

O/0443/26

**TRADE MARKS ACT 1994**

**IN THE MATTER OF**

**TRADE MARK REGISTRATION NOS 3409784, 918087033 & 3533915 IN THE  
NAME OF UNILUX S.A.M.**

**AND APPLICATIONS FOR A DECLARATION OF INVALIDITY UNDER NOS  
505694, 505695 & 505696 BY NIMESH DAVE**

**AND**

**TRADE MARK REGISTRATION NO. 3648759 IN THE NAME OF NIMESH DAVE**

**AND AN APPLICATION FOR A DECLARATION OF INVALIDITY UNDER NO.  
504857 BY UNILUX S.A.M.**

**AND**

**TRADE MARK APPLICATION NO. 3678902 IN THE NAME OF UNILUX S.A.M.**

**AND OPPOSITION THERETO UNDER NO. 600002126 BY NIMESH DAVE**

## **BACKGROUND AND PLEADINGS**

1. This decision concerns consolidated cross-proceedings between Unilux s.a.m. (“Unilux”) and Nimesh Dave. In the proceedings at issue in this decision, Mr Dave seeks invalidation of three registered trade marks and opposes the registration of another, all in the name of Unilux. Unilux in turn requests the invalidation of a registered trade mark owned by Mr Dave.

### **Nimesh Dave’s applications for invalidation of Unilux’s “MEDICANNA” marks**

#### **Application for invalidation of UK trade mark number 3409784**

2. UK trade mark number 3409784 (“the 784 mark”) for the word “MEDICANNA” was filed on 26 June 2019 and registered on 20 September 2019 for goods and services in classes 3, 4, 5, 29, 30, 31, 32, 33, 34 and 35. The full specification is set out at annex 1 of this decision.

3. On 3 January 2023, Mr Dave filed an application for a declaration of invalidity of the 784 Mark. The application is based on ss. 5(4)(a), 3(1)(b), 3(1)(c) and 3(3)(b), given effect by ss. 47(1) and 47(2), of the Trade Marks Act 1994 (“the Act”).

4. Under s. 5(4)(a), Mr Dave claims a valuable goodwill of which the following sign is said to be distinctive:



(“the MEDCANN figurative sign”)

5. Mr Dave says that the sign has been used in the UK since 2015 in relation to pet food, pet care products, candles, food and health care vitamins/supplements essential oils/cannabis extraction systems, hydroponic systems, plastic trays and tanks. The claim based on the MEDCANN figurative sign is directed against some of the goods in class 5 and all of the goods in classes 29, 30, 31, 32 and 33 of the registration. The

full particulars of the claims are set out at annex 2 to this decision. Mr Dave says that he has acquired a substantial goodwill associated with the above sign and that Unilux has misappropriated that goodwill. Accordingly, he requests that the registration be invalidated under s. 5(4)(a).

6. Mr Dave also asserts that the 784 Mark is a portmanteau of the words “medi” and “canna”, a reference to the words “medical cannabis” which are devoid of any distinctive character or are descriptive within the meanings of ss. 3(1)(b) and 3(1)(c) when they relate to products/services associated with cannabis. Mr Dave says that Unilux’s director describes himself as the owner of EthicaCBD and Unilux Monaco which manufactures, markets and sells sports gels, CBD oils, facial scrubs and night creams. Mr Dave says that Unilux’s goods and services are intended to contain or be associated with cannabis. Mr Dave asks that the registration be declared invalid in its totality under ss. 3(1)(b) and 3(1)(c) of the Act.

7. Further, Mr Dave claims that the 784 Mark is of such a nature to deceive the public and is contrary to s. 3(3)(b) of the Act. This ground, too, is directed at the whole of the specification. Mr Dave says that Unilux has educated the public that all of its products/services contain or are associated with cannabis/hemp contrary to the truth and would therefore be of a deceptive nature. He repeats the claims under ss. 3(1)(b) and (c).

### **Application for invalidation of UK trade mark number 918087033**

8. Unilux also owns UK trade mark number 918087033 (“the 033 Mark”) for the word “MEDICANNA”, which was filed on 26 June 2019 and registered on 3 November 2020 for goods and services in classes 3, 4, 5, 29, 30, 31, 32, 33, 34 and 35. The specification is identical to that of the 784 Mark, save in class 35 where there are minor differences. The full specification is listed at annex 1, where the differences with the 784 Mark are highlighted.

9. Mr Dave also filed the application for invalidation of the 033 Mark on 3 January 2023 and he requests that the 033 Mark be invalidated under ss. 47(1) and 47(2) and ss. 5(4)(a), 3(1)(b), 3(1)(c) and 3(3)(b).

10. Mr Dave asserts a substantial goodwill associated with the signs below:



- (i) (i.e., the MEDCANN figurative sign), said to have been used throughout the UK since 2015 for pet food, pet care products, candles, food products and health vitamins and supplements, essential oils, cannabis extraction, hydroponic systems, plastic trays and tanks.
- (ii) “Medcann Studios”, a word sign said to have been used in respect of music recording desks, recording studios fixtures and fittings since 2012.
- (iii) “Medcann Studios Customs”, a word sign also said to have been used since 2012 for music recording desks, recording studios fixtures and fittings.
- (iv) “Medcann”, a word sign said to have been used in relation to music recording desks, recording studio fixtures and fittings, political advertising and promotion of cannabis as a medication, music studio recording services, music studio recording desks, vinyl recording disks, nutraceuticals, vitamin supplements, dog foods, sanitisers, personal protective equipment including screens and masks since 2012.

11. The claim based on the MEDCANN figurative sign is directed at some of the goods in class 5 and all of the goods in classes 29 to 33, inclusive. The claims based on the remaining signs are directed against certain services in class 35; each of the word signs is directed against the same services. The full particulars of the claim are at annex 2. Mr Dave says that Unilux has misappropriated his goodwill and requests that the registration be invalidated under s. 5(4)(a).

12. The claims based on ss. 3(1)(b) and 3(1)(c) are directed against all of the goods and services and are identical to those made against the 784 Mark set out above.

13. Mr Dave’s claim under s. 3(3)(b) is also substantially identical to the claim regarding the 784 Mark. The ss. 3(1)(b) and 3(1)(c) claims are again repeated.

#### **Unilux’s counterstatements for the 784 and 033 Marks**

14. Unilux filed counterstatements denying the claims in their entirety. Regarding the ss. 3(1)(b) and (c) grounds, it submits that “MEDICANNA” would be seen as a single

made-up word with no meaning. In the alternative, it says that even if consumers perceived “medi-” as an abbreviation of the word “medical”, “canna” would be perceived as without meaning. In the further alternative, it says that even if the individual elements “medi” and “canna” are descriptive or non-distinctive, the whole is more than the sum of its parts and is distinctive. It further submits that even if the mark were perceived as meaning “medical cannabis”, those words are distinctive for all or the vast majority of the goods and services.

15. In respect of the s. 3(3)(b) claim, Unilux says that the claim as pleaded does not disclose a proper basis for an action under this ground. In particular, it says that the only pleaded basis of the claim is that Unilux has educated the public that its products/services contain or are associated with cannabis/hemp contrary to the truth. Unilux both denies this and says that the claim fails to consider the mark as registered as opposed to the use made of that mark. It also says that, in any case, consumers would not perceive the mark as being descriptive of products containing cannabis by reference to the goods and services or at all and that there is no possibility that the public would be deceived as to the nature, quality or geographical origin of the goods or services.

16. In respect of the passing off claims, Unilux put Mr Dave to strict proof of the claimed goodwill. It admits that the contested marks are highly similar to the word “MEDCANN”. It also admits, relevant to the 033 Mark, that there is a low degree of similarity between the mark and the signs “MEDCANN STUDIOS” and “MEDCANN STUDIOS CUSTOMS”. It submitted that the nature of some of the businesses pleaded was too vague (e.g. “pet care products”) for it to be able to admit or deny the claims and categorically denied any similarity between a number of the goods relied upon and the registered specifications.

### **Unilux’s application for invalidation of Nimesh Dave’s “MEDCANN” trade mark**

17. Mr Dave is the owner of UK trade mark number 3648759 for the word “MEDCANN” (“the 759 Mark”). It was filed on 28 May 2021 and registered on 10 December 2021 in respect of goods and services in classes 3, 5, 9, 10, 21, 25, 30, 31, 32, 34, 35, 36, 37, 39, 41, 42, 43 and 44. The specification is listed in full at annex 3.

18. By way of an application for a declaration of invalidity filed on 10 May 2022, Unilux requests invalidation based on ss. 5(2)(b), 5(3) and 5(4)(a), and s. 47(2), of the Act. Under each of these grounds, it challenges the full specification of the 759 Mark.

19. The grounds under both s. 5(2)(b) and s. 5(3) are based on Unilux's registration for UK trade mark number 3409784 for the word MEDICANNA, i.e., the 784 Mark. For both of these grounds, Unilux relies upon the full specification of the 784 Mark. The 784 Mark had not been registered for five years at the date of the application for invalidation and it is not subject to the use provisions at s. 47(2A).

20. Unilux says that the goods and services are identical or highly similar and that the marks are similar such that there is a likelihood of confusion, including the likelihood of association. Consequently, it requests that the registration be invalidated under s. 5(2)(b).

21. Further, Unilux claims a reputation in all of the goods and services for which the 784 Mark is registered. It says that use of the 759 Mark would give rise to a link in the mind of the average consumer which would lead to injury, through dilution of the 784 Mark's distinctive character or damage to its reputation, or to an unfair advantage to the 759 Mark. It therefore asks that the 759 Mark be invalidated under s. 5(3) of the Act.

22. Unilux also asserts a protectable goodwill associated with the sign "MEDICANNA", which it says that it has used since 2019 in relation to goods and services which correspond exactly to the specification of the 784 Mark. Unilux says that use of the 759 Mark would lead to misrepresentation likely to cause confusion among consumers and that this would result in damage to Unilux's goodwill. It requests that the registration be invalidated under s. 5(4)(a).

23. Mr Dave filed a counterstatement, subsequently amended, in which he denies the grounds. I will return to the detail as necessary.

#### **Nimesh Dave's opposition to Unilux's "Medicann" trade mark application**

24. On 9 August 2021, Unilux applied to register trade mark number 3678902 ("the 902 Mark") for the word mark "Medicann". The mark was published for a range of

goods and services in classes 5, 31, 34 and 44. The specification can be found in full at annex 1.

25. Mr Dave filed a notice of opposition, subsequently amended, seeking refusal of the application based upon ss. 5(2)(b), 5(4)(a), 3(1)(b), 3(1)(c) and 3(3)(b) of the Act.


26. The opposition under s. 5(2)(b) is directed against all of the goods and services and is based on UK trade mark number 3648759 for the word “MEDCANN” (i.e., the 759 Mark). All of the goods and services in classes 5, 10, 31, 34 and 44 of the 759 Mark’s specification are relied upon. The 759 Mark had not been registered for five years at the date of application for the contested mark and the use provisions at s. 6A do not apply.

27. Mr Dave says that the competing marks are similar and the goods and services identical or similar such that there will be a likelihood of confusion, and he asks that registration be refused under s. 5(2)(b).

28. Mr Dave also asserts that he has goodwill associated with the following signs and that use of the 902 Mark would amount to passing off:

- (i) “MEDCANN”, a word sign said to have been used since 1998 in relation to political advertising and promotion of cannabis as medication; music studio recording services; music studio recording desks; vinyl recording discs; nutraceuticals; vitamin supplements; sanitizers; personal protective equipment including screens and masks, recording studio fittings, recordings studio furnishings, petfood products, pet vitamins, and pet care products, human vitamin supplements, medical device equipment, hydroponic systems, hydroponic trays, hydroponic tanks, pharmacy services, medicine cabinets, music studio desks, CAD drawings for microphones, cigarette papers, consulting on video production, marketing material content and advertising.



- (ii)  (i.e., the MEDCANN figurative sign), said to have been used since 2015 in relation to pet food, pet care products, food and health

vitamins/supplements, candles, cannabis extraction hydroponics, protective screens on wheels, personal protective equipment, personal protective clothing, spices, sweets and candies, cakes and biscuits.

- (iii) “MEDCANN STUDIOS”, a word sign said to have been used since 2006 in relation to vinyl records.
- (iv) “MEDCANN STUDIO CUSTOMS”, a word sign said to have been used since 2012 in relation to music recording desks, recording studios fixtures and fittings.

29. The claims based on “MEDCANN STUDIOS” and “MEDCANN STUDIO CUSTOMS” are discussed under “pleadings points”, below. The grounds based on the “MEDCANN” sign and the MEDCANN figurative sign are directed against all of the goods and services in the specification.<sup>1</sup> It is said that use of the 902 Mark would give rise to a misrepresentation and damage to Mr Dave’s goodwill. Consequently, Mr Dave asks that the registration be refused under s. 5(4)(a).

30. It is further claimed that the 902 Mark is a portmanteau of the words “Medi” and “Canna”, which is a reference to the words “medical cannabis” which are devoid of distinctive character/descriptive for the goods and services. It is said that Unilux intends the goods and services to contain cannabis and offer services associated with cannabis. Consequently, Mr Dave asks that the application be refused in full under ss. 3(1)(b) and (c).

31. Finally, the 902 Mark is said to be deceptive as to the nature of the contested goods and services. Unilux is said to have educated the public that its products/services contain or are associated with cannabis/hemp contrary to the truth. Mr Dave requests that the application be refused in full under s. 3(3)(b) of the Act.

32. Unilux filed a counterstatement denying the grounds. It denies that the goods and services are identical or highly similar and denies that there is a likelihood of confusion. It also denies that Mr Dave has any unregistered rights and puts him to proof. However, Unilux admits that the 902 Mark is highly similar to the word MEDCANN and

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<sup>1</sup> The form TM7 indicates that classes 21 and 39 are not opposed under the MEDCANN figurative sign. However, the contested specification does not include these classes.

to a lesser degree to the MEDCANN figurative sign. It denies any similarity between certain of the goods and services and says it cannot admit or deny the claims regarding others, as the nature of the business is not properly defined. The s. 3 grounds are also denied. I note in particular that it is said that “Medicann” will be perceived as a single made-up word without meaning and that it is therefore neither descriptive nor non-distinctive. It follows that, as the mark has no meaning, it cannot deceive consumers. Unilux also asserts that Mr Dave’s claim has no proper legal basis under s. 3(3)(b) and is denied in any event.

### **Nimesh Dave’s application to invalidate Unilux’s “ETHICACBD” mark**

33. Trade mark registration number 3533915 for the word trade mark “ETHICACBD” (“the ETHICACBD Mark”) stands in the name of Unilux. The trade mark was applied for on 16 September 2020 and was registered on 30 April 2021 in respect of a range of goods and services in classes 3, 4, 5, 29, 30, 31, 32, 33, 34 and 35, set out in full at annex 1 to this decision.

34. On 3 January 2023, Mr Dave applied for invalidation in full of the ETHICACBD mark under ss. 3(1)(b), 3(1)(c) and 3(3)(b), and s. 47(1), of the Act.

35. Mr Dave says that “ETHICACBD” is a portmanteau of the words “Ethica” and “CBD”, which is a reference to the words “ethical” and “cannabidiol”, which are individually or in combination devoid of distinctive character or descriptive when they relate to products associated with cannabis. Consequently, Mr Dave says that the registration should be invalidated under ss. 3(1)(b) and/or 3(1)(c) of the Act.

36. Mr Dave also claims that the ETHICACBD mark should be invalidated because it will deceive the public about the nature of the goods or services in questions. He says that Unilux has educated the public that its products contain or are associated with cannabis/hemp contrary to the truth. Accordingly Mr Dave says that the mark should be invalidated under s. 3(3)(b).

37. Unilux filed a counterstatement denying the grounds. I will return to this to the extent necessary later in this decision.

## **HEARING AND REPRESENTATION**

38. A hearing was held before me on 15 January 2025. Mr Dave was represented by Mark Engelman of Counsel. Unilux was represented by Georgina Messenger, also of Counsel, instructed by Trademark Eagle Limited.

## **PRELIMINARY ISSUES**

### **Pleadings points**

39. A Case Management Conference (“CMC”) was held in these proceedings on 16 March 2023 to address a number of matters, principally issues with the grounds of invalidity/opposition raised by Mr Dave in his claims against Unilux. I allowed various grounds to proceed but struck out claims based on ss. 3(3)(a) and 3(4) of the Act. The reasons for my decision are contained in my letter dated 5 April 2023 and I adopt them here.

40. It is convenient to mention at this point that s. 3(6) grounds raised in the opposition to the 902 Mark were dropped in the skeleton argument. These grounds had been allowed at the CMC, in consequence of a second request to amend the claim in what was originally a fast-track opposition.

41. I should also mention that Mr Dave originally relied on unregistered rights in the word “MEDXCANN” in his invalidity action against the 784 Mark and in the opposition against the 902 Mark as well as, in the latter action, a registered trade mark for the same word (UK3648764). It was suggested in Professor Engelman’s skeleton argument and at the hearing that this was dropped at the CMC but that is not what my letter records; nor does it appear that this is what Unilux understood. Rather, my letter says that it was clarified that the sign identified as “MEDXCANN word mark” was the word “MEDXCANN” alone. It was another sign (“the MEDCANN 3-D device mark”) which it was agreed at the CMC added nothing. Nonetheless, the timing of the concession regarding “MEDXCANN” appears to me to be irrelevant: the important point is that it was made and was made on the record. Professor Engelman confirmed at the hearing that reliance on “MEDXCANN” added nothing and was dropped “across

the board”, i.e., in both the cancellations and the opposition.<sup>2</sup> That is the basis on which I proceed.

42. Finally, in the opposition to the 902 Mark, Mr Dave relies under s. 5(4)(a) on the word signs “MEDCANN STUDIOS” and “MEDCANN STUDIO CUSTOMS”. However, the services identified as opposed are services in class 35, such as advertising (see annex 2 for details). None of these services is contained in the contested specification. The claims based on these signs are therefore dismissed.

### **Mr Dave’s additional evidence**

43. There is an outstanding issue regarding additional evidence filed by Mr Dave and whether, or to what extent, it is admissible. It is necessary to go into some detail about the sequence of events.

44. On 4 April 2024, Mr Dave wrote to the tribunal raising a range of matters. In particular, he identified a challenge by Unilux to the authenticity of an invoice he had filed and to a statement he had made about expenditure. He requested an opportunity to respond to that evidence either by filing further evidence or through cross-examination.

45. On 18 April 2024, the tribunal issued a preliminary view refusing Mr Dave’s request for cross-examination but allowing him to file particular written evidence in response. The preliminary view stated:

“Mr Dave is directed under rule 62 to provide the metadata/document properties showing the dates of creation and modification of the invoices at pages 140 to 143 inclusive of his exhibit NM1 (i.e., the Strawberry Creative invoices). This should be provided under cover of a witness statement. If for any reason Mr Dave is unable to provide the metadata/document properties, he should explain fully the reasons for that in his statement. Mr Dave is also permitted to file the correct records from Companies House pertaining to company number 13383526. As marketing/investment sums are, on their own, of limited value, this will afford Mr Dave sufficient opportunity to respond to exhibit RGS8. This

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<sup>2</sup> Unfortunately, the transcript has no numbering. Confirmation of the concession is at p.36 of 63 of the PDF document.

evidence should be filed within one month of the date of this letter, i.e., on or before 20 May 2024.”

46. The parties were allowed 14 days, i.e., until 2 May 2024, to object to the preliminary view by requesting a hearing.

47. Unilux confirmed that it did not require a hearing. On 2 May 2024, Mr Dave requested an extension of time to request a hearing, because he had not been able to consult counsel. The email ended “should you be minded to refuse that request then I would ask that a hearing be scheduled”. On 9 May 2024, the tribunal wrote to Mr Dave to ask how much longer he needed. It also said that as it was by then almost a week since the deadline had expired and nothing further had been received, specific information, including dates, would be required about why consultation with counsel had not been possible since 18 April. Mr Dave responded on 17 May 2024. He said that he had had “some medical issues” which had been ongoing for the previous two months, and that counsel had been unobtainable because he was out of the country and in court. Mr Dave indicated he had contacted a third party for rebuttal evidence about the invoice and sought financial records. He requested a further two weeks, that is until 30 May 2024.

48. On 17 May 2024, the tribunal issued a preliminary view refusing the request for more time. Consequently, the preliminary view was that the deadline of 20 May 2024 for Mr Dave to file the evidence specified in the official letter of 18 April 2024 remained in force. The parties were given 7 days to request a hearing if they disagreed with this preliminary view and a CMC was provisionally appointed for 7 June 2024.

49. Mr Dave filed his second witness statement on 20 May 2024. There was no request to be heard.

50. On 6 June 2024, the tribunal wrote to the parties in the following terms:

“As neither party requested to be heard in respect of the preliminary view dated 17 May 2024, nor regarding the preliminary view of 18 April 2024, the provisional CMC booked for 7 June 2024 has been cancelled. The preliminary views have been automatically confirmed. The tribunal acknowledges the evidence filed by Mr Dave on 20 May 2024. As the preliminary view of 18 April

2024 was uncontested, Mr Dave was only permitted to file the evidence specified in that letter. The hearing officer will determine in her final decision the extent to which, if at all, the evidence complies with the direction.”

51. This prompted a letter from Mr Dave on 26 June 2024 requiring the tribunal to notify him in advance whether his evidence complied with the direction of 18 April. He also asserted that the tribunal “does not possess the jurisdiction to straight-jacket the nature and quality of the evidence which Mr Dave might wish to submit [...]” and complained that the tribunal’s approach was a breach of his Article 6 rights under the European Convention on Human Rights.

52. The tribunal wrote again to the parties on 1 July 2024 with my response:

“The tribunal has the power to control the evidence placed before it under rule 62(2) of the Trade Marks Rules 2008. It may exclude inadmissible evidence under rule 62(1)(i).

Mr Dave was given an opportunity to request a hearing regarding the preliminary view of 18 April 2024 (i.e., the evidence directions). He did not do so. Nor did he request a hearing in relation to the refusal of a request for more time to object. As there was no request for a hearing, the preliminary views were automatically confirmed. Litigants in person are not exempt from abiding by tribunal rules and procedures. The tribunal does not consider that there has been any procedural irregularity nor that Mr Dave’s Article 6 rights have been breached.

As to the additional evidence, Mr Dave was given permission to file (i) the metadata/document properties for specific invoices or an explanation of why this is unavailable and (ii) records from Companies House. There are therefore two relevant questions: (1) is the evidence metadata/document properties for the invoices identified or an explanation of why this is unavailable; and (2) is the evidence records said to have been filed at Companies House. Only the filleted accounts and the related part of the statement appear to comply. Submissions on whether the additional evidence is admissible can be made at the substantive hearing.”

53. It was maintained at the hearing that Mr Dave’s second witness statement should be admitted and that the tribunal has no powers to control the evidence. The second point is unsustainable. There is a general enabling power for case management at rule 62, which begins:

“62.—(1) Except where the Act or these Rules otherwise provide, the registrar may give such directions as to the management of any proceedings as the registrar thinks fit [...]”.

54. The rule then specifies particular types of case management direction which the registrar may give. Rule 62(1)(a) provides that the registrar may:

(a) require a document, information or evidence to be filed within such period as the registrar may specify; [...]”

55. Rule 62(2) contains express provisions regarding evidence:

“62.—(2) The registrar may control the evidence by giving directions as to—

(a) the issues on which evidence is required; and

(b) the way in which the evidence is to be placed before the registrar.”

56. I am satisfied that directing the issues and manner in which the evidence was to be provided is within the powers of this tribunal.

57. In terms of Mr Dave’s Article 6 rights, he was offered the opportunity to contest both preliminary views but did not request a hearing; indeed, a second CMC was scheduled which he stated was not necessary. I recognise that Mr Dave’s letter of 2 May 2024 requested a hearing if the tribunal was “minded to refuse” the request for more time. However, at that point, the tribunal was not in position to know if it would or would not refuse the request, because it had insufficient information. The tribunal took the request for a hearing to mean that if it refused the extension request, Mr Dave wanted a hearing about that refusal, rather than it being a request for a hearing on the original evidence directions. This is consistent with the nature of the extension request, which arose from Mr Dave not yet knowing whether he wanted to be heard regarding the evidence directions. I do not consider that Mr Dave’s contingent request for a

hearing in these circumstances can be considered a clear objection to the preliminary view dated 18 April 2024 which should have resulted in the appointment of a hearing, or that his Article 6 rights were breached by either the evidence directions or the refusal of extra time to decide whether he objected to the evidence directions. Hearings were offered but not taken up.

58. As for whether the evidence complies with the direction of 18 April, the evidence plainly does not and it is inadmissible (the Companies House records are not for the company stipulated). To the extent that it might be said that justice and fairness demand its admission, first, Mr Dave was given the chance to request a hearing and make submissions to the tribunal about any prejudice to him which might arise if the directions were confirmed but he chose not to do so. Secondly, the evidence would make no difference to the outcome of these cases. I will add that Professor Engelman attempted to give evidence about the reasons for the application of the MEDCANN trade mark to third parties' invoices in his skeleton argument and in submissions at the hearing. That is unacceptable and I ignore this evidence.

### **Ownership of the 784 Mark**

59. In his counterstatement regarding the 759 mark, Mr Dave put in issue the ownership of the 784 Mark, admitting that Unilux owns the trade mark but denying that it is legally entitled to such proprietorship. Unilux is recorded on the register as the proprietor of the 784 Mark and, pursuant to s. 72, that is prima facie evidence of the validity of both the original registration and of any subsequent assignment of it. I was told at the CMC that the assignment from the original applicant to Unilux would be filed in evidence (see §23 of my CMC decision). Undertakings to assign, rather than the assignment document, were filed but Mr Dave did not renew his request for disclosure.<sup>3</sup> Mr Dave filed no evidence on this point and it was not mentioned at the hearing. Consequently, I proceed on the basis that this point is no longer pursued.

### **WITNESSES**

60. Both parties filed evidence in the form of witness statements, some accompanied by exhibits. None of the witnesses was cross-examined.

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<sup>3</sup> The undertakings are at exhibit OR6.

61. Mr Dave provides the bulk of the evidence in support of his case. He filed two witness statements, the second of which is discussed above. Mr Dave's evidence is mainly about the use which he has made of the various MEDCANN signs relied upon. He also gives some details about the regulatory regimes for cannabis-based medicines and provides correspondence with the FSA and MHRA regarding Unilux's products.

62. There are a number of other witnesses in support of Mr Dave's case. They are:

- (i) Michael Herring, a user of prescribed cannabis for chronic pain and customer of Medcann Pharmacy.
- (ii) Cass Grossett, a UK radio presenter for Choice FM who appears to have known Mr Dave since at least 1994.
- (iii) Bryan Taylor, a radio DJ "in the reggae scene" who has known Mr Dave for over ten years.
- (iv) Adeniyi Ogundimu, a recording artist who describes Mr Dave as a "dear friend and collaborator".
- (v) Tito Williams, who also appears to be a musician. Mr Williams has known Mr Dave since around 2005 and they had begun working together on musical projects by 2008.
- (vi) Ryan Inskip, a user of medical cannabis prescribed for chronic pain who appears to be a customer of Medcann Pharmacy.
- (vii) Mitchel Fox, a patient who appears to have used Medcann Pharmacy.
- (viii) Pierre van Weperen, the CEO of Grow Pharma, which he describes as a leading specialist in the import and distribution of cannabis-based medicines in the UK.
- (ix) Dr Sunny Nayee, a medical professional working at the Pain Clinic, Charing Cross Hospital.

- (x) Nikhil Patel, a senior partner and solicitor who takes cannabis THC and CBD flower on prescription and is a customer of Medcann Pharmacy.
- (xi) Andrew O'Connor. Mr O'Connor appears to be a DJ. He says that he has worked with Medcann Studios for many years.
- (xii) Dr Mayur Bodani, an independent consultant neuropsychiatrist who now works in private practice following an NHS career.
- (xiii) Brinsley Forde, a member of reggae band Aswad who has known Mr Dave for many years.
- (xiv) Thomas Bell, a "renowned BBC radio presenter". He has known Mr Dave since 2006.
- (xv) Mohan Devshi, a longstanding friend of Mr Dave.
- (xvi) Maurice Delauney, a radio presenter with BBC 1XTRA and a music producer with his own record label. He has been associated with Mr Dave since 2006.
- (xvii) Paul Levy, a "chart-topping UK mainstream artist"; he is also a friend of Mr Dave.
- (xviii) Jermain Forde, the son of Marcia Simpson and Brinsley Forde of Aswad. He has worked closely with and mentored Mr Dave.
- (xix) Albert Doku, a radio presenter who works at Capital Xtra Radio. He has known Mr Dave for over 20 years.
- (xx) Ernie Harriot, a UK radio presenter at Choice FM. In the early 1990s he owned and operated record shops in London.

63. Unilux also filed a number of witness statements, most as exhibits to the statements of Mr Reiner and/or Mr Spurgeon, detailed below. The witnesses are:

- (i) Oliver Reiner, the founder and director of Unilux. He is also a shareholder in Medicanna Ltd. Mr Reiner filed two witness statements. He gives

evidence about the relationship between Unilux and Medicanna Ltd, the setting up of Medicanna Ltd, including evidence going to the preparations for trade and evidence about the sums invested in the company.

- (ii) Ruarri Spurgeon, the founder and director of Medicanna Ltd, which is a position he has held since 19 November 2019. He gives evidence about the activities of Medicanna Ltd as well as evidence aimed at undermining the evidence of use provided by Mr Dave.
- (iii) Amit Sharma, the proprietor of Indital (UK) Ltd. He gives evidence intended to cast doubt on invoice evidence provided by Mr Dave.
- (iv) Matthew Lawson, Regulatory Barrister who also founded The Canna Consultants (“TCC”), a cannabis regulatory consultancy. Mr Lawson gives details about Novel Foods Authorisation and the prescribing of cannabis-based medicine in the UK.
- (v) Charlotte Caldwell. Ms Caldwell retracts an earlier statement in support of Mr Dave’s case and provides no further evidence. I do not need to mention her again.

64. Both sides have filed evidence which is not relevant to the issues before me but that is particularly the case for the witnesses who give evidence about Mr Dave and his activities. Much of it concerns his personal reputation as a musician, rather than the signs relied upon and/or the goods and services for which he claims use. Similarly, although the parties have both filed evidence about cannabis-based medicines and non-medicinal CBD, including the different regulatory regimes, this is for the most part irrelevant to the issues which I have to decide. I have read all of the evidence carefully but I will refer to it only as I consider necessary.

### **MR DAVE’S INVALIDITIES AGAINST THE “MEDICANNA” MARKS**

65. It is convenient to begin by considering Mr Dave’s invalidity actions against the 784 and 033 Marks, which are both for the word “MEDICANNA” and for materially identical specifications.

**Passing off: s. 5(4)(a)**

66. Passing off is provided for at s. 5(4)(a) of the Act, as follows:

“5—(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,

[...]

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.

(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application.”

67. The grounds under s. 5 of the Act, including s. 5(4)(a), are given effect by s. 47(2):

“47.—(2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground—

(a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or

(b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied,

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.”

68. Section 47(5) is also relevant:

“Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.”

69. The relevant date for assessing the passing off claim is the filing date but if Unilux has used the mark before that date such use must be taken into account.<sup>4</sup>

70. I did not understand it to be either party’s case that Unilux commenced the acts complained off before the filing date of either trade mark on 26 June 2019. I acknowledge that Unilux acquired the domain name medicanna.com on 13 June 2019 and that Medicanna Ltd was incorporated on 18 June 2019. Both of these are activities potentially capable of representing the beginning of the behaviour complained of. In the present case, however, whether the relevant date is 13, 18 or 26 June 2019 makes no difference and my findings below apply at each of these dates.

## **Goodwill**

71. In *Reckitt & Colman Products Limited v Borden Inc. & Ors* [1990] RPC 341 HL, Lord Oliver of Aylmerton described at [406] the “classical trinity” that must be proved in order to reach a finding of passing off:

“First, he must establish a goodwill or reputation attached to the goods or services which he supplies in the mind of the purchasing public by association with the identifying ‘get-up’ (whether it consists simply of a brand name or a trade description, or the individual features of labelling or packaging) under which his particular goods or services are offered to the public, such that the get-up is recognised by the public as distinctive specifically of the plaintiff’s goods or services. Secondly, he must demonstrate a misrepresentation by the defendant to the public (whether or not intentional) leading or likely to lead the public to believe that the goods or services offered by him are the goods or services of the plaintiff. Thirdly, he must demonstrate that he suffers or, in a quia timet action, that he is likely to suffer damage by reason of the erroneous belief engendered by the defendant’s misrepresentation that the source of the

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<sup>4</sup> *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O/410/11 at [43].

defendant's goods or services is the same as the source of those offered by the plaintiff."

72. It is relevant to the present case that goodwill may persist after trade has stopped. In *Ad Lib Club Limited v Granville* [1971] FSR 1 (HC), Vice Chancellor Pennycuik said:

"It seems to me clear on principle and on authority that where a trader ceases to carry on his business he may nonetheless retain for at any rate some period of time the goodwill attached to that business. Indeed it is obvious. He may wish to reopen the business or he may wish to sell it. It further seems to me clear in principle and on authority that so long as he does retain the goodwill in connection with his business he must also be able to enforce his rights in respect of any name which is attached to that goodwill. It must be a question of fact and degree at what point in time a trader who has either temporarily or permanently closed down his business should be treated as no longer having any goodwill in that business or in any name attached to it which he is entitled to have protected by law."

73. Goodwill which is protectable under the law of passing off must be more than trivial: *Hart v Relentless Records* [2002] EWHC 1984 (Ch). In *Smart Planet Technologies, Inc. v Rajinda Sharm*, BL O/304/20, Thomas Mitcheson QC, as the Appointed Person, reviewed *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2015] UKSC 31, *Reckitt & Colman and Erven Warnink B.V. v. J. Townend & Sons (Hull) Ltd* [1980] R.P.C. 31 in relation to the establishment of goodwill for the purposes of passing off. Mr Mitcheson concluded that:

"[...] a successful claimant in a passing off claim needs to demonstrate more than nominal goodwill. It needs to demonstrate significant or substantial goodwill and at the very least sufficient goodwill to be able to conclude that there would be substantial damage on the basis of the misrepresentation relied upon."

74. However, a small business which has more than a trivial goodwill can protect signs which are distinctive of that business under the law of passing off even though its

goodwill and reputation may be small. In *Lumos Skincare Limited v Sweet Squared Limited and others* [2013] EWCA Civ 590, the Court of Appeal in England and Wales held that the defendant had passed off its LUMOS nail care products as the claimant's goods. The claimant had been selling LUMOS anti-ageing products since 2007. The goods retailed at prices between £40 and £100 per bottle. The Claimant's sales were small, of the order of £2,000 per quarter from early 2008 to September 2009, rising to £10,000 per quarter by September 2010. The vast majority of these sales were to the trade, including salons, clinics and a market. As at the relevant date (October 2010) the Claimant had sold to 37 outlets and was still selling to 25 outlets. There was evidence of repeat purchases. Although the number of customers was, as the judge at first instance put it, "very limited", the claimant's goodwill was found to be sufficient to entitle it to restrain the defendant's trade under "LUMOS". In *Stannard v Reay* [1967] F.S.R. 140, a mobile fish and chip van had been trading for three weeks, generating around £130 per week (around £1,600 per week in 2019 money), which was held to be sufficient for an interlocutory injunction to prevent the defendants using the same sign ("MR CHIPPY").

75. Mr Dave claims goodwill in a disparate range of goods and services but the claims under the MEDCANN figurative sign in both invalidities broadly relate to the same goods, whilst those based on the word signs overlap. I will assess the goodwill relating to the MEDCANN figurative sign first. The claims relating to this sign are slightly different in the two invalidities. In the claim against the 784 Mark, goodwill is asserted for "pet food, pet care products, candles, food and health care vitamins/supplements. essential oils/cannabis extraction systems, hydroponic systems, plastic trays and tanks" (reproduced as written). In the invalidation against the 033 Mark, the claim is that it is that there is goodwill in relation to "pet food, pet care products, candles, food products and health vitamins and supplements, essential oils, cannabis extraction hydroponic systems, plastic trays and tanks".

#### The MEDCANN figurative sign

76. Mr Dave says that since 2015/2016 he had manufactured and sold goods from pet food to collars and brushes.<sup>5</sup> The documentary evidence consists of images of product

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<sup>5</sup> Dave 1, §57.

labels for pet food, some of which are “initial proofs”. “MEDCANN petcare” is visible on most of them in the same form as those words in the composite sign reproduced below; the composite is visible on two labels:



77. The only identifiable products on the labels are puppy and adult dog food.<sup>6</sup>

78. In relation to candles, there are six invoices for the sale of candles dated between July and November 2016, which total £1,179.80.<sup>7</sup> They all bear the device shown below:



79. There is also an undated photograph showing candles with packaging which appears to be identical to the device on the invoices.<sup>8</sup>

80. Mr Dave says that he had nutraceuticals and vitamin supplements manufactured from 2015.<sup>9</sup> There are photographs showing “RESCUE AID COMP+”, which is a flower essences product, and a vitamin D3 supplement, both with the MEDCANN figurative sign on the packaging, as well as “Medcann” in very small lettering on the back of the box. Two of the boxes give a manufacturing date of October 2017.<sup>10</sup> There is an invoice showing sales of £300-worth ex. VAT of each of these products.<sup>11</sup> The evidence is, however, somewhat confusing. The invoice is from Prime Health-UK Ltd of Middlesex to MEMORYLAB Ltd of Barry. Prime Health-UK is named as the manufacturer on the product packaging. On its face, this would appear to show the

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<sup>6</sup> Exhibit NM1, pp. 133-135.

<sup>7</sup> NM1, pp.81-86.

<sup>8</sup> NM1, p.80

<sup>9</sup> Dave 1, §55.

<sup>10</sup> NM1, pp. 123-124, 126-127.

<sup>11</sup> NM1, p. 128.

sale of goods bearing the sign directly from the manufacturer to a third party. However, Mr Dave's narrative evidence is that this is a purchase order (though it is marked "invoice") "from Prime Health UK Ltd the Barry, Wales based manufacturer". He does not explain MEMORYLAB Ltd's relationship to him or his business. It is therefore unclear whether this invoice constitutes evidence of sales to a third party or to Mr Dave himself.

81. There are also four invoices bearing the MEDCANN figurative sign which appear to relate to vitamins or supplements. Two appear to mention vitamin D; one of the invoices has been overwritten. In total, these four invoices amount to £1880. All of the invoices relating to supplements are dated 2017.<sup>12</sup>

82. Mr Dave says that he had botanical extraction systems for the expression of essential oils manufactured in 2018.<sup>13</sup> He mentions four retail outlets in London but it is unclear to when this relates. There are undated photographs of what are said to be the extraction systems, which show the MEDCANN figurative sign.<sup>14</sup>

83. Mr Dave also says that he had hydroponic/agricultural/horticultural systems for the growing of fruits and vegetables including cannabis manufactured in 2017/2018.<sup>15</sup> There are two undated photographs of what appear to be plastic trays bearing the word "MEDCANN".<sup>16</sup> There are also two invoices totalling £1,043.64 (excluding shipping charges) which Mr Dave says are "associated sales invoices associated with their manufacture". The invoices relate to the manufacture of 4 grow trays and 14 grow tables. They are from a third party, not sales of the goods by Mr Dave.<sup>17</sup>

84. I also note that Mr Devshi says that he has purchased and assisted Mr Dave in the supply and sale of his Medcann branded products, including candles, vitamin/supplements and pet food for his (Mr Devshi's) cat. Mr Ogundimu says that he has used Medcann vitamin supplement oils "over the years".

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<sup>12</sup> NM1, pp. 129-132.

<sup>13</sup> Dave 1, §53.

<sup>14</sup> NM1, pp. 114-117.

<sup>15</sup> Dave 1, §54.

<sup>16</sup> NM1, pp. 118-119.

<sup>17</sup> NM1, pp. 120-121.

85. Turning to the assessment, the evidence suggests some use of the MEDCANN figurative sign and the word MEDCANN. It is, however, on a very small scale. The goods in relation to which goodwill is claimed are also disparate and belong to distinct areas of business.

86. The evidence relating to pet food, or pet care more widely, falls well short of the evidence needed to establish goodwill of any description. There is no evidence of turnover at any date and the only documentary evidence consists of labels which may or may not ultimately have been affixed to packaging. There is no evidence of promotion and no indication of when or where, if at all, the pet food was sold. Although Mr Devshi appears to have purchased cat food, the evidence of a single customer with an uncertain scale or frequency does not materially assist. Mr Dave's largely unsupported narrative evidence of production since 2015 takes the matter no further.

87. I accept that there were some sales of candles in 2016. However, the sales figures are very small, to a very small number of customers. There is no supporting evidence in the form of promotional material and there is no evidence to demonstrate sales after 2016. The level of sales is well below that even of *Stannard v Reay*, which is described in *Wadlow* as probably representing the "acceptable limit" of a small goodwill.<sup>18</sup> I do not think that the evidence shows a substantial goodwill in a business selling candles in 2016, still less in 2019, given the limited sales and the passage of time since those sales had occurred.

88. I understand nutraceuticals to be foods to which are added additives providing extra nutritional value. Although Mr Dave says that he manufactured nutraceuticals from 2015, there is no documentary evidence that any foodstuffs were manufactured, still less under any MEDCANN sign. There is no detail of any sales at any point and no evidence of any kind of promotion. The claim to goodwill in nutraceuticals is dismissed.

89. There is some limited evidence of the sale of vitamin D and of a flower essence product. On the basis most favourable to Mr Dave, namely that all of the invoices in evidence qualify, they amount to less than £2,500 in 2017. It was submitted to me that the "07.17 invoices for vitamins [sic] supplements amount to £900 per month [...].

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<sup>18</sup> *Wadlow on the Law of Passing Off*, 6<sup>th</sup> ed., 3-34.

Which equates to £2,700 per quarter for 2017 just for that product line alone”.<sup>19</sup> The referencing in the skeleton argument appears to have gone awry but, in any event, Mr Dave gives no evidence as to how representative these invoices are of sales in other months, or indeed any overall monthly or annual sales figures. There is no evidential basis for the extrapolation of figures which Professor Engelman suggests I should make. I bear in mind that Mr Devshi and Mr Ogundimu appear to have purchased vitamins but their evidence is lacking in detail (e.g., dates, frequency). In my view, there was no more than a trivial goodwill in relation to supplements/vitamins in 2017. Even if the goodwill had been enough to be protectable in 2017, it was too small to withstand the passage of time and would have dissipated by the relevant date.

90. There is no evidence that Mr Dave sold essential oils at any time. The evidence relating to essential oil/cannabis extraction systems, hydroponic systems and plastic trays/tanks is also wholly inadequate to establish that there was goodwill at the relevant date. It is simply not enough to make a bare assertion that there was trade in the goods and provide an undated photograph of the product, even with some evidence that Mr Dave may have purchased them. What is needed is evidence that the goods were sold to customers in the UK on a sufficient scale that there is a business which should be protected. The evidence signally fails to establish this.

91. Consequently, the grounds under s. 5(4)(a) based on the MEDCANN figurative sign fail, as Mr Dave owned no goodwill in relation to the goods asserted at the relevant date.

### The word signs

92. Mr Dave relies on the signs “Medcann Studios” and “Medcann Studios Customs”, both in respect of “music recording desks, recording studios fixtures and fittings”. He also claims goodwill in relation to “music recording desks, recording studio fixtures and fittings, political advertising and promotion of cannabis as a medication, music studio recording services, music studio recording desks, vinyl recording disks, nutraceuticals, vitamin supplements, dog foods, sanitisers, personal protective equipment including screens and masks” of which he says that the sign “Medcann” is distinctive.

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<sup>19</sup> Nimesh Dave skeleton argument, §26.

93. I have already described the evidence filed in connection with the purported goodwill in nutraceuticals, vitamin supplements and dog foods. “Medcann” is a prominent part of the sign shown in the evidence but, for the reasons given above, the evidence falls far short of establishing a protectable goodwill relating to these goods.

94. The evidence regarding hand sanitisers consists of a single invoice for anti-bacterial hand gel for £300 ex. VAT from June 2017, which is the invoice/purchase order to MEMORYLAB Ltd discussed above,<sup>20</sup> and an undated photograph of the product with the MEDCANN figurative sign on the packaging.

95. Mr Dave says that since 2017/2018 he had Medcann-branded face coverings and gloves manufactured which he sold to various UK retail outlets such as local pound stores, wholesalers of cleaning products, general hardware stores and hydroponic retail outlets.<sup>21</sup> There is undated advertising material for face coverings. There are also undated images of face shields.<sup>22</sup> These all bear the sign shown below:



96. The face shields also bear another “MEDCANN” sign. The image is very poor but a reproduction is shown below. Leaflets for screens on wheels appear to show the same sign:<sup>23</sup>



97. The sign reproduced at paragraph 95, above, is also present on an undated photograph of a laboratory coat.<sup>24</sup> There is no indication of whether any such coats were ever offered for sale, sold or, if so, when.

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<sup>20</sup> NM1, p. 128.

<sup>21</sup> Dave 1, §58.

<sup>22</sup> NM1, pp. 136-138.

<sup>23</sup> NM1, p. 137.

<sup>24</sup> NM1, p. 144. See also Dave 1, §61.

98. Mr Dave also says that he had personal protective equipment, including screens, manufactured. There is an undated still from a video showing a screen, with the same sign as at paragraph 95, above, superimposed.<sup>25</sup> Four invoices, which are the subject of a dispute between the parties and to which I will return later in this decision, are dated after the relevant date and are irrelevant for the present invalidities.

99. In my judgement, the evidence in relation to sanitisers and personal protective equipment including screens, masks and clothing is far too weak to establish a protectable goodwill at any point. I reject the claim that there was goodwill subsisting in a business providing these goods.

100. Turning to “political advertising and promotion of cannabis as a medication”, there is no documentary evidence at all which supports this claim. Mr Dave does provide an image which he says shows him wearing a Medcann-branded suit on Channel 4 but I cannot make out any such branding on the photograph, even under magnification.<sup>26</sup> Even if I could, it dates from 1994. Mr Dave makes various assertions that he has assisted others to obtain medical cannabis and says that banners bearing the sign “Medcann” were produced promoting the legalisation of cannabis.<sup>27</sup> There is also evidence from others, such as Mr Grossett, that Mr Dave was vocal about his belief in the medicinal properties of cannabis and from Mr Harriott that, on the 1994 Channel 4 appearance, Mr Dave’s image prominently featured Medcann branding and cannabis leaves. The evidence, such as it is, points towards Mr Dave believing that cannabis is a valuable medicine and that it should be available to those who may need it. However, the picture painted by the evidence is simply of someone who has expressed their beliefs about a particular subject. That is a long way from operating a business which provides “promotion of cannabis as a medication” or “political advertising” as a service, whether paid for or not, to third parties. There is some evidence regarding Medcann Pharmacy and its activities, from both Mr Dave and others, but it is all either dated after the relevant date or not dated at all and is irrelevant to these invalidity actions.

101. Regarding the music-studio-related goods and services, there is a photograph of a music studio work station which bears the words “MEDCANN Studio Customs”.<sup>28</sup>

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<sup>25</sup> NM1, p. 139.

<sup>26</sup> NM1, p. 14.

<sup>27</sup> See, for example, Dave 1, §§9, 43.

<sup>28</sup> NM1, p. 87.

The same words are visible on advertising for the “MEDXCANN STUDIO DESK”.<sup>29</sup> Mr Dave says that he has supplied Niki’s Studio Shop of London and an individual, DS.<sup>30</sup> There is a single invoice, to the Studio Shop Ltd (which appears to be Niki’s Studio Shop, judging by the email address), for a “MEDCANN MEDXCANN STUDIO DESK” and a “MEDCANN MEDXCANN STUDIO DESK SIDE CART” totalling £2,494.80 inc. VAT. It is dated November 2018. There is a second invoice identified in Mr Dave’s witness statement but it appears to be a payment to a third party for unrelated services.<sup>31</sup>

102. In respect of recording studio fixtures and fittings, Mr Dave says that he constructed recording studios for third parties in 2000 and that carpentry associated with customised music studios, including doors and window frames, has since that date been supplied under the “Medcann” brand [49]. Undated photographs do not show the mark.<sup>32</sup>

103. Mr Dave says that “all published musical works” were recorded at Medcann Studios, which he built between 1998 and 2000 and on which he spent “£100,000’s” on building works.<sup>33</sup> There are two sales order acknowledgements dated 2018 to Mr Dave for what appears to be music studio equipment.<sup>34</sup> Neither shows the word “MEDCANN”.

104. Mr Dave says that he had vinyl records manufactured from 2003 and that represses were made in 2006, 2012 and 2018, which were distributed in the UK and overseas. He says that all of the recordings were made at and distributed under the name Medcann Studios and that he had thousands manufactured over the years. Mr Dave says that he “sold the vinyl represses outside the UK to amongst others, S&S Records based in London and distributed around the world for example to retail outlets such as Dubstore, Inc. Tokyo”.<sup>35</sup> In support of this, he exhibits four invoices from S&S Records, which are either to customers who are outside the UK or whose location is not given. They total £448.45 and are dated May 2014, February 2015, January 2016

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<sup>29</sup> NM1, pp. 89-90.

<sup>30</sup> Dave 1, §§47-48.

<sup>31</sup> NM1, pp. 91-92.

<sup>32</sup> NM1, pp. 93-95.

<sup>33</sup> Dave 1, §14.

<sup>34</sup> NM1, pp. 16-17.

<sup>35</sup> Dave 1, §§25-27.

and April 2017.<sup>36</sup> The invoices do not show “Medcann Studios” but some of the product codes on the invoices correspond to those on photographs of the records. The records say “recorded at Medcann Studios”. Marketing and distribution are attributed to NW2 Music/Sprint Records.<sup>37</sup> All of the records are Mr Dave’s own songs.

105. Mr Dave says that he attracted the attention of various newspapers and that he made various appearances in 2006, as well as giving a radio interview in 2017-2018. He also says that his songs were played on the radio between 2005 and 2008, which “advertised my recordings made at Medcann Studios”, and that he held musical events at a pub in Hertfordshire between 2005 and 2017, “at which I hosted BBC musical events and advertised my banners and posters of our band, the Medcann Studios recording studios and Medcann Studios recordings”. There are references to other appearances, such as at the Barclay’s Arena Birmingham, and to associations with record labels and production teams. Mr Dave says he would promote Medcann Studios and the NW2 record label recorded at Medcann Studios, and that press releases were issued. However, there is nothing beyond this to demonstrate that the sign MEDCANN or any variant of it formed any part of these events.<sup>38</sup> There is also no documentary evidence of art pieces said to have been commissioned and used for promotional purposes.<sup>39</sup>

106. Some of the witnesses filing evidence in support of Mr Dave’s case mention visiting Medcann Studios (e.g., Mr Grossett, Mr Williams), or that they have received and/or played on the radio songs recorded at Medcann Studios (e.g., Mr Grossett, Mr Taylor, Mr O’Connor). However, their evidence is either not specific about the dates or the dates are many years ago. Nor does their evidence demonstrate how “Medcann” or “Medcann Studios” were promoted through these activities. There is some narrative evidence from Mr Ogundimu and Mr Williams that they collaborated with Mr Dave on musical projects at Medcann Studio (although at least some of this was in Jamaica) and from Mr O’Connor that he has had a “strong working relationship” with Medcann Studio for many years. Mr Bell gives evidence that Mr Dave has collaborated with other artists “on projects that have showcased his songwriting and

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<sup>36</sup> NM1, pp. 64-67.

<sup>37</sup> See Dave 1, §27 and NM1, pp. 68-74.

<sup>38</sup> Dave 1, §§30-39, 41.

<sup>39</sup> Dave 1, §40.

producing skills". Mr Delauney says that he has been associated with Mr Dave since 2006 and that Mr Dave wrote and recorded songs at his Medcann Studio which were released "on his own NW2 Music record label with his Medcann brand". In 2008, Mr Dave's songs were released on Mr Delauney's Big League label. Mr Delauney says that these songs were written and recorded at Medcann Studio. Mr Delauney says that in around 2014 he asked Mr Dave to engineer and mix a few songs at his, Mr Dave's, studio and that the results were outstanding.

107. Mr Dave also says that recordings were made at Medcann Studios for many well-known artists/bands. He names Ijahman Levy, Michael Prophet and Bass Odyssey, among others. He says that the recording of Dennis Alcapone pressed by Roots International was made at Medcann Studios. There is a photograph of a record which says "Funny Feeling [illegible] K-OSS Feat: DENNIS ALCAPONE".<sup>40</sup> I can see that Mr Dave is credited as producer but I cannot see the word "MEDCANN" anywhere on the disc. The copyright date is 2012. The position is similar for another 2012 disc by The Astronauts: Mr Dave is credited with production and arrangement but "MEDCANN" is nowhere visible.<sup>41</sup> Mr Dave says that the recordings were sold through retail outlets and manufactured and distributed under the Medcann Studios label. He also says that he released his own album on Medcann Studios-branded vinyl in 2009.<sup>42</sup> There is no documentary evidence to support this.

108. There is a social media post dated 15 March 2013 which reads "Ijahman Levy and k-OSS working in the studio...another great Medcann studios/Nw2 music moment".<sup>43</sup>

109. Mr Dave provides invoices for services such as "studio services", "recording services", "mixed production & master", "studio session" and "vocal production".<sup>44</sup> One of these is from 2013 and the remainder are dated between July 2016 and November 2017. In total, they amount to almost £8,000, around £7,500 of which is from 2016/2017. However, these figures include some charges for services such as "music consultancy", "ads consultancy" or "consultancy for release", because the services

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<sup>40</sup> NM1, p.19.

<sup>41</sup> NM1, p.20.

<sup>42</sup> Dave 1, §§14-119.

<sup>43</sup> NM1, p. 21.

<sup>44</sup> NM1, pp. 22-53 (31, 32, 55 and 99 are duplicates), 102, 103, 105-110.

are not always itemised separately. There also appear to be sales of 7" vinyl records, albeit in single digits and for a total of only £45. Several invoices from January to April 2017 bear the words "MEDCANN STUDIOS", as does one invoice from 2016 and the invoice from 2013, which also shows "MEDCANN" alone. Some of the other invoices mention "Medcann Studio" services in the description. All of the remaining invoices show the sign reproduced below in black on white or blue paper, the latter being the version shown; the background colour created by the colour of the paper will not be perceived as part of the sign:



110. There are four invoices which specify "music consultancy" in the description and which total £500 between April 2016 and June 2017.<sup>45</sup>

111. The evidence relating to music studio desks is not, in my view, adequate to establish a substantial goodwill in a business supplying these goods. I note that there is invoice evidence. However, a single sale for a fairly small amount, without any evidence to show promotion of any description or orders which have been placed but not yet fulfilled is not sufficient. Undated photographs of construction without the sign take the matter no further. To the extent that the claim is now intended to be one of services for the supply and installation of recording studio fixtures and fittings, that is, first, not pleaded and, secondly, the evidence is inadequate to support a finding of goodwill in relation to any such services.

112. Regarding music studio recording services, the evidence is, as Unilux implicitly acknowledged, better than for many other parts of the claim. However, it remains very thin. Whilst the narrative evidence of most of the witnesses goes some way to establishing that Medcann Studios exists and that some third parties have used its services, the evidence is vague as to what exactly this involved and when it occurred. In particular, much of the evidence, including that of Mr Dave, conflates the separate issues of Mr Dave's personal reputation (under the name K-OSS) and that of Medcann

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<sup>45</sup> NM1, pp. 98, 100, 101, 104.

Studios. For example, the fact that Mr Dave recorded his own songs at Medcann Studios is not directly relevant to the provision of music studio recording services for third parties. When the evidence is distilled down to its essentials, there is invoice evidence supporting around £8,000 of music studio services in 2013 and 2016/2017. There is only unsupported narrative evidence of the provision of such services and no evidence at all of any promotion. Mr Dave does not give any overall turnover figures for his asserted business and I note that the handwritten invoices are largely consecutive (some of the “missing” invoices are provided elsewhere in the evidence for goods such as candles). The numbering of the printed invoices does not appear to be a reliable indicator of how many invoices were issued: for example, invoices dated 19 June 2017, 28 June 2017 and 12 July 2017 are numbered 0617201, 0617401 and 0717201, respectively. Given the limited scale of activity shown elsewhere, it is implausible that 100,000 invoices were issued in less than a month.<sup>46</sup>

113. There is very limited evidence of sales of vinyl records. Although Mr Dave refers to represses and sales in various territories, the only concrete evidence of sales is around £500-worth of sales of his own recordings. It is true that “Medacnn Studios” appears on the records themselves as the place of recording. However, this information is subordinate to the artist, song title, record label and even the marketing and distribution information. There is an additional difficulty in that the records are Mr Dave’s own. The fact that he names the studio is, to a large degree, irrelevant, because it does not show that services were offered to third parties, i.e., as a business. I accept that it could be said that the placing of the name on the disks has a promotional purpose. However, the evidenced sales are so small that I do not think that there would be any real marketing gain for the music studio services as a result of this use. I will add that although various witnesses say that they promoted “Medcann Studios” when playing Mr Dave’s records, and indeed Mr Dave says he did so at performances, this does not appear to me to be a typical way of promoting songs/recordings, particularly on the radio where, in my experience, announcers generally only mention artists and track names. More solid evidence would be required to show that the name of the studio where the track was recorded was mentioned in a relevant way or with any frequency.

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<sup>46</sup> I note that all of the 18 printed invoices end in the digits 17101, 17201, 17401 or 17402.

114. In view of all of the above, I reject the claim that Mr Dave owned a protectable goodwill in relation to vinyl recording disks and that “Medcann” was distinctive of that goodwill.

115. It seems to me probable that there was a small goodwill in relation to music studio recording services in 2017 and that “Medcann”, as the only distinctive part of the name “Medcann Studios”, was distinctive of that goodwill. However, the last invoice evidence is from November 2017, more than eighteen months before the relevant date. There is nothing after this, or indeed before this, to show any promotion of the business (other than the naming of the studio on vinyl records), and nothing which demonstrates either that the business continued to the relevant date or that any attempts were made to keep the goodwill alive. In such circumstances, I am of the view that any goodwill which existed in 2017 is likely to have dissipated by June 2019 and that it was no longer sufficient to found a passing off claim.

116. Mr Dave has failed to establish that he owned a protectable goodwill in relation to any of the goods or services relied on for his invalidity actions. Accordingly, the passing off actions fail.

117. For the sake of completeness, and in case I am held to be wrong on appeal that there was no goodwill in relation to music studio recording services as at June 2019, I will consider the next element of a passing off claim, assuming, contrary to my primary finding, that there was a small but protectable goodwill at the relevant date. This is only relevant to the 033 Mark as recording services are not relied on against the 784 Mark.

### **Misrepresentation**

118. In *Neutrogena Corporation and Another v Golden Limited and Another* [1996] RPC 473, Morritt L.J. stated that:

“There is no dispute as to what the correct legal principle is. As stated by *Lord Oliver of Aylmerton in Reckitt & Colman Products Ltd. v. Borden Inc.* [1990] R.P.C. 341 at page 407 the question on the issue of deception or confusion is

“is it, on a balance of probabilities, likely that, if the appellants are not restrained as they have been, a substantial number of members of the public will be misled into purchasing the defendants' [product] in the belief that it is the respondents'[product]”

The same proposition is stated in Halsbury's Laws of England 4th Edition Vol.48 para 148. The necessity for a substantial number is brought out also in *Saville Perfumery Ltd. v. June Perfect Ltd.* (1941) 58 R.P.C. 147 at page 175 ; and *Re Smith Hayden's Application* (1945) 63 R.P.C. 97 at page 101.”

119. The requirement for a “substantial number” of members of the public to be deceived means a substantial number of the claimant’s actual or potential customers would be likely to be deceived: *Lumos Skincare Limited v Sweet Squared Limited and others* [2013] EWCA Civ 590.

120. Although a common field of activity is not essential, it is a relevant consideration. As Millet LJ said in *Harrods Limited v Harrodian School Limited* [1996] RPC 697 (CA),

“Where the plaintiff's business name is a household name the degree of overlap between the fields of activity of the parties' respective businesses may often be a less important consideration in assessing whether there is likely to be confusion, but in my opinion it is always a relevant factor to be taken into account.

Where there is no or only a tenuous degree of overlap between the parties' respective fields of activity the burden of proving the likelihood of confusion and resulting damage is a heavy one. In *Stringfellow v. McCain Foods (G.B.) Ltd.* [1984] R.P.C. 501 Slade L.J. said (at page 535) that the further removed from one another the respective fields of activities, the less likely was it that any member of the public could reasonably be confused into thinking that the one business was connected with the other; and he added (at page 545) that

‘even if it considers that there is a limited risk of confusion of this nature, the court should not, in my opinion, readily infer the likelihood of resulting damage to the plaintiffs as against an innocent defendant in a completely different line of business. In such a case the onus falling on plaintiffs to

show that damage to their business reputation is in truth likely to ensue and to cause them more than minimal loss is in my opinion a heavy one.”

121. The services challenged are “advertising, marketing and sales promotions; online ordering services; consultancy, information and advisory services relating to all the aforesaid services”. These are services in a field which is entirely distinct from that of music studio recording services. I accept that the relevant public for advertising and marketing services may coincide to a point, as music labels or artists may engage marketing professionals to boost sales, but the services themselves have no points of overlap. For example, music studio recording service require specialist equipment and skills which are a world apart from those of marketing professionals. The services have a different aim and there is no reason to believe that they are commonly provided by the same business; on the contrary, they are not at all likely to have the same trade source. To this may be added what is at best a very limited goodwill. The smaller the goodwill, the less likely it is to bridge the gap between different services. Although “MEDCANN” has a high degree of inherent distinctiveness for music studio recording services, that is not capable of compensating for the very small size of the business and the completely different fields of activity. There is no likelihood that the relevant public will be deceived. The passing off claim is dismissed.

**Descriptiveness and non-distinctiveness of the “MEDICANNA” marks: ss. 3(1)(b) and 3(1)(c)**

122. The legislation regarding ss. 3(1)(b) and (c) reads:

“(1) The following shall not be registered—

(a) [...]

(b) trade marks which are devoid of any distinctive character,

(c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services,

(d) [...]

Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.”

123. In the invalidity actions, the provisions under s. 3 of the Act are given effect by ss. 47(1):

“47.—(1) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 3 or any of the provisions referred to in that section (absolute grounds for refusal of registration).

Where the trade mark was registered in breach of subsection (1)(b), (c) or (d) of that section, it shall not be declared invalid if, in consequence of the use which has been made of it, it has after registration acquired a distinctive character in relation to the goods or services for which it is registered.”

124. The relevant date for the prima facie assessment of registrability under all of the s. 3 grounds is the filing date, namely 26 June 2019. As above, I will consider both “MEDICANNA” trade marks (i.e., the 784 and 033 Marks) together.

### **Section 3(1)(c)**

125. The case law regarding s. 3(1)(c) was summarised by Arnold J (as he then was) in *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2012] EWHC 3074 (Ch). The most relevant points are:

- (a) The general interest underlying s. 3(1)(c) is that of ensuring that descriptive signs relating to one or more characteristics of the goods or services in respect of which registration as a mark is sought may be freely used by all traders offering such goods or services;
- (b) With a view to ensuring that that objective of free use is fully met, it is not necessary that the sign in question actually be in use at the time of the application for registration in a way that is descriptive. It is sufficient that the sign could be used for such purposes;

- (c) The ground for refusal does not depend on there being a real, current or serious need to leave a sign or indication free and it is therefore of no relevance to know the number of competitors who have an interest, or who might have an interest, in using the sign in question;
- (d) It is irrelevant whether there are other, more usual, signs than that at issue for designating the same characteristics of the goods or services referred to in the application for registration;
- (e) The situations specifically covered by s. 3(1)(c) are those in which the sign in respect of which registration as a mark is sought is capable of designating a “characteristic” of the goods or services referred to in the application. By using the terms “the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service”, the legislature made it clear, first, that the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service must all be regarded as characteristics of goods or services and, secondly, that that list is not exhaustive, since any other characteristics of goods or services may also be taken into account.
- (f) The fact that the legislature chose to use the word “characteristic” highlights the fact that the signs referred to in s. 3(1)(c) of the Act are merely those which serve to designate a property, easily recognisable by the relevant class of persons, of the goods or the services in respect of which registration is sought. As the Court has pointed out, a sign can be refused registration on the basis of Article 7(1)(c) of Regulation No 40/94 only if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of those characteristics (see, by analogy, as regards the identical provision laid down in Article 3 of Directive 89/104, *Windsurfing Chiemsee*, paragraph 31, and *Koninklijke KPN Nederland*, paragraph 56);
- (g) A sign is caught by the exclusion from registration in s. 3(1)(c) if at least one of its possible meanings designates a characteristic of the goods or services concerned.

126. The average consumer for most of the goods and services is a member of the general public. Some of the goods in class 5, such as pharmaceuticals and veterinary preparations, will be used by both the general public and professionals. Advertising, marketing and sales promotion services in class 35 are typically business-to-business services and will therefore be used by professionals. The level of attention which will be paid to the selection of the goods and services will vary across the specifications. For the most part, there will be a medium degree of attention, given that consumers will pay some attention to the choice of scent, flavour or particular type of goods (e.g., the type of meat, vegetable or plant). However, chocolate confectionery and confectionery are low-cost products generally selected quickly and routinely, to which only a low degree of attention will be paid. A fairly high degree of attention will be paid by both professionals and end consumers to the selection of pharmaceuticals and veterinary preparations, whether on prescription or not, given the impact on the consumer's health and the importance of selecting the correct medicine for the ailment. I consider that the same also applies to the remedies and supplements in class 5 of the specification, as these products are also important for the user's health. Professional users of services such as marketing services will also pay a fairly high degree of attention to the selection of the services, bearing in mind that such services are likely to be important to a business's future prospects and will involve consideration of factors such as the provider's reputation and experience.

127. Mr Dave's position is that, for both the 784 and 033 Marks, "MEDICANNA" is a reference to "medical cannabis" and that the marks are descriptive when they relate to goods/services associated with cannabis. Professor Engelman submitted that Unilux has admitted that the marks derive from the words "medical" and "cannabis" and that it has demonstrated both that "medi" means "medical" and that "canna" denotes "cannabis". Thus, his submissions appeared to be that Unilux has admitted that its marks are descriptive.<sup>47</sup>

128. Unilux does accept, in its own application for invalidation, that both "MEDICANNA" and "medcann" are derived from "medical" and "cannabis".<sup>48</sup> However, that is some way short of an admission that the resulting mark "MEDICANNA" is

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<sup>47</sup> Skeleton argument of Nimesh Dave, §57-60 and 63.

<sup>48</sup> TM26(l) against the 759 Mark, §15.

descriptive. Professor Engleman identified five instances from Unilux's evidence to support his claim regarding "medi". However, only two of them actually include the string "medi". In respect of "canna", of ten examples only three include "canna".<sup>49</sup> This is not a promising start. Further, one of the examples including "medi" is "Mamedica". The fact that "medi" is contained within the string "medica", itself very similar to "medical", does not establish that "medi" alone will be perceived as meaning "medical" in this mark. Further still, all of the relevant examples are being used as names of pharmacies, as brands for goods or as the name of a consultancy. In other words, they are being used to indicate trade origin. The inclusion of "medi" or "canna" in these names does not, of itself, show that either "medi" will be perceived as meaning "medical" or that "canna" will be perceived as "cannabis". I do not accept that Unilux has admitted its marks are descriptive.

129. Whilst "MEDICANNA" is presented as a single word and "medi" is not separated from the remaining letters, it seems to me that, for goods or services connected with medicine in class 5, or the retail of such goods in class 35, the average consumer will recognise "medi" as a reference to "medical", "medicinal" or "medicine". "Medi" may also be perceived as meaning "medicated". Thus, for "pharmaceuticals and natural remedies; veterinary preparations; dietary supplements; medicated shampoo; food supplements; medicated food supplements; dietary food supplements; food supplements for medical purposes; food supplements for veterinary use; food supplements in liquid form; health food supplements made principally of vitamins; health food supplements made principally of minerals; health food supplements for persons with special dietary requirements", and for the associated retail services in class 35, "medi" will be taken as a reference to the medical or medicinal properties of the goods. I recognise that "health food supplements made principally of vitamins; health food supplements made principally of minerals; health food supplements for persons with special dietary requirements" are widely available in retail premises such as supermarkets and health food shops and are not in the main "medical" goods, like prescription medicines. However, supplementation with minerals or vitamins, or to support a diet dictated by a medical condition, is a facet of medicine and in such circumstances, "medi" used on these supplements is also likely to suggest that these

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<sup>49</sup> The examples appear to be taken from RGS15, not RGS13 as the skeleton indicates.

goods have a medical purpose. Where the goods or services are not obviously medical in nature, I do not consider that “MEDI” will be clearly understood as an abbreviation of medical, there being no obvious connection with that term for the goods or services. Even if it were, for these goods and services, “MEDI” is not descriptive of a characteristic of those goods.

130. In relation to class 31, “MEDI” would not ordinarily allude to, still less describe, a characteristic of the goods. However, given the nature of the debate in these proceedings, it seems probable that where the goods are cannabis plants intended for medical uses that consumers would assume that “MEDI” is an abbreviation of “medical” or “medicinal”. I cannot see that the same would apply to any other plants and there were no submissions to that effect.

131. As regards the second part of the mark, I do not consider it a notorious fact, or a fact which has been established in a line of case law (I was not referred to any such cases), that “canna” will be perceived as meaning “cannabis”. The word “canna” does have a dictionary meaning, as a type of flowering plant (a canna lily), as shown in *Collins*, the *Oxford English Dictionary* and the *Cambridge Dictionary*.<sup>50</sup> This is not fatal to the ground, as it is sufficient that one of the mark’s potential meanings is descriptive. Nevertheless, whilst not everyone may know the dictionary meaning of “canna”, I do not think that it can be presumed without evidence that “canna” will be perceived, immediately and without further reflection, as meaning “cannabis”. There is no evidence before me that “canna” is a recognised or commonly used abbreviation of “cannabis”. For example, there are no dictionary definitions, nor are there articles or even social media posts which use “canna” in the way contended for by Mr Dave. The dictionaries I have mentioned do not include any definition of “canna” meaning “cannabis”, whether as a standard meaning, an abbreviation or a slang term. As I have already indicated, those instances in the evidence where “canna” appears in third-party use are as part of a pharmacy or brand name to indicate the trade source of pharmacy services or medical cannabis products. I do not think that the evidence

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<sup>50</sup><https://www.collinsdictionary.com/dictionary/english/canna>, [https://www.oed.com/dictionary/canna\\_n2?tab=meaning\\_and\\_use#10088969](https://www.oed.com/dictionary/canna_n2?tab=meaning_and_use#10088969) [accessed 10 March 2026], <https://dictionary.cambridge.org/dictionary/english/canna> [accessed 24 March 2026].

relied upon establishes more than the fact that other traders use “canna” to allude to the nature of the goods.

132. I accept that “canna”, in the context of medical cannabis, is allusive. I also accept that that some relevant consumers may understand that cannabidiol can be an additive in a range of products, such as skin creams, food supplements, sweets, beers and soft drinks. It is unclear to what extent such goods are marketed as containing “cannabidiol” as opposed to “CBD”, or to what extent users know the full name of the active ingredient, but it seems probable that at least some users will understand that CBD is a cannabis-derived ingredient. Such users will perceive “canna” as an allusion to the fact that the goods contain CBD.

133. However, whilst “canna” may be allusive, even highly so, I do not think that the word “MEDICANNA” as a whole will convey a clear descriptive meaning to the relevant public, whether for medical cannabis, goods/services which may contain or be connected with cannabidiol/CBD, or goods/services for which there is no reason at all why medicine, cannabis or cannabis-derived ingredients would be brought to mind (e.g., advertising services). Consequently, the mark “MEDICANNA” is not descriptive and the applications under s. 3(1)(c) are dismissed.

134. It was submitted that the policy underlying s. 3(1)(c) is that descriptive terms are available for all to use and that the existence of two or more competitors with identical marks would prevent those competitors from using their marks. This, it is argued, means that the registrations are not in the public interest. However, this conflates two distinct policy considerations: the general availability of descriptive terms on the one hand and the rights of other traders who may be using the same sign as a trade mark proprietor on the other. In *Nude Brands Ltd v Stella McCartney Ltd* [2009] EWHC 2154 Ch, Floyd J. stated that:

“29. Whilst the use by other traders of the brand name NUDE in relation to perfume may give those traders relative rights to invalidate the mark, it does not give those rights to any defendant. I am not at this stage persuaded that this evidence has a bearing on any absolute ground of invalidity. It certainly does not go as far as establishing ground 7(1)(d) - customary indication in trade. Ground 7(1)(b) is concerned with the inherent character of the mark, not with

what other traders have done with it. The traders in question are plainly using the mark as a brand name: so I do not see how this use can help to establish that the mark consists exclusively of signs or indications which may serve to indicate the kind or quality or other characteristics of the goods, and thus support an attack under 7(1)(c).”

135. I respectfully agree that the fact that other traders may be using the mark is only relevant under s. 3(1)(c) if the evidence of such use shows that the mark is descriptive of a characteristic of the goods/services in issue. Where they are using it as a brand name, that use cannot prevent registration, or found a claim for invalidation, based on s. 3(1)(c). The contrasting aims of keeping descriptive words free and protecting other traders who use the mark to indicate trade origin are provided for at s. 3 and s. 5 of the Act, respectively, and are independent of one another; the right to object based on other traders’ use is circumscribed so that only those traders, or in some cases licensees or authorised users, may bring proceedings: see the Trade Marks (Relative Grounds) Order 2007. The fact that a trader may or may not have existing rights in the mark is not a valid consideration under s. 3(1)(c). There is no evidence in this case that traders are using “MEDICANNA”, or indeed “medi” on its own or “canna”, descriptively.

136. The claims based on s. 3(1)(c) are dismissed.

**Devoid of distinctive character: s. 3(1)(b)**

137. The relevant part of the Act reads:

“(1) The following shall not be registered—

(a) [...]

(b) trade marks which are devoid of any distinctive character,

(c) [...]

(d) [...]

Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.”

138. The principles to be applied under article 7(1)(b) of the CTM Regulation (which is now article 7(1)(b) of the EUTM Regulation, and is identical to article 3(1)(b) of the Trade Marks Directive and s.3(1)(b) of the Act) were conveniently summarised by the CJEU in *OHIM v BORCO-Marken-Import Matthiesen GmbH & Co KG* (C-265/09 P) as follows:

“29. [...] the fact that a sign is, in general, capable of constituting a trade mark does not mean that the sign necessarily has distinctive character for the purposes of Article 7(1)(b) of the regulation in relation to a specific product or service (Joined Cases C-456/01 P and C-457/01 P *Henkel v OHIM* [2004] ECR I-5089, paragraph 32).

30. Under that provision, marks which are devoid of any distinctive character are not to be registered.

31. According to settled case-law, for a trade mark to possess distinctive character for the purposes of that provision, it must serve to identify the product in respect of which registration is applied for as originating from a particular undertaking, and thus to distinguish that product from those of other undertakings (*Henkel v OHIM*, paragraph 34; Case C-304/06 P *Eurohypo v OHIM* [2008] ECR I-3297, paragraph 66; and Case C-398/08 P *Audi v OHIM* [2010] ECR I-0000, paragraph 33).

32. It is settled case-law that that distinctive character must be assessed, first, by reference to the goods or services in respect of which registration has been applied for and, second, by reference to the perception of them by the relevant public (*Storck v OHIM*, paragraph 25; *Henkel v OHIM*, paragraph 35; and *Eurohypo v OHIM*, paragraph 67) [...].”

139. There is no basis other than descriptiveness identified in the pleadings for the claim based on s. 3(1)(b). For the same reasons as given under s. 3(1)(c), I find that the mark is not descriptive and the claim based on s. 3(1)(b) is dismissed.

140. It was submitted, though it was not pleaded, that the marks do not enable the consumer to associate them with one undertaking and that the existence of third-party marks makes this difficult. As the comments of Floyd J in *Nude Brands* show, the question is not what other traders have done with a mark, it is the inherent qualities of the mark which matter under s. 3(1)(b). The fact that it is harder for a trader to distinguish its business if it is using a sign which is the same as or similar to the signs used by many others to distinguish their business does not reflect on the inherent capacity of the trade mark to indicate origin, which is the correct lens through which to consider a s. 3(1)(b) objection. I reject the submission that the existence of third-party marks renders the marks at issue non-distinctive.

141. I also reject the, again unpleaded, claim that “an inability by members of the consuming public to distinguish Medicanna/Medicann originating from [Unilux] as opposed to the say the owners of the Medcan pharmacy/foundation and/or the entities products/services listed [...] above” (all sic) is relevant to an assessment under s. 3(1)(b), to the extent that it is a submission that the risk of confusion should prevent registration. That is plainly not the correct test for whether the mark is devoid of distinctive character. The claim under s. 3(1)(b) is dismissed.

### **Acquired distinctiveness**

142. Despite my findings that the 784 and 033 Marks are prima facie registrable under both s. 3(1)(b) and s. 3(1)(c), I will briefly consider acquired distinctiveness, since it was pleaded and may be relevant on appeal if my primary findings are held to be wrong.

143. The Court of Justice of the European Union provided guidance in *Windsurfing Chiemsee*, Joined cases C-108/97 & C-109/97 [EU:C:1999:230], about the correct approach with regard to the assessment of the acquisition of distinctive character through use. The guidance is as follows:

“51. In assessing the distinctive character of a mark in respect of which registration has been applied for, the following may also be taken into account: 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 class of persons who, because of the mark, identify goods as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations.

52. If, on the basis of those factors, the competent authority finds that the relevant class of persons, or at least a significant proportion thereof, identify goods as originating from a particular undertaking because of the trade mark, it must hold that the requirement for registering the mark laid down in Article 3(3) of the Directive is satisfied. However, the circumstances in which that requirement may be regarded as satisfied cannot be shown to exist solely by reference to general, abstract data such as predetermined percentages.

53. As regards the method to be used to assess the distinctive character of a mark in respect of which registration is applied for, Community law does not preclude the competent authority, where it has particular difficulty in that connection, from having recourse, under the conditions laid down by its own national law, to an opinion poll as guidance for its judgment (see, to that effect, *Case C-210/96 Gut Springenheide and Tusky* [1998] ECR I-4657, paragraph 37).”

144. Unilux’s evidence is that the trade mark “MEDICANNA” was first used in 2019.<sup>51</sup> The domain name medicanna.com was acquired on 13 June 2019.<sup>52</sup> Unilux has provided undated prints from the website, which mention the development of hemp products, as well as a Facebook page, which is also not dated. A LinkedIn page contains a post by Mr Spurgeon and mentions that he is Director at Medicanna; “#Medicanna” is visible at the bottom of the page.<sup>53</sup> Mr Dave’s evidence includes prints from the Medicanna website with a 2020 copyright date but it does not show any products offered for sale. There are invoices and agreements showing preparatory steps dated between October 2019 and December 2021.<sup>54</sup> Mr Reiner says that the global turnover associated with “MEDICANNA” to June 2023 is approximately

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<sup>51</sup> Reiner, §5.

<sup>52</sup> OR3.

<sup>53</sup> OR4.

<sup>54</sup> OR4, RGS5.

£153,000.<sup>55</sup> There are details of the investment in marketing and branding totalling approximately £150,000 on the “MEDICANNA” brand.<sup>56</sup>

145. Whilst Unilux has evidently invested significant sums in the brand, the evidence is insufficient to establish that it had acquired distinctiveness by the date of the applications for invalidation on 3 January 2023, which is the relevant date for the assessment. In relation to the website and Facebook evidence, even if it were clearly from before the relevant date, while the mark is present there is no indication of the specific products which might be available, other than that they contain hemp. Likewise, whilst evidence such as the advertising sums and the digital marketing contract shows investment and an intention to market, it does not show how the brand has been presented to the relevant public, or for which goods/services. The global turnover is not broken down by product and is not specific to the UK, which is the relevant territory for acquired distinctive character. I note that there is an interview with Mr Spurgeon, as Director at Medicanna, in Mr Dave’s evidence but this refers to an “EthicaCBD” product and it is not clear to what extent, if any, that product is marketed under the MEDICANNA marks.<sup>57</sup> There is no acquired distinctive character through use.

**Deceptiveness: s. 3(3)(b)**

146. Section 3(3)(b) reads as follows:

“3.—(3) A trade mark shall not be registered if it is—

(a) [...]

(b) of such a nature as to deceive the public (for instance as to the nature, quality or geographical origin of the goods or service).”

147. The case law in relation to s. 3(3)(b) was helpfully summarised by Professor Phillip Johnson, as the Appointed Person, in *TWG Tea Company v Mariage Frères*, BL O/358/17 at [84]:

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<sup>55</sup> Reiner, §15.

<sup>56</sup> Reiner, §16.

<sup>57</sup> NM1, p. 150.

“(a) it is necessary to establish that the mark will create actual deceit or a sufficiently serious risk that the consumer will be deceived: *C-87/97 Consorzio per la tutela del formaggio Gorgonzola*, ECLI:EU:C:1999:115, paragraph 41; *C-259/04 Emanuel*, ECLI:EU:C:2006:215, paragraph 47; *C-689/15 W.F. Gözze Frottierweberei*, EU:C:2017:434, paragraph 54;

(b) the deception must arise from the use of the mark itself (i.e. the use per se will deceive the consumer): *Gorgonzola*, paragraph 43; *Emanuel*, paragraph 49; *Gözze Frottierweberei*, paragraph 55;

(c) the assessment of whether a mark is deceptive should be made at the date of filing or priority date and so cannot be remedied by subsequent corrective statements: *Axle Associates v Gloucestershire Old Spots Pig Breeder’s Club* [2010] ETMR 12, paragraph 25 and 26;

(d) the deception must have some material effect on consumer behaviour: *CFA Institute’s Application* [2007] ETMR 76, paragraph 40;

(e) where the use of a mark, in particular a collective mark, suggests certain quality requirements apply to goods sold under the mark, the failure to meet such requirements does not make use of the mark deceptive: *Gözze Frottierweberei*, paragraphs 57 and 58;

(f) Only where the targeted consumer is made to believe that the goods and services possess certain characteristics which they do not in fact possess will the consumer be deceived by the trade mark: *T-248/05 HUP Usługi Polska v OHIM*, ECLI:EU:T:2008:396, paragraph 65;

(g) Where a mark does not convey a sufficiently specific and clear message concerning the protected goods and services or their characteristics but, at the very most, hints at them, there can be no deception in relation to those goods and services: *HUP*, paragraph 67 and 68; *T-327/16 Aldi v EUIPO* ECLI:EU:T:2017:439, paragraph 51;

(h) Once the existence of actual deceit, or a sufficiently serious risk that the consumer will be deceived, has been established, it becomes irrelevant that the

mark applied for might also be perceived in a way that is not misleading: T-29/16 *Caffè Nero Group v EUIPO*, ECLI:EU:T:2016:635, paragraph 48;

(i) Where a trade mark contains information which is likely to deceive the public it is unable to perform its function of indicating the origin of goods: T-41/05 *SIMS — École de ski internationale v OHIM*, EU:T:2991:200, paragraph 50; *Caffè Nero*, paragraph 47.”

148. The pleaded case is that the marks should be invalidated because they are “of such a nature as to deceive the public as to the nature of the goods or services in question contrary to s. 3(3)(b) of the Act. [Unilux] by its own admission has educated the public that all of its products/services contain or are associated with cannabis/hemp contrary to the truth and would therefore be of a deceptive nature. The proprietor repeats paragraph 10 above [i.e., the ss. 3(1)(b) and (c) claims]”.

149. Unilux says that this is a fundamentally flawed claim, because the relevant question is whether the mark was deceptive at the date of filing.

150. The relevant date is the marks’ filing date of 26 June 2019. The only evidence of any activity relating to “MEDICANNA” on the part of Unilux before the filing date is the acquisition of the domain name medicanna.com and the incorporation of Medicanna Ltd. Neither of these acts can be said to educate the public about the composition of any products sold under the marks, because neither makes any reference to any goods or services at all. The Medicanna website prints filed by Mr Dave postdate the relevant date. Mr Dave has filed correspondence with the FSA and MHRA about the presence or not of MEDICANNA on the relevant lists for authorised sale of CBD products and about regulatory breaches. None of this predates the relevant date and there is nothing to show how Unilux has in fact marketed its products to the relevant public. This claim as pleaded fails on the facts.

151. In addition, in the words of Professor Johnson, “the deception must arise from the use of the mark itself (i.e. the use per se will deceive the consumer)”. This principle was set out in *W.F. Gözze* in the following terms:

“55. Furthermore, in order to find that a mark had been registered in breach of the ground for refusal relating to the risk of deception, it must be established

that the sign filed for the purposes of registration as a trade mark creates per se such a risk (see, to that effect, judgment of 4 March 1999, *Consorzio per la tutela del formaggio Gorgonzola*, C-87/97, EU:C:1999:115, paragraphs 42 and 43).

56. In the present case, in order to determine whether the cotton flower mark had been registered, on 22 May 2008, in breach of the ground of refusal laid down in Article 7(1)(g) of Regulation No 207/2009, it is for the referring court to examine whether the cotton flower sign filed by the VBB was capable per se of deceiving the consumer. The subsequent management, by the VBB, of its mark and licences for its use is irrelevant in this respect.”

152. A more recent comment from the Court of Justice on the equivalent EU provision, in *Fauré Le Page Maroquinier SAS & Fauré Le Page Paris SAS v Goyard ST-Honoré SAS*, C-412/24 [EU:C:2026:250], a judgment which is not binding but which is persuasive, is as follows:

“26. As the Advocate General stated, in essence, in points 33 to 41 of his Opinion, and as is apparent both from the wording of Article 3(1)(g) of Directive 2008/95, which contains an illustrative list of characteristics of goods or services, and from the objective of that provision, which is to target deception inherent in the sign registered as a trade mark or filed for that purpose, a finding that a mark is ‘of such a nature as to deceive the public’, within the meaning of that provision, must be based on deception in relation to a characteristic of the goods or services covered by that mark. Accordingly, the ground for refusal of registration and invalidity set out in Article 3(1)(g) of Directive 2008/95 cannot be applied, inter alia, in cases where the mark at issue is of such a nature as to deceive the public in relation to a characteristic of its proprietor and not in relation to a characteristic of the goods or services which it covers.”

153. The pleaded claim is not based on the mark itself being deceptive but is dependent on Unilux having educated consumers to believe that the products sold under the mark contain something they do not. That is not a valid basis for an invalidation under s. 3(3)(b) and the application would also have failed for this reason.

154. In the skeleton argument and at the hearing, a further basis for the s. 3(3)(b) claim appeared. This is that the meaning of “MEDICANNA” is “medicinal cannabis” and use of the marks on goods which do not fall within that description would be deceptive. It is submitted that this means all of the goods and services in the specification other than cannabis extracts, cannabis for medical purposes, cannabis plants and cannabis.

155. I do not think that this claim was clearly made in the pleaded case. All that the pleaded case did was refer to an earlier submission that the marks are descriptive. If the claim was intended to be that the marks are deceptive because the goods, or some of them, cannot comply with the characteristic identified in the marks themselves, this should have been plainly stated. No application was made before me to amend the pleadings and, strictly speaking, I do not need to consider this claim. However, as I can deal with it briefly, I will. This is how the argument goes in Professor Engleman’s skeleton argument:

“74. Take for example a skin care preparation branded Medicanna/Medicann. The average consumer would expect that product to contain medical cannabis. However, it would not. Far more seriously were the good in question a cl. 5 good: pharmaceuticals and natural remedies. The former wrongly branded is both deceptive and pose a serious health risk, the latter a deception with less serious consequences.

75. The example provided by Kerly at footnote 318 is *Jardex* [1946] R.P.C. 63, in which an opponent tried to use s.3(3)(b) against “GALAXY” for “Preparations for killing weeds and destroying vermin”, citing public policy in the risk to children accustomed to eating the chocolate so named.”

156. The full footnote in *Kerly*’s reads:

“Relying on *Jardex* [1946] R.P.C. 63, an opponent tried to use s.3(3)(b) against “GALAXY” for “Preparations for killing weeds and destroying vermin”, citing public policy in the risk to children accustomed to eating the chocolate so named. This ground failed, because the mark in itself would not deceive the

public. The opposition succeeded under Trade Marks Act 1994 s.5(3): *GALAXY, 19 May 2000 (Regy)*.<sup>58</sup>

157. It is not clear to me how *Jardex* assists Mr Dave. That children might confuse GALAXY chocolate with GALAXY weedkiller, and the obvious undesirability of children consuming poison, were not relevant considerations under s. 3(3)(b) and the claim on that ground failed.

158. I have found that “MEDICANNA” does not convey to the relevant public the clear meaning of “medical cannabis”. Where a mark has no clear meaning, it cannot mislead the public as to the nature of the goods or services: see, for example, *Khadi and Village Industries Commission v EUIPO*, T-681/17 [EU:T:2018:858] at [53]. Thus, the s. 3(3)(b) ground fails for all of the contested goods and services.

159. I will add that, for goods and services which are not medical in nature I am doubtful that “medi” will be perceived as a distinct part of the mark, given that it is presented as part of the single word “MEDICANNA”. However, even if “medi” is perceived as a reference to “medical”, the combination “MEDICANNA” as a whole is, in my view, too vague to deceive on the basis that the marks indicate medical goods/services. At most, “MEDICANNA” hints at a medical uses or medical properties but it is too unclear what they might be for the relevant public to understand a message which could be deceptive. Accordingly, the marks do not create a substantial risk that the relevant public will be deceived. The s. 3(3)(b) grounds fail.

### **Conclusions on the invalidities against the 784 and 033 Marks**

160. All of the grounds have failed. The applications for declarations of invalidity are dismissed and trade mark numbers 3409784 and 918087033 will remain registered for their full specifications.

### **UNILUX’S INVALIDATION AGAINST THE 759 MARK**

161. The relevant date for the s. 5(2)(b) and s. 5(3) grounds is 28 May 2021.

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<sup>58</sup> *Kerly’s Law of Trade Marks and Trade Names*, 17<sup>th</sup> Ed., §10-229, fn., 318.

## **Section 5(2)(b)**

162. I have already set out s. 47(2) (which also applies to the s. 5(3) ground considered below). The relevant part of s. 5 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.”

163. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25:

(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, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

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

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

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

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

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

### **Average consumer and the nature of the purchasing act**

164. The average consumer is a legal construct deemed to be reasonably well informed and reasonably circumspect: *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) at [60]. For the purposes of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods and services in question: *Lloyd Schuhfabrik*.

165. In *Iconix*, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

(a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;

(b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;

(c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;

(d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence;

(e) The average consumer's level of attention varies according to the category of goods or services in question; and

(f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

166. I have already held that the goods and services in the 784 Mark's specification will be used by the general public, a combination of the general public and professionals, or by professionals exclusively. The level of attention will, depending on the specific goods and services, range from low to fairly high. The same broad groups of average consumer will apply to the 759 Mark's goods and services, though there

are some goods, as well as services, which will be used only by professionals, e.g., brush-making materials in class 21. For the majority of the 759 Mark's goods and services, the level of attention will also be low, medium or fairly high. There are, however, some goods and services, such as "artificial limbs, eyes and teeth" in class 10 and "pharmaceuticals and clinical trials" in class 42, which are very specialised goods and services likely to be selected with a high degree of attention. I will return to this, to the extent necessary, when considering the likelihood of confusion.

167. There will be a range of purchasing methods for the various goods and services. Some are general consumer goods, which are readily available in high-street shops and supermarkets and will be selected by consumers from shelves. Others may require a conversation with a pharmacist or GP, or may involve a tendering process or detailed consideration of written information about a provider's capabilities. There may be an oral component to the purchase of any of the goods and services. For some it will be greater than others: for example, there is more likely to be an oral component to the selection of financial services, which may be discussed in detail with a financial adviser, than for biscuits, where the limit of oral discussion is likely to be asking a shop assistant whether they are stocked or where they are in the shop. However, even where there are detailed discussions, this is likely to remain less important than consideration of websites, product brochures or other written information. Consequently, whilst there may be an oral component which may in some cases be significant, the dominant means of selection is likely to remain visual for all of the goods and services at issue.

### **Comparison of the goods and services**

168. It is settled case law that I must compare the goods and services based on all relevant factors. These include their nature, their purpose, their users and method of use, the trade channels through which they reach the market and whether they are in competition with each other or are complementary: see *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, C-251/95 [EU:C:1997:528] at [23], *British Sugar Plc v James Robertson & Sons Limited (TREAT Trade Mark)* [1996] RPC 281 at [296] and *Kurt Hesse v OHIM*, C-50/15 P [EU:C:2016:34]. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, T-325/06 [EU:T:2008:338], the General Court said 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.”

169. Words in specifications must be given their ordinary and natural meaning: *YouView Ltd v Total Ltd* [2012] EWHC 3158 (Ch) at [12]. It is well established that goods are considered identical when a wider term covers a narrower subset of goods included in the general class: *Gérard Meric v Office for Harmonisation in the Internal Market*, T-133/05 [EU:T:2006:247]. The same applies to services.

170. Mr Dave’s position is not entirely clear. Professor Engleman said at the hearing and in his skeleton argument that the parties agree that “the respective goods/services are confusingly similar when associated with hemp/cannabis” and that “to the extent that any goods/services [...] survive ND’s s. 5(4)(a) rights those goods/services are confusingly similar with respect to any goods/associated with cannabis”.<sup>59</sup> It is not clear to me which goods/services are covered by the apparent agreement. The references Professor Engelman gave appear to be in the statement of grounds in the opposition against the 902 Mark. The specifications in issue in that case are not the same as in the invalidities and the opposition claim is denied in Unilux’s counterstatement. Nor do I accept Ms Messenger’s submission that Mr Dave must be taken to accept that the invalidity against the 759 Mark should succeed for those parts of the specification relied on as part of his goodwill claim against the 784 Mark. There is very limited overlap in any case but, more importantly, the tests under s. 5(4)(a) and s. 5(2)(b) are different and factors such as the distinctiveness of the earlier sign/mark may not be comparable, or at least not comparable in the eyes of the parties. Absent a clear concession, I cannot be sure that Mr Dave accepts that Unilux’s claim should succeed. I must make my own assessment of the similarity between the goods and services.

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<sup>59</sup> Mr Dave’s skeleton argument, §§5, 7.

171. Unilux has, helpfully, identified the goods/services which it says are its best case. It accepts that if it is not successful on those goods/services it will fare no better with the other parts of its specification.<sup>60</sup>

172. I should also say at the outset that many of the goods in the 759 Mark's list of goods and services include cannabis or cannabis derivatives. As cannabis is an illegal drug where it is for recreational use, it seems to me that any goods containing cannabis which are not medical cannabis (and therefore in class 5) are illegal goods. That said, there are no grounds for objecting to a mark based on the nature of the goods and it therefore seems to me that I must compare the lists of goods and services as they are.

### Class 3

*Non-medicinal topical oils and cosmetic pastes, massage creams, massage oils, beauty creams, after-sun oils and creams, tanning oils and creams, aftershave creams, perfume oils, oils for perfumes and scents, almond oil, aromatherapy oils, face and body lotions, shaving preparations, face cream, bath additives and creams, sun creams and sunscreen creams, soaps for personal use, hair shampoo, makeup, hair tonics, bath oils and bath salts, hair oils, body oils, facial oils, skin tonics, skin creams, night creams, lip creams, skin lotions, lip care preparations, hair care preparations, non-medicated skin preparations; cosmetics; cosmetics for use on the skin; cosmetics in the form of milks, lotions, and emulsions; cosmetic oils; essential oils for personal use; cosmetic creams; cannabis-based, cannabis infused and cannabinoid-infused non-medicinal topical oils and cosmetic pastes, massage creams, massage oils, beauty creams, after-sun oils and creams, tanning oils and creams, aftershave creams, perfume oils, oils for perfumes and scents, almond oil, aromatherapy oils, face and body lotions, shaving preparations, face cream, bath additives and creams, sun creams and sunscreen creams, soaps for personal use, hair shampoo, makeup, hair tonics, bath oils and bath salts, hair oils, body oils, facial oils, skin tonics, skin creams, night creams, lip creams, skin lotions, lip care preparations, hair care preparations, non-medicated skin preparations; cannabis-based, cannabis infused and cannabinoid-infused cosmetics; cannabis-based, cannabis infused and cannabinoid infused cosmetics for use on the skin; cannabis-*

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<sup>60</sup> Unilux skeleton argument, §74 and annex B.

*based, cannabis infused and cannabinoid-infused cosmetics in the form of milks, lotions, and emulsions; cannabis-based, cannabis infused and cannabinoid-infused cosmetic oils; cannabis-based, cannabis infused and cannabinoid-infused essential oils for personal use; cannabis-based, cannabis infused and cannabinoid-infused cosmetic creams.*

173. The above goods are the same goods as or are identical on the basis of *Merix* to at least the 784 mark's "skin care preparations", "make-up", "body cleaning and beauty care preparations", "cosmetics and cosmetic preparations", "perfumery and fragrances", "shampoos; hair conditioners", "skin conditioners" and/or "essential oils".

*Cleaning preparations for vaporizers, electronic cigarettes, oral vaporizers for smoking*

174. These goods have the same users as "electronic cigarette liquid (e-liquid) comprised of propylene glycol". I have no evidence about how the contested goods reach consumers. It seems to me that they are a relatively specialised type of cleaning product and that they are likely to be available for purchase in the same shops as e-cigarette liquid refills. The goods are similar to a low degree.

#### Class 5

*Pharmaceuticals, medical and veterinary preparations; dietetic food and substances adapted for medical or veterinary use, food for babies; dietary supplements for human beings and animals; fungicides; dietary and nutritional supplements; food supplements; pharmaceutical goods containing cannabis; dietary supplements and dietetic preparations containing cannabis oil; medical products containing cannabis; pharmaceutical and natural remedies containing cannabis; dietetic food preparations adapted for medical purposes, containing cannabis oil; preparations for use as additives to food for human consumption [medicated] with cannabis oil; preparations of vitamins with cannabis*

175. The above are identical to the 784 Mark's "pharmaceuticals and natural remedies", "veterinary preparations", "dietary supplements", "dietary food supplements" and/or "food supplements" either literally or because they are encompassed by the earlier terms, or vice versa.

176. For the avoidance of doubt, “fungicides” are, in my view, identical to “pharmaceuticals; veterinary preparations” because the latter include antifungal medicine (i.e., fungicides) and the broad terms therefore cover the same goods. Alternatively, there is at least a medium degree of similarity between these goods on account of an overlap in nature, purpose, users and distribution channels.

*Marijuana for medical purposes; cannabis oil derived from the hemp plant; cannabis oil capsules; cannabis infused topical creams, lotions, and balms for pain relief*

177. Although derived from a plant, all of the above are or contain medical cannabis. As this is a drug, these goods are encompassed by the earlier mark’s “pharmaceuticals”. These goods are identical.

*Sanitary preparations for medical purposes*

178. A sanitary preparation is something that cleans. This includes medicated toiletries (but not non-medicated toiletries, which are proper to class 3). This term includes the 784 Mark’s “medicated shampoo” and the goods are identical under *Meric*.

*Plasters, materials for dressings; Material for stopping teeth, dental wax*

179. These goods are different in nature and purpose from “pharmaceuticals” and “veterinary preparations” but they will share users and channels of trade. They are neither in competition nor complementary. They are similar to a low degree.

*Disinfectants*

180. This includes disinfectants which may be used prior to surgical procedures to clean the skin. It seems to me that, on this basis, it covers the same goods as the 784 Mark’s “veterinary preparations”. Alternatively, “veterinary preparations” includes for example, topical antiseptics. These goods may have the same purpose (to kill bacteria on the skin) and the same users. They also share distribution channels and are likely to be manufactured by the same providers. They are similar to at least a medium degree.

### *Preparations for destroying vermin*

181. "Vermin" includes both rodents and insects. It seems to me that these goods would include flea and tick treatments, as well as goods such as sheep dips, which are also "veterinary preparations", and that the respective terms therefore cover identical goods. In any event, there is at least a medium degree of similarity on account of their shared purpose, users and channels of trade.

### *Herbicides*

182. I cannot see any term in the 784 Mark's specification which is obviously similar to the above. Aside from a general assertion of identity/similarity with the earlier mark's class 5 goods, Unilux has made no specific submissions regarding these goods. I find these goods dissimilar.

### Class 9

*Scientific, research, navigation, surveying, photographic, cinematographic, audiovisual, optical, weighing, measuring, signalling, detecting, testing, inspecting, life-saving and teaching apparatus and instruments; Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling the distribution or use of electricity; Apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data; Recorded and downloadable media, computer software, blank digital or analogue recording and storage media; Mechanisms for coin operated apparatus; Cash registers, calculating devices; Computers and computer peripheral devices; Diving suits, divers' masks, ear plugs for divers, nose clips for divers and swimmers, gloves for divers, breathing apparatus for underwater swimming; Fire-extinguishing apparatus; light emitting diodes; electrical resistance wire; helmets*

183. Unilux has identified no goods or services in the earlier specification which are similar to these goods and appears to have withdrawn its claim that the goods are similar. There is no obvious basis on which the goods might be similar to the 784 Mark's earlier specification. These goods are not similar.

*Smartphone applications for viewing and ordering products online; mobile applications for viewing and ordering products online; downloadable mobile applications; mobile application software; downloadable software in the nature of a mobile application in the field of online retail, namely, for viewing and ordering products online*

184. Unilux submits that these goods have a similar purpose, use and users to “online ordering services” in class 35 of the earlier specification. It also says that the goods and services are complementary.

185. I agree that both the goods above and “online ordering services” are intended to facilitate the purchase of goods online and that they therefore have an overlapping purpose. Further, it seems to me that the contested goods would include applications such as those for ordering food from restaurants for home delivery, whilst the earlier services would include the provision of the same services via a website. The goods and services are different in nature but have the same users. It is commonplace for food delivery companies to offer an application which users can download and use to access the services, and the application is likely to be used in the same or a very similar way to any website. Although the end users will not purchase the application software from the manufacturer/developer, they will download and use the applications and they are likely to perceive the online ordering service provider as responsible for the software. I therefore agree that there is a complementary relationship between the goods and services. These goods and services have a fairly high degree of similarity.

*Firmware and software for electronic cigarette*

186. Unilux submits that these goods are similar in purpose, use and users to the 784 Mark’s goods in class 34, that they are complementary and that they have the same trade channels.

187. I will compare the above with “electronic cigarette liquid (e-liquid) comprised of propylene glycol”. They are different in nature and purpose, save for a very limited overlap in purpose because both make electronic cigarettes function, and these goods are not in competition. However, as I understand it, electronic cigarettes are sufficiently sophisticated devices that their firmware and software may be updated by users. Updates for the firmware and software are available through retailers of electronic

cigarettes and, therefore, the same retailers as e-cigarette liquid. The goods are not important or essential for one another but they have the same users and channels of trade. There is a low degree of similarity.

*Electronic cigarette batteries; electronic cigarette chargers; electronic cigarette charging cases; portable chargers for electronic cigarettes and vaporizers USB cables; cables for connecting electronic cigarettes to mains electricity; adapters for charging electronic cigarettes; chargers for vaporizers; accessories for vaporisers, namely vaporizer batteries, chargers for vaporizers, USB chargers for vaporizers and portable charging cases for vaporizers*

188. The same submission is made for these goods as for firmware and software for electronic cigarettes. Again, I will consider “electronic cigarette liquid (e-liquid) comprised of propylene glycol”. The goods are different in nature and purpose, other than a superficial overlap because both make electronic cigarettes work. There is no competition, nor are they complementary to one another. However, users are identical and the goods are likely to be sold in the same specialist vape shops. They are similar to a low degree.

*Electronic downloadable publications*

189. The submissions on these goods are as for the mobile applications, i.e., that the goods have a similar purpose, use and users to “online ordering services” and that the goods and services are complementary. However, the natural meaning of “publication” is a printed work, such as a book, magazine or newspaper. An electronic publication is simply an electronic version of such a document. I do not think that these goods coincide with the identified goods in class 34 of the 784 Mark’s specification, apart from a very general overlap which arises from the fact that both are used by the general public. This is not sufficient to give rise to similarity between the goods. The goods are not similar.

Class 10

*Surgical, medical, dental and veterinary apparatus and instruments; pharmaceutical devices, medical devices for use in electronic cigarettes; inhalers; electric vaporisers*

*for administering steam inhalants; sprayers for medical purposes; spray bottles [vaporisers] for medical use; medical devices for use in connection with smoking cessation; pharmaceutical devices, namely devices to aid in the cessation of smoking; medical devices, namely medical devices for human use including, but not limited to inhalators; apparatus used as an aid to help in the cessation of smoking; apparatus used as an aid to help in the cessation of smoking; medical bottles*

190. These goods are different in nature and method of use from “pharmaceuticals and natural remedies; veterinary preparations”. They will, however, share users. There is an overlap in purpose as they all relate to the medical or veterinary fields and therefore are broadly concerned with curing or alleviating health problems, though I do not put this too high. There is likely to be an overlap in channels of trade. The goods may be complementary, because the terms are or include goods with a similar purpose to pharmaceuticals and veterinary preparations, such as needles and other applicators/delivery devices which are the means of administering pharmaceuticals. There is a medium degree of similarity.

#### *Suture materials; medical jars*

191. Like the goods considered above, these goods will, in broad terms, share a purpose with “pharmaceuticals; veterinary preparations”, will be sold through the same channels and are directed at the same users. Unlike the goods considered above, they are not complementary. There is a low degree of similarity. I accept that it may appear inconsistent that I have found “medical bottles” similar to a medium degree, above, whilst “medical” jars” are less similar. However, I cannot see that “medical jars” would include goods which are the means of administering pharmaceuticals, unlike “medical bottles”, which includes spray bottles such as the “spray bottles [vaporisers] for medical use” specified above.

#### *Artificial limbs, eyes and teeth*

192. These goods are highly specialised. They differ in nature, purpose and method of use from “pharmaceuticals and natural remedies” and “veterinary preparations”. It is unlikely that their channels of trade will overlap to any significant extent. The users of the goods will overlap with the earlier goods but this is at too high a level of generality

to be significant. The goods are not in competition, nor are they complementary. There is no similarity. If that is not right, there is only a low degree of similarity on account of their high-level overlap in purpose and some similarity in users and trade channels.

*Orthopaedic articles; therapeutic and assistive devices adapted for persons with disabilities; apparatus, devices and articles for nursing infants*

193. "Orthopaedic articles" is a wide term that includes both highly specialised goods and goods such as wrist splints and orthopaedic insoles which are widely available. All of the above goods will share channels of trade and users with the earlier "pharmaceuticals", as both are sold through pharmacies, though I accept they are likely to be on separate shelves in physical stores. There is a low degree of similarity.

*Massage apparatus*

194. Unilux relies on "pharmaceuticals and natural remedies; veterinary preparations". Whilst I accept that massage apparatus includes goods such as muscle massage balls and muscle rollers, which are broadly for "wellness", such goods are not typically sold in pharmacies; if they are, it is in large pharmacies where they are in distinct sections from pharmaceuticals. Any overlap in user is too superficial to be material and there is no other obvious point of similarity. These goods are not similar to any of the earlier mark's goods or services.

*Sexual activity apparatus, devices and articles*

195. This term is quite wide but, construed according to its normal meaning, it is unlikely it would be stretched as far as meaning contraception. It is more likely to be understood as meaning sex aids. These goods are unlikely to be sold through the same channels as pharmaceuticals, or any of the other goods in class 5 of the 784 mark's specification; if they are, they will be in entirely separate areas of the shop. Users will overlap at a high level of generality. There is no other obvious point of similarity. They are dissimilar.

## Class 21

*Household or kitchen utensils and containers; Cookware and tableware, except forks, knives and spoons; Articles for cleaning purposes; Unworked or semi-worked glass, except building glass; Glassware, porcelain and earthenware; Coffee cups; coffee mugs; coffee makers, non-electric; plunger-style coffee makers, non-electric; bottles; bowls; basins; butter dishes; butter-dish covers; ceramics for household purposes; crockery for household purposes; coasters, not of paper or textile; coffee services [tableware]; coffee filters, non-electric; coffeepots, non-electric; cookery moulds, cookery molds; cookie [biscuit] cutters; cookie jars; drinking vessels; drinking bottles for sports; drinking glasses; droppers for household purposes; flasks; fruit cups; glass jars [carboys]; glass stoppers; glass bowls; hip flasks; jugs, pitchers; menu card holders; mugs; place mats, not of paper or textile; pottery; signboards of porcelain or glass; soup bowls; sugar bowls; tablemats, not of paper or textile; tableware other than knives, forks and spoons; tea caddies; tea services [tableware]; tea infusers, tea balls; tea strainers; tea cosies; teapots; thermally insulated containers for food; thermally insulated containers for beverages; vessels of metal for making ices and iced drinks; single use coffee cups; cups; cups of paper or plastic; coffee cup lids; mugs; tea cups; coffee stirrers; tea infusers; bottles; jars; containers*

196. The opponent relies on various goods in classes 29 and 30 of the 784 Mark's specification. These include, for example, coffee (against mugs), soups (against soup bowls) and tea (against tea caddies). I have borne this in mind. However, the competing goods have different purposes and are different in both nature and method of use. Their users are the same but, as this is at the level of the general public, it is of limited utility. There is no competition, nor is there complementarity in the sense described in the case law: the goods and services may be used together but they are not likely to be perceived as produced by the same undertakings.<sup>61</sup> I would add that, where the contested goods are single-use cups, it is not a point of similarity that ready-to-drink beverages are sold in single-use cups from coffee shops. The purchaser of

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<sup>61</sup> In *Sandra Amalia Mary Elliot v LRC Holdings Limited* BL O/255/13, Daniel Alexander QC pointed out at [18] that wine and wine glasses may be complementary "on any normal view" but that wine and glassware are not necessarily similar goods for trade mark purposes.

the beverage is not a purchaser of the cup, which is simply provided as a means of containing the drink. The goods are not similar to any in the 784 Mark's specification.

*Combs and sponges; Brushes, except paintbrushes; cosmetic utensils; cosmetic spatulas*

197. Unilux says that these goods are similar to various of the beauty care preparations and cosmetics in class 3 of the 784 Mark's specification. I agree. The goods are different in nature and purpose but they have the same users and channels of trade. It is quite common for manufacturers of cosmetics also to sell tools, such as those listed above, with which to use the product (in respect of combs, I have in mind specifically combs used with eyebrow and eyelash products). The goods may have the same providers and they are complementary. There is a medium degree of similarity.

*Droppers for cosmetic purposes; brush-making materials*

198. Unilux makes the same submissions regarding these goods as for brushes and cosmetic utensils, above. However, droppers for cosmetic purposes are sold to cosmetic manufacturers as parts for packaging for their product, rather than to the end user. Although they are used with cosmetics, they are not likely to be regarded as having been manufactured by the cosmetic company. The method of use is not the same because cosmetics may be dispensed with a dropper but their application is by smoothing on to the skin. Similarly, brush-making materials are component parts of brushes. They are purchased and used by brush manufacturers, not the end user of brushes. These goods are not complementary to the 784 Mark's class 3 goods and there is no overlap in nature, purpose or channels of trade. I cannot see any other point of similarity. These goods are dissimilar.

## Class 25

*Clothing; novelty clothing; men's wear; ladies' wear; printed clothing; sportswear; tennis shirts; teeshirts; polo shirts; pique shirts; golf shirts; shirt fronts; shirt-jacs; casual shirts; collared shirts; rugby shirts; dress shirts; turtleneck shirts; woven shirts; yoga shirts; hunting shirts; fishing shirts; knit shirts; aloha shirts; camouflage shirts;*

*sports shirts; sports shirts with short sleeves; sports over uniforms; sports socks; sports vests; sports jerseys; sports singlets; underwear and undergarments; knitted articles of clothing; lingerie; vests; tops; printed t-shirts; short-sleeved or long-sleeved t-shirts; hoodies; aprons; cleaning apron; cooking apron; chef ware; jackets; blouson jackets; casual jackets; riding jackets; waterproof jackets; sleeved jackets; sleeveless jackets; fishing jackets; dinner jackets; windproof jackets; leather jackets; heavy jackets; knit jackets; suede jackets; motorcycle jackets; bed jackets; long jackets; down jackets; coats; outdoor coats; house coats; evening coats; sheepskin coats; tail coats; cotton coats; top coats; fur coats; leather coats; rain coats; morning coats; dust coats; wind coats; ties; neckties; waterproof and water-resistant clothing; rainwear; suits; swimwear; wristbands; ear muffs; gloves and mittens; socks; stockings and hosiery; chaps; kerchiefs; roll necks; shorts; trousers; jeans; belts; jogging bottoms; slippers; body warmers; pants; camisoles; nappy pants; ski pants; jogging pants; dress pants; dresses; cowls; denims; slips; veils; muffs; boas; furs; gabardines; layettes; combinations; ties; drawers; corsets; hats; footwear; sports footwear; ladies' footwear; beach footwear; infants' footwear; casual footwear; leisure footwear; pumps; trainers; uppers; heelpieces for footwear; welts for footwear; tips for footwear; insoles for footwear; soles for footwear; inner socks for footwear; footwear made of wood; fittings of metal for footwear; non-slipping devices for footwear; headgear; sports headgear; peaked headwear; headbands; bonnets; visors; sun visors; sports caps; children's headwear; laboratory coats*

199. The opponent submits that these goods are similar to “skin care preparations; make-up; moisturisers; body cleaning and beauty care preparations; cosmetics and cosmetic preparations; cosmetic kits; compacts containing make-up” on the basis that the users are similar, the goods are likely to be sold in the same outlets and the goods are all used on the body, often for aesthetic purposes.

200. I do not accept that these goods are similar. The users are the same for the majority of the goods but at a superficial level (the general public). It is possible that the competing goods would be sold in the same retail premises but this is only likely to occur in large department stores and supermarkets where the goods would in discrete areas. Smaller retailers are unlikely to offer both and not in close proximity. Nor do I think that there is a shared purpose. Clothing, footwear and headgear are

used to cover the body, which may involve protection from the elements or, for some of the above goods, to protect the clothing underneath (e.g., aprons are used to keep clothing free of food splashes). The skincare, cosmetics and beauty care preparations relied on by the opponent are applied directly to the skin to care for or beautify the skin. Cosmetic kits and compacts have the purpose of containing specific makeup products. The fact that, for example, makeup is worn to beautify and that clothing is, at least some of the time, chosen for aesthetic purposes, is too general an overlap to be material. I can see no other point of similarity. I should add that some of the contested goods are parts for footwear (e.g., welts for footwear, fittings of metal for footwear) whose purpose is to be incorporated into an item to make a complete article and not to be worn alone. These goods are typically used by manufacturers rather than the general public and are even further apart from the earlier goods. All of these goods are dissimilar.

### Class 30

*Coffee, tea, cocoa and artificial coffee; rice, pasta and noodles; tapioca and sago; flour and preparations made from cereals; bread, pastries and confectionery; chocolate; sugar, honey, treacle; yeast, baking-powder; seasonings, spices; sauces; coffee; coffee beverages with milk, coffee-based beverages, including beverages flavoured with cannabis; coffee beans; ground coffee; instant coffee; tea; tea-based beverages, including beverages flavoured with cannabis; iced tea; instant tea; tea leaves; tea bags; chocolate-based beverages, including beverages flavoured with cannabis; chocolate beverages with milk; pastries; chocolate; confectionery, not including popcorn; cereal bars; cereal preparations; cocoa beverages with milk, cocoa-based beverages, including beverages flavoured with cannabis; biscuits, cookies; cakes; unroasted coffee*

201. These goods have literal counterparts in the 784 Mark's specification, are the same goods described slightly differently (e.g. cereal preparations/preparations made from cereals) or they are identical under the principle in *Meric* to "coffee", "tea", "cocoa", "spices", "herb sauces", "preparations made from flour" and/or "preparations made from cereals" These goods are identical.

### *Ice cream, sorbets and other edible ices*

202. These goods have the same purpose as “confectionery”, namely to be eaten as snacks. They are all sweet goods and may have more specific similarities in nature, such as being chocolate-flavoured or covered in chocolate. Whilst frozen goods will need to be kept in freezers and therefore the goods will not be very close to one another, they will be sold through the same shops, including smaller retailers such as corner shops. Users are identical and there is a competitive relationship between these goods. They are similar to a fairly high degree.

### *Salt*

203. Salt is a type of seasoning, as are “spices”. They have a different nature, with one being a solid white crystalline substance and the other being derived from a plant and usually a brighter colour, from brown to orange, yellow or green. Users and methods of use are the same and the goods will be sold close to one another. They are likely to be produced by the same undertakings and there is a degree of competition but they are not complementary in the sense described in the case law. They are similar to a fairly high degree.

### *Preserved herbs*

204. A preserved food is one which has been treated in order to prolong its life. This includes by drying. Herbs which are dried are highly similar to “spices”: they are both plant products which are used for flavouring food, they are frequently sold on the same shelves, they have the same users and they may also be produced by the same undertakings. There is also potential for competition.

### *Vinegar and other condiments*

205. These goods are the same in purpose and method of use as “herb sauces”, both being added to food for flavour. There are some differences in nature as the base ingredients differ and, for vinegar at least, there are perceptible differences in the viscosity of the competing sauces. Users are identical and the goods are sold in close proximity. The goods are not complementary but may be in competition. They are similar to a high degree.

## *Ice*

206. I cannot see anything in the 784 Mark's specification which is similar to "ice". The purpose of ice is to cool other goods, which is not a purpose shared by any of the goods and services in the earlier specification. Nor is the nature of ice similar to that of any of the earlier goods or services; although some of the earlier goods may be frozen (e.g. frozen fruits in class 29) the attributes of the frozen product are quite different. Users overlap but at a very superficial level, and the goods will be sold in distinct area of shops. Even where they are all in the freezer section of retail premises, they will be in separate sections. "Ice" is dissimilar to all of the 784 mark's goods and services.

## *Snack foods consisting principally of confectionery, cereal bars, energy bars, corn chips*

207. "Snack foods consisting principally of confectionery, cereal bars, energy bars" are identical to "confectionery", "preparations made from flour" and/or "preparations made from cereals" in the earlier specification. Energy bars may be made from cereals such as oats, whilst corn chips are made from maize (a cereal) flour.

## *Sandwiches*

208. The contested "sandwiches" are similar in nature to "breads", as bread is a major component of a sandwich. Their purpose is the same, i.e., to be eaten and to satisfy hunger, though sandwiches are typically more of a meal substitute than bread alone. Consequently, they are not strict substitutes but I bear in mind that bread may be bought, with ingredients such as cheese, as an alternative. Users are identical and there is likely to be an overlap in channels of trade: bakeries may sell both breads and sandwiches. The goods are complementary, as bread is important or essential for sandwiches and users are likely to think that the providers are the same. They are similar to a fairly high degree.

## *Coffee flavourings; coffee oils; food flavourings other than essential oils.*

209. There is some similarity in nature between the above goods and "coffee" because both are (or may be) coffee flavoured and may be derived from coffee beans. However,

there are also differences, as flavourings and oils are more concentrated and less watery. The contested goods are intended to be added to food, such as in baking, whilst coffee is meant to be prepared and drunk as a beverage. Users are the same but the goods are likely to be sold in different aisles in supermarkets. The goods are not, for the most part, interchangeable, though coffee and coffee flavourings may be substitutes in baking. Although coffee is essential for coffee oils and may be used in flavourings more widely, there is no evidence that the goods will be produced by the same undertakings and it seems unlikely. The goods are similar to a low degree.

210. I do not think that goods such as “flour” offer the opponent a better case. Whilst they are both ingredients in baking, the nature of the goods is wholly different and their purpose also differs, flavourings being specifically to add a flavour and flour being the main starchy ingredient. The users are the same but the goods are not in competition and they are not generally made by the same undertakings so are also not complementary. It is true that they may all be found in the “baking” aisle of supermarkets but the goods will usually at least be on separate shelves, if not in clearly distinct sections. I doubt they are similar but if they are it is to a very low degree.

*Flavourings, other than essential oils, for beverages*

211. The above goods are or may be intended for use in beverages such as coffee. These goods will be used by the same consumers as “coffee” and have the same users and channels of trade. Both are to be drunk for their taste but the above goods are specifically to flavour another drink rather than to be drunk alone and there are therefore differences in nature and purpose. The goods are used together but are unlikely to be produced by the same entities and are not complementary; nor are they in competition. They are similar to a fairly low (i.e., between low and medium) degree.

Class 31

*Raw and unprocessed agricultural, horticultural and forestry products; raw and unprocessed grains and seeds; fresh fruits, vegetables, fresh herbs; natural plants and flowers*

212. The above terms are self-evidently identical to the same terms in the 784 Mark’s specification.

*Dried herbs for decoration; foodstuffs for animals containing herbal extracts; seedlings and seeds for planting; foodstuffs for animals; cannabis, unprocessed; unprocessed cannabis in its various forms, including live cannabis plants, cannabis seeds, fresh cannabis, dried cannabis, cannabis strains; foodstuff for animals containing, mixed or flavoured with cannabis or cannabis derivatives*

213. The contested terms above are identical based on the principle in *Meric* to “natural plants and flowers”, “foodstuffs for animals” and/or “raw and unprocessed grains and seeds”.

*Beverages for animals; beverages for animals containing, mixed or flavoured with cannabis or cannabis derivatives*

214. These goods may provide nutrients to animals and there is an overlap in purpose with “foodstuffs for animals”, which will do the same. The goods are different in nature but their users will be the same and they are likely to be made available through the same channels of trade. It is unlikely that foodstuffs and beverages are in competition, given that one is to satisfy hunger and the other thirst, and they are not complementary. They are similar to a medium degree.

### Class 32

*Beers; non-alcoholic beverages; mineral and aerated waters; fruit beverages and fruit juices; syrups for making beverages; carbonated soft drinks, and energy drinks; cannabis or cannabis derivatives infused beer; beer containing cannabis or cannabis derivatives as an ingredient; non-alcoholic beverages flavoured or infused with cannabis or cannabis derivatives; mineral and aerated waters flavoured or infused with cannabis or cannabis derivatives; fruit beverage and fruit juices containing cannabis or cannabis derivatives; energy drinks with cannabis or cannabis derivatives; beer and soft drinks, containing cannabis seed extract or mature cannabis stem extract*

215. The above goods have direct counterparts in the 784 Mark’s specification and/or are identical based on the principle in *Meric* to “mineral and aerated waters” and/or “non-alcoholic drinks” in the earlier specification. They are identical.

### *Other non-alcoholic preparations for making beverages*

216. The way that the term “other non-alcoholic preparations for making beverages” is expressed appears to exclude syrups for making beverages. Nonetheless the contested goods have the same purpose and a similar nature to “syrups for making beverages”, which are used by the same users, will be sold in close proximity and are likely to be in competition with and manufactured by the same entities as non-syrup preparations for making beverages. They are highly similar.

### Class 34

#### *Tobacco*

217. “Tobacco” coincides in purpose with, at least, “electronic cigarette liquid (e-liquid) comprised of propylene glycol” in the 784 Mark’s specification, as both are for inhalation and may include the effects of nicotine. The goods have different natures. The users are identical, they may be available through the same trade channels and are in competition. They are similar to a fairly high degree.

#### *Tobacco substitutes*

218. This term is identical to “electronic cigarette liquid (e-liquid) comprised of propylene glycol”, which is a tobacco substitute.

#### *Cigarettes and cigars; pre-rolled joints*

219. These goods are used by the same users as “smokers’ articles”, they are available through the same trade channels and they are complementary goods. They are similar to a medium degree.

#### *Electronic cigarettes and oral vaporizers for smokers; vaporizers; USB rechargeable pen vaporizers; recyclable pen vaporizers*

220. The above goods are complementary to “electronic cigarette liquid (e-liquid) comprised of propylene glycol”, used by the same consumers, and are commonly sold in the same specialist shops. They are similar to a medium degree.

*Smokers' articles; matches; ashtrays; dab mats; grinders for dried cannabis; cigarette paper; cigarette filters; lighters; matches; machines for rolling cigarettes; cigarette cases; tobacco tins and tobacco pouches; bongos; dab rigs; hand pipes, water pipes, hookahs, nebulizers, atomizers*

221. "Nebulizers" are ordinarily medical devices and would not be classified in class 34 but it is to be assumed that Mr Dave knows his business and that nebulisers may also be a type of device proper to class 34. The above are contained in the 784 Mark's specification or are identical on the basis of *Meric* to the 784 Mark's "smokers' articles", which is a very wide term.

*Cannabidiol oil; dried marijuana and cannabis; dried cannabis flower; CO2 Honey oil; marijuana and cannabis extracts for smoking, namely, tinctures, oils, juice, powder, hashish, resins, shatter, wax, concentrate, rosin, live resin rumble, budder*

222. All of the above are types of cannabis or cannabis extract. In class 34, these goods are for recreational purposes. Unilux relies on its own goods in class 34. They have a similar purpose to "electronic cigarette liquid (e-liquid) comprised of propylene glycol", as they are all intended to be smoked for the effects of a pleasurable experience, though they appear to differ in nature. Users overlap and the goods may be in competition. They are similar to a medium degree.

### Class 35

*Advertising; dissemination of advertising for other via computer networks; advertising consultation services; advertising for others; providing online advertising on computer networks; providing of advertising space; advertising time and advertising media; information about advertising; development of advertising flyers; creation and placement of advertisements for others; radio and television advertising; radio advertising; design of advertising materials for others; advertising services for tracking advertising performance, for managing, distributing and serving advertising, for analysing advertising data, for reporting advertising data, and for optimizing advertising performance; dissemination of advertising; marketing services; marketing and sales promotion; database marketing; event marketing; marketing over the internet; market research services; provision of market research information*

223. These services are either self-evidently identical to “advertising” or “marketing” in the earlier mark’s specification or are identical to one or both of those terms under the principle in *Meric*.

*Business management; business administration; office functions; business assistance; business management and administrative services; business information*

224. The earlier “online ordering services” appear to me to be the closest to the above. These services include services to businesses to facilitate the handling of online orders. This is a similar purpose to that of the contested services, above, which are all concerned with assisting businesses to perform better through the provision of support services, such as data entry, invoicing services or other clerical services. These services have the same users and are likely to be offered by the same providers. There is a medium degree of similarity.

*Business analysis*

225. Business analysis involves not only the internal assessment of a business, such as its structure, but also the position of a business in the marketplace. Although the purpose is different from the earlier mark’s “marketing” services, which are essentially about the promotion of goods and services, a degree of research is required for a marketing company to understand, for example, the market conditions for a given good or service and to determine an effective marketing strategy. Users of both services will be professionals and the services may be provided by the same companies. There is a low degree of similarity.

*The contested retail services*

In *Oakley, Inc v OHIM*, T-116/06 [EU:T:2008:399], at [46]-[57], the General Court held that although retail services are different in nature, purpose and method of use from goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree. In *Tony Van Gulck v Wasabi Frog Ltd*, BL O/391/14, Mr Geoffrey Hobbs QC, as the Appointed Person, reviewed the law concerning retail services versus goods. He said that:

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

226. However, on the basis of the European courts’ judgments in *Sanco SA v OHIM*, C-411/13P [EU:C:2014:315] and *Assembled Investments (Proprietary) Ltd v. OHIM*, T-105/05 [EU:T:2007:170], at [30] to [35] of the judgment, upheld on appeal in *Waterford Wedgwood Plc v Assembled Investments (Proprietary) Ltd*, C-398/07P [EU:C:2009:288], Mr Hobbs concluded that:

- i) Goods and services are not similar on the basis that they are complementary if the complementarity between them is insufficiently pronounced that, from the consumer’s point of view, they are unlikely to be offered by one and the same undertaking;
- ii) In making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it is necessary to envisage the retail services normally associated with the opponent’s goods and then to compare the opponent’s goods with the retail services covered by the applicant’s trade mark;
- iii) It is not permissible to treat a mark registered for ‘retail services for goods X’ as though the mark was registered for goods X;

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

227. There is a very long list of disparate retail services and the only submissions from Unilux are an assertion that the services are identical or similar. In the absence of a positive case for similarity, it is not the role of this tribunal to search for potential similarity between the competing terms where that similarity is not obvious. Bearing that in mind, along with the case law above regarding the similarity between goods and retail services and my findings in relation to the similarity between the competing goods, my findings are as follows:

<b>Contested services</b>	<b>Findings compared to the 784 Mark specification</b>
Retail and online retail in relation to the sale of chemicals for use in industry, science and photography, as well as in agriculture, horticulture and forestry, unprocessed artificial resins, unprocessed plastics, fire extinguishing and fire prevention compositions, tempering and soldering preparations, substances for tanning animal skins and hides, adhesives for use in industry, putties and other paste fillers, compost, manures, fertilizers, biological preparations for use in industry and science, paints, varnishes, lacquers, preservatives against rust and against deterioration of wood, colorants, dyes, inks for printing, marking and engraving, raw natural resins, metals in foil and powder form for use in painting, decorating, printing and art.	Dissimilar to all of the earlier goods and services.
Retail and online retail in relation to the sale of cleaning preparations for vaporizers, electronic cigarettes, oral vaporizers for smoking.	Medium similarity with “retail services connected with the sale of electronic cigarette liquid (e-liquid) comprised of propylene glycol” as these services concern goods in the same market sector, available in the same specialist shops to the same users.
Retail and online retail in relation to the sale of non-medicinal topical oils and cosmetic pastes, massage creams, massage oils, beauty creams, after-sun oils and creams, tanning oils and creams, aftershave	Identical to “retail services connected with the sale of skin care preparations, body cleaning and beauty care preparations, cosmetics, perfumery and fragrances,

<p>creams, perfume oils, oils for perfumes and scents, almond oil, aromatherapy oils, face and body lotions, shaving preparations, face cream, bath additives and creams, sun creams and sunscreen creams, soaps for personal use, hair shampoo, makeup, hair tonics, bath oils and bath salts, hair oils, body oils, facial oils, skin tonics, skin creams, night creams, lip creams, skin lotions, lip care preparations, hair care preparations, nonmedicated skin preparations, cosmetics, cosmetics for use on the skin, cosmetics in the form of milks, lotions, and emulsions, cosmetic oils, essential oils for personal use, cosmetic creams, cannabis based, cannabis infused and cannabinoid-infused non-medicinal topical oils and cosmetic pastes, massage creams, massage oils, beauty creams, after-sun oils and creams, tanning oils and creams, aftershave creams, perfume oils, oils for perfumes and scents, almond oil, aromatherapy oils, face and body lotions, shaving preparations, face cream, bath additives and creams, sun creams and sunscreen creams, soaps for personal use, hair shampoo, makeup, hair tonics, bath oils and bath salts, hair oils, body oils, facial oils, skin tonics, skin creams, night creams, lip creams, skin lotions, lip care preparations, hair care preparations, non-medicated skin preparations, cannabis-based, cannabis infused and cannabinoid-infused cosmetics, cannabis-based, cannabis infused and cannabinoid-infused cosmetics for use on the skin, cannabis-based, cannabis infused and cannabinoid-infused cosmetics in the form of milks, lotions, and emulsions, cannabis-based, cannabis infused and cannabinoid-infused cosmetic oils, cannabis-based, cannabis infused and cannabinoid infused essential oils for personal use, cannabis-based, cannabis infused and cannabinoid-infused cosmetic creams.</p>	<p>essential oils”, either literally or based on <i>Meric</i>.</p>
<p>Retail and online retail in relation to the sale of industrial oils and greases, wax, lubricants, dust absorbing, wetting and binding compositions</p>	<p>Dissimilar to all of the earlier goods and services.</p>
<p>Retail and online retail in relation to the sale of fuels and illuminants, candles and wicks for lighting</p>	<p>Identical to “retail services connected with the sale of candles, wicks, perfumed candles, tapers, bees wax”, either literally or based on <i>Meric</i>.</p>

<p>Retail and online retail in relation to the sale of pharmaceuticals, medical and veterinary preparations, sanitary preparations for medical purposes, dietetic food and substances adapted for medical or veterinary use, food for babies, dietary supplements for human beings and animals, disinfectants, preparations for destroying vermin, fungicides, dietary and nutritional supplements, food supplements, marijuana for medical purposes, pharmaceutical goods containing cannabis, dietary supplements and dietetic preparations containing cannabis oil, medical products containing cannabis, pharmaceutical and natural remedies containing cannabis, dietetic food preparations adapted for medical purposes, containing cannabis oil, cannabis oil derived from the hemp plant, cannabis oil capsules, cannabis infused topical creams, lotions, and balms for pain relief, preparations for use as additives to food for human consumption [medicated] with cannabis oil, preparations of vitamins with cannabis.</p>	<p>Identical to retail services connected with the sale of pharmaceuticals and natural remedies, veterinary preparations, dietary supplements, medicated shampoo, food supplements, medicated food supplements, dietary food supplements, food supplements for medical purposes and/or food supplements for veterinary use, literally or based on <i>Meric</i>.</p> <p>If retail of disinfectants is not identical to the above retail of veterinary preparations, the services have a certain similarity in nature, purpose and method of use. They are similar to a medium degree.</p>
<p>Retail and online retail in relation to the sale of plasters, materials for dressings, material for stopping teeth, dental wax</p>	<p>Medium similarity with “retail services connected with the sale of pharmaceuticals” as these services are provided to the public in chemists’ shops, coinciding in users and providers.</p>
<p>Retail and online retail in relation to the sale of herbicides</p>	<p>Dissimilar to all of the earlier goods and services.</p>
<p>Retail and online retail in relation to the sale of common metals and their alloys, ores, metal materials for building and construction, transportable buildings of metal, non-electric cables and wires of common metal, small items of metal hardware, metal containers for storage or transport, safes.</p>	<p>Dissimilar to all of the earlier goods and services.</p>
<p>Retail and online retail in relation to the sale of machines, machine tools, power-operated tools, motors and engines, except for land vehicles, machine coupling and transmission components, except for land vehicles, agricultural implements, other than hand-operated hand tools, incubators for eggs, automatic vending machines, hand tools and implements, hand-operated, cutlery, side arms, except firearms, razors, scientific, research, navigation, surveying,</p>	<p>Dissimilar to all of the earlier goods and services.</p>

<p>photographic, cinematographic, audiovisual, optical, weighing, measuring, signalling, detecting, testing, inspecting, life-saving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling the distribution or use of electricity, apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data, recorded and downloadable media, computer software, blank digital or analogue recording and storage media, mechanisms for coin-operated apparatus, cash registers, calculating devices, computers and computer peripheral devices, diving suits, divers' masks, ear plugs for divers, nose clips for divers and swimmers, gloves for divers, breathing apparatus for underwater swimming, fire extinguishing apparatus.</p>	
<p>Retail and online retail in relation to the sale of firmware and software for electronic cigarette, electronic cigarette batteries, electronic cigarette chargers, electronic cigarette charging cases, portable chargers for electronic cigarettes and vaporizers usb cables, cables for connecting electronic cigarettes to mains electricity, adapters for charging electronic cigarettes, chargers for vaporizers, accessories for vaporisers, namely vaporizer batteries, chargers for vaporizers, usb chargers for vaporizers and portable charging cases for vaporizers.</p>	<p>Medium similarity with “retail services connected with the sale of electronic cigarette liquid (e-liquid) comprised of propylene glycol” as these are all services provided to the public in the same shops and by the same retailers.</p>
<p>Retail and online retail in relation to the sale of light emitting diodes, electrical resistance wire.</p>	<p>Dissimilar to all of the earlier goods and services.</p>
<p>Retail and online retail in relation to the sale of smartphone applications for viewing and ordering products online, mobile applications for viewing and ordering products online, downloadable mobile applications, mobile application software, downloadable software in the nature of a mobile application in the field of online retail, namely, for viewing and ordering products online.</p>	<p>“Retail” indicates sales to end users rather than manufacturers. Users and channels of trade are the same as “online ordering services” but the retail of apps (as distinct from a business having an app to use its ordering services) is likely to take place on app stores. There is a low degree of similarity.</p>
<p>Retail and online retail in relation to the sale of electronic downloadable publications.</p>	<p>Dissimilar to all of the earlier goods and services.</p>
<p>Retail and online retail in relation to the sale of surgical, medical, dental and veterinary apparatus and instruments, pharmaceutical devices, medical devices for use in electronic cigarettes, inhalers, electric</p>	<p>Medium degree of similarity with “retail services connected with the sale of pharmaceuticals and natural remedies, veterinary preparations”, as the services are likely to be provided in the same retail</p>

<p>vaporisers for administering steam inhalants, sprayers for medical purposes, spray bottles [vaporisers] for medical use, medical devices for use in connection with smoking cessation, pharmaceutical devices, namely devices to aid in the cessation of smoking, medical devices, namely medical devices for human use including, but not limited to inhalators, apparatus used as an aid to help in the cessation of smoking, apparatus used as an aid to help in the cessation of smoking, medical bottles.</p>	<p>settings, such as pharmacies or hospital supply shops, target the same users and are provided by the same businesses.</p>
<p>Retail and online retail in relation to the sale of suture materials, medical jars.</p>	<p>Medium similarity with “retail services connected with the sale of pharmaceuticals and natural remedies, veterinary preparations”: provided by the same businesses in the same retail outlets, targeting the same users.</p>
<p>Retail and online retail in relation to the sale of artificial limbs, eyes and teeth.</p>	<p>Dissimilar to all of the earlier goods and services.</p>
<p>Retail and online retail in relation to the sale of orthopaedic articles, therapeutic and assistive devices adapted for persons with disabilities, apparatus, devices and articles for nursing infants.</p>	<p>Medium degree of similarity with “retail services connected with the sale of pharmaceuticals and natural remedies, veterinary preparations”, as the services are available in the same retail outlets, target the same users and have the same providers.</p>
<p>Retail and online retail in relation to the sale of massage apparatus, sexual activity apparatus, devices and articles.</p>	<p>Dissimilar to all of the earlier goods and services.</p>
<p>Retail and online retail in relation to the sale of apparatus and installations for lighting, heating, cooling, steam generating, cooking, drying, ventilating, water supply and sanitary purposes, vehicles, apparatus for locomotion by land, air or water, firearms, ammunition and projectiles, explosives, fireworks, precious metals and their alloys, jewellery, precious and semi-precious stones, horological and chronometric instruments, musical instruments, music stands and stands for musical instruments, conductors' batons, paper and cardboard, printed matter, bookbinding material, photographs, stationery and office requisites, except furniture, adhesives for stationery or household purposes, drawing materials and materials for artists, paintbrushes, instructional and teaching materials, plastic sheets, films and bags for wrapping and packaging, printers' type, printing blocks, unprocessed and semi-processed rubber,</p>	<p>Dissimilar to all of the earlier goods and services.</p> <p>Although candles may be used for lighting, nowadays the purpose of candles is more decorative than functional and there is very limited, if any, competition between candles and lighting apparatus. Candles have a different nature from lighting apparatus and installations and the goods have different manufacturers. The competing goods and services will reach the market through different channels. If there is any similarity at all between these goods/services, it is very low. Retail of candles does not appear to offer a better case, as these services are not offered by the same providers as retail of lighting apparatus and installations and there is therefore only an overlap in user and purpose at a high level of generality.</p>

<p>gutta-percha, gum, asbestos, mica and substitutes for all these materials, plastics and resins in extruded form for use in manufacture, packing, stopping and insulating materials, flexible pipes, tubes and hoses, not of metal, leather and imitations of leather, animal skins and hides, luggage and carrying bags, umbrellas and parasols, walking sticks, whips, harness and saddlery, collars, leashes and clothing for animals, materials, not of metal, for building and construction, rigid pipes, not of metal, for building, asphalt, pitch, tar and bitumen, transportable buildings, not of metal, monuments, not of metal, furniture, mirrors, picture frames, containers, not of metal, for storage or transport, unworked or semi-worked bone, horn, whalebone or mother-of-pearl, shells, meerscham, yellow amber.</p>	
<p>Retail and online retail in relation to the sale of household or kitchen utensils and containers, cookware and tableware, except forks, knives and spoons, glassware, porcelain and earthenware, coffee cups, coffee mugs, coffee makers, non-electric, plunger-style coffee makers, non-electric, bottles, bowls, basins, butter dishes, butter-dish covers, ceramics for household purposes, crockery for household purposes, coasters, not of paper or textile, coffee services [tableware], coffee filters, nonelectric, coffeepots, non-electric, cookery moulds, cookery molds, cookie [biscuit] cutters, cookie jars, drinking vessels, drinking bottles for sports, drinking glasses, droppers for household purposes, flasks, fruit cups, glass jars [carboys], glass stoppers, glass bowls, hip flasks, jugs, pitchers, menu card holders, mugs, place mats, not of paper or textile, pottery, signboards of porcelain or glass, soup bowls, sugar bowls, tablemats, not of paper or textile, tableware other than knives, forks and spoons, tea caddies, tea services [tableware], tea infusers, tea balls, tea strainers, tea cosies, teapots, thermally insulated containers for food, thermally insulated containers for beverages, vessels of metal for making ices and iced drinks, single use coffee cups, cups, cups of paper or plastic, coffee cup lids, mugs, tea cups, coffee stirrers, tea infusers, bottles, jars, containers, household or kitchen utensils</p>	<p>Dissimilar to all of the earlier goods and services.</p>

and containers, cookware and tableware, except forks, knives and spoons, glassware, porcelain and earthenware	
Retail and online retail in relation to the sale of combs and sponges (twice), brushes, except paintbrushes (twice), cosmetic utensils, cosmetic spatulas.	Medium similarity with “retail services connected with the sale of cosmetics and cosmetic preparations, cosmetic kits” as these services are all offered in the same shops by the same providers and are targeted at the same users.
Retail and online retail in relation to the sale of droppers for cosmetic purposes, brush-making materials (twice).	Dissimilar to all of the earlier goods and services.
Retail and online retail in relation to the sale of articles for cleaning purposes (twice).	“Articles for cleaning purposes” suggests goods such as scrubbing brushes and sponges for household use, rather than hygiene and beauty care utensils. Apart from an overlap in user and purpose at a superficial level (retail services used by the general public) there is no obvious point of overlap. Dissimilar to all of the earlier goods and services.
Retail and online retail in relation to the sale of unworked or semi-worked glass, except building glass (twice), ropes and string, nets, tents and tarpaulins, awnings of textile or synthetic materials, sails, sacks for the transport and storage of materials in bulk, padding, cushioning and stuffing materials, except of paper, cardboard, rubber or plastics, raw fibrous textile materials and substitutes therefor, yarns and threads, for textile use, textiles and substitutes for textiles, household linen, curtains of textile or plastic	Dissimilar to all of the earlier goods and services.
Retail and online retail in relation to the sale of clothing, novelty clothing, men’s wear, ladies’ wear, printed clothing, sportswear, tennis shirts, tee-shirts, polo shirts, pique shirts, golf shirts, shirt fronts, shirt-jacs, casual shirts, collared shirts, rugby shirts, dress shirts, turtleneck shirts, woven shirts, yoga shirts, hunting shirts, fishing shirts, knit shirts, aloha shirts, camouflage shirts, sports shirts, sports shirts with short sleeves, sports over uniforms, sports socks, sports vests, sports jerseys, sports singlets, underwear and undergarments, knitted articles of clothing, lingerie, vests, tops, printed t-shirts, short-sleeved or long-sleeved t-shirts, hoodies, aprons, cleaning apron, cooking apron, chef ware, jackets, blouson jackets, casual jackets, riding jackets, waterproof jackets, sleeved jackets, sleeveless jackets, fishing jackets, dinner	Dissimilar to all of the earlier goods and services.

<p>jackets, windproof jackets, leather jackets, heavy jackets, knit jackets, suede jackets, motorcycle jackets, bed jackets, long jackets, down jackets, coats, outdoor coats, house coats, evening coats, sheepskin coats, tail coats, cotton coats, top coats, fur coats, leather coats, rain coats, morning coats, dust coats, wind coats, ties, neckties, waterproof and water-resistant clothing, rainwear, suits, swimwear, wristbands, ear muffs, gloves and mittens, socks, stockings and hosiery, chaps, kerchiefs, roll necks, shorts, trousers, jeans, belts, jogging bottoms, slippers, body warmers, pants, camisoles, nappy pants, ski pants, jogging pants, dress pants, dresses, cowls, denims, slippers, veils, muffs, boas, furs, gabardines, layettes, combinations, ties, drawers, corsets, hats, footwear, sports footwear, ladies' footwear, beach footwear, infants' footwear, casual footwear, leisure footwear, pumps, trainers, uppers, heelpieces for footwear, welts for footwear, tips for footwear, insoles for footwear, soles for footwear, inner socks for footwear, footwear made of wood, fittings of metal for footwear, non-slipping devices for footwear, headgear, sports headgear, peaked headwear, headbands, helmets, bonnets, visors, sun visors, sports caps, children's headwear, laboratory coats.</p>	
<p>Retail and online retail in relation to the sale of lace, braid and embroidery, and haberdashery ribbons and bows, buttons, hooks and eyes, pins and needles, artificial flowers, hair decorations, false hair, carpets, rugs, mats and matting, linoleum and other materials for covering existing floors, wall hangings, not of textile, games, toys and playthings, video game apparatus, gymnastic and sporting articles, decorations for Christmas trees</p>	<p>Dissimilar to all of the earlier goods and services.</p>
<p>Retail and online retail in relation to the sale of meat, fish, poultry and game, meat extracts, preserved, frozen, dried and cooked fruits and vegetables, jellies, jams, compotes, eggs, milk, cheese, butter, yogurt and other milk products, oils and fats for food, coffee, tea, cocoa and artificial coffee, rice, pasta and noodles, tapioca and sago, flour and preparations made from cereals, bread, pastries and confectionery, chocolate, sugar, honey, treacle, yeast, baking-powder, seasonings, spices, sauces, coffee, coffee beverages with milk,</p>	<p>Identical to the retail of the same goods in the 784 Mark specification either literally or based on <i>Meric</i>, and/or identical on the basis of <i>Meric</i> to “retail services connected with the sale of coffee, tea, cocoa, herb sauces, confectionery, preparations made from flour, preparations made from cereals”.</p>

<p>coffee-based beverages, including beverages flavoured with cannabis, coffee beans, ground coffee, instant coffee, tea, tea-based beverages, including beverages flavoured with cannabis, iced tea, instant tea, tea leaves, tea bags, chocolate-based beverages, including beverages flavoured with cannabis, chocolate beverages with milk, pastries, chocolate, confectionery, not including popcorn, cereal bars, cereal preparations, snack foods consisting principally of confectionery, cereal bars, energy bars, corn chips, cocoa beverages with milk, cocoa-based beverages, including beverages flavoured with cannabis, biscuits, cookies, cakes, unroasted coffee.</p>	
<p>Retail and online retail in relation to the sale of ice cream, sorbets and other edible ices, salt, preserved herbs, vinegar and other condiments, ice, sandwiches, coffee flavourings, coffee flavourings, flavourings, other than essential oils, for beverages, coffee oils, food flavourings other than essential oils.</p>	<p>All of these goods are general consumer foodstuffs or ingredients likely to be marketed by the same kind of retailer as, at least, “retail services connected with the sale of confectionery, spices, herb sauces, coffee” such as corner shops and supermarkets of varying size. The services are offered by the same providers to the same users. Medium similarity.</p>
<p>Retail and online retail in relation to the sale of raw and unprocessed agricultural, horticultural and forestry products, raw and unprocessed grains and seeds, fresh fruits, vegetables, fresh herbs, dried herbs for decoration, foodstuffs for animals containing herbal extracts, natural plants and flowers, seedlings and seeds for planting, foodstuffs for animals, cannabis, unprocessed, unprocessed cannabis in its various forms, including live cannabis plants, cannabis seeds, fresh cannabis, dried cannabis, cannabis strains, foodstuff for animals containing, mixed or flavoured with cannabis or cannabis derivatives.</p>	<p>Identical to retail of the same goods in the earlier specification, literally or based on <i>Meric</i>, and/or identical on the basis of <i>Meric</i> to “retail services connected with the sale of raw and unprocessed agricultural, aquacultural, horticultural and forestry products, raw and unprocessed grains and seeds, fresh fruits and vegetables, fresh herbs, natural plants and flowers, foodstuffs for animals”.</p>
<p>Retail and online retail in relation to the sale of beverages for animals, beverages for animals containing, mixed or flavoured with cannabis or cannabis derivatives.</p>	<p>At least medium similarity to “retail of foodstuffs for animals” as the services are offered by the same retailers to the same users in the same premises.</p>
<p>Retail and online retail in relation to the sale of beers, non-alcoholic beverages, mineral and aerated waters, fruit beverages and fruit juices, syrups and other non-alcoholic preparations for making beverages, carbonated soft drinks, and energy drinks, cannabis or cannabis derivatives infused beer, beer containing cannabis or cannabis derivatives as an ingredient, non-alcoholic</p>	<p>Literally identical and/or identical based on <i>Meric</i> to retail of the same goods in the earlier specification and/or identical based on <i>Meric</i> to “retail services connected with the sale of non-alcoholic drinks”</p>

<p>beverages flavoured or infused with cannabis or cannabis derivatives, mineral and aerated waters flavoured or infused with cannabis or cannabis derivatives, fruit beverage and fruit juices containing cannabis or cannabis derivatives, energy drinks with cannabis or cannabis derivatives, beer and soft drinks, containing cannabis seed extract or mature cannabis stem extract.</p>	
<p>Retail and online retail in relation to the sale of other non-alcoholic preparations for making beverages.</p>	<p>Medium similarity with “retail services connected with the sale of syrups for making beverages” as the services are provided in the same shops by the same retailers to the same users.</p>
<p>Retail and online retail in relation to the sale of alcoholic beverages, except beers, alcoholic preparations for making beverages.</p>	<p>Literally identical and/or identical based on <i>Meric</i> to “retail services connected with the sale of alcoholic beverages, preparations for making alcoholic beverages”.</p>
<p>Retail and online retail in relation to the sale of tobacco and tobacco substitutes, cigarettes and cigars, electronic cigarettes and oral vaporizers for smokers, vaporizers, usb rechargeable pen vaporizers, recyclable pen vaporizers.</p>	<p>Medium similarity to “retail services connected with the sale of electronic cigarette liquid (e-liquid) comprised of propylene glycol” as the services are provided in the same specialist shops, target the same user and providers are the same.</p>
<p>Retail and online retail in relation to the sale of cannabidiol oil, dried marijuana and cannabis, dried cannabis flower, pre-rolled joints, co2 honey oil, marijuana and cannabis extracts for smoking, namely, tinctures, oils, juice, powder, hashish, resins, shatter, wax, concentrate, rosin, live resin rumble, budder.</p>	<p>Where goods appear in a retail specification, it is not appropriate to use class numbers as an aid to interpretation; rather, it is necessary to construe the meanings of the descriptions of goods forming part of the opponent’s retail services specification by reference to their ordinary natural meaning. There is nothing to indicate whether these retail services apply to cannabis products which are medical or recreational: they could apply to either. The services are therefore literally identical or identical based on <i>Meric</i> to “retail services connected with the sale of pharmaceuticals and natural remedies”.</p> <p>Alternatively, medium similarity to “retail services connected with the sale of electronic cigarette liquid (e-liquid) comprised of propylene glycol” as the services will have the same trade channels, target the same user and have the same providers.</p>
<p>Retail and online retail in relation to the sale of smokers' articles, matches, ashtrays, dab mats, grinders for dried cannabis, cigarette paper, cigarette filters, lighters, matches, machines for rolling cigarettes, cigarette</p>	<p>Identical to “retail services connected with the sale of smokers' articles”, either literally or based on <i>Meric</i>.</p>

cases, tobacco tins and tobacco pouches, bongs, dab rigs, hand pipes, water pipes, hookahs, nebulizers, atomizers.	
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### Class 36

*Financial, monetary and banking services; Insurance services; Real estate affairs; Financial investment in companies in the healthcare industry, the veterinary industry, the medicinal marijuana industry, the cannabis industry and high-technology industry; Distribution of dividends, profits, capital gains, cash and securities from businesses in the healthcare industry, the medicinal marijuana industry, the cannabis industry and high-technology industry, namely capital investments; Financial consultancy; Financial sponsorship; Investment of funds*

228. Unilux submits that these services are similar to advertising, marketing and sales promotions and the related consultancy, information and advisory services because the services in both classes relate to financial gain and business success and are likely to be offered by the same undertakings and accessed by the same users. I reject that submission. The services are different in every material respect other than users, where the overlap is too superficial to result in similarity overall. They are not similar.

### Class 37

*Repair of commercial and industrial machinery; Installation of industrial machinery; Installation, repair and maintenance of surveillance and control systems for industrial plants and utility plants; installation, repair and maintenance of surveillance and control installations for industrial plants and utility plants; installation, repair and maintenance of computer hardware for surveilling and controlling industrial plants and utility plants*

229. Unilux makes no submissions regarding these services. I assume it has dropped its claim. In any event, I can see no obvious basis for similarity. The services are dissimilar.

## Class 39

### *Transport; delivery services*

230. Unilux relies on “online ordering services; retail services connected with [all goods of the specification which includes pharmaceuticals and natural remedies]” and says that the services are complementary. “Delivery services” and the class heading “transport” include food delivery services. These services are likely to be provided by the same businesses which offer “online ordering services”, i.e., food ordering and delivery companies, and they are complementary. They have the same consumers and channels of trade. There is a medium degree of similarity for these services.

### *Packaging and storage of goods; distribution services relating to cannabis related products*

231. Unilux says that these services are complementary for the same reasons as above. I do not agree. It is true that a user of an online ordering service or retail site to purchase goods will often require them to be packaged. However, the user is not purchasing packaging or storage services per se; rather, they are buying goods and these services are ancillary. Further, these services are usually provided by specialist companies and users would not expect them to be the responsibility of the undertaking offering online ordering or retail services. As regards “distribution services relating to cannabis related products”, these transportation services will be offered by specialist undertakings, particularly where controlled drugs are concerned, not by the providers of online ordering or retail services. Consequently, they are not complementary. There is no other point of similarity. These services are not similar.

## Class 41

*Educational services and patient educational services, namely, audio, visual and print materials, seminars, workshops, classes and training sessions all in the field of medicinal marijuana and cannabis; educational demonstrations in the field of growing plants, workshops and seminars in the fields of horticulture; providing a website providing educational information in the field of medical marijuana and cannabis; education and training services pertaining the sale and selection of medical cannabis*

*and cannabis products for medical uses; providing medical education in the field of medical cannabis and cannabis products for medical uses; providing an educational website featuring the ratings, reviews and recommendations on marijuana and medical marijuana products, the indications and effects of particular cannabis strains, the benefits of medical marijuana and cannabis products for medical use; providing an educational website featuring research in the field of medical marijuana and cannabis products for medical purposes; education and training services pertaining to cannabis in the veterinary and animal care industries; arranging and conducting of workshops, conferences, congresses, educational forums, and seminars; organization of exhibitions for cultural or educational purposes; practical training in the field of medical marijuana and cannabis*

232. Unilux relies on certain goods and services in classes 5, 30 and 35 (e.g., pharmaceuticals and natural remedies, horticultural products, advertising services), submitting that there is a relationship between the goods and efforts to educate users, and that users and trade channels overlap. It further submits that consumers are likely to think that the goods and/or services are offered by the same companies.

233. Educational services have a different purpose from all of the identified goods and services. Their natures are different, as are their methods of use. The services are not in competition and there is no evidence to show that the providers of educational services, which require specific skills and training, are the same as the providers of the goods and services relied upon. They are not similar.

#### Class 42

*Research services; medical device research and development services; medical research services; medical and pharmacological research services; medical therapy research and development services; drug research and development services; biological research, clinical research and medical research; scientific research for medical purposes; providing medical and scientific research information in the field of medical devices; pharmaceuticals and clinical trials; provision of information and data relating to medical research and development; scientific investigations for medical purposes; design services; design and development of medical devices; product design and development; design consultancy; product design and development*

*consultation; technical consultancy relating to product development; analysis and evaluation of product development; research and development of products; design and testing for product development; providing information in the field of product development; scientific and technological services and research and design relating thereto*

234. There is a medium degree of similarity between the above services and “pharmaceuticals; veterinary preparations”. The contested services all are or include research and development into pharmaceuticals and/or medical devices, which includes devices through which drugs are delivered, such as inhalers. The competing goods and services are likely to be used by professionals, such as doctors prescribing medicines or recommending drug trials for patients. As I understand it, pharmaceutical companies carry out research and development into pharmaceuticals, and tend to emphasise the innovative nature or clinically proven efficacy of their pharmaceuticals when promoting their products. I see no reason why this would not also apply to medical devices where it is necessary for the drugs to be delivered by a specific method. I also bear in mind that pharmaceutical companies may engage in research with third parties, and that many practising doctors are also involved in clinical research. It therefore appears to me that the respective goods and services share users and that they are likely to be used together and perceived as the responsibility of the same undertakings, resulting in a complementary relationship.<sup>62</sup> It is true that nothing prevents pharmaceutical companies from offering research and development services to third parties but my understanding is that this is not typically the case and, therefore, whilst there may be some overlap in channels of trade in a clinical trial, I do not think that this applies more widely.

*Design and development of questionnaires, opinion polls and surveys*

235. These services appear to have been misclassified, as opinion polling services are proper to class 35. In any event, there is similarity of purpose and nature between these services and the earlier mark’s “marketing” services, which may involve the canvassing of opinion about products or companies. The users will overlap and these

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<sup>62</sup> I note that similar conclusions were reached in *Emcur Gesundheitsmittel aus Bad Ems GmbH v EUIPO*, T-165/17 [EU:T:2018:346].

services will be provided by the same businesses through the same channels of trade. They are similar to at least a medium degree.

*Industrial analysis, industrial research and industrial design services*

236. These services cover areas such as research relating to industrial machinery, development of advanced manufacturing and optimisation of industrial processes, as well as the design of products for manufacture. Unilux simply submits that there is an overlap between the services in class 5 or 35 with the above. I cannot see that there is any similarity with any of the 784 Mark's goods or services. They are dissimilar.

*Quality control and authentication services*

237. Although goods such as pharmaceuticals will doubtless be tested to assure their efficacy and safety, the users of quality control services are likely to be manufacturers rather than purchasers of the pharmaceuticals. I cannot see any other point of similarity. In particular, the goods and services will not be provided by the same undertakings. They are not similar to any of the earlier mark's goods or services.

*Design and development of computer hardware and software.*

238. Unilux relies on advertising, marketing and sales promotions and various retail services, along with the related consultancy, information and advisory services in class 35. I cannot see that there is any point of similarity between these services apart from a very general overlap in user. They are not similar.

Class 43

*Services for providing food and drink; Restaurant, cafe and coffee shop services; services for the provision of food and drink, bar services, café services, cafeteria services; food and drink catering, snack-bar services, services for the provision of food and drink with CBD supplements, services for the provision of food and drink with cannabidiol supplements, services for the provision of food and drink with hemp supplements*

239. The 784 Mark is registered for, among other things, “cooked meat, fish, poultry and game; soups” in class 29 and “cakes; breads; coffee, tea, cocoa, pastry” in class 30. These are all goods which may be provided in the establishments covered by the contested mark’s services or via the provision of food and drink services in the contested specification. The nature of the goods and services is different but there is some overlap in purpose because they are all aimed at satisfying hunger and thirst, albeit the manner in which they do so is not the same. The users are the same and the goods and services are offered through the same channels of trade. Further, there is a complementary relationship. The goods and services are similar to a medium degree.

*Cake decorating, decorating of food*

240. These services are similar to a medium degree to the earlier “cakes”, which are typically provided by the cake decorator along with the decoration services. Users and channels of trade are shared and the goods and services are complementary.

*Temporary accommodation*

The purpose of the above services is to provide a place in which to sleep, live or work. There is no overlap in nature or purpose with any of the 784 Mark’s goods or services. Users do not coincide at more than a very superficial level and there are no other points of similarity. These services are dissimilar.

Class 44

*Medical services; therapeutic, pharmaceutical and naturopathic advisory services; provision of information on therapeutic, pharmaceutical and naturopathic medicines; medical analysis services; healthcare advisory services; providing health information; information services relating to health care; provision of health information in relation to the medicinal benefits of cannabidiol; medical therapy to aid individuals in the cessation of smoking*

241. The closest terms in the 784 Mark’s specification are “pharmaceuticals and natural remedies”. There is a similar purpose between the goods and services, which are all aimed at improving health. The goods and services are also likely to be made

available through the same channels, be provided by the same undertakings and are sufficiently closely connected that they are complementary. They are similar to a medium degree.

*Agriculture, aquaculture, horticulture and forestry services; cultivating and growing of cannabis, cannabis products and medical marijuana and medical marijuana products*

242. The 784 Mark includes “raw and unprocessed agricultural, aquacultural, horticultural and forestry products” in class 31. These goods are complementary to the above services, because the goods are essential for the services (e.g., seeds are required for cultivation) and the goods are produced by means of the services. The goods and services are usually produced by the same undertakings and the channels of trade are the same. There is a medium degree of similarity.

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

243. In *Lloyd Schuhfabrik*, the Court of Justice said, at [22]-[23], that the court must make an overall assessment of a mark’s capacity to distinguish the goods or services of one undertaking from those of others. This includes the inherent characteristics of the mark, including whether it contains an element descriptive of the goods or services for which it has been registered, as well as the factors identified in *Windsurfing Chiemsee* at [51] (quoted above), such as the intensity of the use and the amount invested by the undertaking in promoting the mark.

244. I have already indicated that “MEDICANNA” is highly allusive in relation to medical cannabis. As such, it is weakly distinctive for goods in class 5 which are or contain medical cannabis, as well as for connected retail services. There are, however, goods encompassed by terms such as “pharmaceuticals” and “veterinary preparations” which do not contain and will not be expected to contain cannabis or cannabis derivatives, such as ocular pharmaceuticals and antifungal preparations. The 784 Mark’s specification also contains terms which encompass goods which may contain CBD. It is tolerably clear that food and dietary supplements may be CBD products. These are likely to be perceived as quasi medical goods and the distinctiveness of the 784 Mark is therefore also quite limited for these supplements. However, as with pharmaceuticals, many food and dietary supplements, such as iron

tablets, will not contain and will not be thought to contain any cannabis derivatives. Where the mark alludes to medicine/medical but does not convey any other concept, even obliquely, it is more distinctive, i.e., it has a lower than average degree of distinctive character.

245. A similar point arises in relation to the goods in class 31. "Raw and unprocessed agricultural, aquacultural, horticultural and forestry products; raw and unprocessed grains and seeds" are wide terms which include cannabis products. I realise that these goods are unprocessed and that their intended use is not necessarily in medicine but it seems likely that if "MEDICANNA" were used in relation to cannabis plants or seeds, it would be perceived as alluding to medical cannabis and the mark would be weakly distinctive in relation to such goods. For other plants, such as apple trees, there is no reason to believe it would be perceived as anything other than invented and highly distinctive.

246. Neither party has filed any evidence which assists me in determining the extent to which cannabis-derived ingredients, such as CBD, may be used other than as medicines or dietary supplements. There is also no evidence to shed light on the extent to which, if any, "canna" may be considered allusive of either cannabidiol or CBD. In such circumstances, I am constrained to judge, as best I can, where the line is to be drawn. I have already indicated that that CBD may be an ingredient in toiletries such as skincare preparations, confectionery (including chocolate confectionery), beers and non-alcoholic beverages. I also consider it likely that it will be, and will be understood as being, an ingredient in honeys, preparations made from flour and preparations made from cereals (the latter two including baked goods such as cakes and brownies) and certain liquids for electronic cigarettes. However, I do not consider that "MEDICANNA" as a whole is more than mildly allusive for such goods, for which it has a lower than average degree of distinctiveness.

247. For the remaining goods and services, which have no obvious connection either with medicine or with cannabis/CBD, including goods in classes 29 and 30, such as meats, fresh fruits and vegetables and advertising, marketing and sales promotion services, the mark is not allusive in any respect and is innately distinctive to a high degree.

248. The evidence does not establish that the mark had acquired any enhanced distinctiveness at the date of the application for invalidation (10 May 2022), for the reasons I have given at paragraphs 142 to 145, above.

### **Comparison of the trade marks**

249. It is clear from *Sabel BV v Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The Court of Justice stated at paragraph 34 of its judgment in *Bimbo* 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.”

250. It would be wrong, therefore, artificially to 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.

251. The marks to be compared are:

<b>The 784 Mark</b>	<b>The 759 mark (the contested mark)</b>
MEDICANNA	MEDCANN

252. The overall impression of both of the marks lies in the marks as wholes.

253. Visually, the marks share the first three letters “MED”. They also share the letters “CANN”, though they are in different positions in the marks and the 784 Mark has

additional letters “I” and “A” at the end of the “MED” and “CANN” elements. They are visually similar to a fairly high degree.

254. The 784 mark will be pronounced as four syllables: ME-DI-CA-NA. The 759 Mark will be two syllables: MED-CAN. There is therefore some similarity and some difference. They are aurally similar to a lower than average degree.

255. “MED” is an obvious and known abbreviation for both “medical” and “medicine” and is likely to be given this meaning where the goods/services in relation to which the mark is used would be expected to have medicinal or medical uses.<sup>63</sup> “CANN” may be perceived as allusive of cannabis or of cannabidiol/CBD when used in relation to goods which may be or contain those ingredients. I have already indicated how “MEDICANNA” may be construed, depending on the goods and services. Consequently, both marks may be allusive of medicine, medical cannabis, or CBD for certain goods and services, though these are overlapping concepts of limited distinctive significance. For other goods and services, the average consumer is unlikely to perceive any allusion to medicine and/or cannabis/CBD and there is no clear concept conveyed by either mark.

### **Likelihood of confusion**

256. Confusion may be direct or indirect. Direct confusion is where the average consumer simply mistakes one mark for another. Indirect confusion is where the average consumer notices that the two marks are not the same but where the common elements lead them to conclude that the later mark is another brand of the owner of the earlier mark: see the comments of Iain Purvis QC, as the Appointed Person, in *LA Sugar Limited v Back Beat Inc.*, BL O/375/10 at [17]. Mr Purvis QC also gave some non-exhaustive examples of how indirect confusion may occur:

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

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else

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<sup>63</sup> See <https://www.collinsdictionary.com/dictionary/english/med> [accessed 16 April 2026].

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

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

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

257. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ pointed out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

258. Unilux relies on both direct and indirect confusion. I cannot, however, see any basis upon which the average consumer would notice the differences between the marks yet think that they are natural evolutions of one another. In my view, if the consumer is not directly confused, there is no proper basis upon which to conclude that indirect confusion is likely.

259. In order for a claim under s. 5(2)(b) to succeed, there must be a degree of similarity between the competing goods and/or services. The application for invalidation based upon s. 5(2)(b) is therefore dismissed for all of the goods and services which I have found dissimilar to the 784 Mark's specification. My findings regarding the remainder are below. I remind myself that the marks are visually similar to a fairly high degree, aurally similar to a lower than average degree and that, to the extent that there is a conceptual overlap, it is of limited distinctive significance. I have borne these findings in mind in reaching the conclusions below.

260. I find that there is a likelihood of confusion for all of the goods in class 3, apart from "cleaning preparations for vaporizers, electronic cigarettes, oral vaporizers for smoking". This is because the vast majority of the goods are identical to those of the 784 Mark, the consumer's level of attention is medium and the 784 Mark's

distinctiveness is lower than average but not low. Where these criteria are present, given the similarity between the competing marks, the consumer is likely to be confused. This does not apply to “cleaning preparations for vaporizers, electronic cigarettes, oral vaporizers for smoking” because there is only a low degree of similarity between the competing goods which, in my view, will be enough for consumers to distinguish between the economic undertakings, given the earlier mark’s lower than average level of distinctiveness for e-cigarette liquids.

261. In class 5, the elevated level of attention and the weak distinctiveness of the 784 Mark for goods which are or contain medical cannabis are unlikely to result in the consumer being confused in respect of the following goods, even though they are identical:

Marijuana for medical purposes; pharmaceutical goods containing cannabis; dietary supplements and dietetic preparations containing cannabis oil; medical products containing cannabis; pharmaceutical and natural remedies containing cannabis; dietetic food preparations adapted for medical purposes, containing cannabis oil; cannabis oil derived from the hemp plant; cannabis oil capsules; cannabis infused topical creams, lotions, and balms for pain relief; preparations for use as additives to food for human consumption [medicated] with cannabis oil; preparations of vitamins with cannabis.

262. However, for goods which are not medical cannabis, the 784 Mark is more distinctive. The trade marks are sufficiently similar and the earlier mark sufficiently distinctive that there is likely to be confusion where the goods are similar to a medium degree or more. I do not think that there is a likelihood of confusion for the less similar goods, as there will be at least a medium level of attention even for goods such as plasters and the other factors are not sufficient to cause the consumer to be confused. Consequently, there is a likelihood of confusion for the following:

Pharmaceuticals, medical and veterinary preparations; sanitary preparations for medical purposes; dietetic food and substances adapted for medical or veterinary use, food for babies; dietary supplements for human beings and animals; disinfectants; preparations for destroying vermin; fungicides; dietary and nutritional supplements; food supplements.

263. As for class 9, the earlier mark is distinctive to a high degree for the online ordering services similar to the goods below. There is a likelihood of confusion for these goods, given the similarity between the goods and between the marks, and the medium level of attention:

Smartphone applications for viewing and ordering products online; mobile applications for viewing and ordering products online; Downloadable mobile applications; mobile application software; downloadable software in the nature of a mobile application in the field of online retail, namely, for viewing and ordering products online.

264. I do not consider that there is likely to be any confusion where the goods are only similar to a low degree, particularly as they are similar to goods for which the 784 Mark is distinctive to a lower than average degree.

265. In class 10, the similar goods are likely to be purchased with an above average level of attention, because they are either for medical purposes or for use with small babies. I accept that some of the similar goods could be used with medical marijuana, e.g., “medical devices for use in electronic cigarettes”, but I have no evidence about whether there are other applications for such goods. It seems plausible that they are compatible with other pharmaceuticals which may be delivered through inhalation. For pharmaceuticals other than cannabis, “MEDICANNA” is distinctive to a lower than average, but not low, degree. Bearing all of the relevant factors in mind, I consider that there is a likelihood of confusion for the following goods, which are similar to a medium degree to the 784 Mark’s goods:

Surgical, medical, dental and veterinary apparatus and instruments; Pharmaceutical devices, medical devices for use in electronic cigarettes; inhalers; electric vaporisers for administering steam inhalants; sprayers for medical purposes; spray bottles [vaporisers] for medical use; Medical devices for use in connection with smoking cessation; pharmaceutical devices, namely devices to aid in the cessation of smoking; medical devices, namely medical devices for human use including, but not limited to inhalators; apparatus used as an aid to help in the cessation of smoking; apparatus used as an aid to help in the cessation of smoking; medical bottles.

266. The invalidation fails for the remaining goods in class 10, as the goods are not similar enough for consumers to be misled as to origin.

267. The only goods which are similar in class 21 are “Combs and sponges; Brushes, except paintbrushes; cosmetic utensils; cosmetic spatulas”. I consider that there is a likelihood of confusion for all of these goods, which are similar to a medium degree to the earlier mark’s goods, bearing in mind that the consumer will pay a medium level of attention and the 784 Mark is not weakly distinctive for toiletries and cosmetics.

268. The identical or similar goods in class 30 will, for the most part, be purchased with a medium level of attention. “MEDICANNA” is distinctive to a lower than average degree for confectionery goods, honeys, preparations made from flour and preparations made from cereals because it is allusive of cannabidiol/CBD and it is highly distinctive for the other goods in class 30 because it is not at all allusive. I consider that there is a likelihood of confusion where the goods are similar to a medium degree or more, because the consumer is likely to mistake the marks for one another and the goods are sufficiently similar that they will believe that the goods are from the same undertaking. For goods such as “chocolate; confectionery, not including popcorn; cereal bars; cereal preparations; snack foods consisting principally of confectionery, cereal bars, energy bars, corn chips” all of which are or encompass goods which are bought frequently, at little cost and are often displayed in places such as checkouts where quick decisions about purchase are made, there is a low degree of attention and more risk of confusion. If I am wrong that CBD may be used in the goods identified above, “MEDICANNA” is distinctive to a high degree and confusion is more, not less, likely. I should add that, if I have approached the current position regarding CBD use in foodstuffs too narrowly and it is already used in goods such as sugar so that “MEDICANNA” will be perceived as distinctive to a lower than average degree, I would still have found a likelihood of confusion on the same basis as above. There is a likelihood of confusion for all of the similar goods in class 30 apart from “coffee flavourings; flavourings, other than essential oils, for beverages; coffee oils; food flavourings other than essential oils”, which are not similar enough for the consumer to think that the products are from the same undertakings, even if MEDICANNA is highly distinctive.

269. In class 31, “MEDICANNA” is distinctive to a high degree for the goods identical or similar to a medium degree to “raw and unprocessed agricultural, horticultural and forestry products; raw and unprocessed grains and seeds; fresh fruits, vegetables, fresh herbs; dried herbs for decoration; foodstuffs for animals containing herbal extracts; natural plants and flowers; seedlings and seeds for planting; foodstuffs and beverages for animals”, because these terms include goods which are neither cannabis nor cannabis-related. Consumers may pay only a medium degree of attention to the selection of these goods and they are likely to mistake the marks for one another. There is a likelihood of confusion for these goods.

270. However, for “cannabis, unprocessed; unprocessed cannabis in its various forms, including live cannabis plants, cannabis seeds, fresh cannabis, dried cannabis, cannabis strains; foodstuff and beverages for animals containing, mixed or flavoured with cannabis or cannabis derivatives”, the average consumer is likely to be a professional purchasing cannabis for eventual medical use. They are likely to pay an above average level of attention. “MEDICANNA” is weakly distinctive and the average consumer is not likely to mistake the marks for one another. There is no likelihood of confusion for these goods.

271. All of the goods in class 32 are identical or similar to a high degree. For these goods, a medium level of attention will be paid and “MEDICANNA” is distinctive to a lower than average degree. I consider that there is a likelihood of confusion.

272. In class 34, “MEDICANNA” is distinctive to a lower than average degree. This is because the goods of the earlier mark do not include medical cannabis (proper to class 5), though they may contain CBD. I see no reason why I should assume that the electronic cigarette liquids in the 784 Mark’s specification are intended to include cannabis, as this would be to assume that Unilux intends to sell cannabis illegally. In view of the similarity between the goods and the marks, and as there will be a medium level of attention, there is a likelihood of confusion.

273. In class 35, the business consumer of the services listed below will pay a fairly high degree of attention to the choice of service provider. However, “MEDICANNA” is distinctive to a high degree for the earlier services. Where the services are identical or

similar to a medium degree, I consider that there is a likelihood of confusion, i.e. for the following services:

Advertising; business management; business administration; office functions; dissemination of advertising for other via computer networks; advertising consultation services; advertising for others; providing online advertising on computer networks; providing of advertising space; advertising time and advertising media; information about advertising; development of advertising flyers; creation and placement of advertisements for others; radio and television advertising; radio advertising; design of advertising materials for others; advertising services for tracking advertising performance, for managing, distributing and serving advertising, for analysing advertising data, for reporting advertising data, and for optimizing advertising performance; dissemination of advertising; business assistance; business management and administrative services; business information; marketing services; marketing and sales promotion; database marketing; event marketing; marketing over the internet; market research services; provision of market research information.

274. I do not think that there is likely to be confusion in respect of “business analysis”, as the services are similar to a low degree and a fairly high level of attention will be paid. The professional user of these services is not likely to be confused, despite the similarity between the marks.

275. I see no reason why the retail services would be selected other than with a medium degree of attention: even where the goods themselves entail a higher or lower degree of attention, the consumer selecting the retail outlet will pay some attention to the range of products likely to be offered by any given retailer but the retail services do not directly have an impact on, for example, the consumer’s health. I consider that there is a likelihood of confusion where the retail services are similar to a medium degree or more and the 784 Mark is distinctive to at least a lower than average degree. Consequently, there is a likelihood of confusion for the following services:

Retail and online retail in relation to the sale of cleaning preparations for vaporizers, electronic cigarettes, oral vaporizers for smoking, non-medicinal topical oils and cosmetic pastes, massage creams, massage oils, beauty

creams, after-sun oils and creams, tanning oils and creams, aftershave creams, perfume oils, oils for perfumes and scents, almond oil, aromatherapy oils, face and body lotions, shaving preparations, face cream, bath additives and creams, sun creams and sunscreen creams, soaps for personal use, hair shampoo, makeup, hair tonics, bath oils and bath salts, hair oils, body oils, facial oils, skin tonics, skin creams, night creams, lip creams, skin lotions, lip care preparations, hair care preparations, nonmedicated skin preparations, cosmetics, cosmetics for use on the skin, cosmetics in the form of milks, lotions, and emulsions, cosmetic oils, essential oils for personal use, cosmetic creams, cannabis based, cannabis infused and cannabinoid-infused non-medicinal topical oils and cosmetic pastes, massage creams, massage oils, beauty creams, after-sun oils and creams, tanning oils and creams, aftershave creams, perfume oils, oils for perfumes and scents, almond oil, aromatherapy oils, face and body lotions, shaving preparations, face cream, bath additives and creams, sun creams and sunscreen creams, soaps for personal use, hair shampoo, makeup, hair tonics, bath oils and bath salts, hair oils, body oils, facial oils, skin tonics, skin creams, night creams, lip creams, skin lotions, lip care preparations, hair care preparations, non-medicated skin preparations, cannabis-based, cannabis infused and cannabinoid-infused cosmetics, cannabis-based, cannabis infused and cannabinoid-infused cosmetics for use on the skin, cannabis-based, cannabis infused and cannabinoid-infused cosmetics in the form of milks, lotions, and emulsions, cannabis-based, cannabis infused and cannabinoid-infused cosmetic oils, cannabis-based, cannabis infused and cannabinoid infused essential oils for personal use, cannabis-based, cannabis infused and cannabinoid-infused cosmetic creams, fuels and illuminants, candles and wicks for lighting, pharmaceuticals, medical and veterinary preparations, sanitary preparations for medical purposes, dietetic food and substances adapted for medical or veterinary use, food for babies, dietary supplements for human beings and animals, plasters, materials for dressings, material for stopping teeth, dental wax, disinfectants, preparations for destroying vermin, fungicides, dietary and nutritional supplements, food supplements, firmware and software for electronic cigarette, electronic cigarette batteries, electronic cigarette chargers, electronic cigarette charging cases, portable chargers for electronic cigarettes and vaporizers usb cables, cables

for connecting electronic cigarettes to mains electricity, adapters for charging electronic cigarettes, chargers for vaporizers, accessories for vaporisers, namely vaporizer batteries, chargers for vaporizers, USB chargers for vaporizers and portable charging cases for vaporizers, surgical, medical, dental and veterinary apparatus and instruments, orthopaedic articles, suture materials, therapeutic and assistive devices adapted for persons with disabilities, apparatus, devices and articles for nursing infants, pharmaceutical devices, medical devices for use in electronic cigarettes, inhalers, electric vaporisers for administering steam inhalants, sprayers for medical purposes, spray bottles [vaporisers] for medical use, medical devices for use in connection with smoking cessation, pharmaceutical devices, namely devices to aid in the cessation of smoking, medical devices, namely medical devices for human use including, but not limited to inhalators, apparatus used as an aid to help in the cessation of smoking, apparatus used as an aid to help in the cessation of smoking, medical jars, medical bottles, combs and sponges, brushes, except paintbrushes, combs and sponges, brushes, except paintbrushes, meat, fish, poultry and game, meat extracts, preserved, frozen, dried and cooked fruits and vegetables, jellies, jams, compotes, eggs, milk, cheese, butter, yogurt and other milk products, oils and fats for food, coffee, tea, cocoa and artificial coffee, rice, pasta and noodles, tapioca and sago, flour and preparations made from cereals, bread, pastries and confectionery, chocolate, ice cream, sorbets and other edible ices, sugar, honey, treacle, yeast, baking-powder, salt, seasonings, spices, preserved herbs, vinegar, sauces and other condiments, ice, coffee, coffee beverages with milk, coffee-based beverages, including beverages flavoured with cannabis, coffee beans, ground coffee, instant coffee, tea, tea-based beverages, including beverages flavoured with cannabis, iced tea, instant tea, tea leaves, tea bags, chocolate-based beverages, including beverages flavoured with cannabis, chocolate beverages with milk, pastries, chocolate, confectionery, not including popcorn, cereal bars, cereal preparations, snack foods consisting principally of confectionery, cereal bars, energy bars, corn chips, sandwiches, cocoa beverages with milk, cocoa-based beverages, including beverages flavoured with cannabis, coffee flavourings, biscuits, cookies, cakes, unroasted coffee, flavourings, other than essential oils, for beverages, coffee oils, food flavourings other than essential oils, raw and

unprocessed agricultural, horticultural and forestry products, raw and unprocessed grains and seeds, fresh fruits, vegetables, fresh herbs, dried herbs for decoration, foodstuffs for animals containing herbal extracts, natural plants and flowers, seedlings and seeds for planting, foodstuffs and beverages for animals, beers, non-alcoholic beverages, mineral and aerated waters, fruit beverages and fruit juices, syrups and other non-alcoholic preparations for making beverages, carbonated soft drinks, and energy drinks, cannabis or cannabis derivatives infused beer, beer containing cannabis or cannabis derivatives as an ingredient, non-alcoholic beverages flavoured or infused with cannabis or cannabis derivatives, mineral and aerated waters flavoured or infused with cannabis or cannabis derivatives, fruit beverage and fruit juices containing cannabis or cannabis derivatives, energy drinks with cannabis or cannabis derivatives, beer and soft drinks, containing cannabis seed extract or mature cannabis stem extract, alcoholic beverages, except beers, alcoholic preparations for making beverages, tobacco and tobacco substitutes, cigarettes and cigars, electronic cigarettes and oral vaporizers for smokers, smokers' articles, matches, vaporizers, USB rechargeable pen vaporizers, recyclable pen vaporizers, cannabidiol oil, dried marijuana and cannabis, dried cannabis flower, pre-rolled joints, ashtrays, dab mats, grinders for dried cannabis, cigarette paper, cigarette filters, lighters, matches, machines for rolling cigarettes, cigarette cases, tobacco tins and tobacco pouches, co2 honey oil, bongs, dab rigs, hand pipes, water pipes, hookahs, nebulizers, atomizers, marijuana and cannabis extracts for smoking, namely, tinctures, oils, juice, powder, hashish, resins, shatter, wax, concentrate, rosin, live resin rumble, budder.

276. For completeness, in relation to the retail of “cannabidiol oil, dried marijuana and cannabis, dried cannabis flower, pre-rolled joints, co2 honey oil, marijuana and cannabis extracts for smoking, namely, tinctures, oils, juice, powder, hashish, resins, shatter, wax, concentrate, rosin, live resin rumble, budder”, my finding is based on the medium similarity with retail of e-cigarette liquids, where “MEDICANNA” is distinctive to a lower than average degree.

277. There is no likelihood of confusion for the following retail services, because the 784 Mark is only weakly distinctive and consumers pay sufficient attention to distinguish between the competing marks:

Retail and online retail in relation to the sale of marijuana for medical purposes, pharmaceutical goods containing cannabis, dietary supplements and dietetic preparations containing cannabis oil, medical products containing cannabis, pharmaceutical and natural remedies containing cannabis, dietetic food preparations adapted for medical purposes, containing cannabis oil, cannabis oil derived from the hemp plant, cannabis oil capsules, cannabis infused topical creams, lotions, and balms for pain relief, preparations for use as additives to food for human consumption [medicated] with cannabis oil, preparations of vitamins with cannabis, cannabis, unprocessed, unprocessed cannabis in its various forms, including live cannabis plants, cannabis seeds, fresh cannabis, dried cannabis, cannabis strains, foodstuff and beverages for animals containing, mixed or flavoured with cannabis or cannabis derivatives.

278. The other retail services are either dissimilar or similar to too low a degree for the consumer paying a medium degree of attention to be confused.

279. In class 39, the earlier mark is highly distinctive for “online ordering services” and these services are similar to a medium degree to “transport; delivery services”. These services will be selected with no more than a medium level of attention. I consider that there is sufficient similarity between the marks and the services such that, when the earlier mark’s level of distinctive character is borne in mind, there is a likelihood of confusion.

280. Turning to the medical services in class 42, whilst the terms include, for example, research into medical cannabis, they are not limited to that field. Therefore, for some services covered by the terms, the 784 Mark is distinctive to a lower than average but not low degree. The services below are similar to a medium degree. However, these services will be selected with a high degree of attention. It is finely balanced but I think that the level of attention will, given the level of similarity between the marks, negate any confusion on the part of the relevant public. There is no likelihood of confusion for the following services:

Medical device research and development services; Medical research services; medical and pharmacological research services; medical therapy research and development services; drug research and development services; biological research, clinical research and medical research; scientific research for medical purposes; providing medical and scientific research information in the field of medical devices; pharmaceuticals and clinical trials; provision of information and data relating to medical research and development; scientific investigations for medical purposes; design and development of medical devices.

281. There is, however, a likelihood of confusion for the services below, which may be selected with a slightly lower (i.e., fairly high) level of attention and for which “MEDICANNA” may be highly distinctive. There is a medium degree of similarity between the competing goods and services and I consider confusion likely:

Research services; design services; product design and development; design consultancy; product design and development consultation; technical consultancy relating to product development; analysis and evaluation of product development; research and development of products; design and testing for product development; providing information in the field of product development; scientific and technological services and research and design relating thereto.

282. There is also a likelihood of confusion for “design and development of questionnaires, opinion polls and surveys”, despite the fairly high level of attention with which the services will be selected. This is because “MEDICANNA” has a high degree of distinctive character for these services and the levels of similarity between the goods and services and the competing marks are likely to cause direct confusion.

283. In class 43, a medium level of attention, along with a medium degree of similarity between the goods and services and a lower than average or high level of distinctive character for the 784 Mark is, bearing in mind the similarity between the marks, likely to lead to a likelihood of confusion for all of the similar services (i.e., all of the services in class 43 save “temporary accommodation”).

284. In class 44, there will be a fairly high level of attention for the medical and health-related services. It is unlikely that there will be a likelihood of confusion where these services relate to medical cannabis or medical cannabis-based services/advice, because the 784 Mark is only weakly distinctive for these services. However, most of the services in the contested specification are not so limited and the 784 Mark is distinctive to a lower than average degree for pharmaceuticals and natural remedies which are not, or are not related to, medical cannabis. Consequently, there is a likelihood of confusion for the following services:

Medical services; therapeutic, pharmaceutical and naturopathic advisory services; provision of information on therapeutic, pharmaceutical and naturopathic medicines; medical analysis services; healthcare advisory services; providing health information; information services relating to health care; medical therapy to aid individuals in the cessation of smoking.

285. There is no likelihood of confusion for “provision of health information in relation to the medicinal benefits of cannabidiol”, because the 784 Mark is weakly distinctive for these services and the higher level of attention and medium similarity between the competing goods and services will preclude confusion.

286. There is a likelihood of confusion for “agriculture, aquaculture, horticulture and forestry services”, because “MEDICANNA” is distinctive to a high degree for some goods covered by these terms. However, the earlier mark is only weakly distinctive where they relate to medical cannabis, and there is therefore no likelihood of confusion in relation to “cultivating and growing of cannabis, cannabis products and medical marijuana and medical marijuana products”.

287. For convenience, the goods and services for which the invalidity application based on s. 5(2)(b) fails, and for which the 759 Mark will remain registered, are set out in **bold** at annex 3 to this decision. The invalidation is successful for all of the remaining goods and services.

### **Section 5(3)**

288. S. 5(3) reads:

“(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 the repute of the earlier trade mark.

(3A) 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.”

289. The relevant case law can be found in the following judgments of the CJEU: *General Motors Corporation v Yplon SA*, C-375/97 [EU:C:1999:408], [1999] ETMR 950; *Intel Corporation, Inc. v CPM United Kingdom Limited*, C-252/07 [EU:C:2008:655], [2009] ETMR 13; *Adidas-Salomon AG and Adidas Benelux BV v Fitnessworld Trading Ltd.*, C-408/01 [EU:C:2003:582], [2004] ETMR 10; and *L’Oréal & Ors v Bellure & Anor*, C-487/07 [EU:C:2009:378], [2009] ETMR 55; *Interflora & Anor v Marks & Spencer & Anor*, C-323/09 [EU:C:2011:604]; and *Environmental Manufacturing LLP v OHIM*, C-383/12P [EU:C:2013:741]. The law appears to be as follows:

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

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

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

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant

consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness: *Intel*, paragraph 42.

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

(f) the more immediately and strongly the earlier mark is brought to mind by the later mark, the greater the likelihood that use of the latter will take unfair advantage of, or will be detrimental to, the distinctive character or the repute of the earlier mark: *L'Oréal v Bellure NV*, paragraph 44.

(g) 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.

(h) 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.

(i) 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'Oréal v Bellure NV*, paragraph 40. The stronger the reputation of the earlier mark, the easier it will be to prove that detriment has been caused to it: *L'Oréal v Bellure NV*, paragraph 44.

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

## Reputation

290. In *General Motors*, the CJEU gave the following guidance for the assessment of a trade mark's reputation:

“25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.

26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation ‘in the Member State’. In the absence of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation ‘throughout’ the territory of the Member State. It is sufficient for it to exist in a substantial part of it.”

291. Only the goods in classes 3 and 5 are relied upon.<sup>64</sup> I have already considered the evidence of use filed by Unilux. For the reasons given at paragraphs 142 to 145, above, I do not consider that the evidence establishes that the 784 Mark had a reputation among a significant part of the public at the relevant date of 28 May 2021 for any goods. The claim based on s. 5(3) falls at the first hurdle and is dismissed accordingly.

### **Section 5(4)(a)**

292. The law is set out above and I do not repeat it. I accept that Unilux has taken some steps towards starting a business of which “MEDICANNA” may in time become distinctive. However, I have only limited evidence of any public-facing use, which is mainly the website and is undated. There is no real evidence of the extent of use other than unsubstantiated assertion that the sign has been used extensively since 2019. Global turnover does not assist in determining the scale of any business which may have taken place in the UK. I recognise that goodwill is a much lower bar than reputation but the evidence still falls a long way short of clearing it. The passing off ground is dismissed.

### **MR DAVE’S OPPOSITION TO THE 902 MARK (“Medicann”)**

#### **Section 3(1)(c)**

293. The relevant legislation and case law are set out above and I will not repeat them.

294. Mr Dave’s claim under this ground is that the 902 Mark “comprises a word which is a portmanteau of the 2 words ‘Medi’ and ‘Canna’ [sic] a reference to the words ‘medical cannabis’ which are devoid of any distinctive character/descriptive [...] when they relate to the Contested G&S when associated with cannabis”.

295. I have explained at paragraph 130, above, why I consider that “medi” is likely to be taken as meaning “medical”, “medicinal”, “medicine” or “medicated” when it is part of the word “MEDICANNA” and is used in relation to medical products, medicated goods and food supplements in class 5. Essentially the same applies, for the same

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<sup>64</sup> Unilux’s skeleton argument, §83.

reasons, to “medi” when it appears in the word “Medicann”. I extend this finding to the medical services in class 44, because “medi” is also likely to be understood as descriptive of their medical nature. Some of the services, such as “beauty care services provided by a health spa” may not be strictly medical in the sense that they do not treat illness or disease, but they may offer cosmetic procedures which are likely to be perceived as medical in nature. Therefore, for these services, too, “medi” is descriptive.

296. However, as with “canna”, there is no evidence whatsoever to demonstrate that “cann” will be perceived as descriptive, rather than merely allusive, of cannabis.<sup>65</sup> I have checked the online *OED*, *Collins* and *Cambridge* dictionaries and none gives a meaning of “cann” that is or includes cannabis. There is no evidence which clearly shows other traders using “cann” in a descriptive fashion. “Medicann” is allusive when used in relation to medical cannabis and connected services but I find that the mark as a whole is not descriptive. The opposition based on s. 3(1)(c) fails.

### **Section 3(1)(b)**

297. No separate basis for the claim that the mark is devoid of distinctive character is identified in the grounds of opposition. For the reasons given in relation to s. 3(1)(c), the mark is not descriptive and the claim based on s. 3(1)(b) fails.

### **Section 3(3)(b)**

298. As with his invalidities, Mr Dave’s claim is that Unilux has educated the public that its products/services contain or are associated with cannabis/hemp contrary to the truth and this makes the mark deceptive. However, not only is this not a valid basis for the claim of deceptiveness, for the reasons explained at paragraph 151 to 153, above, but Mr Dave has also filed no evidence of Unilux’s alleged use of “Medicann”, let alone of Unilux having educated the public in any way.

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<sup>65</sup>[https://www.oed.com/dictionary/can\\_v1?tab=meaning\\_and\\_use#10266561](https://www.oed.com/dictionary/can_v1?tab=meaning_and_use#10266561),  
[https://www.oed.com/dictionary/can\\_n1?tab=meaning\\_and\\_use#10265789](https://www.oed.com/dictionary/can_n1?tab=meaning_and_use#10265789),  
[https://www.oed.com/dictionary/can\\_n1?tab=meaning\\_and\\_use#10265789](https://www.oed.com/dictionary/can_n1?tab=meaning_and_use#10265789);  
<https://www.collinsdictionary.com/dictionary/english/cann>;  
<https://dictionary.cambridge.org/spellcheck/english/?q=cann> [all accessed 16 April 2026].

299. The claim of deceptiveness in this case also points to an assertion in the statement of grounds that Unilux is not licensed to market goods or services associated with cannabis or hemp in the UK. The point appears to be that the goods/services cannot contain cannabis or hemp and that as the mark cannot legally be used for such goods, it is deceptive. I reject that claim. Whether or not Unilux has a licence to produce or market cannabis is irrelevant, as explained in *W.F. Gözze*, quoted above. The question is whether the mark conveys a clear meaning which will mislead the consumer as to the nature of the goods. For the reasons I have given above, whilst “Medicann” may allude to medical cannabis for certain goods and services, it does not convey a clear meaning and there is not a substantial risk of deception. The s. 3(3)(b) ground is dismissed.

### **Section 5(2)(b)**

300. I have already set out the relevant law. The opposition is now only based upon the 759 Mark and is relied upon only in classes 5, 10, 31, 34 and 44.<sup>66</sup> No goods in class 34 have survived the invalidity action; the remaining goods and services in the classes in question are set out below:

Class 5: Plasters, materials for dressings; Material for stopping teeth, dental wax; herbicides; marijuana for medical purposes; pharmaceutical goods containing cannabis; dietary supplements and dietetic preparations containing cannabis oil; medical products containing cannabis; pharmaceutical and natural remedies containing cannabis; dietetic food preparations adapted for medical purposes, containing cannabis oil; cannabis oil derived from the hemp plant; cannabis oil capsules; cannabis infused topical creams, lotions, and balms for pain relief; preparations for use as additives to food for human consumption [medicated] with cannabis oil; preparations of vitamins with cannabis.

Class 10: Artificial limbs, eyes and teeth; Orthopaedic articles; Suture materials; Therapeutic and assistive devices adapted for persons with disabilities;

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<sup>66</sup> Unilux’s case in respect of the 902 Mark originally appears to have been based solely on the alleged invalidity of the 759 Mark. However, there is an express denial that the goods/services are highly similar or identical and that there is a likelihood of confusion at §16 of its amended counterstatement.

Massage apparatus; Apparatus, devices and articles for nursing infants; Sexual activity apparatus, devices and articles; medical jars.

Class 31: Cannabis, unprocessed; unprocessed cannabis in its various forms, including live cannabis plants, cannabis seeds, fresh cannabis, dried cannabis, cannabis strains; foodstuff and beverages for animals containing, mixed or flavoured with cannabis or cannabis derivatives.

Class 44: Provision of health information in relation to the medicinal benefits of cannabidiol; cultivating and growing of cannabis, cannabis products and medical marijuana and medical marijuana products.

### **Average consumer and the nature of the purchasing act**

301. I have already found that the average consumer for the 759 Mark's goods and services is either the general public or a professional who will make the selection mainly by visual means but aural considerations may play a part. The level of attention for the surviving goods and services ranges from medium to fairly high. I consider that the same applies to the 902 Mark's goods and services. Again, I will return to the details as appropriate when I consider the likelihood of confusion.

### **Comparison of the goods and services**

302. I have very limited submissions from Mr Dave regarding the goods/services which are said to be closest to the contested specification.<sup>67</sup> Unilux admitted similarity between the competing specifications but did not specify the degree of any similarity. In addition, the 759 Mark has only survived the attack in part and the specification is now different. I must therefore determine the levels of similarity for myself. I will consider what I think are the closest terms in the 759 Mark's remaining specification.

303. I should also say at this point that my understanding is that medical cannabis prescriptions are only available via specialist doctors, in hospitals after referral from a GP or via specialist medical cannabis clinics.<sup>68</sup> The evidence suggests that some of

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<sup>67</sup> Nimesh Dave skeleton argument, §§48-53.

<sup>68</sup> Mr Lawson's evidence is that the only licensed cannabis medicines available on the NHS are for children and that any other cannabis-based medicines are "specials", only available from doctors on

these clinics prescribe both conventional pharmaceuticals and medical cannabis but the evidence is very limited.<sup>69</sup> It appears that there is a small number of pharmacies (31) which dispense medical cannabis in the UK.<sup>70</sup> It is unclear whether these pharmacies also dispense conventional pharmaceuticals but even if they do, whilst it is possible that conventional medicines and cannabis are both obtained from the same pharmacies, this appears not to be the typical scenario. In addition, I consider that “cannabis” is widely understood to mean marijuana/cannabis as a drug (whether legal or not) and that “cannabis” will not be understood to mean CBD or cannabidiol. With those points in mind, my findings are below.

### Class 5

*Health-aid foods supplements containing ginseng; Health food supplements made principally of minerals; Health-aid foods supplement containing red ginseng; Health food supplements for persons with special dietary requirements*

304. There is a medium degree of similarity to “dietary supplements and dietetic preparations containing cannabis oil”. The goods are similar in nature and purpose, with the same users.

*Health food supplements made principally of vitamins*

305. These goods are identical based on *Meric* to “preparations of vitamins with cannabis”.

*Acne medications; Acne medication; Allergy medications; Antifungal medication; Allergy medication; Diarrhea medication; Organotherapeutic drugs; Antituberculous drugs; Hypoglycemic drugs; Antineoplastic drugs; Autonomic drugs; Antitumor drugs; Antimigraine drugs; Anti-cancer drugs; Drug detoxifying agents; Autonomic drugs for medical purposes; Cytostatic drugs for medical purposes; Antiviral drugs for treating influenza; Antiviral drugs for treating HIV; Antipyretic drugs with sedative effect; Cardiovascular drugs used in treating shocks; Cardiovascular drugs used in angina*

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the GMC specialist register. Dr Nayee and Dr Bodani both refer to medical cannabis only being available on prescription from “specialist doctors”.

<sup>69</sup> See, for example, RGS14, p. 1.

<sup>70</sup> RGS15.

*pectoris; Cardiovascular drugs used in treating arrhythmias; Cardiovascular drugs used in myocardial infarction; Cardiovascular drugs for use in treating hypertension; Cardiovascular drugs used in treating congestive heart failure (CHF); Pharmaceutical preparations for use in discouraging the smoking habit; Nicotine gum for use as an aid to stop smoking*

306. There is a low degree of similarity to “pharmaceutical and natural remedies containing cannabis” on account of a high-level overlap in nature (pharmaceutical products), purpose (treatment of human health problems), users and channels of trade (on prescription from doctors). However, there are also very significant differences, particularly in purpose/specific intended use. In relation to autonomic drugs, I have no evidence about these. They appear to relate to the autonomic nervous system, which *Collins* defines as “the section of the nervous system of vertebrates that controls the involuntary actions of the smooth muscles, heart, and glands”.<sup>71</sup> Although epilepsy affects the nervous system (and epilepsy is a condition for which cannabis-based drugs are used), I have no evidence to show that it affects the autonomic nervous system. There is no competition and no complementarity.

*Medicated candies; Medicated candy; Medicated sweets; Candy, medicated; Medicated lozenges; Medicated confectionery*

307. Identical to “dietary supplements and dietetic preparations containing cannabis oil” under *Meric*

*Medicated lotions, Medicated balms; Medicated creams; Salves [medicated]; Medicated skin lotions; Therapeutic creams [medical]; Medicated body gels; Body creams [medicated]*

308. Identical to “cannabis infused topical creams, lotions and balms for pain relief” and/or “medical products containing cannabis”, which may include gels, under *Meric*.

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<sup>71</sup> <https://www.collinsdictionary.com/dictionary/english/autonomic-nervous-system> [accessed 8 April 2026].

*Dressings, medical; Medical dressings; Medicated compresses; Medicated plasters; Medical plasters*

309. Identical to “plasters, materials for dressings” as synonymous or identical under *Meric*.

*Medicated dentifrices; Medicated mouthwashes; Medicated mouthwash; Medical mouthwashes; Medicated toothpaste; Medicated dental rinses*

310. Fairly high similarity to “material for stopping teeth, dental wax”: the purpose is similar as both are for dental health and intended to prevent tooth degradation, though in different ways; same users, channels of trade and manufacturers.

*Medicated soap; Medicated shampoo; Medicated shampoos; Medicated handwash; Medicated talcum powder; Skin tonics [medicated]; Medicated baby oils; Medicated body powder;*

311. Not similar. Alternatively a low degree of similarity to “medical products containing cannabis”. There is no obvious reason why “medical products containing cannabis” would include the contested goods or why the contested goods would contain medical cannabis. The purpose of medical cannabis (treatment of conditions such as epilepsy, potentially in cancer care or for pain relief) is not shared by these goods. There is a high-level overlap in users but the products are unlikely to be provided in close proximity in retail outlets (one is over the counter on prescription, the other is a self-service selection from open shelves).

*Medical preparations; Drugs for medical purposes;*

312. Identical to “medical products containing cannabis” under *Meric*.

*Medicated wines*

313. Low similarity to “preparations of vitamins with cannabis oil”. There is no evidence that wine is a delivery medium for medical cannabis (the evidence showing wine in Mr Dave’s evidence is a standard Tokaji).<sup>72</sup> On the basis that medicated wines may

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<sup>72</sup> NM1, p. 79.

include added vitamins, there is a similar purpose to “preparations of vitamins with cannabis oil” but different natures and channels of trade. There is no obvious overlap in providers.

#### *Medicated swabs*

314. Fairly high similarity to “plasters, materials for dressings”. Swabs are used for cleaning rather than protecting a wound but the goods have a similar nature, and the same users, channels of trade and providers.

#### *Jujube, medicated*

315. Dissimilar. Alternatively low similarity based on a limited overlap in purpose (both are broadly therapeutic) and users to “pharmaceutical and natural remedies containing cannabis”.

#### *Medical infusions; Tisanes [medicated beverages]*

316. Identical to “dietetic preparations containing cannabis oil” as tisanes may be infusions of cannabis; “medical infusion” is ambiguous but may be construed in the same way (it could also mean drug solutions for intravenous delivery). Alternatively highly similar as the goods are very similar in nature and purpose, with the same users and channels of trade.

#### *Medicated sugar*

317. These goods are dissimilar to all of the terms in the 759 Mark’s specification. There is no evidence that cannabis is delivered in sugar. The term appears to relate to dry sugars with medicine for oral pharmaceutical suspensions. There is no obvious similarity, other than superficial overlaps in purpose and users, to the 759 Mark’s goods or services.

*Face cream (Medicated -); Nappy cream [medicated]; Hand lotion (Medicated -); Foot balms (Medicated -); Face scrubs (Medicated -); Night creams [medicated];*

318. These goods are similar to a low degree to “medical products containing cannabis”. The earlier goods might include creams but whilst the goods may have a

similar nature because both are creams, the active ingredients of the products are likely to be different. Just as the purpose of the goods is crucial for pharmaceuticals which may be different overall despite being available in the same format, I do not think that this overlap in nature is enough to result in significant overall similarity. The contested terms suggest products for conditions such as eczema, dry skin or nappy rash rather than pain relief, which is the only obvious purpose of a cannabis-containing cream; the ordinary meaning of “face cream”, “hand lotion”, “night creams” and foot balms”, even if medicated, would not extend to creams for pain relief. The goods therefore differ in purpose. I accept that hemp may be used in skin products such as those listed above but, as far as I understand it, it has no or negligible levels of the active ingredient in cannabis and its purpose when so used is to moisturise. Same users and channels of trade but no competition or complementarity.

#### *Pain relief medication*

319. These goods are identical to “pharmaceutical goods containing cannabis” as it appears that medical cannabis may be prescribed for chronic pain.<sup>73</sup>

#### *Medicated animal feed*

320. Identical or highly similar to “dietary supplements and dietetic preparations containing cannabis oil”, as it is plausible that there may be veterinary uses for cannabis and that this may be delivered via foodstuffs.

#### *Medical diagnostic reagents*

321. These goods are not similar to the specification of the 759 Mark. Alternatively there is very low similarity to “medical products containing cannabis”, which I consider the closest term. Both are “medical products” broadly speaking but their specific purpose is entirely different: a diagnostic reagent is to detect/show the presence of another substance, not to treat a medical condition. There is only a superficial overlap in users and no other point of intersection.

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<sup>73</sup> Witness statements of Michael Herring and Ryan Inskip.

*Mineral drinks (Medicated -)*

322. Medium similarity to “preparations of vitamins with cannabis”, which may be fortified drinks: there is a similar purpose and nature, the same users and channels of trade.

*Extracts of medicinal plants*

323. Identical to “cannabis oil derived from the hemp plant” based on *MeriC*.

*Cannabis for medical purposes*

324. Identical to “marijuana for medical purposes”: the terms are synonyms.

*Antiepileptic drugs; pharmaceutical drugs; Antiseizure drugs*

325. Identical to “pharmaceutical goods containing cannabis”, including based on *MeriC*. As I understand it, there is a type of epilepsy medication which contains cannabis.

*Crude drugs*

326. Identical to “marijuana for medical purposes”, which is a crude (i.e., raw and unprocessed) drug. There is no evidence to suggest “crude drugs” should be construed differently.

*Drug delivery agents; Drug delivery agents that facilitate the delivery of pharmaceutical preparations; Drug delivery agents in the form of edible wafers for wrapping powdered pharmaceuticals; Drug delivery agents in the form of dissolvable films that facilitate the delivery of pharmaceutical preparations; Drug delivery agents in the form of coatings for tablets that facilitate the delivery of pharmaceutical preparations*

327. Not similar. Alternatively very low similarity to “medical products containing cannabis” due to being broadly medical goods. However, drug delivery agents are intended for the most efficient delivery of the drug, rather than having their own therapeutic purpose. Although the goods may be used together, this is likely to be as a result of the manufacturer combining the delivery agent and therapeutic drug.

Medical professionals and end users are not likely to use drug delivery agents separately and may exercise no choice about the delivery agent present. Whilst medical professionals may add pharmaceuticals to intravenous infusions, for example, this is not likely to be the case for medical-cannabis-based pharmaceuticals.

*Non-steroidal anti-inflammatory drugs*

328. Medium similarity to “pharmaceutical goods containing cannabis”: both are pharmaceuticals used for pain relief but there is no evidence that cannabis treats inflammation and their nature differs (NSAIDS are usually tablets rather than plant material). Users and trade channels overlap, manufacturers do not.

*Medicinal herbs; Herbs (Medicinal -); Medicinal herb extracts; Chinese traditional medicinal herbs; Herbs for medicinal purposes; Extracts of medicinal herbs; Decoctions of medicinal herb; Smoking herbs for medical purposes; Herbs (Smoking -) for medical purposes; Medicinal herbs in dried or preserved form; Plant and herb extracts for medicinal use*

329. Fairly low similarity to “marijuana for medical purposes” and/or “natural remedies containing cannabis”, as both are used for therapeutic purposes, though the specific purpose differs. Their nature is similar and users may be the same. Medicinal herbs are unlikely to be sold through pharmacies, however, and distribution channels differ.

*Medicinal herb infusions; Herb teas for medicinal purposes*

330. Fairly low similarity to “dietetic preparations containing cannabis oil”. Cannabis is not usually understood to be a herb, to my knowledge, but both are or may be infusions or teas and therefore similar in nature. However, the specific purpose differs. Users may intersect but the goods will be sold through different channels.

*Cigarettes (Tobacco-free -) for medical purposes; Tobacco-free cigarettes for medical purposes*

331. Low similarity at best to “marijuana for medical purposes”. The purpose of the contested goods is the cessation of smoking, which is different from that of medical marijuana. Medical marijuana may be vaped but it is not, as far as I understand,

generally smoked. The nature of cigarettes is different from medical marijuana, save that both may contain plant material. Users overlap at a general level. The goods are not likely to have the same manufacturers, nor are distribution channels likely to have a significant overlap.

*Kretek (clove) cigarettes for medical use*

332. Low similarity at most to “marijuana for medical purposes”. I have no evidence about the medical purpose these cigarettes may perform. They appear to contain nicotine, so are not obviously used for smoking cessation. There is some similarity in nature to “marijuana for medical purposes” as both contain plant material and the term suggests a therapeutic indication but there is no other obvious overlap.

Class 31

*Plants; Natural plants; Live plants; Foliage plants; Dried plants; Living plants; Hydroponic plants; Cannabis plants; Fresh plants; Nursery plants; Potted plants; Cuttings (Plant -); Plant seeds; Plants (Live -); Seeds (Plant -); Flowering plants; Natural plants [live]; Seedlings for planting; Natural flowering plants; Seeds for planting; Plant residues (raw materials); Seeds for growing plants; Natural plants and flowers; Plant residues (raw materials); Seeds for growing plants; Natural plants and flowers; Agricultural grains for planting; Cannabis, unprocessed*

333. Identical based on *Meric* to “unprocessed cannabis in its various forms, including live cannabis plants, cannabis seeds, fresh cannabis, dried cannabis, cannabis strains”.

*Peppers [plants]; Leguminous plants; Asparagus plants; Vine plants; Climbing plants; Fruit plants; Flax [linseed] plants; Living fruit plants; Asparagus plant material (Fresh -); Herbs (Fresh -); Fresh herbs; Raw herbs; Unprocessed herbs; Herbs, fresh (Garden -); Culinary herbs (Fresh -); Organic fresh herbs; Garden herbs, fresh; Fresh culinary herbs; Fresh garden herbs; Potted fresh herbs; Fresh herbs*

334. Medium similarity to “live cannabis plants”. There is overlap in nature as these are all live plants. There is also a general overlap in purpose in that these are all agricultural plants which produce fruit, vegetables or leaves for consumption.

However, there is a significant difference in their specific purpose because cannabis plants are not for nutrition but are to be processed for medical cannabis. Given the security and licensing requirements to produce cannabis in the UK, it is unlikely that the same growers will produce the competing goods. The plants will not be sold through the same channels: the contested goods are sold in garden centres, florists' shops and, for fresh herbs, supermarkets, whilst cannabis is obtained through restricted channels. There is no competition or complementarity and the overlap in users is at a high level of generality.

*Pennyroyal [plants]; Roses [plants]; Grasses [plants]; House plants; Pyrethrum [plants]; Aloe vera plants; Plants for ponds [live]; Plants for aquaria [live]*

335. Fairly low similarity to “live cannabis plants”: all the goods are live plants so have a similar nature but the contested plants are horticultural rather than agricultural plants and will not be produced by the same undertakings, nor share distribution channels. There is a general overlap in users, no competition and no complementarity.

*Bulbs (Plant -); Bulbs for planting*

336. Low similarity to “cannabis, unprocessed, including live cannabis plants, cannabis seeds”. Both are or produce plants and are plant material but the form is different. Commercial growers of bulbs are unlikely to grow cannabis, bulbs being either ornamental and destined for nurseries/garden centres or vegetables (e.g. onions) which have distinct growing requirements from cannabis cultivation. Trade channels are different.

*Flax [linseed] plant seeds; Seeds for growing herbs*

337. Medium similarity to “cannabis seeds”. They have a similar nature and purpose as they are all seeds for planting and producing plants. Absent evidence, they are unlikely to be produced by the same undertakings or be available through the same distribution channels as cannabis seeds, given restrictions on cannabis. Users may overlap but there is no competition or complementarity.

*Plants, dried, for decoration; Dried plants for decoration; Herbs, dried, for decoration; Dried herbs for decoration; Wreaths of dried herbs for decoration*

338. Fairly low similarity to “unprocessed cannabis in its various forms, including [...] dried cannabis”. The purpose of the contested goods is decoration, whilst unprocessed cannabis is a raw form intended for further processing. The goods are similar in nature as both are dried plant matter but are unlikely to be produced by the same entities or to share distribution channels. Users may overlap but only superficially.

*Fresh fruits, nuts, vegetables*

339. Not similar to any of the earlier goods or services; alternatively low similarity. Other than being plant products, their nature is different. They are for consumption but the purpose is nutrition, unlike cannabis. Unlikely to coincide in providers or trade channels. Very general overlap in user, no competition or complementarity.

#### Class 34

*Herbs for smoking; Smoking tobacco; Tea for smoking as a tobacco substitute*

340. Not similar to “marijuana for medical purposes”. Alternatively low similarity: the only point of overlap is some similarity in nature that both may be or may contain dried plant material but the purpose (recreational smoking versus medical treatment) is different, which is significant in my view. Channels of trade differ and providers will not be the same; uses overlap only superficially. They are not in competition.

341. The position is not better for cannabis in class 31, which is a plant product not yet processed or ready for consumption. There may be some similarity in nature, being dried plant products, but the goods are otherwise different in all material respects.

*Smoking pipes; Electronic smoking pipes; Vaporizers for smoking purposes; Pipes for smoking mentholated tobacco substitutes; Electronic cigarette atomizers; Electronic cigarette cartomizers; Smokeless cigarette vaporizer pipes*

342. Not similar to any of the 759 Mark’s goods or services. The closest goods appear to be marijuana for medical purposes, which has a different nature and purpose.

Vaporisers for recreational smoking are not medical devices and it therefore seems unlikely that they would be used instead of licensed medical products with medical cannabis. They are not in competition or complementary to medical cannabis and there is no other point of intersection which gives rise to similarity.

*Smoking urns; Smoking pipe cleaners; Smoking sets for electronic cigarettes; Filters (Cigarette -); Cigarette holders; Cigarette cutters; Cases (Cigarette -); Cigarette lighters; Cigarette paper; Cigarette papers; Cigarette tobacco; Tips (Cigarette -); Cigarette cases; Cigarette boxes; Cigarette packets; Cigarette tubes; Cigarette filters; Cigarette tips; Cigarette ash receptacles; Cigarette lighter holders; Electronic cigarette cleaners; Automatic cigarette cases; Cigarette rolling papers; Cigarette rolling machines; Electronic cigarette boxes; Electronic cigarette cases; Mouthpieces for cigarettes; Cases for electronic cigarettes; Portable cigarette ash pouches; Tipping paper for cigarettes; Mouthpieces for cigarette holders; Cigarette holders (Mouthpieces for -); Filter tips for cigarettes; Cigarette papers (Books of -); Pocket cigarette-rolling machines; Holders for electronic cigarettes; Books of cigarette papers; Wicks adapted for cigarette lighters; Gas containers for cigarette lighters; Cigarette boxes of precious metal; Cigarette holders of precious metal; Cigarette lighters of precious metal; Pocket machines for rolling cigarettes; Cigarettes (Pocket machines for rolling -); Pocket apparatus for rolling cigarettes; Liquefied gas cylinders for cigarette lighters; Holders of cigarettes of precious metal; Cigarette holders not of precious metal; Cigarette cases not of precious metal; Cigarette lighters not for land vehicles; Cigarette lighters, not of precious metal; Ready-made cigarette tubes with filters; Cigarette lighter holders of precious metal; Cigarette cases made of precious metal; Hand-held machines for making cigarettes; Cigarette lighter holders, not of precious metal; Lighters for smokers [cigarette lighters] [not for automobiles]; Yellow amber (Tips of -) for cigar and cigarette holders; Tips of yellow amber for cigar and cigarette holders; Devices for extinguishing heated cigarettes, cigars and heated tobacco sticks; Devices for extinguishing heated cigarettes and cigars as well as heated tobacco sticks*

343. Not similar to any of the 759 Mark's goods or services. The overlap in users is too general to result in similarity. The only other potential point of similarity is that the goods are complementary to "marijuana for medical purposes" but the goods in class

34 are general smoking goods, not medical devices, and will not be used with medical marijuana, which is vaporised rather than smoked, or produced by the same undertakings. They will be distributed through different channels and are not in competition.

*Cigarettes, cigars, cigarillos and other ready-for-use smoking articles; Cigarettes; Electric cigarettes [electronic cigarettes]; Electronic cigarettes; Menthol cigarettes; Filter-tipped cigarettes; Cigarettes containing tobacco substitutes; Electronic cigarettes for use as an alternative to traditional cigarettes; Tobacco free cigarettes, other than for medical purposes; Cigars for use as an alternative to tobacco cigarettes; Cigarettes containing tobacco substitutes, not for medical purposes; Inhalers for use as an alternative to tobacco cigarettes; Personal vaporisers and electronic cigarettes*

344. Not similar to any of the 759 Mark's goods or services. The goods are different in nature and purpose from medical marijuana, have different producers and channels of trade. They are not substitutable for medical marijuana/pharmaceutical goods containing cannabis and are not complementary.

*Liquids for electronic cigarettes; Liquid for electronic cigarettes; Cartridges for electronic cigarettes; Refill cartridges for electronic cigarettes; Replaceable cartridges for electronic cigarettes; Liquid nicotine solutions for electronic cigarettes; Liquid solutions for use in electronic cigarettes; Tobacco tar for use in electronic cigarettes; Electronic cigarette liquid [e-liquid] comprised of flavourings in liquid form used to refill electronic cigarette cartridges; Electronic cigarette liquid [e-liquid] comprised of flavorings in liquid form used to refill electronic cigarette cartridges; Liquid nicotine solutions for use in electronic cigarettes; Electronic cigarette liquid [e-liquid] comprised of vegetable glycerin; Electronic cigarette liquid [e-liquid] comprised of propylene glycol; Flavorings, other than essential oils, for use in electronic cigarettes; flavourings and solutions for personal vaporisers and electronic cigarettes; Chemical flavorings in liquid form used to refill electronic cigarette cartridges; Flavourings, other than essential oils, for use in electronic cigarettes; Cartridges sold filled with chemical flavorings in liquid form for electronic cigarettes; Chemical flavourings in liquid form used to refill electronic cigarette cartridges; Cartridges sold filled with chemical flavourings in liquid form for electronic cigarettes.*

345. Not similar to any of the 759 Mark's goods or services. Although there is a slight similarity in purpose (to be inhaled/vaporised) the medical purpose of medical cannabis is entirely different from that of recreational vaping. There are no other points of similarity other than a superficial overlap in users.

#### Class 44

*Health counseling; Health consultancy; Health counselling; Providing health information; Information relating to health; Provision of health information; Health care consultancy services [medical]; Consultancy relating to health care; Advisory services relating to health; Consulting services relating to health care; Advisory services relating to health care; Consultancy services relating to health care; Information services relating to health care; Health advice and information services; Professional consultancy relating to health; Providing health information via a website; Providing health care information by telephone; Professional consultancy relating to health care; Health care services offered through a network of health care providers on a contract basis; Providing health care information via a global computer network; Providing information in the field of health via a website; Medical counseling; Medical counselling; Medical consultations; Medical consultation; Medical information; Providing medical information; Medical counseling services*

346. These services differ in nature from “artificial limbs” but there is a broad overlap in purpose and the services above may include information or advice about prosthetics. The goods and services are used by the same public and may be complementary to one another. They are similar to a medium degree.

*Health care; Health-care; Health-care services; Health clinic services; Health clinic services [medical]; Managed health care services; Provision of health care services; Medical clinics; Medical services; Clinics (Medical -); Medical care; Medical assistance; Medical treatment services; Clinic services (Medical -); Medical assistance services*

347. Although different in nature, these services are very wide and may include the provision of “artificial limbs”. There is therefore an overlap in purpose between the

goods and services, as well in users, and there may be complementarity. There is a medium degree of similarity overall.

*Health centres; Health centers; Health centre services; Health center services*

348. The services have a general overlap in purpose with “artificial limbs”, though a health centre usually means a local centre providing services such as GP services, midwifery, mental health services and community nursing; it is unlikely that artificial limbs would be available through health centres. However, users will be the same (e.g., someone having trouble with their stump might use health centre services). There is, at most, a low degree of similarity.

349. There is a low degree of similarity to “provision of health information in relation to the medicinal benefits of cannabidiol”. A health centre would not ordinarily include specialist services for conditions for which cannabis is prescribed, though a GP may make the referral. There is a similar general purpose, i.e., providing health services to the public, but quite different specific purpose. Users are the same but there is no other significant overlap.

*Health risk assessment; Medical testing*

350. Medium similarity to “provision of health information in relation to the medicinal benefits of cannabidiol”. The services may be provided by the same entities which provide information about cannabidiol, as part of an assessment process for drug suitability. The specific purpose differs, they have the same users but are not in competition. There may be a degree of complementarity.

351. I do not think that there is more than a low degree of similarity with “artificial limbs”: purpose and users coincide at a general level but the goods and services are not obviously complementary and there is no other clear point of similarity.

*Medical health assessment services; Medical examinations*

These services are likely to be a part of the process for individuals needing artificial limbs. There is therefore some overlap in users and purpose and there may be complementarity. There is a medium degree of similarity.

*Health care in the nature of health maintenance organizations*

352. A “health maintenance organisation” strikes me as an entity which provides lifestyle advice on matters such as healthy eating and exercise which are intended to maintain or improve health. The closest term in the 759 Mark’s specification appears to be “provision of health information in relation to the medicinal benefits of cannabidiol”, because this also involves the provision of health advice, albeit advice of a very different nature. There is a broad overlap in purpose and users but I cannot see any other point of similarity. There is no more than a low degree of similarity.

*Health screening; Health screening services; Health screening services in the field of asthma; Health screening services in the field of sleep apnea; Medical screening*

353. “Screening” suggests a preventive or diagnostic test such as blood tests, urine analysis and mammograms. There is an overarching similarity of purpose (health) to “provision of health information in relation to the medicinal benefits of cannabidiol”. but the specific purpose differs. The users are the same but there is no real overlap in providers and trade, nor is there competition or complementarity. They are not similar. If that is not right, there is only a low degree of similarity.

*Public health counseling*

354. Fairly low similarity to “provision of health information in relation to the medicinal benefits of cannabidiol”. There is a broad overlap in purpose as both provide information about health, though public health is about, for example, lifestyle factors and prevention/containment of infectious disease rather than cannabidiol. There is a possible overlap in providers, users and trade channels.

*Health spa services; Medical treatment services provided by a health spa; Cosmetic body care services provided by health spas; Beauty care services provided by a health spa*

355. Not similar. Alternatively low similarity at most to “provision of health information in relation to the medicinal benefits of cannabidiol”, based on a very general overlap in users and purpose, as both are connected with health. A health spa is a place which offers treatments such as massages and facilities such as saunas, swimming pools

and gyms. They may also offer beauty treatments, which may include cosmetic procedures such as filler injections. There is no evidence that health spas provide medical information services/pharmaceutical advice.

*Health hydro services; Health care relating to hydrotherapy; Health care relating to remedial exercise; Exercise facilities for health rehabilitation purposes (Provision of -)*

356. Medium similarity to “artificial limbs”. There is some shared purpose, as both are to facilitate mobility after injury. They differ in nature but may be used by the same relevant public and be offered by the same service providers through the same channels (e.g., orthopaedic departments). They may also be complementary.

*Mental health services; Mental health screening services; Personality testing [mental health services]; Personality assessment services [mental health services];*

357. Not similar, alternatively low similarity with “pharmaceutical and natural remedies containing cannabis” and/or “provision of health information in relation to the medicinal benefits of cannabidiol”. There is a very general overlap in purpose. Mental health services are unlikely to prescribe cannabis or provide information about cannabidiol, given that cannabis can induce psychosis and is addictive, so the goods and services are not complementary. Providers are unlikely to be the same, distribution channels will differ other than at a high level of generality. Users may overlap but only at a general level.

*Health assessment surveys; Health risk assessment surveys*

358. Not similar to any of the 759 Mark’s goods or services. “Surveys” involve questions posed to a large number of individuals/organisations. “Health assessment surveys” suggests an exercise carried out by or on behalf of healthcare providers or government organisations wishing to gather information about the health of a given population or section of it. There is no evidence that providers of such survey services intersect in any respect with the goods/services of the 759 Mark.

*Health farm services [medical]; Health resort services [medical]*

359. Not similar. Alternatively similar only to a very low degree to “pharmaceutical and natural remedies containing cannabis” and/or “provision of health information in relation to the medicinal benefits of cannabidiol”. A health farm is a place where people go to improve their health by dieting/losing weight, exercising, treatments or eating special food.<sup>74</sup> They coincide very broadly in purpose but have a different specific aim. Users are superficially the same but channels of trade are unlikely to overlap and there is no competition or complementarity.

*Home health care services; Provision of health care services in domestic homes*

360. Not similar to any of the 759 Mark’s goods or services. The overlap in users and purpose is at a very high level of generality and insufficient for overall similarity. The goods and services will be provided by different entities and are not in competition or complementary.

*Health care relating to chiropraxis; Health care relating to fasting; Health care relating to acupuncture; Health care relating to homeopathy; Health care relating to osteopathy; Health care relating to relaxation therapy; Health care services for treating Alzheimer's disease*

361. Not similar. If that is wrong, a low degree of similarity at most to “provision of health information in relation to the medicinal benefits of cannabidiol” based on a general overlap in purpose and users. There is no significant intersection in trade channels and no other point of similarity.

*Health care relating to naturopathy*

362. No similarity. Alternatively low similarity to “Provision of health information in relation to the medicinal benefits of cannabidiol”, because it could be said there is some similarity in the sense that naturopathy involves the use of natural ingredients to treat ailments, though it would not include cannabis, which is a regulated drug in the

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<sup>74</sup> See definitions in *Collins* at <https://www.collinsdictionary.com/dictionary/english/health-farm> and the *OED* at [https://www.oed.com/dictionary/health-farm\\_n?tab=meaning\\_and\\_use#1876396100](https://www.oed.com/dictionary/health-farm_n?tab=meaning_and_use#1876396100), which coincide with my own understanding of the term.

UK and only available on prescription. Channels of trade will not intersect, nor will providers. There is no competition and no evidence of complementarity (with either the services or “natural remedies containing cannabis”, to which the same points apply).

*Health care relating to therapeutic massage*

363. Medium similarity to “massage apparatus” in class 10. There is a similar purpose but a different nature. Users may overlap. Channels of trade and providers are not likely to coincide but there may be some competition (massage apparatus may be chosen instead of a massage service). The goods and services are used together but are unlikely to be considered from the same provider.

*Rental of medical and health care equipment;*

364. Medium similarity to at least “orthopaedic articles” and/or “therapeutic and assistive devices adapted for persons with disabilities”. There is a related purpose, a different nature but the same users, providers and channels of trade, and the goods and services are complementary.

*Technical consultancy services relating to medical health*

365. Not similar to any of the earlier goods or services. Technical consultancy services are used by medical institutions to improve healthcare processes. There is very limited overlap in purpose with “provision of health information in relation to the medicinal benefits of cannabidiol”. The services entail provision of information but vastly different information. Users will not overlap, nor will providers or channels of trade. They are not in competition or competitive.

366. The goods in class 10 are no better: different in nature, purpose, providers and channels of trade. Users may be the same but there is no competition or complementarity.

*Preparation of reports relating to health care matters*

367. Identical based on *Meric* to “provision of health information in relation to the medicinal benefits of cannabidiol”. “Health information” is a very wide term, which

could include reports. Similarly, “health care matters” could include information about cannabidiol.

*Health care services for assisting individuals to stop smoking; Smoking (Anti -) therapy; Anti-smoking therapy; Assisting individuals to stop smoking; Providing smoking cessation treatment services*

368. Not similar to the earlier specification. If that is wrong, a low degree of similarity at most to “provision of health information in relation to the medicinal benefits of cannabidiol”. They have a different purpose, other than a very general “health” aim. Any overlap due to the earlier class 44 services involving the provision of information is slight, given the nature of the information. Users coincide but the services will not be provided by the same entities or through the same channels of trade. They are not competitive or complementary.

369. Regarding the earlier class 5 goods, the contested services may involve the prescription of drugs but they will not be the drugs in the earlier specification and there is no other meaningful similarity.

*Advice relating to the personal welfare of elderly people [health]*

370. Not similar to any of the 759 Mark’s goods or services. If that is not right, low degree of similarity to “provision of health information in relation to the medicinal benefits of cannabidiol” as both are broadly “health” services and may involve the provision of information. The nature of information will be different, however, and the services are not likely to be provided by the same undertakings or have the same channels of trade (other than at a very general level, e.g., that both may be provided by the NHS). They are not in competition or complementary.

*Medical and health services relating to DNA, genetics and genetic testing*

371. Not similar. There is no obvious similarity to any of the earlier goods or services, other than high-level overlaps in purpose and user.

*Nursing, medical; Medical nursing*

372. The goods and services differ in nature from “pharmaceutical goods containing cannabis”. The specific purpose is very different. If there is any overlap in providers or channels of trade, it is likely to be at a high level (e.g., the services are provided in hospitals). The users are the same but the goods/services are not competitive or complementary in the sense defined in the case law, as they are not so closely related that they are important or essential for one another’s use. There is at best a low degree of similarity.

373. Low degree of similarity to “artificial limbs”. There is only a general overlap in purpose and if there is any complementarity it is limited.

*Medication counseling*

374. Identical based on *Meric* to “provision of health information in relation to the medicinal benefits of cannabidiol”, because counselling is the provision of advice and all of these services could include advice about cannabidiol.

*Medical tele-reporting [medical services];*

375. Not similar to the earlier goods or services. These services involve the transmission of medical data such as scans, x-rays and biopsies to specialists such as radiologists and pathologists for interpretation. They have very limited overlap in purpose to the earlier medical goods/services, there may be some overlap in users but as the contested services are used by medical professionals to assist in diagnosis, providers and channels of trade are unlikely to be the same.

*Nutrition counseling; Beauty counselling; Genetic counseling; Nutrition counselling; Counselling relating to nutrition; Psychological counseling of staff; Dietetic counselling services [medical]; Counselling relating to diet; Medical counseling relating to stress; Counseling relating to occupational therapy; Counselling relating to occupational therapy; Psychological counseling services in the field of sports;.*

376. Low similarity to “provision of health information in relation to the medicinal benefits of cannabidiol”. There is limited overlap in nature and purpose: counselling

may involve the giving of advice but the advice will not relate to cannabidiol and the purpose of the advice is therefore different. There is a potential overlap in users but providers and trade channels are unlikely to coincide, as providers of the contested counselling services are likely to be trained in their specific fields and not have relevant expertise in the benefits of medical cannabis. There is no competition or complementarity.

377. In relation to nutrition counselling, this is not likely to involve advice about cannabidiol, because nutrition is about ensuring an appropriate diet, whilst cannabidiol is for a different medical purpose.

378. “Dietetic food preparations adapted for medical purposes, containing cannabis oil” is no better for nutrition counselling: there is a different purpose, other than a broad health aim, for the reasons above, the nature of the goods and services is different, and channels of trade are not likely to overlap.

*Psychological counselling; Psychological counseling; Lifestyle counseling and consultancy for medical purposes; Individual medical counseling services provided to patients; Counselling relating to the psychological treatment of medical ailments; Counselling relating to the psychological relief of medical ailments*

379. Fairly low similarity with “medical products containing cannabis”. They are different in nature and have only limited overlap in purpose but these counselling services may be used in conjunction with “medical products containing cannabis” when prescribed for conditions such as MS or cancer and therefore may coincide in users and channels of trade, and may have a degree of complementarity, though I do not think it is particularly pronounced.

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

380. I need only consider the mark’s distinctiveness in relation to the identical or similar goods and services. The 759 mark is the plain word “MEDCANN”. For the reasons I gave at paragraph 255, above, “MED” is likely to be understood as meaning “medicine” or “medical” where the goods/services in relation to which the mark is used

would be expected to have medicinal or medical uses.<sup>75</sup> This applies to the goods and services in classes 5, 10 and 44 of the earlier specification. I accept that “massage apparatus” may not necessarily be medical but since it may be used therapeutically by physiotherapists, I think it likely that “MED” will be construed as meaning “medical” in relation to these goods, too. In relation to cannabis in its various forms in class 31, it is likely to be assumed that the cannabis is for medical purposes and for these goods, too, “MED” will be given a clear meaning. “CANN” is likely to be taken as allusive of cannabis for the majority of the goods and services, which are or are connected to cannabis. There are no other elements which might contribute to the distinctiveness of the mark. As a whole, the mark is highly allusive of medical cannabis and inherently weakly distinctive for all of the pharmaceutical and dietetic products in class 5, cannabis in class 31 and the health information services in class 44. For goods such as plasters and artificial limbs which might be medical but are plainly not cannabis, it is distinctive to a lower than average degree.

381. As regards enhanced distinctiveness, the relevant date for the assessment is the 902 Mark’s filing date, which is 8 August 2021. There is some evidence that “MEDCANN” has been used in relation to a pharmacy but whilst it is dated 2021 is it not clearly before the relevant date.<sup>76</sup> The website prints indicate that the pharmacy dispenses medicines on receipt of a prescription. This suggests a conventional pharmacy service and there is no evidence that any of the goods in issue in class 5 were sold by the pharmacy and certainly no evidence of turnover. The evidence I outlined at paragraph 80, above, in relation to a vitamin D3 product gives no indication that it contained cannabis. Even if it did, the sales figures are very small. There is a reference to assisting patients in obtaining specials and unlicensed medicines but nothing further: there is no detail about how many patients may have used this service or any revenue generated in relation to it. Witnesses such as Mr Herring say that they have obtained medical cannabis from Medcann Pharmacy but none of them gives the date on which this began. Although Mr Dave says that he has invested significant sums in setting up the business, the evidence of promotion is thin in the extreme. The evidence falls hopelessly short of establishing enhanced distinctive character in relation to any of the goods or services in classes 5 or 44. There is no evidence at all

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<sup>75</sup> See <https://www.collinsdictionary.com/dictionary/english/med> [accessed 16 April 2026].

<sup>76</sup> NM1, pp. 145-148.

that the mark has been used for goods in classes 10 or 31. There is no enhanced distinctive character.

### Comparison of the trade marks

382. These are the competing trade marks:

The 759 mark	The 902 Mark
MEDCANN	MEDICANN

383. Unilux admits that the marks are similar.<sup>77</sup> In respect of the passing off ground, it accepts that they are highly similar.<sup>78</sup> It seems to me that the same must apply to the same marks in the registered mark dispute but I note that Mr Dave’s claim mentioned only visual and aural similarity.<sup>79</sup> I will proceed upon the basis that Unilux concedes a high level of both visual and aural similarity, since that is what Mr Dave claimed.

384. Conceptually, I have already said that the earlier mark will be perceived as an allusion to medical cannabis for certain goods and services, or as alluding to medicine/medical. I have made similar findings for the word “MEDICANN”, which will be understood as alluding to medicine and/or cannabis where the goods or services are medical in nature and/or relate to medical cannabis. There is therefore potential for a significant overlap in meaning, though it is a non-distinctive similarity. However, where the 902 Mark is used for goods which are neither medical nor cannabis, such as roses, it will be perceived as meaningless and therefore there is a conceptual difference.

### Likelihood of confusion

385. Both direct and indirect confusion are relied upon. As before, I have no submissions regarding how indirect confusion may apply and I can see no basis upon

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<sup>77</sup> Unilux’s skeleton argument, §88.

<sup>78</sup> Amended counterstatement, §17.1.

<sup>79</sup> Amended statement of grounds, §13, 15.

which consumers may notice the difference between the marks yet consider that they are from the same stable, or a connected undertaking.

386. As far as direct confusion is concerned, there can be no likelihood of confusion under s. 5(2)(b) where there is no similarity between the goods and/or services. The opposition is therefore dismissed for the following goods and services:

Class 5: Medicated soap; Medicated shampoo; Jujube, medicated; Medicated sugar; Medicated shampoos; Medicated handwash; Medicated talcum powder; Skin tonics [medicated]; Medicated baby oils; Medicated body powder; Medical diagnostic reagents; Drug delivery agents; Drug delivery agents that facilitate the delivery of pharmaceutical preparations; Drug delivery agents in the form of edible wafers for wrapping powdered pharmaceuticals; Drug delivery agents in the form of dissolvable films that facilitate the delivery of pharmaceutical preparations; Drug delivery agents in the form of coatings for tablets that facilitate the delivery of pharmaceutical preparations.

Class 31: Fresh fruits, nuts, vegetables.

Class 34: All goods in class 34.

Class 44: Health screening; Health screening services; Health spa services; Mental health services; Health assessment surveys; Health farm services [medical]; Mental health screening services; Home health care services; Health risk assessment surveys; Health resort services [medical]; Health care relating to chiropraxis; Health care relating to fasting; Personality testing [mental health services]; Health care relating to acupuncture; Health care relating to homeopathy; Health care relating to naturopathy; Health care relating to osteopathy; Personality assessment services [mental health services]; Health care relating to relaxation therapy; Health care services for treating Alzheimer's disease; Technical consultancy services relating to medical health; Provision of health care services in domestic homes; Medical treatment services provided by a health spa; Cosmetic body care services provided by health spas; Beauty care services provided by a health spa; Health care services for assisting individuals to stop smoking; Health screening services in the field of asthma;

Health screening services in the field of sleep apnea; Advice relating to the personal welfare of elderly people [health]; Medical and health services relating to DNA, genetics and genetic testing; Medical screening; Medical tele-reporting [medical services]; Smoking (Anti -) therapy; Anti-smoking therapy; Assisting individuals to stop smoking; Providing smoking cessation treatment services.

387. I extend this finding to the goods and services in classes 5 and 44 set out below, which are all medical or concerned with health and will be selected with a fairly high level of attention and for which the earlier mark is weakly distinctive. These factors are sufficient to rule out a likelihood of confusion, despite the level of similarity between the goods and services (some of which are identical) and the fact that the marks are highly similar. The opposition is therefore rejected for the following goods and services:

Class 5: Health-aid foods supplements containing ginseng; Health food supplements made principally of minerals; Health food supplements made principally of vitamins; Health-aid foods supplement containing red ginseng; Health food supplements for persons with special dietary requirements; Acne medications; Acne medication; Allergy medications; Medicated candies; Medicated lotions; Antifungal medication; Medicated candy; Medicated sweets; Medicated balms; Medicated creams; Candy, medicated; Medicated lozenges; Medical preparations; Medicated wines; Salves [medicated]; Medical infusions; Allergy medication; Medicated confectionery; Diarrhea medication; Face cream (Medicated -); Pain relief medication; Medicated animal feed; Medicated body gels; Hand lotion (Medicated -); Body creams [medicated]; Mineral drinks (Medicated -); Tisanes [medicated beverages]; Foot balms (Medicated -); Medicated skin lotions; Face scrubs (Medicated -); Therapeutic creams [medical]; Night creams [medicated]; Extracts of medicinal plants; Cannabis for medical purposes; Antiepileptic drugs; Organotherapeutic drugs; Pharmaceutical drugs; Antituberculous drugs; Hypoglycemic drugs; Antiseizure drugs; Antineoplastic drugs; Autonomic drugs; Crude drugs; Antitumor drugs; Antimigraine drugs; Anti-cancer drugs; Drug detoxifying agents; Drugs for medical purposes; Autonomic drugs for medical purposes; Non-steroidal anti-inflammatory drugs; Cytostatic drugs for medical purposes; Antiviral drugs for

treating influenza; Antiviral drugs for treating HIV; Antipyretic drugs with sedative effect; Cardiovascular drugs used in treating shocks; Cardiovascular drugs used in angina pectoris; Cardiovascular drugs used in treating arrhythmias; Cardiovascular drugs used in myocardial infarction; Cardiovascular drugs for use in treating hypertension; Cardiovascular drugs used in treating congestive heart failure (CHF); Medicinal herbs; Herbs (Medicinal -); Medicinal herb extracts; Medicinal herb infusions; Chinese traditional medicinal herbs; Herbs for medicinal purposes; Extracts of medicinal herbs; Decoctions of medicinal herb; Herb teas for medicinal purposes; Smoking herbs for medical purposes; Herbs (Smoking -) for medical purposes; Medicinal herbs in dried or preserved form; Plant and herb extracts for medicinal use; Pharmaceutical preparations for use in discouraging the smoking habit; Nicotine gum for use as an aid to stop smoking; Kretek (clove) cigarettes for medical use; Cigarettes (Tobacco-free -) for medical purposes; Tobacco-free cigarettes for medical purposes.

Class 44: Public health counselling; Health care in the nature of health maintenance organizations; Managed health care services; Preparation of reports relating to health care matters; Nursing, medical; Medical nursing; Medication counseling; Medical treatment services; Clinic services (Medical -); Medical assistance services; Providing medical information; Nutrition counseling; Beauty counselling; Psychological counselling; Genetic counseling; Psychological counseling; Nutrition counselling; Counselling relating to nutrition; Psychological counseling of staff; Dietetic counselling services [medical]; Counselling relating to diet; Medical counseling relating to stress; Counseling relating to occupational therapy; Counselling relating to occupational therapy; Lifestyle counseling and consultancy for medical purposes; Psychological counseling services in the field of sports; Individual medical counseling services provided to patients; Counselling relating to the psychological treatment of medical ailments; Counselling relating to the psychological relief of medical ailments.

388. There is, however, a likelihood of confusion for certain goods in class 5. This is because they are identical or similar to a fairly high degree to the 759 Mark's "plasters,

materials for dressings” or “material for stopping teeth, dental wax”. The 759 Mark is distinctive to a lower than average, rather than low, degree for these goods. Whilst they might be selected with an above average degree of attention, the similarity between the marks is such that, when all of the relevant factors are taken into account, it is likely that the marks will be mistaken for one another and there is a likelihood of confusion. The opposition succeeds for the following goods:

Class 5: Dressings, medical; Medicated dentifrices; Medicated mouthwashes; Medical dressings; Medicated mouthwash; Medicated compresses; Medicated swabs; Medicated plasters; Medical plasters; Medical mouthwashes; Medicated toothpaste; Medicated dental rinses.

389. Similarly, in class 44, the following services are similar to a medium degree to “artificial limbs”, “massage apparatus”, “orthopaedic articles” and/or “therapeutic and assistive devices adapted for persons with disabilities”. The earlier mark is, admittedly, not particularly distinctive for these goods but it has enough distinctiveness, when the highly similar marks and the degree of similarity between the goods and services are borne in mind, for there to be a likelihood of confusion despite the above average level of attention which will be paid. I do not think that there is a likelihood of confusion where the goods and services are similar to less than a medium degree: even if they are mistaken for one another, the consumer is likely to perceive it as coincidental use of the same or similar marks by distinct entities. The s. 5(2)(b) ground is made out for the following services:

Class 44: Health counseling; Health consultancy; Health care; Health counselling; Health-care; Health-care services; Health hydro services; Providing health information; Health clinic services; Health clinic services [medical]; Medical health assessment services; Information relating to health; Managed health care services; Provision of health information; Health care consultancy services [medical]; Health care relating to hydrotherapy; Consultancy relating to health care; Advisory services relating to health; Consulting services relating to health care; Advisory services relating to health care; Consultancy services relating to health care; Information services relating to health care; Health advice and information services; Professional consultancy relating to health; Provision of health care services; Providing

health information via a website; Health care relating to remedial exercise; Providing health care information by telephone; Health care relating to therapeutic massage; Rental of medical and health care equipment; Professional consultancy relating to health care; Health care services offered through a network of health care providers on a contract basis; Exercise facilities for health rehabilitation purposes (Provision of -); Providing health care information via a global computer network; Providing information in the field of health via a website; Medical counseling; Medical clinics; Medical services; Medical examinations; Clinics (Medical -); Medical care; Medical counselling; Medical consultations; Medical consultation; Medical information; Medical assistance; Medical treatment services; Clinic services (Medical -); Medical assistance services; Providing medical information; Medical counseling services.

390. That leaves the goods in class 31. The goods listed below are identical to the earlier mark's "unprocessed cannabis in its various forms, including live cannabis plants, cannabis seeds, fresh cannabis, dried cannabis, cannabis strains":

Plants; Natural plants; Live plants; Foliage plants; Dried plants; Living plants; Hydroponic plants; Cannabis plants; Fresh plants; Nursery plants; Potted plants; Cuttings (Plant -); Plant seeds; Plants (Live -); Seeds (Plant -); Flowering plants; Natural plants [live]; Seedlings for planting; Natural flowering plants; Seeds for planting; Plant residues (raw materials); Seeds for growing plants; Natural plants and flowers; Plant residues (raw materials); Seeds for growing plants; Natural plants and flowers; Agricultural grains for planting; Cannabis, unprocessed.

391. However, the earlier mark is weakly distinctive. Where the contested goods are also cannabis, they will be selected with an above average level of attention by professionals, since they will be for the authorised cultivation of cannabis. Even though the marks are highly similar, bearing in mind the level of attention and the limited distinctiveness of the earlier mark, the relevant public will not be confused. Where the goods covered by the terms are not cannabis, my view is that there is also no likelihood of confusion. This is because non-cannabis plants, seeds and raw materials are less similar to the earlier goods and in a distinct market sector; even though only a medium

degree of attention may be paid to the selection of non-cannabis products, I do not think that there is a likelihood of confusion.

392. The remaining goods in class 31 of the 902 Mark's specification have a low to medium degree of similarity to unprocessed cannabis, in various forms. Even where only a medium degree of attention is paid to the selection of the contested goods, I do not consider that there is a likelihood of confusion. This is because the goods are in discrete sectors and the earlier mark is weakly distinctive: the relevant public is unlikely to assume that the goods are the responsibility of the same undertakings, even if the earlier mark is misremembered or brought to mind. The opposition under s. 5(2)(b) is dismissed in respect of:

Peppers [plants]; Pennyroyal [plants]; Roses [plants]; Grasses [plants]; Leguminous plants; Asparagus plants; House plants; Pyrethrum [plants]; Vine plants; Climbing plants; Bulbs (Plant -); Fruit plants; Aloe vera plants; Bulbs for planting; Flax [linseed] plants; Plants for ponds [live]; Living fruit plants; Plants, dried, for decoration; Flax [linseed] plant seeds; Dried plants for decoration; Plants for aquaria [live]; Asparagus plant material (Fresh -); Agricultural grains for planting; Herbs (Fresh -); Fresh herbs; Raw herbs; Unprocessed herbs; Herbs, fresh (Garden -); Culinary herbs (Fresh -); Organic fresh herbs; Garden herbs, fresh; Fresh culinary herbs; Fresh garden herbs; Potted fresh herbs; Seeds for growing herbs; Herbs, dried, for decoration; Dried herbs for decoration; Fresh herbs; Wreaths of dried herbs for decoration.

#### **Passing off: s. 5(4)(a)**

#### **Goodwill**

393. There is no claim, and no evidence, that the 902 Mark was used before the filing date. The relevant date is therefore 9 August 2021.

394. I have already considered much of the evidence filed in support of Mr Dave's claim to goodwill and, for most of the goods and services relied upon, there is no later evidence which might be relevant to the opposition. For the reasons given at paragraphs 76 to 115, there was at the relevant date no goodwill in respect of political advertising and promotion of cannabis as medication, music studio recording services,

music studio recording desks, vinyl recording discs, nutraceuticals, (human) vitamin supplements, sanitizers, recording studio fittings, petfood products, pet care products, candles, hydroponic systems, protective screens on wheels or personal protective equipment.

395. The only evidence capable of supporting the claim to “recordings studio furnishings” is the evidence relating to studio fixtures, fittings and desks which I have already considered. For the same reasons as given above, and because there was an even longer period between the only evidenced sale in 2018 and the relevant date, the evidence comes nowhere close to establishing a protectable goodwill in August 2021. “Music studio desks” appears to concern the same goods as “music studio recording desks”—if not, there is no other evidence which might be relevant—and there is no goodwill for the reasons given above.

396. There is no evidence at all that “pet vitamins” have been sold under the “MEDCANN” sign. To the extent that the vitamin D supplement in evidence may be used for pets, for the reasons given above there was no goodwill at the relevant date. To this may also be added the fact that almost four years had elapsed since any evidenced sales.

397. I also found that there was no goodwill in relation to a business supplying plastic trays and tanks. There is no evidence that the “hydroponic trays, hydroponic tanks” are any different from the plastic trays and tanks I have already considered and I adopt the same findings here; there is no other evidence which might relate to the hydroponic goods relied upon against the 902 Mark.

398. “Vinyl records” (relevant to the MEDCANN STUDIOS sign) is a different term for “vinyl recording discs”. For the same reasons as given above, the evidence does not support goodwill. There is no evidence going to vinyl records beyond that which I have already considered.

399. It is asserted that the MEDCANN figurative sign is distinctive of goodwill in relation to “spices, sweets and candies, cakes and biscuits”. There is zero evidence that these goods have ever been marketed or sold under any sign. There is also no evidence whatsoever showing use in relation to CAD drawings for microphones, or cigarette papers (relevant to the MEDCANN word sign).

400. I have outlined most of the evidence relating to personal protective equipment above but, as I mentioned, there is some later evidence which is relevant to the opposition. It comprises four invoices dated 11, 14 and 18 May, and 3 August 2020.<sup>80</sup> Each invoice mentions “Medcann” hygiene screens/screen protector (including supply and installation) in the item descriptions. The invoices total £1,680 inc. VAT (excluding a delivery charge) and are for 13 units in total, twelve of which are attributable to the May invoices. They are all to UK addresses. Unilux disputes the authenticity of these invoices, because they are from CRS Display Ltd, trading as Strawberry Creative, yet, oddly, the MEDCANN figurative sign also appears prominently at the top of the invoice. I do not need to decide whether the invoices have been altered or not. The sum of £1,680 for 13 units, sold at least a year before the relevant date and in respect of which there is no evidence other than Mr Dave’s narrative and the invoices (i.e., there is nothing such as advertising to bolster the case) does not amount to a substantial goodwill. For these reasons, and for those already given in the invalidity actions, the evidence does not establish a protectable goodwill in a business selling personal protective equipment, including protective clothing.

401. The goods and services which I have not yet considered are medical device equipment, medicine cabinets, consulting on video production, marketing material content and advertising, and pharmacy services.

402. The sum total of evidence regarding pharmaceutical drug cabinets is Mr Dave’s statement that in around 2020, he had pharmaceutical drugs cabinets manufactured under the name Medcann, which he says were supplied to “a few” pharmacies, and undated photographs of cabinets which show the MEDCANN figurative sign.<sup>81</sup> Mr Dave also says, again unsupported by any other evidence, that he supplied laboratory cabinets associated with the culturing of tissues including the overhead full laminar flow hoods and supplies under the Medcann brand in 2019/2020.<sup>82</sup> This is the only evidence that might relate to medical device equipment. There is nothing to indicate the scale or duration of any sales in these goods. In my view, the evidence comes

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<sup>80</sup> NM1, pp. 140-143. See also Mr Dave’s account at Dave 1, §60.

<sup>81</sup> Dave 1, §52 and NM1, pp. 111-113.

<sup>82</sup> Dave 1, §63.

nowhere close to establishing goodwill for medicine cabinets or medical device equipment.

403. In relation to video production services, Mr Dave says that he offered video production/content services under the name Medcann, co-branded with Yellow Fish, which was a video production company.<sup>83</sup> There is an invoice dated October 2017 which shows “MEDCANN”, along with a Yellow Fish sign, in the sum of £12,420 for the postponement of a music video and an invoice dated February 2018 in the sum of £7,200 for a music video, which is specified to include pre-production, shooting and editing of the video.<sup>84</sup> These sums are not insignificant. However, neither invoice relates to consultancy, which is the service claimed: they are for the production of the video itself, which is a related but not the same service. More importantly, the invoices were at least three years old at the relevant date and there is no evidence other than the invoices.

404. It is not entirely clear whether the invoices described at paragraphs 109 and 110, above, which include unspecified charges for services such as “music consultancy”, “ads consultancy” or “consultancy for release” and four invoices for “music consultancy” totalling £500, none of which is later than 2017, are relied on for “consulting on video production, marketing material content and advertising”. There is reference to Mr Dave having undertaken “PR campaigns for entertainment and music companies as well, including The London Fire Brigade, Scotland Yard, The Metropolitan Police and various London borough councils. These services were all recorded at the Medcann Studios”.<sup>85</sup> Mr Dave also refers to having provided event management services, saying “I would perform songs recorded at Medcann Studios and perform them at events at which guest artists also performed and invite guests to buy tickets at those events”. He provides sample invoices with descriptions such as “event tickets” and “show tickets”. Some include information such as “Medcann Team Table” or “Medcann Table”. Some of the figures are not clear; the invoices total around £1,700. Professor Engelman submitted that one of these invoices (NM1, p. 58) dates from 2011. However, Mr Dave’s evidence is that they are from 2017. I also note that

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<sup>83</sup> Dave 1, §50.

<sup>84</sup> NM1, pp. 96-97.

<sup>85</sup> Dave 1, §23-24.

the invoice number suggests that it is from 2017. In fact, all of these invoices appear to be dated November/December 2017.

405. In my view, invoice evidence showing “music consultancy” (or, for that matter, “studio services”) cannot be taken as good evidence of “consulting on video production, marketing material content and advertising”. “Music consultancy” may mean many things. At its narrowest, it is about how music is made: the development of tracks/songs and how instruments and musical effects may be used to produce the finished product. At its widest, it might include consultancy about the music business more generally, such as advice about royalties. There is nothing in the evidence to suggest that any business which did exist was broader than music studio services, which I accept might involve an element of advice about how the music should be produced. Consulting on video production, however, is a distinct service from music production, requiring a separate set of skills and equipment. The same applies, with more force, to consulting on marketing material content and advertising. The high point of the evidence is the odd mention of services such as “ads consultancy” and “consultancy for release” on invoices, for unspecified amounts from no later than 2017. Whilst it is possible for goodwill to subsist after a business ceases to trade, or ceases to trade in a relevant field, the absence of any evidence such as advertisements showing the sign offering video production consultancy or articles in which the business is kept alive in the minds of the relevant public is fatal in this case. The Yellow Fish invoices relate to a single client, although it is possible that they concern two artists, and are not sufficient of themselves to show goodwill in relation to “consulting on video production” at the relevant date. If the invoices discussed above are intended to show use for “consulting on video production”, they do not improve the position: the sums are either indeterminate or amount to a few hundred pounds and they, too, were several years before the relevant date.

406. In relation to event management services, I do not accept that these would properly be considered “consulting on video production”: they are a different service. The evidence of event management is slightly more promising in respect of consultancy about marketing material and advertising. However, Mr Dave’s narrative evidence suggests that, far from providing event management services to third parties, he was selling tables for his own concerts. Additionally, there is only invoice evidence

to show that an event was organised. There is nothing to show that Mr Dave offered marketing or advertising services to others. The dates on the invoices are close together and in the absence of any details about other events or other invoices from 2017, or indeed any other date, it appears that the ticket sales concern one concert. Given that the evidence appears to relate to a single event in 2017 which generated less than £2,000, even if these invoices were for relevant services, there is no evidence of any promotion of such services, the sales are too small, and the period between that event and the relevant date too long, for any goodwill to have survived by August 2021.

407. That leaves pharmacy services. Mr Dave says that he has been a director and shareholder of Medcann Pharma Ltd since May 2021 and that it is a registered pharmacy offering patient consultations, healthcare and the sale of medicinal products. He says that all products bear the pharmacy label “Medcann Pharmacy” when they are dispensed. Mr Dave’s evidence is that the pharmacy operates from the website address [medcannpharmacy.co.uk](http://medcannpharmacy.co.uk).<sup>86</sup> There are prints from the website which show “Medcann Pharmacy” and the sign reproduced below. They have a 2021 copyright date. Undated prints from the app also show the sign below:<sup>87</sup>



408. There is an image, again undated, of a display stand bearing the same “Medcann” sign as above, with the addition of the word “pharmacy”. It advertises booking a GP consultation. There is another photograph said to be advertising but, beyond bearing the same sign, it is wholly unclear what it is and whether it has ever been shown to the relevant public.<sup>88</sup>

409. Mr Dave says that he “purchased a number of Medcann domain names since 2021”.<sup>89</sup> They are not specified. He also gives evidence about his investment in Medcann Pharma.<sup>90</sup> The sum is disputed but, other than the items described above,

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<sup>86</sup> Dave 1, §§64-65.

<sup>87</sup> NM1, pp. 145- 146.

<sup>88</sup> NM1, p. 147-148.

<sup>89</sup> Dave 1, §68.

<sup>90</sup> Dave 1, §66.

there is no evidence of how any investment may have been spent on public-facing actions such as advertising, and it is therefore immaterial.

410. There is evidence from users of Medcann Pharmacy services, namely Mr Herring, Mr Ogundimi, Mr Inskip, Mr Patel, Mr Devshi. Mr Herring, Mr Inskip and Mr Devshi say that Medcann Pharmacy has an “outstanding reputation in the medical community”.<sup>91</sup> This is entirely unsupported. Only Mr Patel gives any indication of how long he has been a customer of Medcann Pharmacy: he says that he has used Medcann Pharmacy for over a year. However, his statement is dated October 2023, so Mr Patel does not appear to have been a customer at the relevant date.

411. Taking all of the evidence into account, I consider that it falls well short of establishing that there was any goodwill in a business offering pharmacy services at the relevant date. The only evidence from before the relevant date is the fact that Medcann Ltd was incorporated by May 2021 at the latest. There is no clear evidence of any public-facing material before August 2021 and no evidence of any sales at all before the relevant date. There was no goodwill in relation to a business offering pharmacy services in connection with the sign MEDCANN.

412. Mr Dave has failed to establish goodwill in relation to any of the goods or services relied upon. The opposition based on s. 5(4)(a) is dismissed.

## **MR DAVE’S INVALIDITY AGAINST UK3533915 “ETHICACBD”**

### **Section 3(1)(c)**

413. The claim here, I remind myself, is that “ETHICACBD” is a reference to the words “ethical” and “cannabidiol” and therefore descriptive. The only evidence which Mr Dave has filed in relation to the ETHICACBD mark is an interview with Mr Spurgeon.<sup>92</sup> Mr Spurgeon says that EthicaCBD was the result of a desire to create “the highest quality, ethical, CBD products for people & planet”. There are images of products, such as that shown below for a “Pure Swiss CBD” product:

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<sup>91</sup> Herring, §4; Inskip, §4; Devshi, §9.

<sup>92</sup> NM1, p. 150.



414. The only other evidence which relates to the ETHICACBD trade mark is from Unilux and consists of an undated print showing the same stylised mark as above and the same pure Swiss CBD product as shown above, along with an undated LinkedIn post with a reference to the EthicaCBD sport gel.

415. Unilux's primary position is that consumers will see "ETHICACBD" as a made-up word. I reject that submission as unrealistic. In my view, consumers are sufficiently familiar with CBD as product or significant ingredient in a product that they will recognise that the mark consists of the word "ETHICA" and the abbreviation "CBD". The evidence, very limited though it is, supports this view, as there are references to CBD with no explanation of what CBD is. This suggests that the authors/creators of the material in question expected consumers to know what "CBD" means, at least where the goods in question might contain that substance.

416. Unilux's alternative position is that even if consumers were to break the mark down into "ETHICA" and "CBD", they would not perceive "ETHICA" as a reference to "ETHICAL" or, if they do, that they will not perceive it, immediately and without further thought, as a description of one of the characteristics of the goods/services.

417. There is no evidence from Mr Dave that "ethica" is a typical or common abbreviation of "ethical". I have checked *Collins*, the *OED* and *Cambridge* online dictionaries and there is no entry in any of them for "ethica". I accept that the word is very like "ethical", or "ethics", but I see no reason why it would be immediately perceived as having the clear meaning of "ethical" when it is not, to my knowledge, common practice to alter adjectives ending in "-al" by removing the "l" or to change nouns by replacing an "s" with an "a".

418. Professor Engelman submitted that “ethica” means “ethics” in Latin. There is no evidence of this. Even if that is the case, the relevant public is unlikely to know the Latin word for ethics; there is nothing to show that they would. I do not think that the fact that “ethical” is used on the same page, even to describe the production values of the brand, means that the average consumer will take “ETHICA” to mean “ethical” without further thought.

419. I agree that “ETHICA” may be seen as alluding to the word “ethical” but it is, in my view, no more than suggestive. Consequently, whilst the “CBD” element of the mark will be recognised and taken as descriptive, the mark as a whole will not be. This is an important part of the test, which the submissions made by Professor Engelman overlook. A mark may contain a descriptive element, as indeed very many registered marks do, and still not fall foul of s. 3(1)(c), because it is not descriptive as a whole. “ETHICACBD” is not descriptive as a whole and the objection based on s. 3(1)(c) fails.

### **Section 3(1)(b)**

420. The claim is identical to that under s. 3(1)(c). I see no reason why “ETHICACBD” would not be capable of functioning as a trade mark for reasons other than descriptiveness and none is provided. The claim is dismissed.

### **Section 3(3)(b)**

421. Mr Dave’s claim under this ground is put as follows:

“Whilst [Unilux] by its own admission has educated the public that its products/services contain or are associated with cannabis/hemp the goods/services the subject of the specification of the Registration are not limited to use upon hemp/cannabis-based products and services and would therefore be of a deceptive nature”.

422. Unilux indicated that the only basis of the claim was that it has educated the public but it also said in its counterstatement that average consumers would not perceive the mark as descriptive of products containing CBD and there is no possibility of deception; Ms Messenger made similar submissions at the hearing.

423. Professor Engelman's skeleton argument simply says that "there is a clear expectation that products marked as containing 'CBD' are expected to contain CBD. All the goods to which it is applied would be expected to contain it".

424. The terms of Mr Dave's objection under this ground are not the same as in the cases considered above. In this instance, the claim is ambiguous as to whether it is dependent on Unilux having educated the public, or whether the mark is deceptive because it signals a quality that the goods do not have, despite Unilux having educated the public. In my judgement, the claim as pleaded can be construed both ways.

425. Unilux says that it is irrelevant whether it has, since filing, educated the public in any way. I agree. There is, in any event, nothing to indicate how, precisely, Unilux is said to have educated the public: the single article filed by Mr Dave does not establish any such thing. The claim brought on the basis that the mark is deceptive as a consequence of any use which has been made of it must fail.

426. As regards the claim more broadly, that "ETHICACBD" will convey to the public that the goods/services are or are closely connected with CBD, I agree with Mr Dave that a significant proportion of the relevant public will perceive the mark as containing the abbreviation "CBD". As an abbreviation which is sufficiently common to convey a meaning to the public, either as an abbreviation of "cannabidiol" or as a known term for a substance which is related to cannabis, it has the capacity to impart a clear message about the goods/services in relation to which it is used

427. In *TWG Tea Company*, Professor Johnson referred to the decision of the General Court in *Caffè Nero* (see paragraph 147, above), in which the General Court upheld the Board of Appeal's finding that the mark, which means "black coffee" in Italian, was not deceptive in relation to goods such as biscuits, cakes and puddings. Professor Johnson said:

"88. The General Court, in upholding the Board of Appeal, accepted that the use of 'black coffee' might suggest that something contains coffee when it does not do so. However, it appears to me that if somebody sold 'black coffee pudding' most consumers would assume that it contains coffee or a coffee like flavour. This suggests that in relation to those other goods, the Board of Appeal must have accepted either that the use of 'black coffee' on the goods was not

deceptive when used as a flavouring or, alternatively, that black coffee is an arbitrary mark in relation to say, puddings or biscuits. Although not expressed by the court, the former reasoning seems the much more likely to me.”

428. In deciding whether the marks “PARIS BREAKFAST TEA”, “RUSSIAN BREAKFAST TEA” and “LUCKY TEA”, Professor Johnson adopted the approach that use of the trade mark where the goods could be flavoured with tea was not deceptive, which he considered endorsed by *Caffè Nero*. He also pointed out that the approach taken in *Caffè Nero* was a liberal one, which had strongly influenced his own decision (at [91]-[93]). Consequently, Professor Johnson upheld the oppositions in respect of “coffee, cocoa; cocoa-, coffee-, chocolate-based beverages” but allowed the applications to proceed for goods including sugar, rice, rusks, salt, mustard and sauces (condiments).

429. I take from the above case law that it is not necessary that the goods are the product indicated by the trade mark. It appears that a trade mark which suggests that goods contain a particular product (black coffee in *Caffè Nero*) will not be deceptive if the goods at issue may contain that product, as a flavouring or, in the case of CBD, as an active ingredient. It seems to me that the same would apply to services, if they could reasonably be understood as connected with that product. The case law also indicates that I should take a liberal approach to the assessment. Only “actual deceit or a sufficiently serious risk that the consumer will be deceived” will make good the ground. That consumer is reasonably well informed and reasonably observant and circumspect (*Gut Springenheide*). I consider that there is a sufficiently serious risk that the average consumer will be deceived if the mark is used in respect of goods that are not flavoured or made with CBD, or connected services, if the consumer is likely to believe that that is the case. Where the mark generates no expectation that the goods/services are in any way connected with CBD, the risk is not sufficiently serious.

430. It is clear to me that the vast majority of the goods and services in the contested specification are capable of being goods which are or contain CBD. I indicated, above, that CBD appears to be used in toiletries (including skincare preparations), confectionery (including chocolate confectionery), beers and non-alcoholic beverages, honeys, preparations made from flour and preparations made from cereals (the latter two including baked goods such as cakes and brownies) and certain liquids for

electronic cigarettes. I should also underscore that I have no evidence from the parties regarding the range of products which might feature, or which the average consumer might expect to feature, CBD and no submissions on Mr Dave's behalf regarding any of the specific goods or services in the specification.

431. In class 3, it appears to me that the majority of the goods may contain CBD. I have hesitated over "household fragrances; essential oils for use in air fresheners". However, it is plausible that fragrance diffuser products which are covered by these terms may include CBD. In contrast, it is not obvious to me that "eyelashes" would contain CBD but I do not consider that there is a serious risk that the average consumer would expect them to contain CBD, as these goods are not, to my knowledge, ever infused with other substances and CBD is likely to be taken as arbitrary.

432. In class 4, with the exception of "wicks", all of the goods may be infused with CBD and the mark is not deceptive for these goods. In respect of "wicks", in the absence of any evidence or submissions on the point, I consider that the consumer would expect the goods to contain CBD because they are so closely connected to candles, which might feature CBD. However, it is unclear to me that a wick, which is typically made from a fabric such as cotton and may be stiffened, would be infused with CBD. The mark is deceptive for "wicks".

433. In class 5, the majority of the goods plainly may contain CBD. I do not see why "air fresheners; air freshener refills; air freshener sprays; air deodorizing preparations" are not capable, in principle, of containing CBD. The mark is not deceptive for any goods in class 5.

434. In class 29, it seems likely that "jellies, jams, compotes" may be infused with CBD. That being the case, the mark is not deceptive for these goods. In relation to "fresh, preserved, tinned, chilled, frozen and cooked meat, fish, poultry and game; meat and fish extracts; seafood, crustaceans and molluscs; preserved, frozen, dried and cooked fruits and vegetables", although it is unlikely that CBD would be added to, for example, a bag of frozen prawns, the terms are wide and encompass goods such as sausages, burgers and other ready-to-eat products, including marinated foods. For "seafood, crustaceans and molluscs", at least, the terms cover prepared meals of those goods.

With that in mind, I conclude that it is feasible for CBD to be added to such goods, and “prepared meals and snacks made principally from meat, fish, seafood, molluscs, crustaceans, poultry or game”, and that for these goods the mark is not deceptive of itself. The same principle applies to “eggs, milk and milk products; edible oils and fats” and “soups”: there is no obvious reason why, for example, ready-scrambled egg, milk drinks, butter or soup may not have CBD added to them. Absent any evidence or detailed reasoning from Mr Dave, I find that the mark is not deceptive in class 29.

435. In class 30, “yeast, baking powder” do not appear to be capable of being made from, infused with or otherwise containing CBD but there is a serious risk that the consumer will believe that goods sold under the mark do contain CBD. The remaining goods in class 30 all appear capable of being infused with CBD and the mark is not deceptive.

436. In class 31, “raw and unprocessed agricultural, aquacultural, horticultural and forestry products; raw and unprocessed grains and seeds” and “natural plants and flowers; foodstuffs for animals” may all include cannabis plants or CBD and the mark is not deceptive. In relation to “unprocessed rice; fresh fruits and vegetables, fresh herbs” it seems to me likely that the consumer will assume the goods contain CBD where they do not. I acknowledge that goods in class 31 are unprocessed but the consumer buying, for example, fresh apples or tomatoes, may believe them to have been subject to some kind of minimal processing, genetic modification or cross-breeding to contain CBD. I cannot see that this would be an accurate belief and the mark is deceptive for these goods.

437. In classes 32 and 33, all of the goods may contain CBD. That being the case, the mark is not deceptive.

438. In class 34, all of the liquids for e-cigarettes may contain CBD and the mark is not deceptive. In relation to “smokers’ articles” and the “parts and fittings for all the aforesaid goods”, there is, in my judgement, no risk that the consumer will think that these goods contain CBD and no risk of deception.

439. In class 35, “advertising, marketing and sales promotions” are all business-to-business services selected with an above average level of attention. There is no obvious reason why “CBD” would be descriptive of the nature of these services, and

there is nothing to suggest that these services are generally related in some way to CBD. I do not think that “ETHICACBD” conveys a specific message relating to CBD which would be deceptive in relation to these services. “Online ordering services” may relate to goods which are or contain CBD and it is not deceptive. As for the retail, consultancy, information and advisory services, the ground succeeds and fails for the same reasons given in relation to the goods discussed above.

440. The s. 3(3)(b) ground succeeds for the goods listed below:

Class 4: Wicks

Class 30: Yeast, baking powder

Class 31: Unprocessed rice; fresh fruits and vegetables, fresh herbs

Class 35: Retail and wholesale services connected with the sale of wicks, yeast, baking powder, unprocessed rice, fresh fruits and vegetables, fresh herbs; consultancy, information and advisory services relating to all of the aforesaid services.

441. The claim under s. 3(3)(b) is dismissed for the remainder of the goods and services.

### **OVERALL CONCLUSION**

442. Subject to appeal, the outcomes of the various actions are as follows:

- The invalidity actions brought against registered trade mark numbers 3409784 and 918087033 are dismissed in their entirety.
- The application for invalidation of trade mark registration 3648759 succeeds in part. The mark will remain registered for the goods presented in **bold** at annex 3. It is declared invalid with effect from 28 May 2021 for the remainder.
- The opposition against trade mark application number 3678902 succeeds under s. 5(2)(b) for the goods listed at paragraphs 388 and 389, above. The mark will proceed to registration for the remaining specification.

- The application to invalidate trade mark registration number 3533915 succeeds in part. It is declared invalid for the goods and services listed at paragraph 440, above, with effect from 16 September 2020.

## **COSTS**

443. Unilux has had more success overall, as it has succeeded in full in two of the actions brought by Mr Dave, and partially in the other cases. Ordinarily, Unilux would be entitled to an award of costs in its favour, proportionate its partial success overall. It asks for costs off the scale. However, Mr Dave also requests costs off the scale, regardless of the outcome.

444. S. 68 of the Act and Rule 67 of the Trade Mark Rules 2008 give the registrar a wide discretion to award costs. As Anthony Watson QC stated in *Rizla Ltd.'s Application* [1993] RPC 365 at 377 when considering a very similar provision under the Patents Act 1977:

“The wording of section 107 could not in my view be clearer and confers on the Comptroller a very wide discretion with no fetter other than the overriding one that he must act judicially.”

445. The registrar normally awards costs based on a published scale. The aim is to award costs on a contributory rather than a compensatory basis. This is because the registrar operates an accessible low-cost tribunal with predictable costs. However, the registrar’s practice makes it clear that costs may be awarded on a different basis if a party behaves unreasonably.

446. Although the courts have endorsed the registrar’s power to award compensatory costs in cases of unreasonable behaviour, it does not follow that compensatory costs must be awarded whenever there is any unreasonable behaviour. Rather, as stated in *Rizla’s Application*, the question is whether “the behaviour in question constituted such exceptional circumstances that a standard award of costs would be unreasonable.”

447. Professor Engelman submitted that Mr Dave should be awarded off-scale costs from January 2023 because Unilux unreasonably refused to mediate following an offer to negotiate from Mr Dave. To support the claim, I have been provided with copies of

correspondence and a statement from Mr Dave (not verified by a statement of truth). Mr Dave says that he contacted Mr Reiner by telephone in December 2022 to propose settlement, which Mr Reiner rejected. On 15 December 2022, Mr Dave wrote to Unilux, via its representatives, indicating that he was going to launch further proceedings and suggesting that the parties consider ADR/mediation. The response from Unilux's representatives, on 17 January 2023, was that they had discussed the matter with their client and Unilux was willing to negotiate. They requested Mr Dave's proposal/reasonable offer. The next substantive correspondence provided to me is dated 16 February 2023 from Mr Dave. In that letter, he acknowledges that he proposed ADR/mediation and continues:

“However, matters have progressed since then. Having undertaken a detailed examination of my use of the mark Medcann/Medxcann it becomes apparent both your trade mark registrations for Medicanna are likely to be declared invalid in respect of all of the goods/services the subject of these registrations. [...] In light of the newly compiled evidence I would invite your client to accept it will lose all the cross-proceedings between the parties and in such circumstances I would respectfully ask it to entertain instead of merely losing its registrations outright consider assigning them to me together with any goodwill it has accrued in the name Medicanna. Once assigned, I would suggest that I offer a licence to your client so that it may nevertheless launch its hemp/cannabis/CBD oil products onto the UK market.”

448. There was a further letter from Professor Engelman on 26 November 2024 suggesting that the parties negotiate.

449. Professor Engelman referred me to a number of cases, including *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576 and *PGF II SA v OMFS Company 1 Ltd* [2013] EWCA Civ 1288. These cases consider the factors which should be taken into account in determining whether a failure to agree to Alternative Dispute Resolution (“ADR”) was unreasonable, including, in the latter case, a determination that silence in the face of an invitation to participate in ADR is, as a general rule, unreasonable. However, all of the cases to which Professor Engelman referred concern court proceedings and the Civil Procedure Rules (“CPR”), where pre-action protocols impose a positive duty to try to settle the matter without proceedings. The CPR do not

apply in this tribunal. It is true that, when the Trade Marks Rules 2008 are silent on a matter, the tribunal will have regard to the CPR. However, in my judgement that does not extend to imposing a duty on parties to mediate which is present in the CPR but not in the Trade Marks Rules.

450. There is no requirement for parties to negotiate, or to attempt to negotiate, at any point before or during proceedings in this tribunal. As for the proposed negotiations, it is clear that Unilux was willing to attempt to settle the matter amicably in November 2022. That is notwithstanding the fact that the proceedings had already ballooned and by that time included multiple s. 5 and s. 3 grounds, the latter being less inherently suitable for settlement negotiations as they involve the public interest rather than purely relative interests between the parties. It is also clear, given my findings above, that Unilux cannot be said unreasonably to have refused to negotiate because it had a hopeless case. It has defended two of its registered trade marks in full and had partial success in the other actions, only losing a handful of terms in the ETHICACBD mark's specification. Further, Mr Dave's position shifted considerably between November 2022 and January 2023. The basis for the change is said to be his review of the use he had made of MEDCANN and MEDXCANN. By January 2022, Mr Dave was not seeking negotiation so much as total capitulation. It is unclear if Unilux saw any of the evidence at that point but it is clear from my findings above that Mr Dave's assertion that Unilux would lose all of its trade marks grossly overestimated the strength of his evidence. The shift to a more intransigent position may have been a negotiating tactic but Unilux cannot be criticised for taking Mr Dave at his word and taking the view that the parties were too far apart for negotiation to be a viable prospect. Unilux submits that Mr Dave has attacked registrations owned by Unilux which are of no interest to him, brought "kitchen sink" challenges on more than four grounds and that he has at no time made a genuine effort to settle but "only aggressive and continuous acts to challenge Unilux s.a.m.'s earlier rights". I cannot say that this was an unreasonable view of the proceedings. As for Professor Engelman's renewed proposal to negotiate, this was made shortly before the hearing and at the same time that Mr Dave filed another action against one of Unilux's trade marks, this time a non-use revocation. There is nothing in the letter to suggest that Mr Dave's position had materially changed, or become more realistic. Unilux did not behave unreasonably in refusing to negotiate.

451. Ms Messenger made the following points in support of Unilux's request for off-scale costs:

- (1) All of the matters discussed at the CMC held on 16 March 2023 concerned Mr Dave's pleadings. Some grounds were added, some were struck out and some arguments were withdrawn. This included the addition of a s. 3(6) claim which was dropped in the skeleton argument. Ms Messenger submitted that all of this happened after the evidence rounds and that much of Mr Spurgeon's evidence became irrelevant. She added that there was very significant wasted time and costs as a result of the nature of the pleaded cases and their changing nature.
- (2) The approach taken by Mr Dave throughout is what has led to the delay in these proceedings. The amended pleadings and the consequent need for Unilux to file amended pleadings have added to the delay.
- (3) Unilux was the earliest registered rights holder and it was Mr Dave who took the step of challenging the marks, making wholesale, "kitchen sink" attacks.

452. It is appropriate to set out some of the procedural history regarding the CMC. The first action launched in these proceedings was Mr Dave's opposition against the 902 Mark, filed on 6 January 2022. It was a fast-track opposition based on s. 5(2)(b). There were some problems with both parties' pleadings but once amended forms had been filed, the opposition was suspended on 26 July 2022 to await Mr Dave's defence in the invalidity against the 759 Mark.

453. Unilux's invalidity against the 759 Mark had been filed on 10 May 2022. Mr Dave filed his defence on 4 August 2022. It required amendment. Additions were made to the counterstatement and the amended version was admitted.

454. The proceedings against the 759 Mark were also suspended at this point because by then Mr Dave had applied, albeit not in the prescribed manner, to amend the grounds of his opposition. This entailed the addition of an unregistered right (Medcann) under s. 5(4)(a) and complaints that Unilux had misappropriated the goodwill of various third parties' trade marks, apparently based upon a very old Court of Appeal judgment, *Re Lyle & Kinahan Ltd's Application* (1907) 24 RPC 249 (CA), though the relevance of that judgment was never explained. Mr Dave was asked to

file the required form and, when he did, this included a request to add grounds under ss. 3(1)(b), 3(1)(c), 3(3)(b), 3(3)(a) and 3(4) of the Act (but not s. 5(4)(a)). The tribunal initially allowed this request and Unilux amended its counterstatement.

455. The two actions were consolidated and evidence periods set on 7 December 2022. On 16 December 2022, Mr Dave filed a further request to add grounds to the opposition, this time under s. 3(6) of the Act. This led to a request from the tribunal for clarification and a lifting of the 7 February 2023 evidence deadline (official letter dated 9 January 2023), then a response from Mr Dave which also included a request for disclosure.

456. In the interim, Mr Dave had filed the invalidities against the 784 and 033 Marks, as well as that against the ETHICACBD mark. None of the forms TM26(I) and statements of case was admissible.

457. At this point, the cases were referred to me and the CMC referred to above was appointed in the following terms:

“The hearing officer directs that a CMC be appointed to discuss all matters relating to the future conduct of these cases. In particular, the parties will be required to address:

(i) The addition of earlier trade mark number 3648759 to the s. 5(2)(b) grounds in opposition 600002126;

(ii) The pleadings regarding ss. 3(1)(b), 3(1)(c), 3(3)(a), 3(3)(b) and 3(4) in opposition 600002126; and

(iii) The request to add s. 3(6) grounds to opposition 600002126;

(iv) The requests for disclosure;

(v) The parties should also be prepared to discuss the pleadings, including any amended pleadings filed in the interim, in invalidity numbers 505694, 505695 and 505696;

(vi) Any other matters relating to any of the above cases.

The hearing officer's initial view is that the admission of the amended TM7F filed on 20 June 2022 was procedurally irregular. The form adds the right at (i) above to the case but permission to do so was neither sought nor granted and Unilux was given no opportunity to object. If Mr Dave wishes to amend the form TM7, he will be required to make a formal request for consideration at the CMC.

Although permission was given to add the grounds at (ii), the claims are inadequately pleaded. The statement of grounds is not a sufficient substitute for completed sections of the form TM7, not least because critical information is not given (e.g. the goods/services against which the attacks are directed). The hearing officer is of the view that the claims need to be clarified before they can proceed and the relevant pages of the TM7 filed.

In relation to (iii), amended pages of the TM7 will also be required. The basis of the claim is not clear, in particular what Mr Dave means by "trafficking" of trade marks. He should identify clearly the issues which are relevant to the claim that the trade mark was applied for in bad faith.

Mr Dave will therefore be required to file, by 7 March 2023, completed pages of the TM7 relevant to the grounds identified at (ii) and (iii) above for consideration at the CMC.

No permission was granted to add s. 5(4)(a) grounds to the opposition (the official letter of 2 November 2022 refers). As no hearing was requested to challenge that decision, the preliminary view is confirmed and references to the ground will be ignored.

Mr Dave is advised that there is no assignment document on the official file for UK 3678902: the form TM16 did not include one. Section 67 and Rule 59 are therefore inapplicable. Any other bases for disclosure will be considered at the CMC." (original emphasis)

458. This prompted an email from Mr Dave on 3 March 2023 asking the tribunal to "outline its critiques" of the grounds and the request for disclosure, and making various submissions about why the preliminary view was wrong, amongst other things. Further

directions were issued on 6 March 2023. Amended pages for the TM7 were filed which included not one but six unregistered rights under s. 5(4)(a).

459. As I have mentioned above, I allowed the grounds based on ss. 3(1)(b), 3(1)(c), and 3(3)(b) to proceed. I also permitted the s. 3(6) claim to be added, whilst expressing my “serious reservations about the viability” of the pleading. In the opposition, the s. 5(2)(b) case would proceed based on both earlier marks. I allowed the s. 5(4)(a) claim to proceed but said in my letter (§ 25) “the approach to the addition of grounds on Mr Dave’s part has not been acceptable, particularly as it was his choice to file a fast-track opposition in the first place”. Further amendments were required to Mr Dave’s claim forms in the opposition and two of the invalidities. I struck out as hopeless the claims under ss. 3(3)(a) and 3(4), giving my reasons in my letter. I recorded that the claim based on misappropriation of third party rights under the principle of *ex turpi causa* was withdrawn by Professor Engelman.

460. Mr Dave was not happy with my decision. He wrote to the tribunal at some length on 18 April 2023 explaining why he considered that I was wrong, including why Unilux should not be allowed to rely upon goodwill it had misappropriated, even though Professor Engelman had withdrawn the claim, and sought permission to appeal my decision independently of the final decision. I refused permission for the reasons given in my letter of 25 April 2023, giving the parties the opportunity to be heard if they disputed that decision. Mr Dave again wrote to the tribunal on 9 May 2023, explaining why I was wrong. He made various complaints, including that I had not given reasons for my decision, and he concluded:

“I shall be raising those same issues at the final hearing of the consolidated proceedings rather than appeal your refusal to grant leave at this point in time in order to assist in the progress of the proceedings without further delay.

If the Office does not accept the above proposal I would like the opportunity of a hearing to expand upon the above reasoning. If it does I shall rely upon my legitimate expectation that the strike-out of the said 2 grounds will be dealt with as a preliminary matter at the final hearing.”

461. The tribunal wrote to the parties, on my instructions, to the effect that the tribunal did not accept Mr Dave's proposal and that a CMC would be appointed for him to challenge the refusal of permission to appeal independently of the final decision.

462. This prompted yet another letter from Mr Dave on 23 May 2023. Among other things, he said:

**"The Jurisdiction of the Trade Mark Office**

Whilst rule 70(2) TMR does not provide a right of appeal of an interim decision independently of any appeal against a final decision without leave, a party may appeal an interim decision at the final decision (without leave) and with respect to the UKIPO, it does possess any jurisdiction to prevent any such appeal. That is precisely the route I had identified with the Office.

**The Proposed 2<sup>nd</sup> CMC**

It is for the above reasons that unless the Office were minded to either: (i) permit ss.3(3)(a) and 3(4) to be admitted into my statements of case now and permit disclosure of the 4 live dossiers at this stage in the proceedings or (ii) leave any appeal against the refusal of those 2 grounds until the disposal of the final decision, I do not propose to attend the proposed 2<sup>nd</sup> CMC in order to advance further argument on those sections which have already been fully ventilated.

Clearly, the failure of the Office to permit the 2 grounds to proceed now (as it did back in 02.11.22) prevents my reliance upon the content of the said dossiers for the purpose of underpinning those grounds with evidence sitting entirely within the hands of Unilux. I believe my disadvantage arising from that failure is self-evident."

463. On 30 May 2023, the tribunal asked Mr Dave to clarify if he required a CMC. He confirmed that he did not on the same day.

464. Unilux says that all of the issues with the pleadings occurred after the evidence rounds. That is incorrect. Evidence deadlines had been set in two of the actions but were lifted a month later. No evidence was filed until after all five proceedings were

consolidated, another decision made by me at the CMC. It is true that all of the matters at the CMC concerned Mr Dave's pleadings. The CMC did not all go one way, however. I do not see any reason to award off-scale costs simply on the basis that the issues concerned Mr Dave's pleadings.

465. Nevertheless, whilst some of Mr Dave's requested amendments were permitted and the fact of their being requested did not appear unreasonable at the time, the manner in which Mr Dave made his requests was, in my view, unacceptable and has unreasonably increased Unilux's costs. There were two successive requests to add grounds in the opposition. Neither gave particularly good reasons for the failure to include the claims earlier but were made at a sufficiently early stage to be allowed. However, the effect on Unilux was that, in the opposition, it had to consider all of the new grounds and amend its counterstatements twice to respond to the new claims. It was Mr Dave's choice to file a fast-track opposition and if he realised that other grounds were appropriate, it was incumbent on him to identify all of them at once, rather than in the piecemeal fashion which occurred. It is also to be noted that, despite being the subject of a second request to amend the pleadings and argument at the CMC, no evidence was adduced to support the bad faith claim, which was dropped just before the hearing.

466. Unilux has also had to read and digest all of the correspondence which was generated by Mr Dave, in particular that surrounding the CMC and his request to file additional evidence, which is detailed above. Mr Dave is, strictly speaking, a litigant in person. It is to be expected that litigants in person may require additional assistance in tribunal procedures and certain allowances are made. However, Mr Dave has claimed costs in excess of £100,000 for Professor Engelman's services—an extraordinary sum for proceedings in this tribunal—which date back to June 2022 and include the drafting of pleadings and letters to the tribunal, including, it appears, each of the letters from which I have quoted above. Mr Dave is plainly not acting without legal advice. Whether through infelicitous drafting or a failure to understand the legal position and tribunal processes, Mr Dave's communications increased the overall volume of correspondence, in my view unnecessarily. For example, rather than simply requesting a hearing regarding permission to appeal, more correspondence was filed. Yet absent an appeal, the tribunal had no power to reverse my CMC decision whether

at the final hearing or not, which a properly advised litigant should have known. Further letters on the matter without a request to be heard merely complicated matters and added to the costs of the case.

467. A similar point arises regarding the additional evidence. Mr Dave was given the opportunity to request a hearing if he disagreed with the tribunal's preliminary views regarding both the additional evidence and the refusal of an extension of time. He did not request a hearing but instead filed evidence which plainly does not comply with the directions of the tribunal and then sought to argue that the tribunal had exceeded its powers and that the evidence should be admitted regardless, both in correspondence and at the hearing. Litigants in person are not exempt from following the tribunal's rules. Ignoring directions is unreasonable behaviour.

468. Lastly, Ms Messenger complains of the "kitchen sink" approach to Mr Dave's pleadings. The criticism is justified. In respect of the passing off cases in particular, it should have been obvious to Mr Dave, who has been professionally advised throughout, that his evidence was hopelessly inadequate to support a claim to goodwill across the bulk of his pleaded case. The claim should not have been brought as it was and, at the very least, should have been narrowed substantially when he compiled his evidence.

469. I am, therefore, satisfied that Mr Dave's conduct has been unreasonable and Unilux's costs have been increased as a result. However, not all unreasonable behaviour justifies off-scale costs. I must also bear in mind that Unilux has only been partially successful across the proceedings as a whole. In the event, I consider that the matter may fairly be dealt with by an award to Unilux of costs towards or at the top of the scale, with no reduction for its partial success. This adequately compensates Unilux for the additional work caused by the manner in which the pleadings and the further evidence have been dealt with, and for the unreasonableness of the case maintained to the bitter end by Mr Dave. Unilux incurred only one official fee and was only partially successful in that action, so I make no award for that. The award is calculated as follows:

Preparing and considering statements of case/counterstatements: £3,250 (i.e., £650 x 5)

Preparing evidence and considering and commenting on the other side's evidence: £2200

Preparing for and attending a hearing: £1,000

**Total: £6,450**

470. I therefore order Nimesh Dave to pay Unilux s.a.m. the sum of £6,450. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

**Dated this 26th day of May 2026**

**Heather Harrison**

**For the Registrar**

## **ANNEX 1**

### **UNILUX'S TRADE MARKS**

#### **UK 3409784 "MEDICANNA"**

Class 3: Skin care preparations; make-up; moisturisers; body cleaning and beauty care preparations; cosmetics and cosmetic preparations; cosmetic kits; compacts containing make-up; sunscreen creams; hair treatment preparations; soaps and gels; perfumery and fragrances; nail polish; eyelashes; deodorants and antiperspirants; dentifrices and mouthwashes; natural essential oils; suntan oils (cosmetics); shampoos; hair conditioners; shampoo-conditioners; skin conditioners; household fragrances; fragrance preparations; scents; essential oils for use in air fresheners; essential oils.

Class 4: Candles; wicks; perfumed candles; tapers; bees wax.

Class 5: Pharmaceuticals and natural remedies; veterinary preparations; dietary supplements; medicated shampoo; food supplements; medicated food supplements; dietary food supplements; food supplements for medical purposes; food supplements for veterinary use; food supplements in liquid form; health food supplements made principally of vitamins; health food supplements made principally of minerals; health food supplements for persons with special dietary requirements; air fresheners; air freshener refills; air freshener sprays; air deodorizing preparations.

Class 29: Fresh, preserved, tinned, chilled, frozen and cooked meat, fish, poultry and game; meat and fish extracts; seafood, crustaceans and molluscs; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs, milk and milk products; edible oils and fats; prepared meals and snacks made principally from meat, fish, seafood, molluscs, crustaceans, poultry or game; soups.

Class 30: Honeys; honey substitutes; herbal honey; herb sauces; herbal infusions; herbal teas; chocolate confectionary; confectionery; cakes; breads; syrups and treacles; coffee, tea, cocoa, sugar, tapioca, sago, artificial coffee; flour; preparations made from flour; preparations made from cereals; pastry; yeast, baking powder; spices.

Class 31: Raw and unprocessed agricultural, aquacultural, horticultural and forestry products; raw and unprocessed grains and seeds; unprocessed rice; fresh fruits and vegetables, fresh herbs; natural plants and flowers; foodstuffs for animals.

Class 32: Beers; soft drinks; mineral and aerated waters; non-alcoholic drinks; fruit drinks and fruit juices; syrups for making beverages; shandy, non-alcoholic beers and wines.

Class 33: Herb liqueurs; pre-mixed alcoholic beverages; alcoholic beverages (except beer); preparations for making alcoholic beverages.

Class 34: Smokers' articles; chemical flavourings in liquid form used to refill electronic cigarette cartridges; electronic cigarette liquid (e-liquid) comprised of flavourings in liquid form, other than essential oils, used to refill electronic cigarette cartridges; electronic cigarette liquid (e-liquid) comprised of propylene glycol; electronic cigarette liquid (e-liquid) comprised of vegetable glycerin; liquid nicotine solutions for use in electronic cigarettes; parts and fittings for all the aforesaid goods.

Class 35: Advertising, marketing and sales promotions; online ordering services; retail services connected with the sale of skin care preparations, make-up, moisturisers, body cleaning and beauty care preparations, cosmetics and cosmetic preparations, cosmetic kits, compacts containing make-up, sunscreen creams, hair treatment preparations, soaps and gels, perfumery and fragrances, nail polish, eyelashes, deodorants and antiperspirants, dentifrices and mouthwashes, natural essential oils, suntan oils (cosmetics), shampoos, hair conditioners, shampoo-conditioners, skin conditioners, household fragrances, fragrance preparations, scents, essential oils for use in air fresheners, essential oils, candles, wicks, perfumed candles, tapers, bees wax, pharmaceuticals and natural remedies, veterinary preparations, dietary supplements, medicated shampoo, food supplements, medicated food supplements, dietary food supplements, food supplements for medical purposes, food supplements for veterinary use, food supplements in liquid form, health food supplements made principally of vitamins, health food supplements made principally of minerals, health food supplements for persons with special dietary requirements, air fresheners, air freshener refills, air freshener sprays, air deodorizing preparations, fresh, preserved, tinned, chilled, frozen and cooked meat, fish, poultry and game, meat and fish extracts,

seafood, crustaceans and molluscs, preserved, frozen, dried and cooked fruits and vegetables, jellies, jams, compotes, eggs, milk and milk products, edible oils and fats, prepared meals and snacks made principally from meat, fish, seafood, molluscs, crustaceans, poultry or game, soups, honeys, honey substitutes, herbal honey, herb sauces, herbal infusions, herbal teas, chocolate confectionary, confectionery, cakes, breads, syrups and treacles, coffee, tea, cocoa, sugar, tapioca, sago, artificial coffee, flour, preparations made from flour, preparations made from cereals, pastry, yeast, baking powder, spices, raw and unprocessed agricultural, aquacultural, horticultural and forestry products, raw and unprocessed grains and seeds, unprocessed rice, fresh fruits and vegetables, fresh herbs, natural plants and flowers, foodstuffs for animals, beers, soft drinks, mineral and aerated waters, non-alcoholic drinks, fruit drinks and fruit juices, syrups for making beverages, shandy, non-alcoholic beers and wines, herb liqueurs, pre-mixed alcoholic beverages, alcoholic beverages, preparations for making alcoholic beverages, smokers' articles, chemical flavourings in liquid form used to refill electronic cigarette cartridges, electronic cigarette liquid (e-liquid) comprised of flavourings in liquid form, other than essential oils, used to refill electronic cigarette cartridges, electronic cigarette liquid (e-liquid) comprised of propylene glycol, electronic cigarette liquid (e-liquid) comprised of vegetable glycerin, liquid nicotine solutions for use in electronic cigarettes, parts and fittings for the aforesaid goods;\* consultancy, information and advisory services relating to all the aforesaid services.

\*Differences between this mark's specification in class 35 and that of the 033 Mark are underlined.

### **UK 918087033 "MEDICANNA"**

Class 3: Skin care preparations; make-up; moisturisers; body cleaning and beauty care preparations; cosmetics and cosmetic preparations; cosmetic kits; compacts containing make-up; sunscreen creams; hair treatment preparations; soaps and gels; perfumery and fragrances; nail polish; eyelashes; deodorants and antiperspirants; dentifrices and mouthwashes; natural essential oils; suntan oils (cosmetics); shampoos; hair conditioners; shampoo-conditioners; skin conditioners; household fragrances; fragrance preparations; scents; essential oils for use in air fresheners; essential oils.

Class 4: Candles; wicks; perfumed candles; tapers; bees wax.

Class 5: Pharmaceuticals and natural remedies; veterinary preparations; dietary supplements; medicated shampoo; food supplements; medicated food supplements; dietary food supplements; food supplements for medical purposes; food supplements for veterinary use; food supplements in liquid form; health food supplements made principally of vitamins; health food supplements made principally of minerals; health food supplements for persons with special dietary requirements; air fresheners; air freshener refills; air freshener sprays; air deodorizing preparations.

Class 29: Fresh, preserved, tinned, chilled, frozen and cooked meat, fish, poultry and game; meat and fish extracts; seafood, crustaceans and molluscs; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs, milk and milk products; edible oils and fats; prepared meals and snacks made principally from meat, fish, seafood, molluscs, crustaceans, poultry or game; soups.

Class 30: Honeys; honey substitutes; herbal honey; herb sauces; herbal infusions; herbal teas; chocolate confectionary; confectionery; cakes; breads; syrups and treacles; coffee, tea, cocoa, sugar, tapioca, sago, artificial coffee; flour; preparations made from flour; preparations made from cereals; pastry; yeast, baking powder; spices.

Class 31: Raw and unprocessed agricultural, aquacultural, horticultural and forestry products; raw and unprocessed grains and seeds; unprocessed rice; fresh fruits and vegetables, fresh herbs; natural plants and flowers; foodstuffs for animals.

Class 32: Beers; soft drinks; mineral and aerated waters; non-alcoholic drinks; fruit drinks and fruit juices; syrups for making beverages; shandy, non-alcoholic beers and wines.

Class 33: Herb liqueurs; pre-mixed alcoholic beverages; alcoholic beverages (except beer); preparations for making alcoholic beverages.

Class 34: Smokers' articles; chemical flavourings in liquid form used to refill electronic cigarette cartridges; electronic cigarette liquid (e-liquid) comprised of flavourings in liquid form, other than essential oils, used to refill electronic cigarette cartridges;

electronic cigarette liquid (e-liquid) comprised of propylene glycol; electronic cigarette liquid (e-liquid) comprised of vegetable glycerin; liquid nicotine solutions for use in electronic cigarettes; parts and fittings for all the aforesaid goods.

Class 35: Advertising, marketing and sales promotions; online ordering services; retail services connected with the sale of skin care preparations, make-up, moisturisers, body cleaning and beauty care preparations, cosmetics and cosmetic preparations, cosmetic kits, compacts containing make-up, sunscreen creams, hair treatment preparations, soaps and gels, perfumery and fragrances, nail polish, eyelashes, deodorants and antiperspirants, dentifrices and mouthwashes, natural essential oils, suntan oils (cosmetics), parts and fittings for the aforesaid goods; retail services connected with the sale of\* shampoos, hair conditioners, shampoo-conditioners, skin conditioners, household fragrances, fragrance preparations, scents, essential oils for use in air fresheners, essential oils, candles, wicks, perfumed candles, tapers, bees wax, pharmaceuticals and natural remedies, veterinary preparations, dietary supplements, medicated shampoo, food supplements, medicated food supplements, dietary food supplements; retail services connected with the sale of food supplements for medical purposes, food supplements for veterinary use, food supplements in liquid form, health food supplements made principally of vitamins, health food supplements made principally of minerals, health food supplements for persons with special dietary requirements, air fresheners, air freshener refills, air freshener sprays, air deodorizing preparations, parts and fittings for the aforesaid goods; retail services connected with the sale of fresh, preserved, tinned, chilled, frozen and cooked meat, fish, poultry and game, meat and fish extracts, seafood, crustaceans and molluscs, preserved, frozen, dried and cooked fruits and vegetables, jellies, jams, compotes, eggs, milk and milk products, edible oils and fats, prepared meals and snacks made principally from meat, fish, seafood, molluscs, crustaceans, poultry or game, soups, honeys, honey substitutes, herbal honey, herb sauces, herbal infusions; retail services connected with the sale of herbal teas, chocolate confectionary, confectionery, cakes, breads, syrups and treacles, coffee, tea, cocoa, sugar, tapioca, sago, artificial coffee, flour, preparations made from flour, preparations made from cereals, pastry, yeast, baking powder, spices, raw and unprocessed agricultural, aquacultural, horticultural and forestry products, raw and unprocessed grains and seeds, unprocessed rice, fresh fruits and vegetables, fresh herbs, natural plants and flowers; retail services connected

with the sale of foodstuffs for animals, beers, soft drinks, mineral and aerated waters, nonalcoholic drinks, fruit drinks and fruit juices, syrups for making beverages, shandy, non-alcoholic beers and wines, herb liqueurs, pre-mixed alcoholic beverages, alcoholic beverages, preparations for making alcoholic beverages; retail services connected with the sale of smokers' articles, chemical flavourings in liquid form used to refill electronic cigarette cartridges, electronic cigarette liquid (e-liquid) comprised of flavourings in liquid form, other than essential oils, used to refill electronic cigarette cartridges, electronic cigarette liquid (e-liquid) comprised of propylene glycol, electronic cigarette liquid (e-liquid) comprised of vegetable glycerin, parts and fittings for the aforesaid goods; retail services connected with the sale of liquid nicotine solutions for use in electronic cigarettes; consultancy, information and advisory services relating to all the aforesaid services.

\*Differences between this mark's specification in class 35 and that of the 784 Mark are underlined.

### **UK 3678902 "Medicann"**

Class 5: Health-aid foods supplements containing ginseng; Health food supplements made principally of minerals; Health food supplements made principally of vitamins; Health-aid foods supplement containing red ginseng; Health food supplements for persons with special dietary requirements; Acne medications; Acne medication; Allergy medications; Medicated candies; Medicated lotions; Antifungal medication; Dressings, medical; Medicated dentifrices; Medicated soap; Medicated mouthwashes; Medicated candy; Medicated sweets; Medicated balms; Medical dressings; Medicated creams; Medicated shampoo; Medicated mouthwash; Candy, medicated; Medicated compresses; Medicated lozenges; Medical preparations; Medicated wines; Medicated swabs; Jujube, medicated; Salves [medicated]; Medicated plasters; Medical plasters; Medical infusions; Medicated sugar; Medicated shampoos; Allergy medication; Medical mouthwashes; Medicated confectionery; Medicated handwash; Diarrhea medication; Medicated toothpaste; Face cream (Medicated -); Pain relief medication; Medicated talcum powder; Skin tonics [medicated]; Nappy cream [medicated]; Medicated dental rinses; Medicated baby oils; Medicated animal feed; Medicated body powder; Medicated body gels; Medical diagnostic reagents; Hand lotion (Medicated -); Body creams [medicated]; Mineral drinks (Medicated -); Tisanes [medicated]

beverages]; Foot balms (Medicated -); Medicated skin lotions; Face scrubs (Medicated -); Therapeutic creams [medical]; Night creams [medicated]; Extracts of medicinal plants; Cannabis for medical purposes; Antiepileptic drugs; Organotherapeutic drugs; Pharmaceutical drugs; Antituberculous drugs; Hypoglycemic drugs; Antiseizure drugs; Antineoplastic drugs; Autonomic drugs; Crude drugs; Antitumor drugs; Antimigraine drugs; Anti-cancer drugs; Drug delivery agents; Drug detoxifying agents; Drugs for medical purposes; Autonomic drugs for medical purposes; Non-steroidal anti-inflammatory drugs; Cytostatic drugs for medical purposes; Antiviral drugs for treating influenza; Antiviral drugs for treating HIV; Antipyretic drugs with sedative effect; Cardiovascular drugs used in treating shocks; Cardiovascular drugs used in angina pectoris; Cardiovascular drugs used in treating arrhythmias; Cardiovascular drugs used in myocardial infarction; Cardiovascular drugs for use in treating hypertension; Cardiovascular drugs used in treating congestive heart failure (CHF); Drug delivery agents that facilitate the delivery of pharmaceutical preparations; Drug delivery agents in the form of edible wafers for wrapping powdered pharmaceuticals; Drug delivery agents in the form of dissolvable films that facilitate the delivery of pharmaceutical preparations; Drug delivery agents in the form of coatings for tablets that facilitate the delivery of pharmaceutical preparations; Medicinal herbs; Herbs (Medicinal -); Medicinal herb extracts; Medicinal herb infusions; Chinese traditional medicinal herbs; Herbs for medicinal purposes; Extracts of medicinal herbs; Decoctions of medicinal herb; Herb teas for medicinal purposes; Smoking herbs for medical purposes; Herbs (Smoking -) for medical purposes; Medicinal herbs in dried or preserved form; Plant and herb extracts for medicinal use; Pharmaceutical preparations for use in discouraging the smoking habit; Nicotine gum for use as an aid to stop smoking; Cigarettes (Tobacco-free -) for medical purposes; Kretek (clove) cigarettes for medical use; Tobacco-free cigarettes for medical purposes.

Class 31: Plants; Peppers [plants]; Natural plants; Live plants; Foliage plants; Pennyroyal [plants]; Dried plants; Roses [plants]; Grasses [plants]; Leguminous plants; Living plants; Asparagus plants; Hydroponic plants; Cannabis plants; House plants; Fresh plants; Nursery plants; Pyrethrum [plants]; Vine plants; Potted plants; Cuttings (Plant -); Climbing plants; Plant seeds; Bulbs (Plant -); Plants (Live -); Flowering plants; Fruit plants; Seeds (Plant -); Natural plants [live]; Aloe vera plants; Seedlings for planting; Bulbs for planting; Natural flowering plants; Flax [linseed]

plants; Living fruit plants; Seeds for planting; Plants, dried, for decoration; Flax [linseed] plant seeds; Plants for ponds [live]; Plant residues (raw materials); Seeds for growing plants; Natural plants and flowers; Dried plants for decoration; Plants for aquaria [live]; Asparagus plant material (Fresh -); Agricultural grains for planting; Cannabis, unprocessed; Herbs (Fresh -); Fresh herbs; Raw herbs; Unprocessed herbs; Herbs, fresh (Garden -); Culinary herbs (Fresh -); Organic fresh herbs; Garden herbs, fresh; Fresh culinary herbs; Fresh garden herbs; Potted fresh herbs; Seeds for growing herbs; Herbs, dried, for decoration; Dried herbs for decoration; Fresh fruits, nuts, vegetables and herbs; Wreaths of dried herbs for decoration.

Class 34: Herbs for smoking; Smoking pipes; Smoking urns; Smoking tobacco; Electronic smoking pipes; Smoking pipe cleaners; Vaporizers for smoking purposes; Smoking sets for electronic cigarettes; Pipes for smoking mentholated tobacco substitutes; Tea for smoking as a tobacco substitute; Cigarettes, cigars, cigarillos and other ready-for-use smoking articles; Cigarettes; Electric cigarettes [electronic cigarettes]; Electronic cigarettes; Filters (Cigarette -); Cigarette holders; Cigarette cutters; Cases (Cigarette -); Cigarette lighters; Cigarette paper; Cigarette papers; Cigarette tobacco; Tips (Cigarette -); Cigarette cases; Cigarette boxes; Cigarette packets; Cigarette tubes; Cigarette filters; Cigarette tips; Menthol cigarettes; Cigarette ash receptacles; Cigarette lighter holders; Electronic cigarette cleaners; Automatic cigarette cases; Filter-tipped cigarettes; Electronic cigarette atomizers; Electronic cigarette cartomizers; Cigarette rolling papers; Cigarette rolling machines; Electronic cigarette boxes; Electronic cigarette cases; Mouthpieces for cigarettes; Cigarettes containing tobacco substitutes; Smokeless cigarette vaporizer pipes; Cases for electronic cigarettes; Liquids for electronic cigarettes; Portable cigarette ash pouches; Tipping paper for cigarettes; Mouthpieces for cigarette holders; Cigarette holders (Mouthpieces for -); Filter tips for cigarettes; Cigarette papers (Books of -); Pocket cigarette-rolling machines; Holders for electronic cigarettes; Electronic cigarettes for use as an alternative to traditional cigarettes; Books of cigarette papers; Liquid for electronic cigarettes; Cartridges for electronic cigarettes; Wicks adapted for cigarette lighters; Gas containers for cigarette lighters; Cigarette boxes of precious metal; Cigarette holders of precious metal; Cigarette lighters of precious metal; Refill cartridges for electronic cigarettes; Pocket machines for rolling cigarettes; Replaceable cartridges for electronic cigarettes; Cigarettes (Pocket machines for

rolling -); Pocket apparatus for rolling cigarettes; Liquefied gas cylinders for cigarette lighters; Holders of cigarettes of precious metal; Cigarette holders not of precious metal; Cigarette cases not of precious metal; Cigarette lighters not for land vehicles; Cigarette lighters, not of precious metal; Ready-made cigarette tubes with filters; Liquid nicotine solutions for electronic cigarettes; Cigarette lighter holders of precious metal; Cigarette cases made of precious metal; Hand-held machines for making cigarettes; Liquid solutions for use in electronic cigarettes; Tobacco tar for use in electronic cigarettes; Electronic cigarette liquid [e-liquid] comprised of flavourings in liquid form used to refill electronic cigarette cartridges; Cigarette lighter holders, not of precious metal; Tobacco free cigarettes, other than for medical purposes; Electronic cigarette liquid [e-liquid] comprised of flavorings in liquid form used to refill electronic cigarette cartridges; Cigars for use as an alternative to tobacco cigarettes; Lighters for smokers [cigarette lighters] [not for automobiles]; Cigarettes containing tobacco substitutes, not for medical purposes; Liquid nicotine solutions for use in electronic cigarettes; Inhalers for use as an alternative to tobacco cigarettes; Electronic cigarette liquid [e-liquid] comprised of vegetable glycerin; Electronic cigarette liquid [e-liquid] comprised of propylene glycol; Yellow amber (Tips of -) for cigar and cigarette holders; Flavorings, other than essential oils, for use in electronic cigarettes; Tips of yellow amber for cigar and cigarette holders; Personal vaporisers and electronic cigarettes, and flavourings and solutions therefor; Devices for extinguishing heated cigarettes, cigars and heated tobacco sticks; Chemical flavorings in liquid form used to refill electronic cigarette cartridges; Flavourings, other than essential oils, for use in electronic cigarettes; Cartridges sold filled with chemical flavorings in liquid form for electronic cigarettes; Chemical flavourings in liquid form used to refill electronic cigarette cartridges; Cartridges sold filled with chemical flavourings in liquid form for electronic cigarettes; Devices for extinguishing heated cigarettes and cigars as well as heated tobacco sticks.

Class 44: Health counseling; Health consultancy; Health care; Health counselling; Health centres; Health-care; Health centers; Health screening; Health screening services; Public health counseling; Health spa services; Health centre services; Health-care services; Health hydro services; Providing health information; Health risk assessment; Health center services; Mental health services; Health assessment surveys; Health clinic services; Health farm services [medical]; Mental health

screening services; Health clinic services [medical]; Home health care services; Health risk assessment surveys; Medical health assessment services; Information relating to health; Health care in the nature of health maintenance organizations; Health resort services [medical]; Managed health care services; Provision of health information; Health care relating to chiropraxis; Health care relating to fasting; Health care consultancy services [medical]; Health care relating to hydrotherapy; Consultancy relating to health care; Personality testing [mental health services]; Advisory services relating to health; Consulting services relating to health care; Advisory services relating to health care; Consultancy services relating to health care; Information services relating to health care; Health advice and information services; Health care relating to acupuncture; Health care relating to homeopathy; Professional consultancy relating to health; Health care relating to naturopathy; Health care relating to osteopathy; Provision of health care services; Providing health information via a website; Health care relating to remedial exercise; Providing health care information by telephone; Health care relating to therapeutic massage; Personality assessment services [mental health services]; Rental of medical and health care equipment; Health care relating to relaxation therapy; Professional consultancy relating to health care; Health care services for treating Alzheimer's disease; Health care services offered through a network of health care providers on a contract basis; Technical consultancy services relating to medical health; Provision of health care services in domestic homes; Medical treatment services provided by a health spa; Cosmetic body care services provided by health spas ; Preparation of reports relating to health care matters; Exercise facilities for health rehabilitation purposes (Provision of -); Beauty care services provided by a health spa; Health care services for assisting individuals to stop smoking; Health screening services in the field of asthma; Providing health care information via a global computer network ; Health screening services in the field of sleep apnea; Providing information in the field of health via a website; Advice relating to the personal welfare of elderly people [health]; Medical and health services relating to DNA, genetics and genetic testing; Medical testing; Medical counseling; Nursing, medical; Medical clinics; Medical screening; Medical services; Medical nursing; Medical examinations; Clinics (Medical -); Medical care; Medical counselling; Medical consultations; Medical consultation; Medical information; Medical assistance; Medication counseling; Medical treatment services; Clinic services (Medical -); Medical assistance services; Providing medical information; Medical tele-reporting

[medical services]; Smoking (Anti -) therapy; Anti-smoking therapy; Assisting individuals to stop smoking; Providing smoking cessation treatment services; Nutrition counseling; Beauty counselling; Psychological counselling; Genetic counseling; Psychological counseling; Nutrition counselling; Medical counseling services; Counselling relating to nutrition; Psychological counseling of staff; Dietetic counselling services [medical]; Counselling relating to diet; Medical counseling relating to stress; Counseling relating to occupational therapy; Counselling relating to occupational therapy; Lifestyle counseling and consultancy for medical purposes; Psychological counseling services in the field of sports; Individual medical counseling services provided to patients; Counselling relating to the psychological treatment of medical ailments; Counselling relating to the psychological relief of medical ailments.

### **UK3533915 “ETHICACBD”**

Class 3: Skin care preparations; make-up; moisturisers; body cleaning and beauty care preparations; cosmetics and cosmetic preparations; non-medicated topicals in the form of creams, foams, gels, lotions and ointments; herbal and plant extracts for cosmetic purposes; cosmetic kits; compacts containing make-up; sunscreen creams; hair treatment preparations; soaps and gels; perfumery and fragrances; nail polish; eyelashes; deodorants and antiperspirants; dentifrices and mouthwashes; natural essential oils; suntan oils (cosmetics); shampoos; hair conditioners; shampoo-conditioners; skin conditioners; household fragrances; fragrance preparations; scents; essential oils for use in air fresheners; essential oils.

Class 4: Candles; wicks; perfumed candles; tapers; bees wax.

Class 5: Pharmaceuticals and natural remedies; veterinary preparations; topical medication in the form of creams, foams, gels, lotions, and ointments; plant extracts for pharmaceutical purposes; dietary supplements; medicated shampoo; food supplements; medicated food supplements; dietary food supplements; food supplements for medical purposes; food supplements for veterinary use; food supplements in liquid form; digestible food supplements; health food supplements made principally of vitamins; health food supplements made principally of minerals; health food supplements for persons with special dietary requirements; air fresheners; air freshener refills; air freshener sprays; air deodorizing preparations.

Class 29: Fresh, preserved, tinned, chilled, frozen and cooked meat, fish, poultry and game; meat and fish extracts; seafood, crustaceans and molluscs; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs, milk and milk products; edible oils and fats; prepared meals and snacks made principally from meat, fish, seafood, molluscs, crustaceans, poultry or game; soups.

Class 30: Honeys; honey substitutes; herbal honey; herb sauces; herbal infusions; herbal teas; chocolate confectionary; confectionery; cakes; breads; syrups and treacles; coffee, tea, cocoa, sugar, tapioca, sago, artificial coffee; flour; preparations made from flour; preparations made from cereals; pastry; yeast, baking powder; spices.

Class 31: Raw and unprocessed agricultural, aquacultural, horticultural and forestry products; raw and unprocessed grains and seeds; unprocessed rice; fresh fruits and vegetables, fresh herbs; natural plants and flowers; foodstuffs for animals.

Class 32: Beers; soft drinks; mineral and aerated waters; non-alcoholic drinks; fruit drinks and fruit juices; syrups for making beverages; shandy, non-alcoholic beers and wines.

Class 33: Herb liqueurs; pre-mixed alcoholic beverages; alcoholic beverages (except beer); preparations for making alcoholic beverages.

Class 34: Smokers' articles; chemical flavourings in liquid form used to refill electronic cigarette cartridges; electronic cigarette liquid (e-liquid) comprised of flavourings in liquid form, other than essential oils, used to refill electronic cigarette cartridges; electronic cigarette liquid (e-liquid) comprised of propylene glycol; electronic cigarette liquid (e-liquid) comprised of vegetable glycerin; liquid nicotine solutions for use in electronic cigarettes; parts and fittings for all the aforesaid goods.


Class 35: Advertising, marketing and sales promotions; online ordering services; retail and wholesale services connected with the sale of skin care preparations, make-up, moisturisers, body cleaning and beauty care preparations, cosmetics and cosmetic preparations, non-medicated topicals in the form of creams, foams, gels, lotions and ointments, herbal and plant extracts for cosmetic purposes, cosmetic kits, compacts

containing make-up, sunscreen creams, hair treatment preparations, soaps and gels, perfumery and fragrances, nail polish, eyelashes, deodorants and antiperspirants, dentifrices and mouthwashes, natural essential oils, suntan oils (cosmetics), shampoos, hair conditioners, shampoo-conditioners, skin conditioners, household fragrances, fragrance preparations, scents, essential oils for use in air fresheners, essential oils, candles, wicks, perfumed candles, tapers, bees wax, pharmaceuticals and natural remedies, veterinary preparations, topical medication in the form of creams, foams, gels, lotions, and ointments, plant extracts for pharmaceutical purposes, dietary supplements, medicated shampoo, food supplements, medicated food supplements, dietary food supplements, food supplements for medical purposes, food supplements for veterinary use, food supplements in liquid form, digestible food supplements, health food supplements made principally of vitamins, health food supplements made principally of minerals, health food supplements for persons with special dietary requirements, air fresheners, air freshener refills, air freshener sprays, air deodorizing preparations, fresh, preserved, tinned, chilled, frozen and cooked meat, fish, poultry and game, meat and fish extracts, seafood, crustaceans and molluscs, preserved, frozen, dried and cooked fruits and vegetables, jellies, jams, compotes, eggs, milk and milk products, edible oils and fats, prepared meals and snacks made principally from meat, fish, seafood, molluscs, crustaceans, poultry or game, soups, honeys, honey substitutes, herbal honey, herb sauces, herbal infusions, herbal teas, chocolate confectionary, confectionery, cakes, breads, syrups and treacles, coffee, tea, cocoa, sugar, tapioca, sago, artificial coffee, flour, preparations made from flour, preparations made from cereals, pastry, yeast, baking powder, spices, raw and unprocessed agricultural, aquacultural, horticultural and forestry products, raw and unprocessed grains and seeds, unprocessed rice, fresh fruits and vegetables, fresh herbs, natural plants and flowers, foodstuffs for animals, beers, soft drinks, mineral and aerated waters, non-alcoholic drinks, fruit drinks and fruit juices, syrups for making beverages, shandy, non-alcoholic beers and wines, herb liqueurs, pre-mixed alcoholic beverages, alcoholic beverages (except beer), preparations for making alcoholic beverages, smokers' articles, chemical flavourings in liquid form used to refill electronic cigarette cartridges, electronic cigarette liquid (e-liquid) comprised of flavourings in liquid form, other than essential oils, used to refill electronic cigarette cartridges, electronic cigarette liquid (e-liquid) comprised of propylene glycol, electronic cigarette liquid (e-liquid) comprised of vegetable glycerin, liquid nicotine

solutions for use in electronic cigarettes, parts and fittings for the aforesaid goods; consultancy, information and advisory services relating to all the aforesaid services.

**ANNEX 2**


**INVALIDITY 505694 / UK3409784**

Contested trade mark	Grounds	Details of earlier sign	Contested goods/services
<p>3409784</p> <p>MEDICANNA</p> <p>Filed 26.6.19</p> <p>Registered 20.9.19</p>	<p>s. 5(4)(a)</p>	 <p>2015</p> <p>Pet food, pet care products, candles, food and health care vitamins/supplements essential oils/cannabis extraction systems, hydroponic systems, plastic trays and tanks</p>	<p>Class 5: Pharmaceuticals and natural remedies; veterinary preparations; dietary supplements; medicated shampoo; food supplements; medicated food supplements; dietary food supplements; food supplements for medical purposes; food supplements for veterinary use; food supplements in liquid form; health food supplements made principally of vitamins; health food supplements made principally of minerals; health food supplements for persons with special dietary requirements.</p> <p>Class 29: Fresh, preserved, tinned, chilled, frozen and cooked meat, fish, poultry and game; meat and fish extracts; seafood, crustaceans and molluscs; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs, milk and milk products; edible oils and fats; prepared meals and snacks made principally from meat, fish,</p>

			<p>seafood, molluscs, crustaceans, poultry or game; soups.</p> <p>Class 30: Honeys; honey substitutes; herbal honey; herb sauces; herbal infusions; herbal teas; chocolate confectionary; confectionery; cakes; breads; syrups and treacles; coffee, tea, cocoa, sugar, tapioca, sago, artificial coffee; flour; preparations made from flour; preparations made from cereals; pastry; yeast, baking powder; spices.</p> <p>Class 31: Raw and unprocessed agricultural, aquacultural, horticultural and forestry products; raw and unprocessed grains and seeds; unprocessed rice; fresh fruits and vegetables, fresh herbs; natural plants and flowers; foodstuffs for animals.</p> <p>Class 32: Beers; soft drinks; mineral and aerated waters; non-alcoholic drinks; fruit drinks and fruit juices; syrups for making beverages; shandy, non-alcoholic beers and wines.</p> <p>Class 33: Herb liqueurs; pre-mixed alcoholic beverages; alcoholic beverages (except beer); preparations for</p>
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			making alcoholic beverages.
	s. 3(1)(b)	-	All goods and services.
	s. 3(1)(c)	-	All goods and services.
	s. 3(3)(b)	-	All goods and services.

**INVALIDITY 505965 / UK918087033**

<b>Contested trade mark</b>	<b>Grounds</b>	<b>Details of earlier sign</b>	<b>Contested goods/services</b>
918087033  MEDICANNA  Filed 26.6.19  Registered 3.11.20	s. 5(4)(a)	  2015  Pet food, pet care products, candles, food products and health vitamins and supplements, essential oils, cannabis extraction hydroponic systems, plastic trays and tanks.	Class 5: Pharmaceuticals and natural remedies; veterinary preparations; dietary supplements; medicated shampoo; food supplements; medicated food supplements; dietary food supplements; food supplements for medical purposes; food supplements for veterinary use; food supplements in liquid form; health food supplements made principally of vitamins; health food supplements made principally of minerals; health food supplements for persons with special dietary requirements.  Class 29: Fresh, preserved, tinned, chilled, frozen and cooked meat, fish, poultry and game; meat and fish extracts; seafood, crustaceans and molluscs; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs, milk and milk products; edible oils and fats; prepared meals and snacks made principally from meat, fish, seafood, molluscs,


			<p>crustaceans, poultry or game; soups.</p> <p>Class 30: Honey; honey substitutes; herbal honey; herb sauces; herbal infusions; herbal teas; chocolate confectionary; confectionery; cakes; breads; syrups and treacles; coffee, tea, cocoa, sugar, tapioca, sago, artificial coffee; flour; preparations made from flour; preparations made from cereals; pastry; yeast, baking powder; spices.</p> <p>Class 31: Raw and unprocessed agricultural, aquacultural, horticultural and forestry products; raw and unprocessed grains and seeds; unprocessed rice; fresh fruits and vegetables, fresh herbs; natural plants and flowers; foodstuffs for animals.</p> <p>Class 32: Beers; soft drinks; mineral and aerated waters; non-alcoholic drinks; fruit drinks and fruit juices; syrups for making beverages; shandy, non-alcoholic beers and wines.</p> <p>Class 33: Herb liqueurs; pre-mixed alcoholic beverages; alcoholic beverages (except beer); preparations for making alcoholic beverages.</p>
	s. 5(4)(a)	<p>Medcann Studios</p> <p>2012</p> <p>Music recording desks, recording studios fixtures and fittings.</p>	<p>Class 35: Advertising, marketing and sales promotions; online ordering services; consultancy, information and advisory</p>

			services relating to all the aforesaid services. <sup>93</sup>
	s. 5(4)(a)	Medcann Studios Customs  2012  Music recording desks, recording studios fixtures and fittings.	Class 35: Advertising, marketing and sales promotions; online ordering services; consultancy, information and advisory services relating to all the aforesaid services.
	s. 5(4)(a)	Medcann  2012  Music recording desks, recording studio fixtures and fittings, political advertising and promotion of cannabis as a medication, music studio recording services, music studio recording desks, vinyl recording disks, nutraceuticals, vitamin supplements, dog foods, sanitisers, personal protective equipment including screens and masks	Class 35: Advertising, marketing and sales promotions; online ordering services; consultancy, information and advisory services relating to all the aforesaid services.
	s. 3(1)(b)	-	All goods and services.
	s. 3(1)(c)	-	All goods and services.
	s. 3(3)(b)	-	All goods and services.

**OPPOSITION 60002126 / UK3678902**

<b>Contested trade mark</b>	<b>Grounds</b>	<b>Details of earlier mark/sign</b>	<b>Contested goods/services</b>
3678902  Medicann  Filed 9.8.21	s. 5(2)(b)	3648759 MEDCANN  Filed 28.5.21  Registered 10.12.21	All goods and services.

<sup>93</sup> The form TM26(I) reads “consultancy, information and advisory services relating to all the aforesaid services of the Registrant’s class 25 services”. This must be a mistake, as the trade mark is not registered in class 25. The same mistake is repeated for all of the other bases of the passing off ground.

		Reliance: all goods and services in classes 5, 10, 31, 34 and 44	
	s. 5(4)(a)	<p>MEDCANN</p> <p>1998</p> <p>Political advertising and promotion of cannabis as medication; music studio recording services; music studio recording desks; vinyl recording discs; nutraceuticals; vitamin supplements; sanitizers; personal protective equipment including screens and masks, recording studio fittings, recordings studio furnishings, petfood products, pet vitamins, and pet care products, human vitamin supplements, medical device equipment, hydroponic systems, hydroponic trays, hydroponic tanks, pharmacy services, medicine cabinets, music studio desks, CAD drawings for microphones, cigarette papers, consulting on video production, marketing material content and advertising.</p>	All goods and services.
	s. 5(4)(a)	 <p>2015</p> <p>Pet food, pet care products, food and health vitamins/supplements, candles, cannabis extraction hydroponics,</p>	All goods and services. <sup>94</sup>

<sup>94</sup> The form TM7 indicates that classes 21 and 39 are not opposed. However, the specification does not include these classes.

		protective screens on wheels, personal protective equipment, personal protective clothing, spices, sweets and candies, cakes and biscuits.	
s. 5(4)(a)	MEDCANN STUDIOS 2006 Vinyl records		<p>“Advertising, marketing and sales promotions; online ordering services; consultancy, information and advisory services relating to all the aforesaid services of the Registered Proprietor’s class 35 services”.</p> <p>N.B. The contested specification does not include the above services.</p>
s. 5(4)(a)	MEDCANN STUDIO CUSTOMS 2012 Music recording desks, recording studios fixtures and fittings.		<p>“Advertising, marketing and sales promotions; online ordering services; consultancy, information and advisory services relating to all the aforesaid services of the Registered Proprietor’s class 35 services”.</p> <p>N.B. The contested specification does not include the above services.</p>
s. 3(1)(b)	-		All goods and services in the specification
s. 3(1)(c)	-		All goods and services in the specification
s. 3(3)(b)	-		All goods and services in the specification

## ANNEX 3

### NIMESH DAVE'S TRADE MARK

#### UK 3648759 "MEDCANN"

Class 3: **Cleaning preparations for vaporizers, electronic cigarettes, oral vaporizers for smoking**; Non-medicinal topical oils and cosmetic pastes, massage creams, massage oils, beauty creams, after-sun oils and creams, tanning oils and creams, aftershave creams, perfume oils, oils for perfumes and scents, almond oil, aromatherapy oils, face and body lotions, shaving preparations, face cream, bath additives and creams, sun creams and sunscreen creams, soaps for personal use, hair shampoo, makeup, hair tonics, bath oils and bath salts, hair oils, body oils, facial oils, skin tonics, skin creams, night creams, lip creams, skin lotions, lip care preparations, hair care preparations, non-medicated skin preparations; cosmetics; cosmetics for use on the skin; cosmetics in the form of milks, lotions, and emulsions; cosmetic oils; essential oils for personal use; cosmetic creams; cannabis-based, cannabis infused and cannabinoid-infused non-medicinal topical oils and cosmetic pastes, massage creams, massage oils, beauty creams, after-sun oils and creams, tanning oils and creams, aftershave creams, perfume oils, oils for perfumes and scents, almond oil, aromatherapy oils, face and body lotions, shaving preparations, face cream, bath additives and creams, sun creams and sunscreen creams, soaps for personal use, hair shampoo, makeup, hair tonics, bath oils and bath salts, hair oils, body oils, facial oils, skin tonics, skin creams, night creams, lip creams, skin lotions, lip care preparations, hair care preparations, non-medicated skin preparations; cannabis-based, cannabis infused and cannabinoid-infused cosmetics; cannabis-based, cannabis infused and cannabinoid infused cosmetics for use on the skin; cannabis-based, cannabis infused and cannabinoid-infused cosmetics in the form of milks, lotions, and emulsions; cannabis-based, cannabis infused and cannabinoid-infused cosmetic oils; cannabis-based, cannabis infused and cannabinoid-infused essential oils for personal use; cannabis-based, cannabis infused and cannabinoid-infused cosmetic creams.

Class 5: Pharmaceuticals, medical and veterinary preparations; sanitary preparations for medical purposes; dietetic food and substances adapted for medical or veterinary

use, food for babies; dietary supplements for human beings and animals; **plasters, materials for dressings; material for stopping teeth, dental wax;** disinfectants; preparations for destroying vermin; fungicides, **herbicides;** dietary and nutritional supplements; food supplements; **marijuana for medical purposes; pharmaceutical goods containing cannabis; dietary supplements and dietetic preparations containing cannabis oil; medical products containing cannabis; pharmaceutical and natural remedies containing cannabis; dietetic food preparations adapted for medical purposes, containing cannabis oil; cannabis oil derived from the hemp plant; cannabis oil capsules; cannabis infused topical creams, lotions, and balms for pain relief; preparations for use as additives to food for human consumption [medicated] with cannabis oil; preparations of vitamins with cannabis.**

Class 9: **Scientific, research, navigation, surveying, photographic, cinematographic, audiovisual, optical, weighing, measuring, signalling, detecting, testing, inspecting, life-saving and teaching apparatus and instruments; Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling the distribution or use of electricity; Apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data; Recorded and downloadable media, computer software, blank digital or analogue recording and storage media; Mechanisms for coin operated apparatus; Cash registers, calculating devices; Computers and computer peripheral devices; Diving suits, divers' masks, ear plugs for divers, nose clips for divers and swimmers, gloves for divers, breathing apparatus for underwater swimming; Fire-extinguishing apparatus; Firmware and software for electronic cigarette; electronic cigarette batteries; electronic cigarette chargers; electronic cigarette charging cases; portable chargers for electronic cigarettes and vaporizers USB cables; cables for connecting electronic cigarettes to mains electricity; adapters for charging electronic cigarettes; chargers for vaporizers; accessories for vaporisers, namely vaporizer batteries, chargers for vaporizers, USB chargers for vaporizers and portable charging cases for vaporizers; light emitting diodes; electrical resistance wire; smartphone applications for viewing and ordering products online; mobile applications for viewing and ordering products online;**

**electronic downloadable publications;** Downloadable mobile applications; mobile application software; downloadable software in the nature of a mobile application in the field of online retail, namely, for viewing and ordering products online; **helmets.**

Class 10: Surgical, medical, dental and veterinary apparatus and instruments; **Artificial limbs, eyes and teeth; Orthopaedic articles; Suture materials; Therapeutic and assistive devices adapted for persons with disabilities; Massage apparatus; Apparatus, devices and articles for nursing infants; Sexual activity apparatus, devices and articles;** Pharmaceutical devices, medical devices for use in electronic cigarettes; inhalers; electric vaporisers for administering steam inhalants; sprayers for medical purposes; spray bottles [vaporisers] for medical use; Medical devices for use in connection with smoking cessation; pharmaceutical devices, namely devices to aid in the cessation of smoking; medical devices, namely medical devices for human use including, but not limited to inhalators; apparatus used as an aid to help in the cessation of smoking; apparatus used as an aid to help in the cessation of smoking; **medical jars;** medical bottles.

Class 21: **Household or kitchen utensils and containers; Cookware and tableware, except forks, knives and spoons;** Combs and sponges; Brushes, except paintbrushes; **Brush-making materials; Articles for cleaning purposes; Unworked or semi-worked glass, except building glass; Glassware, porcelain and earthenware; Coffee cups; coffee mugs; coffee makers, non-electric; plunger-style coffee makers, non-electric; bottles; bowls; basins; butter dishes; butter-dish covers; ceramics for household purposes; crockery for household purposes; coasters, not of paper or textile; coffee services [tableware]; coffee filters, non-electric; coffeepots, non-electric; cookery moulds, cookery molds; cookie [biscuit] cutters; cookie jars;** cosmetic utensils; cosmetic spatulas; **drinking vessels; drinking bottles for sports; drinking glasses; droppers for household purposes; droppers for cosmetic purposes; flasks; fruit cups; glass jars [carboys]; glass stoppers; glass bowls; hip flasks; jugs, pitchers; menu card holders; mugs; place mats, not of paper or textile; pottery; signboards of porcelain or glass; soup bowls; sugar bowls; tablemats, not of paper or textile; tableware other than knives, forks and spoons; tea caddies; tea services [tableware]; tea infusers, tea balls; tea strainers; tea cosies; teapots; thermally**

insulated containers for food; thermally insulated containers for beverages; vessels of metal for making ices and iced drinks; single use coffee cups; cups; cups of paper or plastic; coffee cup lids; mugs; tea cups; coffee stirrers; tea infusers; bottles; jars; containers.

Class 25: Clothing; novelty clothing; men's wear; ladies' wear; printed clothing; sportswear; tennis shirts; teeshirts; polo shirts; pique shirts; golf shirts; shirt fronts; shirt-jacs; casual shirts; collared shirts; rugby shirts; dress shirts; turtleneck shirts; woven shirts; yoga shirts; hunting shirts; fishing shirts; knit shirts; aloha shirts; camouflage shirts; sports shirts; sports shirts with short sleeves; sports over uniforms; sports socks; sports vests; sports jerseys; sports singlets; underwear and undergarments; knitted articles of clothing; lingerie; vests; tops; printed t-shirts; short-sleeved or long-sleeved t-shirts; hoodies; aprons; cleaning apron; cooking apron; chef ware; jackets; blouson jackets; casual jackets; riding jackets; waterproof jackets; sleeved jackets; sleeveless jackets; fishing jackets; dinner jackets; windproof jackets; leather jackets; heavy jackets; knit jackets; suede jackets; motorcycle jackets; bed jackets; long jackets; down jackets; coats; outdoor coats; house coats; evening coats; sheepskin coats; tail coats; cotton coats; top coats; fur coats; leather coats; rain coats; morning coats; dust coats; wind coats; ties; neckties; waterproof and water-resistant clothing; rainwear; suits; swimwear; wristbands; ear muffs; gloves and mittens; socks; stockings and hosiery; chaps; kerchiefs; roll necks; shorts; trousers; jeans; belts; jogging bottoms; slippers; body warmers; pants; camisoles; nappy pants; ski pants; jogging pants; dress pants; dresses; cowls; denims; slips; veils; muffs; boas; furs; gabardines; layettes; combinations; ties; drawers; corsets; hats; footwear; sports footwear; ladies' footwear; beach footwear; infants' footwear; casual footwear; leisure footwear; pumps; trainers; uppers; heelpieces for footwear; welts for footwear; tips for footwear; insoles for footwear; soles for footwear; inner socks for footwear; footwear made of wood; fittings of metal for footwear; non-slipping devices for footwear; headgear; sports headgear; peaked headwear; headbands; bonnets; visors; sun visors; sports caps; children's headwear; laboratory coats.

Class 30: Coffee, tea, cocoa and artificial coffee; Rice, pasta and noodles; Tapioca and sago; Flour and preparations made from cereals; Bread, pastries and confectionery; Chocolate; Ice cream, sorbets and other edible ices; Sugar, honey, treacle; Yeast, baking-powder; Salt, seasonings, spices, preserved herbs; Vinegar, sauces and other condiments; **Ice**; Coffee; coffee beverages with milk, coffee-based beverages, including beverages flavoured with cannabis; coffee beans; ground coffee; instant coffee; tea; tea-based beverages, including beverages flavoured with cannabis; iced tea; instant tea; tea leaves; tea bags; chocolate-based beverages, including beverages flavoured with cannabis; chocolate beverages with milk, pastries; chocolate; confectionery, not including popcorn; cereal bars; cereal preparations; snack foods consisting principally of confectionery, cereal bars, energy bars, corn chips; sandwiches; cocoa beverages with milk, cocoa-based beverages, including beverages flavoured with cannabis; **coffee flavourings**; biscuits, cookies; cakes; unroasted coffee; **flavourings, other than essential oils, for beverages; coffee oils; food flavourings other than essential oils.**

Class 31: Raw and unprocessed agricultural, horticultural and forestry products; raw and unprocessed grains and seeds; fresh fruits, vegetables, fresh herbs; dried herbs for decoration; foodstuffs for animals containing herbal extracts; natural plants and flowers; seedlings and seeds for planting; foodstuffs and beverages for animals; **cannabis, unprocessed; unprocessed cannabis in its various forms, including live cannabis plants, cannabis seeds, fresh cannabis, dried cannabis, cannabis strains; foodstuff and beverages for animals containing, mixed or flavoured with cannabis or cannabis derivatives.**

Class 32: Beers; non-alcoholic beverages; mineral and aerated waters; fruit beverages and fruit juices; syrups and other non-alcoholic preparations for making beverages; carbonated soft drinks, and energy drinks; cannabis or cannabis derivatives infused beer; beer containing cannabis or cannabis derivatives as an ingredient; non-alcoholic beverages flavoured or infused with cannabis or cannabis derivatives; mineral and aerated waters flavoured or infused with cannabis or cannabis derivatives; fruit beverage and fruit juices containing cannabis or cannabis derivatives; energy drinks with cannabis or cannabis derivatives; beer and soft drinks, containing cannabis seed extract or mature cannabis stem extract.

Class 34: Tobacco and tobacco substitutes; Cigarettes and cigars; Electronic cigarettes and oral vaporizers for smokers; Smokers' articles; Matches; Vaporizers; USB rechargeable pen vaporizers; recyclable pen vaporizers; Cannabidiol oil; dried marijuana and cannabis; dried cannabis flower; pre-rolled joints; ashtrays; dab mats; grinders for dried cannabis; cigarette paper; cigarette filters; lighters; matches; machines for rolling cigarettes; cigarette cases; tobacco tins and tobacco pouches; CO2 Honey oil; Bongs; Dab rigs; hand pipes, water pipes, hookahs, nebulizers, atomizers; marijuana and cannabis extracts for smoking, namely, tinctures, oils, juice, powder, hashish, resins, shatter, wax, concentrate, rosin, live resin rumble, budder.

Class 35: Advertising; business management; business administration; office functions; dissemination of advertising for other via computer networks; advertising consultation services; advertising for others; providing online advertising on computer networks; providing of advertising space; advertising time and advertising media; information about advertising; development of advertising flyers; creation and placement of advertisements for others; radio and television advertising; radio advertising; design of advertising materials for others; advertising services for tracking advertising performance, for managing, distributing and serving advertising, for analysing advertising data, for reporting advertising data, and for optimizing advertising performance; dissemination of advertising; **business analysis**; business assistance; business management and administrative services; business information; marketing services; marketing and sales promotion; database marketing; event marketing; marketing over the internet; market research services; provision of market research information; **retail and online retail in relation to the sale of chemicals for use in industry, science and photography, as well as in agriculture, horticulture and forestry, unprocessed artificial resins, unprocessed plastics, fire extinguishing and fire prevention compositions, tempering and soldering preparations, substances for tanning animal skins and hides, adhesives for use in industry, putties and other paste fillers, compost, manures, fertilizers, biological preparations for use in industry and science, paints, varnishes, lacquers, preservatives against rust and against deterioration of wood, colorants, dyes, inks for printing, marking and engraving, raw natural resins, metals in foil and powder form for use in painting, decorating, printing and art, cleaning preparations for vaporizers, electronic cigarettes, oral vaporizers for smoking,**

non-medicinal topical oils and cosmetic pastes, massage creams, massage oils, beauty creams, after-sun oils and creams, tanning oils and creams, aftershave creams, perfume oils, oils for perfumes and scents, almond oil, aromatherapy oils, face and body lotions, shaving preparations, face cream, bath additives and creams, sun creams and sunscreen creams, soaps for personal use, hair shampoo, makeup, hair tonics, bath oils and bath salts, hair oils, body oils, facial oils, skin tonics, skin creams, night creams, lip creams, skin lotions, lip care preparations, hair care preparations, nonmedicated skin preparations, cosmetics, cosmetics for use on the skin, cosmetics in the form of milks, lotions, and emulsions, cosmetic oils, essential oils for personal use, cosmetic creams, cannabis based, cannabis infused and cannabinoid-infused non-medicinal topical oils and cosmetic pastes, massage creams, massage oils, beauty creams, after-sun oils and creams, tanning oils and creams, aftershave creams, perfume oils, oils for perfumes and scents, almond oil, aromatherapy oils, face and body lotions, shaving preparations, face cream, bath additives and creams, sun creams and sunscreen creams, soaps for personal use, hair shampoo, makeup, hair tonics, bath oils and bath salts, hair oils, body oils, facial oils, skin tonics, skin creams, night creams, lip creams, skin lotions, lip care preparations, hair care preparations, non-medicated skin preparations, cannabis-based, cannabis infused and cannabinoid-infused cosmetics, cannabis-based, cannabis infused and cannabinoid-infused cosmetics for use on the skin, cannabis-based, cannabis infused and cannabinoid-infused cosmetics in the form of milks, lotions, and emulsions, cannabis-based, cannabis infused and cannabinoid-infused cosmetic oils, cannabis-based, cannabis infused and cannabinoid infused essential oils for personal use, cannabis-based, cannabis infused and cannabinoid-infused cosmetic creams, **industrial oils and greases, wax, lubricants, dust absorbing, wetting and binding compositions**, fuels and illuminants, candles and wicks for lighting, pharmaceuticals, medical and veterinary preparations, sanitary preparations for medical purposes, dietetic food and substances adapted for medical or veterinary use, food for babies, dietary supplements for human beings and animals, plasters, materials for dressings, material for stopping teeth, dental wax, disinfectants, preparations for destroying vermin, fungicides, **herbicides**, dietary and nutritional supplements, food supplements, **marijuana for medical purposes, pharmaceutical goods containing cannabis, dietary supplements and dietetic preparations containing cannabis oil, medical products containing cannabis, pharmaceutical**

**and natural remedies containing cannabis, dietetic food preparations adapted for medical purposes, containing cannabis oil, cannabis oil derived from the hemp plant, cannabis oil capsules, cannabis infused topical creams, lotions, and balms for pain relief, preparations for use as additives to food for human consumption [medicated] with cannabis oil, preparations of vitamins with cannabis, common metals and their alloys, ores, metal materials for building and construction, transportable buildings of metal, non-electric cables and wires of common metal, small items of metal hardware, metal containers for storage or transport, safes, machines, machine tools, power-operated tools, motors and engines, except for land vehicles, machine coupling and transmission components, except for land vehicles, agricultural implements, other than hand-operated hand tools, incubators for eggs, automatic vending machines, hand tools and implements, hand-operated, cutlery, side arms, except firearms, razors, scientific, research, navigation, surveying, photographic, cinematographic, audiovisual, optical, weighing, measuring, signalling, detecting, testing, inspecting, life-saving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling the distribution or use of electricity, apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data, recorded and downloadable media, computer software, blank digital or analogue recording and storage media, mechanisms for coin-operated apparatus, cash registers, calculating devices, computers and computer peripheral devices, diving suits, divers' masks, ear plugs for divers, nose clips for divers and swimmers, gloves for divers, breathing apparatus for underwater swimming, fire extinguishing apparatus: firmware and software for electronic cigarette, electronic cigarette batteries, electronic cigarette chargers, electronic cigarette charging cases, portable chargers for electronic cigarettes and vaporizers usb cables, cables for connecting electronic cigarettes to mains electricity, adapters for charging electronic cigarettes, chargers for vaporizers, accessories for vaporisers, namely vaporizer batteries, chargers for vaporizers, usb chargers for vaporizers and portable charging cases for vaporizers, light emitting diodes, electrical resistance wire, smartphone applications for viewing and ordering products online, mobile applications for viewing and ordering products online, electronic downloadable publications, downloadable**

**mobile applications, mobile application software, downloadable software in the nature of a mobile application in the field of online retail, namely, for viewing and ordering products online, surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth, orthopaedic articles, suture materials, therapeutic and assistive devices adapted for persons with disabilities, massage apparatus, apparatus, devices and articles for nursing infants, sexual activity apparatus, devices and articles, pharmaceutical devices, medical devices for use in electronic cigarettes, inhalers, electric vaporisers for administering steam inhalants, sprayers for medical purposes, spray bottles [vaporisers] for medical use, medical devices for use in connection with smoking cessation, pharmaceutical devices, namely devices to aid in the cessation of smoking, medical devices, namely medical devices for human use including, but not limited to inhalators, apparatus used as an aid to help in the cessation of smoking, apparatus used as an aid to help in the cessation of smoking, medical jars, medical bottles, apparatus and installations for lighting, heating, cooling, steam generating, cooking, drying, ventilating, water supply and sanitary purposes, vehicles, apparatus for locomotion by land, air or water, firearms, ammunition and projectiles, explosives, fireworks, precious metals and their alloys, jewellery, precious and semi-precious stones, horological and chronometric instruments, musical instruments, music stands and stands for musical instruments, conductors' batons, paper and cardboard, printed matter, bookbinding material, photographs, stationery and office requisites, except furniture, adhesives for stationery or household purposes, drawing materials and materials for artists, paintbrushes, instructional and teaching materials, plastic sheets, films and bags for wrapping and packaging, printers' type, printing blocks, unprocessed and semi-processed rubber, gutta-percha, gum, asbestos, mica and substitutes for all these materials, plastics and resins in extruded form for use in manufacture, packing, stopping and insulating materials, flexible pipes, tubes and hoses, not of metal, leather and imitations of leather, animal skins and hides, luggage and carrying bags, umbrellas and parasols, walking sticks, whips, harness and saddlery, collars, leashes and clothing for animals, materials, not of metal, for building and construction, rigid pipes, not of metal, for building, asphalt, pitch, tar and bitumen, transportable buildings, not of metal, monuments, not of metal, furniture, mirrors, picture frames, containers, not of metal, for storage or transport, unworked or semi-**

worked bone, horn, whalebone or mother-of-pearl, shells, meerschaum, yellow amber, household or kitchen utensils and containers, cookware and tableware, except forks, knives and spoons, combs and sponges, brushes, except paintbrushes, brush-making materials, articles for cleaning purposes, unworked or semi-worked glass, except building glass, glassware, porcelain and earthenware, coffee cups, coffee mugs, coffee makers, non-electric, plunger-style coffee makers, non-electric, bottles, bowls, basins, butter dishes, butter-dish covers, ceramics for household purposes, crockery for household purposes, coasters, not of paper or textile, coffee services [tableware], coffee filters, nonelectric, coffeepots, non-electric, cookery moulds, cookery molds, cookie [biscuit] cutters, cookie jars, cosmetic utensils, cosmetic spatulas, drinking vessels, drinking bottles for sports, drinking glasses, droppers for household purposes, droppers for cosmetic purposes, flasks, fruit cups, glass jars [carboys], glass stoppers, glass bowls, hip flasks, jugs, pitchers, menu card holders, mugs, place mats, not of paper or textile, pottery, signboards of porcelain or glass, soup bowls, sugar bowls, tablemats, not of paper or textile, tableware other than knives, forks and spoons, tea caddies, tea services [tableware], tea infusers, tea balls, tea strainers, tea cosies, teapots, thermally insulated containers for food, thermally insulated containers for beverages, vessels of metal for making ices and iced drinks, single use coffee cups, cups, cups of paper or plastic, coffee cup lids, mugs, tea cups, coffee stirrers, tea infusers, bottles, jars, containers, household or kitchen utensils and containers, cookware and tableware, except forks, knives and spoons, combs and sponges, brushes, except paintbrushes, brush-making materials, articles for cleaning purposes, unworked or semiworked glass, except building glass, glassware, porcelain and earthenware, ropes and string, nets, tents and tarpaulins, awnings of textile or synthetic materials, sails, sacks for the transport and storage of materials in bulk, padding, cushioning and stuffing materials, except of paper, cardboard, rubber or plastics, raw fibrous textile materials and substitutes therefor, yarns and threads, for textile use, textiles and substitutes for textiles, household linen, curtains of textile or plastic, clothing, novelty clothing, men's wear, ladies' wear, printed clothing, sportswear, tennis shirts, tee-shirts, polo shirts, pique shirts, golf shirts, shirt fronts, shirt-jacs, casual shirts, collared shirts, rugby shirts, dress shirts, turtleneck shirts, woven shirts, yoga shirts,

hunting shirts, fishing shirts, knit shirts, aloha shirts, camouflage shirts, sports shirts, sports shirts with short sleeves, sports over uniforms, sports socks, sports vests, sports jerseys, sports singlets, underwear and undergarments, knitted articles of clothing, lingerie, vests, tops, printed t-shirts, short-sleeved or long-sleeved t-shirts, hoodies, aprons, cleaning apron, cooking apron, chef ware, jackets, blouson jackets, casual jackets, riding jackets, waterproof jackets, sleeved jackets, sleeveless jackets, fishing jackets, dinner jackets, windproof jackets, leather jackets, heavy jackets, knit jackets, suede jackets, motorcycle jackets, bed jackets, long jackets, down jackets, coats, outdoor coats, house coats, evening coats, sheepskin coats, tail coats, cotton coats, top coats, fur coats, leather coats, rain coats, morning coats, dust coats, wind coats, ties, neckties, waterproof and water-resistant clothing, rainwear, suits, swimwear, wristbands, ear muffs, gloves and mittens, socks, stockings and hosiery, chaps, kerchiefs, roll necks, shorts, trousers, jeans, belts, jogging bottoms, slipovers, body warmers, pants, camisoles, nappy pants, ski pants, jogging pants, dress pants, dresses, cowls, denims, slips, veils, muffs, boas, furs, gabardines, layettes, combinations, ties, drawers, corsets, hats, footwear, sports footwear, ladies' footwear, beach footwear, infants' footwear, casual footwear, leisure footwear, pumps, trainers, uppers, heelpieces for footwear, welts for footwear, tips for footwear, insoles for footwear, soles for footwear, inner socks for footwear, footwear made of wood, fittings of metal for footwear, non-slipping devices for footwear, headgear, sports headgear, peaked headwear, headbands, helmets, bonnets, visors, sun visors, sports caps, children's headwear, laboratory coats, lace, braid and embroidery, and haberdashery ribbons and bows, buttons, hooks and eyes, pins and needles, artificial flowers, hair decorations, false hair, carpets, rugs, mats and matting, linoleum and other materials for covering existing floors, wall hangings, not of textile, games, toys and playthings, video game apparatus, gymnastic and sporting articles, decorations for Christmas trees, meat, fish, poultry and game, meat extracts, preserved, frozen, dried and cooked fruits and vegetables, jellies, jams, compotes, eggs, milk, cheese, butter, yogurt and other milk products, oils and fats for food, coffee, tea, cocoa and artificial coffee, rice, pasta and noodles, tapioca and sago, flour and preparations made from cereals, bread, pastries and confectionery, chocolate, ice cream, sorbets and other edible ices, sugar, honey, treacle, yeast,

baking-powder, salt, seasonings, spices, preserved herbs, vinegar, sauces and other condiments, ice, coffee, coffee beverages with milk, coffee-based beverages, including beverages flavoured with cannabis, coffee beans, ground coffee, instant coffee, tea, tea-based beverages, including beverages flavoured with cannabis, iced tea, instant tea, tea leaves, tea bags, chocolate-based beverages, including beverages flavoured with cannabis, chocolate beverages with milk, pastries, chocolate, confectionery, not including popcorn, cereal bars, cereal preparations, snack foods consisting principally of confectionery, cereal bars, energy bars, corn chips, sandwiches, cocoa beverages with milk, cocoa-based beverages, including beverages flavoured with cannabis, coffee flavourings, biscuits, cookies, cakes, unroasted coffee, flavourings, other than essential oils, for beverages, coffee oils, food flavourings other than essential oils, raw and unprocessed agricultural, horticultural and forestry products, raw and unprocessed grains and seeds, fresh fruits, vegetables, fresh herbs, dried herbs for decoration, foodstuffs for animals containing herbal extracts, natural plants and flowers, seedlings and seeds for planting, foodstuffs and beverages for animals, **cannabis, unprocessed, unprocessed cannabis in its various forms, including live cannabis plants, cannabis seeds, fresh cannabis, dried cannabis, cannabis strains, foodstuff and beverages for animals containing, mixed or flavoured with cannabis or cannabis derivatives**, beers, non-alcoholic beverages, mineral and aerated waters, fruit beverages and fruit juices, syrups and other non-alcoholic preparations for making beverages, carbonated soft drinks, and energy drinks, cannabis or cannabis derivatives infused beer, beer containing cannabis or cannabis derivatives as an ingredient, non-alcoholic beverages flavoured or infused with cannabis or cannabis derivatives, mineral and aerated waters flavoured or infused with cannabis or cannabis derivatives, fruit beverage and fruit juices containing cannabis or cannabis derivatives, energy drinks with cannabis or cannabis derivatives, beer and soft drinks, containing cannabis seed extract or mature cannabis stem extract, alcoholic beverages, except beers, alcoholic preparations for making beverages, tobacco and tobacco substitutes, cigarettes and cigars, electronic cigarettes and oral vaporizers for smokers, smokers' articles, matches, vaporizers, usb rechargeable pen vaporizers, recyclable pen vaporizers, cannabidiol oil, dried marijuana and cannabis, dried cannabis flower, pre-rolled joints, ashtrays, dab mats, grinders for dried cannabis, cigarette paper, cigarette filters, lighters, matches, machines for rolling cigarettes, cigarette cases, tobacco tins and tobacco pouches,

co2 honey oil, bongs, dab rigs, hand pipes, water pipes, hookahs, nebulizers, atomizers, marijuana and cannabis extracts for smoking, namely, tinctures, oils, juice, powder, hashish, resins, shatter, wax, concentrate, rosin, live resin rumble, budder.

**Class 36: Financial, monetary and banking services; Insurance services; Real estate affairs; Financial investment in companies in the healthcare industry, the veterinary industry, the medicinal marijuana industry, the cannabis industry and high-technology industry; Distribution of dividends, profits, capital gains, cash and securities from businesses in the healthcare industry, the medicinal marijuana industry, the cannabis industry and high-technology industry, namely capital investments; Financial consultancy; Financial sponsorship; Investment of funds.**

**Class 37: Repair of commercial and industrial machinery; Installation of industrial machinery; Installation, repair and maintenance of surveillance and control systems for industrial plants and utility plants; installation, repair and maintenance of surveillance and control installations for industrial plants and utility plants; installation, repair and maintenance of computer hardware for surveilling and controlling industrial plants and utility plants.**

**Class 39: Transport; Packaging and storage of goods; delivery services; distribution services relating to cannabis related products.**

**Class 41: Educational services and patient educational services, namely, audio, visual and print materials, seminars, workshops, classes and training sessions all in the field of medicinal marijuana and cannabis; Educational demonstrations in the field of growing plants, workshops and seminars in the fields of horticulture; Providing a website providing educational information in the field of medical marijuana and cannabis; Education and training services pertaining the sale and selection of medical cannabis and cannabis products for medical uses; Providing medical education in the field of medical cannabis and cannabis products for medical uses; Providing an educational website featuring the ratings, reviews and recommendations on marijuana and medical marijuana products, the indications and effects of particular cannabis strains, the benefits of medical marijuana and cannabis products for medical use; Providing an**

**educational website featuring research in the field of medical marijuana and cannabis products for medical purposes; Education and training services pertaining to cannabis in the veterinary and animal care industries; Arranging and conducting of workshops, conferences, congresses, educational forums, and seminars; Organization of exhibitions for cultural or educational purposes; Practical training in the field of medical marijuana and cannabis.**

Class 42: Research services; **medical device research and development services; medical research services; medical and pharmacological research services; medical therapy research and development services; drug research and development services; biological research, clinical research and medical research; scientific research for medical purposes; providing medical and scientific research information in the field of medical devices; pharmaceuticals and clinical trials; provision of information and data relating to medical research and development; scientific investigations for medical purposes;** design services; design and development of questionnaires, opinion polls and surveys; **design and development of medical devices;** product design and development; design consultancy; product design and development consultation; technical consultancy relating to product development; analysis and evaluation of product development; research and development of products; design and testing for product development; providing information in the field of product development; scientific and technological services and research and design relating thereto; **industrial analysis, industrial research and industrial design services; quality control and authentication services; design and development of computer hardware and software.**

Class 43: Services for providing food and drink; **Temporary accommodation;** Restaurant, cafe and coffee shop services; services for the provision of food and drink, bar services, café services, cafeteria services, cake decorating, decorating of food, food and drink catering, snack-bar services, services for the provision of food and drink with CBD supplements, services for the provision of food and drink with cannabidiol supplements, services for the provision of food and drink with hemp supplements.

Class 44: Medical services; therapeutic, pharmaceutical and naturopathic advisory services; provision of information on therapeutic, pharmaceutical and naturopathic

medicines; medical analysis services; healthcare advisory services; providing health information; information services relating to health care; **provision of health information in relation to the medicinal benefits of cannabidiol**; medical therapy to aid individuals in the cessation of smoking; Agriculture, aquaculture, horticulture and forestry services; **Cultivating and growing of cannabis, cannabis products and medical marijuana and medical marijuana products.**