

O/0412/24

TRADE MARK ACT 1994

CONSOLIDATED PROCEEDINGS

BEING

TRADE MARK REGISTRATION NO.3607212

IN THE NAME OF DAVID G. ASPREY

AND

CANCELLATION NO.504869 IN THE NAME OF ASPREY HOLDINGS LIMITED

TO INVALIDATE THE TRADE MARK REGISTRATION

AND

TRADE MARK REGISTRATIONS NOS.902587525, 2340986 & 903411295

IN THE NAME OF ASPREY HOLDINGS LIMITED

AND

CANCELLATION NOS. 505176, 505177 & 505178

IN THE NAME OF DAVID G. ASPREY


TO REVOKE THE TRADE MARK REGISTRATIONS BY REASON OF NON-USE

BACKGROUND & PLEADINGS

1. These are four consolidated cancellation proceedings between David G. Asprey (“DGA”) and Asprey Holdings Limited (“AHL”).

2. DGA is the proprietor of trade mark registration no. 3607212 for the mark **DAVE ASPREY** which was filed in the UK on 9 March 2021, with a US priority date of 23 October 2020, and registered in classes 1, 3, 5, 9, 10, 11, 30, 32, 35, 41, 43 and 44 on 24 September 2021. The full list of goods and services is set out in Annex 1 of this decision.


3. On 13 May 2022, AHL applied under section 47(2) of the Trade Mark Act 1994 (“the Act”) to invalidate the above registration in full on the grounds of section 5(2)(b), 5(3) and 5(4)(a) based on the following marks and classes. The goods and services are set out in Annex 2 of this decision.

<p>UK TM No. 902587525</p> <p>ASPREY</p> <p>Classes: 9, 11, 24 & 35</p> <p>Filing date: 21 February 2002</p> <p>Registration date: 23 September 2003</p>	<p>UK TM No. 903411295</p>  <p>Classes: 3, 8, 9, 11, 18, 21, 24, 25, 33 & 35</p> <p>Filing Date: 15 October 2003</p> <p>Registration date: 7 February 2005</p> <p>Current status: expired</p>
<p>UK TM No.910407351</p> <p>ASPREY</p> <p>Class: 4</p> <p>Filing date: 10 November 2011</p> <p>Registration date: 21 March 2012</p>	<p>UK TM No. 918186877</p> <p>ASPREY</p> <p>Classes: 35, 36, 39, 43 & 44</p> <p>Filing date: 23 January 2020</p> <p>Registration date: 16 July 2020</p>
<p>UK TM No.900483362</p> <p>ASPREY</p> <p>Classes: 3, 8, 16, 18, 21, 25, 29, 30 & 33</p> <p>Filing date: 10 March 1997</p>	

4. AHL claims that DGA's registration is similar to its own marks, goods and services and there exists a likelihood confusion including a likelihood of association under section 5(2)(b) of the Act. Moreover AHL claims that the use of the contested registration contravenes section 5(3) of the Act as its own registrations have a reputation in the UK, therefore the contested mark is without due cause, takes unfair advantage of and is detrimental to the distinctive character and repute of the AHL registrations. Finally AHL claims that the contested registration contravenes section 5(4)(a) of the Act. AHL claims use of the sign **ASPREY** in the UK since 1781 for the goods and services set out in Annex 3 of this decision and as a result has developed significant goodwill under this sign such that it would suffer misrepresentation and damage from use of the contested registration.

5. DGA filed a counterstatement in which he denied the grounds of the invalidation and put AHL to proof of use.

6. On 22 July 2022, DGA filed three applications under section 46(1)(a) and 46(1)(b) of the Act to revoke in full AHL's UK registration nos. 902587525, 2340986 and 903411295 on the grounds of non-use. For the sake of clarity, as it is not mentioned in paragraph 3 as being one the earlier registrations relied on, UK TM no.2340986

consists of the mark . It was filed on 15 August 2003 and registered on 30 July 2004 in classes 3, 8, 9, 14, 16, 18, 20, 21, 24, 25, 25, 28, 34 and 35. The full list of goods and services are set out in Annex 4 to this decision.

7. DGA contends the following, namely

- That 902587525 was not put to genuine use in the periods 25 September 2008 - 24 September 2013, and 22 October 2015 - 21 October 2020 and lastly 22 July 2017 – 21 July 2022. Consequently it requests revocation from the earliest of 25 September 2013, 22 October 2020 or 22 July 2022.
- That 2340986 was not put to genuine use in the periods 1 August 2008 - 31 July 2013, and 22 October 2015 - 21 October 2020 and lastly 22 July 2017 – 21 July 2022. Consequently it requests revocation from the earliest of 1 August 2013, 22 October 2020 or 22 July 2022.

- That 903411295 was not put to genuine use in the periods 9 February 2010 – 8 February 2015 and 22 October 2015 - 21 October 2020 and lastly 22 July 2017 – 21 July 2022. Consequently it requests revocation from the earliest of 9 February 2015, 22 October 2020 or 22 July 2022.

8. AHL filed counterstatements for its three registrations denying that the grounds for revocation exist and stating that all three marks were put to genuine use during the period of 22 July 2017 – 21 July 2022.

9. The invalidation and revocation proceedings were consolidated on 21 October 2022.

10. Both parties have been represented in these proceedings. DGA has been represented by HGF Limited and AHL by Dechert LLP. Both parties filed evidence and written submissions. A hearing was not requested. I make this decision based on a reading of all the material before me.

11. 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 that predate the UK's withdrawal from the EU.

EVIDENCE

12. The following evidence was filed during these proceedings:

- A witness statement dated 20 December 2022 filed by Sally Taylor, a Director and General Counsel of AHL, purporting to show use of the earlier marks during the relevant period. Ms Taylor also filed 9 exhibits.
- A witness statement dated 20 February 2023 filed by Richard Wylie, a Partner and Chartered Trade Mark Attorney of HGF Limited (DGA's legal representatives), purporting to show the current state of the UK jewellery market and the use of 'Asprey' as a trading name in the UK. Mr Wylie also filed 13 exhibits.

- A witness statement dated 3 January 2023 filed by Lily Razai, General Counsel for DGA, purporting to show use of the name **Dave Asprey** in trade. Ms Razai also filed 23 exhibits.
- A witness statement dated 9 May 2023 filed by Paul Kavanagh, Solicitor and Partner of Dechert LLP (AHL's legal representatives), purporting to deal with AHL's use in the luxury goods market and rebutting the evidence of Mr Wylie and Ms Razai. Mr Kavanagh also filed 9 exhibits.

13. I do not intend to summarise the evidence in detail here but will refer to it if necessary to do so during this decision.

APPROACH

14. Given that two of the five earlier registrations relied on in the invalidation action are themselves subject to revocation action on the grounds of non-use along with a third registration of AHL, I intend to start with the revocation. Whatever the outcome is from that decision, it will inform the invalidation action as to the earlier registrations and the goods and services that AHL can rely on.

REVOCAION DECISION

15. Section 46 of the Act states:

“46. - (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;

(c) [...]

(d) [...]

(2) For the purpose 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) [...]

(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 existing at an earlier date, that date”.

16. Where the mark is a comparable mark, paragraph 8 of part 1, schedule 2A is relevant. It reads:

“8.— Non-use as defence in infringement proceedings and revocation of registration of a comparable trade mark (EU)

(1) Sections 11A and 46 apply in relation to a comparable trade mark (EU), subject to the modifications 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]² 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. Section 100 is also relevant, which reads:

“If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

18. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

“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 P *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 Bundervsvereinigung 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 Marken 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 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]; *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].”

Relevant period

19. My first task is to establish whether, or to what extent, AHL has shown genuine use of its registration nos. 902587525, 2340986 and 903411295 within the ‘relevant period’. The relevant periods for each of these marks is set out above in paragraph 7.

Evidence of AHL

20. In Ms Taylor’s witness statement, she sets out the history of the Asprey brand since its inception in 1781. She states that “Asprey is recognised as one of the world’s pre-eminent luxury goods brands”. It sells its goods online and via its boutiques located in the UK (1 location), USA (3 locations), Switzerland (1 location) and Japan (3 locations). Ms Taylor gives the following figures as turnover between 2010 -2018:

2010	£13,670,000
2011	£12,505,000
2012	£13,241,000
2013	£18,444,000
2014	£15,644,000
2015	£15,311,000
2016	£22,091,000
2017	£35,902,000
2018	£20,247,000

21. Ms Taylor also gives the following additional information on turnover following a corporate restructuring in 2019:

“For the year ending 2019, there was a corporate restructuring within the Asprey group and accordingly turnover was attributed to Asprey London Limited (a trading subsidiary of the Asprey [sic] which uses the Marks under licence from the Asprey). For the year ending 31 March 2019, Asprey London Limited’s turnover was £22,653,000. For the year ending 31 March 2020, Asprey London Limited’s turnover was £20,053,000. For the year ending 31 March 2021, Asprey London Limited’s turnover was £6,323,000”.

22. Courtesy of the Wayback Machine Internet Archive, Ms Taylor exhibits a number of screenshots of AHL’s website between 2015-2021¹. An example of the website masthead from 2017 is shown below, indicating the categories of goods for sale. Most goods are marked for sale in pounds sterling, where prices are available, but some goods (notably the jewellery goods) are marked with the phrase “Price on request”:



23. The broad categorisation of goods for sale under the earlier registrations evidenced by the website and catalogue² include perfumery, toiletries (hair care and skin care), cutlery, crockery, tea sets, silverware, glassware, hurricane lamps, photograph frames, mirrors, candle holders, candles, jewellery, timepieces, vases, figurines, wallets, bags, purses, luggage, photograph albums, pens, walking sticks, woollen throws, ties, belts, scarves, board games, ashtrays and cigarette boxes.

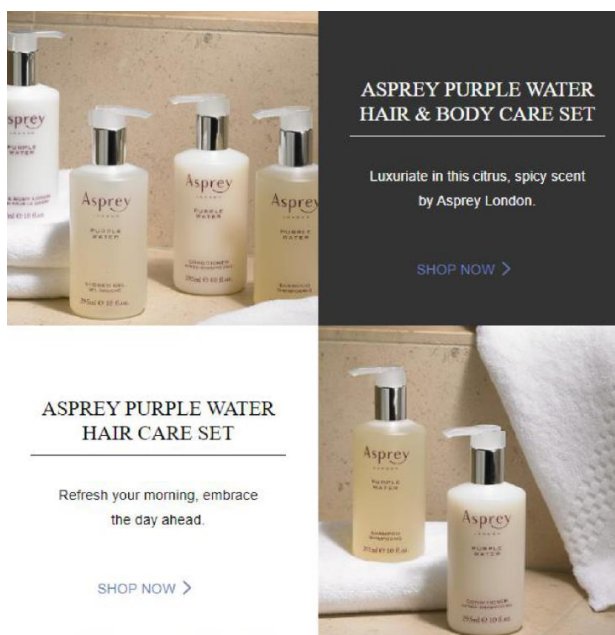
¹ Exhibit ST5

² Exhibit ST5

24. Ms Taylor also exhibits invoices in pounds sterling dated between 2017 and 2022 for the sales of various items included in the list above in the UK and EU member states (up to December 2020).³

25. Ms Taylor states that AHL has a partnership with the Ritz-Carlton chain of hotels who provide AHL branded toiletries for its guests as part of the in-room amenities and also provides the AHL products for sale through its own retail network.

26. Ms Taylor’s evidence describes AHL’s toiletries and candles range as using the sub brand “Purple Water”. The house mark in text is ASPREY but when presented on the containers, it is the Asprey London mark, as seen in the images below:



³ Exhibit ST6



PURPLE WATER

27. The evidence shows the following toiletries for sale, namely soap, hand and body lotion, shower gel, shampoo, hair conditioner and perfume. These items are sold both individually and as part of gift sets.⁴

28. Ms Taylor states that AHL retails its goods through its own website, through use of catalogues and the website www.ritzcarltonshops.com⁵ (for its Purple Water toiletries and candles range). In the 2019 catalogue⁶ in addition to a selection of gifts for sale, AHL also advertises the commissioning and design of bespoke pieces of silverware, crystal, leather, porcelain and silks. The catalogue also contains details of corporate hospitality gift packages consisting of a collection of AHL's Asprey Purple Water toiletries and scented candles.

⁴ Exhibit ST5

⁵ Exhibit ST2

⁶ Exhibit ST8

29. Ms Taylor also exhibits a number of articles⁷ featuring AHL's branded goods in mainstream UK media publications, one dated from 2009, and the remainder dated between 2016-2020. The publications exhibited include Hello! Magazine, Country Life (in which the article about an Asprey/Meissen collaboration for a porcelain figurines collection is titled as an "advertising promotion"), Town & Country, Tatler, Financial Times, the Guardian and Daily Telegraph among others. Although no figures are provided for advertising expenditure, Ms Taylor states that AHL advertises in mainstream print media publications and online equivalents, via its Instagram social media platform, mailing list and sponsorship of sporting and cultural events.

30. Ms Taylor also gives the following UK visitor numbers to AHL's website for the period 2015-2020, namely:

2015 – 95,774

2016 – 148,739


2017 – 139,920

2018 – 168,260

2019 – 144,634

2020 – 74,066

Sufficiency of use

31. I find that AHL has made use of both the ASPREY and  marks during the period 2016-2020. Although there are deficiencies within the evidence such as the lack or advertisement expenditure, turnover figures have been provided which show that sales have taken place to customers in the UK and EU member states. I accept that AHL sells luxury items which are expensive and therefore the volumes sold of such goods may be on the low side. However I am satisfied that the turnover and use of the marks on some goods and services, that I will set out below in the 'fair specification'

⁷ Exhibit ST2

section of this decision, and in marketing/promotional material is sufficient to satisfy the criteria for evidence set out in case law.

Framing a fair specification

32. The next stage is to decide whether AHL's use entitles it to rely on all of the goods and services for which the marks are registered and based on my assessments given above. In framing a fair specification, I rely on guidance given in the following judgments. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*⁸, Mr Geoffrey Hobbs Q.C. as the Appointed Person summed up the law as being:

“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.”

33. Moreover in *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors*⁹, Mr Justice Carr summed up the law relating to partial revocation as follows (at [47]):

“iii) Where the trade mark proprietor has made genuine use of the mark in respect of some goods or services covered by the general wording of the specification, and not others, it is necessary for the court to arrive at a fair specification in the circumstance, which may require amendment; *Thomas Pink Ltd v Victoria's Secret UK Ltd* [2014] EWHC 2631 (Ch) ("Thomas Pink") at [52].

⁸ BL O/345/10

⁹ [2016] EWHC 3103 (Ch)


iv) In cases of partial revocation, pursuant to section 46(5) of the Trade Marks Act 1994, the question is how would the average consumer fairly describe the services in relation to which the trade mark has been used; *Thomas Pink* at [53].

v) It is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do. For example, in *Pan World Brands v Tripp Ltd* (Extreme Trade Mark) [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally; *Thomas Pink* at [53].

vi) A trade mark proprietor should not be allowed to monopolise the use of a trade mark in relation to a general category of goods or services simply because he has used it in relation to a few. Conversely, a proprietor cannot reasonably be expected to use a mark in relation to all possible variations of the particular goods or services covered by the registration. *Maier v Asos Plc* [2015] EWCA Civ 220 ("Asos") at [56] and [60].

vii) In some cases, it may be possible to identify subcategories of goods or services within a general term which are capable of being viewed independently. In such cases, use in relation to only one subcategory will not constitute use in relation to all other subcategories. On the other hand, protection must not be cut down to those precise goods or services in relation to which the mark has been used. This would be to strip the proprietor of protection for all goods or services which the average consumer would consider to belong to the same group or category as those for which the mark has been used and which are not in substance different from them; *Mundipharma AG v OHIM* (Case T-256/04) ECR II-449; EU:T:2007:46."

34. Taking the first earlier registration no. 902587525 being attacked for non-use, i.e. the ASPREY word mark, I found no use for any goods registered in classes 9 or 11¹⁰. The only use evidenced for goods registered under this mark were *woollen throws* in class 24 and retail of same in class 35.

35. Turning now to no.2340986 for the  mark, being the second mark under attack for non-use, there was no evidence to show use on any class 9 goods, but there was evidenced use on the following goods, namely:

Class 3: Perfumes; perfumery; eau de cologne; toilet waters; non-medicated cleaning preparations for personal hygiene; soaps; bath and shower oils, gels.

Class 8: Cutlery (other than surgical); knives, forks and spoons; canteens of cutlery (tableware); boxes adapted for cutlery; hand implements for kitchen use.

Class 14: Articles included in Class 14 of precious metals and their alloys and goods in precious metals or coated therewith; horological and chronometric instruments; watches, clocks; jewellery and imitation jewellery; statues; cufflinks; tie pins and dress studs; parts and fittings for all the aforesaid.

Class 16: Photograph albums; pens; pen stands; letter openers; paper knives; letter trays; desk sets, all being items of stationery.

Class 18: Articles of luggage, suitcases, trunks, valises, travelling bags, travelling sets, garment bags for travel, vanity cases, rucksacks, handbags, shoulder bags, attache cases, brief cases, pouches, holdalls, toiletries and cosmetic bags,—portfolios; tie cases; purses, pocket wallets, card holders; key holders and key fobs; cases for personal organisers; canes, walking sticks.

Class 20: Mirrors; picture frames; jewellery cases (not of precious metal); cigar and cigarette boxes (not of precious metal).

Class 21: Tea, coffee and dinner services; chinaware, glassware, porcelain and earthenware not included in other classes; cork screws; bottle openers; hip flasks; candleholders; hurricane lamps; scent bottles and vases (none being of precious metal)

¹⁰ Whilst there was evidence of goods known as hurricane lamps in exhibit ST5, these are essentially cylindrical glass vessels in which to place a candle and under the Nice classification system are proper to class 21 not class 11.


or coated therewith); figurines; household utensils and containers; kitchen utensils and containers; small domestic containers and utensils.

Class 24: Woollen throws.

Class 25: Ties; silk scarves.

Class 28: Board games and articles for use in playing board games; Christmas crackers; playing cards.

Class 35: The bringing together for the benefit of others of a variety of goods namely Perfumes, perfumery, eau de cologne, toilet waters, non-medicated cleaning preparations for personal hygiene, soaps, bath and shower oils, gels, candles, Cutlery (other than surgical), knives, forks and spoons, canteens of cutlery (tableware), boxes adapted for cutlery, hand implements for kitchen use, Articles of precious metals and their alloys and goods in precious metals or coated therewith, horological and chronometric instruments, watches, clocks, jewellery and imitation jewellery, statues, cufflinks, tie pins and dress studs, parts and fittings for all the aforesaid, photograph albums, pens, pen stands, letter openers, paper knives, letter trays, desk sets, all being items of stationery, articles of luggage, suitcases, trunks, valises, travelling bags, travelling sets, garment bags for travel, vanity cases, rucksacks, handbags, shoulder bags, attache cases, brief cases, pouches, holdalls, toiletries and cosmetic bags, portfolios, tie cases, purses, pocket wallets, card holders, key holders and key fobs, cases for personal organisers, canes, walking sticks, Mirrors, picture frames, jewellery cases (not of precious metal), cigar and cigarette boxes (not of precious metal), Tea, coffee and dinner services, chinaware, glassware, porcelain and earthenware not included in other classes, cork screws, bottle openers, hip flasks, candleholders, hurricane lamps, scent bottles and vases (none being of precious metal or coated therewith), figurines, household utensils and containers, kitchen utensils and containers, small domestic containers and utensils, woollen throws, ties, silk scarves, board games and articles for use in playing board games, Christmas crackers, playing cards, enabling customers to conveniently view and purchase those goods in a department store, a general merchandise catalogue by mail order or by means of telecommunications or from a general merchandise Internet website.

36. Finally with regard to earlier mark no. 903411295 for the  mark, there was no evidence to show use on any goods in classes 9, 11, 13, 27 or 33, but there was evidenced use of the following goods, namely:

Class 3: Perfumes; perfumery; eau de cologne; toilet waters; non-medicated cleaning preparations for personal hygiene; soaps; bath and shower oils, gels.

Class 8: Cutlery (other than surgical); knives, forks and spoons; canteens of cutlery (tableware); boxes adapted for cutlery.

Class 18: Articles of luggage, suitcases, trunks, valises, travelling bags, travelling sets, garment bags for travel, vanity cases, rucksacks, handbags, shoulder bags, attache cases, brief cases, pouches, holdalls, toiletries and cosmetic bags, portfolios; tie cases; purses, pocket wallets, card holders; key holders and key fobs; cases for personal organisers; canes, walking sticks.

Class 21: Tea, coffee and dinner services; chinaware, glassware, porcelain and earthenware not included in other classes; cork screws; bottle openers; hip flasks; candleholders; hurricane lamps; scent bottles and vases (none being of precious metal or coated therewith); figurines; household utensils and containers; kitchen utensils and containers; small domestic containers and utensils; hand implements for kitchen use.

Class 24: Woollen throws.

Class 25: Ties; silk scarves.

Class 28: Board games and articles for use in playing board games; Christmas crackers; playing cards.

Class 34: Cigar and cigarette boxes and cases; cigar holders, cigarette holders; smokers' ashtrays.

Class 35: The bringing together for the benefit of others of a variety of goods namely Perfumes, perfumery, eau de cologne, toilet waters, non-medicated cleaning preparations for personal hygiene, soaps, bath and shower oils, gels, candles Cutlery (other than surgical), knives, forks and spoons, canteens of cutlery (tableware), boxes adapted for cutlery, Articles of luggage, suitcases, trunks, valises, travelling bags, travelling sets, garment bags for travel, vanity cases, rucksacks, handbags, shoulder bags, attache cases, brief cases, pouches, holdalls, toiletries and cosmetic bags,

portfolios, tie cases, purses, pocket wallets, card holders, key holders and key fobs, cases for personal organisers, canes, walking sticks, Tea, coffee and dinner services, chinaware, glassware, porcelain and earthenware not included in other classes, cork screws, bottle openers, hip flasks, candleholders, hurricane lamps, scent bottles and vases (none being of precious metal or coated therewith), figurines, household utensils and containers, kitchen utensils and containers, small domestic containers and utensils, hand implements for kitchen use, Woollen throws Ties, silk scarves, Board games and articles for use in playing board games, Christmas crackers, playing cards, Cigar and cigarette boxes and cases, cigar holders, cigarette holders, smokers' ashtrays, enabling customers to conveniently view and purchase those goods in a department store, a general merchandise catalogue by mail order or by means of telecommunications or from a general merchandise Internet website.

37. The above represents a fair specification based on the goods and services for which use was found for the three AHL registrations which were named in the revocation action. The goods and services for which no evidence of use was provided will be revoked as of 25 September 2013 for no. 902587525, 1 August 2013 for 2340986 and 9 February 2015 for 903411295.

Proof of use for earlier registrations not under attack from non-use

38. Whilst the above section deals with the revocation action, this is also a convenient point in the decision to note that AHL's registration nos. 910407351 and 900483362, both for the word mark ASPREY being relied on in the invalidation action, are also subject to proof of use provisions. For these two earlier registrations, the relevant periods for use would be the five year period prior to the invalidation action being launched namely 14 May 2017 to 13 May 2022 and the five year period prior to the priority date of the DGA registration namely 24 October 2015 to 23 October 2020. From my consideration of the evidence provided, I find that there has been use of these marks during the relevant periods and that following goods represent a fair specification for no.910407351 namely,

Class 4: Candles; fragranced or scented candles; candles for scenting or perfuming the atmosphere.

39. With regard to no. 900483362, there was no evidence provided to show that this mark, ASPREY, had been used on goods in class 29, 30 or 33. As for the remaining classes, I find use had been made on the following goods, namely

Class 3: Perfumes; toilet waters; non-medicated toilet preparations; soaps; hair lotions, preparations for the hair; toilet articles; non-medicated cleaning preparations for personal hygiene purposes; preparations for the bath.

Class 8: Cutlery (other than surgical); boxes for cutlery; knives, forks and spoons; hand implements for kitchen use.

Class 16: Desk sets all being items of stationery; ordinary playing cards; pens; letter openers; pen holders; photograph albums; letter trays; pen stands; paper knives.

Class 18: Articles of luggage; trunks; travelling bags; brief cases; attache cases; portfolio bags for carrying suits; hand bags; purses, pocket wallets; passport cases all made of leather; vanity cases; card holders; sticks; walking sticks; wash bags; tie cases.

Class 21: Tea services, coffee and dinner services; cocktail shakers; chinaware, glassware; porcelain and earthenware not included in other classes; cork screws; bottle openers; hip flasks; crystal; candleholders; small domestic utensils and containers; scent bottles and vases (none of precious metal or coated therewith); figurines.

Class 25: Ties; silk scarves.

INVALIDATION DECISION

Section 5(2)(b)

40. Section 5(2)(b) of the Act reads as follows:

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

[...]

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

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

41. Section 5A is also relevant and reads:

“5A. [...] Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only”.

42. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, EU:C:1997:528, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, EU:C:1998:442, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, EU:C:1999:323, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, EU:C:2000:339, *Matratzen Concord GmbH v OHIM*, Case C-3/03, EU:C:2004:233, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, EU:C:2005:594, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P, EU:C:2007:333, and *Bimbo SA v OHIM*, Case C-591/12P, EU:C:2016:591:

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

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

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

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

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

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

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

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

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

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

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

Comparison of goods and services

43. In *Canon*, the CJEU stated at paragraph 23 of its judgment:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all

the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary.”

44. Guidance on this issue has also come from Jacob J. (as he then was) *British Sugar Plc v James Robertson & Sons Ltd* (the *Treat* case), [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

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

44. I also find the following case law to be useful in these proceedings.

45. In *Gérard Meric v Office for Harmonisation in the Internal Market*¹¹, the General Court stated that:

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

¹¹ Case T- 133/05

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

46. The goods and services must be given their ordinary and natural meanings. In *YouView Ltd v Total Ltd*,¹² Floyd J. stated:

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

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

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

¹² [2012] EWHC 3158 (Ch) at [12].

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

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

49. Whilst on the other hand:

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

50. AHL has made submissions regarding the terms in each of the contested classes. I will refer to these as necessary throughout the comparison. The goods and services to be compared are set out in Annex 1 for DGA and annex 2 as well as paragraphs 34-39 for AHL. To minimise confusion given the number of classes at issue from both parties, I intend to take each of the DGA classes as my starting point.

Class 1

51. DGA has *mold inhibiting chemicals for preventing growth of mold* in this class. AHL contends in its written submissions that these goods are similar to *non-medicated toilet preparations* and *non-medicated cleaning preparations for personal hygiene* in its class 3 on the basis the goods “share a similar purpose of ensuring cleanliness and

hygiene”¹³. I disagree with this submission. In my view mold (or mould) inhibiting chemicals may be used in a domestic setting as part of a regime for preventing damage in damp environments but are not for use on the person or for the purposes of personal hygiene. Their nature and purpose are different. The users will be different as will the trading channels. The respective goods are not complementary nor in competition. Overall I find the goods to be dissimilar.

Class 3

52. DGA has *Home cleaning products, including, all-purpose cleaners, glass cleaners, eyeglass cleaners, upholstery cleaners, carpet cleaners, cosmetics* registered in this class. AHL contends¹⁴ that the term *cosmetics* is identical to its class 3 goods. I consider that term *cosmetics* relates both to make up (for which AHL did not demonstrate any use) and substances applied to the skin not only for cleanliness but also to improve the appearance of the skin. The term cosmetics in relation to products for personal hygiene, soaps etc was also considered in *La Mer Technology, Inc v OHIM*.¹⁵ To that end and based on the guidance in that decision, I find that DGA's Cosmetics are considered similar to a high degree to AHL's goods *non-medicated cleaning preparations for personal hygiene; soaps; bath and shower oils, gels*.

53. However I do not find DGA's remaining goods to be similar to AHL's goods in this class as DGA's goods are specifically targeted at home cleaning products and not products for use on the person. Therefore the nature and purpose is different. The users may coincide in that they can all be purchased by the public at large but that is at too general a level to be considered as similar. The trading channels will be different as goods for house cleaning and goods for personal cleaning will be either in different retail environments or be in different aisles of a single retailer. Nor are the respective goods in competition or complementary. Overall I find these goods to be dissimilar.

¹³ Written submissions dated 10 August 2023, paragraph 5.13

¹⁴ Written submissions dated 10 August 2023, paragraph 5.14

¹⁵ *La Mer Technology, Inc v OHIM*, Case T-418/03, paragraphs 110-114

Class 5

54. DGA has *Air freshening products, including, air deodorizing preparations* in this class which AHL submits are similar to its *perfumes* and *toilet waters* in class 3 and its *fraganced or scented candles* and *candles for scenting or perfuming the atmosphere*¹⁶ in class 4. The respective products may be similar in nature for example liquid perfuming products, and both products have an aroma. However perfumes/toilet waters are for the purpose of improving/enhancing the smell of a person whilst air fresheners and deodorizers are meant to improve the smell of an enclosed space such like a bathroom or sitting room. The trading channels are different and there is no competition or complementarity between these goods. At best I find there is only a low degree of similarity.

55. With regard to the similarity between air fresheners and deodorizers and scented candles, I accept that although the nature of the respective goods is different, the purpose is closer and there is a degree of competition between the goods. The trading channels are also likely to be closer as candles and air fresheners can be sold in the same area of a retail establishment. Overall I find the respective goods to be similar to a medium degree.

56. The remaining goods in DGA's class 5 specification either relate to antimicrobial preparations for the elimination and prevention of mold or to a range of dietary supplements. My conclusion on DGA's class 1 goods also applies to the mold related goods in class 5. With regard to DGA's dietary supplements, I am aware of an emerging trend of 'cosmeceuticals' which may lead to a consumer identifying a closer connection between topical and edible goods which purport to improve the wellbeing of the individual's skin. Whilst DGA's dietary supplements do not share the same nature or method of use with AHL's class 3 goods, there may be some overlap in purpose and some complementarity Therefore I find these goods to be similar to a low degree.

Class 9

57. DGA's goods in this class broadly includes eyewear and accessories for eyewear, films and covers for filtering light, electronic devices, software and downloadable

¹⁶ Written submissions dated 10 August 2023, paragraph 5.15

podcasts. AHL were not able to prove use in relation to any eyewear although it submits in this regard that it is common practice in the luxury goods sector to sell eyewear alongside jewellery and bags as complementary accessories¹⁷. I note that in *Compagnie des montres Longines, Francillon SA v EUIPO*¹⁸, the General Court considered the similarity issues relating to sunglasses and jewellery and concluded that the “mere existence of aesthetic complementarity between the goods is not sufficient to conclude that there is a similarity between them”. I find the same principle could also be applied to sunglasses and bags. Therefore I find there is no similarity between DGA’s eyewear related goods and AHL’s class 14 or 18 goods. Moreover I find nothing within in AHL’s other goods and services which are similar to DGA’s goods in this class.

Class 10

58. DGA’s goods in this class broadly include medical instruments including LED lights to relieve pain and improve certain cellular and skin conditions. AHL contends¹⁹ that these goods are similar to its class 44 services. It has not specified which of its class 44 services but in my view it is likely that *Hygienic and beauty care for human beings; beauty salons; facials; hydro-therapy; spa services, massage; mud treatments; spas; beauty waxing; beautician services* are likely to overlap in terms of users and could be considered as complementary to DGA’s goods in class 10 if they treat and improve skin conditions. Therefore I find these goods and services are similar to a low degree. I do not consider that the remainder of AHL’s class 44 services namely *Hygienic and beauty care for animals; private residence classes; manicures and pedicures; provision of flowers and floral arrangements* are similar to DGA’s class 10 goods.

Class 11

59. DGA’s goods in this class include *Air freshening products, including, electric air deodorizing apparatus*. These goods are likely to be of an electrical plug in or electrical dispersant variety than the aerosol or solid block based *Air freshening products* which are proper to class 5. As such they are further away from AHL’s scented candle based goods in terms of nature, but as previously stated the purpose is similar and there may

¹⁷ Written submissions dated 10 August 2023, paragraph 5.18

¹⁸ T-505/12, EU:T:2015:95, Paragraph 60

¹⁹ Written submissions dated 10 August 2023, paragraph 5.19

be a degree of competition between the goods. The trading channels are also likely to be closer as candles and plug in air fresheners can be sold in the same area of a retail establishment. Overall I find the respective goods to be similar to a medium degree.

Class 30

60. DGA's goods in this class consist of *Coffee beans; Coffee pods; Iced coffee; High-protein cereal bars*. AHL contends²⁰ that these goods are similar to its *restaurant, bar and café services* and *bar services and bar, wine bar, coffee bar services*. Although the nature and purpose of the respective coffee goods and services is different, there is an overlap of user and trade channels and I also find that there is a low degree of complementarity. However I do not find the same logic applies to *High-protein cereal bars*. It is common practice for bar and café services to offer coffee based beverages to drink on site or take away but I do not think the same practice extends to *High-protein cereal bars*. As such I find these goods to be dissimilar to AHL's services whereas I consider the coffee related goods to be similar to a low degree.

Class 32

61. DGA's goods in this class consist of *Flavored waters; Flavored enhanced water; Flavored bottled water*. I take the same view toward these goods as I did toward the coffee related goods in the previous class in that they are similar to a low degree to AHL's *restaurant, bar and café services* and *bar services and bar, wine bar, coffee bar services* because there is an overlap of user and trade channels and also there is a low degree of complementarity.

Class 35

62. I find DGA's retail services namely *Online retail store services in relation to cosmetics, air freshening products, including, air deodorizing preparations, Online retail store services in relation to subscription boxes containing cosmetics, air freshening products, including, air deodorizing preparations* is similar to a low degree to AHL's *The bringing together for the benefit of others of a variety of goods namely non-medicated cleaning preparations for personal hygiene, soaps, bath and shower oils, gels,*

²⁰ Written submissions dated 10 August 2023, paragraph 5.23

candles, enabling customers to conveniently view and purchase those goods in a department store, a general merchandise catalogue by mail order or by means of telecommunications or from a general merchandise Internet website. The respective retail services will overlap in the nature of goods being sold, the user and trade channels.

63. The other services in DHL's class 35 specification are *Business management; Business management and advice; Business management consulting; Advisory services relating to business management and business operations; Consulting services in business organization and management; Business management of hotels; Providing consumer information services and making referrals in the field of entertainment services for products, services, events, activities, facilities and locations*. AHL submits²¹ that these services are similar to its own class 35 services namely *Business and hotel management and hotel administration; franchise services in relation to hotels, restaurants, night clubs, bars, spas, remedial and crèche facilities; compilation of directories for printed publication and publication on the Internet; operation and supervision of loyalty schemes and incentive schemes; providing consumer product information relating to food or drink products*. I agree that AHL's services are either identically worded (such as *business management of hotels*) or are identical on the *Meric* principle in that AHL's services are covered by DGA's broader terms.

Class 41

64. DGA's services in this class consist of, *inter alia*, *Neuro feedback training being educational training; educational services, including, providing training to improve an individual's learning capacity by means of interactive neurofeedback; Entertainment services, including, providing podcasts; .* AHL submits²² firstly that these services are complementary to its class 44 services and secondly that *Providing online publications in the field of health, fitness, wellness, news, innovation, science, food; Providing a website featuring blogs and non-downloadable publications;* are similar to *compilation of directories for printed publication and publication on the Internet* in its class 35 specification. Having considered AHL's submission, I find that there is no similarity

²¹ Written submissions dated 10 August 2023, paragraph 5.26

²² Written submissions dated 10 August 2023, paragraphs 5.27, 5.28 & 5.29

between DGA's services and AHL's class 44 services as they differ in nature, purpose and trade channels. Whilst users may overlap being members of the public, this is too general a level to make a finding of similarity.

65. I regard AHL's services *compilation of directories for printed publication and publication on the Internet* to mean a service whereby publications are compiled, systemised or indexed online for the purpose of searching. I find this to be similar to a low degree to DGA's *Providing online publications in the field of health, fitness, wellness, news, innovation, science, food; Providing a website featuring blogs and non-downloadable publications*, as both services create a platform for publications to be hosted and can searched for by consumers.

66. I find that AHL's services *provision of conference and meeting facilities* will likely cover the provision of logistical matters such as venues, seating, audio/visual facilities etc for a gathering to take place. Whereas in my view DGA's services for *Arranging and conducting educational conferences* fall in the area of content provision, booking speakers and hosting delegates. I find the respective services differ in their nature and purpose, as well as their users and trading channels. I accept that there may be a degree of complementarity in that there is a close connection between the provision of one to enable the other, but, in my view, this is insufficient on which to base a finding of similarity.

67. I do not find that DGA's services namely *Physical fitness training services; Providing fitness and exercise facilities; Physical fitness studio services, including, providing group exercise instruction, equipment, and facilities* are similar to AHL's class 43 services which largely cover the provision of hotel and accommodation facilities and class 44 which relates to wellbeing and beauty services. The respective nature and purpose of the services is different. There is no competition between the respective services and, in my view, one is not so closely connected to or necessary for the other for complementarity to exist. There may be some overlap of users but that is insufficient on which to base a finding of similarity.

Class 43

68. DGA's services in this class relate to the provision of hotel services. I find that AHL's class 43 services are either identically worded or are identical on the *Meric* principle that AHL's services are covered by DGA's broader terms.

Class 44

69. I find DGA's services namely *Health spa services for health and wellness of the mind, body and spirit; Health spa services for health and wellness of the body and spirit, including, providing massage, facial and body treatment services, cosmetic body care services; Health spa services for health and wellness of the mind, body and spirit offered in or from a remote, mobile or temporary on-site location; Health spa services, including, body care services* to be *Meric* identical to AHL's services namely *Hygienic and beauty care for human beings; beauty salons; facials; hydro-therapy; spa services, manicures and pedicures; massage; mud treatments; spas; beauty waxing; beautician services;*

70. However with regard to DGA's remaining services in this class namely *Neuro feedback training as a therapy; Providing information and advice in the field of health, nutrition and stress management via personal consultations; Providing healthy lifestyle and nutrition services, including, personal assessments, personalized routines, maintenance schedules, and counseling; Counseling services in the fields of health, nutrition and lifestyle wellness; Cryotherapy services; Vibration therapy; Providing a web site featuring information on health and nutrition; Consulting services in the fields of health and nutrition; Providing healthy lifestyle and nutrition services, including, personal assessments, personalized routines, maintenance schedules, and counseling; Bodywork therapy; Holistic health services; Health and wellness consultation to individuals to help them make health, wellness and nutritional changes in their daily living to improve health; Fitness services, including, providing assistance in the nature of physical fitness evaluations to individuals to help them make health, wellness and nutritional changes in their daily living to improve health; Providing healthy lifestyle services, including, fitness activity monitoring,* I find these are much more specific and targeted toward particular therapies and areas of health like nutrition and fitness. Therefore the respective nature, purpose and trading channels is

different, although there may be an overlap of trading channels and a degree of competition and complementarity between the service. Therefore I find they are similar to a low degree.

Average consumer and the purchasing process

71. I next consider who the average consumer is for the goods and services at issue and how they are purchased. It is settled case law that the average consumer is deemed to be reasonably well informed and reasonably observant and circumspect.²³ For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question.²⁴

72. The average consumer for the contested goods and services will be members of the general public, some of whom will have health conditions. Some goods and services may be frequent and inexpensive purchases such as dietary supplements or cereal bars but some may be infrequent purchases such as an LED medical device for example. The purchasing process will be predominately visual, as consumers see physical products or equivalent online images, but aural considerations cannot be ruled out from word of mouth recommendations or through aural means such as a podcast. I find for the most part the level of attention paid during the purchasing process will be at a medium level but given that some of the goods and services relate to therapies for treating medical conditions, I find the level of attention there may be higher.

Mark comparisons

73. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant

²³ *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch)


²⁴ *Lloyd Schuhfabrik Meyer*, Case C-342/97.

components. The CJEU stated at paragraph 34 of its judgment in *Bimbo SA v OHIM*²⁵, that:

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

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

75. The respective trade marks to be compared are:

AHL's marks	DGA's mark
ASPREY ("the word mark")  ("the figurative mark")	DAVE ASPREY

76. AHL's word mark consists of a single word, **ASPREY**, in block capitals which has no other aspect to it. Therefore the overall impression is derived solely from this word.

77. AHL's figurative mark contains the stylised word, **Asprey**, where the tail of the final letter 'y' extends to the left under the letters 'r' and 'e'. The word **Asprey** is presented

²⁵ Case C-591/12P

above the much smaller word **LONDON**. Although the word **LONDON** is not negligible in the presentation, it has less impact and carries less weight than the word **Asprey** in the overall impression of the mark.

78. DGA's mark consists of two words, namely **DAVE ASPREY**, presented in block capitals with no other aspect to either word. As such, both words make an equal contribution to the overall impression of the mark.

Visual comparison

79. Clearly the respective marks share the word **ASPREY**. It is the entirety of AHL's word mark and the dominant element of its figurative mark. The points of difference reside in the additional word **DAVE** for DGA's part and **LONDON** for AHL's figurative mark. Taking all this into account I find there is a medium degree of visual similarity between DGA's mark and AHL's word mark and a slightly lower degree of visual similarity for AHL's figurative mark.

Aural comparison

80. I find the shared element **ASPREY** will be pronounced identically in all cases as either ASS-PRAY or ASS-PREE. The vocalisation of the DGA's mark will include the additional word element **DAVE** as it begins the mark. It is less likely that the second word element of AHL's figurative mark, namely **LONDON**, would be pronounced. As per the previous comparison, I find there is a medium degree of aural similarity between DGA's mark and AHL's word mark and a slightly lower degree of aural similarity for AHL's figurative mark if the word **LONDON** is vocalised.

Conceptual comparison

81. I find that, taken in isolation, the word **ASPREY** will have no meaning and may be seen as an invented word by some consumers. However in conjunction with the common male forename **DAVE**, consumers will see and understand DHL's mark to be a proper name, i.e. a forename and surname combination, of an individual. AHL's additional element **LONDON** will be seen as the geographical location. It is reasonably common for geographical locations to feature in trade marks and consumers may give little more significance to the word, other than to think that **ASPREY** has something to do with London. Taking all these factors into account I

find that there a low degree of conceptual similarity based only on the shared element **ASPREY**.

Distinctive character of the earlier trade mark

82. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it.

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

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, paragraph 49).

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

84. I begin by considering the inherent position. AHL's earlier marks consist of or contain **ASPREY** which has no meaning in relation to its goods and services. I note the figurative mark contains the additional word **LONDON** which I do not consider increases the inherent distinctiveness of that mark to any material degree. Overall I find the earlier marks have a high degree of inherent distinctiveness.

85. The relevant market for assessing whether the distinctiveness of the earlier marks has been enhanced through use is the UK market. In terms of enhanced distinctiveness, I have already set out the most relevant and pertinent evidence earlier in my assessment. Based on the evidence filed and taking into account the *Chiemsee* factors, the evidence is sufficient to demonstrate that the opponent enhanced the distinctiveness of the earlier marks for the goods and services set out in at paragraphs 34-39. I find that the distinctiveness of the earlier registrations has been enhanced to a modest degree, which is, in my view, the opponent's best case based on the evidence filed.

Likelihood of confusion

86. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's registrations, the average consumer for the goods and services the nature of the purchasing process. In doing so, I must be alert to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

87. In *L.A. Sugar Limited*,²⁶ Mr Iain Purvis Q.C. (as he then was), 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 recognized 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”.

88. I also bear in mind that there must be a “proper basis” for finding indirect confusion where there is no direct confusion.²⁷

89. So far in this decision I have found,

- the goods and services are identical and similar to varying degrees but there is dissimilarity for some of the goods and services at issue.
- The average consumer for the goods and services at issue is the general public paying between a medium to high degree of attention in a predominantly visual purchasing process.
- There is a medium degree of visual and aural similarity and low degree of conceptual similarity between the respective marks.
- The earlier marks are inherently distinctive to a high degree which has been enhanced through use to a degree for some goods and services.

²⁶ *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10

²⁷ *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207

90. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another*,²⁸ Arnold J. (as he then was) considered the impact of the CJEU's judgment in *Bimbo*,²⁹ on the court's earlier judgment in *Medion v Thomson*. The judge 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 meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).

²⁸ [2015] EWHC 1271 (Ch)

²⁹ Case C-591/12P

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.”

91. The respective trade marks consist of or contain the word **ASPREY** leading to a medium degree of visual and aural similarity. However as per paragraph 20 in the *Whyte & Mackay* extract given above, DGA's mark is presented as a forename and surname combination and as such the average consumer would perceive the mark as a unit and therefore different from AHL's earlier marks. Taking this into account I do not find there is a likelihood of either direct confusion, i.e. mistaking one mark for another, or indirect confusion, where the similarities lead the consumer into believing the goods and services come from the same or connected trade source.

92. The invalidation action based on section 5(2)(b) is dismissed.

93. I will next go on to consider the remaining grounds.

Section 5(3)

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

“5(3) A trade mark which -

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

94. Section 5(3A) of the Act states:

“Subsection (3) applies irrespective of whether the goods and services for which the trade mark is to be registered are identical with, similar to or not similar to those for which the earlier trade mark is protected.”

95. The relevant case law can be found in the following judgments of the CJEU: Case C375/97, *General Motors*, Case 252/07, *Intel*, Case C-408/01, *Adidas-Salomon*, Case C-487/07, *L'Oreal v Bellure*, Case C-323/09, *Marks and Spencer v Interflora*, Case C383/12P, *Environmental Manufacturing LLP v OHIM*. The law appears to be as follows:

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

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

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

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

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

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a

change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel, paragraphs 76 and 77* and *Environmental Manufacturing, paragraph 34*.

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

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

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

96. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that its registrations and the application are similar. Secondly, the opponent must show that its registrations have achieved a level of knowledge/reputation amongst a significant part of the public. Thirdly, it must be established that the level of reputation and the similarities between the parties' marks will cause the public to make a link between them, in the sense of the earlier registrations being brought to mind by the

contested mark. Finally, assuming the first three conditions have been met, section 5(3) requires that one or more of the types of damage will occur. It is unnecessary for the purposes of section 5(3) that the goods and services be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

Reputation

97. AHL relies on all five of its earlier registrations under this ground. From my assessment of AHL's evidence in the earlier part of this decision, I find it had demonstrated the requisite reputation for the goods and retail services set out in paragraphs 34 to 39. There was nothing in the evidence before me demonstrating a reputation for the other goods and services claimed.

Link

98. Having found that the opponent has established the requisite reputation in relation to some goods and services, I will go on to make the assessment of whether the public will make the required mental 'link' between the marks, taking account of all relevant factors. The factors identified in *Intel* (underlined below) are:

The degree of similarity between the conflicting marks

99. For the reasons given previously I find there is a medium degree of visual and aural similarity but a low degree of conceptual similarity.

The nature of the goods or services for which the conflicting marks are registered, or proposed to be registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public

100. DGA has registered its mark for broad range of goods and services. AHL were only able to provide evidence of use for a limited range of its registered goods and retail services of the same. During the comparison of the respective goods and services, I found there was some overlap between cosmetics in class 3 and air freshening preparations of different types in classes 4, 5 and 11. However the remaining goods for which AHL was able to provide use which broadly speaking cover

jewellery, stationery, bags, homewares or games are simply too dissimilar to DHL's goods and services to find the degree of closeness required for a link to be made.

The strength of the earlier mark's reputation

101. I found that the opponent's evidence has demonstrated a modest reputation for some specified goods and retail services in the UK.

The degree of the earlier marks' distinctive character, whether inherent or acquired through use

102. I found that the earlier marks are inherently distinctive to a high degree but that this has been enhanced through use by a modest degree in respect of some specified goods and associated retail services.

Whether there is a likelihood of confusion

103. Previously in this decision, I found there was no likelihood of direct or indirect confusion.

104. Taking all of the above into account and proceeding on the basis that AHL does have a modest reputation in the UK, based on the evidence before me, I consider the differences between the marks sufficient to avoid a link being made in the mind of the relevant public, notwithstanding the distinctiveness of the earlier marks and the low to medium similarity of the goods which represent AHL's best case, namely its toiletries in class 3 and scented candles in class 4 and retail of same. In my view, even if a link was made, it would be too fleeting for damage to arise.

105. The invalidity based upon section 5(3) of the Act is dismissed.

Section 5(4)(a)

106. Section 5(4)(a) states:

“(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented-

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

(aa) [...]

(a) [...]

(b)

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an “earlier right” in relation to the trade mark.”

107. In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

“55. The elements necessary to reach a finding of passing off are the ‘classical trinity’ of that tort as described by Lord Oliver in the *Jif Lemon* case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56. In relation to deception, the court must assess whether “*a substantial number*” of the Claimants’ customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21).”

108. I recognise that the test for misrepresentation is different to that for likelihood of confusion, namely, that misrepresentation requires “a substantial number of members of the public are deceived” rather than whether the “average consumers are confused”.

However, as recognised by Lewinson L.J. in *Marks and Spencer PLC v Interflora*³⁰, it is doubtful whether the difference between the legal tests will produce different outcomes. In my view, this is the case here. Whilst I accept that AHL has demonstrated sufficient use for the goods and services set out in paragraphs 34-39 and I would likely find goodwill in those particular goods and services, its claim under Section 5(4)(a) does not provide any better an outcome than for section 5(2)(b). Therefore I do not need to consider this ground further.

Overall Conclusion

109. DGA has partially succeeded in revoking AHL's registration nos. 902587525, 2340986 and 903411295 on the grounds of non-use. AHL has failed in its application to invalidate DGA's registration.

Costs

110. DGA has been partially successful in these proceedings. As such it is entitled to a contribution towards the costs incurred. Awards of costs for proceedings commenced before 1 February 2023 are governed by Annex A of Tribunal Practice Notice (TPN) 2/2016. Bearing in mind the guidance given in TPN 2/2016, I award costs as follows:

£600 Official fees x 3

£600 Preparing a statement and considering AHL's counterstatement x 3

£800 Preparing and considering evidence

£400 Preparing written submissions

£2400 Total

111. I order Asprey Holdings Limited to pay David G. Asprey the sum of £2400. This sum is to be paid within 21 days of the expiry of the appeal period or within 21 days of the final determination of this case if any appeal against this decision is unsuccessful.

³⁰ [2012] EWCA (Civ) 1501

Dated this 7th day of May 2024

June Ralph

For the Registrar

ANNEX 1

Goods and services of trade mark registration no. 3607212 for the mark **DAVE ASPREY:**

Class 1: Mold inhibiting chemicals for preventing growth of mold.

Class 3: Home cleaning products, including, all-purpose cleaners, glass cleaners, eyeglass cleaners, upholstery cleaners, carpet cleaners, cosmetics.

Class 5: Air freshening products, including, air deodorizing preparations; probiotic mold prevention, including, antimicrobial preparations for preventing mold; Antimicrobial preparations for eliminating mold growth and preventing growth of mold; Dietary supplements; Dietary food supplements; Dietary supplemental drinks; Protein dietary supplements; Protein dietary supplements formed and packaged as bars; Probiotic supplements; Nutritional supplements; Vitamin supplements; Mineral supplements; Herbal supplements.

Class 9: Lenses for sunglasses, eyeglass and spectacles; Lenses for filtering light of specific wavelengths for use in sunglasses, eyeglass and spectacles; Optical filters for windows; Window treatments in the nature of adhesive color separation film sheeting for filtering light of specific wavelengths; Protective color separation films for windows, televisions, computers, tablets, laptops, smart phones, cell phones, digital clocks, electronic appliances and light emitting diode displays, luminaires, and other light fixtures to filter light of specific wavelength; Electronic components in the nature of protective display screen covers, display screen filters, and display screen protectors for filtering light of specific wavelengths; Cases for eyeglasses; eyewear; Sunglasses; Accessories for eyewear; Accessories for sunglasses; Apparatus for providing neuro feedback training; Electronic device for providing neuro feedback training to improve an individual's learning capacity; Software for providing interactive neuro feedback training; Downloadable podcasts in the field of health, fitness, wellness, news, innovation, science, food.

Class 10: Medical instruments, including, light emitting devices and displays for increasing mitochondrial function, collagen production, pain relief, and improvement of a variety of skin attributes or conditions; LED circadian lights; LED lights that track the body's natural circadian rhythms; Smart lights that change wavelengths over time

to support the body's natural circadian rhythms; Smart lightbulbs to support the body's natural circadian rhythms.

Class 11: Air freshening products, including, electric air deodorizing apparatus; Flashlights; LED flashlights; LED flashlights for illumination purposes.

Class 30: Coffee beans; Coffee pods; Iced coffee; High-protein cereal bars.

Class 32: Flavored waters; Flavored enhanced water; Flavored bottled water.

Class 35: Online retail store services in relation to mold inhibiting chemicals for preventing growth of mold, home cleaning preparations, cosmetics, air freshening products, including, air deodorizing preparations, probiotic mold prevention, including, antimicrobial preparations for preventing mold, antimicrobial preparations for eliminating mold growth and preventing growth of mold, dietary supplements, dietary food supplements, dietary supplemental drinks, protein dietary supplements, protein dietary supplements formed and packaged as bars, probiotic supplements, nutritional supplements, vitamin supplements, mineral supplements, herbal supplements, lenses for sunglasses, eyeglass and spectacles, lenses for filtering light of specific wavelengths for use in sunglasses, eyeglass and spectacles, optical filters for windows, window treatments in the nature of adhesive color separation film sheeting for filtering light of specific wavelengths, protective color separation films for windows, televisions, computers, tablets, laptops, smart phones, cell phones, digital clocks, electronic appliances and light emitting diode displays, luminaires, and other light fixtures to filter light of specific wavelength, electronic components in the nature of protective display screen covers, display screen filters, and display screen protectors for filtering light of specific wavelengths, cases for eyeglasses, eyewear, sunglasses, accessories for eyewear, accessories for sunglasses, computer hardware, tablet computers, headsets, sensors, microphones, headphones, earphones for providing neuro feedback training, computer hardware, tablet computers, headsets, sensors, microphones, headphones, earphones for providing neuro feedback training to improve an individual's learning capacity, software for providing interactive neuro feedback training, light emitting devices and displays for increasing mitochondrial function, collagen production, pain relief, and improvement of a variety of skin attributes or conditions, LED circadian lights, LED lights that track the body's natural circadian rhythms, smart lights that change wavelengths over time to support the

body's natural circadian rhythms, smart lightbulbs to support the body's natural circadian rhythms, confectionery bars, coffee, coffee beans, coffee pods, iced coffee, high-protein cereal bars, cereal-based snack foods, tea, non-alcoholic beverages, flavored waters, flavored enhanced water, flavored bottled water, Online retail store services in relation to subscription boxes containing mold inhibiting chemicals for preventing growth of mold, home cleaning preparations, cosmetics, air freshening products, including, air deodorizing preparations, probiotic mold prevention, including, antimicrobial preparations for preventing mold, antimicrobial preparations for eliminating mold growth and preventing growth of mold, dietary supplements, dietary food supplements, dietary supplemental drinks, protein dietary supplements, protein dietary supplements formed and packaged as bars, probiotic supplements, nutritional supplements, vitamin supplements, mineral supplements, herbal supplements, lenses for sunglasses, eyeglass and spectacles, lenses for filtering light of specific wavelengths for use in sunglasses, eyeglass and spectacles, optical filters for windows, window treatments in the nature of adhesive color separation film sheeting for filtering light of specific wavelengths, protective color separation films for windows, televisions, computers, tablets, laptops, smart phones, cell phones, digital clocks, electronic appliances and light emitting diode displays, luminaires, and other light fixtures to filter light of specific wavelength, electronic components in the nature of protective display screen covers, display screen filters, and display screen protectors for filtering light of specific wavelengths, cases for eyeglasses, eyewear, sunglasses, accessories for eyewear, accessories for sunglasses, computer hardware, tablet computers, headsets, sensors, microphones, headphones, earphones for providing neuro feedback training, computer hardware, tablet computers, headsets, sensors, microphones, headphones, earphones for providing neuro feedback training to improve an individual's learning capacity, software for providing interactive neuro feedback training, including, light emitting devices and displays for increasing mitochondrial function, collagen production, pain relief, and improvement of a variety of skin attributes or conditions, LED circadian lights, LED lights that track the body's natural circadian rhythms, smart lights that change wavelengths over time to support the body's natural circadian rhythms, smart lightbulbs to support the body's natural circadian rhythms, confectionery bars, coffee, coffee beans, coffee pods, iced coffee, high-protein cereal bars, cereal-based snack foods, tea, non-alcoholic beverages, flavored waters, flavored enhanced water or flavored bottled water; Business

management; Business management and advice; Business management consulting; Advisory services relating to business management and business operations; Consulting services in business organization and management; Business management of hotels; Providing consumer information services and making referrals in the field of entertainment services for products, services, events, activities, facilities and locations.

Class 41: Neuro feedback training being educational training; educational services, including, providing training to improve an individual's learning capacity by means of interactive neurofeedback; Entertainment services, including, providing podcasts; Providing online publications in the field of health, fitness, wellness, news, innovation, science, food; Providing a website featuring blogs and non-downloadable publications; Arranging and conducting educational conferences; Physical fitness training services; Providing fitness and exercise facilities; Physical fitness studio services, including, providing group exercise instruction, equipment, and facilities.

Class 43: Hotel services; Resort hotel services; Hotel, restaurant, and bar services; Making hotel reservations for others; Hotels focused on lifestyle, wellness and fitness; Hotels for health-conscious tourists and business travelers that include providing fitness services; Providing online reservation, booking and search services for temporary lodging; Providing an online interactive website featuring temporary lodging; Providing a website featuring information in the field of temporary lodging; Travel agency services, including, making reservations and bookings for temporary lodging; Providing rental information for temporary lodging; Making temporary lodging reservations for others; Reservation and booking for temporary accommodation and lodging; Temporary accommodation reservations; Booking of temporary accommodation; Booking of temporary accommodation via the Internet; Providing temporary accommodation; Providing temporary housing accommodations; Providing information in the field of temporary lodging and accommodations; Providing online reservations and bookings for temporary lodging and accommodations; Reservation of temporary accommodations; Spa services, including, providing temporary accommodations and meals to clients of a health or beauty spa.

Class 44: Neuro feedback training as a therapy; Providing information and advice in the field of health, nutrition and stress management via personal consultations; Providing healthy lifestyle and nutrition services, including, personal assessments, personalized routines, maintenance schedules, and counseling; Counseling services in the fields of health, nutrition and lifestyle wellness; Cryotherapy services; Vibration therapy; Health spa services for health and wellness of the mind, body and spirit; Health spa services for health and wellness of the body and spirit, including, providing massage, facial and body treatment services, cosmetic body care services; Health spa services for health and wellness of the mind, body and spirit offered in or from a remote, mobile or temporary on-site location; Health spa services, including, body care services; Bodywork therapy; Providing a web site featuring information on health and nutrition; Consulting services in the fields of health and nutrition; Providing healthy lifestyle and nutrition services, including, personal assessments, personalized routines, maintenance schedules, and counseling; Holistic health services; Health and wellness consultation to individuals to help them make health, wellness and nutritional changes in their daily living to improve health; Fitness services, including, providing assistance in the nature of physical fitness evaluations to individuals to help them make health, wellness and nutritional changes in their daily living to improve health; Providing healthy lifestyle services, including, fitness activity monitoring.

ANNEX 2

Goods and services of the earlier AHL registrations relied on in its invalidation action:

UK TM No. 902587525 ASPREY

Class 9: Spectacles; eye glasses; sunglasses; binoculars; field glasses; cases, cords and chains for the aforesaid goods; spectacle and sunglasses frames and lenses, monocular; magnifying glasses; parts and fittings for all the aforesaid goods.

Class 11: Chandeliers; lamps, overhead lamps, table lamps, oil lamps; lanterns; decorative lights; lamp shades; tea and coffee making machines; espresso machines; coffee filters and percolators; coffee roasters; kettles; ice making machines and ice making apparatus; toasters; electric kettles; ice cream makers; waffle irons; parts and fittings for all the aforesaid goods.

Class 24: Textiles; textile articles; textile piece goods; bed and table covers; household linen; linen cloth; bed linen; table lined; table cloths; curtains of textile or plastic; pillow shams; pillow cases; sheets; towels; eiderdowns; duvets; covers for eiderdowns and duvets; napkins; serviettes; table mats (not of paper); face towels; flannels, tissues of textile for removing make-up; traced cloth for embroidery; tapestry (wall hangings) of textile; rugs (travelling).

Class 35: The bringing together for the benefit of others of a variety of goods enabling customers to conveniently view and purchase those goods in a department store; consultancy services relating to the acquisition of goods and services; the bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods from a general merchandise catalogue by mail order or by means of telecommunications; the bringing together for the benefit of others of a variety of goods enabling customers to conveniently view and purchase those goods from a general merchandise Internet website.

Class 3: Perfumes; perfumery; eau de cologne; toilet waters; essential and herbal oils; non-medicated cleaning preparations for personal hygiene; cosmetics; make-up preparations; soaps; bath and shower oils, gels; preparations for use before shaving and after shaving; shaving soap; shaving cream; shaving gels; after-shave preparations; pre-shave preparations; pot pourri.

Class 8: Cutlery (other than surgical); knives, forks and spoons; canteens of cutlery (tableware); boxes adapted for cutlery; manicure and pedicure sets (sold complete); nail files; nail clippers; fingernail polishers; pen knives; hand tools; razors; shavers; scissors.

Class 9: Spectacles; eye glasses; sunglasses; binoculars; field glasses; cases, cords and chains for the aforesaid goods; spectacle and sunglasses frames and lenses, monocular; magnifying glasses; parts and fittings for all the aforesaid goods.

Class 11: Chandeliers; lamps, overhead lamps, table lamps, oil lamps; lanterns; decorative lights; lamp shades; tea and coffee making machines; espresso machines; coffee filters and percolators; coffee roasters; ice making machines and ice making apparatus; toasters; electric kettles; ice cream makers; waffle irons; parts and fittings for all the aforesaid goods.

Class 18: Goods made of leather or of imitation leather; articles of luggage, suitcases, trunks, valises, travelling bags, travelling sets, garment bags for travel, vanity cases, rucksacks, handbags, beach bags, shopping bags, shoulder bags, attaché cases, briefcases, pouches, holdalls, shoulder belts, toiletries and cosmetic bags, satchels and portfolios; tie cases; purses, pocket wallets, card holders; key holders and key fobs; passport covers, cases for personal organisers; umbrellas, parasols, canes, shooting sticks, walking sticks, walking stick seats; whips, harnesses and saddlery; dog collars and leads.

Class 21: Tea, coffee and dinner services; chinaware, glassware, porcelain and earthenware not included in other classes; brushes, combs, grooming aids; clothes brushes; cork screws; bottle openers; hip flasks; candleholders; scent bottles and vases (none being of precious metal or coated therewith); figurines; household utensils and containers; kitchen utensils and containers; small domestic containers and

utensils; toothpicks; picnic baskets; cosmetic utensils; shaving brush stands; sponges (not for surgical use); hand implements for kitchen use.

Class 24: Textiles; textile articles; textile piece goods; bed and table covers; household linen; linen cloth; bed linen; table linen; table cloths; curtains of textile or plastic; pillow shams; pillow cases; sheets; towels; eiderdowns; duvets; covers for eiderdowns and duvets; napkins; serviettes; table mats (not of paper); face towels; flannels, tissues of textile for removing make-up; traced cloth for embroidery; tapestry (wall hangings) of textile; rugs (travelling).

Class 25: Clothing; footwear; headgear.

Class 33: Spirits (beverages); champagne; wines; liqueurs; cider.

Class 35: The bringing together for the benefit of others of a variety of goods enabling customers to conveniently view and purchase those goods in a department store; consultancy services relating to the acquisition of goods and services; the bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods from a general merchandise catalogue by mail order or by means of telecommunications; the bringing together for the benefit of others of a variety of goods enabling customers to conveniently view and purchase those goods from a general merchandise Internet website.

UK TM No.910407351 ASPREY

Class 4: Candles; fragranced or scented candles; candles for scenting or perfuming the atmosphere; illuminants, tapers, night lights and wicks.

UK TM No. 918186877 ASPREY

Class 35: Business and hotel management and hotel administration; franchise services in relation to hotels, restaurants, night clubs, bars, spas, remedial and crèche facilities; advertising services in relation to travel and hotel accommodation; advertising and promotion services provided through printed publications and via the Internet; compilation of directories for printed publication and publication on the Internet; operation and supervision of loyalty schemes and incentive schemes;

providing consumer product information relating to food or drink products; organising and arranging participation in events for commercial purposes; yacht charter management services; business management of yachts for owners or users; administrative services in respect of yachts for owners or users; provision of crews for yachts.

Class 36: Payment of dock fees and other fees when staying in harbour and scheduling and planning voyages for yacht owners and users.

Class 39: Transportation services by land, air, or sea, namely yacht charter services, yacht hire, boat hire, ship hire; cruise ship services, arranging and conducting of cruises, limousine and transfer services; services for arranging tours, safaris, game drives, cruises, cultural visits, diving and snorkelling, sightseeing; booking of seats for travel; travel agency services; travel services being services including passenger transport services, air travel services, car hire services, road transport services, rail transport services, sea transport services, booking and reservation of travel services, travel ticket reservation services, tourist travel information services, package holiday services for arranging travel, air transport services, transport and delivery of goods services, escorting of travellers; planning services, namely, booking of holidays and flights and provision of advice in relation to the aforesaid; travel; moorage services such as obtaining slip space.

Class 43: Hotels, resort hotels, motels and guest house services; accommodation services; hotel reservation services; provision of conference and meeting facilities; restaurant, bar and cafe services; cocktail lounge services, catering services; cafeteria services, banqueting services; catering services including the supply of crèche and nursery facilities; reservation services for booking accommodation and meals; bar services and bar, wine bar, coffee bar services; hotel-in and check-out services; holiday and honeymoon planning services, namely booking of accommodation and restaurants and provision of advice in relation to the aforesaid.

Class 44: Hygienic and beauty care for human beings or animals; beauty salons; facials; hydro-therapy; private residence classes; spa services, manicures and pedicures; massage; mud treatments; spas; hairdressing services; hairdressing salons, beauty waxing; beautician services; provision of flowers and floral arrangements.

UK TM No.900483362 ASPREY

Class 3: Perfumes; toilet waters; non-medicated toilet preparations; cosmetics; soaps; essential oils; hair lotions, preparations for the hair; depilatory preparations; toilet articles; non-medicated cleaning preparations for personal hygiene purposes; powder puffs; anti-perspirants; dentifrices; pot pourri; preparations for the bath.

Class 8: Cutlery (other than surgical); boxes for cutlery; knives, forks and spoons; manicure and pedicure sets (sold complete); nail files, nail clippers, fingernail polishers; penknives; hand tools; razors; shavers; hand implements for kitchen use; scissors.

Class 16: Writing paper and envelopes sold in sets; engagement cards; memoranda; books; notebooks; visiting cards, invitation cards; writing cases; desk sets all being items of stationery; ordinary playing cards; pens; pencils; ink stands; letter openers; pen holders; pencil holders; pen trays; bookmarks; note pads; blotters; paper clips; document holders; seals; printed matter, printed publications, diaries; photographs, photograph albums; wrapping and packaging materials; gift tags; letter trays; pen stands; paper knives; posters; artists' materials (other than colours or varnish); typewriters.

Class 18: Articles of leather or of imitation leather; articles of luggage; trunks; travelling bags; brief cases; attache cases; portfolio bags for carrying suits; hand bags; purses, pocket wallets; cheque book covers and passport cases all made of leather; leather shoulder belts; dog collars and leads; vanity cases; card holders; note cases; key holders; leather pouches; umbrellas; parasols; shooting sticks; walking sticks; whips, harness and saddlery; wash bags; tie cases; satchels.

Class 21: Tea services, coffee and dinner services; cocktail shakers; chinaware, glassware; porcelain and earthenware not included in other classes; brushes, combs, grooming aids; clothes brushes; cork screws; bottle openers; hip flasks; crystal; candleholders; small domestic utensils and containers; scent bottles and vases (none of precious metal or coated therewith); toothpicks; picnic baskets; figurines; sponges (non for surgical use).

Class 25: Clothing; scarves, shawls; footwear; boots, shoes, slippers, sandals; headgear; headbands; armbands, belts; ties.

Class 29: Meat, fish, poultry and game, none being live; food products included in Class 29 made from meat, fish, poultry or from game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies and dairy products, all for foods; jams; edible oils, edible fats; fruit preserves, vegetable preserves and pickles.

Class 30: Pastry and pastry products for food, pies and flans, all containing meat, fish, poultry, game, fruit or vegetables; coffee, tea, cocoa, coffee essences and coffee extracts; snack foods; preparations made from cereals for food for human consumption, bread, biscuits (other than biscuits for animals), cakes, pastries, non-medicated confectionery, honey, treacle, mustard, sauces and spices, condiments; chocolate.

Class 33: Spirits (beverages); champagne; wines; liqueurs; cider.

ANNEX 3

Goods and services claimed by AHL under section 5(4)(a)

Perfumes; perfumery; fragrances; eau de cologne; toilet waters; non-medicated toilet preparations; cosmetics; make-up preparations; soaps; bath and shower oils, gels; essential oils; hair lotions, preparations for the hair; depilatory preparations; toilet articles; non-medicated cleaning preparations for personal hygiene purposes; powder puffs; anti-perspirants; dentifrices; preparations for use before shaving and after shaving; shaving soap; shaving cream; shaving gels; after-shave preparations; pre-shave preparations; pot pourri; essential and herbal oils; preparations for the bath.

Candles; fragranced or scented candles; candles for scenting or perfuming the atmosphere; illuminants, tapers, night lights and wicks.

Cutlery (other than surgical); boxes for cutlery; boxes adapted for cutlery; knives, forks and spoons; canteens of cutlery (tableware); manicure and pedicure sets (sold complete); nail files, nail clippers, fingernail polishers; penknives; hand tools; razors; shavers; hand implements for kitchen use; scissors.

Spectacles; eye glasses; sunglasses; binoculars; field glasses; cases, cords and chains for the aforesaid goods; spectacle and sunglasses frames and lenses, monocular; magnifying glasses; parts and fittings for all the aforesaid goods; phone covers; tablet cases; tablet covers; cases for goods in class 9.

Chandeliers; lamps, overhead lamps, table lamps, oil lamps; lanterns; decorative lights; lamp shades; tea and coffee making machines; espresso machines; coffee filters and percolators; coffee roasters; kettles; ice making machines and ice making apparatus; toasters; electric kettles; ice cream makers; waffle irons; parts and fittings for all the aforesaid goods.

Firearms; ammunition and projectiles; cartridge, gun and rifle cases; explosives; fireworks; parts and fittings for all the aforesaid goods.

Articles included in Class 14 made of precious metals or their alloys or coated or plated therewith; jewellery and imitation jewellery; horological and chronometric instruments; watches, clocks; semi-precious and precious stones; statues; cufflinks; tie pins; dress studs; cigar and cigarette boxes; parts and fittings for all the aforesaid.

Writing paper and envelopes sold in sets; writing paper holders; engagement cards; memoranda; books; book covers; book marks; notebooks; cheque book covers; visiting cards, invitation cards; writing cases; desk sets all being items of stationery; ordinary playing cards; pens; pencils; ink stands; letter openers; pen holders; pencil holders; pencil sharpeners; pen trays; note pads; blotters; paper clips; paper knives; rulers; document holders; seals; printed matter, printed publications, diaries; organisers; photographs, photograph albums; wrapping and packaging materials; gift tags; letter trays; pen stands; paper knives; prints; pictures; posters; artists' materials (other than colours or varnish); typewriters.

Goods made of leather or of imitation leather; articles of luggage, suitcases, trunks, valises, travelling bags, travelling sets, garment bags for travel, vanity cases, rucksacks, handbags, beach bags, shopping bags, shoulder bags, attaché cases, briefcases, pouches, holdalls, shoulder belts, toiletries and cosmetic bags, wash bags, satchels and portfolios; portfolio bags for carrying suits; tie cases; purses, pocket wallets, card holders; cheque book covers and passport cases; key holders and key fobs; satchels; passport covers, cases for personal organisers; umbrellas, parasols, canes, shooting sticks, walking sticks, walking stick seats; whips, harnesses and saddlery; leather shoulder belts; note cases; key holders; leather pouches; dog collars and leads.

Furniture; picture frames; mirrors included in Class 20; jewel cases not of precious metal or coated therewith; hand-held mirrors; hampers; jewellery cases (not of precious metal); cosmetics cases; pill boxes; tooth boxes; fans for personal use; articles made of wood, wax, plaster, plastic, cork, wicker, shell, cane and mother of pearl.

Tea, coffee and dinner services; cocktail shakers; chinaware, glassware, porcelain and earthenware not included in other classes; brushes, combs, grooming aids; clothes brushes; cork screws; bottle openers; hip flasks; crystal; candleholders; small domestic utensils and containers; scent bottles and vases (none being of precious metal or coated therewith); figurines; household utensils and containers; kitchen utensils and containers; small domestic containers and utensils; toothpicks; picnic baskets; cosmetic utensils; shaving brush stands; sponges (not for surgical use); hand implements for kitchen use.

Textiles; textile articles; textile piece goods; bed and table covers; household linen; linen cloth; bed linen; table linen; table cloths; curtains of textile or plastic; pillow shams; pillow cases; sheets; towels; eiderdowns; duvets; covers for eiderdowns and duvets; napkins; serviettes; table mats (not of paper); face towels; flannels, tissues of textile for removing make-up; traced cloth for embroidery; tapestry (wall hangings) of textile; rugs (travelling).

Clothing; scarves, shawls; footwear; boots, shoes, slippers, sandals; headgear; headbands; armbands, belts; ties.

Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile); wallpaper.

Toys, games (other than ordinary playing cards) and playthings; board games and articles for use in playing board games; golf bags; Christmas crackers and decorations (other than candles or lamps) for Christmas trees; playing cards.

Meat, fish, poultry and game, none being live; food products included in Class 29 made from meat, fish, poultry or from game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies and dairy products, all for foods; jams; edible oils, edible fats; fruit preserves, vegetable preserves and pickles.

Pastry and pastry products for food, pies and flans, all containing meat, fish, poultry, game, fruit or vegetables; coffee, tea, cocoa, coffee essences and coffee extracts; snack foods; preparations made from cereals for food for human consumption, bread, biscuits (other than biscuits for animals), cakes, pastries, non-medicated confectionery, honey, treacle, mustard, sauces and spices, condiments; chocolate.

Spirits (beverages); champagne; wines; liqueurs; cider.

Lighters for smokers; cigar and cigarette boxes and cases; cigar holders, cigarette holders; smoker's ashtrays; matchboxes; tobacco jars none being of precious metal or coated therewith; tobacco pipe- cleaners, tobacco pipe scrapers; cigar cutters; pyrophoric lighters for smokers and parts and fittings thereof; cigarettes, tobacco, cigarillos, cigars, pipes.

Retail services; online retail services; retail of the aforementioned goods; the bringing together for the benefit of others of a variety of goods enabling customers to

conveniently view and purchase those goods in a department store; consultancy services relating to the acquisition of goods and services; the bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods from a general merchandise catalogue by mail order or by means of telecommunications; the bringing together for the benefit of others of a variety of goods enabling customers to conveniently view and purchase those goods from a general merchandise Internet website.

Business and hotel management and hotel administration; franchise services in relation to hotels, restaurants, night clubs, bars, spas, remedial and crèche facilities; advertising services in relation to travel and hotel accommodation; advertising and promotion services provided through printed publications and via the Internet; compilation of directories for printed publication and publication on the Internet; operation and supervision of loyalty schemes and incentive schemes; providing consumer product information relating to food or drink products; organising and arranging participation in events for commercial purposes; yacht charter management services; business management of yachts for owners or users; administrative services in respect of yachts for owners or users; provision of crews for yachts; payment of dock fees and other fees when staying in harbour and scheduling and planning voyages for yacht owners and users.

Transportation services by land, air, or sea, namely yacht charter services, yacht hire, boat hire, ship hire; cruise ship services, arranging and conducting of cruises, limousine and transfer services; services for arranging tours, safaris, game drives, cruises, cultural visits, diving and snorkelling, sightseeing; booking of seats for travel; travel agency services; travel services being services including passenger transport services, air travel services, car hire services, road transport services, rail transport services, sea transport services, booking and reservation of travel services, travel ticket reservation services, tourist travel information services, package holiday services for arranging travel, air transport services, transport and delivery of goods services, escorting of travellers; planning services, namely, booking of holidays and flights and provision of advice in relation to the aforesaid; travel; moorage services such as obtaining slip space.

Hotels, resort hotels, motels and guest house services; accommodation services; hotel reservation services; provision of conference and meeting facilities; restaurant, bar and cafe services; cocktail lounge services, catering services; cafeteria services, banqueting services; catering services including the supply of crèche and nursery facilities; reservation services for booking accommodation and meals; bar services and bar, wine bar, coffee bar services; hotel-in and check-out services; holiday and honeymoon planning services, namely booking of accommodation and restaurants and provision of advice in relation to the aforesaid.

Hygienic and beauty care for human beings or animals; beauty salons; facials; hydro-therapy; private residence classes; spa services, manicures and pedicures; massage; mud treatments; spas; hairdressing services; hairdressing salons, beauty waxing; beautician services; provision of flowers and floral arrangements.

ANNEX 4

Goods and services of the earlier UK TM No. 2340986

Asprey
LONDON

Class 3: Perfumes; perfumery; eau de cologne; toilet waters; essential and herbal oils; non-medicated cleaning preparations for personal hygiene; cosmetics; make-up preparations; soaps; bath and shower oils, gels; preparations for use before shaving and after shaving; shaving soap; shaving cream; shaving gels; after-shave preparations; pre-shave preparations; pot pourri.

Class 8: Cutlery (other than surgical); knives, forks and spoons; canteens of cutlery (tableware); boxes adapted for cutlery; manicure and pedicure sets (sold complete); nail files; nail clippers; fingernail polishers; pen knives; hand tools; razors; shavers; hand implements for kitchen use; scissors.

Class 9: Spectacles; eye glasses; sunglasses; binoculars; field glasses; cases, cords and chains for the aforesaid goods; spectacle and sunglasses frames and lenses, monocular; magnifying glasses; parts and fittings for all the aforesaid goods.

Class 14: Articles included in Class 14 of precious metals and their alloys and goods in precious metals or coated therewith; semi-precious and precious stones; horological and chronometric instruments; watches, clocks; jewellery and imitation jewellery; statues; cufflinks; tie pins and dress studs; parts and fittings for all the aforesaid.

Class 16: Writing paper and envelopes sold in sets; writing paper holders; engagement cards, visiting cards, invitation cards; note books; books; book covers; book marks; prints; pictures; photographs; photograph albums; pen holders; pencil holders; pens; pencils; pen stands; ink stands; rulers; pencil sharpeners; letter openers; paper knives; letter trays; printed matter; printed publications; diaries; organisers; wrapping and packaging materials; gift tags; writing cases; desk sets, all being items of stationery; cheque book covers, passport covers.

Class 18: Goods made of leather or of imitation leather; articles of luggage, suitcases, trunks, valises, travelling bags, travelling sets, garment bags for travel, vanity cases, rucksacks, handbags, beach bags, shopping bags, shoulder bags, attache cases, brief cases, pouches, holdalls, shoulder belts, toiletries and cosmetic bags, satchels and portfolios; tie cases; purses, pocket wallets, card holders; key holders and key fobs;

cases for personal organisers; umbrellas, parasols, canes, shooting sticks, walking sticks, walking stick seats; whips, harnesses and saddlery; dog collars and leads.

Class 20: Furniture; mirrors; picture frames; jewellery cases (not of precious metal); cigar and cigarette boxes (not of precious metal); hampers; fans for personal use; articles made of wood, wax, plaster, plastic, cork, wicker, shell, cane and mother of pearl.

Class 21: Tea, coffee and dinner services; chinaware, glassware, porcelain and earthenware not included in other classes; brushes, combs, grooming aids; clothes brushes; cork screws; bottle openers; hip flasks; candleholders; scent bottles and vases (none being of precious metal or coated therewith); figurines; household utensils and containers; kitchen utensils and containers; small domestic containers and utensils; toothpicks; picnic baskets; cosmetic utensils; shaving brush stands; sponges (not for surgical use).

Class 24: Textiles; textile articles; textile piece goods; bed and table covers; household linen; linen cloth; bed linen; table linen; table cloths; curtains of textile or plastic; pillow shams; pillow cases; sheets; towels; eiderdowns; duvets; covers for eiderdowns and duvets; napkins; serviettes; table mats (not of paper); face towels; flannels, tissues of textile for removing make-up; traced cloth for embroidery; tapestry (wall hangings) of textile; rugs (travelling).

Class 25: Clothing; footwear; headgear.

Class 28: Toys, games (other than ordinary playing cards) and playthings; board games and articles for use in playing board games; golf bags; Christmas crackers and decorations (other than candles or lamps) for Christmas trees; playing cards.

Class 34: Lighters for smokers; cigar and cigarette boxes and cases; cigar holders, cigarette holders; smokers' ashtrays; matchboxes; tobacco jars, none being of precious metal or coated therewith; tobacco pipe-cleaners, tobacco pipe scrapers; cigar cutters; pyrophoric lighters for smokers and parts and fittings thereof; cigarettes, tobacco, cigarillos, cigars, pipes.

Class 35: The bringing together for the benefit of others of a variety of goods enabling customers to conveniently view and purchase those goods in a department store; consultancy services relating to the acquisition of goods and services; the bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods from a general merchandise catalogue by mail order or by means of telecommunications; the bringing together for the benefit of others of a variety of goods enabling customers to conveniently view and purchase those goods from a general merchandise Internet website.