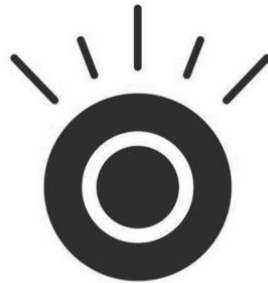


O-0505-24

**TRADE MARKS ACT 1994
IN THE MATTER OF
TRADE MARK APPLICATION NO. 3698996
BY WUHAN MAOREN YUNSHANG TECHNOLOGY CO., LTD.
TO REGISTER**



**AS A TRADE MARK
IN CLASSES 25 & 35
AND OPPOSITION THERETO (UNDER NO. 431981)
BY
TARGET BRANDS, INC.**

Background & pleadings

1. Wuhan Maoren Yunshang Technology Co., Ltd. (“the applicant”) applied to register the trade mark shown on the title page of this decision on 22 September 2021. The mark was published in the Trade Marks Journal on 17 December 2021 for the following goods and services in classes 25 and 35:

25: Gloves [clothing]; Scarves; Girdles; Sleep masks; Underwear; Clothing; Waterproof clothing; Layettees [clothing]; Swimsuits; Masquerade costumes; Shoes; Hats; Hosiery.

35: Retail services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Presentation of goods on communication media, for retail purposes; Advertising; Online advertising on a computer network; Business management and organization consultancy; Commercial administration of the licensing of the goods and services of others; Provision of an online marketplace for buyers and sellers of goods and services; Sales promotion for others; Import-export agency services; Personnel management consultancy; Search engine optimisation for sales promotion; Accounting; Sponsorship search.

2. Target Brands, Inc (“the opponent”) opposed the application in full on 17 March 2022 under sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”). The opponent relies on the following UK trade marks under section 5(2)(b).

UK TM No. 3506029



Class 25

Filing date: 29 June 2020

Registration date: 12 March 2021

("the '029 mark")

UK TM No.3207260



Class 35

Filing date: 18 January 2017

Registration date: 25 August 2017

("the '260 mark")

UK TM No.3301115



Class 35

Filing date: 3 April 2018

Registration date: 2 November 2018

("the '115 mark")

3. The goods and services relied upon by the opponent are set out in Annex 1 to this decision. It claims that the marks are similar and the goods and services are identical or similar, with the result that there is a likelihood of confusion.

4. Moreover the opponent claims that the use of the contested application contravenes section 5(3) of the Act as the '260 mark and the '115 mark have a reputation in the UK for the services registered in class 35. Therefore the opponent claims the relevant consumers would believe that there is an economic connection between the earlier registrations and the contested application. Furthermore the contested application

would “free ride on the image associated with the proprietors’ BULLSEYE device”¹ and take unfair advantage.

5. The applicant filed a counterstatement in which it denied there was a likelihood of confusion and put the opponent to proof of its claims under section 5(3). However the applicant appears to concede² that its class 25 goods, except for the terms *sleep masks* and *masquerade costumes*, are similar to the opponent’s class 25 goods. With regard to the applicant’s class 35 services, again it appears to concede³ that some services are similar, i.e. for the *retail services* portion of the specification but that its terms, namely *Presentation of goods on communication media, for retail purposes; Advertising; Online advertising on a computer network; Business management and organization consultancy; Commercial administration of the licensing of the goods and services of others; Provision of an online marketplace for buyers and sellers of goods and services; Sales promotion for others; Import-export agency services; Personnel management consultancy; Search engine optimisation for sales promotion; Accounting; Sponsorship search* are not similar to the opponent’s class 35 services.

6. Both sides are represented in these proceedings. The applicant is represented by Handsome I.P. Ltd and the opponent by Cleveland Scott York.

7. Both sides filed submissions but only the opponent filed evidence. A hearing was requested and was held before me on 16 January 2024. The applicant did not attend. The opponent was represented by Andrew Norris KC, instructed by Cleveland Scott York, who filed a skeleton argument in advance of the hearing.

8. I make this decision based on a reading of all the material before me and the submissions presented at the hearing.

9. 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

¹ TM7, page 9

² Applicant’s Counterstatement, paragraph 29

³ Applicant’s Counterstatement, paragraphs 30 & 31

EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts that predate the UK's withdrawal from the EU.

Approach

10. The opponent's marks qualify as earlier trade marks under the provisions of section 6(1)(a). As the opponent's marks had not completed their registration process more than 5 years before the application date of the contested application, they are not subject to proof of use pursuant to section 6A of the Act. Consequently, the opponent can rely upon all of the goods and services under section 5(2)(b) for which its marks are registered although it has provided evidence in support of enhanced distinctiveness under section 5(2)(b) and for its section 5(3) claim.

Opponent's Evidence

11. The opponent filed two witness statements in the name of Renee Kraft, who is the Director Counsel - Trademark and Copyright, a position she has held since 2012. The first witness statement is dated 23 September 2022 and Ms Kraft attached 33 exhibits to her evidence in chief. The second witness statement is dated 1 June 2023 and was filed as evidence in reply to the applicant's written submissions of 16 February 2023. Ms Kraft attached 4 additional exhibits to her second witness statement.

12. I do not intend to summarise the evidence in detail here but I have reviewed it all and set out the most pertinent points below. In addition I note Ms Kraft refers to the earlier device marks as the 'Bullseye' logo so I will also refer to them by that name for convenience.

13. Ms Kraft states the opponent is a "major retail business specialising in discount department store services" which trades using the word TARGET and the bullseye logo. Ms Kraft states that sales in the UK are generated from its online website presence and from some concessionary presence in the premises of collaborative partners which I go in to in more detail below. Ms Kraft states that the opponent retails third party products, its own branded products and the products resulting from its collaborations. Ms Kraft draws attention to the 'shopfront' of the opponent on the UK eBay platform which existed between November 2014 and January 2018. By means

of the Wayback Machine Internet Archive services Ms Kraft exhibits pages from 2017 which show a range of goods with prices displayed in pounds sterling. The pages are headed with the bullseye device and the word “targetstores”.

14. Ms Kraft states that the opponent’s annual global turnover between 2015 and 2019 averaged \$74 billion and in 2020 it reached approximately \$93 billion. These figures are not broken down into territories or attributed to any particular class of goods or services. From the global figures, Ms Kraft extracted the following figures for online sales where the shipping destination was the UK, namely:

2015 (from October only)	£78,156.79
2016	£182,034.91
2017	£465,546.17
2018 (up to March only)	£35,069.43

15. In Exhibit RK29, there are several trade press articles dated November 2015 highlighting the opponent’s new partnership with Borderfree which enabled consumers outside the USA, including the UK, to make purchases from the opponent’s US website and for USA based consumers to send purchases overseas.

16. The number of orders from the UK are given as,

2015 (from October only)	1141
2016	2938
2017	6240
2018 (up to March only)	363

17. Ms Kraft exhibits nine invoices⁴, headed up with the bullseye logo, which are dated between 2015 and 2018 and contain orders for UK addresses. The orders are for third party branded furniture, Christmas decorations, cosmetics, a TV set, toys, coffee making accessories and a single invoice for clothing. In her second witness statement, Ms Kraft makes reference to a list comprising several dozen pages listing various

⁴ Exhibit RK33

goods sold and shipped to the UK between 2015 and 2018, complied for the opponent by Borderfree.⁵

18. Ms Kraft gives the global advertising revenue for the opponent as being approximately \$1.5 million p.a. but is unable to give figures for the UK in particular. However the following traffic figures are given for UK visitors to the opponent's website, target.com, namely:

2015	41,629
2016	49,977
2017	52,217
2018	41,034
2019	30,595
2020	45,800

19. Ms Kraft states that it is the opponent's approach to enter into collaborations with well-known designers for a broad spectrum of goods. In relation to fashion, the opponent's approach with collaborative partners is to make time limited and garment limited collections. Ms Kraft states that garments from these collaborations were not always available to purchase in the UK, with the exception of the collaborations with Alice Temperley (collection dated September 2007),⁶ Liberty of London⁷ (March 2010) and Peter Pilotto (February 2014),⁸ although the newspaper articles she exhibits at Exhibit RK16 state the former two of those collections were not available in the UK. Ms Kraft states the newspaper articles were incorrect. Where these collaboration collections were available in the UK, Ms Kraft states that Alice Temperley garments could be purchased from Selfridges in London and Liberty of London garments could be purchased both online and in store from Liberty of London.⁹ The 'Peter Pilotto for Target' garment range was available to UK customers via the online retailer Net-a-porter.com. Ms Kraft states that a similar arrangement with Net-a-porter took place

⁵ Exhibit RK37

⁶ Exhibit RK10

⁷ Exhibit RK12

⁸ Exhibit RK13

⁹ Exhibit RK10

for purchases in the UK of another collaborative collection with the designer Joseph Altuzarra in 2014.¹⁰

20. Ms Kraft also states that the consumer interest and publicity generated by such collaborations are widely covered in the UK. A typical example of this collaboration approach is given at Exhibit RK4 in which an article from vogue.co.uk, (undated but gives the date April 2006 within the article) advertises a collaboration between a British designer, Louella Bartley, and the opponent and the resultant collection being available for 90 days only. There are similar articles dated 2011 from several UK national newspapers given at Exhibit RK5 about the opponent's collaboration with Missoni which proved so popular that it caused the opponent's US website to crash.

21. Ms Kraft gives a number of examples of how the bullseye device is presented on publicity material and swing tags¹¹ for collaboration garments. A selection is shown below.



22. Ms Kraft states that the opponent was a sponsor of the 2012 London Olympics and hosted a 'pop up' event space on the Southbank. The event space was used for the public to participate in outdoor games and Ms Kraft states the opponent also gave away free items of merchandise, namely hats, umbrellas, ponchos, plush toys, sunglasses and tote bags branded with the bullseye device. Ms Kraft also states that the opponent has had a long sponsorship association with various American sports

¹⁰ Exhibit RK18

¹¹ Exhibits RK5 & 6

sectors such as Indycar racing, the National Basketball Association, Major League Baseball and Major League Soccer. Ms Kraft has not indicated whether these sports events are available to watch on UK TV channels.

23. That concludes my summary of the evidence.

DECISION

Section 5(2)(b)

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

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

(a)...

(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.”

25. 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.”

26. The following principles are gleaned from the decisions of the EU courts 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 C-120/04, Shaker di L. Laudato & C. Sas v OHIM, Case C-334/05P and Bimbo SA v OHIM, Case C-591/12P:

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

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

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

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

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

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

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

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

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

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

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

Comparison of goods and services

27. In *Canon*, the Court of Justice of the European Union (“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.”

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

(a) The respective uses of the respective goods or services;

(b) The respective users of the respective goods or services;

(c) The physical nature of the goods or acts of service;

(d) The respective trade channels through which the goods or services reach the market;

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

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

30. In *Gérard Meric v Office for Harmonisation in the Internal Market*¹², the General Court (“GC”) 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.”

31. The goods and services must be given their ordinary and natural meanings. In *YouView Ltd v Total Ltd*,¹³ Floyd J. stated:

“...Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. *Treat* was decided the way it was because the ordinary and natural, or core, meaning of ‘dessert sauce’ did not include jam, or because the ordinary and natural description of jam was not ‘a dessert sauce’. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their

¹² Case T- 133/05

¹³ [2012] EWHC 3158 (Ch) at [12].

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.”

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

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

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

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

34. Whilst on the other hand:

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

35. in its counterstatement the applicant submits that some of its class 25 goods namely *sleep masks* and *Masquerade costumes*, and class 35 services, namely *Presentation of goods on communication media, for retail purposes; Advertising; Online advertising on a computer network; Business management and organization consultancy; Commercial administration of the licensing of the goods and services of others; Provision of an online marketplace for buyers and sellers of goods and services; Sales promotion for others; Import-export agency services; Personnel management consultancy; Search engine optimisation for sales promotion; Accounting; Sponsorship search* are not similar to the opponent’s goods and services in the same classes. I will, therefore, assess the similarity of the classes as set out below.

Class 25

Opponent’s ‘029 goods in class 25	Applicant’s goods in class 25
<i>Articles of clothing; articles of underclothing; nightwear; swimwear; footwear; hosiery; headwear.</i>	<i>Gloves [clothing]; Scarves; Girdles; Sleep masks; Underwear; Clothing; Waterproof clothing; Layettees [clothing]; Swimsuits; Masquerade costumes; Shoes; Hats; Hosiery</i>

36. The opponent’s specification includes the terms *Articles of clothing; Articles of underclothing; swimwear; footwear; hosiery; headwear* which are either identically worded or identical under the *Meric* principle, to the terms *Underwear; Clothing; Swimsuits; Shoes; Hats; Hosiery* in the applicant’s specification.

37. Moreover in my view the opponent’s terms *Articles of clothing* is broad enough under the *Meric* principle to cover *Masquerade costumes*, which were specifically identified by the applicant as dissimilar.

38. In addition I find that the term *nightwear* in the opponent’s specification will cover all types of apparel that can be worn at night which in my view is broad enough, under the *Meric* principle, to cover the term *sleep masks* in the applicant’s specification.

Class 35

39. With regard to class 35, the opponent in its skeleton argument¹⁴ and being mindful of the length of its specifications in this class, set out what it believed were the closest similar services to the applicant’s terms. I have set out these terms in the table below, separating out the relevant terms for clarity. With that in mind, the competing services are as follows:

Opponent’s ‘260 mark: class 35 services	Opponent’s ‘115 mark: class 35 services	Applicant’s class 35 services
<i>Retail store services and on-line retail store services in the nature of a general merchandise department store connected with the sale of... pharmaceutical preparations.</i>	<i>Retail store services, retail services, on-line retail store services, and on-line retail services connected with the sale of... pharmaceutical, medical, surgical and veterinary preparations, sanitary preparations for medical purposes.</i>	<i>Retail services for pharmaceutical, veterinary and sanitary preparations and medical supplies;</i>
<i>promoting the sale of the goods and services of others through customer loyalty and incentive programmes for retail customers</i>	<i>sales promotion of products for third parties; order fulfilment services; sales promotion of products for third parties;</i>	<i>Presentation of goods on communication media, for retail purposes; Sales promotion for others;</i>
<i>providing information electronically about the</i>	<i>Providing a searchable online evaluation database for</i>	<i>Business management and organization consultancy; Commercial</i>

¹⁴ Opponent’s skeleton argument paragraph 12

<i>products of others regarding price comparison information, product reviews, and discount information</i>	<i>buyers and sellers; providing an online searchable advertising guide featuring the goods and services of online vendors;</i>	<i>administration of the licensing of the goods and services of others; Import-export agency services;</i>
<i>promoting the sale of goods of others through electronic promotions;</i>	<i>providing an online searchable advertising guide featuring the goods and services of online vendors;</i>	<i>Advertising; Online advertising on a computer network</i>
<i>promoting the sale of goods of others through electronic promotions; online ordering services featuring a wide variety of consumer goods; providing information electronically about the products of others regarding price comparison information, product reviews, and discount information</i>	<i>Provision of an online marketplace for buyers and sellers of goods and services; Providing a searchable online evaluation database for buyers and sellers</i>	<i>Provision of an online marketplace for buyers and sellers of goods and services; Search engine optimisation for sales promotion</i>
		<i>Accounting; Sponsorship search; Personnel management consultancy;</i>

40. I find that the applicant's services namely *Retail services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Presentation of goods on communication media, for retail purposes; Advertising; Online advertising on a computer network; Provision of an online marketplace for buyers and sellers of goods and services; Sales promotion for others; Search engine optimisation for sales*

promotion can be considered as identical, or identical under the *Meric* principle to the opponent's terms as set out in the table above

41. With regard to the applicant's services for *Business management and organization consultancy; Commercial administration of the licensing of the goods and services of others; Import-export agency services*, the opponent states its similar services are *providing information electronically about the products of others regarding price comparison information, product reviews, and discount information* for its '260 mark and *Providing a searchable online evaluation database for buyers and sellers; providing an online searchable advertising guide featuring the goods and services of online vendors* for its '115 mark. In its skeleton argument,¹⁵ the opponent contends that,

"Many of the services specified in the contested mark are offered alongside the corresponding service in the same row. They have a complementary, and often important, relationship with the corresponding service in the contested mark. For example, business management and organisation consultancy and commercial administration of the licensing of the goods and services of others is likely to be provided in conjunction with providing information electronically about the products of others. Providing information electronically about the products of others would naturally fall to be provided alongside business management and commercial administration of the goods and services of others".

42. I disagree with the opponent's contention. To my mind *Business management and organization consultancy* relates to the provision of services to advise businesses on the management and organisation of their particular enterprises which has a different nature and purpose from the provision of information on products, which is broadly what the opponent's services cover. The respective services are not in competition or complementary in the sense of one being essential or important to the other. the opponent's services appear to be aimed at the general public or those looking for products while the applicant's services which could include businesses, but

¹⁵ Paragraph 14

in my view the applicant's services are aimed at professional businesses. Overall I find the respective services to be dissimilar.

43. With reference to the applicant's term *Commercial administration of the licensing of the goods and services of others*, I take the view that this means the applicant administers license arrangements (for example monitoring the duration and expiry of licenses and/or the conditions of licensing agreements by which licensor and licensee must abide) for third parties. As previously stated, these services have a different nature and purpose from the opponent's services and are aimed at different end users. The respective services are not in competition or complementary in the sense of one being essential or important to the other. Overall I find the respective services to be dissimilar.

44. Turning to the applicant's term *Import-export agency services*, I take the view that this is a service to facilitate the movement of goods and services across territorial borders and would involve the arranging of transport logistics for goods and preparation of appropriate customs, excise and/or other territorial paperwork required. These services have a different nature and purpose from the opponent's services and are aimed at different end users. The respective services are not in competition nor are they complementary in the sense of one being essential or important to the other. Overall I find the respective services to be dissimilar.

45. Finally I turn to the remaining services in the applicant's specification namely *Accounting; Sponsorship search; Personnel management consultancy*. The opponent referred to these terms at the hearing as "outliers". The opponent did not provide any detailed argument as to why these terms would be seen as similar to the opponent's services. In the absence of such, I find that the terms are not similar to the opponent's services. The contested terms are aimed at a professional user, whether a business or an individual, and do not coincide in term of nature, purpose, competition or complementarity with the opponent's services in this class.

46. For those services I have found to be dissimilar, I am guided by *eSure Insurance v Direct Line Insurance*,¹⁶ in which Lady Justice Arden stated that:

“49..... I do not find any threshold condition in the jurisprudence of the Court of Justice cited to us. Moreover I consider that no useful purpose is served by holding that there is some minimum threshold level of similarity that has to be shown. If there is no similarity at all, there is no likelihood of confusion to be considered. If there is some similarity, then the likelihood of confusion has to be considered but it is unnecessary to interpose a need to find a minimum level of similarity.

47. As a result I find that the opposition under section 5(2)(b) fails for the services *Business management and organization consultancy; Commercial administration of the licensing of the goods and services of others; Import-export agency services; Accounting; Sponsorship search; Personnel management consultancy* in class 35.

Average consumer and the purchasing process

48. I next consider who the average consumer is for the contested goods and services and how they are purchased. It is settled case law that the average consumer is deemed to be reasonably well informed and reasonably observant and circumspect.¹⁷ For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question.¹⁸

49. The average consumer for the goods at issue will be the general public and for the services it will be a mix of the general public, professional users and businesses. Whilst the goods and services will vary in price, the average consumer is likely to consider various factors when selecting the goods, such as size, suitability for purpose and aesthetic qualities. When selecting the services, the average consumer will consider factors such as functionality (for online retail purchasing), and professional

¹⁶ [2008] ETMR 77 CA

¹⁷ *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)

¹⁸ *Lloyd Schuhfabrik Meyer*, Case C-342/97.

expertise. Consequently, I consider that at least a medium degree of attention will be paid during the purchasing process. However, I recognise that a higher level of attention may be paid by businesses, particularly for services such as accountancy or import/export agency.

50. The goods are likely to be purchased in physical premises or online equivalents. The services will likely come from online provisions such as websites. Consequently, visual considerations will dominate the selection process. However, I do not discount an aural component to the purchase given that advice may be sought from business professionals and word-of-mouth recommendations may be made.

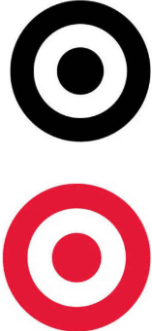

Comparison of trade marks

51. It is clear from *Sabel* that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU 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.”

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

53. The respective trade marks are shown below:

Opponent's marks	Applicant's mark
	

54. The opponent's '029 and '260 marks consist of a black and white image of what it refers to as its bullseye device. Its '115 mark consists of the same device rendered in red and white. Essentially the devices consist of an arrangement of concentric circles, starting with a solid circle of black/red in the centre, which is surrounded by a white circle, which in turn is surrounded by a third circle of either black or red. The overall impression resides in this presentation.

55. The applicant's mark also consists of three concentric circles, namely a solid black circle in the centre, surrounded by a white circle, which in turn is surrounded by another black circle. There are five lines above the concentric circles, which are presented at different angles. From left to right, the first, third and fifth lines are noticeably longer than the second and fourth lines. The overall impression resides in the presentation of the circle device and lines as a whole.

56. As the respective marks are all devices, there is no aural comparison to be made so I shall go on to make the visual and conceptual comparisons between the marks.

57. In a visual comparison there are similarities in that the respective marks all contain a three concentric circle arrangement. The thickness of the circles varies between the applicant's and opponent's marks and in addition as a point of visual difference the application has an additional feature of five lines of different lengths radiating out above its concentric circles. Taking these factors into account, I find there is a medium degree of visual similarity.

58. In a conceptual comparison, the opponent states in its skeleton argument¹⁹ that “the marks convey an impression of an archery or rifle target”. I accept that this is the case for the opponent’s marks. The devices appear to be the visual representation of the opponent’s name, i.e. Target Brands. The opponent notes the additional five lines element of the applicant’s mark and states that the impression of a target may be “lessened” but states a target concept is still “clearly understood”. I do not agree that the concept of the applicant’s mark will be clearly understood as a target. The additional five lines, in my view, give a different concept to the applicant’s mark. The applicant states in its counterstatement,²⁰

“[its] mark resembles an eye, with the black circle being a pupil, the outer annulus outlining an eyeball, and the black, radiating lines defining the eyelashes. In fact, the eye is open wide and consequently conveys a surprised look.”

It is settled case law that for a conceptual message to be relevant it must be capable of immediate grasp by the average consumer.²¹ I acknowledge that the additional five lines element may give the applicant’s mark an impression of an eye to some consumers. However it is doubtful that all consumers will immediately perceive the applicant’s mark in this way. Taking these factors into account I find the respective marks are conceptually different.

Distinctive character of the earlier trade mark

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

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

¹⁹ Paragraph 7

²⁰ Paragraph 14

²¹ This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM* [2006] e.c.r.-I-643; [2006] E.T.M.R. 29.

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

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

61. I begin by considering the inherent position. The earlier marks consist of devices resembling a target rendered in a black/white version and a red/white version. The device marks have no meaning in relation to the goods and services for which they are registered. I do not consider the red colour element in the ‘115 mark increases the inherent distinctiveness of that mark to any material degree. Overall I find the earlier marks have a medium degree of inherent distinctiveness.

62. The relevant market for assessing whether the distinctiveness of the earlier marks has been enhanced through use is the UK market. In terms of enhanced distinctiveness, I have already set out the most relevant and pertinent points regarding the evidence earlier in my assessment. Based on the evidence filed and taking into account the *Chiemsee* factors, I find the evidence is insufficient to demonstrate that the opponent enhanced the distinctiveness of its earlier marks for the goods and services set out in Annex 1. In relation to its class 25 goods, the opponent has

demonstrated some small sales to UK consumers via its own online platform and from the online sites of its collaborative partners such as Liberty of London. I note that the earlier marks have been used on the opponent's website for its retail services and it claims direct sales in the UK via Ebay and Borderfree but the high point of its evidenced trading years was 2017 in which it claims sales of £474,546 based on 6240 orders. In my view this is not sufficient to establish enhanced distinctiveness particularly as the evidence of trading directly to the UK from the opponent's website via Borderfree is limited to only a couple of years. Prior to the availability of goods from the opponent's website, there was limited evidence of sales in the UK from the collaborations, and for which I remind myself that several collaborations had no goods available in the UK. With regard to the collaborations, I note that the approach is to create a short term exclusivity hype around these collections so that the impact is immediate in terms of sales and often resales. It is apparent from the evidence that some of the collaboration garments were available in the UK and some were not. If the collections were available in the UK then in-store purchases were limited to two locations in central London or via third-party websites. Moreover whilst I accept that the bullseye logo was used on garments themselves, the collaboration collections were titled along the lines of "Hunter for Target", "VB x Target", "Peter Pilotto for Target", "Lilly for Target" and "Altuzarra for Target". Finally in regard to the issue of publicity from sponsorships in the UK, this amounted to single instance for a short temporary period in 2012 for the duration of the London Olympic games. In my view the retail sales are not long-standing or widespread enough as per the *Chiemsee* criteria. Due to the nature of the designer collaborations being deliberately engineered to create an atmosphere of "exclusivity" either because the goods were limited by only being available for a short time period or because the range of garments was limited, there is a pattern of various peaks of activity. Whilst sales are not negligible, they are not substantial in what must be considered as an extremely large UK clothing/fashion sector. The last evidenced collaboration took place in 2018 which is some time before the relevant date. In my view and in the context of fairly modest sales, I do not find the evidence is sufficient to establish enhanced distinctiveness for either goods or services as at the relevant date.

Likelihood of confusion

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

64. In *L.A. Sugar Limited*,²² Mr Iain Purvis Q.C. (as he then was), sitting as the Appointed Person, explained that:

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

²² *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10

65. I also bear in mind that there must be a “proper basis” for finding indirect confusion where there is no direct confusion.²³

66. So far in this decision I have found,

- Some of the goods and services are identical or similar to varying degrees but there is dissimilarity for some of the services at issue.
- The average consumer for the goods and services at issue is a mix of the general public, professional users and businesses paying between a medium to high degree of attention in a predominantly visual purchasing process.
- There is a medium degree of visual similarity but no conceptual similarity between the respective marks.
- The earlier marks are inherently distinctive to a medium degree.

67. As previously stated in paragraph 47, where there is dissimilarity between the services, then there is no likelihood of confusion to be considered.

68. Considering the principle of imperfect recollection I find that the visual and particularly the conceptual differences between the respective marks, namely one being perceived as a target and the other potentially being perceived as an eye or simple as a device with no concept, are sufficient to avoid the marks being misremembered as each other. Therefore I do not find any likelihood of direct confusion.

69. I next consider whether there is a likelihood of indirect confusion. I remind myself of the guidance given in *L.A. Sugar* that indirect confusion requires a consumer to undertake a thought process whereby they acknowledge the differences between the marks yet attribute the common element to the same or an economically connected undertaking, taking one mark to be a possible brand extension or sub brand of the other mark(s). The visual and conceptual differences between the marks, in my view, differentiate them. Having recognised the differences between the mark, I see no reason why the average consumer would assume that they come from the same or economically linked undertakings. The conceptual differences between the respective

²³ *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207

marks do not seem likely to cause the average consumer to consider one mark to be a brand extension or sub brand of the other. As such I do not find there is a likelihood of indirect confusion.

70. The opposition claim brought under section 5(2)(b) fails.

Section 5(3)

71. I remind myself that under section 5(3), the opponent relies on its '260 and '115 marks in class 35.

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

“5(3) A trade mark which -

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

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

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

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

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

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

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

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

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

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel, paragraphs 76 and 77* and *Environmental Manufacturing, paragraph 34*.

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

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

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

75. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that its registrations and the application are similar. Secondly, the opponent must show that its registrations have achieved a level of knowledge/reputation amongst a significant part of the public. Thirdly, it must be established that the level of reputation and the similarities between the parties' marks will cause the public to make a link between them, in the sense of the earlier registrations being brought to mind by the contested mark. Finally, assuming the first three conditions have been met, section 5(3) requires that one or more of the types of damage will occur. It is unnecessary for the purposes of section 5(3) that the goods and services be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

76. Previously in this decision, I found that the respective marks are visually similar to a medium degree although they are conceptually dissimilar. I will proceed to consider the next stage as to whether the evidence demonstrates that the earlier registrations have achieved a level of knowledge/reputation amongst a significant part of the public.

77. In Ms Kraft's first witness statement, she sets out that the opponent's reputation in the UK comes from,

“18.1. Direct activities in the United Kingdom – these comprise in particular:

18.1.1. Collaborations with third party retailers and well-known designers;

18.1.2. Pop up events and sponsorships purely intended to raise brand awareness in the United Kingdom;

18.1.3. Direct online sales;

18.2. Cross-over reputation from events outside the United Kingdom, in particular:

18.2.1. USA-based retail events which are reported in the United Kingdom;
and

18.2.2. General brand awareness activities and event sponsorships in the USA which are reported in the United Kingdom.”

78. I made an analysis of the evidence at paragraph 62 and for the reasons I gave there, I also find there is no reputation in the UK. In reference to Ms Kraft's evidence on “cross over reputation” from events outside the UK, I do not consider these to be relevant. No UK audience figures have been provided for US-specific sports such as NBA basketball and Major League Baseball. Whilst overall I accept sports such as motor racing and soccer have a more global fanbase, again no evidence has been provided regarding viewing figures in the UK for either US based Indycar racing or for the US Soccer league. In my view, if there is an UK audience it will be small. In my

experience, UK viewer awareness is usually more focussed towards UK or European premier league soccer or Formula 1 racing rather than US equivalents.

79. Taking all these factors into account I do not find that the opponent has established a reputation for the bullseye devices and therefore the section 5(3) claim fails at the hurdle.

Conclusion

80. The opposition has been unsuccessful and subject to any appeal against this decision, the application can proceed to registration.

Costs

81. The applicant has been successful and is entitled to a contribution to its costs. Awards of costs are governed by Annex A of Tribunal Practice Notice (TPN) 2/2016. Bearing in mind the TPN, I award costs as follows:

£400	Considering the Notice of Opposition & preparing the counterstatement.
£800	Considering the opponent's evidence & preparing written submissions
£1200	Total

82. I order Target Brands, Inc. to pay Wuhan Maoren Yunshang Technology Co.,Ltd. the sum of £1200. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 3rd day of June 2024

June Ralph
For the Registrar
The Comptroller-General

ANNEX 1

Goods and services relied on by the opponent for each of its earlier marks.

UK TM No. 3506029



Class 25: Articles of clothing; articles of underclothing; nightwear; swimwear; footwear; hosiery; headwear.

UK TM No.3207260



Class 35: Retail store services and on-line retail store services in the nature of a general merchandise department store connected with the sale of cosmetics, beauty care products, toiletries, health and beauty aids, pharmaceutical preparations, domestic electrical and electronic equipment, including white goods, machines for household use, calculators, telephones, computer hardware, software and accessories, radios, televisions, sound equipment, video recorders, DVD recorders, hand tools, hardware, optical goods, cameras, lighting, jewellery, clocks, watches, stationery, office and school supplies, publications, books, magazines, records, tapes, CDs, videos, DVDs, animal skins, attaché cases, boxes of leather, card cases, furniture coverings of leather, hand bags, key cases of leather, leather shoulder belts, leather straps, music cases, suitcases, travelling sets [leather ware], wallets, purses, bags and luggage, furniture, household containers and utensils, tableware, housewares, furnishings, bedding, linens, curtains, draperies, carpets and rugs,

picture frames and mirrors, textiles, clothing, footwear, headgear, haberdashery, hobby and craft supplies and equipment, toys, games and playthings, sports equipment, food stuffs, beverages, trees, plants, and flowers, Christmas trees, ornaments, decorations, lights and accessories, automotive maintenance and repair supplies and equipment, battery, oil, anti-freeze and automotive accessories, bicycles and bicycle accessories, pet equipment and supplies, fishing, boating, camping and hunting equipment, garden lawn and patio equipment and supplies, electrical and plumbing maintenance and repair supplies and equipment; retail store services and online retail store services in connection with cosmetics, beauty care products, toiletries, health and beauty aids, pharmaceutical preparations, domestic electrical and electronic equipment, including white goods, machines for household use, calculators, telephones, computer hardware, software and accessories, radios, televisions, sound equipment, video recorders, DVD recorders, hand tools, hardware, optical goods, cameras, lighting, jewellery, clocks, watches, stationery, office and school supplies, publications, books, magazines, records, tapes, CDs, videos, DVDs, animal skins, attaché cases, boxes of leather, card cases, furniture coverings of leather, hand bags, key cases of leather, leather shoulder belts, leather straps, music cases, suitcases, travelling sets [leather ware], wallets, purses, bags and luggage, furniture, household containers and utensils, tableware, housewares, furnishings, bedding, linens, curtains, draperies, carpets and rugs, picture frames and mirrors, textiles, clothing, footwear, headgear, haberdashery, hobby and craft supplies and equipment, toys, games and playthings, sports equipment, food stuffs, beverages, trees, plants, and flowers, Christmas trees, ornaments, decorations, lights and accessories, automotive maintenance and repair supplies and equipment, battery, oil, anti-freeze and automotive accessories, bicycles and bicycle accessories, pet equipment and supplies, fishing, boating, camping and hunting equipment, garden lawn and patio equipment and supplies, electrical and plumbing maintenance and repair supplies and equipment; retail grocery store services connected with the sale of foodstuffs and drinks; retail bakery store services connected with the sale of baked foodstuffs; retail delicatessen store services connected with the sale of foodstuffs and drinks; retail convenience store services connected with the sale of alcoholic beverages; online retail grocery store services connected with the sale of foodstuffs and drinks; online retail bakery services connected with the sale of baked foodstuffs; online retail delicatessen services connected with the sale of foodstuffs and drinks;

online retail convenience store services connected with the sale of alcoholic beverages; gift registry services; online gift registry services; promoting the sale of the goods and services of others through customer loyalty and incentive programmes for retail customers; promoting the sale of goods of others through electronic promotions; online ordering services featuring a wide variety of consumer goods; providing information electronically about the products of others regarding price comparison information, product reviews, and discount information.

UK TM No.3301115



Class 35: Retail store services, retail services, on-line retail store services, and on-line retail services connected with the sale of chemicals for use in industry, science, photography, agriculture, horticulture and forestry, unprocessed artificial resins, unprocessed plastics, fire extinguishing and fire prevention compositions, fire proofing preparations, tempering and soldering preparations, automotive maintenance and repair supplies and equipment, anti-freeze and automotive accessories, coolants for vehicle engines, chemical substances for preserving foodstuffs, substances for tanning animal skins and hides, adhesives for use in industry, putties and other paste fillers, compost, manures, fertilizers, biological preparations for use in industry and science, paints, varnishes, lacquers, preservatives against rust and against deterioration of wood, colorants, dyes, inks for printing, marking and engraving, raw natural resins, metals in foil and powder form for use in painting, decorating, printing and art, beauty care products, cosmetics, toiletries, health and beauty aids, dentifrices, perfumery, body preparations and soaps, essential oils, hair products, hair removal preparations, artificial nails, manicure sets, pedicure sets, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, industrial oils and greases, wax, lubricants, dust absorbing, wetting and binding compositions, fuels, illuminants, candles, wicks for lighting, pharmaceutical, medical, surgical and veterinary preparations, sanitary preparations for medical

purposes, dietetic food and substances adapted for medical or veterinary use, food for babies, dietary supplements, plasters, materials for dressings, material for stopping teeth, dental wax, disinfectants, preparations for destroying vermin, fungicides, herbicides, common metals and their alloys, ores, ironmongery, goods made of common metals, metal materials for building and construction, pipes and tubes of metal, transportable buildings of metal, nonelectric cables and wires of common metal, small items of metal hardware, metal containers for storage or transport, safes, machines, machine tools, power-operated tools, motors and engines, machine coupling and transmission components, agricultural implements, incubators for eggs, automatic vending machines, hand tools and hand-operated implements, domestic electrical and electronic equipment including white goods, machines for household use, cutlery, razors, scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs, compact discs, DVDs and other digital recording media, mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment, computers, computer software, computer hardware, computer accessories, tablet cases, mobile phone cases, sunglasses, cases for sunglasses, optical goods, spectacles, cases for spectacles, contact lenses, contact lens solutions, contact lens cases, televisions, sound equipment, video recorders, DVD recorders, cameras, batteries, fire-extinguishing apparatus, surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth, orthopaedic articles, suture materials, plasters, bandages, therapeutic and assistive devices adapted for the disabled, massage apparatus, apparatus, devices and articles for nursing infants, sexual activity apparatus, devices and articles, contraceptives, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, vehicles, bicycles, accessories for bicycles, trolleys, apparatus for locomotion by land, air or water, fireworks, precious metals and their alloys, jewellery, precious and semi-precious stones, horological and chronometric instruments, presentation boxes for watches, presentation boxes for jewellery, ornaments and statues of precious metal, tie clips, tie pins, musical instruments, paper and cardboard, printed matter, bookbinding material, photographs,

stationery and office requisites, adhesives for stationery or household purposes, drawing materials and materials for artists, paintbrushes, instructional and teaching materials, plastic sheets, films and bags for wrapping and packaging, packaging materials, gift wrap, printers' type, printing blocks, unprocessed and semi-processed rubber, gutta-percha, gum, asbestos, mica and substitutes for all these materials, plastics and resins in extruded form for use in manufacture, packing, stopping and insulating materials, flexible pipes, tubes and hoses, leather and imitations of leather, animal skins and hides, luggage and carrying bags, wallets, purses, bags, music cases, suitcases, travelling sets [leather ware], umbrellas and parasols, walking sticks, whips, harness and saddlery, collars, leashes and clothing for animals, building materials, rigid pipes for building, asphalt, pitch and bitumen, transportable buildings, monuments, furniture, mirrors, picture frames, containers for storage or transport, unworked or semi-worked bone, horn, whalebone or mother-of-pearl, shells, meerschaum, yellow amber, household or kitchen utensils and containers, cookware and tableware, combs and sponges, brushes, brush-making materials, articles for cleaning purposes, unworked or semi-worked glass, glassware, porcelain and earthenware, ropes and string, nets, tents and tarpaulins, awnings of textile or synthetic materials, sails, sacks for the transport and storage of materials in bulk, padding, cushioning and stuffing materials, raw fibrous textile materials and substitutes therefor, yarns and threads, textiles, substitutes for textiles, textile goods, bedding, towels, table covers, napkins, household linen, curtains, draperies, blankets, clothing, footwear, headgear, aprons, belts, haberdashery, lace and embroidery, ribbons and braid, buttons, hooks and eyes, pins and needles, artificial flowers, hair decorations, false hair, carpets, rugs, mats and matting, yoga mats, linoleum and other materials for covering existing floors, wall hangings, wallpaper, games, toys and playthings, pet toys, video game apparatus, gymnastic and sporting articles, decorations for Christmas trees, Christmas trees of synthetic materials, Christmas tree stands, food, drink, meat, fish, poultry and game, meat extracts, preserved, frozen, dried and cooked fruits and vegetables, jellies, jams, compotes, eggs, milk and milk products, oils and fats for food, coffee, tea, cocoa and artificial coffee, rice, tapioca and sago, flour and preparations made from cereals, bread, pastries and confectionery, edible ices, sugar, honey, treacle, yeast, baking-powder, salt, mustard, vinegar, sauces (condiments), spices, ice, raw and unprocessed agricultural, aquacultural, horticultural and forestry products, raw and unprocessed grains and

seeds, fresh fruits and vegetables, fresh herbs, natural plants and flowers, bulbs, seedlings and seeds for planting, live animals, foodstuffs and beverages for animals, malt, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages, alcoholic beverages, food for animals, animal litter, pet equipment and supplies, pet jewellery, pet grooming articles, trees, plants, flowers, fishing, boating, camping and hunting equipment, gardening tools, garden lawn and patio equipment and supplies, electrical plumbing maintenance and repair supplies and equipment, tobacco, smokers' articles, matches, ecigarettes, e-cigarette liquids, e-cigarette accessories; comparison shopping services; order fulfillment services; sales promotion of products for third parties; provision of an on-line marketplace for buyers and sellers of goods and services; provision of product information, product pricing and after sale services, namely replacing items and facilitating the return of items; providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods and services, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith; providing a searchable online advertising guide featuring the goods and services of online vendors; providing a searchable online evaluation database for buyers and sellers.