satisfy all elements of the claim. To be successful on this ground, the opponent must prove it holds a reputation for the earlier marks relied upon amongst a significant portion of the public. It must also be established that the marks are similar. If it is found both that the marks are similar and that the earlier mark holds a qualifying reputation it must then be shown that this reputation, combined with the similarity between the marks will result in the relevant public establishing a link between the marks. A link may be found on the basis that the later mark brings the earlier mark to mind. Importantly, if all three of these elements have been established, it must then be shown that the link made by the public will result in, or will be likely to result in, one of the pleaded types of damage.

73. The relevant date for consideration under section 5(3) of the Act is the application date of 5 March 2021.

74. The opposition based on section 5(3) relies on the goods and services in classes 9, 35 and 44 as set out in the table at the outset of this decision. The opposition based on this ground opposes all of the goods identified under section 5(2)(b) above.

Reputation

75. As the earlier marks are comparable EU marks, evidence of a reputation in the EU up until the end of the transition period on 31 December 2020 will be considered towards the establishment of a reputation of the earlier marks, in accordance Schedule 2A of the Act. In *Pago International GmbH v Tirolmilch registrierte GmbH*, Case C-301/07, the CJEU held that:

“20. By its first question, the national court in essence asks the Court, first, to clarify the meaning of the expression ‘has a reputation in the Community’, by means of which, in Article 9(1)(c) of the regulation, one of the conditions is laid down which a Community trade mark must fulfil in order to benefit from the protection accorded by that provision and, second, to state whether that condition, from a geographical point of view, is satisfied in a case where the Community trade mark has a reputation in only one Member State.

21. The concept of ‘reputation’ assumes a certain degree of knowledge amongst the relevant public.

22. The relevant public is that concerned by the Community trade mark, that is to say, depending on the product or service marketed, either the public at large or a more specialised public, for example traders in a specific sector (see, by way of analogy, *General Motors*, paragraph 24, with regard to Article 5(2) of the directive).

23. It cannot be required that the Community trade mark be known by a given percentage of the public so defined (*General Motors*, by way of analogy, paragraph 25).

24. The degree of knowledge required must be considered to be reached when the Community trade mark is known by a significant part of the public concerned by the products or services covered by that trade mark (*General Motors*, by way of analogy, paragraph 26).

25. In examining this condition, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it (*General Motors*, by way of analogy, paragraph 27).

26. In view of the elements of the main proceedings, it is thus for the national court to determine whether the Community trade mark at issue is known by a significant part of the public concerned by the goods which that trade mark covers.

27. Territorially, the condition as to reputation must be considered to be fulfilled when the Community trade mark has a reputation in a substantial part of the territory of the Community (see, by way of analogy, *General Motors*, paragraph 28).

28. It should be noted that the Court has already ruled that, with regard to a Benelux trade mark, it is sufficient, for the purposes of Article 5(2) of the directive, that it has a reputation in a substantial part of the Benelux territory, which part may consist of a part of one of the Benelux countries (*General Motors*, paragraph 29).

29. As the present case concerns a Community trade mark with a reputation throughout the territory of a Member State, namely Austria, the view may be taken, regard being had to the circumstances of the main proceedings, that the territorial requirement imposed by Article 9(1)(c) of the regulation is satisfied.

30. The answer to the first question referred is therefore that Article 9(1)(c) of the regulation must be interpreted as meaning that, in order to benefit from the protection afforded in that provision, a Community trade mark must be known by a significant part of the public concerned by the products or services covered by that trade mark, in a substantial part of the territory of the Community, and that, in view of the facts of the main proceedings, the territory of the Member

State in question may be considered to constitute a substantial part of the territory of the Community.”

76. As previously mentioned within this decision, the opponent has provided evidence in the form of a witness statement in the name of Maria Isabel Excudero Perez, a Spanish solicitor and representative for the opponent from Ars Privilegium, S.L. It introduces seven exhibits, namely Exhibit MIEP1 – Exhibit MIEP7.

77. Ms Perez explains that the opponent is a leading Spanish company that holds the largest share of the Spanish optical market. She states they have been operating for over 40 years and have a distribution network of over 600 stores, have more than 300 partners and 2,200 ‘professionals’ nationwide.⁷

78. Ms Perez explains that the “MÓ” brand was created in 2009⁸ and that they sell “a line of fashionable glasses and accessories under the same.”⁹ She confirms that “[m]ore than a million pairs of “MÓ” glasses are sold each year.”¹⁰ Ms Perez explains the opponent sells glasses from other brands in its physical stores, and also sells optical eye products, those being contact lenses and contact lens cleaning liquid, and accessories for those goods.¹¹ She states that the “MÓ” brand accounts for “90% of the Opponent’s annual sales of glasses and accessories sold each year”.¹² Turnover is provided as below:¹³

⁷ See paragraph 4 of the witness statement of Maria Isabel Excudero Perez

⁸ See paragraph 7 of the witness statement of Maria Isabel Excudero Perez

⁹ See paragraph 5 of the witness statement of Maria Isabel Excudero Perez

¹⁰ See paragraph 6 of the witness statement of Maria Isabel Excudero Perez

¹¹ See paragraph 12 of the witness statement of Maria Isabel Excudero Perez

¹² See paragraph 8 of the witness statement of Maria Isabel Excudero Perez

¹³ See paragraph 31 of the witness statement of Maria Isabel Excudero Perez

Annual sales under MÓ brand from 2014 - 2020

(in Euros)	2014	2015	2016	2017
Sales goods under MÓ mark	25,691,943.74	33,049,503.71	40,669,503.13	39,493,475.28
Sales of Services under the MÓ mark	9,952,458.85	12,298,316.72	12,902,308.65	14,015,911.00
Net turnover	35,644,402.59	45,347,877.43	53,571,811.78	53,509,386.28

(in Euros)	2018	2019	2020	
Sales goods under MÓ mark	25,691,943.74	33,049,503.71	40,669,503.13	
Sales of Services under the MÓ mark	9,952,458.85	12,298,316.72	12,902,308.65	
Net turnover	35,644,402.59	45,347,877.43	53,571,811.78	

79. Ms Perez states that this accounts for 15-20% of the Spanish market for eyewear.¹⁴ Advertising spend is also provided as below:¹⁵

The below table is a summarised breakdown:

(in Euros)	2016	2017	2018	2019
TV	5,150,438	4,496,541	3,153,966	2,804,945
Radio	620,943	407,187	487,601	202,786
Cinema	236,175	0	0	94,819
Magazines/Diaries	143,969	99,600	0	219,819
Internet	350,144	302,099	733,446	508,720
Microphones	414,628	381,035	214,124	0
External	82	-18	706,850	775,712
Sub-total	6,916,378	5,686,444	5,295,987	4,606,975
Related services & commissions	2,426,578	2,920,086	3,742,818	4,402,846
Total	8,702,687	8,606,530	9,038,805	€9,009,821

80. Promotional material, including magazine articles showing glasses are provided at Exhibit MIEP1. These are dated by the opponent as being between 1 April 2016 and 1 May 2016 and show the word MÓ in use in respect of glasses and sunglasses in Spanish magazines including Elle and Cosmopolitan. Online articles are also provided showing use of this mark in 2016.

81. Ms Perez explains that the opponent was a sponsor of Mercedes Benz Madrid Fashion Week in 2019 and provides an article confirming as such dated 17 June 2019

¹⁴ See paragraph 29 of the witness statement of Maria Isabel Excudero Perez

¹⁵ See paragraph 20 of the witness statement of Maria Isabel Excudero Perez

making use of the mark MÓ, as well as an article dated from 30 June 2019 which uses the word MÓ but also shows the image as below:¹⁶

MÓ, SPONSOR OF THE MERCEDES BENZ FASHION WEEK



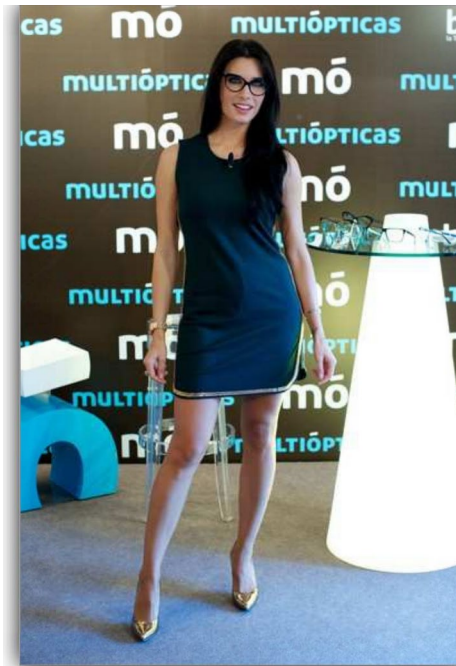
82. Ms Perez also confirms at paragraph 16 of her witness statement that the opponent sponsored Madrid Fashion week in 2020 and 2021.

83. A number of images in press articles showing retail stores featuring the opponent's

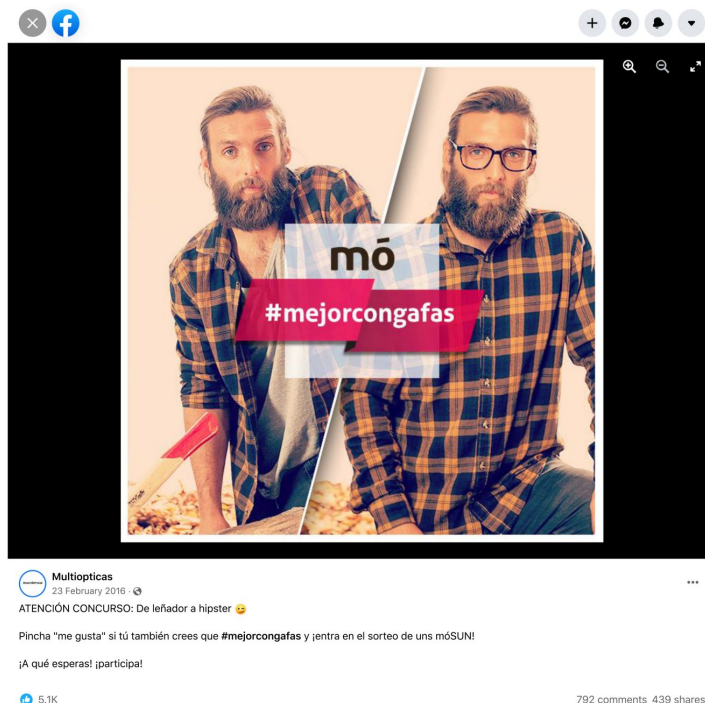
mark  on storefronts and inside the shops dated in 2019 are provided

¹⁶ See paragraph 15 of the witness statement of Maria Isabel Excudero Perez and Exhibit MIEP1

at Exhibit MIEP1 and images from further online press articles and press events dating back to 2013 at the same exhibit show the use of the full mark as below:



84. A post from the opponent's Facebook page in 2016 is provided at Exhibit MIEP5, showing the mark as follows:



85. In addition to its Facebook account, Ms Perez states the opponent runs a Twitter, YouTube and Instagram account.¹⁷ Whilst a reasonable following is confirmed for

¹⁷ See paragraphs 24 – 28 of the witness statement of Maria Isabel Excudero Perez

each, it is not clear what portion of the same was in place prior to the relevant date. However, an example of an advertisement run on its YouTube campaign released in September 2018 is said to have had 4.1 million views.¹⁸

86. Whilst I have not summarised all of the evidence provided, I have reviewed and considered the same. I have no doubt from the sum of the evidence, including the significant turnover figures and substantial marketing expenditure, as well as the significant market share of the opponent, that the opponent has a very strong

reputation in Spain under the marks  &  respect of the following goods and services relied upon:

Glasses & sunglasses; and

The retailing in shops and via global computer networks of eyeglasses & sunglasses

87. I find the reputation held in Spain to constitute a reputation in a significant part of the EU territory, and that this will have been maintained at the relevant date.

Link

88. As I have established the opponent holds a qualifying reputation, I will now consider if a link will be made between the marks. Before I consider the factors set out in *Intel* I note that the opponent holds a reputation in Spain. Whilst I accept this is to be considered as a qualifying reputation under section 5(3), I note it will still be more difficult for a mark which holds a reputation in a country outside of the UK to show that a link will be made between the marks. In *Iron & Smith kft v Unilever NV*, Case C-125/14, the CJEU held that:

“If the earlier Community trade mark has already acquired a reputation in a substantial part of the territory of the European Union, but not with the

¹⁸ See paragraph 24 of the witness statement of Maria Isabel Excudero Perez

relevant public in the Member State in which registration of the later national mark concerned by the opposition has been applied for, the proprietor of the Community trade mark may benefit from the protection introduced by Article 4(3) of Directive 2008/95 where it is shown that a commercially significant part of that public is familiar with that mark, makes a connection between it and the later national mark, and that there is, taking account of all the relevant factors in the case, either actual and present injury to its mark, for the purposes of that provision or, failing that, a serious risk that such injury may occur in the future.

It is apparent from the court's judgment that "*a commercially significant part of the [relevant] public*" is intended to cover a lesser, but still significant, degree of recognition of the EUTM in the Member State where the same or a similar trade mark has been applied for by a third party. This is confirmed by versions of the judgment in other languages. The French version says that a "*commercially non-negligible*" part of the relevant public in the Member State must be aware of the earlier CTM (now: EUTM) and make a link with the later national trade mark.

It follows that where there is no awareness of the EU trade mark in the UK, or only a negligible level of awareness of it, the relevant UK public will not make the necessary 'link' between the EU mark and the later national mark. Consequently, the use of the national mark will not take unfair advantage of, or be detrimental to, the [EU] reputation and/or the distinctive character of the EU trade mark."

89. The evidence provided by the opponent does not show that the relevant public in the UK will have an awareness of its mark. I note that it sponsored accessories at Madrid Fashion week in 2019, and also provided sponsorship to the 2020 and 2021 events where a few members of the relevant public may have viewed it, and I note it has plans to open a shop in the UK and has a 'UK accessible' website. However, I do not find the evidence sufficient to show that the portion of the UK public that will be aware of the mark will be more than negligible. As it has not been shown that a commercially significant part of the relevant UK public is familiar with its mark, I do not

consider it possible for a link to be made by the relevant consumer between the marks, or for damage to follow. The opposition on section 5(3) of the Act therefore fails.

Final Remarks

90. The opposition has failed in respect of all goods and services opposed with the exception of:

Class 3: [...] eye [...] care preparations

Class 18: Cosmetic purses; Cosmetic bags; Makeup bags; Make-up boxes; Make-up bags; Make-up cases; Make-up bags sold empty; Make-up cases sold empty; Pouches for holding make-up, keys and other personal items.

Class 21: cosmetic bags [fitted]; holders for cosmetics and containers for cosmetics

91. Subject to a successful appeal, the application will therefore proceed to registration for all goods other than those listed above, including all goods and services against which the opposition was not directed, and the following opposed goods:

Class 3: Eye cosmetics; Cosmetic eye pencils; Cosmetic eye gels; Eye makeup; Eyelid doubling makeup; Eye makeup remover; Eyes make-up; Eye make-up; Eye make-up remover; Eye make-up removers; Eye-concealers; Eye cream; Eye creams; Eye lotions; Eye wrinkle lotions; Eye pencils; Eye pencils; Eye shadow; Eye-shadow; Eye gels; Eye stylers; Eye sticks; Eye shadows; Eye gel; Under eye correctors; Eye correction serum; Eye brightening correctors; Under-eye enhancers; Gel eye masks; Cosmetics for eye-lashes; cosmetics for eye-brows; Cosmetic preparations for eye lashes; Fragrance sashes for eye pillows; Colour cosmetics for the eyes; Eye compresses for cosmetic purposes; Creams (non-medicated) for the eyes; Skin and nail care preparations; Gel eye patches for cosmetic purposes; Cosmetics in the form of eye shadow; Cosmetic creams for firming skin around eyes; Eyebrow mascara; Long lash mascaras; Eyeliners; Eyeliner; Eyeliner pencils; Liquid eyeliners; Eye liner; Liners [cosmetics] for the eyes.

Class 21: Cosmetics applicators; Cosmetic utensils; Cosmetic sponges; Cosmetic spatulas; Cosmetic brushes; Cosmetics brushes; Dispensers for cosmetics; Applicators for cosmetics; Cosmetic powder compacts; Racks for cosmetics; Hair combs; Hair brushes; Hair tinting brushes; Electric hair combs; Makeup sponge holders; Brushes; Brushes (except paint brushes); Brushes and brush-making articles; Applicator sticks for applying makeup; Washing brushes; Dish brushes; Eyeliner brushes; Tongue brushes; Nail brushes; Clothes brushes; Eyebrow brushes; Cleaning brushes; Brush holders; Dishwashing brushes; Toilet brushes; Mopping brushes; Bottle brushes; Shaving brushes; Eyelash brushes; Brushes (Dishwashing -); Exfoliating brushes; Tooth brushes; Floor brushes; Scrubbing brushes; Shoe brushes; Lip brushes; Mascara brushes; Lawn brushes; Brushes for footwear; Footwear (Brushes for -); Brushes for pets; Brush-making materials; Toilet brush holders; Washing-up brushes; Carpet-cleaning brushes; Tooth brush cases; Bottle cleaning brushes; Electric tooth brushes; Brushes for cleaning; Holders for brushes; Tongue cleaning brushes; Shaving brush stands; Brush making materials; Hair for brushes; Toilet brush sets; Handles for brushes; Shaving brush holders; Pot cleaning brushes; Brushes (except paintbrushes); Brushes, except paintbrushes; Feeding bottle brushes; Lamp-glass brushes; Skin cleansing brushes; Make-up brushes; Household utensils for cleaning, brushes and brush-making materials; Stands for shaving brushes; Brushes for personal hygiene; Vegetable brushes with peelers; Tooth brushes, non-electric; Brushes for feeding bottles; Brushes for household purposes; Brushes for household use; Material for brush-making; Stands for tooth brushes; Body sponges; Body cleanser holders; Body cleanser dispensers; Body scrubbing puffs; Make-up sponges; Eye make-up applicators; Make-up artist belts; Make-up removing appliances; Electric make-up removing appliances; Applicator sticks for applying make-up; Applicators for applying eye make-up; Appliances for removing make-up, electric; Facial sponges for applying make-up; Non-electric make-up removing appliances; Appliances for removing make-up, non-electric; Brushes for washing up; Powder compacts; Powder puffs; Powder compacts [cases]; Powder compacts [empty]; Powder compacts, empty.

Class 24: Textile napkins for removing makeup; Cloth napkins for removing makeup; Make-up pads of textile for removing make-up; Make-up pads of textile; Cloths for removing make-up; Make-up (Napkins for removing -) [cloth]; Cloth napkins for removing make-up; Textiles for making up into articles of clothing; Textile piece goods for making-up into clothing; Textile piece goods for making-up into towels; Woven fabrics for making up into articles of clothing; Textile fabrics for making up into household textile articles; Make-up removal cloths [textile], other than impregnated with cosmetics; Make-up removal towels [textile] other than impregnated with cosmetics; Make-up removal wipes [textile] other than impregnated with cosmetics; Make-up removal towels [textile] other than impregnated with toilet preparations; Make-up removal wipes [textile] other than impregnated with toilet preparations; Make-up removal cloths [textile], other than impregnated with toilet preparations; Face towels; Face cloths; Textile face towels; Face cloths of towelling; Face towels of textile; Face cloths of textile; Face towels of textiles; Household linen, including face towels; Face towels [made of textile materials].

COSTS

92. The applicant has been considerably more successful in these proceedings than the opponent and is therefore entitled to a contribution towards its costs. However, I consider it appropriate to apply a 20% reduction to account for the opponent's partial success. In the circumstances I award the applicant the sum of £690 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Considering the other side's statement and preparing the TM8 and counterstatement:	£350
Considering the other side's evidence and filing evidence and submissions:	£500
20% reduction for the opponent's partial success:	-£160
Total:	£690

93. I therefore order MULTIOPTICAS SOCIEDAD COOPERATIVA to pay Momineral UK Ltd the sum of £690. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 10th day of October 2022

Rosie Le Breton

For the Registrar

Annex A

Class 3: Non-medicated skin care, hair care and beard care preparations; Cosmetics; Cosmetics and cosmetic preparations; Milks [cosmetics]; Eyebrow cosmetics; Cosmetic dyes; Creams (Cosmetic -); Cosmetic soaps; Cosmetic soap; Cosmetic pencils; Pencils (Cosmetic -); Nail cosmetics; Functional cosmetics; Moisturisers [cosmetics]; Skincare cosmetics; Cosmetic powder; Eye cosmetics; Cosmetic preparations; Cosmetics preparations; Cosmetic creams; Multifunctional cosmetics; Dyes (Cosmetic -); Cosmetic kits; Kits (Cosmetic -); Tonics [cosmetic]; Natural cosmetics; Cosmetic rouges; Cosmetic moisturisers; Cosmetic masks; Cosmetic oils; Hair cosmetics; Mousses [cosmetics]; Decorative cosmetics; Colour cosmetics; Lip cosmetics; Organic cosmetics; Skin balms [cosmetic]; Cosmetic bath salts; Cleansing creams [cosmetic]; Non-medicated cosmetics; Cosmetic eye pencils; Suntan lotion [cosmetics]; Body paint (cosmetic); Bath powder [cosmetics]; Cosmetic massage creams; Cosmetic eye gels; Cosmetic hand creams; Facial washes [cosmetic]; Cosmetic facial lotions; Facial masks [cosmetic]; Cosmetic facial packs; Body scrubs [cosmetic]; Facial gels [cosmetics]; Cosmetic body mud; Cosmetic tanning preparations; Cosmetic face powders; Sun block [cosmetics]; Skin care cosmetics; Nail hardeners [cosmetics]; Moisturising concentrates [cosmetic]; Powder compacts [cosmetics]; Skin creams [cosmetic]; Nail primer [cosmetics]; Facial creams [cosmetics]; Facial lotions [cosmetic]; Cosmetic sunscreen preparations; Cosmetic facial masks; Cosmetic nail preparations; Lip stains [cosmetics]; Cosmetic skin enhancers; Body creams [cosmetics]; Sun barriers [cosmetics]; Lip protectors [cosmetic]; Facial cleansers [cosmetic]; Skin masks [cosmetics]; Night creams [cosmetics]; Nail tips [cosmetics]; Nail paint [cosmetics]; Toning creams [cosmetic]; Moisturising gels [cosmetic]; Cosmetic cotton wool; Skin fresheners [cosmetics]; Cosmetic nourishing creams; Face wash [cosmetic]; Facial scrubs [cosmetic]; Cosmetic suntan lotions; Face packs [cosmetic]; Suntan oils [cosmetics]; Tanning oils [cosmetics]; Smoothing emulsions [cosmetics]; Cosmetic mud masks; Acne cleansers, cosmetic; Mineral oils [cosmetic]; Facial moisturisers [cosmetic]; Facial toners [cosmetic]; Lip coatings [cosmetic]; Cosmetics for suntanning; Skin cleansers [cosmetic]; Skin toners [cosmetic]; Cosmetic skin fresheners; Henna [cosmetic dye]; Body care cosmetics; Tanning milks [cosmetics]; Tanning gels [cosmetics]; Facial creams [cosmetic]; Cosmetic sun oils; Cosmetic suntan preparations; Tanning

preparations [cosmetics]; Facial packs [cosmetic]; Suntanning oil [cosmetics]; Beauty care cosmetics; Cosmetic hair lotions; Cosmetic body scrubs; Fluid creams [cosmetics]; Hair oils; Hair creams; Hair texturizers; Hair gels; Hair dye; Hair dyes; Hair colorants; Hair frosts; Hair masks; Hair liquids; Hair balm; Hair oil; Hair glaze; Hair moisturisers; Hair conditioners; Hair shampoos; Hair relaxers; Hair spray; Hair nourishers; Hair colouring; Hair colourants; Hair powder; Hair liquid; Hair serums; Hair neutralizers; Hair balms; Hair glazes; Hair moisturizers; Hair conditioner; Hair lacquer; Hair balsam; Hair fixers; Hair bleach; Hair decolorants; Hair rinses; Hair lotion; Hair lotions; Hair tonic; Hair tonics; Hair gel; Hair mousse; Hair mascara; Hair lighteners; Hair wax; Hair cream; Hair shampoo; Hair pomades; Hair sprays; Hair bleaches; Hair color; Hair mousses; Hair chalks; Hair protection lotions; Hair care agents; Hair permanent treatments; Hair waving preparations; Hair curling preparations; Hair protection mousse; Hair styling gels; Hair styling lotions; Hair treatment preparations; Hair care serum; Baby hair conditioner; Hair fixing oil; Hair-waving preparations; Hair styling spray; Hair dyeing preparations; Hair care serums; Makeup; Lip makeup; Organic makeup; Theatrical makeup; Eye makeup; Facial makeup; Nail makeup; Multifunctional makeup; Natural makeup; Eyelid doubling makeup; Eye makeup remover; Makeup setting sprays; Body scrub; Body oils; Body wash; Body gels; Body glitter; Body soufflé; Body polish; Body moisturisers; Body powder; Body lotions; Body lotion; Body oil; Body butter; Body butters; Body scrubs; Body washes; Body glitters; Body shampoos; Body cream; Body creams; Body emulsions; Body sprays; Body deodorants; Body masks; Body milks; Body milk; Body spray; Body soap; Body mist; Body splash; Body fragrances; Body cleansing foams; Moisturizing body lotions; Scented body creams; Body gels [cosmetics]; Body talcum powder; Body oil spray; Body deodorants [perfumery]; Body mask powder; Exfoliating body scrub; Scented body spray; Baby body milks; Body cream soap; Body mask lotion; Scented body lotions; Body firming creams; Body mask cream; Moisture body lotion; Body art stickers; Body massage oils; Body powder (Non-medicated -); Body sprays [non-medicated]; Soaps for body care; Face and body lotions; Non-medicated body soaks; Body and facial oils; Face and body creams; Moisturising body lotion [cosmetic]; Deodorants for body care; Hand and body butter; Make-up; Make-up foundation; Powder (Make-up -); Make-up pencils; Make up foundations; Make-up removers; Make-up preparations; Foundation make-up; Make-up primer; Make-up foundations; Make-up primers; Skin make-up; Eyes make-up; Eye make-up; Make-up remover;

Make-up powder; Make-up kits; Make-up base; Make-up removing lotions; Make up removing preparations; Make-up removing creams; Make-up for compacts; Eye make up remover; Make-up removing milk; Powder for make-up; Eye make-up removers; Make-up removing milks; Make-up removing preparations; Compacts containing make-up; Chalk for make-up; Make-up removing gels; Make-up for the face; Make-up pads of cotton wool; Make-up for the face and body; Tissues impregnated with make-up removing preparations; Cotton swabs impregnated with make-up removing preparations; Make-up bases in the form of pastes; Cotton puffs impregnated with make-up removing preparations; Make-up preparations for the face and body; Cotton wool impregnated with make-up removing preparations; Washing-up detergent; Washing-up liquids; Concealers; Eye concealers; Facial concealer; Concealers for spots and blemishes; Concealers for lines and wrinkles; Lipstick cases; Suntan creams [self-tanning creams]; Base cream; Shaving creams; Lip cream; Day creams; Night cream; Night creams; Washing creams; Cream soaps; Sunscreen cream; Sun creams; Skin cream; Skin creams; Moisturising creams; Eye cream; Eye creams; Boot cream; Polishing creams; Bath creams; Exfoliant creams; Conditioning creams; Hand cream; Facial cream; Sunscreen creams; Suntan creams; Tanning creams; Cream foundation; Shaving cream; Shave creams; Aftershave creams; Perfumed creams; Day cream; Beauty creams; Hand creams; Shower creams; Moisturizing creams; Cuticle cream; Aromatherapy creams; Bath cream; Cleansing creams; Cleansing cream; Exfoliating creams; Nail cream; Shower cream; Face creams; Facial creams; Non-medicated creams; Skin whitening creams; Hair protection creams; Skin lightening creams; Anti-wrinkle creams; Wrinkle resistant cream; Anti-aging creams; Anti-aging cream; Blemish balm creams; Pre-shave creams; Auto-tanning creams; Fair complexion cream; Anti-wrinkle cream; Wrinkle resistant creams; Aromatherapy lotions; Hand lotions; Bath lotion; Bathing lotions; Eye lotions; Skin lotion; Suncare lotions; Styling lotions; Shaving lotions; Baby lotions; Cleansing lotions; Beauty lotions; Facial lotions; Facial lotion; Sunscreen lotions; Shaving lotion; Baby lotion; Skin lotions; Suntan lotions; Aftershave lotions; Day lotion; Permanent waving lotions; Skin cleansing lotion; Age retardant lotion; Non-medicated lotions; Eye wrinkle lotions; Sun-tanning lotions; After-shave lotions; Hair care lotions; After-sun lotions; After shave lotions; Pre-shaving lotions; Lotions for beards; Sun-block lotions; Sun care lotions; Sun tan lotion; Non-medicated skin lotions; Lotions for cosmetic purposes; Hand lotion (Non-medicated -); Self tanning lotions [cosmetic]; Lotions for the skin; Non-medicated

hair lotions; Cosmetic creams and lotions; Non-medicated foot lotions; Bath lotions (Non-medicated -); Lotions for cellulite reduction; Perfumed lotions [toilet preparations]; Massage oils and lotions; Moisturising skin lotions [cosmetic]; Skin care lotions [cosmetic]; Cosmetic sun milk lotions; Tissues impregnated with cosmetic lotions; Lotions for strengthening the nails; Perfumed body lotions [toilet preparations]; Moisturising creams, lotions and gels; Colouring lotions for the hair; Sun-tanning creams and lotions; Scented body lotions and creams; Milky lotions for skin care; Lotions (Tissues impregnated with cosmetic -); Non-medicated skin clarifying lotions; Suncare lotions [for cosmetic use]; Lotions for face and body care; Hair care lotions [for cosmetic use]; Sun care lotions [for cosmetic use]; Cosmetics in the form of lotions; After-sun lotions [for cosmetic use]; Moist wipes impregnated with a cosmetic lotion; Non-medicated stimulating lotions for the skin; Toning lotion, for the face, body and hands; Moist paper hand towels impregnated with a cosmetic lotion; Soap pads; Face powder; Face powders; Eyebrow powder; Creamy face powder; Pressed face powder; Face dusting powders; Loose face powder; Foundations; Foundation; Creamy foundation; Liquid foundation; Skin foundation; Liquid foundation (mizu-oshiroi); Eyes pencils; Eye pencils; Eye shadow; Eye-shadow; Eye gels; Eye stylers; Eye sticks; Eye shadows; Eye gel; Under eye correctors; Eye correction serum; Eye brightening correctors; Under-eye enhancers; Gel eye masks; Cosmetics for eye-lashes; Cosmetics for eye-brows; Cosmetic preparations for eye lashes; Fragrance sachets for eye pillows; Colour cosmetics for the eyes; Eye compresses for cosmetic purposes; Creams (Non-medicated -) for the eyes; Skin, eye and nail care preparations; Gel eye patches for cosmetic purposes; Cosmetics in the form of eye shadow; Cosmetic creams for firming skin around eyes; Cotton puffs for cosmetic purposes; Blush; Blush pencils; Blushers; Blusher; Face blusher; Lip liners; Lip conditioners; Lip glosses; Lip liner; Lip pencils; Lip balms; Lip rouge; Lip gloss; Lip polisher; Lip neutralizers; Lip pomades; Lip balm; Lip tints; Lip care preparations; Lip gloss palettes; Stick pomade; Sunscreen sticks; Incense sticks; Lip coatings (Non-medicated -); Lip balms [non-medicated]; Non-medicated lip balms; Sun protectors for lips; Lip protectors (Non-medicated -); Lip balm [non-medicated]; Shaving sticks [preparations]; Lip stains for cosmetic purposes; Non-medicated lip care preparations; Cotton sticks for cosmetic purposes; Lipstick; Lipsticks; Sun blocking lipsticks [cosmetics]; Mascara; Mascaras; Eyebrow mascara; Long lash mascaras; Eyeliners; Eyeliner; Eyeliner pencils; Liquid eyeliners; Eye liner; Liners [cosmetics] for the eyes; Face paints; Face scrub; Face

masks; Face oils; Face wipes; Face wash; Face paint; Face packs; Face glitter; Face gels; Face cream (Non-medicated -); Face scrubs (Non-medicated -); Face-powder on paper; Face powder (Non-medicated -); Cosmetic white face powder; Face and body glitter; Face and body masks; Non-medicated face care preparations; Cleaning masks for the face; Face creams for cosmetic use; Face powders [for cosmetic use]; Exfoliating scrubs for the face; Face powder [for cosmetic use]; Face lifting stickers for cosmetic use; Liquid soaps for hands and face; Beauty tonics for application to the face; Face powder in the form of powder-coated paper; Cosmetic paste for application to the face to counteract glare; Disposable wipes impregnated with cleansing compounds for use on the face; Body and facial butters; Facial butters; Cocoa butter for cosmetic purposes; Soap; Soaps; Perfumed soap; Sugar soap; Soap solutions; Soap powder; Soap powders; Almond soaps; Shower soap; Bath soap; Hand soaps; Soap (Deodorant -); Soap (Antiperspirant -); Bar soap; Toilet soap; Facial soaps; Skin soap; Handmade soap; Liquid soaps; Liquid soap; Perfumed soaps; Hand soap; Waterless soap; Deodorant soap; Granulated soaps; Scented soaps; Soap products; Soap sheets; Almond soap; Bath soaps; Antiperspirant soap; Beauty soap; Industrial soap; Shaving soap; Shaving soaps; Toilet soaps; Detergent soap; Laundry soap; Laundry soaps; Aloe soap; Aloe soaps; Non-medicated soaps; Soap (Cakes of -); Cakes of soap; Bars of soap; Soaps and gels; Liquid bath soaps; Liquid bath soap; Soaps for personal use; Soap for foot perspiration; Foot perspiration (Soap for -); Soaps for laundry use; Non-medicated toilet soaps; Soaps in gel form; Soaps for household use; Cakes of toilet soap; Soap for brightening textile; Liquid soaps for laundry; Soaps in liquid form; Soaps for brightening textiles; Sponges impregnated with soaps; Soaps for toilet purposes; Liquid soap for laundry; Liquid soap for dish washing; Paper soaps for personal uses; Liquid soap used in foot bath; Liquid soap used in foot baths; Refill packs for hand soap dispensers; Cakes of soap for body washing; Creams (Soap -) for use in washing; Cakes of soap for household cleaning purposes; Soap free washing emulsions for the body; Skin toners; Facial toner; Skin toner; Toners for cosmetic use; Non medicated skin toners; Ethereal oils; Combing oil; Pine oil; Rose oil; Beard oil; Shower oils; Shaving oils; Shaving oil; Jasmine oil; Baby oil; Bath oils; Perfume oils; Facial oil; Essential oils; Etheric oils; Lavender oil; Cuticle oils; Scented oils; Aromatherapy oil; Bath oil; Baby oils; Massage oils; Massage oil; Almond oil; Bergamot oil; Aromatic oils; Aromatherapy oils; Facial oils; Cleansing oil; Wintergreen oil; Peppermint crude oil; Aromatic essential oils; Skin tonics [non-

medicated]; Hair tonic [non-medicated]; Hair tonics [for cosmetic use]; Hair tonic [for cosmetic use]; Beauty tonics for application to the body; Blended essential oils; Perfumery, essential oils; Aromatics [essential oils]; Natural essential oils; Emulsified essential oils; Essential vegetable oils; Cake flavourings [essential oils]; Essential oils of lemon; Essential oils for aromatherapy; Essential oils of sandalwood; Essential oils of cedarwood; Lemon [Essential oils of -]; Cake flavorings [essential oils]; Cedarwood (Essential oils of -); Food flavorings [essential oils]; Essential oils for household use; Flavourings for cakes [essential oils]; Essential oils for personal use; Essential oils for food flavorings; Essential oils for industrial use; Essential oils for cosmetic purposes; Essential oils for household purposes; Flavourings for beverages [essential oils]; Flavorings for beverages [essential oils]; Food flavoring, being essential oils; Essential oils and aromatic extracts; Essential oils for aromatherapy use; Essential oils for soothing the nerves; Flavourings for cakes being essential oils; Flavour enhancers for food [essential oils]; Beverages (Flavorings [flavourings] for -) essential oils; Flavorings [flavourings] for beverages [essential oils]; Food flavorings prepared from essential oils; Essential oils for use in manufacturing processes; Essential oils for use in air fresheners; Essential oils as perfume for laundry purposes; Essential oils as fragrances for laundry use; Essential oils for the care of the skin; Tissues impregnated with essential oils, for cosmetic use; Essential oils for use in the manufacture of scented products; Beard dyes; Beard balm; Beard care preparations; Tints for the beard; Moustache wax; Wax (Moustache -); Mustache wax.

Class 16: Food wrappers; Food-wrapping paper; Make-up pads of paper for removing make-up; Tissues of paper for removing make-up; Towels of paper for removing make-up; Napkins of paper for removing make-up; Pop-up books; Pop-up greetings cards; Roll-up pencil cases; Cook books; Gift bags; Gift tags; Gift boxes; Gift paper; Gift certificates; Gift packaging; Gift wraps; Gift vouchers; Gift cards; Gift cartons; Gift wrap; Gift books; Paper gift boxes; Paper gift tags; Gift wrap cards; Gift wrap paper; Paper gift wrap; Gift-wrapping paper; Christmas gift wrap; Paper gift bags; Cardboard gift boxes; Gift wrapping foil; Gift wrapping paper; Metallic gift wrap; Paper wine gift bags; Paper gift wrapping ribbons; Metallic gift wrapping paper; Paper gift wrap bows; Gift cases for writing instruments; Gift boxes made of cardboard; Paper bows for gift wrap.

Class 18: Cosmetic purses; Cosmetic bags; Makeup bags; Make-up boxes; Make-up bags; Make-up cases; Make-up bags sold empty; Make-up cases sold empty; Pouches for holding make-up, keys and other personal items.

Class 21: Cosmetics applicators; Cosmetic utensils; Cosmetic sponges; Cosmetic spatulas; Cosmetic brushes; Cosmetics brushes; Holders for cosmetics; Dispensers for cosmetics; Applicators for cosmetics; Cosmetic powder compacts; Racks for cosmetics; Cosmetic bags [fitted]; Containers for cosmetics; Hair combs; Hair brushes; Hair tinting brushes; Electric hair combs; Makeup sponge holders; Brushes; Brushes (except paint brushes); Brushes and brush-making articles; Applicator sticks for applying makeup; Washing brushes; Dish brushes; Eyeliner brushes; Tongue brushes; Nail brushes; Clothes brushes; Eyebrow brushes; Cleaning brushes; Brush holders; Dishwashing brushes; Toilet brushes; Mopping brushes; Bottle brushes; Shaving brushes; Eyelash brushes; Brushes (Dishwashing -); Exfoliating brushes; Tooth brushes; Floor brushes; Scrubbing brushes; Shoe brushes; Lip brushes; Mascara brushes; Lawn brushes; Brushes for footwear; Footwear (Brushes for -); Brushes for pets; Brush-making materials; Toilet brush holders; Washing-up brushes; Carpet-cleaning brushes; Tooth brush cases; Bottle cleaning brushes; Electric tooth brushes; Brushes for cleaning; Holders for brushes; Tongue cleaning brushes; Shaving brush stands; Brush making materials; Hair for brushes; Toilet brush sets; Handles for brushes; Shaving brush holders; Pot cleaning brushes; Brushes (except paintbrushes); Brushes, except paintbrushes; Feeding bottle brushes; Lamp-glass brushes; Skin cleansing brushes; Make-up brushes; Household utensils for cleaning, brushes and brush-making materials; Stands for shaving brushes; Brushes for personal hygiene; Vegetable brushes with peelers; Tooth brushes, non-electric; Brushes for feeding bottles; Brushes for household purposes; Brushes for household use; Material for brush-making; Stands for tooth brushes; Body sponges; Body cleanser holders; Body cleanser dispensers; Body scrubbing puffs; Make-up sponges; Eye make-up applicators; Make-up artist belts; Make-up removing appliances; Electric make-up removing appliances; Applicator sticks for applying make-up; Applicators for applying eye make-up; Appliances for removing make-up, electric; Facial sponges for applying make-up; Non-electric make-up removing appliances; Appliances for removing make-up, non-electric; Brushes for washing up; Powder compacts; Powder puffs; Powder compacts [cases]; Powder compacts [empty]; Powder compacts.

Class 24: Textile napkins for removing makeup; Cloth napkins for removing makeup; Make-up pads of textile for removing make-up; Make-up pads of textile; Cloths for removing make-up; Make-up (Napkins for removing -) [cloth]; Cloth napkins for removing make-up; Textiles for making up into articles of clothing; Textile piece goods for making-up into clothing; Textile piece goods for making-up into towels; Woven fabrics for making up into articles of clothing; Textile fabrics for making up into household textile articles; Make-up removal cloths [textile], other than impregnated with cosmetics; Make-up removal towels [textile] other than impregnated with cosmetics; Make-up removal wipes [textile] other than impregnated with cosmetics; Make-up removal towels [textile] other than impregnated with toilet preparations; Make-up removal wipes [textile] other than impregnated with toilet preparations; Make-up removal cloths [textile], other than impregnated with toilet preparations; Face towels; Face cloths; Textile face towels; Face cloths of towelling; Face towels of textile; Face cloths of textile; Face towels of textiles; Household linen, including face towels; Face towels [made of textile materials].

Class 30: Food flavourings; Farinaceous foods; Foods (Farinaceous -); Wafers [food]; Food seasonings; Pastes (Farinaceous food -); Food dressings [sauces]; Glutamate for food; Food leavening agents; Cereal breakfast foods; Fructose for food; Oat-based food; Turmeric for food; Honey [for food]; Starch for food; Syrup for food; Flavourings for foods; Curried food pastes; Canned pasta foods; Oat-based foods; Farinaceous food pastes; Flour for food; Maltose for food; Dried pasta foods; Glucose for food; Mustard for food; Molasses for food; Preparations for making up into sauces; Sauces; Salad sauces; Canned sauces; Pepper sauces; Chili sauce; Cooking sauces; Tomato sauce; Sauce powder; Hot sauce; Curry sauces; Sauces [condiments]; Fish sauce; Mushroom sauces; Shrimp sauce; Pizza sauce; Sauce [edible]; Concentrated sauce; Barbecue sauce; Ketchup [sauce]; Kebab sauce; Brown sauce; Pizza sauces; Spicy sauces; Fruit sauces; Sauce (Tomato -); Sauce powders; Spaghetti sauce; Savoury sauces; Sauce mixes; Herb sauces; Chocolate sauces; Pasta sauce; Pasta sauces; Salsa sauces; Oyster sauce; Peanut sauce; Sambal sauce (ground red pepper sauce); Sauces for pizzas; Ready-made sauces; Sauces for rice; Sauces containing nuts; Vegetable purees [sauces]; Tomato based sauces; Sauces for pasta; Vegetable pastes [sauces]; Sauces for chicken; Sauces flavoured with nuts; Sweet and sour

sauce; Mixes for preparing sauces; Hot chili pepper sauce; Sauces for barbecued meat; Vegetable pulps [sauces - food]; Preparations for making sauces; Sauces for frozen fish; Sauces for use with pasta; Dried sauce in powder form; Canned spaghetti in tomato sauce; Savory sauces, chutneys and pastes; Savory sauces used as condiments; Flavourings in the form of dehydrated sauces; Flavourings in the form of concentrated sauces; Prepared foodstuffs in the form of sauces; Prepared baking mixes; Pre-mixes ready for baking; Baking powders; Baking soda; Baking-powder; Baking spices; Baking powder; Pre-baked bread; Flour for baking; Semi-baked bread; Custards [baked desserts]; Doughnut mixes; Pizza mixes; Frosting mixes; Muffin mixes; Baking soda [bicarbonate of soda for baking purposes]; Mixed spices; Dough mix; Icing mixes; Spice mixes; Flour mixes; Bread mixes; Custard mixes; Bun mix; Flour ready for baking; Pancake mixes; Pastry mixes; Biscuit mixes; Rice mixes; Batter mixes; Cake mixes; Gravy mixes; Pre-baked pizzas crusts; Ready-made baking mixtures; Instant pancake mixes; Savory pancake mixes; Corn bread mix; Ready-to-bake dough products; Wholemeal bread mixes; Ice cream mixes; Malted bread mix; Curry spice mixes; Hot cocoa mix; Foods produced from baked cereals; Stuffing mixes [foodstuffs]; Instant doughnut mixes; Mixed spice powder; Stew seasoning mixes; Hot chocolate mixes; Savoury pancake mixes; Pizza dough mix; Mixes for making puddings; Cooked rice; Cooking essences; Rice; Fried rice; Prepared rice; Rice salad; Rice pasta; Steamed rice; Rice pudding; Rice flour; Rice based dishes; Frozen prepared rice with seasonings; Prepared meals consisting primarily of rice; Frozen meals consisting primarily of rice; Peppers [seasonings]; Pepper spice; Hot pepper powder [spice]; Dried chili peppers seasoning; Red pepper powder (Gochutgaru); Chili pepper pastes being condiments; Ice cream cones; Ice cream bars; Powder (Cake -); Chili powders; Cacao powder; Garlic powder; Chocolate powder; Powdered sugar; Curry powders; Cocoa powder; Cake powder; Curry powder; Pudding powders; Powdered garlic; Custard powder; Yeast powder; Ginger [powdered spice]; Curry powder [spice]; Tea mix powders; Powders for ices; Instant cocoa powder; Pepper powder [spice]; Clove powder [spice]; Ice cream powder; Dumplings; Doughnuts; Flour for doughnuts.

Class 35: Administering customer loyalty program that provides promotions, discounts, admission to events, and personalized gifts to members in the field of cosmetics and skincare; Restaurant management for others; Business management

of restaurants; Business advice relating to restaurant franchising; Marketing services in the field of restaurants; Business management assistance in the operation of restaurants; Business advisory services relating to the running of restaurants; Business management assistance in the establishment and operation of restaurants; Business advisory services relating to the setting up of restaurants; On-line ordering services in the field of restaurant take-out and delivery.

Class 43: Food preparation; Contract food services; Fast food restaurants; Food preparation services; Takeaway food services; Restaurants; Restaurant services; Grill restaurants; Delicatessens [restaurants]; Restaurant information services; Reservation of restaurants; Providing restaurant services; Self-service restaurants; Restaurants (Self-service -); Mobile restaurant services; Take-out restaurant services; Self-service restaurant services; Fast-food restaurant services; Bar and restaurant services; Salad bars [restaurant services]; Booking of restaurant seats; Restaurant and bar services; Restaurant services incorporating licensed bar facilities; Agency services for reservation of restaurants; Provision of food and drink in restaurants; Serving food and drink for guests in restaurants; Serving food and drink in restaurants and bars; Making reservations and bookings for restaurants and meals; Reservation and booking services for restaurants and meals; Providing food and drink for guests in restaurants; Providing food and drink in restaurants and bars; Restaurant services for the provision of fast food; Serving food and drink in doughnut shops; Providing food and drink in doughnut shops.