

O/0480/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NUMBER 3996826

BY SWIFT SURGICAL LIMITED

TO REGISTER THE FOLLOWING TRADE MARK:

Swift Surgical

IN CLASSES 1, 5, 9, 10, 11, 35 AND 44

AND

THE OPPOSITION THERETO UNDER NUMBER 600003345

BY EMBLATION LTD

Background and pleadings

1. On 29 December 2023, Swift Surgical Limited (“the applicant”) applied to register the trade mark “Swift Surgical” in the UK.¹ It was accepted and published in the Trade Marks Journal on 22 March 2024 in respect of goods and services in classes 1, 5, 9, 10, 11, 35 and 44.²

2. On 21 June 2024, Emblation Ltd (“the opponent”) opposed the trade mark under the Fast Track opposition procedure, based upon Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). This is on the basis of its earlier UK trade marks:

1. SWIFT USA

SWIFTUSA

SWIFT-USA

(series of three)

(“the opponent’s first mark”)

UK registration number: UK00003942066

Filing date: 4 August 2023

Registration date: 12 January 2024

2. SWIFT LITE

SWIFTLITE

SWIFT-LITE

(series of three)

(“the opponent’s second mark”)

¹ On 10 August 2024, the applicant was changed by way of assignment from Signature Global Holdings Limited to Swift Surgical Limited.

² See annex for goods and services.

UK registration number: UK00003942078

Filing date: 4 August 2023

Registration date: 12 January 2024

3. The opponent relies on all the goods and services for which the marks are registered.³

4. By virtue of their earlier filing dates, the above registrations constitute earlier marks in accordance with section 6 of the Act. In accordance with section 6A of the Act, the earlier marks are not subject to proof of use. The opponent may therefore rely upon all the goods and services for which the marks are registered.

5. Under section 5(2)(b), the opponent claims that the respective goods are identical or highly similar and that the marks are similar, and that, as such, there will be a likelihood of confusion between the marks.

6. The applicant filed a counterstatement in which they acknowledge that some of the goods and services may be similar, but that the differences in the marks result in no confusion between the marks.

7. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but provides that Rule 20(4) shall continue to apply. Rule 20(4) states that: "(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit." The net effect of these changes is to require the parties to seek leave in order to file evidence in fast track oppositions. However, no leave was sought to file any evidence in respect of these proceedings.

8. Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken. An oral hearing was not requested in this instance, and neither party filed written submissions.

³ See annex for goods and services.

9. The opponent is represented by Cloch Solicitors. The applicant is represented by Trademark Eagle Limited.

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

Decision

Section 5(2)(b)

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

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

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

Section 5A

12. Section 5A of the Act is as follows:

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

The principles

13. The following principles are gleaned from the decisions of the Court of Justice of the European Union (“CJEU”) in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik*

Meyer & Co GmbH v Klijsen Handel B.V., Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

The principles

- (a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the Page 5 of 17 imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods

14. In comparing the respective specifications, all relevant factors should be considered, as per *Canon*, where the CJEU stated at paragraph 23 of its judgment:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary.”

15. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

- a. The respective uses of the respective goods or services;
- b. The respective users of the respective goods or services;
- c. The physical nature of the goods or acts of service;
- d. The respective trade channels through which the goods or services reach the market;

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

16. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court stated that:

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

17. In *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that:

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

18. Further, in *Kurt Hesse v OHIM*,⁴ the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*,⁵ the General Court (“GC”) stated that “complementary” means: “...there is close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking.”

19. The goods to be compared are shown in the annex after this decision.

20. In their submissions, the opponent argues as follows:

“The competing goods/services in question are identical or highly similar, and likely flow through the same channels to the same market(s). The scope for confusion is live and large.”

21. The applicant’s counterstatement acknowledges that some of the goods and services may be regarded as similar, but submits that there is no or little likelihood of confusion due to the differences between the marks. The applicant acknowledges that there is some similarity between their goods and services in classes 10, 35 and 44 and the opponent’s goods and services in the same classes.

Class 1

Diagnostic chemicals [other than for medical or veterinary use]; Bactericides [other than for medical and veterinary use]; Inoculants [other than for medical or veterinary use]; Chemicals for use in pathology [other than medical and veterinary]; Enzymes [other than for medical or veterinary use]; Bacterial products [other than for medical and veterinary use]

22. The above goods cover a range of chemicals and biological material that are for uses other than medical or veterinary. I see no obvious reason why such goods would overlap with or have similarity to any the opponent’s goods, none of which relate to chemical and biological material, whether for medical or veterinary use, or otherwise.

⁴ Case C-50/15 P

⁵ Case T-325/06

In the absence of any evidence or arguments from the opponent regarding this matter, I find the above goods to be dissimilar to the opponent's goods.

Class 5

Medical and surgical dressings; Dressings, medical; Medical dressings; Dressings (Surgical -); Surgical dressings; Medical wound dressings; Surgical bandages; Medical dressings, coverings and applicators; Surgical plasters; Medical plasters; Bandages for dressings; Eye bandages for medical use; Plasters for medical purposes; Gauzes for use as dressings; Compression bandages [dressings]; Plasters [dressings]; Dressings for wounds; Materials for dressings; Adhesive plasters for medical purposes

23. The above goods are all medical and surgical dressings. These goods are considered most similar to the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'. The above goods are not considered to fall under the scope of apparatus and instruments, but they are also medical equipment of sorts, often for use alongside the apparatus and instruments and during surgical and medical treatment and procedures. Whilst their specific purpose therefore differs, more broadly there will be an overlap on this basis. Their users also overlap as both would be used by medical professionals, as well as members of the general public for first aid treatment and procedures. Their nature differs as the above goods are typically flexible material in strips, while the opponent's goods are tools and machines, most likely manufactured from plastic and metal. Their trade channels overlap as both can be purchased through pharmacies by the general public and through medical wholesalers to hospitals and medical practices, and health boards more generally. There is no competition or complementarity between the goods. Overall, I find a medium level of similarity between the above goods and the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'.

Medical preparations; Pharmaceutical preparations for medical purposes; Preparations of microorganisms for medical and veterinary use; Analgesics for medical use; Bacterial preparations for medical and veterinary use; Dietetic products for medical purposes; Medical preparation for slimming purposes; Pharmaceutical preparations for ocular or intraocular surgery; Medical infusions; Therapeutic creams

[medical]; Emollients for medical purposes; Balms for medical purposes; Scrubs [preparations] for medical use; Medical mouthwashes; Anesthetics for surgical use

24. The above goods are all medical preparations. These goods are considered most similar to the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'. The above goods are not considered to fall under the scope of apparatus and instruments, but they are also for use in medical treatments. Whilst their specific purpose therefore differs, more broadly there will be an overlap on this basis. Their users also overlap as both would be used by medical professionals, as well as members of the general public for first aid treatment and procedures. Their nature differs as the above goods are balms, tablets and liquids, while the opponent's goods are tools and machines most likely manufactured from plastic and metal. Their trade channels overlap as both can be purchased through pharmacies to the general public and through medical wholesalers to hospitals and medical practices, and health boards more generally. There is no competition or complementarity between the goods. Overall, I find a low to medium level of similarity between the above goods and the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'.

Diagnostic preparations for medical and veterinary use; Diagnostic preparations for medical or veterinary purposes; Diagnostic preparations for medical purposes; Diagnostic preparations for medical purposes used by medical laboratories; Reagents and media for medical and veterinary diagnostic purposes; Diagnostic preparations for veterinary use; Medical diagnostic reagents; Clinical medical reagents;

25. The above goods are all diagnostic preparations. These goods are considered most similar to the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'. The above goods are not considered to fall under the scope of apparatus and instruments, but they are for use in diagnostic testing during medical treatment and procedures. Whilst their specific purpose therefore differs, more broadly there will be an overlap on this basis. Their users also overlap as both would be used by medical professionals. Their nature differs as the above goods are likely to be liquids or powders added to samples for diagnosing conditions, while the opponent's goods are tools and machines most likely manufactured from plastic and metal. Their trade channels overlap as both can be purchased through medical wholesalers to hospitals and medical practices, and health boards more generally. There is no competition or

complementarity between the goods. Overall, I find a low to medium level of similarity between the above goods and the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'.

Implants (Surgical -) [living tissues]

26. The above goods are living tissue implants used during surgical procedures. These goods are considered most similar to the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'. The above goods are not considered to fall under the scope of apparatus and instruments, but they are for use during surgical and medical treatment and procedures. Whilst their specific purpose therefore differs, more broadly there will be an overlap on this basis. Their users also overlap as both would be used by medical professionals. Their nature differs as the above goods are living tissues, while the opponent's goods are tools and machines most likely manufactured from plastic and metal. Their trade channels will likely overlap as both may be purchased through medical wholesalers to hospitals and medical practices, and health boards more generally. As far as I am aware there is no competition or complementarity between the goods, and I have no evidence on this point. Overall, I find a medium level of similarity between the above goods and the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'.

Greases for medical or veterinary purposes; Surgical tape; Surgical spirits; Surgical glues; Tampons for medical purposes

27. These goods are considered most similar to the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'. The above goods are not considered to fall under the scope of apparatus and instruments, but they are also medical equipment of sorts, often for use alongside the apparatus and instruments and during surgical and medical treatment and procedures. Their purpose therefore broadly overlaps. Their users also overlap as both would be used by medical professionals. Their nature differs as the above goods are liquids, pastes, cotton material and flexible material, while the opponent's goods are tools and machines most likely manufactured from plastic and metal. Their trade channels overlap as both can be purchased through pharmacies by the general public, as well as through medical wholesalers to hospitals and medical practices, and health boards more

generally. There is no competition or complementarity between the goods. Overall, I find a medium level of similarity between the above goods and the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'.

Surgical dyes; Bone cement for surgical and orthopedic purposes; Bone cement for surgical and orthopaedic purposes

28. These goods are considered most similar to the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'. The above goods are not considered to fall under the scope of apparatus and instruments, but they are for use during surgical and medical treatment and procedures. Whilst their specific purpose therefore differs, more broadly there will be an overlap on this basis. Their users also overlap as both would be used by medical professionals. Their nature differs as the above goods are liquids and pastes, while the opponent's goods are tools and machines manufactured from plastic and metal, which may be flexible or inflexible. Their trade channels overlap as both can be purchased through medical wholesalers to hospitals and medical practices, and health boards more generally. To my knowledge there is unlikely to be competition or complementarity between the goods, and I have no submissions or evidence to consider on this point. Overall, I find a medium level of similarity between the above goods and the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'.

Disinfectants for medical instruments

29. The above goods are considered most similar to the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'. The above goods are not apparatus or instruments, although they are for use in preparation for and clean up after surgical and medical treatments or procedures. Whilst their specific purpose therefore differs, more broadly there will be an element of overlap on the basis they are all to assist in the provision of safe medical procedures. Their users overlap as both would be used by medical professionals, as well as members of the general public for first aid treatment and procedures. Their nature differs as the above goods are likely to be liquids, while the opponent's goods are tools and machines, most likely manufactured from plastic and metal. Their trade channels overlap as both can be purchased from pharmacies by the general public as well as through medical wholesalers to hospitals

and medical practices, and health boards more generally. There is no competition. Medical instruments are indispensable to the use of disinfectants for medical instruments. However, I do not consider that this would lead consumers to believe that the same entity is responsible for both, therefore I do not find complementarity between the goods. Overall, I find a low to medium level of similarity between the above goods and the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'.

Class 9

Microtitration instruments [other than for medical use]

30. The above goods are considered most similar to the opponent's 'apparatus for medical testing', which would include microtitration instruments for medical use. The nature of the goods is therefore largely the same. The purposes of the goods clearly differ as the opponent's goods are used for medical diagnosis, while the above goods are used for non-medical laboratory work. The users overlap as both may be used by scientific professionals, although the above goods may also be used by medical professionals themselves in some cases. The trade channels overlap where both are sold through retailers or wholesalers providing laboratory supplies, and may differ where the above goods are also sold through medical supplies retailers. There may be an element of competition between the goods as non-medical microtitration instruments may be used for medical uses and vice versa. There is no complementarity. Overall, I find the above goods to share a high degree of similarity with the opponent's 'apparatus for medical testing'.

Class 10

Surgical instruments for use in orthopedic surgery; Surgical apparatus and instruments for medical use; Surgical instruments for use in spinal surgery; Medical apparatus for use in cardiac surgery; Medical instruments for percutaneous tracheostomy; Medical apparatus for use in laparoscopy; Surgical instruments; Medical instruments; Surgical apparatus and instruments for veterinary use; Medical and veterinary apparatus and instruments; Lasers for medical use; Lasers for medical purposes; Laser scalpels for medical use; Laser instruments for medical use; Medical instruments incorporating

lasers; Laser installations for medical use; Lasers for surgical use; Lasers for use in surgery; Prostheses for surgical treatment; Medical prostheses; Prostheses for medical treatment; Transplant prostheses for use in surgery; Implants [prosthesis] for dental surgery; Implants [prosthesis] for use in facial surgery; Implants [prosthesis] for bone surgery; Medical implants; Staplers for surgical purposes; Staplers for medical purposes; Surgical skin staplers; Surgical staplers; Surgical splints; Splints, surgical; Splints [for medical purposes]; Splints for surgical use; Plaster for medical or surgical purposes; Surgical bougies; Catheters for surgical use; Medical catheters; Medical guidewires; Guidewires (Medical -); Medical endoscopes; Medical and surgical catheters; Medical and surgical laparoscopes; Endoscopic equipment for medical purposes; Hammers for medical or surgical use; Mallets for medical use; Surgical and wound treating equipment; Medical stents; Medical stethoscopes; Dressing forceps [for surgical use]; Inflation syringes for medical or surgical use; Surgical forceps; Retractors [medical instruments]; Surgical retractors; Medical ventilators; Medical syringes; Medical therapy instruments; Medical aids for use in stoma care; Catheters for medical use; Plates in the nature of orthopaedic surgical implants; Cutlery [surgical]; Surgical cutlery; Medical tubing for use in vascular procedures; Medical braces; Medical knives; Humidifiers for use in medical treatment; Grafts for surgical use; Forceps for medical use; Plates in the nature of orthopaedic surgical instruments; Surgical scissors; Medical scissors; Surgical knives; Medical dosage dispensers for medical use; Endoscopes for surgical use; Surgical needles; Medical devices; Medical apparatus for use in endoscopy; Surgical apparatus and instruments for dental use; Medical lasers; Medical hand tools; Syringes for medical use; Medical syringe needles; Syringes for medical purposes; Hypodermic syringes for injections for medical purposes; Disposable hypodermic syringes for medical use; Injection syringes for medical purposes; Hypodermic syringes; Medicinal injection syringes; Medical apparatus and instruments; Surgical apparatus and instruments; Surgical instruments and apparatus; Medical ultrasound apparatus; Electronic apparatus for medical purposes; Medical X-ray apparatus; Apparatus for medical rehabilitation; Electronic endoscopes for surgical use; Medical spatulas; Nebulizers for medical use; Refractometers for medical use; Manometers for medical use; Endoscopes for medical use; Cryoprobes for medical use; Tweezers for medical use; X-ray analyzers for medical use; Electrodes for medical use; Splints for medical use; Knives for medical use; Radiotherapy instruments for medical use; Inhalers for medical use; Diathermic

handles for medical use; Spatulae for medical use; Irrigators for medical use; Pipetting apparatus for medical use; Scanning instruments for medical use; Tomographic instruments for medical use; Radioisotope apparatus for medical use; Pliers for medical use; Warmers for medical use; Humidifying apparatus for medical use; X-ray appliances for dental and medical use; Splinting materials for medical use; Aerosol dispensers for medical use; Slings for medical use; Incentive spirometers for medical use; Separation instruments for medical use; Dissecting instruments for medical use; Sprays (Hand-operated -) for medical use; Sprayers [hand-operated] for medical use; Push syringes for medical use; Suction apparatus for medical use; Bougies [surgery]; Scissors for surgery; Tissue expanders for use in surgery; Implants [prosthesis] for use in jawbone surgery; Maxillo-mandibular splints for use in maxillofacial surgery; Implant materials [prosthesis] for use in surgery; Implant materials [prosthesis] for use in dental surgery; Instruments for use in gastrointestinal surgery; Apparatus for use in surgery in the drainage of incisions; Apparatus for non-invasive surgery; Apparatus for use in surgery in the drainage of wounds; Artificial surgical implants; Cardiac vascular prosthesis for surgical protheses; Cardiac valves for surgical protheses; Compresses (Thermo-electric -) [surgery]; Thermo-electric compresses [surgery]; Lenses [intraocular prosthesis] for surgical implantation; Implants [prosthesis] for use in dentistry; Intraocular protheses [lenses] for surgical implantation; Protheses (Intraocular -) [lenses] for surgical implantation; Lenses [intraocular protheses] for surgical implantation; Surgical amputaters; Orthopedic implants; Orthopaedic implants; Apparatus and instruments used in foot surgery; Compressing screws in the nature of orthopaedic surgical implants; Lag screws in the nature of orthopaedic surgical implants; Medical knee braces; Silicone lace combined with a needle for use in the retraction of arteries during surgery; Intraocular lenses for surgical implantation; Implants [prosthesis] for use in bone grafting; Orthopedic joint implant protheses; Armboards [surgical splints]; Silicone lace combined with a needle for use in the retraction of veins during surgery; Knee protheses; Medical elbow braces; Prosthesis for dentistry; Surgical tubing for wound drainage; Orthopedic joint implants; Surgical bypass devices; Surgical drills; Implants [prosthesis]; Medical ankle braces; Implants [prosthesis] for ligaments; Dental implants; Hip implants; Otological implants; Ureteral stents being surgical support; Prosthetic hip joint implants; Orthopaedic hip protheses; Prosthetic implants; Surgical pliers; Surgical implants [artificial materials]; Breast implants; Implants for osteosynthesis; Artificial orthopaedic

implants; Orthopaedic femur prostheses; Surgical perforators; Orthopedic prostheses; Silicone orthopedic implants; Breast prostheses; Surgical saws; Intra-ocular implants; Catheters for use in urology; Medical tubing; Catheters; Catheters for urological purposes; Medicinal catheters; Cardiac catheters; Medical tubing for transfusions; Medical devices for placing and securing catheters; Angioplasty catheters; Electrophysiology diagnostic catheters; Rigid medical endoscopes; Flexible medical endoscopes; Capsule endoscopes for medical purposes; Medical vessel dilators; Medical tubing for administering drugs; Medical probes; Medical apparatus for renal dialysis; Catheters for use in embolectomy; Spirometers [medical apparatus]; Medical devices for moxibustion therapy; Nebulizers for medical purposes; Nebulisers for medical purposes; Oxygenators for medical use; Medical apparatus for urological purposes; Intravenous catheters; Medical pumps; Tubes for medical purposes; X-ray tubes for medical purposes; Electronic endoscopes for medical use; Medical inhalers; Electrodes for use with medical apparatus; Suction tubes for medical purposes; Disposable medical devices for treating constipation; Tubes (Drainage -) for medical purposes; Drainage tubes for medical purposes; Electrodes for medical purposes; Catheter apparatus for gastroenterological use; Intravenous bags for medical purposes; Optical instruments for medical endoscopy; Needles for medical purposes; Tubing for use with catheters; Medical apparatus and devices; Dialysis machines for medical use; Angiographic vascular introducers for the placement of catheters; Drainage tubes for medical use; Medical tubing for irrigation purposes; Medical imaging apparatus; Medical apparatus for hyperhidrosis treatment; Veterinary apparatus and instruments

31. The above goods are all considered to fall within the scope of the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'. These goods are therefore considered identical according to the principles set out in *Meric*.⁶

Tools for medical diagnostics; Diagnostic instruments for medical use; Diagnostic ultrasound instruments for medical use; Testing instruments for medical diagnostic purposes; Diagnostic apparatus for medical purposes used in medical laboratories; Diagnostic apparatus for medical purposes; Diagnostic testing apparatus for use in immunoassay procedures [medical]; Medical diagnostic apparatus for medical

⁶ Case T-133/05

purposes; Medical diagnostic instruments; Ultrasonic diagnostic instruments for medical use; Diagnostic imaging apparatus for medical use; Medical testing instruments; Medical analysis instruments; Instruments for use in medical analysis; Test equipment for medical use; Chromatographs for medical use; Analysers for medical use; Scanners for medical use; Chromatography instruments for medical use; Temperature scanners for medical use; Analytical instruments for medical use; Chromatographic apparatus for medical use; Chromatography apparatus for medical use; Scanning machines for medical use; Ultrasonic probes for medical use; Measuring devices for medical use; Physical analyzers for medical use; Medical analytical apparatus for medical purposes

32. The above goods are considered to fall within the scope of the opponent's 'diagnostic apparatus for medical use'. These goods are therefore considered identical according to the principles set out in *Meric*.⁷

Surgical sutures; Surgical staples; Surgical catgut; Staples for surgical use; Catgut for surgical purposes; Suture materials for medical use; Staples for medical purposes; Suture materials for surgical use; Transplant sutures for use in surgery

33. The above goods are all means of closing wounds during medical procedures. These goods are considered most similar to the opponent's 'surgical, medical, dental and veterinary apparatus and instruments', which would include apparatus such as needles and staplers. The purpose of the goods overlaps to an extent as both include those that are used to close wounds during surgical procedures. The users of both goods are identical as both will be used by medical professionals, such as surgeons and nurses. Sutures and catguts comprise natural or synthetic thread, and medical staples are formed of metal. Their nature therefore differs from the opponent's goods which are tools and machines, most likely manufactured from plastic and metal. The trade channels will be shared as both goods will be sold through medical wholesalers to hospitals and medical practices, and health boards more generally. There is no competition between the goods. The goods are complementary as apparatus and instruments such as needles and staplers are indispensable for the use of sutures, catgut and staples, and the consumer is likely to believe the goods are provided by

⁷ Case T-133/05

the same entity. Overall, I find the above goods to have a between a medium and high degree of similarity to the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'.

Surgical gowns; Medical gowns; Gowns for surgical use; Surgical gloves; Medical gloves; Examination gloves for medical use; Gloves for medical use; Sanitary masks for medical use; Medical masks; Surgical masks; Surgical caps; Sterile clothing for surgical use

34. The above goods are all attire to be worn during surgery and other medical procedures. These goods are considered most similar to the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'. Although the above goods are not apparatus or instruments, they are designed for use during surgical and medical treatments and procedures. Their purpose differs as the above goods are intended to provide sanitary protection to the medical professional or patient during a medical procedure, while the opponent's goods are related to the surgery or procedure itself. The users overlap as both are used by medical professionals, including surgeons. The nature differs as the above goods are typically formed of flexible, wearable materials, while the opponent's goods are tools and machines, most likely manufactured from plastic and metal. Their trade channels will likely overlap as both may be purchased through medical wholesalers to hospitals and medical practices, and health boards more generally. There is no competition. The above goods are essential to medical treatments and procedures. However, I do not consider that this would lead consumers to believe that the same entity is responsible for both, therefore I do not find the goods to be complementary. Overall, I find a low to medium level of similarity between the above goods and the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'.

Bandages [supportive] for surgical purposes; Bandages for orthopaedic purposes; Knee bandages, orthopaedic; Orthopaedic knee bandages; Hernia bandages; Orthopaedic bandages; Support bandages for medical purposes; Bandages (Knee -), orthopedic; Knee bandages, orthopedic; Pads (Abdominal -) for surgical use; Surgical mesh; Sponges (Surgical -); Surgical sponges

35. The above goods are all bandages or similar for use in surgical and medical procedures. These goods are considered most similar to the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'. The above goods are not considered to fall under the scope of apparatus and instruments, but they are for use during surgical and medical treatment and procedures. Whilst their specific purpose therefore differs, more broadly there will be an overlap on this basis. Their users also overlap as both would be used by medical professionals, as well as members of the general public for first aid treatment and procedures. Their nature differs as the above goods are typically flexible material in strips, while the opponent's goods are tools and machines, most likely manufactured from plastic and metal. Their trade channels overlap as both can be purchased through pharmacies to the general public and through medical wholesalers to hospitals and medical practices, and health boards more generally. There is unlikely to be competition or complementarity between the goods. Overall, I find a medium level of similarity between the above goods and the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'.

Stockings (Elastic -) [surgery]; Elastic stockings [surgery]; Medical hosiery; Pressure garments for medical treatment

36. The above goods are all garments for patients to wear during surgical and medical procedures. These goods are considered most similar to the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'. The above goods are not considered to fall under the scope of apparatus and instruments, but they are for use during surgical and medical treatment and procedures. Whilst their specific purpose therefore differs, more broadly there will be an overlap on this basis. Their users overlap as both goods would be used by patients and medical professionals. Their nature differs as the above goods are typically made of flexible material, while the opponent's goods are tools and machines manufactured from plastic and metal, which may be flexible or inflexible. Their trade channels overlap as both can be purchased

through pharmacies to the general public and through medical wholesalers to hospitals and medical practices, and health boards more generally. There is no competition or complementarity between the goods. Overall, I find a low level of similarity between the above goods and the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'.

Post-operative colostomy bags; post-operative enterostomy bags; post-operative ileostomy bags

37. The above goods are all ostomy bags for use after surgical procedures. These goods are considered most similar to the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'. The above goods are not considered to fall under the scope of apparatus and instruments. Their purpose has a small element of overlap as both relate to medical procedures, but their specific purpose largely differs. Their users also overlap as both would be used by patients and medical professionals. Their nature differs as the above goods are bags made of flexible material, while the opponent's goods are tools and machines manufactured from plastic and metal, which may be flexible or inflexible. Their trade channels overlap as both can be purchased through pharmacies to the general public and through medical wholesalers to hospitals and medical practices, and health boards more generally. It appears unlikely that there is any competition or complementarity between the goods. Overall, I find a low level of similarity between the above goods and the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'.

Ultrasonic cleaning instruments for medical use; Autoclaves for medical use

38. The above goods are used in preparation for medical or surgical procedures. These goods are considered most similar to the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'. The above goods are apparatus and instruments related to surgery, as they are used before and after surgical procedures, but they are not surgical apparatus and instruments as such. Whilst their specific purpose therefore differs, more broadly there will be an element of overlap on the basis they are all to assist in the provision of safe medical procedures. Their users also overlap as both would be used by medical professionals. Their nature overlaps as both include machines manufactured from plastic and metal. Their trade channels overlap

as both can be purchased through medical wholesalers to hospitals and medical practices, and health boards more generally. There is no competition. Cleaning equipment is essential to the use of medical instruments. However, I do not consider that this would lead consumers to believe that the same entity is responsible for both, therefore I do not consider the goods to be complementary. Overall, I find a low to medium level of similarity between the above goods and the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'.

Trays for holding medical instruments; Medical bags designed to hold medical instruments; Medical trays; Isolation bags for medical use

39. The above goods are all accessories for storing apparatus and instruments during surgical and medical procedures. These goods are considered most similar to the opponent's 'apparatus and instruments for use during surgical and medical treatment and procedures'. The above goods are not considered to fall under the scope of apparatus and instruments, but they are used for holding said apparatus and instruments during surgical and medical treatment and procedures. Their specific purpose therefore differs, however, more broadly all the goods are for use by medical staff either during or after medical procedures. Their users also overlap as both would be used by medical professionals. Their nature differs as the above goods are bags made of flexible material or trays made of inflexible metal or plastic, while the opponent's goods are tools and machines, most likely manufactured from plastic and metal.. Their trade channels overlap as both can be purchased through medical wholesalers to hospitals and medical practices, and health boards more generally. There is no competition. The use of the above goods requires tools or instruments, such as those covered by the opponent's goods. The consumer would likely conclude that accessories for tools or instruments, such as trays and bags, would be sold by the same entity as the tools or instruments themselves. There is therefore complementarity between the goods. Overall, I find a medium level of similarity between the above goods and the opponent's 'apparatus and instruments for use during surgical and medical treatment and procedures'.

Mattresses for medical use; Medical blankets for the cooling of patients

40. The above goods are mattresses and blankets for use during or after medical or surgical treatment and procedures. These goods are considered most similar to the opponent's 'cushions (Heating-), electric for medical purposes'. The purpose of the goods overlaps as they are all designed to keep a patient comfortable, with the opponent's goods and 'medical blankets' also used to regulate a patient's temperature or provide temperature-related pain relief. Their users also overlap as both would be used by medical professionals, as well as members of the general public for first aid treatment and procedures. There will be a small element of overlap in their nature as all of the goods are made from flexible materials, although overall they will be different. Their trade channels overlap as both can be purchased through medical wholesalers to hospitals and medical practices, and health boards more generally. There is no competition or complementarity between the goods. Overall, I find a medium level of similarity between the above goods and the opponent's 'cushions (Heating-), electric for medical purposes'.

Medical stretchers; Tables for surgery; Surgical drapes; Surgical examination drapes; Sheets [drapes] for use in surgery; Sterilised sheets for use on patients during surgery; Drape sheets for use during surgery; Urinals [vessels] for medical use; Medical patient treatment chairs

41. The above goods are all furniture and accessories for use during or after medical or surgical treatment and procedures. These goods are considered most similar to the opponent's 'apparatus and instruments for use during surgical and medical treatment and procedures'. The above goods are not considered to fall under the scope of apparatus and instruments, but they are for use during and after surgical and medical treatment and procedures. Their purpose therefore overlaps at a high level, although the specific purpose clearly differs. Their users also overlap as both would be used by medical professionals, as well as members of the general public for first aid treatment and procedures. Their nature differs as the above goods are flexible materials and metal or plastic furniture, while the opponent's goods are tools and machines, most likely manufactured from plastic and metal. Their trade channels overlap as both can be purchased through medical wholesalers to hospitals and medical practices, and health boards more generally. There is no competition or complementarity between

the goods. Overall, I find a low level of similarity between the above goods and the opponent's 'apparatus and instruments for use during surgical and medical treatment and procedures'.

Class 11

Sterilisers for medical instruments; Sterilisers for surgical instruments; Sterilization units for medical instruments; Sterilizers for medical use; Steam sterilizers for medical use; Sterilisation autoclaves for medical use; Sterilizers for medical instruments

42. The above goods are used in the preparation of tools and apparatus for medical or surgical procedures. These goods are considered most similar to the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'. The above goods are apparatus and instruments related to surgery, as they are used before and after surgical procedures, but they are not surgical apparatus and instruments as such. Whilst their specific purpose therefore differs, more broadly there will be an element of overlap on the basis they are all to assist in the provision of safe medical procedures. Their users also overlap as both would be used by medical professionals. Their nature overlaps as both include machines manufactured from plastic and metal. Their trade channels overlap as both can be purchased through medical wholesalers to hospitals and medical practices, and health boards more generally. There is no competition. Sterilising equipment is indispensable to the use of medical instruments. However, I do not consider that this would lead consumers to believe that the same entity is responsible for both, therefore I do not find the goods to be complementary. Overall, I find a low to medium level of similarity between the above goods and the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'.

Humidifiers [other than for medical use]

43. The opponent's 'surgical, medical, dental and veterinary apparatus and instruments' is considered to include humidifiers which are intended for medical use. As the above goods are for other uses, they are not considered to fall within the scope of the opponent's goods. Their purpose therefore differs. Their users overlap to the extent that both may be used by the general public. Although I note that some medical humidifiers may include masks to direct the water vapour onto a patient's face, some

humidify the room in the same way as non-medical humidifiers. Their nature therefore overlaps. Their trade channels will overlap where both can be purchased through supermarkets or online retailers but will differ where medical humidifiers are purchased through pharmacies and non-medical humidifiers are purchased through home appliance stores. There is no competition or complementarity between the goods. Overall, I find a medium level of similarity between the above goods and the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'.

Toilets adapted for medical patients

44. The above goods are considered most similar to the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'. The above goods are not considered to fall under the scope of apparatus and instruments, but they are used by patients after surgical and medical treatment and procedures. Their use therefore overlaps insofar as both are used in the medical field, although their specific uses differ as the above goods are used as sanitary receptacle for patients while the opponent's goods are used to perform medical or surgical procedures. Their users may overlap as both may be used by members of the general public as well as medical professionals. Their nature differs as the above goods are solid metal, ceramic or plastic shaped into toilets, while the opponent's goods are tools and machines, most likely manufactured from plastic and metal. It is not obvious that there would be an overlap in the trade channels. There is no competition or complementarity between the goods. Overall, I find the above goods dissimilar to the opponent's 'surgical, medical, dental and veterinary apparatus and instruments'.

45. I will also consider the similarity of the above goods to the opponent's 'heating cushions [pads]'. The use of the goods differs as the above goods are used to enable medical patients to use the toilet, while the opponent's goods are used for heat treatment. Their users overlap as both are used by members of the general public as well as medical professionals. Their nature differs as the above goods are solid metal, ceramic or plastic shaped into toilets, while the opponent's goods are soft material with heating elements. It is not obvious that there would be an overlap in the trade channels. There is no competition or complementarity between the goods. Overall, I find the above goods dissimilar to the opponent's 'heating cushions [pads]'.

Class 35

Retail or wholesale services for pharmaceutical [...] preparations [...]; Wholesale services in relation to pharmaceutical preparations

46. The above goods all relate to the retail or wholesale of pharmaceutical preparations. These goods are considered most similar to the opponent's 'retail services, mail order retail services, online retail services, wholesale services connected with the sale of medical devices'. The nature of the services is similar although the purpose of the services differs as the above services are used to sell medications or pharmaceutical preparations, while the opponent's services are used to sell medical devices. The users of the services are identical; both are used by the general public as well as medical professionals. The trade channels also overlap as both services would be conducted through pharmacies to the general public, and through medical wholesalers to hospitals and medical practices, and health boards more generally. There is no competition or complementarity. Overall, I find a medium level of similarity between the above services and the opponent's 'retail services, mail order retail services, online retail services, wholesale services connected with the sale of medical devices'.

Retail or wholesale services for [...] veterinary [...] preparations [...]

47. The above services are considered most similar to the opponent's 'veterinary services'. The nature differs as the above services relate to the retail of veterinary medications, while the opponent's services relate to providing veterinary medical treatment. Their purposes broadly overlap as both relate to providing veterinary care, however their specific purposes differ. The users of the services overlap where both are used by animal owners and differ where the above services are used by veterinary professionals. Trade channels overlap where veterinary preparations are purchased by an animal owner through a veterinary clinic and differ where they are purchased via online retailers or wholesalers. There is no competition. Some veterinary services may require veterinary preparations, such as surgical procedures. It is likely that a consumer would believe that the same entity would be responsible for both the retail of the veterinary preparation and the retail of the veterinary services. There is therefore

complementarity between the services. Overall, I find a medium level of similarity between the above services and the opponent's 'veterinary services'.

Retail or wholesale services for [...] sanitary [...] preparations [...]

48. The above services are considered most similar to the opponent's 'hygienic and beauty care for human beings or animals'. The nature differs as the above services relate to the retail of sanitary preparations, while the opponent's services relate to providing hygienic and beauty care, which would involve the use of sanitary preparations. Their purposes broadly overlap as both relate to providing sanitary care, however their specific purposes differ. The users of the services overlap as both will be used by the general public. Trade channels overlap where sanitary preparations are purchased by consumer through hygiene or beauty clinic or salon, and differ where they are purchased via supermarkets, pharmacies, online retailers or wholesalers. There is no competition. Some hygienic and beauty services may require sanitary preparations, and subsequently sell them to consumers. It is likely that consumers would believe that the same entity is responsible for the retail of both sanitary preparations and hygienic or beauty services in situations such as these. There is therefore complementarity between the services. Overall, I find a medium level of similarity between the above services and the opponent's 'hygienic and beauty care for human beings or animals'.

Wholesale services in relation to dietetic preparations.

The above goods relate to the wholesale of dietetic preparations. These goods are considered most similar to the opponent's 'wholesale services connected with the sale of medical devices'. The nature of the services are similar although the purpose of the services differs as the above services are used to sell dietetic preparations, while the opponent's services are used to sell medical devices. The users of the services are identical; both are used by the general public as well as medical professionals. The trade channels also overlap as both services would be conducted through pharmacies and supermarkets to the general public, and through medical wholesalers to hospitals and medical practices, and health boards more generally. There is no competition or complementarity. Overall, I find a low level of similarity between the above goods and

the opponent's 'retail services, mail order retail services, online retail services, wholesale services connected with the sale of medical devices'.

Retail services in relation to medical apparatus; Retail services in relation to medical instruments; Wholesale services in relation to medical apparatus; Wholesale services in relation to medical instruments; Retail or wholesale services for [...] medical supplies;

49. The above goods are considered to be identical to or fall within the scope of the opponent's 'retail services, mail order retail services, online retail services, wholesale services connected with the sale of medical devices'. These goods are therefore considered identical according to the principles set out in *Meric*.⁸

Class 44

Medical services; Medical and healthcare services; Medical care; Medical treatment services; Surgery; Medical nursing; Nursing, medical; Nursing services (Medical -); Medical tele-reporting [medical services]; Medical imaging services.

The above goods are considered to be identical to or fall within the scope of the opponent's 'medical services'. These goods are therefore considered identical according to the principles set out in *Meric*.⁹

Health clinic services [medical]; Clinic services (Medical -); Clinic (Medical -) services; Medical clinic services; Medical and healthcare clinics; Clinics (Medical -)

50. The above goods are considered to be identical to or fall within the scope of the opponent's 'clinic services (Medical-)'. These goods are therefore considered identical according to the principles set out in *Meric*.¹⁰

Veterinary services

51. The above goods are identical to the opponent's 'veterinary services'.

⁸ Case T-133/05

⁹ Case T-133/05

¹⁰ Case T-133/05

Conclusion of goods and services comparison

52. There can be no likelihood of confusion in respect of section 5(2)(b) of the Act regarding the applicant's goods which were found to be dissimilar to the opponent's goods.¹¹ In light of my findings above, the present opposition fails against the following goods:

'Class 1: Diagnostic chemicals [other than for medical or veterinary use]; Bactericides [other than for medical and veterinary use]; Inoculants [other than for medical or veterinary use]; Chemicals for use in pathology [other than medical and veterinary]; Enzymes [other than for medical or veterinary use]; Bacterial products [other than for medical and veterinary use];

Class 11: Toilets adapted for medical patients'.

53. I will now proceed with my decision in respect of the opposition against the goods that I have found to be identical or similar.

Comparison of marks

54. 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 of the European Union stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

¹¹ *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

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

56. The respective trade marks are shown below:

The opponent's earlier marks	The applicant's contested mark
<p style="text-align: center;">SWIFT USA</p> <p style="text-align: center;">SWIFTUSA</p> <p style="text-align: center;">SWIFT-USA</p> <p style="text-align: center;"><i>("the opponent's first series of marks")</i></p> <p style="text-align: center;">SWIFT LITE</p> <p style="text-align: center;">SWIFTLITE</p> <p style="text-align: center;">SWIFT-LITE</p> <p style="text-align: center;"><i>("the opponent's second series of marks")</i></p>	<p style="text-align: center;">Swift Surgical</p>

Overall impression

57. The opponent's first and second series of marks consist of the same two marks, with differing divisions between the words. In both marks, the division is either a space, the lack of a space or a dash ("-"). These differences have a very minimal effect on the overall impression of the marks as a whole.

58. All of the marks are word-only and have no additional elements that contribute to the overall impression of the mark.

59. I note that, in *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, the General Court noted that the beginnings of marks tend to have more visual and aural impact than the ends.

60. All three marks begin with the word 'SWIFT'. Being at the beginning of the marks and being in my view the most distinctive element in each, I consider that the 'SWIFT' element plays the greatest role in the overall impression of all of the marks. However, the additional wording in each mark is not negligible, and still plays a role within the same.

Visual comparison

61. All of the marks share the identical element SWIFT. The opponent's first series of marks has "USA" at the end of the mark, the opponent's second series of marks has "LITE" at the end of the mark, and the applicant's contested mark has "Surgical" at the end of the mark. There is no visual similarity between these second elements of each mark.

62. As noted above, the opponent's two series of marks comprise differing divisions between the words; using a space, a lack of space or a dash ("-"). Where a space is used, this is a (very minimal) point of visual similarity between the marks as the applicant's contested mark uses a space between the words. Where a lack of a space or a dash are used, this is a point of visual difference, albeit a very small one.

63. Given the identical first elements of the marks, I consider the marks to have a medium level of visual similarity.

Aural comparison

64. All of the marks include the word "SWIFT" at the beginning, which would be pronounced in the same way in each mark.

65. The opponent's first series of marks has "USA" at the end of the mark, which would be pronounced as "U. S. A". The opponent's second series of marks has "LITE" at the end of the mark, which would be pronounced as "light". The applicant's contested mark has "Surgical" at the end of the mark, which would be pronounced in the usual way. There is no aural similarity between these second elements of each mark.

66. Given the identical first elements of the marks, I consider the marks to have a low to medium level of aural similarity.

Conceptual comparison

67. I refer to *Usinor SA v OHIM*, Case T-189/05, in which the General Court found that:

“62. In the third place, as regards the conceptual comparison, it must be noted that while the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details (*Lloyd Schuhfabrik Meyer*, paragraph 25), he will nevertheless, perceiving a verbal sign, break it down into verbal elements which, for him, suggest a concrete meaning or which resemble words known to him (Case T-356/02 *Vitakraft-Werke Wührmann v OHIM – Krafft (VITAKRAFT)* [2004] ECR II-3445, paragraph 51, and Case T-256/04 *Mundipharma v OHIM – Altana Pharma (RESPICUR)* [2007] ECR II-0000, paragraph 57).”

68. All three marks comprise the word “Swift”. The average consumer will understand this word to mean either something happening or moving quickly, or a species of bird.

69. The opponent’s first series of marks comprises the words “SWIFT” and “USA”. In my view, these words do not hang together and will not form a unit with a meaning that is more than the sum of its parts. Instead, each word plays an independent role within the mark itself. The word “Swift” will convey the above meaning, and the word “USA” will convey the concept that the goods originate from, or are related to, the United States of America.

70. The opponent’s second series of marks comprises the words “SWIFT” and “LITE”. In my view, these words do not hang together and will not form a unit with a meaning that is more than the sum of its parts. Instead, each word plays an independent role within the mark itself. The word “Swift” will convey the meaning set out previously, and the word “LITE” will convey that the goods themselves may be less bulky or heavy, or that the services are less complex or offer a lighter touch.

71. The applicant's contested mark comprises the words "Swift" and "Surgical". In my view, these words do hang together to an extent, but they do not form a unit with a meaning that is more than the sum of its parts. The word "Swift" will convey the meaning previously set out, and the word "Surgical" will convey goods or services related to or used in a medical procedure or surgery. Used together, this mark conveys the meaning of a product or service related to or used in surgery that happens quickly or can be used quickly and easily.

72. Whilst there are conceptual differences between the marks, the use of the word Swift acts as a point of conceptual similarity in all of the same. I consider the marks to be conceptually similar to a medium degree.

Average consumer and the purchasing act

73. As the case law above indicates, it is necessary to determine who the average consumer is for the respective parties' goods. I must then determine the manner in which the goods are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

"60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words "average" denotes that the person is typical. The term "average" does not denote some form of numerical mean, mode or median."

74. For the goods in class 5, I refer to *Olimp Laboratories sp. z o.o. v EUIPO*, Case T-817/19, EU:T:2021:41, in which the General Court considered the average consumer for and level of attention which would be paid in the selection of pharmaceutical and medical products in class 5. It said:

“39 Where the goods in question are medicinal or pharmaceutical products, the relevant public is composed of medical professionals, on the one hand, and patients, as end users of those goods, on the other (see judgment of 15 December 2010, *Novartis v OHIM – Sanochemia Pharmazeutika (TOLPOSAN)*, T-331/09, EU:T:2010:520, paragraph 21 and the case-law cited; judgment of 5 October 2017, *Forest Pharma v EUIPO – Ipsen Pharma (COLINEB)*, T-36/17, not published, EU:T:2017:690, paragraph 49).

40 Moreover, it is apparent from case-law that, first, medical professionals display a high degree of attentiveness when prescribing medicinal products and, second, with regard to end consumers, in cases where pharmaceutical products are sold without prescription, it must be assumed that those goods will be of concern to consumers, who are deemed to be reasonably well informed and reasonably observant and circumspect where those goods affect their state of health, and that these consumers are less likely to confuse different versions of such goods. Furthermore, even assuming that a medical prescription is mandatory, consumers are likely to demonstrate a high level of attentiveness upon prescription of the goods at issue in the light of the fact that those goods are pharmaceutical products. Thus, medicinal products, whether or not issued on prescription, can be regarded as receiving a heightened level of attentiveness on the part of consumers who are normally well informed and reasonably observant and circumspect (see judgment of 15 December 2010, *TOLPOSAN*, T-331/09, EU:T:2010:520, paragraph 26 and the case-law cited).

41 ...]

42 In the present case, having regard to the nature of the goods concerned, namely medical or pharmaceutical products in Class 5, the Board of Appeal acted correctly in finding in paragraphs 18 to 21 of the contested decision – which, moreover, is not disputed by the applicant – that, in essence, the relevant public was made up of medical professionals and pharmacists and consumers belonging to the general public with a higher than average degree of attentiveness.”

75. The average consumer of the goods in class 5 will therefore be made up of medical professionals and general public consumers, who will pay a higher than average degree of attentiveness during the purchasing process.

76. The applicant's other goods and services, although they are not within class 5, are also medical or pharmaceutical and the above case law is considered to apply to them. The consumer, whether a member of the general public or a medical professional, would apply a higher than average degree of attentiveness during the purchasing process.

77. The goods at issue will be purchased by the general public from pharmacies and by medical professionals from medical wholesalers. In both cases, visual considerations will play a dominant role, although aural considerations should not be discounted as advice may be sought from pharmacists, and particularly in the case of medical professionals, orders may be placed over the phone.

78. The services at issue will be purchased by the general public and by medical professionals over the phone, in person or online. When purchasing over the phone, aural considerations will dominate. When purchasing online, visual considerations will dominate. When purchasing in person, both aural and visual considerations will be taken into account.

Distinctive character of the earlier trade mark

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

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *WindsurfingChiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

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

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

81. There is no evidence regarding the use of the earlier mark. Consequently, I have only the inherent position to consider.

82. As noted above, the earlier marks do not hang together or form a unit. The series of marks have differing divisions between the words, using a space, a lack of a space and a dash (“-“). These differing divisions do not have any bearing on the distinctiveness of the marks. The average consumer would therefore read the marks as “SWIFT USA” and “SWIFT LITE”. The words are not directly descriptive of the goods or services for which the opponent’s marks are registered, which are primarily medical services and apparatus. However, the word “Swift” is somewhat allusive of a characteristic of the goods and services, as the consumer may understand this to suggest a medical service that is delivered quickly or, more tenuously, a medical apparatus that can be used to perform quicker procedures.

83. The word “USA” will simply be considered as indicating that the goods and services derive from the USA, and does not add to the distinctive character of the mark overall. Overall, the opponent’s first marks, “SWIFT USA” (and its variations) are

considered to have a low to medium level of inherent distinctive character for goods and a low level of distinctive character for services.

84. The word “LITE” is also considered to be descriptive or at the least highly allusive of a characteristic of the goods, as it will in my view be understood as a misspelling of the word “light” and will indicate that the goods themselves may be less bulky or heavy, or that the services are less complex or offer a lighter touch. Overall, the opponent’s second marks are considered to have a low to medium level of inherent distinctive character for goods and a low level of distinctive character for services.

GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion

85. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle, i.e., a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods (or services) and vice versa (*Canon* at [17]). It is necessary to keep in mind the distinctive character of the opponent’s trade mark, the average consumer of the goods and the nature of the purchasing act. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind (*Lloyd Schuhfabrik* at [26]).

86. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings being the same or related.

87. Earlier in this decision, I found the goods and services to range from low similarity to identical. I found the marks to have a medium level of visual similarity, a low to medium level of aural similarity, and a medium level of conceptual similarity. I found the earlier marks to possess a low level of distinctive character for services and a low to medium level of distinctive character for goods. I identified the average consumer

to be in two groups: the general public, purchasing products from pharmacies; and medical professionals, purchasing products from medical wholesalers. I found both groups would apply a higher than average level of attention. I found that the goods would be selected primarily by visual means, although I did not discount an aural aspect to the purchasing process. I found that the services would be selected either predominantly by aural or visual considerations, or both equally.

88. Firstly, considering direct confusion, given the visual, aural and conceptual differences between the marks, as well as the higher than average level of attention, I do not consider it likely that a consumer would mistake one mark for the other. I therefore do not find a likelihood of direct confusion.

89. I will therefore proceed to consider whether there is a likelihood of indirect confusion, whilst reminding myself that, as James Mellor QC sitting as the Appointed Person pointed out in *Cheeky Italian Ltd v Sutaria* (O/219/16) at [16], “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”.

90. In *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

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

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

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ('26 RED TESCO' would no doubt be such a case).
- (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI' etc.).
- (c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ('FAT FACE' to 'BRAT FACE' for example)."

91. While the above examples in *L.A. Sugar* are noted, they are not intended to be treated as an exhaustive list of the only instances in which indirect confusion occurs.

92. Earlier I found that the opponent's earlier marks do not hang together or form a unit, and that "SWIFT" played the larger role in all of the marks. Further, I found that the words "LITE" and "USA" were either non-distinctive or at best highly allusive of a characteristic of the goods and services. Whilst I also found that "SWIFT" is somewhat allusive of a characteristic of the goods and the services, I considered it to be the most distinctive element in all three marks. I consider that "SWIFT" has an independent distinctive significance in all of the earlier marks.

93. The use of the word "Surgical" in the applicant's mark is clearly descriptive of the goods in question. Whilst I note I found this mark hangs together to an extent, I did not find it forms a unit that is more than the sum of its parts, and as such I consider the word "Swift" also plays an independent distinctive role in the contested mark.

94. Taking all of this into account, I find it likely in this instance that a consumer who has previously encountered similar goods or services under the “SWIFT USA” or “SWIFT LITE” marks will see a similar or identical product under the “Swift Surgical” mark and note the change of the second word to “Surgical”, but also consider “Swift” as an indication of origin in both marks, and the change of the second word to “Surgical” in the later mark as a reference to an alternative range of goods or services from the same origin, for example goods or services specifically related to surgery. Additionally, the consumer may see “SWIFT USA” and/or “Swift Surgical” as house brands or names for an entity’s main range of goods or services, and “SWIFT LITE” as a range of goods and services from the same entity, made of lighter materials or offering a lighter touch. The consumer is therefore likely to conclude that the goods are supplied by the same, or economically-linked, undertakings.

95. Taking all of this into account, I consider there to be a likelihood of indirect confusion in relation to the applicant’s goods where there is at least a minimum degree of similarity.

Final Remarks

96. The opposition under Section 5(2)(b) fails in respect of the following goods:

Class 1: Diagnostic chemicals [other than for medical or veterinary use]; Bactericides [other than for medical and veterinary use]; Inoculants [other than for medical or veterinary use]; Chemicals for use in pathology [other than medical and veterinary]; Enzymes [other than for medical or veterinary use]; Bacterial products [other than for medical and veterinary use];

Class 11: Toilets adapted for medical patients.

97. The opposition is successful in respect of the applicant’s remaining goods and services.

COSTS

98. Both parties have achieved partial success in these proceedings, however the opponent has been considerably more successful than the applicant and is therefore

entitled to a contribution towards its costs. In the circumstances, I award the opponent the sum of £350 as a contribution towards the cost of the proceedings, in accordance with Tribunal Practice Notice 1/2023 which governs costs in Fast Track proceedings issued after 1 February 2023. The sum is calculated as follows:

Official fee:	£100
Filing a notice of opposition:	£250
Total:	£350

99. I therefore order Swift Surgical Limited to pay Emblation Ltd the sum of £350. 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 29th day of May 2025

K HARBACH

For the Registrar

ANNEX

The opponent's goods

Class 9: *Controlled impedance microwave feedthroughs; High pressure microwave supply apparatus for diamond deposition; Masers [microwave amplifiers]; Microwave antenna for the reception of satellite data; Microwave antenna for the reception of television signals; Microwave antennae; Microwave apparatus for communication; Microwave apparatus for laboratory use; Microwave cables with connector; Microwave communications apparatus; Microwave communications instruments; Microwave components; Microwave connectors; Microwave decomposing apparatus being scientific laboratory apparatus; Microwave detectors [radar]; Microwave engineering design software; Microwave filters; Microwave instruments; Microwave ovens for experimental purposes; Microwave sensing apparatus; Microwave sensing heads for fitting to bins; Microwave sensing heads for fitting to mixers; Microwave tubes; Microwave type intruder sensors; Pulse code modulation apparatus for transmission via microwave; Pulse code modulation instruments for transmission via microwave; Wave filters adapted for use with microwaves; Wave meters adapted for use with microwaves; Wave receivers adapted for use with microwaves; Antennas for the reception of electromagnetic waves; Antennas for the transmission of electromagnetic waves; Apparatus for receiving electromagnetic radiation; Detection apparatus employing electromagnetic waves [other than for medical use]; Electromagnetic apparatus for the communication of information; Heat sinks for conducting heat away from electrical components; computer software and mobile applications for use by others in rendering medical services, namely, software for collecting, analysing, organizing, storing and transmitting data and information; computer databases; digital recorded media; electronic publications; parts and fittings for all the aforesaid goods; none of the aforesaid relating to financial communications or the facilitation of financial transactions; none of the aforesaid relating to the facilitation of coagulation.*

Class 10: *Medical apparatus deploying treatment method; medical instruments deploying treatment method; medical apparatus deploying procedural method; medical instruments deploying procedural method; apparatus and instruments for use during surgical and medical treatment and procedures; diagnostic, examination, and monitoring equipment; diagnostic apparatus for medical purposes; diagnostic testing*

apparatus and instruments for use in medical treatment and procedures; Surgical, medical, dental and veterinary apparatus and instruments; analysing apparatus for medical purposes; Analysis (Apparatus for use in medical)-; Analysis apparatus for medical use; Analytical instruments for medical use; Apparatus for analysis [for medical use]; Apparatus for applying laser radiation [for medical purposes]; Apparatus for medical analysis; Apparatus for medical diagnosis; Apparatus for medical diagnostic purposes; Apparatus for medical purposes; Apparatus for medical testing; Apparatus for medical use; Apparatus for producing oscillatory waves for medical application; Apparatus for producing ultrasonic waves for medical application; Apparatus for the application of laser radiation for medical purposes; Apparatus for use in the generation of laser radiation for medical purposes; Electrical apparatus for medical treatment; Electrical appliances for medical purposes; Electrically operated medical apparatus; Electro medical apparatus; Electro medical instruments; Electronic apparatus for medical purposes; Electronic apparatus for medical use with computers; Electronic medical apparatus; Electronic medical instruments; High frequency cutting apparatus for medical purposes; High frequency cutting devices for medical purposes; High frequency cutting instruments for medical purposes; High frequency generators for use in medical treatment; Laser beam delivery apparatus for medical use; Laser beam delivery instruments for medical use; Laser cutting apparatus for medical use; Laser cutting tools for medical use; Laser devices for medical application; Laser installations for medical use; Laser instruments for medical use; Laser light transmitting apparatus for medical use; Laser light treatment apparatus for medical use; Laser light treatment instruments for medical use; Laser machining tools for medical use; Laser scalpels for medical use; Lasers capable of producing pulsating laser beams [for medical use]; Lasers for medical purposes; Lasers incorporating optical fibres for medical use; Magnetic field generators for medical use; Magnetic resonance imaging apparatus for medical purposes; Magnetic resonance imaging apparatus for medical use in diagnostic evaluation; Magnetic resonance imaging instruments for medical purposes; Magnetic resonance imaging spectrometers for medical use; Magnetic treatment apparatus for medical use; Medical apparatus and instruments; Medical apparatus for producing laser radiation; Medical apparatus incorporating lasers; Medical electronic diagnostic apparatus; Medical electronic therapeutic apparatus; Medical instruments; Medical instruments for application in animal bodies; Medical instruments for application in human bodies; Medical

instruments for application on animal bodies; Medical instruments for application on human bodies; Medical instruments for the removal of warts; Medical instruments incorporating lasers; Medical laser apparatus; Medical laser beam apparatus; Medical lasers; Medical measuring apparatus for measurements on skin; Medical testing apparatus; Medical testing instruments; Medical therapy apparatus; Medical therapy instruments; Scientific electrical apparatus for medical diagnosis; Scientific electrical apparatus for medical treatment purposes; Scientific electronic apparatus for medical diagnosis; Scientific electronic apparatus for medical treatment purposes; Shock wave apparatus for medical use; Sources of electromagnetic fields for use in medical diagnosis; Sources of electromagnetic fields for use in medical treatment; Sources of magnetic fields for use in medical diagnosis; Sources of magnetic fields for use in medical treatment; Sources of ultrasonic fields for use in medical diagnosis; Sources of ultrasonic fields for use in medical treatment; Test apparatus for medical use; Testing apparatus for medical purposes; Vaporizers for medical purposes; Detection apparatus for medical use employing electromagnetic waves; Electromagnetic medical apparatus; Electromagnetic wave apparatus for use in therapy; Electromagnetic wave therapeutic instruments; Scalpels emitting electromagnetic rays; Sources of electromagnetic fields for use in medical diagnosis; Hyperthermia apparatus for the treatment of diseases of the prostate; Hyperthermia apparatus for the treatment of urinary diseases; High frequency cutting apparatus for dental purposes; High frequency cutting apparatus for medical purposes; High frequency cutting devices for dental purposes; High frequency cutting devices for medical purposes; High frequency cutting instruments for dental purposes; High frequency cutting instruments for medical purposes; High frequency surgical apparatus and instruments; Apparatus for the heat treatment of cancer; Apparatus for the thermal treatment of cancer; Apparatus for the treatment of cancer; Apparatus for the heat treatment of cancer; Cushions (Heating-), electric for medical purposes; Cushions [pads] (Heating-), for medical purposes; Deep heat massage apparatus; Electric heating appliances for medical therapeutic use; Electrical heating apparatus for medical [therapeutic] use; Electrical heating pads for medical [treatment] use; Heat pads for therapeutic treatment; Heat therapy apparatus; Heat therapy instruments; Heat treatment apparatus; Heat treatment installations [therapeutic]; Heating apparatus for medical purposes; Heating cushions [pads], electric for medical purposes; Heating cushions [pads], non-electric for medical purposes; Medical

apparatus for heat exposure sterilisation; Medical heating units with body contact applicators; Pads (Heating-), electric, for medical purposes; Thermal protective aids [heated] for medical use; surgical and medical apparatus and instruments for use in medical procedures; surgical and medical apparatus and instruments for use in medical procedures; lasers for surgical and medical use; lasers for dental use; parts and fittings for all the aforesaid goods; none of the aforesaid relating to the facilitation of coagulation.

Class 16: Printed matter; printed medical forms; printed instruction manuals; printed publications; business cards; printed certificates; newsletters, reports; binders and folders; printed forms; logbooks; forms and files made of paper; advertising and promotional materials; marketing stands made from paper or cardboard; pop up stands made from paper or cardboard; banners made of paper or cardboard; printed matter; printed publications; promotional literature; brochures; flyers; leaflets; tickets and passes; receipts; labels; stickers; photographs; posters; greetings cards and postcards; calendars and diaries; organisers; reminder pads; magazines; journals; periodical publications; books, booklets; information books; programmes; printed tutorials, seminars, lectures; educational books; forms, diagrams, and manuals; activity books; folders; instructional and teaching materials; printed technical manuals, technical bulletins and technical notes; boxes and materials for packaging (not included in other classes); coasters; parts and fittings for all the aforesaid goods; none of the aforesaid relating to financial communications or the facilitation of financial transactions.

Class 35: Advertising; merchandising; marketing; advertising; compilation of statistical information; advice for consumers; dissemination of advertisements; sales promotion; advertising matter (dissemination of -); distribution of samples; market research services; social media strategy and marketing consultancy; blogger and vlogger marketing services; providing business advice in the field of social media; providing marketing consulting in the field of social media; advertisement and marketing of social media accounts, texts, blogs and video logs; advertisement and marketing provided by means of blogging; recruitment services; advertisement and marketing services provided by a means of blogging and vlogging; retail services, mail order retail services, online retail services, wholesale services connected with the sale of medical

devices; business management; business administration; office functions; business consultancy services; business services; business networking services; business, customer, product and service research, analysis, assistance; provision of business, customer, product and service advice and information; the bringing together, for the benefit of others, by the means of a website of a variety of medical services enabling customers to conveniently view and purchase those services; the bringing together, for the benefit of others, of a variety of medical services, enabling customers to conveniently view and purchase those services; information, advisory and consultancy services relating to all the aforesaid services; none of the aforesaid relating to financial communications or the facilitation of financial transactions.

Class 42: Custom design of microwave products; calibration services relating to medical apparatus; design of medical apparatus; development of test equipment for medical apparatus; medical laboratory services; Medical research; Writing of computer programs for medical applications; scientific and technological services and research and design relating thereto; design services; Design of apparatus for heating; Design of heating; Planning [design] of heating apparatus; design and development of websites and platforms for the secure access of medical information (data rooms); providing temporary use of on-line non-downloadable computer software, web applications, and computer software platforms in the field of medical services; preparation of reports; research services; design services; electronic data storage; hosting of medical content on the Internet; computer services, namely, providing an interactive website featuring technology that allows users to manage their online information and medical accounts; information, advisory and consultancy services relating to all the aforesaid services; none of the aforesaid relating to financial communications or the facilitation of financial transactions.

Class 44: Medical services; medical treatment services; medical procedure services; diagnostic and screening services; surgical diagnostic services; medical diagnostic services; medical testing for diagnostic or treatment purposes; conducting studies for medical diagnostic or treatment purposes; medical treatment services; surgical treatment services; provision of medical treatment; analysis of human serum for medical treatment; medical services for treatment of the skin; analysis of human tissues for medical treatment; medical testing for diagnostic or treatment purposes;

medical services for the treatment of skin; medical treatment services provided by clinics and hospitals; advisory services relating to the treatment of degenerative diseases; medical analysis for the diagnosis and treatment of persons; medical analysis services relating to the treatment of persons and patients; medical services in the field of treatment of chronic pain; medical services for the treatment of conditions of the human body; medical testing services relating to the diagnosis and treatment of disease; veterinary services; hygienic and beauty care for human beings or animals; medical analysis for the diagnosis and treatment of persons; clinic services (Medical-); Hiring of medical apparatus; Hiring of medical appliances; Hiring of medical instruments; Medical analysis services; Medical assistance; Medical services; Medical services for the treatment of conditions of the human body; Medical services for treatment of the skin; Medical treatment services; Rental of equipment for medical purposes; Rental of medical apparatus; Services for the provision of medical facilities; Heat therapy [medical]; advisory, information and consultancy services for all the aforesaid services including such services provided online from a computer network and/or via a computer database or the Internet and/or extranets.

The applicant's goods

Class 1: Diagnostic chemicals [other than for medical or veterinary use]; Bactericides [other than for medical and veterinary use]; Inoculants [other than for medical or veterinary use]; Chemicals for use in pathology [other than medical and veterinary]; Enzymes [other than for medical or veterinary use]; Bacterial products [other than for medical and veterinary use].

Class 5: Medical and surgical dressings; Dressings, medical; Medical dressings; Dressings (Surgical -);Surgical dressings; Medical wound dressings; Surgical bandages; Medical dressings, coverings and applicators; Surgical plasters; Medical plasters; Therapeutic creams [medical];Surgical dyes; Bandages for dressings; Clinical medical reagents; Disinfectants for medical instruments; Surgical glues; Medical mouthwashes; Diagnostic preparations for medical and veterinary use; Scrubs [preparations] for medical use; Eye bandages for medical use; Surgical tape; Medical preparations; Anesthetics for surgical use; Pharmaceutical preparations for medical purposes; Plasters for medical purposes; Gauzes for use as dressings; Compression bandages [dressings];Plasters [dressings];Dressings for wounds;

Materials for dressings; Adhesive plasters for medical purposes; Preparations of microorganisms for medical and veterinary use; Emollients for medical purposes; Balms for medical purposes; Analgesics for medical use; Bacterial preparations for medical and veterinary use; Greases for medical or veterinary purposes; Diagnostic preparations for medical or veterinary purposes; Diagnostic preparations for medical purposes; Diagnostic preparations for medical purposes used by medical laboratories; Reagents and media for medical and veterinary diagnostic purposes; Diagnostic preparations for veterinary use; Dietetic products for medical purposes; Medical preparation for slimming purposes; Pharmaceutical preparations for ocular or intraocular surgery; Implants (Surgical -) [living tissues]; Surgical spirits; Bone cement for surgical and orthopedic purposes; Bone cement for surgical and orthopaedic purposes; Medical infusions; Medical diagnostic reagents; Tampons for medical purposes.

Class 9: Microtitration instruments [other than for medical use].

Class 10: Medical and surgical catheters; Medical and surgical laparoscopes; Plaster for medical or surgical purposes; Surgical instruments for use in orthopedic surgery; Medical catheters; Dressing forceps [for surgical use]; Inflation syringes for medical or surgical use; Prostheses for surgical treatment; Hammers for medical or surgical use; Surgical sutures; Medical prostheses; Prostheses for medical treatment; Surgical splints; Splints, surgical; Surgical gowns; Surgical staples; Medical gowns; Surgical apparatus and instruments for medical use; Medical guidewires; Guidewires (Medical -); Bandages [supportive] for surgical purposes; Surgical and wound treating equipment; Medical implants; Medical endoscopes; Medical stents; Medical hosiery; Surgical retractors; Medical apparatus for use in cardiac surgery; Medical instruments for percutaneous tracheostomy; Medical stethoscopes; Surgical instruments for use in spinal surgery; Surgical drapes; Surgical forceps; Surgical gloves; Retractors [medical instruments]; Surgical catgut; Surgical bougies; Surgical staplers; Surgical examination drapes; Medical apparatus for use in laparoscopy; Medical masks; Surgical instruments; Surgical masks; Endoscopic equipment for medical purposes; Medical gloves; Medical ventilators; Medical syringes; Catheters for surgical use; Medical therapy instruments; Pressure garments for medical treatment; Orthopaedic bandages; Sponges (Surgical -); Surgical sponges; Medical aids for use in stoma care;

Catheters for medical use; Plates in the nature of orthopaedic surgical implants; Cutlery [surgical]; Surgical cutlery; Sterile clothing for surgical use; Gowns for surgical use; Surgical skin staplers; Medical tubing for use in vascular procedures; Medical braces; Splints for surgical use; Medical knives; Medical instruments; Humidifiers for use in medical treatment; Medical stretchers; Splints [for medical purposes]; Surgical apparatus and instruments for veterinary use; Medical patient treatment chairs; Bandages for orthopaedic purposes; Support bandages for medical purposes; Grafts for surgical use; Forceps for medical use; Plates in the nature of orthopaedic surgical instruments; Surgical scissors; Medical scissors; Surgical knives; Medical dosage dispensers for medical use; Endoscopes for surgical use; Medical and veterinary apparatus and instruments; Staplers for surgical purposes; Catgut for surgical purposes; Surgical needles; Medical devices; Medical apparatus for use in endoscopy; Medical diagnostic apparatus for medical purposes; Surgical apparatus and instruments for dental use; Medical lasers; Staples for surgical use; Medical diagnostic instruments; Suture materials for surgical use; Medical trays; Tools for medical diagnostics; Diagnostic instruments for medical use; Diagnostic ultrasound instruments for medical use; Testing instruments for medical diagnostic purposes; Medical hand tools; Ultrasonic diagnostic instruments for medical use; Diagnostic imaging apparatus for medical use; Medical testing instruments; Diagnostic testing apparatus for use in immunoassay procedures [medical]; Medical analysis instruments; Instruments for use in medical analysis; Test equipment for medical use; Syringes for medical use; Medical syringe needles; Syringes for medical purposes; Hypodermic syringes for injections for medical purposes; Disposable hypodermic syringes for medical use; Injection syringes for medical purposes; Hypodermic syringes; Medicinal injection syringes; Diagnostic apparatus for medical purposes used in medical laboratories; Medical apparatus and instruments; Veterinary apparatus and instruments; Surgical apparatus and instruments; Surgical instruments and apparatus; Medical ultrasound apparatus; Diagnostic apparatus for medical purposes; Electronic apparatus for medical purposes; Medical X-ray apparatus; Apparatus for medical rehabilitation; Lasers for medical use; Lasers for medical purposes; Laser scalpels for medical use; Laser instruments for medical use; Medical instruments incorporating lasers; Laser installations for medical use; Lasers for surgical use; Lasers for use in surgery; Electronic endoscopes for surgical use; Trays for holding medical instruments; Medical spatulas; Medical bags designed to hold

medical instruments; Autoclaves for medical use; Nebulizers for medical use; Refractometers for medical use; Manometers for medical use; Endoscopes for medical use; Chromatographs for medical use; Analysers for medical use; Cryoprobes for medical use; Scanners for medical use; Tweezers for medical use; X-ray analyzers for medical use; Gloves for medical use; Electrodes for medical use; Splints for medical use; Knives for medical use; Chromatography instruments for medical use; Radiotherapy instruments for medical use; Inhalers for medical use; Temperature scanners for medical use; Diathermic handles for medical use; Spatulae for medical use; Irrigators for medical use; Pipetting apparatus for medical use; Scanning instruments for medical use; Tomographic instruments for medical use; Radioisotope apparatus for medical use; Pliers for medical use; Ultrasonic cleaning instruments for medical use; Warmers for medical use; Mattresses for medical use; Humidifying apparatus for medical use; X-ray appliances for dental and medical use; Mallets for medical use; Suture materials for medical use; Sanitary masks for medical use; Splinting materials for medical use; Aerosol dispensers for medical use; Analytical instruments for medical use; Slings for medical use; Incentive spirometers for medical use; Separation instruments for medical use; Chromatographic apparatus for medical use; Chromatography apparatus for medical use; Dissecting instruments for medical use; Sprays (Hand-operated -) for medical use; Isolation bags for medical use; Scanning machines for medical use; Ultrasonic probes for medical use; Measuring devices for medical use; Sprayers [hand-operated] for medical use; Physical analyzers for medical use; Examination gloves for medical use; Push syringes for medical use; Suction apparatus for medical use; Urinals [vessels] for medical use; Transplant sutures for use in surgery; Transplant protheses for use in surgery; Bougies [surgery]; Scissors for surgery; Implants [prosthesis] for dental surgery; Implants [prosthesis] for use in facial surgery; Implants [prosthesis] for bone surgery; Tissue expanders for use in surgery; Implants [prosthesis] for use in jawbone surgery; Maxillo-mandibular splints for use in maxillofacial surgery; Tables for surgery; Implant materials [prosthesis] for use in surgery; Implant materials [prosthesis] for use in dental surgery; Instruments for use in gastrointestinal surgery; Apparatus for use in surgery in the drainage of incisions; Apparatus for non-invasive surgery; Apparatus for use in surgery in the drainage of wounds; Stockings (Elastic -) [surgery]; Elastic stockings [surgery]; Hernia bandages; Artificial surgical implants; Cardiac vascular prosthesis for surgical protheses; Cardiac valves for surgical protheses; Compresses (Thermo-

electric -) [surgery]; Thermo-electric compresses [surgery]; Post-operative colostomy bags; Lenses [intraocular prosthesis] for surgical implantation; Implants [prosthesis] for use in dentistry; Intraocular prostheses [lenses] for surgical implantation; Prostheses (Intraocular -) [lenses] for surgical implantation; Lenses [intraocular prostheses] for surgical implantation; Sheets [drapes] for use in surgery; Surgical amputaters; Orthopedic implants; Orthopaedic implants; Apparatus and instruments used in foot surgery; Compressing screws in the nature of orthopaedic surgical implants; Lag screws in the nature of orthopaedic surgical implants; Medical knee braces; Knee bandages, orthopaedic; Orthopaedic knee bandages; Post-operative enterostomy bags; Bandages (Knee -), orthopedic; Knee bandages, orthopedic; Silicone lace combined with a needle for use in the retraction of arteries during surgery; Intraocular lenses for surgical implantation; Sterilised sheets for use on patients during surgery; Post-operative ileostomy bags; Implants [prosthesis] for use in bone grafting; Orthopedic joint implant prostheses; Armboards [surgical splints]; Silicone lace combined with a needle for use in the retraction of veins during surgery; Knee prostheses; Drape sheets for use during surgery; Surgical mesh; Medical elbow braces; Prosthesis for dentistry; Surgical tubing for wound drainage; Orthopedic joint implants; Surgical bypass devices; Surgical drills; Implants [prosthesis]; Medical ankle braces; Implants [prosthesis] for ligaments; Dental implants; Hip implants; Otological implants; Ureteral stents being surgical support; Prosthetic hip joint implants; Orthopaedic hip prostheses; Prosthetic implants; Surgical pliers; Surgical implants [artificial materials]; Breast implants; Implants for osteosynthesis; Artificial orthopaedic implants; Orthopaedic femur prostheses; Surgical perforators; Orthopedic prostheses; Silicone orthopedic implants; Surgical caps; Pads (Abdominal -) for surgical use; Breast prostheses; Surgical saws; Intra-ocular implants; Catheters for use in urology; Medical tubing; Catheters; Catheters for urological purposes; Medicinal catheters; Cardiac catheters; Medical tubing for transfusions; Medical devices for placing and securing catheters; Angioplasty catheters; Electrophysiology diagnostic catheters; Rigid medical endoscopes; Flexible medical endoscopes; Capsule endoscopes for medical purposes; Medical vessel dilators; Medical tubing for administering drugs; Medical probes; Medical apparatus for renal dialysis; Catheters for use in embolectomy; Spirometers [medical apparatus]; Medical devices for moxibustion therapy; Nebulizers for medical purposes; Nebulisers for medical purposes; Oxygenators for medical use; Medical apparatus for urological purposes; Intravenous

catheters; Medical pumps; Tubes for medical purposes; X-ray tubes for medical purposes; Electronic endoscopes for medical use; Medical inhalers; Electrodes for use with medical apparatus; Suction tubes for medical purposes; Disposable medical devices for treating constipation; Tubes (Drainage -) for medical purposes; Drainage tubes for medical purposes; Electrodes for medical purposes; Catheter apparatus for gastroenterological use; Intravenous bags for medical purposes; Optical instruments for medical endoscopy; Needles for medical purposes; Tubing for use with catheters; Medical apparatus and devices; Dialysis machines for medical use; Medical blankets for the cooling of patients; Angiographic vascular introducers for the placement of catheters; Drainage tubes for medical use; Medical tubing for irrigation purposes; Staplers for medical purposes; Medical imaging apparatus; Medical apparatus for hyperhidrosis treatment; Medical analytical apparatus for medical purposes; Staples for medical purposes.

Class 11: Sterilisers for medical instruments; Sterilisers for surgical instruments; Sterilization units for medical instruments; Sterilizers for medical use; Steam sterilizers for medical use; Sterilisation autoclaves for medical use; Humidifiers [other than for medical use]; Sterilizers for medical instruments; Toilets adapted for medical patients.

Class 35: Retail or wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Wholesale services in relation to pharmaceutical preparations; Retail services in relation to medical apparatus; Retail services in relation to medical instruments; Wholesale services in relation to medical apparatus; Wholesale services in relation to medical instruments; Wholesale services in relation to dietetic preparations.

Class 44: Medical services; Veterinary services; Medical and healthcare services; Nursing services (Medical -); Health clinic services [medical]; Clinic services (Medical -); Clinic (Medical -) services; Medical clinic services; Medical treatment services; Surgery; Medical and healthcare clinics; Medical nursing; Nursing, medical; Medical tele-reporting [medical services]; Clinics (Medical -); Medical care; Medical imaging services.