

O/0067/25

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

**IN THE MATTER OF UK REGISTRATION NOS 911011831,
913628664, 913621057 & 909270877
IN THE NAME OF WOLFGANG RIMBECK**


AND


**APPLICATIONS FOR THE REVOCATION THEREOF
UNDER NOS 505296, 505297, 505298 & 505299
BY
LACED EUROPE LTD**

BACKGROUND AND PLEADINGS

1. These proceedings concern applications made under sections 46(1)(a) and 46(1)(b) of the Trade Marks Act 1994 (“the Act”) by Laced Europe Ltd (“the applicant”) for partial revocation for non-use of four UK comparable trade marks derived from EU Trade Marks (“EUTMs”) following the UK’s departure from the EU. The proprietor of these marks is Wolfgang Rimbeck (“the registered proprietor”). All the applications were made on 23 August 2022.

2. The four marks are shown in the table below. Each is registered for goods and, in two cases, services in a large number of different classes, but only goods in Class 25 and services in Class 35 are the subject of these applications. The goods and services under attack are listed in Annex A of this decision. The table shows each of the periods during which the applicant claims that the marks have not been put to genuine use for the challenged goods and services.

Mark	Claimed Periods of Non-Use	Effective Date of Revocation
UKTM No. 909270877 (“the 877 mark”)  Filing date: 23 July 2010 Registration date: 21 January 2011 Registered for goods in Classes 6, 8, 22, 25 & 28.	22 January 2011 – 21 January 2016 23 August 2017 – 22 August 2022	22 January 2016 23 August 2022
UKTM No. 911011831 (“the 831 mark”) LACD Filing date: 3 July 2012	5 December 2012 – 4 December 2017 23 August 2017 – 22 August 2022	5 December 2017 23 August 2022

Mark	Claimed Periods of Non-Use	Effective Date of Revocation
<p>Registration date: 4 December 2012</p> <p>Registered for goods in Classes 6, 8, 22, 25 & 28.</p>		
<p>UKTM No. 913621057 (“the 057 mark”)</p> <p>LACD</p> <p>Filing date: 7 January 2015 (with a claimed priority date of 31 July 2014)</p> <p>Registration date: 9 June 2015</p> <p>Registered for goods and services in Classes 5, 6, 8, 9, 11, 14, 20, 21, 22, 24, 25, 27, 28 & 35.</p>	<p>10 June 2015 – 9 June 2020</p> <p>23 August 2017 – 22 August 2022</p>	<p>10 June 2020</p> <p>23 August 2022</p>
<p>UKTM No. 913628664 (“the 664 mark”)</p> <p></p> <p>Filing date: 9 January 2015 (with a claimed priority date of 31 July 2014)</p> <p>Registration date: 9 June 2015</p> <p>Registered for goods and services in Classes 5, 6, 8, 9, 11, 14, 20, 21, 22, 24, 25, 27, 28 & 35.</p>	<p>10 June 2015 – 9 June 2020</p> <p>23 August 2017 – 22 August 2022</p>	<p>10 June 2020</p> <p>23 August 2022</p>

3. The registered proprietor filed defences and counterstatements to all four applications. He claimed that the marks had been put to genuine use within the UK

and the EU during the relevant periods for all the challenged goods and services and that evidence would be filed in support of his claims.

RELEVANCE OF EU LAW

4. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

EVIDENCE AND PROCEDURAL ISSUES

5. The registered proprietor's evidence of use comes in the form of a witness statement from Mr Rimbeck dated 30 August 2023. It is accompanied by eight exhibits. Mr Rimbeck states that he is the CEO of LACD GmbH, and his evidence goes to his company's use of the marks during the relevant periods.

6. The applicant filed evidence from Louisa Victoria Dixon, a partner in the law firm Mishcon de Reya LLP who represent the applicant. Her witness statement is dated 15 May 2023 and is a vehicle for exhibiting extracts from the website www.statista.com relating to the size of the footwear and clothing markets in the UK and EU.

7. The registered proprietor filed evidence in reply in the form of a second witness statement from Mr Rimbeck dated 19 July 2023. It is accompanied by 3 exhibits providing information on the outdoor pursuits sector.

8. On 31 July 2023, the Registry wrote to both parties to inform them that the evidence rounds were now concluded. The applicant requested a hearing on 10 August 2023.

9. On 31 August 2023, the registered proprietor filed a Form TM9R (Request to extend the time period, set by examination or tribunals, if you have missed the deadline) along with amended versions of Mr Rimbeck's first witness statement and Exhibits WR1, WR2 and WR4. The reason he gave was as follows:

“We would like to request an extension to include evidence in the Witness Statement and Exhibits dated 1 March 2023, consisting of additional invoices, brochure and product images that were not previously available and will be submitted in the form of Amended Exhibits 1, 2 and 4.

Please note that this could make a material difference to the evidence but will not prejudice the other side, as they have not filed any submissions to date.”

10. The additional evidence sought to be admitted was as follows:

- (i) what appeared to be two design drawings;
- (ii) brochures from 2019/2020 and 2020; and
- (iii) 30 invoices.

11. The factors to be considered when deciding whether to allow a request to file additional evidence were set out in *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel)* [2016] EWHC 3013 (Ch) at paragraph 34.

They are:

- (i) the materiality of the evidence;
- (ii) the justice and fairness of subjecting the other party to the burden of evidence at this stage in the proceedings, including the reasons why the evidence was not filed earlier;
- (iii) whether the admission of the evidence would prejudice the opposing party in ways that could not be compensated for in costs; and
- (iv) the fairness to the registered proprietor of excluding the evidence in question, including the prejudice to the registered proprietor if it is unable to rely on such evidence.

12. The registered proprietor had not explained why the evidence had not been available before. I therefore indicated that I would call a case management conference (“CMC”). On 13 September 2023, the registered proprietor wrote to the Registry explaining that the evidence had not been available by the initial deadline and that “*in particular the additional invoices relating to France, product images and catalogues ... [were] not available ... due to the varying electronic storage methods*”. He also stated

that he had amended the witness statement, as sales figures had been unintentionally consolidated and it was important that the figures were separate. Further amendments to the witness statement consisted of the addition of the words “*and other*” at the end of the first line of paragraph 6; the inclusion of text in brackets in paragraph 10 giving some explanation of the contents of Exhibit WR3; and the addition of the words “*and France*” at the beginning of the second line of paragraph 11. The applicant wrote to the Registry on 20 September 2023 submitting that the registered proprietor’s request should be refused.

13. I held a CMC on 26 October 2023. The registered proprietor was represented by Thomas St Quintin of Counsel, instructed by Potter Clarkson LLP, and the applicant was represented by Guy Hollingworth of Counsel, instructed by Mishcon de Reya LLP. I reserved my decision and wrote to the parties on 30 October 2023. The text of my letter following the CMC is attached to this decision at Annex B. In summary, I allowed the revisions to the witness statement and admitted the additional invoices, but not the design drawings or the additional catalogues.

HEARING

14. The substantive issues came to be heard by me on 26 March 2024. As at the CMC, the registered proprietor was represented by Mr St Quintin and the applicant by Mr Hollingworth. Both filed skeleton arguments in advance of the hearing. In his skeleton, Mr St Quintin conceded that use had not been shown for some of the goods and services under attack and proposed the following as fair specifications for the contested classes. Deletions are shown in strike-through and additional words are shown in bold:

Mark	Registered proprietor’s proposed specification
909270877	<p><u>Class 25</u></p> <p>Casual Outerclothing and underwear for women and men and children, in particular for climbing and hiking, watersports, beach sports and cycling; rainwear and heated clothing rain jackets; weatherproof clothing for mountain climbing; weatherproof trousers and jackets; headgear, in particular hats , and caps; and</p>

Mark	Registered proprietor's proposed specification
	headbands; stockings, footwear and sports shoes, in particular climbing shoes,; gloves and leggings.
911011831	As above.
913621057	<p><u>Class 25</u></p> <p>Snow spikes for shoes; Anti-slip sleeves for shoes; non-slip soles for footwear; Non-slipping devices for footwear; Cleated shoes; Ski boots; Soles for footwear; shoes covers for use when wearing shoes Gaiters (being a type of shoe cover for use when wearing shoes); Goloshes; Shoe pegs.</p> <p><u>Class 35</u></p> <p>Advertising; Business management; Business administration; Office functions; Retailing and wholesaling in relation to sporting articles for mountaineering, hiking, water sports, swimming and eyeling, Including on the Internet; Business consultancy and advisory services; Business consulting services; Organisational consultancy; Development of professional business and organisational concepts; Arranging and conducting of advertising events; Marketing services; Market research; Marketing analysis; Publication of publicity texts; Updating of advertising material; Distribution of products for advertising purposes; Arranging and organising of advertising; Advertising advice; On-line advertising in a computer network; Exhibitions for commercial or advertising purposes; Consultancy relating to business organisation; Presentation of companies on the Internet and other media; Collating and systematic ordering of data in a computer database; Organisation of trade fairs for commercial or advertising purposes; Dissemination of advertisements; Public relations services; Arranging of contracts, for others, for the buying and selling of goods or the providing of services, in particular via networks, including the Internet, Presentation of goods and services on websites accessed via networks; Sales promotion (for others); Presentation of goods and services, for others, on</p>

Mark	Registered proprietor's proposed specification
	<p>the Internet; Arranging contracts, for others, for the selling of goods, including via the Internet, online shops or teleshopping channels; Business management for shops; Sales promotion (for others); Organizational and business advice for franchise concepts; Arranging commercial transactions, for others; Arranging of contracts, for others, for the providing of services; Professional business consultancy with regard to retail distribution systems; Providing information relating to all the aforesaid goods through advertising in periodicals, brochures and newspapers; Exhibition and presentation of goods for advertising purposes; Collection of various goods (except the transport thereof) for others, to facilitate the display and purchase of the aforesaid goods for customers; Professional business consultancy for franchise concepts in connection with support for operating or managing a commercial business.</p>
913628664	<p><u>Class 25</u> Casual Outer clothing and underwear for women, and men and children, in particular for climbing, and hiking, watersports, beach sports and cycling; Rainwear and heated clothing Rain jackets; Weatherproof clothing for mountain climbing; Weatherproof trousers and jackets; Headgear, in particular caps (headwear), headbands (clothing) and caps; Stockings; Footwear, sports shoes, In particular mountaineering climbing shoes; gloves and gaiters; Snow spikes for shoes; Anti-slip sleeves for shoes; non-slip soles for footwear; Non-slipping devices for footwear; Cleated shoes; Ski boots; Soles for footwear; shoe covers for use when wearing shoes; Goloshes; Shoe pegs.</p> <p><u>Class 35</u> As above.</p>

DECISION

15. Section 46 of the Act is as follows:

“(1) The registration of a trade mark may be revoked on any of the following grounds—

(a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use;

(b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;

...

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

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as is referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made:

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

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

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

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

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

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

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

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

16. As all the marks at issue are comparable marks, created from EUTMs, Paragraph 8 of Schedule 2A of the Act is also relevant. It reads:

“(1) Sections 11A and 46 apply in relation to a comparable trade mark (EU), subject to the notifications set out below.

(2) Where the period of five years referred to in sections 11A(3)(a) and 46(1)(a) or (b) (the ‘five-year period’) has expired before IP completion day-

(a) the references in sections 11A(3) and (insofar as they relate to use of a trade mark) 46 to a trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in sections 11A and 46 to the United Kingdom include the European Union.

(3) Where IP completion day falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day-

(a) the references in sections 11A(3) and (insofar as they relate to use of a trade mark) 46 to a trade mark, are to be treated as references to the corresponding EUTM; and

(b) the references in sections 11A and 46 to the United Kingdom include the European Union.”

17. Both parties were agreed that it was the later period that should be the focus of the assessment of use and Mr St Quintin conceded at the hearing that any revocation should take effect from the earliest possible date, from the end of the five-year period following the completion of the registration process.¹ Therefore, the relevant period during which use must be shown is 23 August 2017 to 22 August 2022. As a result of Mr St Quintin’s concession, the effective dates of any revocations would be 22 January 2016 (the 877 mark), 5 December 2017 (the 831 mark) and 10 June 2022 (the 057 and 664 marks).

18. The case law on genuine use was summarised by Arnold LJ in *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247:

“105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundersvereinigung Kamaradschaft ‘Feldmarschall Radetsky’* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W. F. Gözze Frottierweberei GmbH v*

¹ Transcript, page 45.

Verein Bremer Baumwollbörse [EU:C:2017:434] and Joined Cases C-720/18 and C-721/18 *Ferrari SpA v DU* [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:

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

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

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

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the

mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

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

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

107. The trade mark proprietor bears the burden of proving genuine use of its trade mark: see section 100 of the 1994 Act and *Ferrari* at [73]-[83]. The General Court of the European Union has repeatedly held that genuine use of a trade mark cannot be proved by means of probabilities or suppositions, but must be demonstrated by solid and objective evidence of effective and

sufficient use of the trade mark on the market concerned: see e.g. Case T-78/19 *Lidl Stiftung & Co KG v European Union Intellectual Property Office* [EU:C:2020:166] at [25]. It has also repeatedly held that the smaller the commercial volume of the exploitation of the mark, the more necessary it is for the proprietor to produce additional evidence to dispel any doubts as to the genuineness of its use: see e.g. *Lidl* at [33]. In *Awareness Ltd v Plymouth City Council* [2013] RPC 24 Daniel Alexander QC sitting as the Appointed Person said:

‘19. For the tribunal to determine in relation to what goods or services there has been genuine use of a mark during the relevant period, it should be provided with clear, precise, detailed and well-supported evidence as to the nature of that use during the period in question from a person properly qualified to know.

...

22. ... it is not strictly necessary to exhibit any particular kind of documentation but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal ... comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said the public.’”

Evidence of Use

19. Mr Rimbeck states that his company “*supplies climbing and mountaineering enthusiasts with safety and other products*”.² Later, he explains that, in the UK, it offers its goods and services primarily through business partners Bergfreunde, Bergzeit and CAMPZ.³ He then provides a table showing a summary of sales in the UK by Bergfreunde. However, this includes all the goods produced by his company and, as is demonstrated elsewhere in the evidence, these extend beyond the goods that are the subject of these proceedings, including, for example, carabiners, pulleys, bags and cooking stoves. I shall therefore say no more about this particular table, or about the table in paragraph 9 showing EU sales for the brand as a whole.

20. Exhibit WR1 contains undated photographs of some of the goods. Mr St Quintin explains that these are merely better-quality images of the goods shown in brochures found in Exhibit WR2. These brochures are dated 2016/17, 2017, 2017/18, 2018, 2018/19 and 2021. All but the first of these is described as a Workbook. They contain images of products, along with codes and brief information, but no prices. The 877 mark is shown on the cover and the unstylised letters “LACD” appear in website addresses and contact details. The 2016/17 brochure also contains the text “© LACD GmbH” in the footer of each page. Mr Rimbeck describes these documents as “*product brochures*” but does not explain how widely they were distributed, or to whom. The absence of any information on prices leads me to infer that they were not intended for the end-consumer of the products shown within their pages, but Mr Rimbeck does not state that they were sent to the distributors, wholesalers or retailers.

21. Mr Rimbeck states that Exhibit WR3 contains a breakdown of items sold by his company in the UK. Mr Hollingworth argued that the first 15 pages of the exhibit should be disregarded as they are in German and have not been translated. He referred to the decision of Professor Ruth Annand, sitting as the Appointed Person, in *Pollini*, BL O/146/02, in which she said at [32] that “*where an exhibit is in a foreign language, a party seeking to rely on it in registry proceedings must provide a verified translation into English*”. The first 9 pages of the exhibit are in English and German, and I consider

² First witness statement, paragraph 6.

³ Paragraph 10.

that there is sufficient English text for me to be able to identify the goods that have been shipped. These are as follows:

Year	Goods	Units	Value (in €)
2017	Splash – Kletterschuhe	17	671
	Via Ferrata Pro - Handschuhe	15	162
	Via Ferrata Glove Heavy Duty – Handschuhe	5	72
	Phantom - Kletterschuhe ⁴	2	52
	Snow Spikes Easy I	2	39
	Gaiter Ultralight	3	37
	Snow Spikes Easy II	1	19
2018	Splash – Kletterschuhe	62	2,042
	Via Ferrata Pro – Handschuhe	19	213
	Gaiter Ultralight WP	11	180
	Gaiter Ultralight	7	118
	Via Ferrata Glove Heavy Duty – Handschuhe	11	108
	Snow Spikes Easy II	2	53
	Snow Spikes Easy I	2	45
2019	Splash – Kletterschuhe	129	4,146
	Via Ferrata Pro – Handschuhe	19	233
	Snow Spikes Easy II	6	147
	Gaiter Ultralight	9	138
	Gaiter Ultralight WP	4	74
	Gloves Heavy Duty – Handschuhe	4	71
	Snow Spikes Easy I	1	23
2020	Snow Spikes Easy II	8	187
	Gloves Heavy Duty – Handschuhe	11	169
	Stripes Beanie Hat	18	115
	Gaiter Ultralight	8	103
	Snow Spikes Easy I	5	101
	Via Ferrata Pro – Handschuhe	7	79
2021	Striped Beanie Hat	6	35
	Via Ferrata Pro – Handschuhe	2	25
	Snow Spikes Light	1	10
	Gloves Ultimate – Handschuhe	1	7
2022	Snow Spikes Easy II	5	137
	Via Ferrata Pro – Handschuhe	10	137
	Snow Spikes Easy I	5	116
	Gloves – Heavy Duty Handschuhe	1	17
	Gaiter Ultralight	1	16

22. Pages 10 to 15 are also in German and English. They contain a table listing goods, product codes and numbers under the heading “Absatz”. However, the table itself is

⁴ Mr Rimbeck states that this is also a footwear product. It is not shown in the brochures.

undated, and Mr Rimbeck does not say what period it covers. The table in Pages 16-20 does contain some information on dates and is in English. It shows unit sales of particular products during the period 2013 to 2022. I have summarised the information pertaining to the Class 25 goods below:

Year	Good	Units
2013	Splash Sunrise ⁵	4
	Gloves Via Ferrata Pro	2
2014	Splash Sunrise	24
	Gloves Via Ferrata Pro	8
2015	Splash Sunrise	2
2016	Splash Sunrise	12
2017	Splash Climbing Shoes blue	2
	Splash Sunrise	1
2018	Splash Climbing Shoes blue	1
2020	Gloves Via Ferrata Pro	1
2021	Easy II Snow Spikes	1
	Gloves Via Ferrata Pro	1

23. I shall therefore take account of pages 1-9 and 16-20 of this exhibit.

24. Exhibits WR4 and WR5 contain selections of invoices showing sales to companies based in Germany, France and the UK. They cover the period 2017 to 2020, and I shall say more about them in due course.

25. Exhibit WR6 contains extracts from the websites of distributors and Amazon, showing Mr Rimbeck's company's products on sale. These are undated, although there are 2023 copyright notices on some of the websites. Exhibit WR7 is an undated listing for a climbing helmet, with reviews from 2018 to 2022. However, Mr St Quintin accepted that climbing helmets are not among the goods at issue in these proceedings. Further reviews can be found in Exhibit WR8. These come from Google and, while the print-out is undated, the reviews were posted 1 to 3 years before the print-out was made. While some of the reviewers have German-sounding names, it is not clear where they were located.

Sufficient Use

26. For use to be genuine, it must have been real commercial exploitation of the mark, in the course of trade, sufficient to create or maintain a market for the goods at issue

⁵ Mr Rimbeck states that "Splash Sunrise" are footwear.

in the EU between 23 August 2017 and 31 December 2020, and in the UK between 1 January 2021 and 22 August 2022. As the EU is the relevant territory for part of this period, I refer to the decision of the Court of Justice of the European Union (“CJEU”) in *Leno Merken BV v Hagelkruis Beheer BV*, Case C-149/11. It said:

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

...

50. Whilst there is admittedly some justification for thinking that a Community trade mark should – because it enjoys more extensive territorial protection than a national trade mark – be used in a larger area than the territory of a single Member State in order for the use to be regarded as ‘genuine use’, it cannot be ruled out that, in certain circumstances, the market for the goods or services for which a Community trade mark has been registered is in fact restricted to the territory of a single Member State. In such a case, use of the Community trade mark on that territory might satisfy the conditions both for genuine use of a Community trade mark and for genuine use of a national mark.

...

55. Since the assessment of whether the use of the trade mark is genuine is carried out by reference to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark services to create or maintain market shares for the goods or services for which it was registered, it is impossible to determine a priori, and in the abstract, what territorial scope should be chosen in order to determine whether the use of the mark is genuine or not. A *de minimis* rule, which would not allow the national court to appraise all the circumstances of the dispute before it,

cannot therefore be laid down (see, by analogy, the order in *La Mer Technology*, paragraphs 25 and 27, and the judgment in *Sunrider v OHIM*, paragraphs 72 and 77).”

27. In making my assessment, I am required to consider all relevant factors, including (i) the scale and frequency of the use shown; (ii) the nature of the use shown; (iii) the goods and services for which use has been shown; (iv) the nature of those goods and services, and the market(s) for them; and (v) the geographical extent of the use shown. I also bear in mind the comments of the General Court (“GC”) in *New Yorker SHK Jeans GmbH KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-415/09:

“53. In order to examine whether use of an earlier mark is genuine, an overall assessment must be carried out which takes account of all the relevant factors in the particular case. Genuine use of a trade mark, it is true, cannot be proved by means of probabilities or suppositions, but has to be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned (*COLORIS*, paragraph 24). However, it cannot be ruled out that an accumulation of items of evidence may allow the necessary facts to be established, even though each of those items of evidence, taken individually, would be insufficient to constitute proof of the accuracy of those facts (see, to that effect, judgment of the Court of Justice of 17 April 2008 in Case C-108/07, *Ferrero Deutschland v OHIM*, not published in the ECR, paragraph 36).”

28. In his skeleton argument, Mr St Quintin provided a table which groups the goods he proposes as a fair specification and indicates the parts of the evidence that are relied upon for each of those groups. I shall structure my assessment of genuine use according to these groups.

Casual outerclothing for women and men, in particular for climbing and hiking; rain jackets; weatherproof clothing for mountain climbing; weatherproof trousers and jackets.

29. Mr Rimbeck states that EU sales of particular goods in Class 25 were as follows:⁶

Year	Sales € - shoes only	Sales € - clothing only (being trousers and t-shirts)
2018	35,000	19,000
2019	8,000	48,000
2020	-	79,000

30. Mr Hollingworth invited me to infer from this table that trousers and t-shirts were the only items of clothing that had been sold. I have examined the invoices cited by Mr St Quintin in his table and find that they do not include any other goods from this group other than trousers and t-shirts. A summary of the relevant goods on the invoices can be found in Annex C and the table below shows the units shipped and the value in euros (according to my calculations). The invoices date from 13 September 2017 to 28 September 2020 and cover sales to businesses in France, Germany and the UK. They all bear the 877 mark in a black rectangular background.

	Goods	Units Shipped	Value (€)
Men	Gravity Pants	1,104	19,784.18
	LD Hard Rock Pants	10	230.00
	TOTAL TROUSERS	1,114	20,014.18
	Warning T-shirt	263	2,503.00
	Half Dome T-shirt	435	3,926.00
	Bellavista T-shirt	728	6,055.40
	Piz Long Sleeve T-shirt	468	4,746.00
	Mellow T-shirt	405	3,231.00
	Van T-shirt	1,461	12,074.67
	Miracle T-shirt	657	5,286.25
		TOTAL T-SHIRTS	4,417
Women			
	Gravity Pants	9	145.00
	TOTAL TROUSERS	9	145.00

⁶ Paragraph 9.

	Goods	Units Shipped	Value (€)
	Fanni Long Sleeve T-shirt	119	1,198.00
	Bellavista T-shirt	879	8,496.50
	Stella Long Sleeve T-shirt	543	5,458.00
	Van T-shirt	903	7,495.50
	Miracle T-shirt	1,230	8,195.50
	TOTAL T-SHIRTS	3,674	30,843.50

31. The tables in Exhibit WR3 do not show any sales of goods in this group.

32. The goods shown on the invoices can all be seen in the brochures. While many of the non-clothing goods in the catalogues display one of the contested marks, this is not the case with most of the goods listed in the above table. The exception is the Fanni Long-Sleeve T-shirt, which bears the letters “LACD” in a slightly stylised script:⁷



I have magnified the label and consider that the 877 mark can just be made out.



⁷ Exhibit WR2, page 10.

However, I have been unable to do this with any of the other women's T-shirts, as the images in the brochures are not of sufficient quality to allow the neck labels to be read. The neck labels on the men's T-shirts and any labels on the trousers are not visible, and it does not appear that these goods are decorated with any of the contested marks.

33. The brochures also contain other items of clothing, such as weatherproof jackets and hoodies. However, there is no evidence of any sales of these goods, either in the invoices or the tables supplied by Mr Rimbeck.

34. Exhibit WR1 contains larger images, which I noted at the hearing were undated. Mr St Quintin explained that the purpose of this exhibit was to provide good quality images of the goods, which appear in the dated brochures. He took me to photographs of two t-shirts and a pair of trousers. The second photograph of a T-shirt shows the 877 mark on the label:⁸



The photograph of the trousers shows the 831 mark below the pocket on the right side of the image:⁹

⁸ Page 9.
⁹ Page 10.



The quality of the first photograph of a T-shirt is not good enough for me to be able to see whether any of the marks appear on the label.¹⁰

35. Mr Rimbeck does not explain which of the products are shown in the photographs. In the case of the T-shirt, I can see that the pattern is the one shown on the Miracle T-shirts in the brochures. However, none of those has long sleeves. Therefore, I am unable to say whether this particular garment was available during the relevant period. I am also unable to say for sure whether the photograph of the trousers reproduced above shows the Gravity Pants, the Motion Tech Pants, or something else.

36. The final exhibit of relevance to these goods is Exhibit WR8. This contains a selection of Google reviews. There is no date on the exhibit, but it cannot have been sourced later than 10 March 2023 when the registered proprietor filed its evidence in chief. One of the reviews (dated “3 years ago”) refers to T-shirts as being among the “*Super products*” offered by the registered proprietor’s company. A further review (also from “3 years ago”) says that “*The shirts are visually and qualitatively top.*”¹¹ At the hearing, Mr St Quintin noted that the reviewers had German-sounding names. I put it to him that this did not necessarily mean that the customers were from a German-speaking Member State of the European Union. He accepted this point but relied on Mr Rimbeck’s statement that the marks had been used in the UK and the EU and added that “*in my submission these reviews will stem from that trade*”.¹²

¹⁰ Page 6.

¹¹ The exhibit states that the reviews have been translated by Google.

¹² Transcript, page 16.

37. Mr Hollingworth submitted that the registered proprietor had not discharged the burden on him to provide “*clear, precise, detailed and well-supported evidence*” showing use and referred me to the comments of the Appointed Person in *Awareness Ltd v Plymouth City Council* that were endorsed by the Court of Appeal in *easyGroup* at [107], cited above in paragraph 18. He added that it had been a particularly difficult process to go through the evidence to determine what it might show. I would not disagree with this last point. I am grateful for the clarification provided by Mr St Quintin’s skeleton argument, but even so it has been time consuming to trawl through the tables and invoices to identify those goods which are relevant for the present purposes.

38. To begin with, it is not helpful that the sales figures for Clothing that I quote in paragraph 29 have not been broken down so that I can see what proportion of the sales can be accounted for by trousers and what proportion by T-shirts. The invoices do show that some sales of both types of clothing occurred. The total number of pairs of trousers sold was 1,123 (with all but 9 of these being for men) at a cost of €20,159.18. As this was the cost to the retailer/distributor, the price paid by the end-consumer would be higher. The total number of T-shirts sold was 8,091 (55% for men, 45% for women) at a cost of €63,919.82. Both trousers and T-shirts were sold to UK, French and German companies.

39. The problem I have with the evidence on these goods is that it is not clear how, or whether, the contested marks were shown to the end-consumer or an intermediary, such as a distributor or retailer. I accept that the 877 mark is shown on the covers of the brochures, but, as I have already noted, Mr Rimbeck has not given me any information on their distribution. I would have to assume, on the basis of the couple of photographs reproduced above (one of which is undated), that the 877 mark appears on the labels of clothing. Mr Rimbeck does not even say this in his witness statement. Given that Mr Rimbeck said in paragraph 7 of his witness statement that his company provides its distributors with photographs and advertising texts and allows the use of the logo in advertisements, it should not have been difficult to provide some evidence of such use within the relevant period. I acknowledge that Exhibits WR6 and WR7 contain extracts from third party websites, but these are either undated or have a copyright marking of 2023. Therefore, they do not help the registered proprietor.

40. Although other types of clothing are depicted in the brochures and some of these bear one of the marks at issue, the absence of any information about the distribution of these brochures or, indeed, any advertising material aimed at the end-user or retailer, combined with no evidence of any sales, leads me to find that the proprietor has not shown that marks have been genuinely used for the goods in this group.

Headgear, in particular hats and caps

41. Mr St Quintin submitted that the registered proprietor had shown that it had used the marks for beanies, caps and wind hats. A table showing the items of headgear recorded on invoices dating from 13 September 2017 to 2 November 2020 can be found in Annex C. Together with the information on UK sales from Exhibit WR3, I calculate that the evidence shows sales of 41 hats (beanies) at a value of €237.50 and 17 caps at a value of €124.58 during the period 2017-2021. Images of the hats and caps taken from the catalogues are shown below:¹³



42. I have no evidence to indicate that these hats and caps are anything other than ordinary items of headgear that would be worn by members of the general public. While the applicant filed information on the market for apparel, there is nothing specific to headgear. Even so, I consider that the level of sales shown in the evidence are tiny in comparison to the likely size of the EU or UK market. Arnold LJ explained that GC

¹³ Exhibit WR2, pages 46 and 77.

has held on numerous occasions that *“the smaller the commercial volume of the exploitation of the mark, the more necessary it is for the proprietor to produce additional evidence to dispel any doubts as to the genuineness of its use”*. I have already commented on the shortcomings of the brochure evidence. The proprietor has filed no advertising or other marketing material, or dated screenshots showing the relevant goods being offered for sale. While I acknowledge that there is no *de minimis* level of sales, I remind myself that the mere fact of commercial use of a mark may not automatically mean that genuine use has been shown. I consider that the registered proprietor has not shown that it has made genuine use of the earlier marks for *Headgear*.

Sports shoes in particular climbing shoes

43. Mr Rimbeck states that EU sales of shoes are shown in the table below:¹⁴

Year	Sales € - shoes only	Sales € - clothing only (being trousers and t-shirts)
2018	35,000	19,000
2019	8,000	48,000
2020	-	79,000

44. The only shoes shown in the brochures are the Splash climbing shoes:¹⁵



¹⁴ Paragraph 9.

¹⁵ Exhibit WR2, page 6.

45. The 877 mark can be seen diagonally towards the heel of the shoe.

46. Invoices summarised in the table in Annex C and dated from 20 July 2017 to 19 February 2019 show sales of 317 pairs of the Splash shoes in the UK, Germany and France, at a cost of €9,593.50. There is also what appears to be an order or a packing slip dated 12 June 2018 for 1,096 pairs of Splash blue climbing shoes, with the purchaser based in Germany. It contains no price information. I take from Exhibit WR3 that 17 pairs of the Splash shoe were sold in 2017 in the UK at €671, 62 pairs in 2018 at €2,042 and 129 pairs in 2019 at €4,146. There also appear to have been two sales of the Phantom Kletterschuhe, but there are no images of this shoe and no explanatory narrative setting out how the mark was used on it or its packaging.

47. In his second witness statement, Mr Rimbeck states that the correct market for these shoes is a specialist one, as they are not designed to be walked in.¹⁶ An article from the Sports N Hobbies website, last modified on 14 July 2023, says that:

“Climbing shoes have a number of distinctive features which make them easy to differentiate from other types of shoes. The first is the flexible rubber sole, which runs partway up the side of the shoe for additional support. The second is the snug fit, which ensures that the shoe conforms to the shape of the wearer’s foot. Climbing shoes for men and women are also styled differently, to accommodate subtle anatomical differences.

...

... As a general rule, climbing shoes are designed only to be used during climbing, and they are unsuitable for hiking, walking, or running. ...”¹⁷

48. Mr Rimbeck has adduced evidence that the size of the wholesale value of the footwear part of the European outdoor sector was €1.6 billion in 2022. Climbing would represent only part of this, as the category would also include goods such as hiking boots. The volumes sold may be fairly small, but I am satisfied that the Splash shoe is specialist footwear bought for the specific purpose of climbing. While the sales of the shoe are concentrated in the first part of the relevant period, it is not necessary for a

¹⁶ Paragraph 5.

¹⁷ Exhibit WR11, pages 9-10.

mark to be used in the whole of the period for use to be genuine. I find that the 877 mark has been genuinely used for Climbing shoes.

Gloves

49. The invoices in Exhibit WR4 show sales of 392 pairs of gloves for €3,424.82 between 3 July 2017 and 18 December 2020 in the UK, Germany and France. I take from Exhibit WR3 that 20 pairs of gloves were sold in 2017 in the UK at €234, 30 pairs in 2018 at €321, 23 pairs in 2019 at €304, 18 pairs in 2020 at €194, 3 pairs in 2021 at €32 and 11 pairs in 2022 at €154. The table in pages 16-20 of that exhibit shows sales of 2 pairs in 2013, 8 pairs in 2014, 1 pair in 2020 and 1 pair in 2021. Mr Rimbeck has not provided overall turnover figures for gloves. The totals listed above come to 509 pairs.

50. Images of the gloves featured in the invoices and tables are found in the brochures in Exhibit WR2, and I have reproduced some examples below. The 877 mark can be seen on the cuffs of all the gloves:¹⁸



¹⁸ Pages 5 and 51.



1171 **ULTIMATE GLOVES**
Double layer leather gloves
sizes fullfinger S - XL (7 - 10)

51. Mr St Quintin also refers me to the contents of Exhibit WR6, but I have already noted that these website print-outs do not date from the relevant period. I am not persuaded that they shine light backwards on the position at that point.

52. He submitted that the gloves were marketed for a particular purpose, namely climbing and mountaineering, but that the average consumer would understand them to share the same purposes as any other gloves, i.e. protecting and warming the hands. It is clear from the images that the gloves are padded. This is in keeping with what I see to be their primary purpose: protecting the wearer's hands when they are mountaineering or rock climbing. The wearer will need to be able to grip cables and ropes without causing damage to their hands. Some of the gloves are not fully-fingered. This would allow for greater dexterity on the part of the wearer, which is likely to be desirable in the activities for which the gloves would be worn. In my view, these gloves are specialist gloves. I have no information on the size of the EU and the UK market for climbing and mountaineering gloves, but it would be very small in relation to the size of the market for gloves as a whole. As there is no *de minimis* level of use and the gloves have been sold throughout the relevant period, I find that there has been genuine use of the 877 mark for Climbing and mountaineering gloves.

Snow spikes for shoes; Non-slipping devices for footwear

53. The evidence shows three different types of snow spikes and no other non-slipping devices for footwear. Snow Spikes Easy I and Easy II are shown in the image below. The 877 mark is on the top strap and the storage bag.¹⁹



54. The invoices in Exhibits WR4 and WR5 show sales of 907 pairs at a wholesale price of €11,088.00 between 13 September 2017 and 7 December 2020 in France, Germany and the United Kingdom. The tables in Exhibit WR3 show sales in the UK of 37 pairs at a wholesale price of €1,067 from 2017 to 2022, along with a further pair in 2021.

55. The invoices also show sales of what is described as “Snow Spikes Light”. The only image I can find of these goods in the evidence is shown below.²⁰ This comes from the 2021 Workbook and none of the marks can be seen on the product.



¹⁹ Exhibit WR2, page 7.

²⁰ Exhibit WR2, page 71.

56. Mr St Quintin also refers me to Exhibit WR6, but I have already discussed the problems with this exhibit. The sales of snow spikes are fairly small, but I am of the view that these are also specialist goods that would not be purchased frequently. As there is no *de minimis* level of use and the snow spikes have been sold throughout the relevant period, I find that the registered proprietor has shown genuine use of the 877 mark for *Snow spikes for shoes*. I shall assess whether a fair specification would include *Non-slipping devices for footwear* in due course.

Gaiters

57. The invoices in Exhibits WR4 and WR5 record sales of 250 pairs of gaiters in France, Germany and the United Kingdom at a wholesale price of €3,261.71 between 26 March 2018 and 18 December 2020. In addition, Exhibit WR3 shows sales of 3 pairs at €37 in the UK in 2017, 18 pairs at €298 in 2018, 13 pairs at €212 in 2019, 8 pairs at €103 in 2020 and 1 pair at €15 in 2022. These are all described as “Gaiter Ultralight” and “Gaiter Ultralight WPB”, apart from a single pair of “Gaiter Alpine”. All three gaiters are shown in the image from the 2021 workbook reproduced below.²¹ The 877 mark can be clearly seen on the Ultralight gaiters and the storage bags. I am unable to see whether it also appears on the Alpine gaiters.



58. The evidence shows small levels of sales in France, Germany and the UK. Mr St Quintin submitted that these goods are shoe covers. The above illustration shows that only the top part of the shoe is covered, along with the lower leg. From the evidence

²¹ Exhibit WR2, page 72.

before me, it appears that the purpose of the gaiters is to protect the lower leg from the elements and stop the wet or debris from getting inside the wearer's shoes. I am of the view that these products would be bought by people who enjoy outdoor pursuits such as hiking and mountaineering. In my view, they are far from everyday goods. As there is no *de minimis* level of use and the gaiters have been sold throughout the relevant period, I find that there has been genuine use of the 877 mark for these goods.

Services

59. Up to this point, I have summarised what the evidence says about goods. Mr Rimbeck deals with services very briefly in his witness statement and I reproduce it in full here:

“7. My Company's retail services include, but are not limited to the following use of the LACD brand to promote the sale of LACD goods to customers:

- Retailer use our logo in the presentation of goods online.
- We provide the dealer with photos (products and advertising images) and texts (products and advertising texts). The dealer can adopt text or adapt them as desired.
- We assemble our products together with third party products to promote special kits/sets for the trade i.e. avalanche equipment.
- We pay partial advertising subsidies for our customer to advertise our products.
- Logo use in advertisements.
- Brand stores online.
- Advising dealers through field sales and inside sales, so that dealers can sell LACD products.
- Training of sales representatives (of the dealers).
- Offering a customised range to different distributors to enable them to promote LACD products.
- Handling of return and complaints with end customer, directly.”

60. In my view, the use described here is not use in trade. There is no evidence that the registered proprietor's company offers retail or wholesale services, in the sense of

bringing together for the benefit of others of a variety of goods enabling customers conveniently to purchase those goods. Selling one's own goods is not the same thing as offering retail services: see *Tony Van Gulck v Wasabi Frog Ltd*, Case BL O/391/14 at [9]. Nor do I see from the evidence before me that the registered proprietor's company is trading in advertising, business consultancy, public relations or any of the services that Mr St Quintin submitted constituted a fair specification in Class 35. There are no turnover figures, invoices, or promotional materials covering these services. I find that the marks have not been genuinely used for any of the services.

Variant Use

61. Section 46(2) of the Act states that use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered. Mr Hollingworth accepted that the 877 and the 664 mark possess materially the same distinctive character as each other and that use of one may be taken into account for use of the other. As these marks are registered in black and white, normal and fair use would include use in different colours, such as white lines on a black background, as seen on the image of the gloves reproduced in paragraph 21 above.

62. He submitted that neither the 877 nor the 664 mark would be an acceptable variant of the 831 or 057 word marks and referred me to the decision of Geoffrey Hobbs QC, as the Appointed Person, in *Dosenbach-Ochsner AG Schuhe und Sport v Continental Shelf 128 Ltd (CATWALK)*, BL O-404-13, in which he upheld the Hearing Officer's decision that the following mark was not an acceptable variant of the word mark CATWALK:



63. Mr Hollingworth explained that he referred to this case as

“... an illustration of the sorts of things which can amount to differentiation. The Hearing Officer found that the marks which are shown in my skeleton were distinctively different, and the Appointed Person did not just rubber stamp that, but he analogised it and said you could analogise it to the way

a signature individualises the name it represents. He said that there is a visual individualisation to a degree which causes the stylised form of the word *Catwalk* to differ distinctively. ... In my submission, the visual individualisation of the logo mark is distinctively different from the word mark and you cannot just treat one as the other.”²²

64. Mr St Quintin referred me to *Walton International Ltd & Anor v Verweij Fashion BV* [2018] EWHC 1608 (Ch), where Arnold J (as he then was) considered the law at [119]-[123]. He submitted that:

“... where the registered mark, as is relevant here in respect of two of the registrations, is a word mark and therefore is deemed to cover any presentation of that mark in various fonts, that the particular font chosen for a given presentation cannot alter the distinctive character of the mark and so one must then look only at, if one is being urged to conclude that there is a difference in distinctive character between a word registration and the particular presentation used, only really is going to have to look at aspects other than the font that is chosen for the presentation of the word.”²³

65. In *Lactalis McLelland Limited v Arla Foods AMBA*, BL O/265/22, Professor Phillip Johnson, sitting as the Appointed Person, considered the correct approach to the test under section 46(2), drawing on more recent case law of the European courts. He said:

“13. ... While the law has developed since *Nirvana* [BL O/262/06], the recent case law still requires a comparison of the marks to identify elements of the mark added (or subtracted) which had led to the alteration of the mark (that is, the differences) (see, for instance, T-598/18 *Grupo Textil Brownie v EUIPO*, EU:T:2020:22, [63 and 64]).

14. The courts, and particularly the General Court, have developed certain principles which apply to assess whether a mark is an acceptable variant and the following appear relevant to this case.

²² Transcript, page 31.



²³ Transcript, page 7.

15. First, when comparing the alterations between the mark as registered and used it is clear that the alteration or omission of a non-distinctive element does not alter the distinctive character of the mark as a whole: T-146/15 *Hypen v EUIPO*, EU:T:2016:469, [30]. Secondly, where a mark contains words and a figurative element the word element will usually be more distinctive: T-171/17 *M & K v EUIPO*, EU:T:2018:683, [41]. This suggests that changes in figurative elements are usually less likely to change the distinctive character than those related to the word elements.

16. Thirdly, where a trade mark comprises two (or more) distinctive elements (eg a house mark and a sub-brand) it is not sufficient to prove use of only one of these distinctive elements: T-297/20 *Fashioneast v AM.VI. Srl*, EU:T:2021:432, [40] (I note that this case is only persuasive, but I see no reason to disagree with it). Fourthly, the addition of descriptive or suggestive words (or it is supposed figurative elements) is unlikely to change the distinctive character of the mark: compare, T-258/13 *Artkis*, EU:T:2015:207, [27] (ARKTIS registered and use of ARKTIS LINE sufficient) and T-209/09 *Alder*, EU:T:2011:169, [58] (HALDER registered and use of HALDER I, HALDER II etc sufficient) with R 89/2000-1 CAPTAIN (23 April 2001) (CAPTAIN registered and use of CAPTAIN BIRDS EYE insufficient).

17. It is also worth highlighting the recent case of T-615/20 *Mood Media v EUIPO*, EU:T:2022:109 where the General Court was considering whether the use of various marks amounted to the use of the registered mark MOOD MEDIA. It took the view that the omission of the word 'MEDIA' would affect the distinctive character of the mark (see [61 and 62]) because MOOD and MEDIA were in combination weakly distinctive, and the word MOOD alone was less distinctive still."

66. The marks are shown in the table below:

831 and 057 marks	877 mark	664 mark
LACD		

67. Mr St Quintin submitted that the only difference between the word marks and the stylised marks was the underlining of the letters “A”, “C” and “D” and that this was too insignificant a difference to alter the distinctive character of the word marks. Mr Hollingworth argued that the typeface was distinctive and potentially sufficient to change the distinctive character of the marks:

“There are distinctive differences. There is an unusual lettering style, the enlarged ‘L’ wraps around the other letters. It is not just a line, it is a parallelogram, underlining it and it creates a frame around the rest of the characters in a quirky and distinctive way.”²⁴

68. It is not always the case that the stylisation used alters the distinctive character of a word mark. In *Dreamersclub Ltd v KTS Group Ltd*, BL O/091/19, Professor Phillip Johnson, sitting as the Appointed Person, found that the use of the mark shown below qualified as use of the registered word-only mark DREAMS.

dreams

This was because the stylisation of the word did not alter the distinctive character of the word mark. Rather, it constituted an expression of the registered word mark in normal and fair use.

69. The 831 and 057 marks are word marks and their distinctive character lies in the sequence of 4 letters (L, A, C and D) that make up the mark. They do not create a known word in the English language, and it is my view that it is most likely that the average consumer would understand them to be an abbreviation.

²⁴ Transcript, page 31.

70. The differences between these marks and the 877 and 664 marks that has been used are the use of a particular, blocky typeface, the larger letter “L” and the underlining of the final letters. The typeface does not appear to me to be unusual and the underlining would, to my mind, be perceived as decorative. The four letters are clearly identifiable and I find that the distinctive character of the 831 and 057 marks remain unchanged. The use of the 877 or 664 mark is an acceptable variant of these marks.

Framing a fair specification

71. In *Merck KGaA v Merck Sharp & Dohme Corp & Ors*, [2017] EWCA Civ 1834, Kitchin LJ (as he then was) set out the approach to be followed when considering partial revocation of a trade mark. The same approach is relevant when framing a fair specification. He said:

“244. As I described in *Maier v Asos*, the approach to be adopted is relatively straightforward (although I readily acknowledge that it may on occasion be difficult to apply) and it is in my view consistent with the earlier decisions of the Court of Appeal to which I referred at paragraph [63]. On reflection, I think it can be expressed more clearly as follows.

245. First, it is necessary to identify the goods or services in relation to which the mark has been used during the relevant period.

246. Secondly, the goods or services for which the mark is registered must be considered. If the mark is registered for a category of goods or services which is sufficiently broad that it is possible to identify within it a number of subcategories capable of being viewed independently, use of the mark in relation to one or more of the subcategories will not constitute use of the mark in relation to all of the other categories.

247. Thirdly, it is not possible for a proprietor to use the mark in relation to all possible variations of a product or service. So care must be taken to ensure this exercise does not result in the proprietor being stripped of protection for goods or services which, though not the same as those for

which use has been proved, are not in essence different from them and cannot be distinguished from them other than in an arbitrary way.

248. Fourthly, these issues are to be considered having regard to the perception of the average consumer and the purpose and intended use of the products or services in issue. Ultimately it is the task of the tribunal to arrive at a fair specification of goods or services having regard to the use which has been made of the mark.”

72. In *Euro Gida Sanayi ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10, Mr Geoffrey Hobbs QC, sitting as the Appointed Person, summed up the law as follows:

“In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned.”²⁵

73. The goods for which I found that there had been genuine use are as follows: *climbing shoes, climbing and mountaineering gloves, snow spikes for shoes, and gaiters*. The average consumer of these goods is a mountaineering and climbing enthusiast, although I accept that in the case of gaiters the average consumer would be someone who takes part in outdoor pursuits more generally.

74. Mr St Quintin submitted that a fair specification for the first of these would be *Sports shoes in particular climbing shoes*. The words “*in particular*” indicate that the terms that follow them are examples of the goods covered by the wider term: see *Durferrit GmbH v OHIM (Nu-Tride)*, Case T-224/01 at [41]. I consider that *Sports shoes* is a category that is broad enough for a number of subcategories to be identified, for example golf shoes and running shoes. Earlier in my decision, I discussed the particular features of climbing shoes that make them different from shoes that are worn for walking and other purposes. These include the flexible sole that extends up the

²⁵ Pages 10-11.

side of the shoe, and the snug fit. Climbing shoes can, in my view, be distinguished from other categories of sports shoe in a way that is not arbitrary. The average consumer would see them as an identifiable category and so I find that a fair specification is *Climbing shoes*.

75. The next goods that I need to consider are climbing and mountaineering gloves. Mr St Quintin submitted that the average consumer would consider that all gloves have the same purpose, that is, keeping the wearer's hands warm and protecting them. It appears to me from the images in the evidence that the primary purpose of the registered proprietor's goods is protection, as padding is a significant feature. In my view, the average consumer, who is a specialist consumer, would distinguish between such gloves and those which only offer warmth. They would also be looking for gloves that enable them to use their fingers to grip onto rocks or pulleys. On this basis, I consider that a fair specification is *Gloves for mountaineering and climbing*.

76. Mr St Quintin submitted that a fair specification for snow spikes for shoes would be *Snow spikes for shoes; Non-slipping devices for footwear*. Snow spikes are a particular sort of device, but the average consumer might wish to avoid slipping on other surfaces, for example wet or icy pavements and railway platforms. The original specification of the 057 and 664 marks lists other types of non-slip devices, namely *Anti-slip sleeves for shoes* and *Non-slip soles for footwear*. The goods shown in the evidence have a particular purpose and contain metal spikes joined by chains. Mr St Quintin did draw my attention to the Snow Spikes Light as "*less rugged, perhaps more for general use rather than more expedition use*".²⁶ However, as I explain in paragraph 55 above, it is not clear how, or even if, the mark was used in conjunction with the goods. Consequently, I focus on the Snow Spikes shown in paragraph 53 above. In my view, the average consumer would see them as a specialist item that constitutes an identifiable subcategory. I find that a fair specification is *Snow spikes for shoes*.

77. The term *Gaiters* appears in the specification for the 664 mark. However, Mr St Quintin also submitted that a fair specification for the 057 mark would include *Gaiters*, as this is a narrower term encompassed by the broader *Shoes covers for use when wearing shoes*.²⁷ He noted that they partly cover the shoe. Mr Hollingworth argued that

²⁶ Transcript, page 18.

²⁷ Transcript, page 18.

the gaiters did not cover the shoe, but the lower leg, and that, if I were satisfied that the registered proprietor had shown genuine use of the relevant mark for gaiters, the specification should be narrowed to *Gaiters for mountain climbing*, as gaiters could have other uses, for example in military kit. I agree that the gaiters do not cover the shoe entirely, or even a large part of it. However, they do cover the top, in particular any gaps between the shoe and the ankle. I do not consider that the word “cover” necessarily means that the whole of the shoe is enclosed, or would be understood in this way by the average consumer, who is someone who enjoys outdoor pursuits. Therefore, I accept that gaiters are a form of shoe cover. I have no evidence on whether gaiters used for other purposes are different from the ones shown in the evidence in anything other than an arbitrary way. Consequently, I find that a fair specification for both the 057 and the 664 marks would include *Gaiters*.

OUTCOME

78. The applications for partial revocation are partially successful.

79. With effect from 22 January 2016, Class 25 of UKTM No. 909270877 is as follows:

Climbing shoes; Gloves for mountaineering and climbing.

80. With effect from 5 December 2017, Class 25 of UKTM No. 911011831 is as follows:

Climbing shoes; Gloves for mountaineering and climbing.

81. With effect from 10 June 2020, Class 25 of UKTM No. 913621057 is as follows, and Class 35 is revoked in its entirety:

Snow spikes for shoes; Shoes covers for use when wearing shoes, namely Gaiters.

82. With effect from 10 June 2020, Class 25 of UKTM No. 913628664 is as follows, and Class 35 is revoked in its entirety:

Climbing shoes; Gloves for mountaineering and climbing; Gaiters; Snow spikes for shoes.

COSTS

83. Both parties have enjoyed some success in these proceedings, with a greater part going to the applicant, who is entitled to a contribution to the costs it has incurred, in line with the scale set out in Tribunal Practice Notice 2/2016 and reflecting the balance of success achieved by each party. When calculating an award of costs, I have borne in mind the additional work required by the registered proprietor's filing of additional evidence, which occasioned a CMC. In addition, the way the evidence was presented required the applicant to undertake a good deal of work to identify what it might or might not show. I have therefore made an award for the evidence stage that is near the top of the scale. As both parties had some success at this CMC, I have not included it in the award.

£600 for preparing statements and considering the other side's statements;

£2,000 for preparing evidence and considering and commenting on the other side's evidence, including the additional evidence;

£800 for preparing for and attending the hearing;

£800 for official fees.

£4,200 in total

84. I therefore order Wolfgang Rimbeck to pay Laced Europe Ltd the sum of £4,200. The above sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 24th day of January 2025

Clare Boucher

For the Registrar,

Comptroller-General

Annex A: Contested Goods and Services

The 877 and 831 marks

Class 25

Outerclimbing and underwear for women, men and children, in particular for climbing, hiking, watersports, beach sports and cycling; rainwear and heated clothing; weatherproof clothing for mountain climbing; trousers and jackets; headgear, in particular hats, caps and headbands; stockings, footwear and shoes, in particular climbing shoes, gloves and leggings.

The 057 mark

Class 25

Snow spikes for shoes; Anti slip sleeves for shoes; non slip soles for footwear; Non-slipping devices for footwear; Cleated shoes; Ski boots; Soles for footwear; shoes covers for use when wearing shoes; Goloshes; Shoe pegs.

Class 35

Advertising; Business management; Business administration; Office functions; Retailing and wholesaling in relation to sporting articles for mountaineering, hiking, water sports, swimming and cycling, Including on the Internet; Business consultancy and advisory services; Business consulting services; Organisational consultancy; Development of professional business and organisational concepts; Arranging and conducting of advertising events; Marketing services; Market research; Marketing analysis; Publication of publicity texts; Updating of advertising material; Distribution of products for advertising purposes; Arranging and organising of advertising; Advertising advice; On line advertising in a computer network; Exhibitions for commercial or advertising purposes; Consultancy relating to business organisation; Presentation of companies on the Internet and other media; Collating and systematic ordering of data in a computer database; Organisation of trade fairs for commercial or advertising purposes; Dissemination of advertisements; Public relations services; Arranging of contracts, for others, for the buying and selling of goods or the providing of services, in particular via networks, including the Internet, Presentation of goods and services on websites accessed via networks; Sales promotion (for others); Presentation of goods and services, for others, on the Internet; Arranging contracts, for others, for the

selling of goods, including via the Internet, online shops or teleshopping channels; Business management for shops; Sales promotion (for others); Organizational and business advice for franchise concepts; Arranging commercial transactions, for others; Arranging of contracts, for others, for the providing of services; Professional business consultancy with regard to retail distribution systems; Providing information relating to all the aforesaid goods through advertising in periodicals, brochures and newspapers; Exhibition and presentation of goods for advertising purposes; Collection of various goods (except the transport thereof) for others, to facilitate the display and purchase of the aforesaid goods for customers; Professional business consultancy for franchise concepts in connection with support for operating or managing a commercial business.

The 664 mark

Class 25

Outer clothing and underwear for women, men and children, in particular for climbing, hiking, watersports, beach sports and cycling; Rainwear and heated clothing; Weatherproof clothing for mountain climbing; Weatherproof trousers and jackets; Headgear, in particular caps (headwear), headbands (clothing) and caps; Stockings; Footwear, shoes, In particular mountaineering shoes, gloves and gaiters; Snow spikes for shoes; Anti slip sleeves for shoes; non-slip soles for footwear; Non-slipping devices for footwear; Cleated shoes; Ski boots; Soles for footwear; shoe covers for use when wearing shoes; Goloshes; Shoe pegs.

Class 35

Advertising; Business management; Business administration; Office functions; Retailing and wholesaling in relation to sporting articles for mountaineering, hiking, water sports, swimming and cycling, Including on the Internet; Business consultancy and advisory services; Business consulting services; Organisational consultancy; Development of professional business and organisational concepts; Arranging and conducting of advertising events; Marketing services; Market research; Marketing analysis; Publication of publicity texts; Updating of advertising material; Distribution of products for advertising purposes; Arranging and organising of advertising; Advertising advice; On line advertising in a computer network; Exhibitions for commercial or advertising purposes; Consultancy relating to business organisation; Presentation of companies on the Internet and other media; Collating and systematic ordering of data

in a computer database; Organisation of trade fairs for commercial or advertising purposes; Dissemination of advertisements; Public relations services; Arranging of contracts, for others, for the buying and selling of goods or the providing of services, in particular via networks, including the Internet, Presentation of goods and services on websites accessed via networks; Sales promotion (for others); Presentation of goods and services, for others, on the Internet; Arranging contracts, for others, for the selling of goods, including via the Internet, online shops or teleshopping channels; Business management for shops; Sales promotion (for others); Organizational and business advice for franchise concepts; Arranging commercial transactions, for others; Arranging of contracts, for others, for the providing of services; Professional business consultancy with regard to retail distribution systems; Providing information relating to all the aforesaid goods through advertising in periodicals, brochures and newspapers; Exhibition and presentation of goods for advertising purposes; Collection of various goods (except the transport thereof) for others, to facilitate the display and purchase of the aforesaid goods for customers; Professional business consultancy for franchise concepts in connection with support for operating or managing a commercial business.

Annex B: Text of Post-CMC Letter

This letter follows the Case Management Conference (“CMC”) held on 26 October 2023. The Registry had given a preliminary view to refuse the request by Party A to file additional evidence in these consolidated proceedings. At the CMC, Party A was represented by Thomas St Quintin and Party B was represented by Guy Hollingworth, both of Counsel. I am grateful to both for their clear submissions. At the end of the CMC, I reserved my decision.

There was no dispute that the relevant factors to be taken into account are those set out in paragraph 34 of *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel)* [2016] EWHC 3013 (Ch). Mr St Quintin also drew my attention to a (real) property decision: *Capital Funding One Limited v Esqulant & Anor* [2020] EWHC 981 (QB). He submitted that this case was pertinent for two reasons.

The first is that the overriding objective of a court to deal with cases justly should be borne in mind. The Tribunal adheres to this overriding objective which is set out in Rule 1.1 of the Civil Procedure Rules 1998 (as amended) and includes, so far as is practicable:

- “(2)(a) Ensuring that the parties are on an equal footing;
- (b) Saving expense;
- (c) Dealing with the case in ways which are proportionate—
 - (i) to the amount of money involved;
 - (ii) to the importance of the case;
 - (iii) to the complexity of the issues and
 - (iv) to the financial position of each party;
- (d) Ensuring that it is dealt with expeditiously and fairly and
- (e) Allotting to it an appropriate share of the court’s resources, while taking into account the need to allot resources to other cases.”

I shall return to this objective after considering each of the factors from *Property Renaissance*.

The materiality of the evidence in question to the issues that the registrar has to determine

The additions sought to the evidence in chief are as follows:

- a) Two additional pages in Exhibit WR1 showing what appear to be design drawings;
- b) Two additional catalogues from 2019/20 and 2020 in Exhibit WR2;
- c) 109 additional pages of invoices (amounting to just over 30 additional invoices) in Exhibit WR4;
- d) A new paragraph 9 containing a table showing the registered proprietor's total sales figures in the EU between 2016 and 2021 and a further table showing EU sales relating to "*Shoes only*" and "*Clothing only (being trousers and t- shirts)*" for 2018, 2019 and 2020;
- e) The addition of the words "*and other*" at the end of the first line of paragraph 6;
- f) The inclusion of a bracket in paragraph 10 giving some explanation of the contents of Exhibit WR3; and
- g) The addition of the words "*and France*" at the beginning of the second line of paragraph 11.

I have examined this additional material closely, comparing it with what has already been admitted into the proceedings. I consider that the additions in point (a) above are not material to the questions to be decided. As I have noted, they appear to be design drawings. They do not add anything to the evidence that has already been admitted in the form of the catalogues in Exhibit WR2. The additional catalogues (point (b)) do not show any relevant goods that are not also shown in the catalogues that have already been admitted. For this reason, I do not consider that they are material to the issue of whether the marks have been used.

Turning to points (c) and (d), I consider that these additions are material. The original evidence in chief contains no information on sales figures for the EU. The first table admittedly does not differentiate between the goods and services that might be sold under the marks, and it is clear from the catalogues that a wide range of different goods is offered for sale. However, the second table provides some more detail. The additional invoices go to the question of the goods that have been sold. Point (f) explains items in Exhibit WR3.

I shall deal with the points (e) and (g) together. In comparison with the additions sought to the exhibits and paragraph 9, these are minor. I do not consider them to be material, although (g) is consequential on the admission (or not) of the additional invoices in Exhibit WR4.

The justice and fairness of subjecting the opposite party to the burden of the evidence in question at the stage that the registry proceedings have reached, including the reasons why the evidence was not filed earlier.

Party A had stated that the evidence had not been readily available at the time of the filing of the evidence in chief because of different electronic storage methods. It particularly highlighted the invoices relating to sales to French customers, the product image and additional catalogues. It also stated that sales figures had been “*unintentionally consolidated*” and that additional processing time had been required to separate the data.

Mr St Quintin accepted that the explanation provided was rather limited. I agree. It is not clear why some catalogues were available at the time of filing the evidence in chief while others were not and, as the Registry noted in its letter of 22 September 2023, the additional invoices are not confined to those issued to French customers, but include some German invoices that were presumably available earlier. Also, Mr Hollingworth took me to some examples of invoices in the additional evidence that had appeared in the original evidence in chief.

Turning to the EU sales figures, I note that these are not included in the original evidence in chief. I find the explanations unconvincing.

Mr St Quintin went on to submit that Party B would not be put to an unfair burden by considering the additional evidence at this stage as few amendments would need to be made to the written submissions it filed during the evidence rounds. I consider that it is relevant that the hearing that was requested by Party B has not yet been listed.

Whether the admission of the further evidence would prejudice the opposite party in ways that cannot be compensated for in costs (e.g. excessive delays)

In its letter of 20 September, Party B submitted that it would be prejudiced because it has already invested time and money in preparing and filing written submissions based on the evidence in chief filed by Party A. Mr St Quintin argued that this was not prejudice that could not be compensated for in costs and referred me to paragraph 57 of the *Capital Funding One* decision, where Freedman J said:

“It cannot be a prejudice simply because the case was more likely to be proven with the evidence than without it. The prejudice must therefore be of the way in which the case would be tried with the evidence.”

This suggests that there must be something more than an improvement in Party A’s likelihood of winning the case. Mr Hollingworth’s submissions were largely focused on costs and he highlighted the requirement in proceedings governed by scale costs to follow the standard timetable. He argued that Party A was trying to improve the inadequacies of its evidence in chief and, should the additional evidence be admitted, it would require reconsideration.

The fairness to the applicant of excluding the evidence in question, including prejudice to the applicant if it is unable to rely on such evidence.

I have already said that I consider some of the additional evidence to be material to the questions to be decided in these proceedings. If it is unable to rely on the evidence, it is likely (in my view) that Party A would lose the protection of the contested marks for a larger number of goods and services than if the evidence were admitted.

Conclusions

Given the materiality of some of the evidence, the prejudice to the applicant and the fact that the hearing has not yet been listed, I consider that the overriding objective points towards the admission of the evidence that is material.

I partially reverse the preliminary view not to admit the additional evidence. The revised witness statement and Exhibit WR4 are admitted into the proceedings. The revised Exhibits WR1 and WR2 are not admitted into the proceedings.

However, I do maintain that the reasons given for the late filing of this evidence are unconvincing and it is difficult to avoid coming to the conclusion that Party A has sought to improve its evidence in chief. For this reason, I consider that it would be appropriate to seek submissions from Party B on costs, following the determination of the substantive matters. I would be prepared to make an award to reflect the extra costs incurred by Party B in considering the additional evidence.

A hearing will now be listed and you will be informed of the date and time in due course.

I am writing in the same terms to the other party.

Annex C: Summary of Invoices

Casual outerclothing for women and men, in particular for climbing and hiking; rain jackets; weatherproof clothing for mountain climbing; weatherproof trousers and jackets.

Date and Invoice Number	Country of Purchaser	Product	Units	Value in €
13.09.2017 7998875	United Kingdom	Gravity Pants (women's)	1	20.00
30.10.2017 7999024	United Kingdom	LD Hard Rock Pants (men's)	1	32.00
		Gravity Pants (men's)	3	60.00
		Gravity Pants (women's)	1	20.00
26.03.2018 7999482	United Kingdom	LD Hard Rock Pants (men's)	2	44.00
		Fanni Long Sleeve T-shirt (women's)	2	24.00
26.03.2018 7999484	United Kingdom	LD Hard Rock Pants (men's)	2	44.00
		Fanni Long Sleeve T-shirt (women's)	2	24.00
09.05.2018 7999628	France	Warning T-shirt (men's)	3	33.00
		LD Hard Rock Pants (men's)	5	110.00
		Half Dome T-shirt (men's)	4	44.00
		Fanni Long Sleeve T-shirt (women's)	5	50.00
		Gravity Pants (men's)	4	44.00
		Gravity Pants (women's)	7	105.00
		Bellavista T-shirt (men's)	13	143.00
		Bellavista T-shirt (women's)	8	88.00
27.06.2018 7999793	Germany	Fanni Long Sleeve T-shirt (women's)	110	1,100.00
		Bellavista T-shirt (women's)	502	4,769.00
		Half Dome T-shirt (men's)	268	2,546.00
		Bellavista T-shirt (men's)	209	1,985.50

Date and Invoice Number	Country of Purchaser	Product	Units	Value in €
		Warning T-shirt (men's)	260	2,470.00
06.11.2018 8000136	France	Piz Long Sleeve T-shirt (men's)	5	70.00
		Bellavista T-shirt (men's)	16	176.00
		Mellow T-shirt (men's)	8	88.00
		Stella Long Sleeve T-shirt (women's)	4	56.00
		Bellavista T-shirt (women's)	4	44.00
22.11.2018 8000184	France	Piz Long Sleeve T-shirt (men's)	1	14.00
		Bellavista T-shirt (men's)	6	66.00
		Mellow T-shirt (men's)	4	44.00
		Stella Long Sleeve T-shirt (women's)	2	28.00
		Bellavista T-shirt (women's)	2	22.00
06.06.2019 8000686	Germany	Van T-shirt (women's)	450	3,870.00
		Miracle T-shirt (women's)	450	3,870.00
		Miracle T-shirt (men's)	225	1,935.00
		Mellow T-shirt (men's)	225	1,935.00
		Van T-shirt (men's)	450	3,870.00
17.07.2019 8000861	Germany	Bellavista T-shirt (men's)	28	225.40
		Van T-shirt (men's)	98	788.90
		Bellavista T-shirt (women's)	95	1,415.50
20.08.2019 8001039	France	Piz Long Sleeve T-shirt (men's)	2	24.00
		Bellavista T-shirt (men's)	1	11.00
		Mellow T-shirt (men's)	6	66.00
21.10.2019 8001208	United Kingdom	Piz Long Sleeve T-shirt (men's)	3	36.00
		Van T-shirt (men's)	1	9.48
21.10.2019 8001209	Germany	Miracle T-shirt (women's)	268	2,144.00
		Van T-shirt (women's)	199	1,592.00
		Miracle T-shirt (men's)	185	1,480.00
		Mellow T-shirt (men's)	86	688.00
		Van T-shirt (men's)	112	896.00

Date and Invoice Number	Country of Purchaser	Product	Units	Value in €
05.11.2019 8001260	France	Piz Long Sleeve T-shirt (men's)	13	162.00
		Bellavista T-shirt (men's)	4	44.00
		Mellow T-shirt (men's)	5	55.00
		Stella Long Sleeve T-shirt (women's)	1	14.00
18.06.2020 8001907	Germany	Gravity Pants (men's)	1,097	19,680.18
		Piz Long Sleeve T-shirt (men's)	444	4,440.00
		Bellavista T-shirt (men's)	194	1,318.00
		Mellow T-shirt (men's)	71	355.00
		Half Dome T-shirt (men's)	163	1,336.60
		Stella Long Sleeve T-shirt (Women's)	536	5,360.00
03.09.2020 8002250	Germany	Miracle T-shirt (men's)	125	1,006.25
		Van T-shirt (men's)	145	1,167.25
		Bellavista T-shirt (men's)	200	1,610.00
		Bellavista T-shirt (women's)	130	1,046.50
07.09.2020 8002251	France	Van Long sleeve T-shirt (men's)	5	60.00
		Bellavista T-shirt (men's)	15	142.50
		Van T-shirt (men's)	24	228.00
		Miracle T-shirt (men's)	16	152.00
		Bellavista T-shirt (women's)	5	47.50
		Miracle T-shirt (women's)	3	28.50
		Van T-shirt (women's)	1	9.50
28.09.2020 8002342	Germany	Bellavista T-shirt (women's)	133	1,064.00
		Miracle T-shirt (women's)	509	4,072.00
		Van T-shirt (women's)	253	2,024.00
		Van Long-sleeved T-shirt (men's)	248	2,232.00
		Bellavista T-shirt (men's)	42	336.00
		Van T-shirt (men's)	378	3,024.00
		Miracle T-shirt (men's)	331	2,648.00

Headgear, in particular caps and hats

Date and Invoice Number	Country of Purchaser	Product	Units	Value in €
13.09.2017 7998875	United Kingdom	Rock Beanie	1	7.50
30.10.2017 7999024	United Kingdom	Rock Beanie	2	15.00
		Stripes Beanie	1	3.50
26.03.2018 7999482	United Kingdom	Rock Beanie	2	15.00
26.03.2018 7999484	United Kingdom	Rock Beanie	2	15.00
06.11.2018 8000136	France	Stripes Beanie	5	16.50
22.11.2018 8000184	France	Stripes Beanie	1	3.00
08.10.2019 8001158	France	Fid Cap	2	15.00
		Soft Cap	2	15.00
21.10.2019 8001208	United Kingdom	Stripes Beanie	3	12.00
		Fid Cap	2	13.54
		Soft Cap	2	13.54
05.11.2019 8001260	France	Soft Cap	3	22.50
07.09.2020 8002251	France	Soft Cap	1	7.50
02.11.2020 8002441	France	Soft Cap	5	37.50

Sports shoes, in particular climbing shoes

Date and Invoice Number	Country of Purchaser	Product	Units	Value in €
20.07.2017 7998702	United Kingdom	Splash blue	4	122.00
13.09.2017 7998875	United Kingdom	Splash blue	3	91.50
30.10.2017 7999024	United Kingdom	Splash blue	2	61.00
31.01.2018 7999268	Germany	Splash blue	15	427.50
09.05.2018 7999628	France	Splash blue	3	91.50
31.01.2019	Germany	Splash blue	100	3,100.00

Date and Invoice Number	Country of Purchaser	Product	Units	Value in €
8000315 ²⁸				
18.02.2019 8000344 ²⁹	Germany	Splash blue	112	3,192.00
19.02.2019 8000356	Germany	Splash blue	88	2,508.00

There is also what appears to be an order (Lieferschein Nummer 8001091) dated 12 June 2018 for 1096 pairs of Splash blue climbing shoes. The purchaser is a business in Germany.

Gloves

Date and Invoice Number	Country of Purchaser	Product	Units	Value in €
03.07.2017 7998642	United Kingdom	Via Ferrata Gloves Pro	2	17.00
		Via Ferrata Gloves Heavy Duty	6	55.80
20.07.2017 7998702	United Kingdom	Via Ferrata Gloves Pro	2	17.00
		Via Ferrata Gloves Heavy Duty	6	55.80
13.09.2017 7998875	United Kingdom	Via Ferrata Gloves Pro	1	8.50
		Via Ferrata Gloves Heavy Duty	2	18.60
30.10.2017 7999024	United Kingdom	Via Ferrata Gloves Pro	2	17.00
26.03.2018 7999482	United Kingdom	Gloves Pro	2	17.00
12.04.2018 7999534	Germany	Via Ferrata Gloves Heavy Duty	6	75.00
08.05.2018 7999628	France	Gloves Pro	12	102.00
		Gloves Heavy Duty	5	5.00
03.09.2018 7999982	Germany	Gloves Pro	9	71.10
		Gloves Heavy Duty	10	100.00
06.11.2018 8000136	France	Gloves Pro	2	17.00
		Gloves Heavy Duty	7	66.50
		Gloves Ultimate	4	68.00
		Gloves Heavy Duty FF	3	33.00
22.11.2018 8000184	France	Gloves Heavy Duty	2	19.00
		Gloves Heavy Duty FF	2	22.00

²⁸ A corresponding document, "Lieferschein Nummer 8001796", is also in evidence.

²⁹ A corresponding document, "Lieferschein Nummer 8001841", is also in evidence.

Date and Invoice Number	Country of Purchaser	Product	Units	Value in €
08.01.2019 8000272	Germany	Gloves Pro	20	157.60
13.08.2019 8001010	Germany	Gloves Pro	2	18.00
13.08.2019 8001016	Germany	Gloves Pro	4	36.00
20.08.2019 8001039	France	Gloves Pro	6	51.00
		Gloves Heavy Duty	2	12.30
		Gloves Ultimate	2	34.00
		Gloves Heavy Duty FF	3	33.00
20.08.2019 8001045	Germany	Gloves Pro	34	267.92
14.10.2019 8001185	Germany	Gloves Heavy Duty	150	1,206.00
21.10.2019 8001208	United Kingdom	Gloves Heavy Duty	2	18.60
		Gloves Ultimate	1	15.00
		Gloves Heavy Duty FF	1	11.50
05.11.2019 8001260	France	Gloves Pro	11	93.50
		Gloves Ultimate	2	34.00
15.11.2019 8001289	Germany	Gloves Pro	18	142.20
		Gloves Ultimate	2	32.00
07.09.2020 8002251	France	Gloves Pro	2	8.00
		Gloves Heavy Duty	10	93.00
		Gloves Ultimate	1	17.00
		Gloves Heavy Duty FF	4	44.00
02.11.2020 8002441	France	Gloves Heavy Duty	9	83.70
		Gloves Heavy Duty FF	4	44.00
12.11.2020 8002467	Germany	Gloves Heavy Duty	2	18.00
30.11.2020 8002520	France	Gloves Heavy Duty	4	37.20
		Gloves Heavy Duty FF	7	77.00
18.12.2020 8002593	France	Gloves Ultimate	2	34.00
		Gloves Heavy Duty FF	2	22.00

Snow spikes for shoes; Non-slipping devices for footwear

Date and Invoice Number	Country of Purchaser	Product	Units	Value in €
13.09.2017 7998875	United Kingdom	Snow Spikes Easy II	3	42.00
30.10.2017 7999024	United Kingdom	Snow Spikes Easy I	1	12.00
26.03.2018		Snow Spikes Easy I	2	24.00

Date and Invoice Number	Country of Purchaser	Product	Units	Value in €
7999482	United Kingdom	Snow Spikes Easy II	1	14.00
26.03.2018 7999484	United Kingdom	Snow Spikes Easy I	2	24.00
		Snow Spikes Easy II	1	14.00
09.05.2018 7999628	France	Snow Spikes Easy I	6	72.00
		Snow Spikes Easy II	24	300.00
06.11.2018 8000136	France	Snow Spikes Easy I	2	24.00
		Snow Spikes Easy II	1	12.50
22.11.2018 8000184	France	Snow Spikes Easy I	1	12.00
		Snow Spikes Easy II	8	100.00
08.01.2019 8000272	Germany	Snow Spikes Easy I	11	137.50
		Snow Spikes Easy II	14	210.00
20.08.2019 8001039	France	Snow Spikes Easy I	1	12.00
		Snow Spikes Easy II	5	62.50
20.08.2019 8001045	Germany	Snow Spikes Easy I	6	72.00
		Snow Spikes Easy II	6	84.00
08.10.2019 8001158	France	Snow Spikes Easy I	4	48.00
		Snow Spikes Easy II	4	50.00
05.11.2019 8001260	France	Snow Spikes Easy I	1	12.00
		Snow Spikes Easy II	7	87.50
19.11.2019 8001299	Germany	Snow Spikes Easy I	21	252.00
		Snow Spikes Easy II	13	182.00
		Snow Spikes light	32	153.60
10.12.2019 8001386	Germany	Snow Spikes Easy I	25	300.00
		Snow Spikes Easy II	48	672.00
07.09.2020 8002251	France	Snow Spikes Easy II	13	162.50
		Snow Spikes light	5	25.00
29.10.2020 8002433	Germany	Snow Spikes Easy II	1	13.00
02.11.2020 8002441	France	Snow Spikes Easy II	8	100.00
		Snow Spikes light	5	25.00
30.11.2020 8002520	France	Snow Spikes Easy II	31	387.50
		Snow Spikes light	6	30.00
30.11.2020 8002521	Germany	Snow Spikes Easy I	435	5,046.00
		Snow Spikes Easy II	131	1,637.50
		Snow Spikes light	60	295.80
07.12.2020 8002548	Germany	Snow Spikes Easy II	70	910.00
18.12.2020 8002593	France	Snow spikes light	1	5.00

Gaiters

Date and Invoice Number	Country of Purchaser	Product	Units	Value in €
03.07.2017 7998642	United Kingdom	Gaiter Ultralight	1	11.00
20.07.2017 7998702	United Kingdom	Gaiter Ultralight	1	11.00
26.03.2018 7999482	United Kingdom	Gaiter Ultralight WP	2	25.00
26.03.2018 7999484	United Kingdom	Gaiter Ultralight WP	2	25.00
09.05.2018 7999628	France	Gaiter Ultralight	5	55.00
		Gaiter Ultralight WP	5	65.00
20.08.2018 8001039	France	Gaiter Ultralight	2	26.00
06.11.2018 8000136	France	Gaiter Ultralight WP	2	26.00
22.11.2018 8000184	France	Gaiter Ultralight	1	14.90
		Gaiter Ultralight WP	2	26.00
08.01.2019 8000272	Germany	Gaiter Ultralight	20	208.00
		Gaiter Ultralight WP	30	369.90
08.10.2019 8001158	France	Gaiter Ultralight WP	1	14.50
05.11.2019 8001260	France	Gaiter Ultralight	2	26.00
14.11.2019 8001185	Germany	Gaiter Ultralight WP	100	1,120.00
07.09.2020 8002251	France	Gaiter Ultralight	1	13.00
		Gaiter Alpine	1	13.75
30.11.2020 8002521	Germany	Gaiter Ultralight WPB	50	815.50
07.12.2020 8002548	Germany	Gaiter Ultralight WPB	20	366.16
18.12.2020 8002593	France	Gaiter Ultralight	4	52.00