

O/0972/24

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

TRADE MARK REGISTRATIONS NOs. 3864636 & 3869121

IN THE NAME OF REBORN LTD

IN RESPECT OF THE FOLLOWING TRADE MARKS:



IN CLASSES 3, 5, 10, 18, 21, 25, 32, 35, 38, 39, 41, 43 & 44

AND

REBORN

IN CLASSES 5, 10, 18, 21, 32, 38, 39, 41 & 43

AND


TWO OPPOSITIONS THERETO
UNDER NOs. 440333 & 440400
BY REBORN HOMEWARES LTD

BACKGROUND & PLEADINGS

1. These consolidated proceedings concern two applications by Reborn LTD (“**the applicant**”) to register the trade marks shown on the cover page of this decision, the details of which are as follows:
 - a. The application no. 3864636 was filed on 18 January 2023 and was published on 20 January 2023. Registration is sought for various goods and services in Classes 3, 5, 10, 18, 21, 25, 32, 35, 38, 39, 41, 43 and 44. However, this partial opposition¹ is directed against the goods in Class 21 and some services in Classes 35, 39, and 43, reproduced later in this decision.
 - b. The application no. 3869121 was filed on 4 January 2023 and was published on 3 February 2023. Registration is sought for various goods and services in Classes 5, 10, 18, 21, 32, 38, 39, 41 and 43. However, this partial opposition is directed against all the goods in Class 21 and some services in Classes 39 and 43, reproduced later in this decision.
2. On 19 April 2023 and 21 April 2023, REBORN HOMEWARES LTD (“**the opponent**”) partially opposed the above applications by filing two oppositions, nos. 440333 and 440400, respectively, on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (“**the Act**”)². The opponent relies on the following registration:

¹ The opponent initially opposed Class 3 of the contested goods but later changed its position and withdrew the opposition against that Class.

² 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.

Trade Mark no.	UK00003861100
Trade Mark (Series of two)	
Goods Registered	Classes 8, 20 & 21
Filing date	20 December 2022
Date of entry in register	24 March 2023

3. For the purposes of this opposition, the opponent relies on all goods as follows:

Class 8: Cutlery; kitchen knives, and cutting implements for kitchen use; silverware [cutlery, forks and spoons]; canteens of cutlery.

Class 20: Furniture, mirrors, picture frames; Containers, not of metal, for storage or transport; Counter stands; counter organisers; countertop organisers; kitchen countertop organizer.

Class 21: Household or kitchen utensils and containers; Cookware and tableware, except forks, knives, spoons; Articles for cleaning purposes; Chopping boards; sink caddies; sink-side caddies; draining racks; dish drying racks; cooking utensils; bathroom pails; bathroom bins; pedal bins; plastic bath racks [caddies]; caddies for holding hair accessories for household and domestic use; soap dispensers; soap containers; liquid soap dispensers; soap dispensing bottles; toilet brushes; none of the aforesaid goods being plastic bottles or plastic cups.

4. Under Section 6(1) of the Act, the opponent's trade mark clearly qualifies as an earlier trade mark. Further, as registration of the opponent's earlier mark was completed less than five years before the filing date of the contested mark, proof of use is not relevant in these proceedings as per Section 6A of the Act.

5. For ease of reference, I will refer to the series of the earlier marks as the opponent's "earlier mark", unless it becomes necessary to differentiate between the marks which comprise the series.

The Opponent's Statement of Grounds

6. In its statement of grounds, in respect of both oppositions, the opponent claims that the marks are phonetically and conceptually identical, and visually similar. In addition, it asserts that the competing goods/services are identical and/or similar.

The Applicant's Defence

7. The applicant filed notices of defence on the same terms in each case, claiming that:

"It is denied that the Application is visually similar to the Earlier Mark. While both marks include the same word element, the stylization of the word REBORN (all in capital letters) of the Application is very different to the stylization of the word ReBorn (mix of capital and lowercase letters) of the Earlier Mark. Visually, the Application is dissimilar to the Earlier Mark."

The applicant also denied similarity between the competing goods and services.

Papers Filed and Representation

8. Neither party filed evidence in these proceedings.
9. No hearing was requested. Only the opponent filed written submissions in lieu, which will not be summarised but will be referred to as and where appropriate during this decision. Thus, this decision is taken following a careful perusal of the papers.

10. In these proceedings, the applicant is represented by Panoramix Limited and the opponent by Dolleymores LLP.

DECISION

Section 5(2)(b)

11. Section 5(2)(b) of the Act states:

“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”.

12. Section 5A states:

“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.”

13. The principles considered in these oppositions stem from the decisions of the European 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 BV* (Case C-342/97), *Marca Mode CV v Adidas AG & Adidas Benelux BV* (Case C-425/98), *Matratzen Concord GmbH v Office for Harmonisation in the Internal Market* (Trade Marks and Designs) (OHIM) (Case C-3/03), *Medion AG v Thomson Multimedia Sales Germany & Austria GmbH* (Case C-120/04), *Shaker di*

L. Laudato & C. Sas v OHIM (Case C-334/05 P) and *Bimbo SA v OHIM* (Case C-519/12 P):

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

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

Comparison of the Goods and Services at issue

14. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account. In *Canon Kabushiki Kaisha*, the Court of Justice of the European Union (CJEU) stated that:

“23. In assessing the similarity of the goods or services concerned [...], 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 complementary.”

15. Guidance on this issue was also given by Jacob J (as he then was) in *British Sugar Plc v James Robertson & Sons Limited (“Treat”)* [1996] RPC 281. At [296], he identified the following relevant factors:

- “(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. The General Court (“GC”) confirmed in *Gérard Meric v OHIM*, Case T-133/05, paragraph 29, that, even if goods or services are not worded identically, they can still be considered identical if one term falls within the scope of another, or vice versa:

“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 für 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 *Sky v Skykick* [2020] EWHC 990 (Ch), Lord Justice Arnold considered the validity of trade marks registered for, amongst many other things, the general term ‘computer software’. In the course of his judgment he set out the following summary of the correct approach to interpreting broad and/or vague terms:

“[...] the applicable principles of interpretation are as follows:

(1) General terms are to be interpreted as covering the goods or services clearly covered by the literal meaning of the terms, and not other goods or services.

(2) In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms.

(3) An unclear or imprecise term should be narrowly interpreted as extending only to such goods or services as it clearly covers.

(4) A term which cannot be interpreted is to be disregarded.”

18. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), paragraph 12, Floyd J (as he then was) gave the following guidance on construing the words used in specifications:

“[...] 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.”

19. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU held that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods or services. The GC

clarified the meaning of “complementary” goods or services in *Boston Scientific Ltd v OHIM*, Case T-325/06, at paragraph 82:

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

20. In *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. (as he then was) stated that:

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.”

Opposition no. 440333

21. The competing services to be compared are shown in the following table:

Opponent's goods & services
Class 8: Cutlery; kitchen knives, and cutting implements for kitchen use; silverware [cutlery, forks and spoons]; canteens of cutlery.
Class 20: Furniture, mirrors, picture frames; Containers, not of metal, for storage or transport; Counter stands; counter organisers; countertop organisers; kitchen countertop organizer.
Class 21: Household or kitchen utensils and containers; Cookware and tableware, except forks, knives, spoons; Articles for cleaning purposes; Chopping boards; sink caddies; sink-side caddies; draining racks; dish drying racks; cooking utensils; bathroom pails; bathroom bins; pedal bins; plastic bath racks [caddies]; caddies for holding hair accessories for household and domestic

use; soap dispensers; soap containers; liquid soap dispensers; soap dispensing bottles; toilet brushes; none of the aforesaid goods being plastic bottles or plastic cups.

Applicant's goods

Class 21: Camping grills; Portable pots and pans for camping; Portable cooking kits for outdoor use; Picnic crockery; Cooking utensils for use with domestic barbecues; Cooking utensils, non-electric; Cooking pots [non-electric]; Grills in the nature of cooking utensils; Cooking pans [non-electric]; Non-electric cooking pans; Travel mugs; Cosmetic, hygiene and beauty care utensils; Combs for back-combing hair; Confectioners' molds; Ice cream scoops; Coffee scoops; Stirrers (Drink -); Water bottles; Water troughs; Water flossers; Siphons for sparkling water; Siphons for carbonated water; Siphons for aerated water; Siphon bottles for aerated water; Kitchen utensils; Household or kitchen utensils; Kitchen graters; Kitchen jars; Kitchen containers; Spatulas [kitchen utensils]; Kitchen mitts; Kitchen sponges; Kitchen sieves; Tenderizers [kitchen utensils]; Kitchen utensils of silicon; Turners (kitchen utensil); Moulds [kitchen utensils]; Molds [kitchen utensils]; Kitchen moulds; Household or kitchen containers; Mixing spoons [kitchen utensils]; Bread-cases [for kitchen use]; Spatulas for kitchen use; Graters for kitchen use; Garlic presses [kitchen utensils]; Presses (Garlic -) [kitchen utensils]; Ceramics for kitchen use; Serving scoops [household or kitchen utensil]; Egg separators [kitchen utensils]; Pestles for kitchen use; Kitchen mixers, non-electric; Kitchen paper racks; Defrosting trays for kitchen use; Tortilla presses, non-electric [kitchen utensils]; Turners for kitchen use; Kitchen paper dispensers; Containers for household or kitchen use; Kitchen grinders, non-electric; Aluminium moulds [kitchen utensils]; Toilet and bathroom cleaning utensils ; Kitchen boards for chopping; Scrapers (kitchen implements); Crushers for kitchen use, non-electric; Cooking utensils; Mortars for kitchen use; Basting spoons, for kitchen use; Spoons (Basting -), for kitchen use; Batter dispensers for kitchen use; Funnels for kitchen use; Cutting boards for the kitchen; Kitchen cutting boards; Cooking pots for use in microwave ovens; Griddles [cooking utensils]; Kitchen paper holders; Plastic bottles; Plastic water bottles; Plastic water bottles [empty]; Reusable plastic water bottles sold empty; Glass bottles; Bottles; Aluminum water bottles; Plastic cups; Biodegradable

bottles; Aluminum water bottles, empty; Glass stoppers for bottles; Reusable stainless steel water bottles; Bottle buckets; Reusable bottles; Bottle gourds; Gourds (Bottle -); Reusable stainless steel water bottles sold empty; Plastic coasters; Bottle coolers; Plastic buckets; Bottle pourers; Wine bottle cradles; Cups of paper or plastic; Empty spray bottles; Plastic containers for dispensing drink to pets; Plastic juice box holders; Bottle brushes; Vacuum bottles; Bottle cradles; Perfume bottles; Bottle baskets coated with precious metal; Plastic plates; Plastic funnels; Neoprene zippered bottle holders; Bottle coolers [receptacles]; Vacuum pumps for wine bottles; Covers for water bottles ; Hand operated sushi makers; Coffee mills (Hand operated -); Salt mills [hand operated]; Implements (Hand operated -) for cracking lobsters; Cosmetic brushes; Cosmetic sponges; Cosmetic utensils; Cosmetic spatulas; Cosmetic apparatus for microdermabrasion; Cosmetic powder compacts; Cosmetics brushes; Cosmetics applicators; Applicators for cosmetics; Containers for cosmetics; Dispensers for cosmetics; Racks for cosmetics; Holders for cosmetics; Dental floss; Dental floss (floss for dental purposes); Dental floss [floss for dental purposes]; Medicated dental floss; Floss for dental purposes; Dental floss dispensers; Dental tape; Battery-powered dental flossers; Dental cleaning articles; Oral irrigators, other than for use in dentistry; Brushes for footwear; Footwear (Brushes for -); Articles for the care of clothing and footwear; Material for brush-making; Brush-making (Material for -); Plate glass [raw material]; Cold packs used to keep food and drink cold; Bota bags; Pastry bags ; Piping bags ; Isothermic bags; Tea bag rests; Sports bottles [empty]; Thermal insulated tote bags for food or beverages; Paper hand towel dispensers; Dispensers for paper hand towels; Hand soap racks; Hand towel dispensers, other than fixed; Hand soap holders; Plastic bag holders for household use; Cool bags; Cooking mesh bags; Fitted toilet bags; Ultrasonic cleansing devices for dental prostheses; Silicone baking cups; Baking cases of silicone; Silicone muffin baking liners; Reusable silicone food covers; Nine sectioned lacquer ware serving plates (Gujeolpan); Combs for use on domestic animals; Japanese style personal dining trays or stands (zen); Japanese style personal dining trays or stands [zen]; Drinking bottles; Drinking glasses; Drinking goblets; Drinking cups; Drinking straws; Straws for drinking; Drinking flasks; Drinking steins; Drinking

bottles for sports; Drinking troughs; Drinking vessels; Pilsner drinking glasses; Drinking receptacles; Glasses [drinking vessels]; Tumblers for use as drinking glasses; Drinking horns; Horns (Drinking -); Drinking straw dispensers; Tumblers [drinking vessels]; Drinking glass holders; Glasses, drinking vessels and barware; Drinking flasks for travellers; Drinking flasks [for travellers]; Flasks for travellers (Drinking -); Pet drinking bowls; Drinking troughs for poultry; Drinking troughs for livestock; Drinking troughs for animals; Pet feeding and drinking bowls; Biodegradable rice straws for drinking ; Drinking cups [not of precious metal]; Drinking mugs made of porcelain; Beer glasses; Siphon bottles for carbonated water; Beer jugs; Drinks containers; Dispensers for liquid soap; Liquid soap dispensers; Liquid soap holders; Make-up artist belts; Sauna buckets.

Class 35: Retail services in relation to kitchen appliances; retail services in relation to cups and drinking glasses.

Class 39: Removal of commercial furniture; household removal services.

Class 43: Rental of cutlery; rental of kitchen worktops for preparing food for immediate consumption; rental of kitchen sinks; rental of kitchen worktops; rental of kitchen sinks for household purposes; rental of kitchen sinks for commercial use.

22. The applicant denied any similarity or identity between the competing terms by refusing any overlap in the nature, purpose, end user and channels of trade.
23. The opponent has provided direct comparison tables for the competing terms. However, these are not accompanied by particularised submissions or evidence to support the opponent's claims, including the identity or high similarity of the competing specifications. Therefore, I will proceed to the notional assessment of the respective goods and services based on their

ordinary meaning and context while considering the closest comparable terms between the specifications.

24. For the purpose of considering the issue of similarity of services, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way for the same reasons.³

Class 21

Camping grills; Portable pots and pans for camping; Portable cooking kits for outdoor use; Picnic crockery; Cooking utensils for use with domestic barbecues; Cooking utensils, non-electric; Cooking pots [non-electric]; Grills in the nature of cooking utensils; Confectioners' molds; Ice cream scoops; Coffee scoops; Stirrers (Drink -); Kitchen utensils; Household or kitchen utensils; Kitchen graters; Kitchen jars; Kitchen containers; Spatulas [kitchen utensils]; Kitchen mitts; Kitchen sponges; Kitchen sieves; Tenderizers [kitchen utensils]; Kitchen utensils of silicon; Turners (kitchen utensil); Moulds [kitchen utensils]; Molds [kitchen utensils]; Kitchen moulds; Household or kitchen containers; Bread-cases [for kitchen use]; Spatulas for kitchen use; Graters for kitchen use; Garlic presses [kitchen utensils]; Presses (Garlic-) [kitchen utensils]; Ceramics for kitchen use; Serving scoops [household or kitchen utensil]; Egg separators [kitchen utensils]; Pestles for kitchen use; Kitchen mixers, non-electric; Kitchen paper racks; Defrosting trays for kitchen use; Tortilla presses, non-electric [kitchen utensils]; Turners for kitchen use; Kitchen paper dispensers; Containers for household or kitchen use; Kitchen grinders, non-electric; Aluminium moulds [kitchen utensils]; Kitchen boards for chopping; Scrapers (kitchen implements); Crushers for kitchen use, non-electric; Cooking utensils; Mortars for kitchen use; Batter dispensers for kitchen use; Funnels for kitchen use; Cutting boards for the kitchen; Kitchen cutting boards; Griddles [cooking utensils]; Kitchen

³ *Separode Trade Mark* BL O-399-10 and *BVBA Management, Training en Consultancy v BeneluxMerkenbureau* [2007] ETMR 35 at paragraphs 30 to 38.

paper holders; Plastic coasters; Bottle coolers; Plastic buckets; Bottle pourers; Wine bottle cradles; Cups of paper[...]; Empty spray bottles; Plastic juice box holders; Vacuum bottles; Bottle cradles; Plastic funnels; Neoprene zippered bottle holders; Bottle coolers [receptacles]; Vacuum pumps for wine bottles; Covers for water bottles; Hand operated sushi makers; Coffee mills (Hand operated -); Salt mills [hand operated]; Implements (Hand operated-) for cracking lobsters; Cold packs used to keep food and drink cold; Bota bags; Pastry bags; Piping bags; Isothermic bags; Tea bag rests; Thermal insulated tote bags for food or beverages; Plastic bag holders for household use; Cool bags; Cooking mesh bags; Silicone baking cups; Baking cases of silicone; Silicone muffin baking liners; Reusable silicone food covers; Drinking bottles; Drinking glasses; Drinking goblets; Drinking cups; Drinking straws; Straws for drinking; Drinking flasks; Drinking steins; Drinking vessels; Drinking straw dispensers; Drinking glass holders; Drinking flasks for travellers; Drinking flasks [for travellers]; Flasks for travellers (Drinking-); Biodegradable rice straws for drinking]; Siphon bottles for carbonated water; Beer jugs; Drinks containers; Cooking pots [non-electric]; Cooking pans [non-electric]; Non-electric cooking pans; Travel mugs; Cooking pots for use in microwave ovens; Bottle baskets coated with precious metal; Plastic plates; Bottle coolers[receptacles]; Nine sectioned lacquer ware serving plates (Gujeol pan); Japanese style personal dining trays or stands (zen); Japanese style personal dining trays or stands [zen]; Drinking bottles ; Drinking glasses; Drinking goblets; Drinking cups; Drinking steins; Drinking vessels; Pilsner drinking glasses; Drinking receptacles; Glasses [drinking vessels]; Tumblers for use as drinking glasses; Drinking horns; Horns (Drinking -); Drinking straw dispensers; Tumblers [drinking vessels]; Drinking glass holders; Plate glass [raw material]; Glasses, drinking vessels and barware; Drinking cups [not of precious metal]; Drinking mugs made of porcelain; Beer glasses; Glass bottles; Bottles; Aluminum water bottles; Aluminum water bottles, empty; Glass stoppers for bottles; Reusable stainless steel water bottles; Bottle buckets; Reusable bottles; Bottle gourds; Gourds (Bottle -); Reusable stainless steel water bottles sold empty; Water bottles; Siphons for

sparkling water; Siphons for carbonated water; Siphons for aerated water; Siphon bottles for aerated water; Paper hand towel dispensers; Dispensers for paper hand towels; Hand towel dispensers, other than fixed; Fitted toilet bags; Liquid soap dispensers; Liquid soap holders

25. The opponent's broad terms "*Household or kitchen utensils and containers; Cookware and tableware, except forks, knives, spoons;*" are household and kitchen tools/items intended to be used for various purposes, such as cooking. On this basis, I consider that the opponent's terms are broad terms that will encompass the contested terms. Therefore, they are identical as per the *Meric* principle. If I am wrong in this finding, and, for example, some of the competing goods have different physical nature, I find that the respective goods will be highly similar nonetheless, sharing the same purpose, users, method of use, trade channels, and they can be in competition.

Sports bottles [empty]; Drinking bottles for sports

26. The closest comparable term from the opponent's specification is "*Household [...] containers*". The respective goods are all containers which may be in the form of bottles, used for storing liquids for consumption. They are likely to be sold through the same retail outlets and found in the same sections. They may also be manufactured by the same undertakings. There is a level of competition between them, as individuals participating in sports may use a sports bottle or any other type of bottle for their refreshments. There is also overlap in users. These goods are not essential to the use of each other and therefore not complementary. Considering all these factors, I find that there is a high degree of similarity between the respective goods.

Kitchen boards for chopping; Cutting boards for the kitchen; Kitchen cutting boards

27. The contested terms will be covered by the opponent's broad term "*chopping boards*". Therefore, the competing goods are *Merici* identical.

Bottle brushes; Brushes for footwear; Footwear (Brushes for -); Articles for the care of clothing and footwear

28. The contested terms "*Bottle brushes; Brushes for footwear; Footwear (Brushes for -)*" will be covered by the opponent's broad term "*Articles for cleaning purposes*". The competing goods are *Merici* identical.
29. The contested term "*Articles for the care of clothing and footwear*" is a broad term and will encompass the opponent's term "*Articles for cleaning purposes*". The competing goods are *Merici* identical.

Toilet and bathroom cleaning utensils

30. The contested terms will be covered by the opponent's broad term "*Articles for cleaning purposes; toilet brushes*". The competing goods are *Merici* identical.

Mixing spoons [kitchen utensils]; Basting spoons, for kitchen use; Spoons (Basting-), for kitchen use

31. In this instance, the opponent's terms in Class 21 contain the limitation "*Cookware and tableware, except [...] spoons*". Therefore, it follows that the above contested goods are not identical to the opponent's earlier terms. However, the competing goods may share the same nature and purpose, as they are all used for the purposes of cooking and dining. They also share the same method of use, users, and trade channels. There is also a degree of competition. However, there is no degree of complementarity between the goods. I find that the goods are similar to a high degree.

Plastic bottles; Plastic water bottles; Plastic water bottles [empty]; Reusable plastic water bottles sold empty; Plastic cups; Biodegradable bottles; Cups of [...] plastic

32. The opponent's terms in Class 21 contain the limitation "*none of the aforesaid goods being plastic bottles or plastic cups*". Therefore, it follows that the above contested goods are not identical to the opponent's earlier term "*Household [...] containers*". However, the competing goods may share the same purpose that of storing liquids, method of use, users, and trade channels. Also, there might be a degree of competition. However, they differ in nature and there is no degree of complementarity. I find the competing terms to be similar to a medium degree.

Hand soap racks; Hand soap holders

33. I consider the above terms against the opponent's "*soap dispensers; soap containers; liquid soap dispensers; soap dispensing bottles*". The contested terms are used to store hand soaps, whereas the earlier goods are soap containers/bottles/dispensers. I consider that the competing goods differ in nature, purpose, and method of use. However, they may overlap in users and trade channels, and they may be sold in the same outlets. I do not consider the goods to be in competition. Even though they could be used together, they are not indispensable to each other. I do not consider that they may originate from the same undertaking; hence there is no complementary relationship. I find them to be similar to a low degree.

Containers for cosmetics; Dispensers for cosmetics; Racks for cosmetics; Holders for cosmetics; Perfume bottles

34. The contested goods are used to store, carry or dispense cosmetics, including perfumes. The opponent compares these to its "*countertop organisers; counter organisers*" goods. However, I consider the opponent's "*Household [...] containers*" to be more suitable for the purposes of comparison. I find that there may be some overlap in nature

and end purpose, as they are all used for storage. To this extent, there is some overlap in the method of use. The trade channels may overlap as they could all be sold in retail outlets. I do not consider that there is a degree of competition or complementarity. I find the respective goods to be similar to a medium degree.

Cosmetic, hygiene and beauty care utensils; Combs for back-combing hair; Cosmetic brushes ;Cosmetic sponges; Cosmetic utensils; Cosmetic spatulas; Cosmetic apparatus for microdermabrasion; Cosmetic powder compacts; Cosmetics brushes; Cosmetics applicators; Applicators for cosmetics; Dispensers for cosmetics; Dental floss; Dental floss (floss for dental purposes); Dental floss [floss for dental purposes]; Medicated dental floss; Floss for dental purposes; Dental floss dispensers; Dental tape; Battery-powered dental flossers; Dental cleaning articles; Oral irrigators, other than for use in dentistry; Ultrasonic cleansing devices for dental prostheses; Water flossers

35. The contested goods are all cosmetic or dental tools, including hygiene utensils. The opponent claims similarity based on the following goods “*sink caddies; sink-side caddies; draining racks; dish drying racks; cooking utensils; bathroom pails; bathroom bins; pedal bins; plastic bath racks [caddies]; caddies for holding hair accessories for household and domestic use; soap dispensers; soap containers; liquid soap dispensers; soap dispensing bottles; toilet brushes*”. However, there is no evidence or submissions to guide me as to the specific points of similarity. I consider that there is no obvious similarity between the contested terms and those relied upon as they differ in physical nature, purpose, trade channels, and method of use. Even if they target the same users (general public), this is not a sufficient factor to find similarity. Consequently, I find the respective goods dissimilar.

Pet drinking bowls; Drinking troughs; Drinking troughs for poultry; Drinking troughs for livestock; Drinking troughs for animals; Pet feeding and drinking bowl; Water troughs

36. There is no obvious similarity between the contested terms and the earlier specification. There is no overlap in nature, purpose, users, method of use, and trade channels between the earlier specification and those appearing in the applicant's specification. Therefore, I find them to be dissimilar.

Make-up artist belts; Material for brush-making; Sauna buckets; Combs for use on domestic animals

37. In the absence of particularised submissions or evidence, there is no obvious similarity between the contested goods and the goods relied upon. Furthermore, there is no evidence to suggest that it is typical in trade for the respective goods to reach the market through the same undertakings. Even though the competing goods may share the same users, this is not a sufficient factor by itself to find similarity. They differ in nature, purpose, method of use, trade channels, and they are not complementary or in competition. Thus, I consider them to be dissimilar.

Class 35

Retail services in relation to kitchen appliances; retail services in relation to cups and drinking glasses

38. Before I consider the contested services, I will delineate the relevant case law and principles, applicable in the case at hand.
39. In *Oakley, Inc v OHIM*, Case T-116/06, at paragraphs 46-57, the General Court held that although retail services are different in nature, purpose, and method of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree.

40. In *Tony Van Gulck v Wasabi Frog Ltd*, Case BL O/391/14, Mr Geoffrey Hobbs QC (as he then was), as the Appointed Person, reviewed the law concerning retail services v goods. He said at paragraph 9 of his judgment that:

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

41. However, on the basis of the European Courts’ judgments in *Sanco SA v OHIM*, Case C-411/13P and *Assembled Investments (Proprietary) Ltd v OHIM*, Case T-105/05, at paragraphs 30 to 35 of the judgment, upheld on appeal in *Waterford Wedgwood Plc v Assembled Investments (Proprietary) Ltd*, Case C-398/07P, Mr Hobbs QC (as he then was) concluded that:

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

ii) In making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it

is necessary to envisage the retail services normally associated with the opponent's goods and then to compare the opponent's goods with the retail services covered by the applicant's trade mark;

iii) It is not permissible to treat a mark registered for 'retail services for goods X' as though the mark was registered for goods X;

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

42. The opponent claims similarity between the contested services and its Class 21 goods "*Household or kitchen utensils and containers; Cookware and tableware, except forks, knives, spoons.*" The contested services concerning "*retail services in relation to cups and drinking glasses*" in Class 35 are provided with the aim of selling cups and drinking glasses. That said, the nature of the services differs from the earlier goods. The former services are offered by a retail operator for the sale and purchase of goods by the end users, whereas the latter goods are the physical products as such. Moreover, the method of use and purpose differentiates between the goods and the services in question. The goods are intended to be used as containers in the form of cups or glasses, whereas the respective services are intended to enable the end users to purchase cups and drinking glasses by interacting with them either online or at physical premises. At an overarching level, the ordinary method of retailing such goods to the public creates a link where consumers are likely to believe that the same commercial undertaking could offer both the goods and the retail services. Therefore, I find that the complementarity in this case is sufficiently pronounced. Taking all these factors into consideration, there is a medium degree of similarity between the respective goods and services.

43. Bearing in mind the principles set out in *Tony Van Gulck v Wasabi Frog Ltd*, in the case where the goods retailed do not correspond exactly to the goods of the kind of the other mark, it is necessary to consider whether there is the likelihood the same undertaking would provide both goods in question. In the present case, the relationship between “*Retail services in relation to kitchen appliances*” and Class 20 goods “*furniture, counter organisers; countertop organisers; kitchen countertop organizer*”, is not sufficiently pronounced that the average consumer would consider them to be offered by the same undertaking. Therefore, I consider that the competing goods and services are dissimilar.

Class 39

Removal of commercial furniture; household removal services

44. The services in question involve the transportation and relocation of goods from one location to another. The opponent compares these services to its Class 20 goods “*Furniture; containers not of metal for storage or transport*”. Although such goods might be the subject of removal services, in the absence of evidence, I do not consider that they are complementary in a way that would make the goods and services indispensable to each other. There is also no overlap in nature, purpose, method of use, or trade channels. I find that they are dissimilar.

Class 43

Rental of cutlery

45. The contested services concern the rental of cutlery. The opponent’s “*Cutlery*” in Class 8 is the closest comparable term. There is a more pronounced complementary relationship between the competing goods and services, as the earlier goods will be indispensable for delivering the services. Moreover, consumers may believe that the same company is responsible for both the respective goods and services. However, the

goods and services differ in nature, purpose, and trade channels. I find that the respective goods and services are similar to a low degree.

Rental of kitchen worktops for preparing food for immediate consumption; rental of kitchen sinks; rental of kitchen worktops; rental of kitchen sinks for household purposes; rental of kitchen sinks for commercial use

46. The contested services relate to the renting of kitchen-related parts. I note that the opponent compares these to its Class 8, 20, and 21 goods. However, without any evidence or particularised submissions, I fail to see any meaningful similarity between the competing goods and services. They are different in nature, purpose, method of use, trade channels, and they are not complementary or in competition. I find them to be dissimilar.
47. The likelihood of confusion does not arise in relation to the contested goods and services which are dissimilar to the earlier mark's goods.⁴ **The opposition cannot succeed against dissimilar goods and services and, therefore, is dismissed insofar as it concerns the following terms:**

Class 21: Cosmetic, hygiene and beauty care utensils; Combs for back-combing hair; Cosmetic brushes ;Cosmetic sponges; Cosmetic utensils; Cosmetic spatulas; Cosmetic apparatus for microdermabrasion; Cosmetic powder compacts; Cosmetics brushes; Cosmetics applicators; Applicators for cosmetics; Dispensers for cosmetics; Dental floss; Dental floss (floss for dental purposes); Dental floss [floss for dental purposes]; Medicated dental floss; Floss for dental purposes; Dental floss dispensers; Dental tape; Battery-powered dental flossers; Dental cleaning articles; Oral irrigators, other than for use in dentistry; Ultrasonic cleansing devices for dental prostheses; Water flossers; Pet drinking bowls; Drinking troughs;

⁴ Case C-398/07, *Waterford Wedgwood plc v OHIM*; and *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, para 49.

Drinking troughs for poultry; Drinking troughs for livestock; Drinking troughs for animals; Pet feeding and drinking bowl; Water troughs; Make-up artist belts; Material for brush-making; Sauna buckets; Combs for use on domestic animals.

Class 35: Retail services in relation to kitchen appliances.

Class 39: Removal of commercial furniture; household removal services.

Class 43: Rental of kitchen worktops for preparing food for immediate consumption; rental of kitchen sinks; rental of kitchen worktops; rental of kitchen sinks for household purposes; rental of kitchen sinks for commercial use.

Opposition no. 440400

48. The competing goods and services to be compared are shown in the following table:

Opponent's goods	Applicant's goods and services
<p>Class 8: Cutlery; kitchen knives, and cutting implements for kitchen use; silverware [cutlery, forks and spoons]; canteens of cutlery.</p> <p>Class 20: Furniture, mirrors, picture frames; Containers, not of metal, for storage or transport; Counter stands; counter organisers; countertop organisers; kitchen countertop organizer.</p> <p>Class 21: Household or kitchen utensils and containers; Cookware and tableware, except forks, knives,</p>	<p>All goods in Class 21 (as shown above).</p> <p>Class 39: Removal of commercial furniture; household removal services.</p> <p>Class 43: Rental of cutlery; rental of kitchen worktops for preparing food for immediate consumption; rental of kitchen sinks; rental of kitchen worktops; rental of kitchen sinks for household purposes; rental of kitchen sinks for</p>

spoons; Articles for cleaning purposes; Chopping boards; sink caddies; sink-side caddies; draining racks; dish drying racks; cooking utensils; bathroom pails; bathroom bins; pedal bins; plastic bath racks [caddies]; caddies for holding hair accessories for household and domestic use; soap dispensers; soap containers; liquid soap dispensers; soap dispensing bottles; toilet brushes; none of the aforesaid goods being plastic bottles or plastic cups.	commercial use.
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49. The contested terms have already been considered in respect of the first opposition, and thus my earlier findings apply in this case at hand.

Average Consumer and the Purchasing Act

50. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purposes of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods and services in question: *Lloyd Schuhfabrik Meyer, Case C-342/97*. In *Hearst Holdings & Anor v A.V.E.L.A. Inc & Ors*, [2014] EWHC 439 (Ch), at paragraph 70, Birss J described the average consumer in these terms:

“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 word ‘average’ denotes that the person

is typical. The term ‘average’ does not denote some form of numerical mean, mode or median.”

51. The average consumer for the goods will be members of the general public, without excluding businesses. The goods will be available for purchase in a variety of outlets, stores, including specialist ones, brochures, catalogues, and online. In retail premises, visual considerations will dominate the selection of the goods in question, but aural considerations will not be ignored in the assessment. Although some of the goods are considered to be low-cost items, for instance cooking utensils and plastic plates, the average consumer may examine the product to ensure that they select the correct type and material, and that it is fit for purpose. Thus, the average consumer will pay a medium degree of attention.

52. As to the contested services, the consumers will be members of the general public and businesses. They will select such services by looking through brochures, websites, or signs on a physical property so the visual element will be important. However, I do not discount the aural element, as word-of-mouth recommendations may influence consumers’ decisions. The cost of the services will be relatively significant, contributing to the selection process of the service provider. Typically, for all the above services, prior consultation or research is conducted before purchase. I consider that members of the general public will pay a medium degree of attention, with business users and professionals paying a higher degree of attention in choosing the service provider to ensure that the services meet their particular needs.

Comparison of the Trade Marks

53. 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 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.”

54. 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.

Opposition no. 440333

55. The marks to be compared are:

Earlier Mark(Series of two)	Contested Mark
	

Overall Impression

56. The applicant’s figurative mark consists of a stylised word element appearing in grey gradient shading against a black background in upper

case intended to read as the word “REBORN”. I note that sections of the letters are variously present or absent. In more detail, the full upright part of the first three and last two letters, and the left bottom quarter of the letter ‘O’ are absent from the mark. However, the average consumer will naturally fill in the missing parts to read the complete word “REBORN” in the mark. Therefore, I consider that the word element “REBORN” will have the greatest weight in the overall impression, with the stylisation of the mark making a lesser contribution and the black background even less.

57. The earlier mark is a series of two consisting of two versions of the stylised word element “REBORN”, one in a colourful font and the other in black. I note that the word appears in a non-standard script and a mixture of upper- and lower-case letters. The word element “REBORN” will play the greatest role in the overall impression while the stylisation, including the underlining of the letter ‘O’ in the earlier series, will have a lesser impact in the overall impression.

Visual comparison

58. The parties agree that the marks share the same word element “REBORN”. This acts as a point of visual similarity. However, the presentation of the word in each of the marks is significantly different.⁵ The stylisation and the colourisation of the letters differ significantly in the competing marks as the earlier mark features a colourful or black font together with a non-standard script, whilst the contested mark uses incomplete letters in a grey gradient shading against a black background.

⁵ I bear in mind the comments of Iain Purvis QC (as he then was) sitting as the Appointed Person, in *The Royal Academy of Arts v Errea Sport S.p.A.*, BL O/010/16, where it was stated:

“13. Thirdly, I do not have any difficulty with the notion (which Mr Stobbs appeared to be contending was illogical) that two representations of the same thing may have no visual similarity. In the world of art, the visual representation of a horse in Picasso’s *Guernica* has little or nothing in common with the visual representation of a horse in one of George Stubbs’ portraits. I do not think it unreasonable to say that they have no visual similarity, whilst having some limited conceptual similarity (they are both paintings of horses).”

Taking into account the above and the overall impressions of the marks, I find the marks to be similar visually to just below a medium degree.

Aural comparison



59. The word element of the competing marks will be pronounced as “REE-BAWRN”. Therefore, they are aurally identical.

Conceptual comparison

60. The common word element “REBORN” in the competing marks is a well-known dictionary word that the average consumer will understand immediately, conveying the concept of being born again. Consequently, the marks are conceptually identical.

Opposition no. 440400

61. The marks to be compared are:

Earlier Mark (Series of two)	Contested Mark
	

Overall Impression

62. I adopt the same findings as in my paragraphs 56-57 above, noting that my analysis remains unchanged despite the background of the contested mark being in white in this case.

Visual comparison

63. I adopt the same finding as in my paragraphs 58 above.

Aural comparison

64. I adopt the same finding as in my paragraph 59 above.

Conceptual comparison

65. I adopt the same finding as in my paragraph 60 above.

DISTINCTIVE CHARACTER OF THE EARLIER TRADE MARK

66. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97, paragraph 22 and 23, the CJEU stated that:

“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-0000, paragraph 49).

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).”

67. Registered trade marks possess varying degrees of inherent distinctive character from the very low, because they are suggestive of, or allude to, a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.
68. The opponent has not shown use of its mark and thus cannot benefit from any enhanced distinctiveness. In this respect, I have only the inherent distinctiveness of the earlier mark to consider. The opponent’s mark is the ordinary and dictionary word “REBORN” with the meaning identified earlier in this decision. The earlier mark has no real suggestive or allusive significance in relation to the goods for which it is registered. I also bear in mind that only the common element between the respective marks should be considered to evaluate the relevant (to the question of confusion) distinctiveness.⁶ Also, the stylisation will add somewhat to the distinctiveness of the mark but not to a significant degree. Considering the above, I find that the degree of inherent distinctiveness will be medium.

LIKELIHOOD OF CONFUSION

69. In assessing the likelihood of confusion, I must adopt the global approach set out in the case law to which I have already referred above in this decision. Such a global assessment is not a mechanical exercise. I must also have regard to the interdependency principle, that 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.⁷ It is essential to keep in mind the distinctive character of the opponent’s trade mark since the more distinctive the trade mark, the greater the likelihood of confusion. I must

⁶ See *Kurt Geiger v A-List Corporate Limited*, BL O-075-13.

⁷ See *Canon Kabushiki Kaisha*, paragraph 17.

also keep in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon imperfect recollection.⁸

70. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other. Indirect confusion is where the consumer notices the differences between the marks but concludes that the later mark is another brand of the owner of the earlier mark or a related undertaking.

71. In *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, Mr Iain Purvis QC (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.”

72. In *Kurt Geiger v A-List Corporate Limited*, BL O/075/13, Mr Iain Purvis QC (as he then was) as the Appointed Person pointed out that the level of ‘distinctive character’ is only likely to increase the likelihood of confusion

⁸ See *Lloyd Schuhfabrik Meyer*, paragraph 27.

to the extent that it resides in the element(s) of the marks that are identical or similar. He said:

“38. The Hearing Officer cited *Sabel v Puma* at paragraph 50 of her decision for the proposition that ‘the more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion’. This is indeed what was said in *Sabel*. However, it is a far from complete statement which can lead to error if applied simplistically.

39. It is always important to bear in mind what it is about the earlier mark which gives it distinctive character. In particular, if distinctiveness is provided by an aspect of the mark which has no counterpart in the mark alleged to be confusingly similar, then the distinctiveness will not increase the likelihood of confusion at all. If anything it will reduce it.”

73. Earlier in this decision I have concluded that:

- the goods and services at issue range from identical to similar to a low degree;
- the average consumer for the goods and services are members of the general public and businesses. As to the goods at hand, the level of attention paid will be to a medium degree, whilst for the services, the members of the general public will pay a medium degree of attention, with business users and professionals paying a higher degree of attention. The selection process is predominantly visual without discounting aural considerations;
- the competing marks are visually similar to just below a medium degree, and aurally and conceptually identical;
- the earlier mark is inherently distinctive to a medium degree.

74. Considering that my findings above are consistent across both oppositions for the competing marks, I will make a single determination of the likelihood of confusion below, which will apply to both cases.

75. Taking into account the above factors and considering the identical goods in play, there is likelihood of direct confusion. Notwithstanding that the purchasing act in this case is predominantly visual,⁹ the difference in the stylisation of the competing marks is insufficient to allow the average consumer to distinguish between them. Put simply, both marks are “REBORN” marks, and the word element, which has the greatest weight in the overall impression, will act as a conceptual ‘hook’ in the mind of the average consumer. The presence/absence of the black/white background in the competing marks may well be lost due to the principle of imperfect recollection. When the average consumer encounters one mark and then encounter another ‘reborn’ mark for identical goods, they will simply be mistaken that the goods originate from the same undertaking.
76. Even when the average consumer recalls that one mark has a different stylisation from the other and that it contains a black/white background and the other does not, I still consider that the marks would be indirectly confused for identical goods. This is because both marks contain the identically shared word element, “REBORN”, which is the element in both marks with the greatest weight in the overall impression. Thus, it will not go unnoticed, with the difference in the stylisation put down to the use of a brand/sub-brand variant.
77. My finding extends to the goods and services that I found similar at any degree.

OUTCOME

78. Part of the opposition **succeeds and, subject to any successful appeal against this decision, the applications will be refused for the following goods and services:**

⁹ *Quelle AG v OHIM*, Case T-88/05.

Class 21: Camping grills; Portable pots and pans for camping; Portable cooking kits for outdoor use; Picnic crockery; Cooking utensils for use with domestic barbecues; Cooking utensils, non-electric; Cooking pots [non-electric]; Grills in the nature of cooking utensils; Confectioners' molds; Ice cream scoops; Coffee scoops; Stirrers (Drink -); Kitchen utensils; Household or kitchen utensils; Kitchen graters; Kitchen jars; Kitchen containers; Spatulas [kitchen utensils]; Kitchen mitts; Kitchen sponges; Kitchen sieves; Tenderizers [kitchen utensils]; Kitchen utensils of silicon; Turners (kitchen utensil); Moulds [kitchen utensils]; Molds [kitchen utensils]; Kitchen moulds; Household or kitchen containers; Bread-cases [for kitchen use]; Spatulas for kitchen use; Graters for kitchen use; Garlic presses [kitchen utensils]; Presses (Garlic-) [kitchen utensils]; Ceramics for kitchen use; Serving scoops [household or kitchen utensil]; Egg separators [kitchen utensils]; Pestles for kitchen use; Kitchen mixers, non-electric; Kitchen paper racks; Defrosting trays for kitchen use; Tortilla presses, non-electric [kitchen utensils]; Turners for kitchen use; Kitchen paper dispensers; Containers for household or kitchen use; Kitchen grinders, non-electric; Aluminium moulds [kitchen utensils]; Kitchen boards for chopping; Scrapers (kitchen implements); Crushers for kitchen use, non-electric; Cooking utensils; Mortars for kitchen use; Batter dispensers for kitchen use; Funnels for kitchen use; Cutting boards for the kitchen; Kitchen cutting boards; Griddles [cooking utensils]; Kitchen paper holders; Plastic coasters; Bottle coolers; Plastic buckets; Bottle pourers; Wine bottle cradles; Cups of paper[...]; Empty spray bottles; Plastic juice box holders; Vacuum bottles; Bottle cradles; Plastic funnels; Neoprene zippered bottle holders; Bottle coolers [receptacles]; Vacuum pumps for wine bottles; Covers for water bottles; Hand operated sushi makers; Coffee mills (Hand operated -); Salt mills [hand operated]; Implements (Hand operated-) for cracking lobsters; Cold packs used to keep food and drink cold; Bota bags; Pastry bags; Piping bags; Isothermic bags; Tea bag rests; Thermal insulated tote bags for food or beverages; Plastic bag holders for

household use; Cool bags; Cooking mesh bags; Silicone baking cups; Baking cases of silicone; Silicone muffin baking liners; Reusable silicone food covers; Drinking bottles; Drinking glasses; Drinking goblets; Drinking cups; Drinking straws; Straws for drinking; Drinking flasks; Drinking steins; Drinking vessels; Drinking straw dispensers; Drinking glass holders; Drinking flasks for travellers; Drinking flasks [for travellers]; Flasks for travellers (Drinking-); Biodegradable rice straws for drinking]; Siphon bottles for carbonated water; Beer jugs; Drinks containers; Cooking pots [non-electric]; Cooking pans [non-electric]; Non-electric cooking pans; Travel mugs; Cooking pots for use in microwave ovens; Bottle baskets coated with precious metal; Plastic plates; Bottle coolers[receptacles]; Nine sectioned lacquer ware serving plates (Gujeol pan); Japanese style personal dining trays or stands (zen); Japanese style personal dining trays or stands [zen]; Drinking bottles ; Drinking glasses; Drinking goblets; Drinking cups; Drinking steins; Drinking vessels; Pilsner drinking glasses; Drinking receptacles; Glasses [drinking vessels]; Tumblers for use as drinking glasses; Drinking horns; Horns (Drinking -); Drinking straw dispensers; Tumblers [drinking vessels]; Drinking glass holders; Plate glass [raw material]; Glasses, drinking vessels and barware; Drinking cups [not of precious metal]; Drinking mugs made of porcelain; Beer glasses; Glass bottles; Bottles; Aluminum water bottles; Aluminum water bottles, empty; Glass stoppers for bottles; Reusable stainless steel water bottles; Bottle buckets; Reusable bottles; Bottle gourds; Gourds (Bottle -); Reusable stainless steel water bottles sold empty; Water bottles; Siphons for sparkling water; Siphons for carbonated water; Siphons for aerated water; Siphon bottles for aerated water; Paper hand towel dispensers; Dispensers for paper hand towels; Hand towel dispensers, other than fixed; Fitted toilet bags; Liquid soap dispensers; Liquid soap holders; Sports bottles [empty]; Drinking bottles for sports; Kitchen boards for chopping; Cutting boards for the kitchen; Kitchen cutting boards; Bottle brushes; Brushes for footwear; Footwear (Brushes for -); Articles for the care of clothing and

footwear; Toilet and bathroom cleaning utensils; Mixing spoons [kitchen utensils]; Basting spoons, for kitchen use; Spoons (Basting-), for kitchen use; Plastic bottles; Plastic water bottles; Plastic water bottles [empty]; Reusable plastic water bottles sold empty; Plastic cups; Biodegradable bottles; Cups of [...] plastic; Hand soap racks; Hand soap holders; Containers for cosmetics; Dispensers for cosmetics; Racks for cosmetics; Holders for cosmetics; Perfume bottles.

Class 35: Retail services in relation to cups and drinking glasses.

Class 43: Rental of cutlery.

79. Part of the opposition **fails, and the applications may, subject to any successful appeal against this decision, proceed to registration for all those goods and services which were excluded from the opposition and the following goods and services:**

Class 21: Cosmetic, hygiene and beauty care utensils; Combs for back-combing hair; Cosmetic brushes; Cosmetic sponges; Cosmetic utensils; Cosmetic spatulas; Cosmetic apparatus for microdermabrasion; Cosmetic powder compacts; Cosmetics brushes; Cosmetics applicators; Applicators for cosmetics; Dispensers for cosmetics; Dental floss; Dental floss (floss for dental purposes); Dental floss [floss for dental purposes]; Medicated dental floss; Floss for dental purposes; Dental floss dispensers; Dental tape; Battery-powered dental flossers; Dental cleaning articles; Oral irrigators, other than for use in dentistry; Ultrasonic cleansing devices for dental prostheses; Water flossers; Pet drinking bowls; Drinking troughs; Drinking troughs for poultry; Drinking troughs for livestock; Drinking troughs for animals; Pet feeding and drinking bowl; Water troughs; Make-up artist belts; Material for brush-making; Sauna buckets; Combs for use on domestic animals.

Class 35: Retail services in relation to kitchen appliances.

Class 39: Removal of commercial furniture; household removal services.

Class 43: Rental of kitchen worktops for preparing food for immediate consumption; rental of kitchen sinks; rental of kitchen worktops; rental of kitchen sinks for household purposes; rental of kitchen sinks for commercial use.

COSTS

80. In terms of costs, whilst both parties have achieved a measure of success, proportionately, the opponent has been more successful than the applicant. Awards of costs are governed by Annex A of Tribunal Practice Notice (TPN) 1/2023. I award costs (reduced accordingly to reflect the partial success) as follows:

Official opposition fee x2	£200
Preparing a statement and considering the counterstatement x2	£400
Preparing and filing submissions	£300
Total	£900

81. I, therefore, order Reborn LTD to pay to REBORN HOMEWARES LTD the sum of £900. 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 11th day of October 2024

**Dr Stylianos Alexandridis
For the Registrar,
The Comptroller General**