

**O-1082-24**

**TRADE MARKS ACT 1994**

**CONSOLIDATED PROCEEDINGS**

**IN THE MATTER OF**

**TRADE MARK APPLICATION NOS. 3764413, 3764415 & 3866998**

**BY**

**SHENZHEN HAISHUN NETWORK CO., LTD**

**TO REGISTER THE FOLLOWING THREE MARKS**

**IN CLASS 25:**

**Lushforest excellenz**

**&**

**Lushforest forkidd**

**&**

**Lushforest**

**AND**

**OPPOSITION THERETO (UNDER NOS. 434587, 434589 & 440472,  
RESPECTIVELY)**

**BY**

**COSMETIC WARRIORS LIMITED**

## **BACKGROUND**

1) On 11 March 2022, Shenzhen Haishun Network Co., Ltd ('the applicant') applied to register the marks 'Lushforest excellenz' (application 3764413) and 'Lushforest forkidd' (application 3764415) under separate applications ('the first two applications'). A further application was also filed on 12 January 2023 for the mark 'Lushforest' (application 3866998) ('the third application'). All three applications are made in respect of 'Dressing gowns; Pullovers; Jumpers [pullovers]; Sweaters; Clothing; Trousers; Bath robes; Children's clothing; Singlets; Shirts; Tee-shirts; Underwear; Tights; Suits; Skirts; Outerclotthing' in class 25. The third application also contains the additional term 'T-shirts' at the end of that list of goods.

2) The first two applications were published in the Trade Marks Journal on 25 March 2022; the third application was published on 27 January 2023. Notice of opposition was later filed by Cosmetic Warriors Limited ('the opponent') against all three applications. The opponent claims that each application offends under sections 5(2)(b) & 5(3) of the Trade Marks Act 1994 ('the Act').

3) In support of its opposition under section 5(2)(b) of the Act, the opponent relies upon the following three registrations:

- **UKTM 3269886 ('886)**

LUSH

**All goods in classes 3, 18 & 25 and some services in class 35 (as set out in the Annex)**

**Priority date:** 22 June 2017

**Filing date:** 10 November 2017

**Date of entry in register:** 02 February 2018

- **UKTM 2113249 ('249)**

LUSH

**All goods in class 25 (as set out in the Annex)**

**Filing date:** 19 October 1996

**Date of entry in register:** 04 July 1997

- **UKTM 913135331 ('331)**

LUSH

**All goods in classes 18 & 25 and all services in class 35 (as set out in the Annex) are relied on against the first two applications. Only the goods in classes 18 & 25 are relied upon against the third application.**

**Filing date:** 01 August 2014

**Date of entry in register:** 26 December 2014

4) It is claimed that the respective goods and services are either identical or similar and that the respective marks are similar, such that there exists a likelihood of confusion under section 5(2)(b) of the Act.

5) In support of its opposition under section 5(3) of the Act the opponent relies upon mark '886 in respect of all the goods covered by that registration in class 3 (as shown in the Annex). It is claimed that the earlier mark has a reputation in the UK in relation to the goods relied upon and that use of the contested marks will take unfair advantage of, or be detrimental to, the reputation and/or distinctive character of the earlier mark.

6) The trade marks relied upon by the opponent are earlier marks in accordance with section 6 of the Act<sup>1</sup>. As marks '249 and '331 completed their registration procedure more than five years prior to the application dates of the contested marks, they are, in principle, subject to the proof of use conditions, as per section 6A of the Act. The opponent made a statement of use in relation to all the goods and services relied upon for those marks.

7) The applicant filed a counterstatement in defence of all three applications. I note, in particular, the following points made therein:

- The applicant does not put the opponent to proof of use of its earlier marks<sup>2</sup>.
- It is denied that any of the respective marks are visually and aurally highly similar. The applicant submits that there is no more than a medium degree of aural similarity between any of the respective marks. It also submits that the respective marks are all conceptually different.
- It is submitted that the overall impression of the applicant's marks lies in the juxtaposition of the words in each mark whereas the earlier mark consists solely of the word 'LUSH'.
- The applicant states that its category of goods is different to the categories covered by the earlier marks. I take this to mean that the applicant does not consider its goods to be similar to any of the goods covered by the earlier marks. Even where both parties' marks cover class 25, it states that the respective goods are 'inconsistent' which I take to mean that it considers the respective goods in class 25 to be different.
- The applicant asserts that its brand entered the market before the opponent's 'brand' and that it completely disagrees that it uses the opponent's 'brand reputation'.

---

<sup>1</sup> This includes earlier mark '331 which is a comparable mark (EU). Following the end of the transition period of the UK's withdrawal from the EU, all EUTMs registered before 1 January 2021 were recorded as comparable trade marks in the UK trade mark register and as a consequence, have the same legal status as if they had been applied for and registered under UK law. A comparable trade mark (EU) retains the same filing date, priority date (if applicable) and registration date of the EUTM from which it derives.

<sup>2</sup> As per the answer to Q7 on each Form TM8.

8) Upon receipt of all three counterstatements, the three oppositions were consolidated.

9) The opponent is represented by D Young & Co LLP. The applicant is represented by Axis Professionals Ltd. Both parties filed evidence. The opponent's evidence-in-chief consists of a witness statement from Nicola Karen Dear (Senior Counsel IP & Commercial at the opponent) with Exhibits NKD1 – NKD21 thereto. The applicant's evidence consists of two witness statements from Manshen Chen (the applicant's director), each with Exhibits JS1-JS2 thereto. Neither party requested a hearing; only the opponent filed written submissions in lieu<sup>3</sup>. When reviewing the latter submissions, it came to my attention that in paragraph 73 of the same, the opponent refers to Annex 2; however, no such Annex was attached to the submissions. That being so, I asked the Hearings Team to contact the opponent to enquire as to whether it still wished to rely upon Annex 2 and, if so, a copy of that Annex should be filed within seven days of the date of the email<sup>4</sup>. The opponent responded, confirming that reference to Annex 2 could be disregarded<sup>5</sup>. I now make this decision based on the papers before me.

## **DECISION**

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

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

11) This section of the Act states:

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

---

<sup>3</sup> Dated 21 November 2023

<sup>4</sup> The official email of 22 July 2024 refers

<sup>5</sup> The opponent's email of 25 July 2024 refers

(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.

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.”

12) The leading authorities which guide me are from the Court of Justice of the European Union ('CJEU'): *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.

### **The principles**

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

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the

imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

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

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

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

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

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

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

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

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

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

## **Approach**

13) I consider it appropriate to begin by considering the likelihood of confusion between earlier mark '249 and each of the contested marks. This is because mark '249 is not only identical to the other two earlier marks relied upon but also covers the broadest specification in class 25, namely 'articles of clothing, footwear and headgear', which, for reasons given below, are identical to the contested goods. I will return to the other marks relied upon under section 5(2)(b) later, should it be necessary to do so.

## **Comparison of goods**

14) In *Gérard Meric v Office for Harmonization in the Internal Market (Trade Marks and Designs)* (OHIM Case T-133/05) the General Court held 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 the trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM – Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark (Case T-104/01 *Oberhauser v OHIM – Petit Liberto (Fifties)* [2002] ECR II-4359, paragraphs 32 and 33; Case T-110/01 *Vedial v OHIM – France Distribution (HUBERT)* [2002] ECR II-5275, paragraphs 43 and 44; and Case T-10/03 *Koubi v OHIM – Flabesa (CONFORFLEX)* [2004] ECR II-719, paragraphs 41 and 42).”

15) The goods to be compared are:

Opponent's goods	Applicant's goods
<p data-bbox="204 309 347 342"><u>mark '249</u></p> <p data-bbox="204 421 769 510"><b>Class 25:</b> Articles of clothing; footwear; headgear.</p>	<p data-bbox="794 309 1150 342"><u>The first two applications</u></p> <p data-bbox="794 421 1390 678"><b>Class 25:</b> Dressing gowns; Pullovers; Jumpers [pullovers]; Sweaters; Clothing; Trousers; Bath robes; Children's clothing; Singlets; Shirts; Tee-shirts; Underwear; Tights; Suits; Skirts; Outercloding.</p> <p data-bbox="794 745 1086 779"><u>The third application</u></p> <p data-bbox="794 857 1390 1171"><b>Class 25:</b> Dressing gowns; Pullovers; Jumpers [pullovers]; Sweaters; Clothing; Trousers; Bath robes; Children's clothing; Singlets; Shirts; Tee-shirts; Underwear; Tights; Suits; Skirts; Outercloding; T-shirts.</p>

16) The goods covered by all three applications fall within the opponent's broad term 'Articles of clothing'. They are identical, as per *Meric*.

**Average consumer and the purchasing process**

17) It is necessary to determine who the average consumer is for the respective goods and the manner in which they are likely to be selected. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

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

18) The average consumer for items of clothing is the general public. The purchasing act will be primarily visual because the goods will be selected after perusal of racks/shelves in high-street stores or from photographs/images on Internet websites or in catalogues. That is not to say, though, that the aural aspect should be ignored since the goods may sometimes be the subject of discussions with sales representatives, for example. The cost of the goods is likely to vary. However, factors such as size, material, comfort/fit, aesthetics and/or suitability for purpose are likely to be taken account of by the consumer regardless of cost. Generally speaking, I find that a medium degree of attention is likely to be paid during the purchase.

### **Comparison of marks**

19) 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.”

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

20) The marks to be compared are, as follows:

Opponent's mark	Applicant's marks
LUSH	Lushforest excellenz  &  Lushforest forkidd  &  Lushforest

### Overall impressions

21) The opponent's mark consists of the plain word 'LUSH' in which the overall impression of the mark lies.

22) The overall impression of the applicant's 'Lushforest excellenz' mark is dominated by the first word, 'Lushforest'. This is because that word enjoys the more prominent position at the beginning of the mark and is also the more distinctive element, given the obvious laudatory meaning conveyed by the word 'excellenz' (the laudatory

meaning of 'excellence' is not disguised by the miss-spelling). That is not to say that 'excellenz' is negligible; it contributes to the overall impression of the mark but to a lesser extent than 'Lushforest'. Similar considerations apply to 'Lushforest forkidd'. 'forkidd' is likely to be perceived as meaning 'for kids', despite the conjoining of the words and miss-spelling of 'kid'; that mark is dominated by the word 'Lushforest', with 'forkidd' playing a lesser role. Lastly, I find that the overall impression of the 'Lushforest' mark lies in the mark as a whole.

#### Similarity between LUSH and Lushforest excellenz

23) Visually, the sole point of similarity between the marks is the word 'Lush'. In all other respects, they are different, owing to the additional words, 'forest' and 'excellenz', in the contested mark which are absent from the earlier mark. I find a below-medium degree of visual similarity between the marks.

24) Aurally, the word 'lush' will be pronounced in the same way in both marks. However, the remaining words in the contested mark have no counterpart in the earlier mark. I find a below-medium degree of aural similarity between the marks.

25) Conceptually, the opponent contends that the word, LUSH, in the earlier mark may be 'perceived as being associated with vegetation, green landscapes or cultivated fields'. I consider this to be unlikely in the absence of other words in the mark to lead the consumer to immediately perceive such a meaning (such as 'lush garden', 'lush vegetation' or 'lush field', for example). In my view, the word LUSH, on its own, will be recognised, immediately, as a slang term meaning something luxurious or appealing and nothing more. That is the sole concept of the earlier mark. The term 'Lushforest' in the later mark will be perceived as meaning a luxurious/appealing forest or a forest which has an abundance of healthy, green plants. Either way, the concept of 'lushforest' is different to that of 'lush' solus. The word 'excellenz' has little role to play in the conceptual comparison because it will send a laudatory and non-distinctive meaning of 'excellence' and, as such, does not introduce a distinctive conceptual difference between the marks. Overall, I find the marks to be conceptually different. If I am wrong about that, any conceptual similarity stemming from the common use of 'lush' is low.

#### Similarity between LUSH and Lushforest forkidd

26) Visually, the marks coincide in the word 'Lush'. In all other respects, they are different, owing to the additional words, 'forest' and 'forkidd', in the contested mark which are absent from the earlier mark. I find a below-medium degree of visual similarity between the marks.

27) Aurally, the word 'lush' will be pronounced in the same way in both marks. However, the remaining words in the contested mark have no counterpart in the earlier mark. I find a below-medium degree of aural similarity between the marks.

28) Conceptually, the respective 'lush' and 'lushforest' elements are conceptually different for reasons already explained. The 'forkidd' element is likely to be perceived as meaning 'for kids'; that message is descriptive and, as such, does not introduce a distinctive conceptual difference between the marks and plays little role in the conceptual comparison. I find the marks to be conceptually different overall. If am wrong about that, any conceptual similarity stemming from the common use of 'lush' is low.

#### Similarity between LUSH and Lushforest

29) Visually, the marks share the word 'Lush'. However, the 'forest' part of the contested mark is absent from the earlier mark. I find a medium degree of visual similarity between the marks.

30) Aurally, the word 'lush' will be pronounced in the same way in both marks. However, the contested mark contains two additional syllables arising from the word 'forest'. I find a medium degree of aural similarity between the marks.

31) Conceptually, the marks are different, for reasons already explained. If am wrong about that, any conceptual similarity stemming from the common use of 'lush' is low.

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

32) The distinctive character of the earlier mark must be considered. The more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion between it and each of the contested marks (*Sabel BV v Puma AG*). In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

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

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

33) Inherently, I find that LUSH is low in distinctiveness owing to the rather laudatory message that it sends of luxuriousness/something appealing.

34) Turning to the question of whether the inherent distinctiveness of the earlier mark has been enhanced through use, the majority of the evidence shows use in relation to various goods in class 3 and retail services connected with those goods. There is

some evidence<sup>6</sup> showing use of the earlier mark in relation to certain items of clothing such as t-shirts, sweatshirts, aprons and goods which are described as 'knot wraps'. I have some reservations about whether 'knot wraps' constitute clothing given that they appear to be primarily marketed as a sustainable form of gift wrap rather than as an item of clothing. In any event, the scale and frequency of use for those kinds of clothing and knot wraps falls far short of satisfying me that the earlier mark has an enhanced degree of distinctiveness in relation to any of them.

### **Likelihood of confusion**

35) I must now feed all of my earlier findings into the global assessment of the likelihood of confusion, keeping in mind the following factors: i) the interdependency principle, whereby a lesser degree of similarity between the goods may be offset by a greater similarity between the marks, and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*); ii) the principle that the more distinctive the earlier mark is, the greater the likelihood of confusion (*Sabel BV v Puma AG*), and; iii) the factor of imperfect recollection i.e. that consumers rarely have the opportunity to compare marks side by side but must rather rely on the imperfect picture that they have kept in their mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.*).

### The 'Lushforest' application

36) The respective goods are identical. The marks are visually and aurally similar to a medium degree. Conceptually, the marks are different. If I am wrong about that, they are conceptually similar to a low degree. The opponent's mark has a low degree of distinctiveness in relation to clothing. The average consumer, being a member of the general public, is likely to pay a medium degree of attention. Weighing all these factors, I find it unlikely that the average consumer will mistake one mark for the other, even allowing for imperfect recollection. I make this finding whether the marks are conceptually different or similar to a low degree. There is no likelihood of direct confusion.

---

<sup>6</sup> As per Exhibits NKD3, NKD4, NKD7, NKD11, NKD12, NKD16 and NKD18

37) I will now consider the likelihood of indirect confusion. In this connection, I bear in mind that in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10 (*L.A. Sugar*), 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’.

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

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

38) I also keep in mind that in *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Arnold LJ agreed, pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion. Furthermore, it is not sufficient that a mark merely calls to mind another mark: *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17. This is mere association not indirect confusion.

39) I bear in mind that the categories listed above in *L.A. Sugar* are, of course, not an exhaustive list of all the ways in which indirect confusion can occur; they are merely examples of the way in which it tends to occur.

40) I can see no proper basis for concluding that the consumer is likely to believe that the respective goods covered by the marks at issue come from the same/linked undertaking(s). Neither mark appears to be an entirely logical brand extension of the other nor does the later mark simply add a non-distinctive element to the earlier mark. Furthermore, the common element between the marks is far from being so strikingly distinctive such that the average consumer would assume that nobody, but the brand owner, would be using it in a trade mark at all; on the contrary, the common use of the lowly distinctive word, ‘lush’, is likely to be put down to mere coincidence and nothing more. **The opposition under section 5(2)(b) of the Act, against the Lushforest mark, fails.**

#### The ‘Lushforest excellenz’ and ‘Lushforest forkidds’ applications

41) Given my findings above in relation to the ‘Lushforest’ application, it logically follows that the opponent is in no better position against the ‘Lushforest excellenz’ and ‘Lushforest forkidds’ applications. Each of those applications are even less similar to the earlier mark than the ‘Lushforest’ application, owing to the additional elements that they contain. With all other factors being equal, there is clearly no likelihood of direct or indirect confusion in respect of these marks either. **The opposition under section**

**5(2)(b) of the Act, against the ‘Lushforest excellenz’ and ‘Lushforest forkidds’ marks, fails.**

Other marks relied upon

42) The other marks relied upon, which are all for the word ‘LUSH’, and cover various goods and services in classes 3, 18, 25 and 35, clearly do not offer the opponent any greater prospect of success for the following reasons:

- The goods covered by earlier marks ‘886 and ‘331 in class 25 are the same as those covered by earlier mark ‘249 and for which the opposition has already failed.
- The goods covered by earlier marks ‘886 and ‘331 in class 18 can be no more than similar (rather than identical) to the applicant’s goods and there is no evidence of any enhanced distinctiveness for the class 18 goods relied upon. As the opponent has already failed in relation to identical goods in class 25, its goods in class 18 provide no stronger case.
- Although the opponent contends that its goods in class 3 are complementary and, therefore, similar, to the contested goods in class 25<sup>7</sup>, there is no evidence before me to satisfy me that this is the case. Further, the opponent’s reference to *Sergio Rossi v OHIM* (Case T-169/03) which, it asserts, supports its claim of complementarity, appears erroneous given that that case concerned a comparison between footwear in class 25 and bags in class 18 and does not mention class 3 goods at all. Even if there may be certain very well-established businesses who sell clothing as well as cosmetics/perfume (of the kind referred to by the opponent), I am not persuaded that such a practice is typical in the marketplace and there is no evidence before me to suggest otherwise. Whilst trade channels may sometimes overlap, and the users will be the same (the general public) the respective goods have different natures, methods of use and purpose and are not in competition nor complementary in the sense described in the case law. I find that the goods relied upon in class 3 for earlier mark ‘886 are dissimilar to the contested

---

<sup>7</sup> Submissions in lieu of a hearing, at [32] – [33]

goods in class 25. It follows that there can be no likelihood of confusion under section 5(2)(b) of the Act, regardless of any enhanced distinctiveness the earlier mark may enjoy for any of its class 3 goods.

- I find that the retail services relied upon in class 35 for earlier mark '331, which are all connected with the sale of various cosmetics and toiletries, are dissimilar to the contested goods in class 25. Whilst both will be purchased by the general public, they differ in nature, methods of use, purpose and are not in competition nor complementary. It follows that there can be no likelihood of confusion under section 5(2)(b) of the Act in respect of those class 35 services.
- Insofar as the retail services covered by earlier mark '886 include the retail of cosmetics and toiletries, the same comments apply equally here as in the preceding bullet point.
- Insofar as the retail services covered by mark '886 are connected with the sale of clothing, those services can be no more than similar (rather than identical) to the applicant's goods and there is no evidence of any enhanced distinctiveness for those services. As the opponent has already failed in relation to identical goods in class 25, those services in class 35 provide no stronger case.
- It is not obvious to me that any of the other retail services relied upon in class 35 of earlier mark '886 share any similarity with the contested goods and nor has the opponent identified where any such similarity lies. I find that all of the other services relied upon in class 35 for mark '886, which have not already been addressed in any of the preceding bullet points, are dissimilar to the applicant's goods. As such, there can be no likelihood of confusion in respect of them.

**43) The opposition under section 5(2)(b) of the Act fails.**

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

44) Section 5(3) of the Act provides:

“(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 (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.”

45) The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, Case 252/07, *Intel*, Case C-408/01, *Adidas-Salomon*, Case C-487/07, *L’Oreal v Bellure* and Case C-323/09, *Marks and Spencer v Interflora* and 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 Saloman*, paragraph 29 and *Intel*, paragraph 63.

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

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

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

(f) 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 proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases

where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

## Reputation

46) The opponent claims that its earlier mark, '886, has a reputation in respect of all goods in class 3.

47) Ms Dear states that the LUSH brand was created in 1995 in Poole, Dorset and has been used continuously since that time. The Lush Group sells a wide variety of products in retail stores, through its on-line website and through mobile applications.

48) The following table<sup>8</sup> is provided detailing annual sales of certain goods between 2017 – 2022 in the UK:

UK Net Sales - GBP	Total 2017	Total 2018	Total 2019	Total 2020	Total 2022
<b>Category</b>					
Bath Bombs	31,659,605	29,001,750	33,67,112	25, 371,963	27,776,850
Bath Melts, Bubble Bars & Oils	15,059,738	13,197,373	9,762,535	8,383,875	10,019,298
Face	18,357,827	18,478,399	18,174,723	11,741,464	10,326,434
Fragrance	3,381,324	5,558,349	6,681,253	7,176,904	9,241,962
FUN	1,072,276	879,077	928,382	524,306	563,140
Gifts	27,162,264	25,124,652	22,923,893	23,878,654	28,017,350
Hair	14,550,963	17,854,019	20,234,701	12,767,433	12,086,611
Hand & Body	10,098,474	10,461,688	9,753,136	6,599,786	6,488,235
Make Up	1,605,651	700,027	766,586	476,842	545,859
Media	27,827	34,798	18,897	6,374	5,811
Mouth	4,546,815	3,826,995	3,872,345	2,153,990	2,314,913
Shower	12,449,163	12,454,424	14,980,837	11,681,517	14,759,692
Soap	4,097,075	4,403,543	4,633,522	3,138,728	3,659,603
	145,234,493	143,168,920	146,168,920	114,347,352	125,805,757

49) A selection of invoices<sup>9</sup> is provided, showing sales of various goods in class 3 to locations in the UK between 2017 and 2021. The mark 'LUSH' is prominently displayed

<sup>8</sup> NKD11

<sup>9</sup> NKD12

on the top of each invoice. The goods include body sprays, body lotions, shampoos, face masks, bath bombs, toner waters, moisturisers, hair creams, fragrances and other certain cosmetic products.

50) A number of third-party articles are provided<sup>10</sup> illustrating the success and renown of the LUSH mark in the UK. For example, one article refers to 'Lush' as "The cosmetics retailer which frequently rates as the UK's favourite high-street store...".

51) The opponent spent over £5 million on advertising between 2016 – 2020<sup>11</sup>. This included promotion of the 'LUSH brand in-store (via windows) and on-line via the LUSH TIMES, the opponent's websites, Google and social media.

52) A selection of publications is provided referencing the opponent's 'LUSH' brand, dating as far back as 2010<sup>12</sup>. Those publications include the 'Mail Online' which lists 'LUSH' as being one of 'The Very Best of British Beauty'. 'Glamour' magazine shows an advert for 'Lush's 6 best-selling products' which includes a body lotion. The same article states that 'Lush' is 'renowned for its bath bombs'. An advertisement in 'The Sun' newspaper shows a body lotion from 'Lush'. An advert in 'Grazia' magazine shows a 'Lush' gourmet soap.

53) The opponent has won various awards for its 'Lush' products<sup>13</sup>. For example, in 2015 its bath bombs won 'best bath or shower product' in the Bella Magazine Beauty Awards. In 2016, it won 'Best health & beauty retailer' at the Verdict Customer Satisfaction Awards'. In 2019, it won the Glamour Beauty Power list Award for 'best beauty bar' (for its new shampoo bar).

54) Taking all of the above into account, and viewing the evidence before me in the round, I find that the opponent's earlier mark had a strong reputation in the UK at both relevant dates (being the filing dates of the contested marks) in relation to 'cosmetics, soaps, fragrances, shower and bath preparations, preparations for care of the hair'.

---

<sup>10</sup> NKD13

<sup>11</sup> NKD14

<sup>12</sup> NKD19

<sup>13</sup> NKD21

## Link

55) Whether the public will make the required mental 'link' between each of the applicant's marks and the earlier mark must take account of all relevant factors. The relevant factors identified in Case C-252/07, *Intel* [2009] ETMR 13 are:

*i) The degree of similarity between the conflicting marks*

I have already assessed this factor under section 5(2)(b) (bearing in mind that earlier mark '886 is identical to mark '249). I remind myself of those findings which were as follows:

As regards the 'Lushforest' application, there is a medium degree of visual and aural similarity between the marks. Conceptually, they are different or, if I am wrong on that, the conceptual similarity is low.

Turning to the 'Lushforest excellenz' and 'Lushforest forkidds' applications, these marks are visually and aurally similar to the earlier mark to a below-medium degree. Conceptually, both marks are different to the earlier mark or, if I am wrong on that, the conceptual similarity is low.

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

I have already found that the contested goods in class 25 are dissimilar to the opponent's goods in class 3.

*iii) The strength of the earlier mark's reputation*

The earlier mark had a strong reputation for 'cosmetics, soaps, fragrances, shower and bath preparations, preparations for care of the hair' at both relevant dates.

- iv) *The degree of the earlier mark's distinctive character, whether inherent or acquired through use*

Inherently, LUSH is low in distinctiveness owing to the rather laudatory message it sends of something luxurious or appealing.

There has clearly been substantial use of the earlier mark in relation to the goods for which it has established a reputation. However, I bear in mind that the starting point is that the mark has a low level of distinctiveness. In my view, the use is such as to have elevated the distinctiveness to a medium level.

- v) *Whether there is a likelihood of confusion*

Bearing in mind all relevant factors and having due regard for the dissimilarity between the respective goods, there is no likelihood of confusion.

### Conclusions on link

56) I note that the opponent states the following in relation to whether the relevant public will make the requisite link:

"73. It is unnecessary for the purposes of Section 5(3) of the Act that the Contested Goods be similar to the Class 3 goods relied on, 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. The goods under the earlier LUSH Registration and the Contested Marks will target the same consumers. As can be seen from paragraphs 32 and 33 of these submissions and Annex 2, it is common for third parties to advertise, offer and

sell clothing, cosmetics and toiletries under the same mark. The Opponent is a perfect example of this, as can be seen from the use of the Opponent's Registrations on cosmetics and on clothing goods (Exhibits NKD3 and NKD4). Moreover, and as can be seen throughout Exhibit NKD3, the Opponent's Registration is also used in combination with sub-brands across many of its product ranges, for example: 'LUSH HIPPY' at page 7; 'LUSH GARDENER' at pages 7 and 11. Thus, consumers are used to seeing the Opponent's LUSH registration used in combination with another word and the Contested Marks as used on the Contested Goods would be no different. Consumers are also used to seeing the Opponent's LUSH registration used in combination with a third party brand or collaborator (Exhibit NKD9). This raises the likelihood of the Opponent's earlier mark LUSH being called to mind when presented with the Contested Marks as used on the Contested Goods."<sup>14</sup>

I will deal, first, with the opponent's contention that it is common for third parties to 'advertise, offer and sell clothing, cosmetics and toiletries under the same mark'. I have already dismissed this argument earlier in this decision. There is no such evidence before me. In this connection, it is to be noted that the opponent confirmed that its reference to Annex 2, which was not in fact provided, should be disregarded (my earlier comments in paragraph 9 refer). Furthermore, the fact that the opponent itself has provided a limited number of clothing items also does not support such a finding. This argument does not assist the opponent.

57) The opponent's submissions about its use of sub-brands also does not assist it. Although the evidence shows some use of 'Lush' with other words such as 'LUSH HIPPY', this use is on the opponent's core offering of goods in class 3, for which it enjoys a reputation, and which are dissimilar to the contested goods. It is difficult to see how such use improves the likelihood of a link being made in respect of dissimilar goods in class 25. This argument does not assist the opponent.

58) Finally, as regards the argument that consumers are used to seeing the opponent's mark used in combination with a third-party brand or collaborator, this also

---

<sup>14</sup> Submissions in lieu, [73]

does not assist the opponent. The only evidence relied upon in support of this submission is in exhibit NKD9. That evidence merely shows that the well-known online retailer ASOS has sold the opponent's 'Lush' branded products (being cosmetics and the like) through its website. It does not show that the opponent and ASOS collaborated in producing clothing bearing the 'Lush' mark nor is there anything else in that exhibit, nor any of the other evidence before me, to suggest that the opponent is known for collaborating with third parties to produce goods outside of its core range in class 3.

59) The earlier mark has a strong reputation for certain goods in class 3. However, although the respective goods target the same consumer, they are dissimilar. Furthermore, the earlier mark is inherently distinctive to only a low degree which has been elevated to no more than a medium degree through use. Bearing in mind those factors, together with the degree of similarity between each contested mark and the earlier mark, I do not consider that the requisite link will be made in relation to any of the contested marks. If I am wrong about that, any link that is made is likely to be so weak and fleeting as to be incapable of giving rise to any damage.

**60) The opposition under section 5(3) of the Act fails.**

## **OVERALL OUTCOME**

**61) The opposition fails entirely.**

## **COSTS**

62) As the applicant has been successful, it is entitled to a contribution towards its costs. Given that the opposition proceedings against the first two applications were filed in 2022 and consolidated with the later filed opposition proceedings against the third application, the relevant scale for assessing costs in the instant case is that which relates to proceedings commenced prior to 1 February 2023, which is provided in Tribunal Practice Notice 2/2016. Using that scale as guidance, and bearing in mind that the three cases were consolidated and the applicant's evidence

has been of no relevance or assistance to me in making this decision, I award costs to the applicant on the following basis:

Preparing a statement and considering the other side's statement x 3	£600
---	------

<b>Total:</b>	<b>£600</b>
---------------	-------------

63) I order Cosmetic Warriors Limited to pay Shenzhen Haishun Network Co., Ltd the sum of **£600**. 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 14<sup>th</sup> day of November 2024**

**Beverley Hedley**  
**For the Registrar,**  
**the Comptroller-General**

## ANNEX

### **Goods and services relied on for UKTM 3269886:**

**Class 3:** Cosmetics; cleaning preparations; non-medicated toilet preparations; soaps; moisturising and revitalising bath soaps; toilet soaps; fragrance soaps; liquid soaps; cosmetic preparations; cosmetic preparations for baths; lotions, milks, gels, powders, oils, mousses, wax and creams, all for use on the skin; perfumery; perfumes; perfumed paper; perfuming preparations for the atmosphere; toilet waters; colognes and fragrances; perfume oils; essential oils; perfumed paper for use as drawer linings; perfumed tissues; room fragrances; incense; pot pourri; perfumed sachets; sun care preparations (cosmetic products); dentifrices; mouth washes; depilatory preparations; shaving preparations; deodorants and anti perspirants; toilet articles; cleansing and toning preparations; face masks; shower and bath preparations; make-up; makeup articles; eye makeup, eyebrow pencils; eyeliner, eye crayons and eye shadows; mascaras; eyeshadows; false eyelashes, false fingernails and adhesives therefor; lipsticks, glosses and moisturisers; nail polishes and varnishes; face powders, foundations, blushers and rouge; preparations for care of the hair; shampoos; hair rinses (shampoo-conditioners); hair conditioners; gels, sprays, mousses, balms and fixatives for hair styling and hair care; hair lacquers; hair colourants; dandruff creams (not for medical treatment), shampoos for dandruff treatment (not for medical treatment), dandruff lotions (not for medical treatment), hair balsams for dandruff treatment; cleaning preparations for cosmetics; abrasive preparations for use on the face, body and/or fingernails; body scrubs; body washes; bubble bath; bath foams; bath melts; bath oils; bath bombs; bath pearls; bath salts and crystals; non-medicated bath salts containing effervescent materials; shower gels; bath gels; massage cream; massage lotions; massage oils; skin creams; skin cleaners; skin toners; complexion treatments; skin moisturisers; cosmetic preparations for skin care; nail care treatments and creams; powders; eye creams; pumice stones for cosmetic purposes; aromatherapy preparations; cleansing pads, wipes, cotton wool pads and buds; toiletry impregnated tissues and towels; decorative transfers and skin jewels for cosmetic purposes.

**Class 18:** Articles of luggage; trunks; travel cases; backpacks; briefcases; handbags; purses; sports bags; gym bags; beach bags; bags for clothing; casual bags; holdalls; rucksacks; satchels; shopping bags; sling bags; suitcases; tote bags; trunks and travelling bags; bumbags; sports bags; casual bags; beauty cases; card cases; umbrellas; parasols and walking sticks; towelling bags; haversacks; bags for campers; attaché cases; wallets; vanity cases; briefcases portfolios; jewellery rolls for travel; make up bags and cases; pouches for holding make-up, and other personal items; toiletry bags; cosmetic bags; cosmetic cases; beauty cases; cases for carrying make up brushes; key cases.

**Class 25:** Clothing, namely, shirts, T-shirts, hoodies, trousers, jeans, shorts, sports shorts, swimwear, underwear, boxer shorts, robes, pyjamas, articles of outerwear, coats, jackets, jumpers and cardigans, pullovers, knitwear, leggings, headbands and wristbands, sweatshirts; footwear, namely, boots, shoes, trainers; headgear, namely, headbands, hats, caps, visors, baseball caps, beanies.

**Class 35:** Retail services being in store, by mail order catalogues, telephone, or via the internet, connected with the sale of cosmetics, cleaning preparations, non-medicated toilet preparations, soaps, moisturising and revitalising bath soaps, toilet soaps, fragrance soaps, liquid soaps, cosmetic preparations for baths, lotions, milks, gels, powders, oils, mousses, wax and creams, perfumery, perfumes, perfumed paper, perfuming preparations for the atmosphere, toilet waters, colognes and fragrances, perfume oils, essential oils, perfumed paper for use as drawer linings, perfumed tissues, incense, pot pourri, perfumed sachets, suncare preparations (cosmetic products), dentifrices, mouth washes, depilatory preparations, shaving preparations, deodorants and anti perspirants, toilet articles, cleansing and toning preparations, face masks, shower and bath preparations, make-up, makeup articles, eye makeup, eyebrow pencils, eyeliner, eye crayons and eye shadows, mascaras, eyeshadows, false eyelashes, false fingernails, adhesives for false eyelashes, adhesives for false fingernails, lipsticks, glosses and moisturisers, nail polishes and varnishes, face powders, foundations, blushers and rouge, preparations for care of the hair, shampoos, hair rinses (shampoo-conditioners), hair conditioners, gels, sprays, mousses, balms, hair lacquers, hair colourants, dandruff creams (not for medical treatment), shampoos for dandruff treatment (not for medical treatment), dandruff

lotions (not for medical treatment), hair balsams for dandruff treatment, cleaning preparations for cosmetics, abrasive preparations for use on the face, body and/or fingernails, body scrubs, body washes, bubble bath, bath foams, bath melts, bath oils, bath bombs, bath pearls, bath salts and crystals, non-medicated bath salts containing effervescent materials, shower gels, bath gels, massage cream, massage lotions, massage oils, skin creams, skin cleaners, skin toners, complexion treatments, skin moisturisers, cosmetic preparations for skin care, nail care treatments and creams, powders, eye creams, pumice stones for cosmetic purposes, aromatherapy preparations, cleansing pads, wipes, cotton wool pads and buds, toiletry impregnated tissues and towels; retail services being in store, by mail order catalogues, telephone, or via the internet, connected with the sale of articles of luggage, trunks, travel cases, backpacks, briefcases, handbags, purses, sports bags, gym bags, beach bags, bags for clothing, casual bags, holdalls, rucksacks, satchels, shopping bags, sling bags, suitcases, tote bags, trunks and travelling bags, bumbags, sports bags, casual bags, beauty cases, card cases, umbrellas, parasols and walking sticks, towelling bags, haversacks, bags for campers, attaché cases, wallets, vanity cases, briefcases portfolios, jewellery rolls for travel, make up bags and cases, pouches for holding make-up and other personal items, toiletry bags, cosmetic bags, cosmetic cases, beauty cases, cases for carrying make up brushes, key cases; retail services being in store, by mail order catalogues, telephone, or via the internet, connected with the sale of clothing, shirts, T-shirts, hoodies, trousers, jeans, shorts, sports shorts, swimwear, underwear, boxer shorts, robes, pyjamas, articles of outerwear, coats, jackets, jumpers and cardigans, pullovers, knitwear, leggings, headbands and wristbands, sweatshirts, footwear, boots, shoes, trainers, headgear, headbands, hats, caps, visors, baseball caps, beanies.

**Goods relied on for UKTM 2113249:**

**Class 25:** Articles of clothing; footwear; headgear.

## **Goods and services relied on for UKTM 913135331:**

**Class 18:** Leather and imitations of leather; animal skins, hides; trunks and travelling bags; handbags, rucksacks, purses; umbrellas, parasols and walking sticks; whips, harness and saddlery; clothing for animals.

**Class 25:** Clothing, footwear, headgear.

**Class 35:** The bringing together, for the benefit of others, of a variety of goods, namely non-medicated bath salts containing effervescent materials, emollients and skin moisturizers, soaps, perfumery, perfumes, essential oils, cosmetics, toilet waters, colognes and fragrances, nonmedicated toilet preparations, cosmetic preparations, lotions, milks, gels, powders, oils, mousses, wax and creams, all for use on the skin, bleaches for cosmetic use, suncare preparations (cosmetic products), dentifrices, mouth washes, depilatory preparations, shaving preparations, deodorants and anti perspirants, toilet articles, cleansing and toning preparations, face masks, shower and bath preparations, preparations for care of the hair, shampoos, hair conditioners, gels, sprays, mousses, balms and fixatives for hair styling and hair care, hair lacquers, hair colourants, essential oils, makeup articles, eye makeup, eyebrow pencils, eyeliner, eye crayons and eye shadows, mascara, eyeshadows, false eyelashes, false fingernails and adhesives therefor, lipsticks, glosses and moisturisers, nail polishes and varnishes, face powders, foundations, blushers and rouge, cleaning preparations for cosmetics, abrasive preparations for use on the face, body and/or fingernails, and creams all for use on the skin, preparations for care of the hair, body scrubs, body washes, bath preparations, bubble bath, bath foams, bath oils, shower gels, bath gels, massage cream, massage lotions, massage oils, skin creams, skin cleaners, skin toners, face masks, complexion treatments, skin moisturisers, nail care treatments and creams, powders, lipsticks, mascaras, eye creams, moisturising and revitalising bath soaps, toilet soaps, fragrance soaps, liquid soaps, massage creams and lotions, non-medicated toilet preparations, toilet articles, pumice stones for cosmetic purposes, aromatherapy preparations, incenses, pot pourri, room fragrances, cleansing pads, wipes, cotton wool pads and buds, toiletry impregnated tissues and towels, decorative transfers and skin jewels for cosmetic purposes, perfumed paper, sachets and tissues, pharmaceutical preparations and substances, products and preparations for the care

of skin, hair, teeth or nails, air freshening preparations, enabling customers to conveniently view and purchase those goods in a retail cosmetics and toiletries store.