

O/0106/25

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF APPLICATION NOS. 3702951 & 3702859

BY SYMPHONY HOLDINGS LIMITED

AND

IN THE MATTER OF THE OPPOSITIONS THERETO

UNDER NOS. 434516 & 434597 BY

SEMPERIT INVESTMENTS ASIA PTE LTD

BACKGROUND AND PLEADINGS

1. These proceedings concern the oppositions brought by Semperit Investments Asia Pte Ltd (“the opponent”) to two trade mark applications made by Symphony Holdings Limited (“the applicant”) on 28 September 2021. The trade mark applications were made pursuant to Article 59 of the Withdrawal Agreement between the United Kingdom and the European Union. This provision allows those who had pending EU Trade Marks (“EUTMs”) at the end of the Implementation Period to file a comparable UK application and claim the filing or priority date of the earlier EUTM as the priority date for the UK application. The applicant had relevant pending EUTM Nos 18229928 and 18228572. It filed the comparable UK trade mark applications within the nine month period allowed for doing so. Therefore, in accordance with section 6(2A) and paragraph 25 of Schedule 2A of the Act, the applicant is entitled to rely on the filing or priority date of its EUTM as the priority date for its comparable UK application for the purpose of establishing which rights take precedence.

2. The first application is shown below. Registration is sought for goods and services in Classes 10, 18, 25 and 35. The specification has been amended during the course of these proceedings and the current version is set out in the Annex to this decision. Priority is claimed from Australian Trade Mark No. 2045799, which has a filing date of 23 October 2019. The goods and services that are opposed are shown below the mark, which I shall from now on refer to as the 951 mark.



Class 10

Clothing especially made for medical use, but not including medical gloves or gowns; Articles of clothing for surgical purposes, but not including surgical gloves or gowns; Protective clothing for medical purposes, but not including gloves or gowns for medical, surgical or dental purposes; Protective clothing for surgical purposes, but not including surgical gloves or gowns.

Class 35

Retail services connected with the sale of surgical and medical garments, but not including surgical and medical gloves or gowns; Retail services (by any means), in relation to surgical and medical garments, but not including surgical and medical gloves and gowns; Wholesale services (by any means), in relation to surgical and medical garments, but not including surgical and medical gloves or gowns; The bringing together, for the benefit of others, of a variety of goods (excluding the transport thereof), namely surgical and medical garments, but not including surgical and medical gloves or gowns, enabling customers to conveniently view and purchase the goods.

3. The second application is shown below. As with the 951 mark, registration is sought for goods and services in Classes 10, 18, 25 and 35. The specification can be found in the Annex to this decision. Priority is claimed from Australian Trade Mark No. 2045795 which has a filing date of 23 October 2019. The goods that are opposed are shown below the mark, which I shall from now on refer to as the 859 mark.



Class 10

Compression garments; Support garments for medical use; Therapeutic garments for people; Clothing especially made for medical use; Elastic stockings for medical purposes; Elasticised stockings for medical purposes; Articles of clothing for support purposes; Articles of clothing for surgical purposes; Protective clothing for medical purposes; Protective clothing for surgical purposes; Compression stockings; Medical compression stockings; Elastic stockings for surgical purposes; Stockings for therapeutic purposes; Surgical stockings (for medical use); Medical Sporting articles (supports) for protective purposes; Medical Sports supports; Support articles for medical purposes; Support articles for surgical purposes; Supports for medical use; Supports for surgical use; Surgical supports; Therapeutic support devices; Supports for athletic purposes (other than sports articles); Therapeutic hosiery.

Class 35

Retail services connected with the sale of surgical and medical garments, compression garments, therapeutic compression garments, stockings, elastic supports, including elastic supports for stabilising injured areas of the body; Retail services (by any means), in relation to surgical and medical garments, compression garments, therapeutic compression garments, stockings, elastic supports, including elastic supports for stabilising injured areas of the body, compression underwear; Wholesale services (by any means), in relation to surgical and medical garments, compression garments, therapeutic compression garments, stockings, elastic supports, including elastic support for stabilising injured areas of the body, compression underwear; The bringing together, for the benefit of others, a variety of goods (excluding the transport thereof), namely, surgical and medical garments, compression garments, therapeutic compression garments, stockings, elastic supports, including elastic supports for stabilising injured areas of the body, compression underwear.

4. The 951 and 859 marks were opposed on 27 June 2022. The oppositions are based on section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and concern the goods listed above. In both oppositions, the opponent relies on the following marks and goods and services:

UKTM No. 908600389 (“the 389 mark”)

NITRILE SKIN²

Filing date: 7 October 2009

Registration date: 16 March 2010

Class 10

Gloves for use in hospitals; gloves for medical purposes; gloves for medical and surgical use; disposable gloves for medical and dental use; latex and synthetic gloves for medical, surgical, dental and health care use; surgical gloves.

UKTM No. 916311342 (“the 342 mark”)

skin²

Filing date: 1 February 2017

Registration date: 17 May 2017

Class 10

Gloves for medical examinations; Gloves for use during operations; Gloves for use in hospitals; Gloves for medical purposes; Gloves for veterinary use; Gloves for dental use.

5. Both marks qualify as earlier marks under section 6(1)(a) of the Act by virtue of their earlier filing dates. As the 389 mark completed its registration procedures more than five years before the priority date of the contested marks, it is caught by the proof of use provisions in section 6A of the Act. The opponent made a statement to the effect that it had used the 389 mark for all the goods relied upon.

6. The opponent claims that the marks are highly similar, and that the goods and services are either identical or similar. Consequently, it claims that there exists a likelihood of confusion on the part of the relevant public in the UK, and that registration of the contested marks would be contrary to section 5(2)(b) of the Act.

7. The applicant filed a defence and counterstatement denying the claims made and putting the opponent to proof of use of the 389 mark.

8. Only the opponent filed evidence. This comes in the form of a witness statement from Christian Rohrbach, Head of Business Strategy at Sempermed Europe GmbH, which is a subsidiary of the opponent. He has held this position for 4 years and been an employee of the group for 10 years. The witness statement is dated 14 September 2023 and has been filed for the purpose of showing that the 389 mark has been genuinely used.

9. The opponent initially asked to be heard, but then decided that it was content to have a decision from the papers. An email of 26 March 2024 set a revised deadline for filing final written submissions of 9 April 2024. The applicant filed written submissions

on this date. The opponent contacted the Registry on 11 April 2024 and explained that it had been unable to meet this deadline, as the email of 26 March 2024 had been missed for the reasons set out in the email. It requested a further 2 weeks in which to make final submissions. This was agreed. Following objections from the applicant, the opponent suggested that the applicant be permitted to file written submissions strictly in reply after receipt of the opponent's submission. The proceedings moved forward on this basis. The opponent filed its final written submissions on 23 April 2024 and the applicant filed brief submissions in reply on 29 April 2024.

10. I confirm that I have read all the papers filed and have made my decision after a careful consideration of the facts and submissions presented therein.

11. In these proceedings, the opponent is represented by M.J.P. Deans and the applicant by Keltie LLP.

RELEVANCE OF EU LAW

12. 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.

PRELIMINARY ISSUE

13. Both parties have referred me to decisions of the European Union Intellectual Property Office ("EUIPO"). The opponent had attached to each Form TM7 (Notice of opposition and statement of grounds) the decision of the Opposition Division of the EUIPO in Opposition No. B 3 043 240 which the opponent in these proceedings had brought against an application by Skins International Trading AG for a stylised SKINS mark.¹ The opponent claims that the circumstances pertaining to that case were substantially on all fours with the present oppositions and so it adopts the reasoning given by the Opposition Division as its claims. Decisions of the EUIPO are not binding on this Tribunal, and were not so even before the UK left the EU. I therefore take

¹ The stylisation in this EUTM Application is the same as that used in the 859 mark.

nothing more from this decision than an outline of the claims advanced by the opponent in the present proceedings.

14. The applicant has referred me to a revocation action brought against its EUTM No. 5310511, which it states is the same as the 859 mark. It says that much of the evidence in that case pertained to the UK market and adds that both the Cancellation Division and the Board of Appeal found that it had proved that it had used the mark for a wide range of goods, some of which can be found in the specification of the 859 mark. The applicant submits that *“This is solid evidence that goods bearing the respective marks that are subject to this opposition, have been sold in the UK concurrently since 2014.”*² There are two problems with this argument. The first is that the applicant filed nothing during the evidence rounds and has made no subsequent request to file late evidence. The second problem with this submission is that, following the principle set out in *Hollington v Hewthorn* [1943] KB 587, the opinion of another tribunal is not admissible evidence to support a finding of fact or evaluative finding in these proceedings. Even if the applicant had asked for permission to file it, it would not help its case. I shall say no more about it.

PROOF OF USE

15. In its written submissions, the opponent stated that the 342 mark represented its best case, although it still relied on the 389 mark which is subject to proof of use.³ I shall therefore proceed with my assessment of the opposition on the basis of the 342 mark alone, and shall return to the 389 mark later.

DECISION

16. Section 5(2)(b) of the Act is as follows:

“A trade mark shall not be registered if because-

...

² Written submissions of 9 April, paragraph 19.

³ See paragraph 5.

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

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

17. I am guided by the following principles, gleaned from the decisions of the Court of Justice of the European Union (“CJEU”) in *SABEL BV v Puma AG* (Case C-251/95), *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* (Case C-39/97), *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV* (Case C-342/97), *Marca Mode CV v Adidas AG & Adidas Benelux BV* (Case C-425/98), *Matratzen Concord GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (Case C-3/03), *Medion AG v Thomson Multimedia Sales Germany & Austria GmbH* (Case C-120/04), *Shaker di L. Laudato & C. Sas v OHIM* (Case C-334/05 P) and *Bimbo SA v OHIM* (Case C-519/12 P):

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

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

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

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

- e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks and vice versa;
- h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; and
- k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

18. It is settled case law that I must make my comparison of the goods and services on the basis of all relevant factors. These include the nature of the goods and services, their purpose, their users and method of use, the trade channels through which they reach the market, and whether they are in competition with each other or are complementary: see *Canon*, paragraph 23, and *British Sugar Plc v James Robertson & Sons Limited (TREAT Trade Mark)* [1996] RPC 281 at [296]. As the General Court (“GC”) said in *Boston Scientific Ltd v OHIM*, Case T-325/06, goods and services are complementary when

“82. ... there is a close connection between them in the sense that one is indispensable or important for the use of the other in such a way that

customers may think that the responsibility for those goods lies with the same undertaking.”

19. The goods and services to be compared are shown in the table below:

Contested goods and services	Earlier goods
<p>The 951 mark:</p> <p><u>Class 10</u> <i>Clothing especially made for medical use, but not including medical gloves or gowns; Articles of clothing for surgical purposes, but not including surgical gloves or gowns; Protective clothing for medical purposes, but not including gloves or gowns for medical, surgical or dental purposes; Protective clothing for surgical purposes, but not including surgical gloves or gowns.</i></p> <p><u>Class 35</u> <i>Retail services connected with the sale of surgical and medical garments, but not including surgical and medical gloves or gowns; Retail services (by any means), in relation to surgical and medical garments, but not including surgical and medical gloves and gowns; Wholesale services (by any means), in relation to surgical and medical garments, but not including surgical and medical gloves or gowns; The bringing together, for the benefit of others, of a variety of goods (excluding the transport thereof), namely surgical and medical garments, but not including surgical and medical gloves or gowns,</i></p>	<p><u>Class 10</u> <i>Gloves for medical examinations; Gloves for use during operations; Gloves for use in hospitals; Gloves for medical purposes; Gloves for veterinary use; Gloves for dental use.</i></p>

Contested goods and services	Earlier goods
<p><i>enabling customers to conveniently view and purchase the goods.</i></p> <p>The 859 mark:</p> <p><u>Class 10</u></p> <p><i>Compression garments; Support garments for medical use; Therapeutic garments for people; Clothing especially made for medical use; Elastic stockings for medical purposes; Elasticised stockings for medical purposes; Articles of clothing for support purposes; Articles of clothing for surgical purposes; Protective clothing for medical purposes; Protective clothing for surgical purposes; Compression stockings; Medical compression stockings; Elastic stockings for surgical purposes; Stockings for therapeutic purposes; Surgical stockings (for medical use); Medical Sporting articles (supports) for protective purposes; Medical Sports supports; Support articles for medical purposes; Support articles for surgical purposes; Supports for medical use; Supports for surgical use; Surgical supports; Therapeutic support devices; Supports for athletic purposes (other than sports articles); Therapeutic hosiery.</i></p> <p><u>Class 35</u></p> <p><i>Retail services connected with the sale of surgical and medical garments,</i></p>	

Contested goods and services	Earlier goods
<p><i>compression garments, therapeutic compression garments, stockings, elastic supports, including elastic supports for stabilising injured areas of the body; Retail services (by any means), in relation to surgical and medical garments, compression garments, therapeutic compression garments, stockings, elastic supports, including elastic supports for stabilising injured areas of the body, compression underwear; Wholesale services (by any means), in relation to surgical and medical garments, compression garments, therapeutic compression garments, stockings, elastic supports, including elastic supports for stabilising injured areas of the body, compression underwear; The bringing together, for the benefit of others, a variety of goods (excluding the transport thereof), namely, surgical and medical garments, compression garments, therapeutic compression garments, stockings, elastic supports, including elastic supports for stabilising injured areas of the body, compression underwear.</i></p>	

20. It is clear from the opponent's written submissions that it considers that its best case rests on a comparison of the contested terms with *Gloves for medical purposes*. It argues that "medical purposes" has a fairly broad meaning and so I shall begin by construing this term.

21. In *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, Lord Kitchin said:

“365. ... The correct approach, as a matter of principle, in considering a specification of services which is defined by terms which are not clear or precise, is to confine the terms used to the substance or core of their possible meanings: see, for example, *Reed Executive plc v Reed Business Information Ltd* [2004] EWCA Civ 195; [2004] RPC 40 at para 43. So too, if a specification of goods is defined by terms which are ambiguous, then it should be confined to those goods which are clearly covered. These principles are consistent with first, the requirement that the specification of goods and services must be clear and precise so that others know what they can and cannot do; and secondly, general fairness because any ambiguity is the responsibility of the owner of the mark. If despite this, the words used are still unclear so that they cannot be interpreted, then it is permissible to disregard them. But, in my opinion, that will rarely be the case.”

22. I also remind myself of what Floyd J (as he then was) stated in an earlier case, *YouView TV Ltd v Total Ltd* [2012]:

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

23. It is my view that the average consumer would understand “medical purposes” to refer to the diagnosis, treatment, relief or prevention of human health conditions. I am not convinced that they would draw a clear distinction between “medical” and “surgical purposes”. The applicant has submitted that the opponent’s goods have a very specific purpose (i.e. covering hands when a medical examination is taking place). This is consistent with what Mr Rohrbach says about goods sold under the 389 mark: “*Our **NITRILE SKIN²** glove is a disposable examination glove made of an elastic material, designed for, and used not only but also in, medical and dental practice, as well as physiotherapy, chiropractic treatment and numerous other healthcare settings such as doctors’ surgeries and pharmacies*”.⁴ However, I am, at least initially, using the 342 mark as the basis for the comparison, and I must carry this out on the basis of the terms used in the specification, rather than any particular use that has been shown in the evidence. In Exhibit CR5, the opponent has filed evidence that shows examples of gloves worn to alleviate symptoms. I find that *Gloves for medical purposes* would include the gloves that are worn by clinicians when examining or treating patients and gloves that are worn by patients to relieve symptoms or aid recovery, such as compression gloves worn by individuals with arthritis.

The 859 mark

24. I am dealing with this mark first, as the specification has not been amended to include any limitations.

25. In *SEPARODE Trade Mark*, BL O-399-10, Mr Geoffrey Hobbs QC, sitting as the Appointed Person, stated:

“5. The determination must be made with reference to each of the different species of goods listed in the opposed application for registration; if and to the extent that the list includes goods which are sufficiently comparable to be assessable for registration in essentially the same way for essentially the same reasons, the decision taker may address them collectively in his or her decision.”

⁴ Witness statement, paragraph 3.

Class 10

26. The first group I shall consider is *Clothing especially made for medical use; Articles of clothing for surgical purposes; Protective clothing for medical purposes; Protective clothing for surgical purposes*. These are broader terms that could include *Gloves for medical purposes*. Where goods in the specification of one party are included in a broader term from the other party's specification, those goods (or services) are considered to be identical: see *Gérard Meric v OHIM*, Case T-133/05, paragraph 29. Consequently, I find that these terms are identical to *Gloves for medical purposes*.

27. The next group is *Compression garments; Therapeutic garments for people*. Compression garments are worn to relieve symptoms such as pain and swelling. The opponent's Exhibit CR5 contains a print-out from the website of the retailer Boots showing Arthritis Gloves for sale. The information provided on the website states that the glove "*provides warmth & mild compression*".⁵ I accept that the print-out is undated, but I am prepared to accept that *Compression garments* and *Therapeutic garments for people* could include gloves and so I find that the terms are identical to *Gloves for medical purposes*.

28. I now turn to *Support garments for medical use*. I understand that a support garment is an article of clothing that is worn to support part of the body, including while it is healing after surgery. Examples would include hernia belts and post-surgical bras. The support may be provided through gentle compression. I consider that, as with *Compression garments*, the terms *Support garments for medical use* and *Gloves for medical purposes* are identical for the same reasons. If, however, I am wrong in this, I find that there is a high degree of similarity, as the physical nature, method of use, users, trade channels and purpose are the same, or significantly overlap.

29. In construing the term *Articles of clothing for support purposes*, I bear in mind that it is Class 10 of the Nice Classification that is used in the specification. The heading for this class is *Surgical, medical, dental and veterinary apparatus and instruments; artificial limbs, eyes and teeth; orthopaedic articles; suture materials; therapeutic and assistive devices adapted for persons with disabilities; massage apparatus; apparatus, devices and articles for nursing infants; sexual activity apparatus, devices and articles*.

⁵ Page 4.

In *Pathway IP Sarl (formerly Regus No. 2 Sarl) v Easygroup Ltd (formerly Easygroup IP Licensing Limited)* [2018] EWHC 3608 (Ch), Carr J considered whether it was appropriate to take the class(es) in which the trade mark was registered into account in revocation or invalidation proceedings when deciding whether a description covered the goods or services shown in the evidence. After considering the judgments of the High Court in the *Omega 1* and *Omega 2* cases,⁶ he stated that in his (provisional) view, the class number should be taken into account where the meaning of the disputed term is not otherwise sufficiently clear and precise. In particular, the judge stated that where:

“94. ... the words chosen may be vague or could refer to goods or services in numerous classes, the class may be used as an aid to interpret what the words mean with the overall objective of legal certainty of the specification of goods and services.”

30. The same consideration applies in opposition proceedings. I therefore understand that *Articles of clothing for support purposes* to be synonymous with *Support garments for medical use* and so identical to the opponent's *Gloves for medical purposes*, or highly similar, if I am wrong about identity.

31. I also find the following terms to be identical (or, as above, highly similar) to *Gloves for medical purposes*: *Support articles for medical purposes*; *Support articles for surgical purposes*; *Supports for medical use*; *Supports for surgical use*; *Surgical supports*; *Therapeutic support devices*. This is because all these terms would include garments.

32. The opponent also submits that *Medical Sporting articles (supports) for protective purposes*; *Medical Sports supports* are identical to *Gloves for medical purposes*. The applicant submits that *Medical Sports supports* are “clearly not identical”.⁷ It does not explain how it construes the term *Medical Sports supports*. In my view, the term would include garments that are worn by people playing sport to protect joints or other parts of the body for medical reasons. This might be because the individual is recovering from an injury or because they have some other physical condition for which wearing

⁶ [2010] EWHC 1211 (Ch) and [2012] EWHC 3440 (Ch).

⁷ Second written submissions, paragraph 10.

a support would be beneficial. I see no reason why such garments would not include gloves, and so I find that they are identical per *Meric*. However, if I am wrong in this, I find that they are similar to a high degree, as the physical nature, method of use, users, trade channels and purpose are the same, or significantly overlap.

33. I consider that the contested *Supports for athletic purposes (other than sports articles)* would also include the protective garments I discussed in the previous paragraph. For this reason, I make the same findings, i.e. that they are identical to the opponent's *Gloves for medical purposes*, or, if I am wrong in this finding, that they are highly similar.

34. The next group consists of *Elastic stockings for medical purposes; Elasticised stockings for medical purposes; Compression stockings; Medical compression stockings; Elastic stockings for surgical purposes; Stockings for therapeutic purposes; Surgical stockings (for medical use); Therapeutic hosiery*. As with the opponent's *Gloves for medical purposes*, the applicant's goods will all be used by being worn on the body, albeit on different parts of the body. There is some similarity in purpose with the applicant's goods and some gloves covered by the opponent's term, as they will be worn to aid recovery or alleviate symptoms such as swelling. The users would therefore overlap and I consider that it is likely that the goods would be obtained through the same trade channels and in fairly close proximity to each other. In my view, the physical nature of the goods may differ, with the materials used for hosiery likely to be thinner and lighter than those used for therapeutic gloves, to enable the wearer to put them on relatively easily. The goods are not in competition: gloves are not substitutable for hosiery, or vice versa. Neither do I find that there is complementarity. Taking all these factors into account, I consider that there is a medium degree of similarity between the goods.

Class 35

35. The Class 35 services are all retail and wholesale services. In *Oakley, Inc v OHIM*, Case T-116/06, the GC held at [46]-[57] that although retail services are different in nature, purpose and method of use from goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree. In *Tony Van Gulck v Wasabi Frog Ltd*,

BL O/391/14, Mr Geoffrey Hobbs QC, sitting as the Appointed Person, reviewed the law concerning the comparison of retail services and goods. He said:

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

36. However, on the basis of the European courts’ judgments in *Sanco SA v OHIM*, Case C-411/13 P and *Assembled Investments (Proprietary) Ltd v OHIM*, Case T-105/05, upheld on appeal in *Waterford Wedgwood Plc v Assembled Investments (Proprietary) Ltd*, Case C-398/07 P, Mr Hobbs concluded that:

(i) Goods and services are not similar on the basis that they are complementary if the complementarity between them is insufficiently pronounced that, from the consumer’s point of view, they are unlikely to be offered by one and the same undertaking;

(ii) In making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it is necessary to envisage the retail services normally associated with the opponent’s goods and then to compare the opponent’s goods with the retail services covered by the applicant’s trade mark;

(iii) It is not permissible to treat a mark registered for “retail services for goods X” as though the mark were registered for goods X; and

(iv) The GC's findings in *Oakley* did not mean that goods could only be regarded as similar to retail services where the retail services related to exactly the same goods as those for which the other party's trade mark was registered (or proposed to be registered).

37. It is clear from this case law that where the applicant's retail services are to be compared to the opponent's goods, the retail services will be different in nature, purpose and method of use from those goods. Despite those differences, where there is some complementarity and shared trade channels, retail services *may* be similar to goods. It is equally clear that complementarity alone will not suffice for a finding of similarity, where from the consumer's point of view, the retail services of the applicant would not normally be offered by the same undertaking as the goods. Furthermore, I note that I must not treat the retail services as goods, although consideration of the retail services normally associated with the opponent's goods should be made.

38. I shall first consider the retail services connected with the sale of goods that I found to be identical to the opponent's goods. These are *Retail services connected with the sale of surgical and medical garments, compression garments, therapeutic compression garments, ... elastic supports, including elastic supports for stabilising injured areas of the body; Retail services (by any means), in relation to surgical and medical garments, compression garments, therapeutic compression garments, ... elastic supports, including elastic supports for stabilising injured areas of the body, ...; The bringing together, for the benefit of others, a variety of goods (excluding the transport thereof), namely, surgical and medical garments, compression garments, therapeutic compression garments, ... elastic supports, including elastic supports for stabilising injured areas of the body,* In my view, there is a degree of complementarity between the services and the opponent's goods. The goods are indispensable for the delivery of the service and the average consumer may think that the same undertaking is responsible for both the retail services and the goods. Exhibit CR5 contains a photograph showing that the retailer Boots sells goods under its own mark, as well as those of other undertakings. I consider that there will be some shared trade channels and the users will be the same. Both the goods and the services will be used by members of the general public who wish to treat their own physical conditions, and by clinicians and therapeutic businesses. Consequently, I find that the

services are similar to the opponent's *Gloves for medical purposes* to a medium degree.

39. The opponent's specification also includes *Retail services connected with the sale of ... stockings ...; Retail services (by any means), in relation to ... stockings, ... compression underwear* and *The bringing together, for the benefit of others, a variety of goods (excluding the transport thereof), namely ... stockings, ... compression underwear*. First, I note that the term *Stockings* would include compression stockings and other stockings for therapeutic use. I do not consider that there is any complementarity between these services and the opponent's *Gloves for medical purposes*. There are likely to be some shared trade channels, as a retailer of therapeutic or compression *stockings* and *compression underwear* is likely also to sell *Gloves for medical purposes*. There is also likely to be some overlap in users. Consequently, I find that there is a low degree of similarity between these services and *Gloves for medical purposes*.

40. Finally, I need to consider the wholesale services also included in the contested specification. The user of wholesale services is a retailer or other business, rather than the end-consumer of the goods distributed through the wholesale services. However, some businesses, such as clinics or care homes, may choose the goods on behalf of the end-consumer and purchase these through a wholesaler. As with retail services, the purpose, nature and method of use of the services differ. There may be some overlap in the way the goods and services reach the market, with the wholesale services acting as part of the distribution chain. Turning now to the question of complementarity, I consider that the supply of *Wholesale services (by any means), in relation to surgical and medical garments, compression garments, therapeutic compression garments, ... elastic supports, including elastic supports for stabilising injured areas of the body ...* is dependent on the opponent's *Gloves for medical purposes*, in so far as they are included in the broader goods that are the subject of the wholesale services. The consumer may think that the same undertaking provides both the goods and the services, with the wholesaler supplying its own products as well as those of others. I find that there is a medium degree of similarity between these wholesale services and *Gloves for medical purposes*.

41. I do not consider that there is any complementarity between *Wholesale services (by any means), in relation to ... stockings, ... compression underwear* and *Gloves for medical purposes*. There are likely to be some shared trade channels, as a wholesaler of these therapeutic or compression *stockings* and *compression underwear* is likely also to sell *Gloves for medical purposes* and some overlap in users. I find that the opponent's goods and the applicant's services are similar to a low degree.

The 951 mark

Class 10

42. I shall deal with all the Class 10 goods as a single group. They are: *Clothing especially made for medical use, but not including medical gloves or gowns; Articles of clothing for surgical purposes, but not including surgical gloves or gowns; Protective clothing for medical purposes but not including gloves or gowns for medical, surgical or dental purposes; Protective clothing for surgical purposes, but not including surgical gloves or gowns*. Some specific items of clothing have been excluded, but I understand that the specification would include sanitary clothing such as medical scrubs (i.e. tops and trousers) and support and compression garments worn by patients. I shall compare them to the opponent's *Gloves for medical purposes*. The users of the goods are the same, as is their method of use, with both parties' goods being worn on the body, and there is an overlap in purpose and nature. They are also likely to be distributed through some of the same trade channels. The goods are not in competition and I do not consider that they are complementary. Taking all these factors into account, I find that the contested goods are similar to the opponent's goods to a high degree.

Class 35

43. These services are the retail and wholesale services connected with the sale of the goods in Class 10 of the specification. I consider that the analysis carried out in paragraphs 39 and 41 applies to these services. This is because gloves are excluded from the retail and wholesale services. Consequently, I find that the similarity between the opponent's goods and these services is low.

Average consumer and the purchasing process

44. The average consumer is deemed to be reasonably well informed and reasonably circumspect: see *Hearst Holdings Inc & Anor v A.V.E.L.A. Inc & Ors*, [2014] EWHC 439 (Ch), paragraph 60. For the purposes of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods and services in question: see *Lloyd Schuhfabrik*, paragraph 26.

45. The average consumer for the goods and services relevant for the 859 mark is a member of the general public who wishes to alleviate their physical symptoms or aid their recovery after surgery, or a professional clinician or business who is acquiring goods for their patients to use. The average consumer for the goods and services relevant for the 951 mark is a professional clinician or business acquiring goods for their own use while delivering their services.

46. The goods are unlikely to be particularly expensive, but the average consumer will consider the materials used and their suitability for the particular condition they wish to alleviate. With respect to the services, they will take account of the range of goods offered, location of the services and standards of customer service. I consider that the average consumer will pay a medium degree of attention during the purchasing process, although I accept that professional users may pay a slightly higher degree of attention when choosing the goods, given their potential impact upon their work.



47. The goods are likely to be selected from the shelves of a retail or wholesale outlet or from websites or printed catalogues. The services will be selected following perusal of websites, promotional material and physical signage on premises. Consequently, the purchasing process is likely to be dominated by visual considerations. However, there may also be a role for the aural element of the mark, as advice may be sought from sales staff or (in the case of the 859 mark) from professionals such as surgeons and physiotherapists.

Comparison of marks

48. It is clear from the judgment of the CJEU in *SABEL* that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various

details: see, in particular, [23]. In the same case, the court explained that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. Artificial dissection of the marks would therefore be wrong, although it is necessary for me to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and therefore contribute to the overall impression created by the marks: see *Bimbo*, at [34].

49. The respective marks are shown below:

Contested marks	Earlier mark (the 342 mark)
<p>The 951 mark:</p>  <p>The 859 mark:</p> 	<p>skin²</p>

50. The 342 mark consists of the word “skin” followed by the numeral “2” in superscript. Because the English speaker reads from left to right, the beginnings of marks tend to have more impact than the ends. The word “skin” is also larger. Consequently, I consider that this word makes a greater contribution to the overall impression of the 342 mark, with a smaller role played by the numeral.

51. The contested 951 mark contains the word “SKINS” in title case and a standard typeface. At the left of this word is a black circle in which can be seen a curved white line that is likely to be interpreted as the letter “S”. In my view, it is the word “SKINS” that will make the greater contribution to the overall impression of the mark and that it has an independent distinctive role. This is how the average consumer is likely to refer to the goods sold under it. They will not, to my mind, attempt to describe the “S” device at the start of the mark. However, this device is not negligible.

52. The contested 859 mark also contains the word “SKINS” in stylised black upper-case letters. For example, the bottom half of the stem of the second letter (“K”) is absent. To the left of the word is the letter S in an identical typeface, surrounded by a circle that is broken towards the top left. In my view, the word “SKINS” will make the greatest contribution to the overall impression of the mark for the reasons outlined above, with the stylisation and the “S” device playing smaller roles. As with the 951 mark, I find that “SKINS” also has an independent distinctive role.

Comparison between the 951 mark and the earlier 342 mark

53. Both marks contain the letters “S”, “K”, “I” and “N”. The visual differences lie in the superscript “2” in the 342 mark, and the second “S” and the figurative device in the 951 mark. Taking into account the overall impression of the 951 mark, I find that the marks are visually similar to a medium to high degree.

54. The 342 mark will be pronounced as “SKIN TWO” or “SKIN SQUARED”. I do not consider that the average consumer is likely to pronounce the “S” in the device at the beginning of the 951 mark. Instead, it will articulate the mark as “SKINS”. The starts of the marks are therefore aurally identical. I consider that the marks as wholes are aurally similar to a medium degree.

55. The opponent submits that, depending on how its mark is perceived by the average consumer, it will suggest two skins, squared skins (i.e. a multiplicity of skins) or a new version of skin. The 951 mark refers to more than one skin. Nevertheless, both marks will bring to mind the outer layer of tissue that covers the body of a human or other vertebrate animal. I consider that the marks are conceptually similar to a high degree.

Comparison between the 859 mark and the earlier 342 mark

56. The 859 mark contains the same letters as the 951 mark, along with a device. As I have already noted, the stylisation used in this mark does make a contribution towards the overall impression of that mark. In *Herno SpA v Miss Sparrow Ltd (mr heron)*, BL O/954/22, Mr Iain Purvis KC, sitting as the Appointed Person, considered the law covering the comparison of word marks with figurative marks (including those marks where the figurative element is the stylisation of the word). He explained at [39] that the stylisation would be relevant to the comparison where it served to emphasise

or obscure some elements of the words or where it conveyed a distinct concept which distinguished the mark from the words used in the word mark. In the present case, I do not consider that the stylisation emphasises or obscures some elements of the word “SKINS” or conveys a particular conceptual message. I find that the marks are visually similar to a medium to high degree.

57. The stylisation would have no impact on the way that the average consumer articulates the 859 mark and so I find that the marks are aurally similar to a medium degree for the same reasons set out in paragraph 55 above.

58. Given my findings on the impact of the stylisation, I consider that the marks are conceptually similar to a high degree for the same reasons set out in paragraph 56 above.

Distinctive character of the earlier 342 mark

59. Distinctive character is a measure of how strongly a mark distinguishes the goods or services of one undertaking from those of others. The factors that I must take into account in assessing the level of distinctive character were set out by the CJEU in *Lloyd Schuhfabrik Meyer*:

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

60. Registered trade marks possess varying degrees of inherent distinctive character from the very low, because they are suggestive of, or allude to, a characteristic of the goods or services, to those with high inherent distinctive character, such as invented

words which have no allusive qualities. The distinctiveness of the mark can be enhanced by the use that has been made of it.

61. It is my view that in the context of disposable gloves worn by clinicians when diagnosing conditions or treating patients, the word “SKIN” alludes to goods that would feel to the wearer as if they are a second skin, i.e. that they are light and do not interfere with the wearer’s ability to carry out the tasks they need to perform. However, this allusive message is noticeably weaker for the other types of gloves worn to alleviate symptoms and it is these types of glove that I have used for my comparison of the goods and services. I find that the word “SKIN” has a medium degree of inherent distinctive character for these goods. The superscript numeral makes a small contribution to the distinctive character of the mark, but I do not consider that this would raise the medium degree of inherent distinctive character to a high level.

62. The opponent filed evidence of use of the 389 mark, which contains the 342 mark. Mr Rohrbach has given figures for turnover and advertising spend, but these relate to the EU as a whole. While this would be the relevant territory for the proof of use assessment, it is the UK that is the relevant territory for the purposes of assessing whether the distinctive character of the mark has been enhanced. The dated evidence pertinent to the UK consists of three invoices to the same customer, which appears to be a distributor. These invoices are dated 30 November 2017, 7 May 2018 and 16 April 2019. Each shipment consisted of 2,760 cartons, and each of these cartons contained 2000 pairs of gloves. The values of the invoices are £103,201.92, £123,338.88 and £116,085.60 respectively.⁸ While the evidence contains screenshots from the websites of the opponent and retailers, none of these is dated and so I am unable to see how the mark was presented to the consumer before the relevant date. The evidence therefore falls short of what would be required to support a finding of enhanced distinctiveness.

Conclusions on the likelihood of confusion

63. Making an assessment of the likelihood of confusion is a matter of considering the relevant factors from the viewpoint of the average consumer of the goods and services at issue and determining whether they are likely to be confused. When doing this, I am

⁸ Exhibit CR3, pages 11-14, 17-18.

required to bear in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely on the imperfect picture of them that they have in their mind. This means that the global assessment emulates what happens in the mind of the average consumer on encountering the later mark with an imperfect recollection of the earlier mark. The courts have not said what weight should be attached to each of the factors or provided a formula that can be applied to any set of circumstances. However, I am required to take account of the interdependency principle, i.e. that a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services or vice versa.

64. There are two types of confusion: direct and indirect. In *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10, Mr Iain Purvis QC, sitting as the Appointed Person, explained that:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognised that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but analysed in formal terms, is something along the following lines: ‘The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark

at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ('26 RED TESCO' would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI', etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ('FAT FACE' to 'BRAT FACE' for example)."

65. In *Liverpool Gin Distillery Limited & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ commented that:

"12. This is a helpful explanation of the concept of indirect confusion, which has frequently been cited subsequently, but as Mr Purvis made clear it was not intended to be an exhaustive definition.

13. As James Mellor QC sitting as the Appointed Person pointed out in *Cheeky Italian Ltd v Sutaria* (O/291/16) at [16] 'a finding of likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion'. Mr Mellor went on to say that, if there is no likelihood of direct confusion, 'one needs a reasonably special set of circumstances for a finding of a likelihood of indirect confusion'. I would prefer to say that there must be a proper basis for concluding that there is a likelihood of indirect confusion given that there is no likelihood of direct confusion."

66. Earlier in my decision, I found that the goods and services for which registration were sought were similar to *Gloves for medical purposes* to the following degrees:

The 951 mark	
Similar to a high degree	<p><u>Class 10</u></p> <p><i>Clothing especially made for medical use, but not including medical gloves or gowns; Articles of clothing for surgical purposes, but not including surgical gloves or gowns; Protective clothing for medical purposes, but not including gloves or gowns for medical, surgical or dental purposes; Protective clothing for surgical purposes, but not including surgical gloves or gowns.</i></p>
Similar to a low degree	<p><u>Class 35</u></p> <p><i>Retail services connected with the sale of surgical and medical garments, but not including surgical and medical gloves or gowns; Retail services (by any means), in relation to surgical and medical garments, but not including surgical and medical gloves and gowns; Wholesale services (by any means) in relation to surgical and medical garments, but not including surgical and medical gloves or gowns; The bringing together, for the benefit of others, of a variety of goods (excluding the transport thereof), namely surgical and medical garments, but not including surgical and medical gloves or gowns, enabling customers to conveniently view and purchase the goods.</i></p>
The 859 mark	
Identical	<p><u>Class 10</u></p> <p><i>Compression garments; Support garments for medical use; Therapeutic garments for people; Clothing especially made for medical use; Articles of clothing for support purposes; Articles of clothing for surgical purposes; Protective</i></p>

	<p><i>clothing for medical purposes; Protective clothing for surgical purposes; Medical Sporting articles (supports) for protective purposes; Medical Sports supports; Support articles for medical purposes; Support articles for surgical purposes; Supports for medical use; Supports for surgical use; Surgical supports; Therapeutic support devices; Supports for athletic purposes (other than sports articles).</i></p>
<p>Similar to a medium degree</p>	<p><u>Class 10</u></p> <p><i>Elastic stockings for medical purposes; Elasticised stockings for medical purposes; Compression stockings; Medical compression stockings; Elastic stockings for surgical purposes; Stockings for therapeutic purposes; Surgical stockings (for medical use); Therapeutic hosiery.</i></p> <p><u>Class 35</u></p> <p><i>Retail services connected with the sale of surgical and medical garments, compression garments, therapeutic compression garments, ... elastic supports, including elastic supports for stabilising injured areas of the body; Retail services (by any means), in relation to surgical and medical garments, compression garments, therapeutic compression garments, ... elastic supports, including elastic supports for stabilising injured areas of the body, ...; Wholesale services (by any means), in relation to surgical and medical garments, compression garments, therapeutic compression garments, ... elastic supports, including elastic supports for stabilising</i></p>

	<i>injured areas of the body ...; The bringing together, for the benefit of others, a variety of goods (excluding the transport thereof), namely, surgical and medical garments, compression garments, therapeutic compression garments, ... elastic supports, including elastic supports for stabilising injured areas of the body.</i>
Similar to a low degree	<u>Class 35</u> <i>Retail services connected with the sale of ... stockings ...; Retail services (by any means), in relation to ... stockings, ... compression underwear; Wholesale services (by any means), in relation to ... stockings, ... compression underwear; The bringing together, for the benefit of others, a variety of goods (excluding the transport thereof), namely ... stockings, ... compression underwear.</i>

67. I also made the following findings:

- (i) The average consumer for the goods and services is either a member of the public or a professional clinician or business user acquiring goods to use themselves or for their patients to use;
- (ii) The average consumer would pay an average degree of attention if a member of the public or a slightly higher degree of attention if a professional or business user purchasing the goods, in what would be a largely visual purchasing process;
- (iii) Both contested marks are visually similar to the earlier mark to a medium to high degree, aurally similar to a medium degree and conceptually highly similar;
- (iv) The earlier 342 mark has a medium degree of inherent distinctive character that has not been enhanced through use; and
- (v) The word “SKINS” plays an independent distinctive role in both contested marks.

68. In *Whyte and Mackay Ltd v Origin Wine UK Ltd & Anor* [2015] EWHC 1271 (Ch), Arnold J (as he then was) considered the impact of the CJEU's judgment in *Bimbo* on the court's earlier judgment in *Medion*. He said:

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

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

20. The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meaning of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).

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

69. Taking all the factors into account, and bearing in mind the imperfect recollection of the average consumer, it is my view that there is a likelihood of the marks being mistaken one for the other where the goods and services are identical or similar to any degree. The word "SKINS" is highly similar to the earlier mark, and the average consumer may easily not recall whether there is a device, or whether the word "SKIN" is in the singular and followed by a numeral, even when they are paying a higher degree of attention. I find a likelihood of direct confusion.

70. For completeness, If the average consumer recognises the differences between the marks, I do not consider it likely that they will assume that the marks belong to the same or economically unconnected undertakings. In my view, the common element ("SKIN") is not so strikingly distinctive that the average consumer would assume that no-one else but the opponent would use it in trade, and I do not see that the differences between the marks could be considered as logical brand extensions.

71. As the partial oppositions based on the 342 mark have been wholly successful, I do not need to consider the position in respect of the 389 mark.

OUTCOME

72. The partial oppositions have been wholly successful. Application No. 3702951 is refused registration for the following goods and services:

Class 10

Clothing especially made for medical use, but not including medical gloves or gowns; Articles of clothing for surgical purposes, but not including surgical gloves or gowns; Protective clothing for medical purposes, but not including gloves or gowns for medical, surgical or dental purposes; Protective clothing for surgical purposes, but not including surgical gloves or gowns.

Class 35

Retail services connected with the sale of surgical and medical garments, but not including surgical and medical gloves or gowns; Retail services (by any means), in relation to surgical and medical garments, but not including surgical and medical gloves and gowns; Wholesale services (by any means), in relation to surgical and medical garments, but not including surgical and medical gloves or

gowns; The bringing together, for the benefit of others, of a variety of goods (excluding the transport thereof), namely surgical and medical garments, but not including surgical and medical gloves or gowns, enabling customers to conveniently view and purchase the goods.

73. Application No. 3702859 is refused registration for the following goods and services:

Class 10

Compression garments; Support garments for medical use; Therapeutic garments for people; Clothing especially made for medical use; Elastic stockings for medical purposes; Elasticised stockings for medical purposes; Articles of clothing for support purposes; Articles of clothing for surgical purposes; Protective clothing for medical purposes; Protective clothing for surgical purposes; Compression stockings; Medical compression stockings; Elastic stockings for surgical purposes; Stockings for therapeutic purposes; Surgical stockings (for medical use); Medical Sporting articles (supports) for protective purposes; Medical Sports supports; Support articles for medical purposes; Support articles for surgical purposes; Supports for medical use; Supports for surgical use; Surgical supports; Therapeutic support devices; Supports for athletic purposes (other than sports articles); Therapeutic hosiery.

Class 35

Retail services connected with the sale of surgical and medical garments, compression garments, therapeutic compression garments, stockings, elastic supports, including elastic supports for stabilising injured areas of the body; Retail services (by any means), in relation to surgical and medical garments, compression garments, therapeutic compression garments, stockings, elastic supports, including elastic supports for stabilising injured areas of the body, compression underwear; Wholesale services (by any means), in relation to surgical and medical garments, compression garments, therapeutic compression garments, stockings, elastic supports, including elastic support for stabilising injured areas of the body, compression underwear; The bringing together, for the benefit of others, a variety of goods (excluding the transport thereof), namely, surgical and medical garments, compression garments, therapeutic compression

garments, stockings, elastic supports, including elastic supports for stabilising injured areas of the body, compression underwear.

74. The marks may be registered for the remaining goods and services in the specifications, depending on the outcome of outstanding oppositions OP600002432 and OP600002431.

COSTS

75. The opponent has been successful in these proceedings and is entitled to a contribution to its costs in line with the scale set out in Tribunal Practice Notice 2/2016. The award has been calculated as follows and reflects the balance of success:

£250 for preparing statements and considering the other side's statements;

£600 for preparing evidence;

£300 for preparing written submissions in lieu;

£200 for official fees for the two oppositions.

£1350 in total

76. I order Symphony Holdings Limited to pay Semperit Investments Asia Pte Ltd the sum of £1350. This sum is to be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 6th day of February 2025

Clare Boucher

For the Registrar,

The Comptroller-General

ANNEX

Specification of UKTM(A) No. 3702951

Class 10

Clothing especially made for medical use, but not including medical gloves or gowns; Articles of clothing for surgical purposes, but not including surgical gloves or gowns; Protective clothing for medical purposes, but not including gloves or gowns for medical, surgical or dental purposes; Protective clothing for surgical purposes, but not including surgical gloves or gowns.

Class 18

Athletic bags; Bags for sports; Bags for use in sports for carrying sports clothing; Bags made of imitation leather; Bags made of leather; Beach bags; Cricket bags (other than adapted); Duffle bags; Gym bags; Shoulder bags; Travelling bags; Backpacks; Knapsacks; Luggage; Purses; Credit card cases (wallets); Leather wallets; Pocket wallets; Wallets for attachment to belts; Key cases; Satchels; Umbrellas.

Class 25

Apparel (clothing, footwear, headgear); Athletic clothing; Clothing; Clothing for sports; Clothing for swimming; Golf clothing (other than gloves); Headbands (clothing); Jackets (clothing); Ladies clothing; Men's clothing; Pants (Clothing); Ski clothing (other than for protection against injury); Smart clothing (clothing which incorporates digital components); Sports clothing (other than golf gloves); Tennis clothing; Thermal clothing (not specifically adapted for protection against accident or injury); Waterproof clothing; Women's clothing; Athletic footwear; Footwear; Footwear for sport; Sports footwear; Headwear; Sports headgear (other than helmets); Underwear; Overcoats; Leisure wear; Sports jackets; Jumpers (pullovers); Jumpers (sweaters); Sports jumpers; Sports jerseys; Athletics vests; Vests; Shirts; Sports shirts; T-shirts; Bike pants; Long pants; Pantsuits; Ski pants; Sweat pants; Track pants; Trousers; Athletics shorts; Gym shorts; Shorts; Swimming shorts; Pyjamas; Dressing gowns; Bath robes; Swimwear; Wetsuits for surface watersports; Wetsuits for surfing; Half length tights; Tights; Socks; Sports socks; Body stockings; Stockings; Support stockings, other than for surgical use; Sweat-absorbent stockings; Bandanas (neckerchiefs); Baseball shirts; Tracksuits.

Class 35

Retail services connected with the sale of surgical and medical garments, but not including surgical and medical gloves or gowns; Retail services (by any means), in relation to surgical and medical garments, but not including surgical and medical gloves and gowns; Wholesale services (by any means), in relation to surgical and medical garments, but not including surgical and medical gloves or gowns; The bringing together, for the benefit of others, a variety of goods (excluding the transport thereof), namely, surgical and medical garments, but not including surgical and medical gloves or gowns, enabling customers to conveniently view and purchase the goods.

Specification of UKTM(A) No. 3702859

Class 10

Compression garments; Support garments for medical use; Therapeutic garments for people; Clothing especially made for medical use; Elastic stockings for medical purposes; Elasticised socks for medical purposes; Articles of clothing for support purposes; Articles of clothing for surgical purposes; Protective clothing for medical purposes; Protective clothing for surgical purposes; Compression stockings; Medical compression stockings; Elastic stockings for surgical purposes; Stockings for therapeutic purposes; Surgical stockings (for medical use); Medical Sporting articles (supports) for protective purposes; Medical Sports supports; Support articles for medical purposes; Support articles for surgical purposes; Supports for medical use; Supports for surgical use; Surgical supports; Therapeutic support devices; Supports for athletic purposes (other than sports articles); Therapeutic hosiery.

Class 18

Athletics bags; Bags for sports; Bags for use in sports for carrying sports clothing; Bags made of imitation leather; Bags made of leather; Beach bags; Cricket bags (other than adapted); Duffle bags; Gym bags; Shoulder bags; Travelling bags; Backpacks; Knapsacks; Luggage; Purses; Credit card cases (wallets); Leather wallets; Pocket wallets; Wallets for attachment to belts; Key cases; Satchels; Umbrellas.

Class 25

Apparel (clothing, footwear, headgear); Athletic clothing; Clothing; Clothing for sports; Clothing for swimming; Golf clothing (other than gloves); Headbands (clothing); Jackets (clothing); Ladies clothing; Men's clothing; Pants (clothing); Ski clothing (other than for protection against injury); Smart clothing (clothing which incorporates digital components); Sports clothing (other than golf gloves); Tennis clothing; Thermal clothing (not specifically adapted for protection against accident or injury); Waterproof clothing; Women's clothing; Athletics footwear; Footwear; Footwear for sport; Sports footwear; Headwear; Sports headgear (other than helmets); Underwear; Overcoats; Leisure wear; Sports jackets; Jumpers (pullovers); Jumpers (sweaters); Sports jumpers; Sports jerseys; Athletics vests; Vests; Shirts; Sports shirts; T-shirts; Bike pants; Long pants; Pantsuits; Ski pants; Sweat pants; Track pants; Trousers; Athletics shorts; Gym shorts; Shorts; Swimming shorts; Pyjamas; Dressing gowns; Bath robes; Swimwear; Wetsuits for surface watersports; Wetsuits for surfing; Half length tights; Tights; Socks; Sports socks; Body stockings; Stockings; Support stockings, other than for surgical use; Sweat-absorbent stockings; Bandanas (neckerchiefs); Baseball shirts; Tracksuits.

Class 35

Discount services (retail, wholesale, or sales promotion services); Retail services connected with the sale of surgical and medical garments, compression garments, therapeutic compression garments, stockings, elastic supports, including elastic supports for stabilising injured areas of the body, clothing, footwear, headgear, including clothing for men, women, children and babies, clothing for sports including football, gymnastics, cycling, golf and skiing, clothing for motorists and travellers, underwear including compression underwear, outerwear, overcoats, leisure clothing, jackets, jumpers, pullovers, sports jerseys, vests, shirts, t-shirts, pants, trousers, shorts, pyjamas, dressing gowns, bath robes, swimwear including bathing trunks and bathing suits, thermal clothing, wetsuits, waterproof clothing, wrist bands, shoes and boots including football shoes and boots, gymnastic shoes, other sports shoes and boots, socks, tights, bandannas and headbands, padded clothing, including padded clothing for men, women, children and babies, padded clothing for sport, sports guards including shin pads, knee pads and elbow pads, bags, including bags of leather and imitation leather, athletic bags, beach bags, backpacks, handbags, hydration packs,

knapsacks, luggage, purses, wallets, key cases, satchels, shoulder bags, sports bags, including all-purpose sports bags, ball bags, bottle bags, boot bags, cricket bags, duffle bags, draw-string bags, football bags, gear bags, gym bags, holdalls, kit bags, team bags and travelling bags; Retail services (by any means), in relation to surgical and medical garments, compression garments, therapeutic compression garments, stockings, elastic supports, including elastic supports for stabilising injured areas of the body, clothing, footwear, headgear, including clothing for men, women, children and babies, clothing for sports including football, gymnastics, cycling, golf and skiing, clothing for motorists and travellers, underwear including compression underwear, outerwear, overcoats, leisure clothing, jackets, jumpers, pullovers, sports jerseys, vests, shirts, t-shirts, pants, trousers, shorts, pyjamas, dressing gowns, bath robes, swimwear including bathing trunks and bathing suits, thermal clothing, wetsuits, waterproof clothing, wrist bands, shoes and boots including football shoes and boots, gymnastic shoes, other sports shoes and boots, socks, tights, bandannas and headbands, padded clothing, including padded clothing for men, women, children and babies, padded clothing for sport, sports guards including shin pads, knee pads and elbow pads, bags, including bags of leather and imitation leather, athletic bags, beach bags, backpacks, handbags, hydration packs, knapsacks, luggage, purses, wallets, key cases, satchels, shoulder bags, sports bags, including all-purpose sports bags, ball bags, bottle bags, boot bags, cricket bags, duffle bags, draw-string bags, football bags, gear bags, gym bags, holdalls, kit bags, team bags and travelling bags; Wholesale services (by any means), in relation to surgical and medical garments, compression garments, therapeutic compression garments, stockings, elastic supports, including elastic supports for stabilising injured areas of the body, clothing, footwear, headgear, including clothing for men, women, children and babies, clothing for sports including football, gymnastics, cycling, golf and skiing, clothing for motorists and travellers, underwear including compression underwear, outerwear, overcoats, leisure clothing, jackets, jumpers, pullovers, sports jerseys, vests, shirts, t-shirts, pants, trousers, shorts, pyjamas, dressing gowns, bath robes, swimwear including bathing trunks and bathing suits, thermal clothing, wetsuits, waterproof clothing, wrist bands, shoes and boots including football shoes and boots, gymnastic shoes, other sports shoes and boots, socks, tights, bandannas and headbands, padded clothing, including padded clothing for men, women, children and babies, padded clothing for sport, sports guards including shin pads, knee pads and elbow pads, bags, including bags of

leather and imitation leather, athletic bags, beach bags, backpacks, handbags, hydration packs, knapsacks, luggage, purses, wallets, key cases, satchels, shoulder bags, sports bags, including all-purpose sports bags, ball bags, bottle bags, boot bags, cricket bags, duffle bags, draw-string bags, football bags, gear bags, gym bags, holdalls, kit bags, team bags and travelling bags; Demonstration of goods; Demonstration of goods for advertising purposes; Demonstration of goods for promotional purposes; Presentation of goods on communication media, for retail purposes; The bringing together, for the benefit of others, a variety of goods (excluding the transport thereof), namely, surgical and medical garments, compression garments, therapeutic compression garments, stockings, elastic supports, including elastic supports for stabilising injured areas of the body, clothing, footwear, headgear, including clothing for men, women, children and babies, clothing for sports including football, gymnastics, cycling, golf and skiing, clothing for motorists and travellers, underwear including compression underwear, outerwear, overcoats, leisure clothing, jackets, jumpers, pullovers, sports jerseys, vests, shirts, t-shirts, pants, trousers, shorts, pyjamas, dressing gowns, bath robes, swimwear including bathing trunks and bathing suits, thermal clothing, wetsuits, waterproof clothing, wrist bands, shoes and boots including football shoes and boots, gymnastic shoes, other sports shoes and boots, socks, tights, bandannas and headbands, padded clothing, including padded clothing for men, women, children and babies, padded clothing for sport, sports guards including shin pads, knee pads and elbow pads, bags, including bags of leather and imitation leather, athletic bags, beach bags, backpacks, handbags, hydration packs, knapsacks, luggage, purses, wallets, key cases, satchels, shoulder bags, sports bags, including all-purpose sports bags, ball bags, bottle bags, boot bags, cricket bags, duffle bags, draw-string bags, football bags, gear bags, gym bags, holdalls, kit bags, team bags and travelling bags enabling customers to conveniently view and purchase the goods; Promotion of goods and services through sponsorship of sports events; Sponsorship (promotion and marketing services); Advertising.