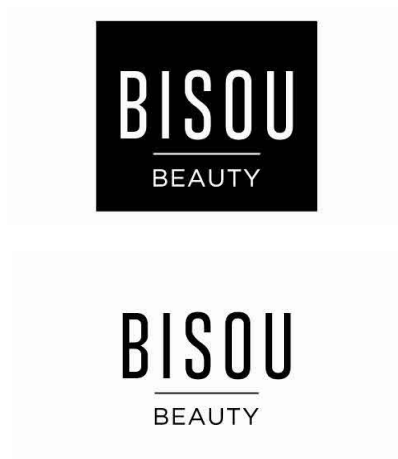


O-805-18

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3247718
BY EASY QUESTION LIMITED FOR A SERIES OF TWO TRADE MARKS**



IN CLASSES 3, 5, 8, 16, 18, 20, 21 AND 24

AND

THE OPPOSITION THERETO UNDER NUMBER 410811

BY

NUWENA GMBH

Background

1. On 2 August 2017, Easy Question Limited (“the applicant”) filed trade mark application number 3247718, for the series of two marks shown on the cover page of this decision, in respect of goods in classes 3, 5, 8, 16, 18, 20, 21 and 24.
2. The application was accepted and published in the *Trade Marks Journal* for opposition purposes on 18 August 2017. Nuwena GmbH (“the opponent”) opposes the application under sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”), relying upon the following five earlier EU trade mark registrations (“EUTMS”), the full specification details for which are contained in the annex to this decision:

Number	Mark	Classes	Filing date	Registration date
14194799	bilou	3, 5, 18 & 21	03.06.2015	03.03.2016
14723258	bilou	4, 8, 14, 26 & 44	23.10.2015	05.06.2017
15868763	bilou	29, 30, 32 & 33	28.09.2016	24.05.2017
14453062	bilou Bibi loves you	3, 4, 5, 18 & 21	07.08.2015	18.12.2015
14723191	bilou Bibi loves you	8, 14, 25, 26 & 44	23.10.2015	12.06.2017

3. Although the opponent claims that there is a “significant similarity” between the parties’ marks and goods, and refers only to the goods of its earlier marks covering beauty products, it relies on all its goods and services, claiming a likelihood of confusion under section 5(2)(b) with all of the applied-for goods. However, in its section 5(3) pleadings, the opponent acknowledges that some of the applicant’s goods are potentially dissimilar to those of the earlier marks.

4. For section 5(3) of the Act, the opponent relies upon a reputation in the UK in its marks, claiming that use of the applicant’s mark would take unfair advantage of the distinctive character and repute of the opponent’s marks. It also claims that the similarities between the marks will cause the relevant public to believe that they are either used by the same undertaking or that there is an economic connection between the users; in particular, that the opponent has extended its range of goods.

5. The applicant filed a defence and counterstatement, denying all the grounds and putting the opponent to proof of use of its earlier registered marks. The applicant was subsequently advised that since none of the earlier marks had been registered for five years or more on the date on which the contested application was published, there is no requirement for the opponent to prove use of its marks under section 6A of the Act. The opponent is entitled to rely upon all of its goods as services (as pleaded) on the basis of notional and fair use. Trade Mark owners have five years after registration to commence use of their mark, before they can be required to prove use.

6. The opponent is represented by Innovate Legal, whilst the applicant represents itself. The opponent filed evidence. Neither party chose to be heard and both parties filed written submissions in lieu of a hearing. I make this decision having taken into careful account all the papers on file.

Evidence

7. The opponent's evidence comes from Anja Bettin, who is the opponent's General Manager. Her witness statement is dated 2 August 2018. The first part of her evidence addresses the opponent's sales under the mark bilou, in Germany. She specifically states that bilou is used in relation to shower foam, cream foam, hand foam and body spray. These goods sold under the bilou mark won an award in Germany, in October 2016. The other three awards mentioned by Ms Bettin, in late 2016, early 2017 and early 2018, relate to marketing awards, in Germany, rather than to the goods themselves.

8. Ms Bettin states that the opponent's Instagram channel "mybilou" has 1.5 million followers, but she does not give figures for the position at the date on which the contested application was filed, 2 August 2017, which is the relevant date for the grounds of opposition. She states that the goods are sold in Germany, Austria, Switzerland, China, Serbia and in the UK.

9. Ms Bettin states that, in 2017 (she is not precise about when in 2017), the opponent made a concerted effort to increase its presence in the UK. She explains

that the opponent used, as its marketing strategy, cooperation with ‘influencers’ on the Internet. Such a marketing strategy involves using influential people to market a product, rather than targeting the consumer market as a whole¹. Three such influencers used by the opponent were “Zoella”, and “Lucy and Ludia”, known as ‘vloggers’ (video bloggers). Ms Bettin states that Zoella has an audience of over 12 million; she does not say whether this is a global audience, but I assume it is because it would, otherwise, constitute an unlikely proportion of the UK population. Ms Bettin states that the vlog produced by Zoella in which she reviews bilou products has achieved over 2.4 million views ‘to date’. This does not give me any idea how many views had been achieved by the relevant date. Ms Bettin invites me to look at the vlog by quoting the web address at which the vlog may be viewed on Youtube. Similarly, Ms Bettin states that “Lucy and Ludia” have an audience of over 265,000, and their Youtube vlog has achieved over 12,600 views “to date”. She gives the web address for the vlog. I have not looked at either of these vlogs because it is not the responsibility of the Tribunal to investigate internet evidence: only content put before the Tribunal can be considered. Internet links may have become inaccessible or their content changed. They are not durable, reliable evidence².

10. Ms Bettin states that products marketed under ‘the brand bilou’ are sold in the UK exclusively by Superdrug. The opponent started with 180 selected Superdrug stores, which “has now been extended to about 493 selected stores around the UK.” Exhibit AB3 comprises copies of photographs of bilou products on Superdrug shop shelves, in various UK towns and cities, alongside goods bearing the trade mark Dove. Superdrug also sells the goods online (although the supporting exhibit, AB4, is illegible). I note that the dates of the photographs range from 22 November 2017 to 25 May 2018, which is after the relevant date. ‘bilou’ is presented in the following way:

¹ Exhibit AB2, from Wikipedia.

² *Kustom Musical Amplification, Inc. v Office for Harmonisation in the Internal Market (OHIM)*, Case T-317/05, General Court of the European Union.

The image shows a handwritten logo in black ink. The word "bilou" is written in a cursive, lowercase font. The letter 'i' has a dot. The letter 'o' is replaced by a heart symbol. The letter 'u' has a small tail. The overall style is casual and artistic.

11. Ms Bettin provides details of the marketing efforts in the UK and lists seven internet links at which reviews may be read. I have not reviewed these for the reasons given above. The marketing assessment gives the date of the UK launch as 19 August 2017 and the date on which Zoella's vlog was released as 28 August 2017. Other reviews on social media all post-date the relevant date. Ms Bettin describes Exhibit AB7 as an independent review of bilou in "feastmagazine.org; however, it appears to be a copy of an article about Superdrug, with an advertisement for bilou products. The article is undated.

Decision

Section 5(2)(b) of the Act

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

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

(a) ...

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

13. The following principles are gleaned from the decisions of the CJEU in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case 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 might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

14. In comparing the respective specifications, all relevant factors should be considered, as per *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.* where the CJEU stated at paragraph 23 of its judgment:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their

intended purpose and their method of use and whether they are in competition with each other or are complementary.”

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

“82 ... there is a close connection between [the goods], 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...”.

16. Additionally, the criteria identified in *British Sugar Plc v James Robertson & Sons Limited (“Treat”)* [1996] R.P.C. 281 for assessing similarity between goods and services also include an assessment of the channels of trade of the respective goods or services.

17. In *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. stated:

“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.”

18. In *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch) at [12] Floyd J said:

“... 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. It is entirely unclear why the opponent's goods in classes 29, 30, 32 and 33 (earlier mark bilou, 15868763) are similar to any of the applicant's goods. Consequently, I say not more about this particular earlier mark or the goods which it covers in the section 5(2)(b) assessment. I will begin my assessment on the basis of earlier registrations, 14453062 and 14723191, both for the mark bilou Bibi loves you, because these two registrations have the widest specification coverage. I will come back to the other earlier marks, 14194799 and 14723258 (for the mark bilou) if it is necessary.

20. Class 3 of the application

Masks (Beauty -); Beauty soap; Beauty masks; Beauty gels; Beauty lotions; Beauty milk; Beauty milks; Beauty creams; Beauty serums; Beauty care cosmetics; Beauty balm creams; Facial beauty masks; Beauty care preparations; Non-medicated beauty preparations; Distilled oils for beauty care; Beauty creams for body care; Body cleaning and beauty care preparations; Beauty tonics for application to the body; Beauty tonics for application to the face; Make-up; Powder (Make-up -); Eyes make-up; Skin make-up; Make-up primer; Make up foundations; Make-up foundations; Make-up powder; Make-up preparations; Foundation make-up; Make-up foundation; Make-up primers; Eye make-up; Make-up remover; Make-up pencils; Make-up removers; Make up removing preparations; Powder for make-up; Eye make up remover; Compacts containing make-up; Make-up removing gels; Make-up removing creams; Chalk for make-up; Make-up removing milk; Make-up removing milks; Make-up removing preparations; Eye make-up removers; Make-up removing lotions; Make-up for compacts; Make-up for the face; Make-up pads of cotton wool; Tissues impregnated with make-up removing preparations; Make-up for the face and body; Make-up preparations for the face and body; Make-up bases in the form of

pastes; Nail polish removers [cosmetics]; Nail varnish remover [cosmetics]; Self-tanning preparations [cosmetics]; Nail cosmetics; Refill packs for cosmetics dispensers; Lip cosmetics; Fluid creams [cosmetics]; Colour cosmetics; Anti-aging moisturizers used as cosmetics; Pores tightening mask packs used as cosmetics; Cosmetics all for sale in kit form; Nail paint [cosmetics]; Liners [cosmetics] for the eyes; Tanning preparations [cosmetics]; Cosmetics containing keratin; Cosmetics containing hyaluronic acid; Cosmetics containing panthenol; Cosmetics in the form of powders; Cosmetics in the form of eye shadow; Sun blocking lipsticks [cosmetics]; Cosmetics preparations; Eye cosmetics; Colour cosmetics for the eyes; Bath powder [cosmetics]; Cosmetics in the form of milks; Night creams [cosmetics]; Non-medicated cosmetics; Cosmetics for the treatment of dry skin; Temporary tattoo transfers for use as cosmetics; Suntan lotion [cosmetics]; Paper hand towels impregnated with cosmetics; Sun blocking preparations [cosmetics]; Sun blocking oils [cosmetics]; Nail tips [cosmetics]; Nail hardeners [cosmetics]; Cosmetics for eye-lashes; Cosmetics in the form of rouge; Colour cosmetics for the skin; Moisturisers [cosmetics]; Cosmetics for protecting the skin from sunburn; Nail base coat [cosmetics]; Milks [cosmetics]; Sun protecting creams [cosmetics]; Sun barriers [cosmetics]; Sun block [cosmetics]; Skin masks [cosmetics]; Facial wipes impregnated with cosmetics; Cosmetics for suntanning; Skin moisturizers used as cosmetics; Cosmetics in the form of oils; Tanning gels [cosmetics]; Body creams [cosmetics]; Powder compact refills [cosmetics]; Mousses [cosmetics]; Cosmetics in the form of creams; Glitter in spray form for use as a cosmetics; Hair cosmetics; Cosmetics for the use on the hair; Tanning oils [cosmetics]; Suntanning oil [cosmetics]; Suntan oils [cosmetics]; Powder compacts [cosmetics]; Cosmetics for eye-brows; Cosmetics for use in the treatment of wrinkled skin; Cosmetics in the form of gels; Nail primer [cosmetics]; Impregnated cleaning pads impregnated with cosmetics; Teeth whitening strips impregnated with teeth whitening preparations [cosmetics]; Tanning milks [cosmetics]; After-sun milk [cosmetics]; Cosmetics and cosmetic preparations; Lip stains [cosmetics]; Cleaning pads impregnated with cosmetics; Cosmetics for personal use; Tissues impregnated with cosmetics; Cosmetics in the form of lotions; Decorative cosmetics; Cosmetics for use on the skin; Skin fresheners [cosmetics]; Solid powder for compacts [cosmetics]; Eyebrow cosmetics; Skincare cosmetics; Sun-tanning preparations [cosmetics]; After-sun milks [cosmetics]; After-sun oils [cosmetics]; Cosmetics; Sponges impregnated with

toiletries; Sponges impregnated with soaps; Cotton buds for cosmetic purposes; Cotton wool buds for cosmetic use; All-purpose cotton buds for personal use; Cosmetic cotton wool; Cotton wool for cosmetic purposes; Cotton wool balls for cosmetic use; Cotton for cosmetic purposes; Cotton swabs for cosmetic purposes; Cotton puffs for cosmetic purposes; Cotton balls for cosmetic purposes; Cotton sticks for cosmetic purposes; Eyelashes; Eyelash tint; Eyelash dye; Eyelashes (False -); Artificial eyelashes; False eyelashes; Eyelashes (Cosmetic preparations for -); Cosmetic preparations for eyelashes; Eyelashes (Adhesives for affixing false -); Adhesives for affixing artificial eyelashes; Adhesives for affixing false eyelashes; Adhesives for false eyelashes, hair and nails; Bubble bath; Bath salts; Bath herbs; Bath crystals; Bath powder; Bath oils; Bath oil; Bath beads; Bath pearls; Bath lotion; Bath cream; Bath soap; Bath bombs; Bath gels; Bath gel; Bath foams; Bath foam; Foam bath; Bath flakes; Bath milk; Bath soaps; Bath creams; Bubble baths; Bathing lotions; Bubble bath preparations; Foam bath preparations; Baby bath mousse; Foaming bath liquids; Foaming bath gels; Baby bubble bath; Cosmetic bath salts; Liquid bath soap; Liquid bath soaps; Scented bathing salts; Bath concentrates (Non-medicated -); Bath creams (Non-medicated -); Foams for the bath; Bath powders (Non-medicated -); Bath oils (Non-medicated -); Bath crystals (Non-medicated -); Non-medicated bath oils; Bath foams (Non-medicated -); Bath preparations, not medicated; Bath gels (Non-medicated -); Bath preparations (Non-medicated -); Bath pearls (Non-medicated -); Bath lotions (Non-medicated -); Non-medicated bath preparations; Non-medicated bath salts; Bath and shower foam; Shower and bath foam; Shower and bath gel; Baths (Cosmetic preparations for -); Cosmetic preparations for baths; Bubble bath [for cosmetic use]; Aromatic oils for the bath; Bath oils for cosmetic purposes; Non-medicated bubble bath preparations; Oil baths for hair care; Cosmetic preparations for bath and shower; Bubble bath preparations [for cosmetic use]; Bath oil, not for medical use; Bath crystals, not for medical use; Bath preparations, not for medical purposes; Bath salts, not for medical purposes; Liquid soap used in foot baths; Bath and shower gels, not for medical purposes; Shower soap; Shower foams; Shower gels; Shower gel; Shower preparations; Shower creams; Cosmetic products for the shower; Foams for use in the shower; Shower salts not for medical purposes; Refill packs for shower gel dispensers; Exfoliating creams; Exfoliating scrubs for the body; Exfoliating scrubs for the face; Exfoliating scrubs for the feet; Exfoliating scrubs for cosmetic purposes; Exfoliating

scrubs for the hands; Face packs; Face gels; Face powders; Face powder; Face creams; Face oils; Face packs [cosmetic]; Cosmetic face powders; Face scrubs (Non-medicated -); Face powder (Non-medicated -); Face cream (Non-medicated -); Cosmetic white face powder; Face and body lotions; Face and body glitter; Cleaning masks for the face; Face creams for cosmetic use; Lotions for face and body care; Liquid soaps for hands and face; Anti-bacterial face washes (Non-medicated -); Toning lotion, for the face, body and hands; Body scrub; Body scrubs; Hand scrubs; Facial scrubs; Foot scrubs; Cosmetic body scrubs; Facial scrubs [cosmetic]; Cleansing masks; Cleansing foam; Cleansing lotions; Cleansing creams; Cleansing milk; Cleansing gels; Body cleansing foams; Skin cleansing cream; Facial cleansing milk; Skin cleansing lotion; Cleansing creams [cosmetic]; Skin cleansing foams; Non-medicated cleansing creams; Cleansing milks for skin care; Cleansing milk for cosmetic purposes; Varnish (Nail -); Nail cream; Nail gel; Nail polish; Nail varnishes; Nail varnish; Nail strengtheners; Nail hardeners; Nail glitter; Nails (False -); False nails; Artificial nails; Nail-polish removers; Nail polish remover; Nail polish pens; Nail polishing powder; Gel nail removers; Nail enamel removers; Nail polish removers; Nail varnish removers; Nail repair preparations; Nail buffing preparations; Nail art stickers; Nail care preparations; Nail varnish removing preparations; Cosmetic nail care preparations; Nail polish top coat; Nail polish base coat; Nail varnish for cosmetic purposes; Adhesives for fixing false nails; Artificial nails for cosmetic purposes; Lotions for strengthening the nails; Skin, eye and nail care preparations; Cuticle oil; Cuticle cream; Cuticle conditioners; Cuticle removers; Cuticle removing preparations.

21. The earlier marks cover the terms toiletries, cosmetics, essential oils, cotton sticks for cosmetic purposes, impregnated cleaning pads impregnated with toilet preparations and cotton balls for cosmetic purposes. The law requires that goods and services be considered identical where one party's description of its goods or services encompasses the specific goods or services covered by the other party's description (and vice versa): see *Gérard Meric v OHIM*, Case T-33/05, General Court ("GC"). The terms in the applicant's class 3 specification are either identical to these or are identical on the *Merici* principle (either the opponent's goods cover the applicant's or vice versa).

22. Class 5 of the application

Cotton wool in the form of buds for medical use; Antiseptic cotton; Aseptic cotton; Absorbent cotton; Absorbent cotton wadding; Face cream (Medicated -); Face scrubs (Medicated -); Medicated face lotions; Nail fungus treatment preparations; Nail care preparations for medical use.

23. The specification of one of the earlier marks includes the terms *pharmaceutical preparations, Face cream (Medicated-)* and *medicated lotions*, which are identical to the applicant's *Face cream (Medicated -); Face scrubs (Medicated -); Medicated face lotions; Nail fungus treatment preparations* and *Nail care preparations for medical use*. The opponent's mark also covers *hygienic articles and materials for dressings*, which cover the applicant's *Cotton wool in the form of buds for medical use; Antiseptic cotton; Aseptic cotton; Absorbent cotton* and *Absorbent cotton wadding*. If I am wrong about that, the applicant's goods in Class 5 are highly similar to the opponent's *cotton sticks for cosmetic purposes, impregnated cleaning pads impregnated with toilet preparations* and *cotton balls for cosmetic purposes*.

24. Class 8 of the application

Hand tools for use in beauty care; Hygienic and beauty implements for humans and animals; Eyelash separators; Curlers (Eyelash -); Eyelash curlers; Hand tools for exfoliating skin; Nail clippers; Nail clippers, electric or non-electric; Cuticle scissors; Nail scissors; Scissors; Nail files; Nail buffers; Nail nippers; Nail polishers (Electric -); Electric nail buffers; Nail files, electric; Electric nail files; Nail polishers (Non-electric); Nail files, non-electric; Nail buffers for use in manicure; Nail buffers, electric or non-electric; Emery boards; Manicure sets; Manicure sets, electric; Electric manicure sets; Manicure and pedicure tools; Cases for manicure instruments; Cuticle pushers; Cuticle nippers; Cuticle tweezers; Pedicure sets; Electric pedicure sets; Pedicure implements [hand tools]; Tweezers; Hair-removing tweezers.

25. Earlier mark 14723191 has cover for:

Razors; Depilation appliances; Hair clippers for personal use, electric and non-electric; Hair-removing tweezers; Electric hair curling irons; Hand implements for hair curling; Curling tongs; Non-electric hand implements for hair curling; Manicure sets, electric; Electric fingernail polishers; Electric pedicure sets; Cases for manicure instruments; Fingernail polishers, electric or non-electric; Callus cutters; Manicure sets; Emery files; Nail files, electric; Cuticle tweezers; Nail clippers; Nail buffers for use in manicure; Nail scissors; Nail extractors; Pedicure sets; Nail skin treatment trimmers; Eyelash curlers; Eyelash separators; Pedicure implements; Hair cutting and removal implements; Hair styling appliances; Manicure and pedicure tools; Electric irons for styling hair; Electric hair straightening irons.

26. The opponent submits that the goods are highly similar, with the exception of hygienic and beauty implements for animals. This is a curious submission given that there are some goods which are identically worded (such as cuticle tweezers). However, it is not my task to make the opponent's case stronger than it makes it for itself. I agree that the goods are highly similar with the exception of hygienic and beauty implements for animals, which are of a similar nature and for a similar purpose (e.g. dog grooming, entailing the clipping of hair and nails) to the opponent's goods, but are not in competition or complementary, and are not sold in the same outlets. They are similar to a low degree.

27. Class 16 of the application

Make-up pads of paper for removing make-up; Napkins of paper for removing make-up; Towels of paper for removing make-up; Tissues of paper for removing make-up; Bathroom tissues; Bathroom tissue; Paper face towels; Face tissues of paper; Nail stencils.

28. None of the opponent's marks cover goods in class 16. However, as per the authorities cited earlier in this decision, I must compare these goods to the goods and services of the earlier marks (in whatever classes they fall). The applicant's *Make-up pads of paper for removing make-up; Napkins of paper for removing make-up; Towels of paper for removing make-up* and *Tissues of paper for removing make-up* are all of a similar nature to the opponent's *tissues impregnated with make-up*

removing preparations, in Class 3. The goods have an identical purpose, are likely to be sold in the same channels of trade and nearby on shelves to one another, and are in competition with highly similar methods of use (the choice is whether to use impregnated versions or plain versions and a separate make-up remover). They are highly similar.

29. *Bathroom tissues; Bathroom tissue; Paper face towels and Face tissues of paper* are similar in nature to the opponent's *tissues impregnated with make-up removing preparations* because they are all made of paper (paper face towels are soft, like tissue). They may serve a similar purpose, although the applicant's goods could also be used for blowing the nose and for drying the face. They may be sold in the same trade channels, but are not likely to be sold cheek-by-jowl with make-up removing tissues, which more naturally sit with make-up and skin-cleansing goods. There is a degree of competition as tissues of any description may be used to clean off make-up (with water or lotion). There is a medium degree of similarity.

30. The applicant's *Nail stencils* will be sold alongside nail polish because they are stencils through which polish is applied to create a pattern on the nails. There is an element of complementarity (in one direction) as the stencils need nail polish to be effective. The applicant's *nail stencils* are similar to a medium degree to the opponent's *nail polish*.

31. Class 18 of the application

Beauty cases; Make-up boxes; Make-up cases; Make-up bags; Make-up bags sold empty; Pouches for holding make-up, keys and other personal items; Cosmetic bags; Cosmetic bags sold empty; Wash bags (not fitted); Wash bags for carrying toiletries; Unfitted vanity cases; Vanity cases sold empty; Vanity cases, not fitted.

32. The opponent has cover for the broad terms *bags and other carriers* which covers all the applicant's class 18 goods, making them identical on the *Merit* principle.

33. Class 20 of the application

Mirrors; Bathroom mirrors; Hand mirrors; Hand mirrors [toilet mirrors]; Shaving mirrors; Mirrors (Hand-held -) [toilet mirrors]; Hand-held mirrors [toilet mirrors]; Mirrors (silvered glass); Mouldings for mirrors; Hand-held mirrors; Personal compact mirrors; Make-up mirrors for purses; Mirrors for use in powder compacts; Make-up mirrors for the home; Make-up mirrors for travel use; Bath seats; Bath pillows; Bathroom vanities; Cushions adapted to support the face [other than for medical use].

34. The applicant's *Hand mirrors; Hand mirrors [toilet mirrors]; Shaving mirrors; Mirrors (Hand-held -) [toilet mirrors]; Hand-held mirrors [toilet mirrors]; Hand-held mirrors; Personal compact mirrors; Make-up mirrors for purses; Mirrors for use in powder compacts; Make-up mirrors for the home; Make-up mirrors for travel use*, do not share nature or purpose, are not in competition with and are not truly complementary to the opponent's *cosmetics* (Class 3), *beautification tools* (Class 8) and *cosmetic and bathroom articles* (Class 21), but they are sold in proximity. They are similar to a low degree. Since *Mirrors at large, Mirrors (silvered glass)* and *Bathroom mirrors* also cover the more specific mirrors, these are also similar to the opponent's goods to a low degree.

35. *Mouldings for mirrors* are not similar to any of the opponent's goods. These are parts used in the manufacture of mirrors. *Bathroom vanities* are items of furniture and are not similar to any of the opponent's goods. None of these goods share nature, purpose or meaningful channels of trade. They are not complementary and are not in competition.

36. The applicant's *Bath seats* and *Bath pillows* do not share nature or purpose with the opponent's goods. They are not complementary or in competition. However, these goods are frequently sold alongside other bathroom accessories such as *bathroom articles; toilet brushes* and *brush holders, toilet roll dispensers* and *soap dispensers*, all of which are listed in the opponent's class 21 specification. There is a low degree of similarity between them.

37. There does not appear to be any similarity between *cushions adapted to support the face [other than for medical use]* and any of the opponent's goods. Accordingly, I find that they are not similar.

38. Class 21 of the application

Make-up sponges; Make-up brushes; Make-up artist belts; Eye make-up applicators; Make-up removing appliances; Electric make-up removing appliances; Applicators for applying eye make-up; Applicator sticks for applying make-up; Facial sponges for applying make-up; Appliances for removing make-up, electric; Non-electric make-up removing appliances; Stencils for use when applying make-up; Appliances for removing make-up, non-electric; Racks for cosmetics; Holders for cosmetics; Dispensers for cosmetics; Cosmetics brushes; Containers for cosmetics; Cosmetics applicators; Applicators for cosmetics; Sponges; Bath sponges; Body sponges; Scrub sponges; Natural sea sponges; Facial cleansing sponges; Sponges for applying body powder; Skin (Abrasive sponges for scrubbing the -); Abrasive sponges for scrubbing the skin; Cotton ball dispensers; Cotton ball jars; Cleaning cotton; Cosmetic bags [fitted]; Wash bags (Fitted -); Eyelash brushes; Eyelash combs; Vanity cases (Fitted -); Fitted vanity cases; Bath brushes; Bathtub brushes; Shower gel dispensers; Sponge bags; Exfoliating brushes; Exfoliating slippers; Exfoliating pads; Exfoliating mitts; Foot exfoliating pads; Scrubbing pads; Scrubbing brushes; Skin cleansing brushes; Nail brushes.

39. The opponent's goods in Class 21 include the broad term *Cosmetic and toilet utensils and bathroom articles*. The applicant's goods are identical either in wording or on the *Meric* principle to the following terms in the opponent's class 21 specification:

Cosmetic and toilet utensils and bathroom articles; Sponges; Cleaning rags; Cosmetic brushes; Cotton ball dispensers; Cosmetic bags [fitted]; Electric make-up removing appliances and Non-electric make-up removing appliances.

40. Class 24 of the application

Make-up pads of textile for removing make-up; Make-up pads of textile; Cloths for removing make-up; Make-up (Napkins for removing -) [cloth]; Cloth napkins for removing make-up; Make-up removal towels [textile] other than impregnated with cosmetics; Make-up removal cloths [textile], other than impregnated with cosmetics; Make-up removal wipes [textile] other than impregnated with cosmetics; Make-up removal cloths [textile], other than impregnated with toilet preparations; Make-up removal towels [textile] other than impregnated with toilet preparations; Make-up removal wipes [textile] other than impregnated with toilet preparations; Wash gloves; Bath sheets; Bath mitts; Bath towels; Bathroom towels; Face towels; Face cloths; Textile face towels; Face cloths of towelling; Face cloths of textile; Face flannels of textile; Face towels of textiles; Face towels of textile; Flannel; Flannel [fabric]; Face flannels in the form of gloves.

41. The applicant's *Make-up pads of textile for removing make-up; Make-up pads of textile; Cloths for removing make-up; Make-up (Napkins for removing -) [cloth]; Cloth napkins for removing make-up; Make-up removal towels [textile] other than impregnated with cosmetics; Make-up removal cloths [textile], other than impregnated with cosmetics; Make-up removal wipes [textile] other than impregnated with cosmetics; Make-up removal cloths [textile], other than impregnated with toilet preparations; Make-up removal towels [textile] other than impregnated with toilet preparations; Make-up removal wipes [textile] other than impregnated with toilet preparations* have an identical purpose to the opponent's *tissues impregnated with make-up removing preparations*, are likely to be sold in the same channels of trade and nearby on shelves to one another, and are in competition with highly similar methods of use (the choice is whether to use impregnated versions or plain versions and a separate make-up remover). There is a good deal of similarity between them.

42. The applicant's *Wash gloves; Bath sheets; Bath mitts; Bath towels; Bathroom towels; Face towels; Face cloths; Textile face towels; Face cloths of towelling; Face cloths of textile; Face flannels of textile; Face towels of textiles; Face towels of textile; Face flannels in the form of gloves* are frequently sold alongside other

bathroom accessories such as *cosmetic and toilet utensils and bathroom articles; sponges, body scrubbing puffs, toilet brushes and brush holders, toilet roll dispensers and soap dispensers*, which are covered by the opponent's class 21 specification. They do not share nature, purpose, method of use and are not in competition or complementary. They are similar to a low degree.

43. The applicant's *Flannel; Flannel [fabric]* are textiles for making into articles (as opposed to 'flannels', which are face cloths). The opponent's class 26 specification covers *patches for clothing, accessories for apparel, sewing articles and decorative textile articles*. Both parties' goods are used to make, for example, clothing and home furnishings. They are similar in nature (patches for clothing being pieces of textile), purpose, method of use and trade channels. There is a good level of similarity between them.

44. There are no goods or services covered by the opponent's other earlier marks which put it in a stronger position than in relation to the marks I have already considered.

The average consumer and the purchasing process

45. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer, Case C-342/97*. The parties' goods which I have considered above are all consumer items, aimed at the general public. Some will be inexpensive and frequently purchased (low-cost toiletries, for example). Others, such as clothing, will be purchased with an eye for colour, style, and suitability. The purchase will be overwhelmingly visual, although I do not ignore the potential for an aural aspect to the purchasing process; for example, department stores commonly provide assistance when purchasing cosmetics. On the whole, no more than an average degree of attention will be paid to the purchase of the parties' goods.


Comparison of marks

46. I will compare the earlier mark(s) bilou, and bilou Bibi loves you with the later mark. I will make the comparison on the basis of the second mark in the applicant's series, which does not have the black background.

47. 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 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.”

48. 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. The marks must be compared as they appear on the trade mark register. The applicant submits that this is not how 'bilou' is used (as I have noted). The law permits trade mark owners five years after registration to use their mark in the form in which it is registered, or in a form which does not alter the distinctive character of the mark in the form in which it is registered. As it is less than five years since the earlier marks were registered, the opponents do not have to prove that the marks have been used at all. For this reason, I must take into account the marks as they appear on the register, not how they have been used. The exception to this is when, later in this decision, I consider whether the opponent has used its marks to a level and in such a way that it is entitled to claim that the inherent distinctive character of the marks has been improved through use.

Opponent's marks	Applicant's mark
<p data-bbox="277 528 555 562">bilou Bibi loves you</p> <p data-bbox="288 696 357 730">bilou</p>	

49. The opponent's bilou Bibi loves you marks comprise an invented word as the first element, followed by Bibi loves you, which will be seen as a statement about somebody called Bibi. The overall impression of the mark is therefore, of two separate elements which do not fit together as a phrase with a meaning, in totality. Neither element is more dominant than the other. The bilou (solus) marks consist entirely of bilou, which is the sole element in which the overall impression resides.

50. The overall impression of the applicant's mark is dominated by the word BISOU. The word BEAUTY is considerably smaller, positioned beneath BISOU, and is descriptive or non-distinctive for most of the applicant's goods. The line separating the words has very little weight in the overall impression.

51. The point of visual and aural convergence between the marks is bilou v. BISOU. The only difference between these words is the middle letter (l or s). It makes no difference that one is in lower case letters and the other in upper case because notional and fair use of trade mark registrations covers use in lower or upper case³. 'bilou' is the only word in two of the earlier marks and one of four words in the other two earlier marks. It is the first word which will be read and heard in the earlier marks, as is BISOU in the later mark. There is a good degree of visual similarity

³ Professor Ruth Annand, sitting as the Appointed Person, in *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17.

between the bilou (solus) marks and the application. There is a medium degree of visual similarity between the longer earlier marks and the application.

52. The two syllables of bilou and BISOU will sound the same: likely, a short 'l', as in biblical, and a long -OO. The only aural difference is the middle letters. In relation to the bilou (solus) marks and the application, there is a good degree of aural similarity. Taking into account the extra words in the longer earlier marks, there is a medium degree of aural similarity between the marks.

53. BISOU and bilou will appear to the UK average consumer as invented words, with no concept. The applicant submits that bisou means 'kiss', in French. This meaning is unlikely to be known to the average UK consumer and is not a concept capable of immediate grasp. The only recognisable concept in the earlier mark is a person named Bibi who loves someone, whilst the only recognisable concept in the later mark is the word BEAUTY. There is no conceptual similarity between bilou and BISOU, and conceptual differences are introduced by the elements Bibi loves you and BEAUTY.

Distinctive character of the earlier marks

54. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*⁴ the CJEU stated that:

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

⁴ Case C-342/97

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).”

55. One of the principles which must be taken into account in deciding whether there is a likelihood of confusion is that 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. With this in mind, I need to assess whether the use made by the opponent of its marks has improved their inherent distinctiveness level. The relevant date for this assessment is the filing date of the contested application, 2 August 2017.

56. The evidence is thin. Fundamentally, there is no evidence that the mark was known to UK consumers on 2 August 2017. The figures given for the opponent’s Instagram channel are undated and appear to be current at the date of Ms Bettin’s witness statement. The same is true of the views on the vloggers’ Youtube channels. All of the photographs of products on sale in Superdrug post-date the relevant date. A crucial point is that there is evidence that the UK launch took place on 19 August 2017, which is after the relevant date. Finally, the mark in use is in a highly stylised form, rather than a form which would be covered by notional and fair use of the plain word bilou. Consequently, there can be no basis for finding that the mark as registered has become more distinctive through use. There is no use in the UK which pre-dates the relevant date. Although there is some evidence that the mark was used in Germany prior to the relevant date, it is the perception of the UK average consumer which matters in determining whether a mark’s distinctive

character has been enhanced through use in the UK because section 5(2)(b) is about whether the average UK consumer will be confused⁵.

57. Consequently, the opponent is unable to claim that any of its marks have acquired an enhanced level of distinctive character through use. That being the case, I have only the inherent distinctiveness of the earlier marks to consider.

58. The element of all the earlier marks which is similar to the later mark is bilou. This is an invented word. It is highly distinctive because it does not describe, allude to or evoke any characteristics of any of the goods (or services) covered by the earlier mark. The bilou (solus) marks are highly distinctive. Together with the phrase Bibi loves you, the longer earlier marks, bilou Bibi loves you, have a reasonably high degree of inherent distinctiveness.

Likelihood of confusion

59. Deciding whether there is a likelihood of confusion is not scientific; it is a matter of considering all the factors, weighing them and looking at their combined effect, in accordance with the authorities set out earlier in this decision. One of those principles states that a lesser degree of similarity between goods and services may be offset by a greater degree of similarity between the trade marks, and vice versa. There can be no likelihood of confusion in relation to goods which are not similar (*Canon*, paragraph 23). The section 5(2)(b) ground fails in relation to *mouldings for mirrors; bathroom vanities; cushions adapted to support the face [other than for medical use]* (all in class 20).

60. In *Kurt Geiger v A-List Corporate Limited*, BL O/075/13, Mr Iain Purvis QC, sitting as the Appointed Person, pointed out that the level of 'distinctive character' is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar. He said:

⁵ *China Construction Bank Corporation v Groupement Des Cartes Bancaires*, Case BL O/281/14, Mr Iain Purvis QC, sitting as the Appointed Person.

“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.”

61. The bilou/BISOU elements are the only point of similarity between the marks. As said earlier, bilou is highly distinctive. It is also separated in meaning from the rest of the longer earlier marks (Bibi loves you), because the combination bilou Bibi loves you does not form a unit with a meaning, as a whole. Bilou is an invented word. It sits at the start of the earlier mark, with no conceptual connection to the rest of the mark. It has the impression of a house mark. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), Arnold J. considered the impact of the CJEU’s judgment in *Bimbo*, Case C-591/12P, on the court’s earlier judgment in *Medion v Thomson*. The judge said:

“18 The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.

19 The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also

perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

20 The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).

21 The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors.”

62. As pointed out by Arnold J, the principle established in *Medion v Thomson* extends to the situation where the composite mark contains an element which is similar to the earlier mark. In an earlier judgment, Arnold J considered the marks AVEDA and DABUR UVEDA and said:

“48. On that basis, I consider that the hearing officer failed correctly to apply *Medion v Thomson*. He failed to ask himself whether the average consumer would perceive UVEDA to have significance independently of DABUR UVEDA as a whole and whether that would lead to a likelihood of confusion. Accordingly, it is necessary for me to consider the matter afresh. Having regard to the matters set out in paragraph 39 above, I think there can be little doubt that the average consumer who was familiar with AVEDA beauty products would be likely to be confused by the use of DABUR AVEDA in relation to identical goods. In particular, there would be a strong likelihood that

the average consumer would think that it indicated some connection between DABUR and AVEDA. In my judgment it makes little difference that the second word in the composite mark is UVEDA rather than AVEDA. As the hearing officer rightly accepted, UVEDA is both visually and aurally very close to AVEDA. The human eye has a well-known tendency to see what it expects to see and the human ear to hear what it expects to hear. Thus it is likely that some consumers would misread or mishear UVEDA as AVEDA. (Indeed, not only did the hearing officer himself write AVEDA instead of UVEDA at [43], but also the Intellectual Property Office's database of past decisions currently records the contested mark as being "Dabur AVEDA".)

63. In the present case, in considering bilou Bibi loves you (which has the widest specification coverage) against BISOU BEAUTY, bilou has an independent distinctive role in the earlier mark. BISOU and bilou are not identical, but they do not have to be, as set out in *Whyte and Mackay* and *Aveda*. The bilou and BISOU elements are close visually and aurally, and they will be seen as invented words with no counteracting concept, making them more prone to imperfect recollection. Further, bilou, as an invented word, is highly distinctive. Owing to the additional words Bibi loves you, I do not think that the marks will be mistaken for one another. However, all factors in the analysis considered, there is a likelihood of indirect confusion because the average consumer, while noting the extra words, will nevertheless perceive the bilou/BISOU elements in the manner of a house mark; particularly in view of the position of bilou at the start of the mark in which it does not form a meaningful unit with the remainder of the mark. The consequence of such a perception is that the average consumer will conclude that the goods emanate from economically linked undertakings or the same undertaking using a variation on its brand. I consider that to be the case for all the goods which I have found to be similar.

64. In case I am wrong that there is a likelihood of indirect confusion in relation to the applicant's goods which I have found only to be similar to a low degree, I will consider the matter in relation to the earlier bilou (solus) marks. The outcome of the comparison of the goods in the application which are similar to a low degree would not have been any different if the bilou (solus) marks had been considered. This is

because the bilou (solus) marks cover the same goods as the longer earlier marks which led to my finding of similarity to a low degree. Taking into account the interdependency principle, there is a likelihood of direct confusion between bilou and BISOU BEAUTY for the goods for which there is a low degree of similarity.

65. The section 5(2)(b) ground succeeds, except in relation to *mouldings for mirrors; bathroom vanities; cushions adapted to support the face [other than for medical use]*.

Section 5(3) of the Act

66. Section 5(3) states:

“(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 Community trade mark or international trade mark (EC), in the European Community) 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.”

67. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, [1999] ETMR 950, Case 252/07, *Intel*, [2009] ETMR 13, Case C-408/01, *Adidas-Salomon*, [2004] ETMR 10 and Case C-487/07, *L’Oreal v Bellure* [2009] ETMR 55 and Case C-323/09, *Marks and Spencer v Interflora*. 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*.

(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 on 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*).

68. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that its marks are identical or similar to the applicant's mark. Secondly, the opponent's must show that its marks have achieved a level of knowledge/reputation amongst a significant part of the public. Thirdly, it must be established that the level of reputation and the similarities between the marks will cause the UK public to make a link between them, in the sense of the earlier marks being brought to mind by the later mark. Fourthly, assuming that the first three conditions have been met, section 5(3) requires that one or more of the three types of damage claimed (unfair advantage and detriment to distinctive character and repute) will occur and/or that the relevant public will believe that the marks are used by the same undertaking or that there is an economic connection between the users. It is unnecessary for the purposes of section 5(3) that the goods and services be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

69. I have already found that the marks are similar. The next condition is reputation. For its section 5(3) ground, the opponent relies upon all the goods and services of its marks. Whilst it was not required to prove genuine use in relation to the goods and services of its marks and so was able to rely upon them all for section 5(2)(b), the

same is not true for section 5(3), for which there must be evidence of a reputation. The only use that has been shown is in respect of a limited range of toiletries. As said earlier, all the UK use, including the UK-launch date, post-dates the relevant date. Even if I were to find, on the very thin evidence, that, at the relevant date, the marks had a reputation for such goods in Germany (these being European trade marks⁶), without a reputation in the UK amongst UK consumers, it is difficult to see how the relevant UK public would have made a link at the relevant date⁷. Without a link, there can be no damage.

70. The section 5(3) ground fails.

Overall outcome

71. The opposition succeeds under Section 5(2)(b) of the Act, except for the goods which are not similar. The application may proceed to registration for:

Class 20: Mouldings for mirrors; Bathroom vanities; cushions adapted to support the face [other than for medical use].

The application is refused for all the other goods.

Costs

72. The opponent has been almost wholly successful, save in relation to a tiny proportion of the contested goods, and is entitled to a contribution towards its costs, based upon the scale of costs published in Tribunal Practice Notice 2/2016. I will make no award for the opponent's evidence, which is very light and of no assistance for the reasons given earlier in this decision. I have also reduced the amount for written submissions in lieu of a hearing because no attempt was made to explain why the opponent's goods in classes 14, 25, 29, 30, 32 and 33, all of which it

⁶ *Burgerista Operations GmbH v Burgista Bros Limited* [2018] EWHC (IPEC).

⁷ *China Construction Bank Corporation v Groupement Des Cartes Bancaires*, Case BL O/281/14, Mr Iain Purvis QC, sitting as the Appointed Person.

continued to rely upon under section 5(2)(b), were similar to any of the applicant's goods. The award breakdown is as follows:

Preparing a statement and considering the counterstatement	£200
Official fee	£200
Written submissions in lieu of a hearing	£100
Total	£500

73. I order Easy Question Limited to pay to Nuwena GmbH the sum of **£500**. This sum is to be paid within 14 days of the expiry of the appeal period or within 14 days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 14th day of December 2018

Judi Pike
For the Registrar,
the Comptroller-General

Annex: the opponent's marks

EUTM 14194799

bilou

Class 3: Toiletries; Cleaning and fragrancing preparations; None of the aforesaid goods for the purpose of sun protection, after-sun skin care and/or hair removal; None of the aforesaid goods for pets.

Class 5: Dietary supplements and dietetic preparations; Sanitary preparations and articles; None of the aforesaid goods for the purpose of treating and/or alleviating sunburn; None of the aforesaid goods for pets.

Class 18: Luggage, bags, wallets and other carriers; Umbrellas and parasols.

Class 21: Cosmetic and toilet utensils and bathroom articles; None of the aforesaid goods in connection with sun protection, after-sun skin care and/or hair removal and/or medical preparations for treating and/or alleviating sunburn.

EUTM 14723258

bilou

Class 4: Perfumed candles; Aromatherapy fragrance candles; Christmas tree decorations for illumination [candles]; Christmas tree candles; Candles for use as nightlights; Candle assemblies; Floating candles; Tealights; Table candles; Tapers for lighting; Nightlights [candles]; Wicks for candles; Candles in tins; Candles for lighting; Tapers; Candles and wicks for lighting; Wax for making candles; Candles for use in the decoration of cakes; Fruit candles; Special occasion candles; Fuels and illuminants; Patio torches.

Class 8: Razors; Depilation appliances; Hair clippers for personal use, electric and non-electric; Hair-removing tweezers; Electric hair curling irons; Hand implements for hair curling; Curling tongs; Non-electric hand implements for hair curling; Electric fingernail polishers; Cases for manicure instruments; Fingernail polishers, electric or non-electric; Callus cutters; Emery files; Nail files, electric; Cuticle tweezers; Nail buffers for use in manicure; Nail scissors; Nail extractors; Nail skin treatment trimmers; Eyelash curlers; Manicure sets; Manicure sets, electric; Pedicure sets; Electric pedicure sets; Nail clippers; Hair cutting and removal implements; Hair styling appliances; Manicure and pedicure tools; Eyelash separators.

Class 14: Charms of precious metals; Key fobs of precious metals; Commemorative shields; Boxes of precious metal; Objet d'art made of precious stones; Key charms coated with precious metals; Trinkets coated with precious metal; Trinkets of bronze; Leather key fobs; Key fobs of imitation leather; Metal key fobs; Key fobs, not of metal; Cases [fitted] for jewels; Jewelry rolls for storage; Jewel cases of precious metal; Cases of precious metals for horological articles; Presentation boxes for horological articles; Presentation boxes for jewelry; Jewel cases; Wristwatches; Pendants for watch chains; Digital clocks; Clocks and watches, electric; Miniature clocks; Alarm clocks; Necklaces [jewellery, jewelry (Am.)]; Decorative articles [trinkets or jewellery] for personal use; Small jewellery boxes of precious metals; Rings [jewellery, jewelry (Am.)]; Jewelry boxes; Brooches [jewelry]; Decorative brooches [jewellery]; Gemstones, pearls and precious metals, and imitations thereof; Jewellery; Jewellery boxes and watch boxes; Time instruments; Earrings; Bracelets [jewellery, jewelry (Am.)]; Bracelets.

Class 26: Patches for clothing; Belt clasps; Belt buckles; Elasticated hair ribbons; Electric hair rollers; Hair twisters [hair accessories]; Hair bands; Bows for the hair; Decorative articles for the hair; Barrettes; Ponytail holders and hair ribbons; Twisters [hair accessories]; Hair ribbons; Brooches [clothing accessories]; Accessories for apparel, sewing articles and decorative textile articles; Hair ornaments, hair rollers, hair fastening articles, and false hair.

Class 44: Application of cosmetic products to the face; Application of cosmetic products to the body; Providing information about beauty; Consultancy in the field of

body and beauty care; Consultation services relating to skin care; Consultancy services relating to beauty; Advisory services relating to beauty treatment; Advice relating to hair care; Consultation services in the field of make-up; Skin care salons; Hair cutting; Services for the care of the face; Tanning salons; Services of a hair and beauty salon; Nail salon services; Services for the care of the feet; Beauty salons; Cosmetic treatment; Pedicurist services; Hair colouring services; Hygienic and beauty care; Hygienic care for human beings; Depilatory waxing; Personal hair removal services; Services for the care of the hair; Cosmetic treatment for the hair; Cosmetic treatment for the body; Cosmetics consultancy services; Facial beauty treatment services; Cosmetic treatment services for the body, face and hair; Cosmetic make-up services; Manicuring; Manicure and pedicure services; Nail care services; Aromatherapy services; Massage; Foot massage services; Reflexology; Services for the care of the skin; Make-up consultation services provided on-line or in-person; Beauty treatment services especially for eyelashes; Human hygiene and beauty care.

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Class 29: Fruit preserves; Frozen fruits; Dried fruit; Vegetables, cooked; Fruit, stewed; Jellies for food; Jellies, jams, compotes, fruit and vegetable spreads; Jams; Compotes; Milk; Flavoured milk beverages; Apple purée; Curd; Quark; Dairy puddings; Chilled dairy desserts; Dips; Dairy-based dips; Peanut butter; Peanut milk for culinary purposes; Ice cream shakes; Low-fat potato chips; Fat-containing mixtures for bread slices; Fruit chips; Fruit jellies; Fruit pulp; Fruit salads; Fruit-based snack food; Candied fruit snacks; Coconut, desiccated; Vegetables, dried; Flavored nuts; Ginger jam; Yogurt; Yoghurt desserts; Crystallized fruits; Candied nuts; Potato chips; Potato snacks; Kephir [milk beverage]; Coconut butter; Coconut fat; Coconut oil; Milk of almonds for culinary purposes; Marmalade; Milk beverages, milk predominating; Dairy products; Milk shakes; Sugar-coated fruits on a stick; Whey; Dairy spreads; Fruits, tinned [canned (Am.)]; Rice milk [milk substitute]; Snack foods based on vegetables; Snack foods based on legumes; Potato-based snack foods;

Snack foods based on nuts; Drinking yogurts; Peanuts, prepared; Hazelnuts, prepared; Almonds, ground; Processed nuts; Processed fruits, fungi and vegetables (including nuts and pulses); Seeds, prepared; Sunflower seeds, prepared.

Class 30: Fruit gums [other than for medical use]; Coffee; Tea; Coffee, teas and cocoa and substitutes therefor; Cocoa; Flour; Cereal preparations; Pastries; Confectionery items coated with chocolate; Candy coated confections; Snack foods consisting principally of confectionery; Honey; Flowers or leaves for use as tea substitutes; Sweetmeats [candy]; Ice cream; Iced tea; Chocolate based products; Fondants [confectionery]; Fruit coulis [sauces]; Pastries, cakes, tarts and biscuits (cookies); Royal jelly; Fruit jellies [confectionery]; Tea-based beverages; Chips [cereal products]; Cereal bars; High-protein cereal bars; Cereal-based snack food; Oat flakes; Oatmeal; Husked oats; Coffee flavorings [flavourings]; Artificial coffee; Vegetal preparations for use as coffee substitutes; Coffee-based beverages; Cocoa-based beverages; Chewing gum; Butterscotch chips; Cookies; Crackers; Cakes; Corn flakes; Macaroons [pastry]; Coffee beverages with milk; Cocoa beverages with milk; Chocolate beverages with milk; Muesli; Muesli bars; Muesli desserts; Cereal bars and energy bars; Mousse confections; Oat-based food; Infusions, not medicinal; Chocolate-coated nuts; Nougat; Petits fours [cakes]; Puddings; Chocolates; Confectionery; Chocolate; Chocolate-based beverages; Chocolate mousses; Sandwich spread made from chocolate and nuts; Sorbets [ices]; Sorbets [water ices]; Waffles; Wheat germ for human consumption; Cotton candy.

Class 32: Whey beverages; Syrups for making whey-based beverages; Non-alcoholic beer; Beers; Mineral water [beverages]; Aerated water; Aerated juices; Fruit beverages and fruit juices; Syrups for making beverages; Syrups for making flavoured mineral waters; Syrups for making non-alcoholic beverages; Aloe vera drinks, non-alcoholic; Peanut milk (soft drink); Non-alcoholic fruit extracts; Fruit juice beverages (Non-alcoholic -); Smoothies; Fruit nectars, non-alcoholic; Non-alcoholic beverages flavoured with coffee; Non-alcoholic beverages flavoured with tea; Non-alcoholic honey-based beverages; Beer-based cocktails; Powders for effervescing beverages; Pastilles for effervescing beverages; Energy drinks; Essences for making beverages; Vegetable juices [beverages]; Ginger ale; Isotonic drinks; Lemonades; Syrups for lemonade; Malt beer; Milk of almonds [beverage]; Orgeat; Protein-

enriched sports beverages; Rice-based beverages, other than milk substitutes; Smoothies; Soda water; Soya-based beverages, other than milk substitutes; Juices; Sports drinks; Waters [beverages]; Water-based beverages containing tea extracts; Wheat beer.

Class 33: Alcoholic fruit extracts; Alcoholic essences; Alcoholic extracts; Distilled beverages; Mead [hydromel]; Brandy; Whisky; Vodka.

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Class 3: Toiletries; Essential oils and aromatic extracts; Cleaning and fragrancng preparations; Make-up removing preparations; Hair preparations and treatments; Cosmetics; Massage oils; Nail polish; Nail care preparations; Oils for cosmetic purposes; Oils for perfumes and scents; Sachets for perfuming linen; Shaving preparations; Cleansing milk for toilet purposes; Make-up; Make-up powder; Beauty masks; Soap; Laundry detergent; Sunscreen preparations; Dentifrice; Oils for toilet purposes; Perfumery; Body sprays; Face creams for cosmetic use; Face packs; Antiperspirants [toiletries]; Medicated soap; Aromatic oils for the bath; Bath creams (Non-medicated -); Bath concentrates (Non-medicated -); Bath lotions (Non-medicated -); Bath pearls (Non-medicated -); Bath powders (Non-medicated -); Bath salts, not for medical purposes; Bath foams (Non-medicated -); Bath preparations, not for medical purposes; Non-medicated bath oils; Scented bathing salts; Shower and bath foam; Anti-perspirant deodorants; Antiperspirants for personal use; Deodorants for personal use [perfumery]; Deodorants for body care; Deodorants for the feet; Feminine deodorant sprays; Dandruff shampoos, not for medical purposes; Combing oil; Oil baths for hair care; Hair balm; Hair dye; Hair lotion; Hair fixers; Hair care preparations, not for medical purposes; Non-medicated hair shampoos; Oils for hair conditioning; Hair wax; Hair styling waxes; Hair mousse; Styling gels; Preparations for setting hair; Hair moisturising conditioners; Detanglers; Shampoo-conditioners; Cosmetic hair lotions; Hair protection lotions; Conditioning balsam; Hair care lotions; Shampoos; Non-medicated shampoos; Anti-aging creams; Creams

(Non-medicated -) for the eyes; Bath salts; Bath lotion; Essential oils for the care of the skin; Essential oils for use in air fresheners; Skin cleansing cream [non-medicated]; Fair complexion creams; Non-medicated scalp treatment cream; Make-up removing creams; Non-medicated creams; Moisturizers; Skin moisturisers; Emollients; Moisturising creams, lotions and gels; Skin moisturizer masks; Non-medicated moisturisers; Foot balms (Non-medicated -); Non-medicated foot cream; Foot care preparations (Non-medicated -); Face cream (Non-medicated -); Facial masks; Face scrubs (Non-medicated -); Face-powder on paper; Hand creams; Hand lotions; Hand lotion (Non-medicated -); Skin cleansers; Skin cleansing lotion; Skin cleansing cream; Skin care creams, other than for medical use; Non-medicated skin clarifying lotions; Skin balms (Non-medicated -); Body powder (Non-medicated -); Body masks; Creams (Non-medicated -) for the body; Body scrub; Lotions for face and body care; Lip protectors (Non-medicated -); Lip cream; Lip balms [non-medicated]; Cosmetic oils for the epidermis; Night creams [cosmetics]; Body oil spray; Lip protectors [cosmetic]; Exfoliants for the cleansing of the skin; Exfoliants for the care of the skin; Exfoliants; Exfoliant creams; Cleansing foam; Cleansing milks for skin care; Cleansing lotions; Cleansing gels; Toilet powders; Dusting powder; Non-medicated lip care preparations; Day creams; Facial concealer; Make-up removing lotions; Make-up removing milks; Concealers; Fair complexion cream; Nail polish top coat; Liners [cosmetics] for the eyes; Eyebrows [false]; Face paint; Cheek colors; Colour cosmetics for the eyes; Make-up removing gels; Make-up for the face; Lipsticks; Lip glosses; Nail varnish remover [cosmetics]; Cosmetic pencils; Cuticle oil; Cosmetics in the form of eye shadow; Cosmetics in the form of rouge; Cosmetics in the form of gels; Moist paper hand towels impregnated with a cosmetic lotion; Skin make-up; Make-up pencils; Mousses [cosmetics]; Bath and shower gels, not for medical purposes; Cream soaps; Creams (Soap -) for use in washing; Shower creams; Shower gels; Shower soap; Body shampoos; Body cream soap; Soaps for body care; Perfumed soaps; Foams for use in the shower; Shower and bath gel; Pre-moistened cosmetic wipes; Foot scrubs; Moist wipes for sanitary and cosmetic purposes; Cleaning masks for the face; Feminine hygiene cleansing towelettes; Non-medicated body care preparations; Beauty lotions; Impregnated tissues for cleaning [non-medicated, for use on the person]; Body cleansing foams; Tissues impregnated with make-up removing preparations; Tissues impregnated with essential oils, for cosmetic use; Cotton sticks for cosmetic purposes; Massage oils and lotions; Non-

medicated massage preparations; Tissues impregnated with cosmetics; Impregnated cleaning pads impregnated with toilet preparations; Massage oils, not medicated; Massage creams, not medicated; Cotton balls for cosmetic purposes; Aromatherapy creams; Fragrances; Body deodorants [perfumery]; Body sprays [non-medicated]; Perfume; Aromatics; Aromatic essential oils; Aromatherapy preparations; Scented oils; Essential oils; Essential oils for aromatherapy use; Non-medicated oils; Aromatherapy oil.

Class 4: Perfumed candles; Aromatherapy fragrance candles; Candles for lighting; Tapers; Christmas tree decorations for illumination [candles]; Christmas tree candles; Special occasion candles; Candles in tins; Fruit candles; Candles for use in the decoration of cakes; Candles for use as nightlights; Candle assemblies; Floating candles; Tealights; Patio torches; Table candles; Tapers for lighting.

Class 5: Hygienic preparations and articles; Dental preparations and articles; Pharmaceutical preparations; Disinfectants and antiseptics; Disinfectants; Antiseptics; Plasters, materials for dressings; Dressings, medical; Scalp treatments (Medicated -); Medicinal ointments; Medicated creams; Creams (Medicated -) for the feet; Creams (Medicated -) for the lips; Creams (Medicated -) for application after exposure to the sun; Foot balms (Medicated -); Medicated foot powder; Face cream (Medicated -); Face scrubs (Medicated -); Medicated hair care preparations; Medicated lotions for the hands; Medicated skin creams; Medicated skin lotions; Medicated lotions; Medicated lip balm; Body creams [medicated]; Medicated lip care preparations; Medicinal preparations and substances; Medicated preparations for skin treatment.

Class 18: Luggage, bags, wallets and other carriers; Holdalls; Parasols; Briefbags; Handbags; Suitcases; Wallets; Purses; Umbrellas; Walking sticks; Cosmetic bags sold empty; Leather and imitation leather; Sheets of leather for use in manufacture; Faux fur; Sheets of imitation leather for use in manufacture; Coin holders; Luggage; Travel cases; Clutch bags; Bags; Toiletry bags; Vanity cases, not fitted; Cosmetic purses.

Class 21: Cosmetic and toilet utensils and bathroom articles; Combs; Brushes; Sponges; Powder puffs; Toothbrushes; Toothpicks; Cleaning rags; Floss for dental purposes; Materials [cloths] for polishing; Lockable non-metal household containers for food; Cosmetic brushes; Brushes for household purposes; Brush holders; Toilet brushes; Canister sets; Household containers; Containers for ice; Beverage coolers [containers]; Toilet roll dispensers; Water closet brush holders; Powder compacts; Exfoliating pads; Dusting cloths; Lotion containers, empty, for household use; Utensil jars; Ice cube molds; Toilet cases; Toilet utensils; Cotton ball dispensers; Scent sprays [atomizers]; Nebulizers for household use; Bathroom basins [receptacles]; Brushes for cleaning; Brushes for cleaning tanks and containers; Hard brooms; Feather-dusters; Holders for flowers and plants [flower arranging]; Storage jars; Bakeware [not toys]; Baking utensils; Containers for household or kitchen use; Jars for household use; Abrasive instruments for kitchen [cleaning] purposes; Cosmetic bags [fitted]; Electric make-up removing appliances; Non-electric make-up removing appliances; Body scrubbing puffs; Cosmetic utensils; Soap dispensers; Dispensers for facial tissues; Paper towel dispensers; Dispensers for paper wipes [other than fixed]; Dusting apparatus, non-electric; Artificial sponges for household purposes; Sponges for household purposes; Abrasive pads.

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Class 8: Razors; Depilation appliances; Hair clippers for personal use, electric and non-electric; Hair-removing tweezers; Electric hair curling irons; Hand implements for hair curling; Curling tongs; Non-electric hand implements for hair curling; Manicure sets, electric; Electric fingernail polishers; Electric pedicure sets; Cases for manicure instruments; Fingernail polishers, electric or non-electric; Callus cutters; Manicure sets; Emery files; Nail files, electric; Cuticle tweezers; Nail clippers; Nail buffers for use in manicure; Nail scissors; Nail extractors; Pedicure sets; Nail skin treatment trimmers; Eyelash curlers; Eyelash separators; Pedicure implements; Hair cutting and removal implements; Hair styling appliances; Manicure and pedicure tools; Electric irons for styling hair; Electric hair straightening irons.

Class 14: Charms of precious metals; Decorative articles [trinkets or jewellery] for personal use; Key fobs of precious metals; Commemorative shields; Boxes of precious metal; Objet d'art made of precious stones; Key charms coated with precious metals; Trinkets coated with precious metal; Trinkets of bronze; Leather key fobs; Key fobs of imitation leather; Metal key fobs; Key fobs, not of metal; Cases [fitted] for jewels; Jewelry rolls for storage; Jewel cases of precious metal; Cases of precious metals for horological articles; Presentation boxes for horological articles; Presentation boxes for jewelry; Jewelry boxes; Jewel cases; Wristwatches; Pendants for watch chains; Digital clocks; Clocks and watches, electric; Miniature clocks; Alarm clocks; Necklaces [jewellery, jewelry (Am.)]; Bracelets; Small jewellery boxes of precious metals; Rings [jewellery, jewelry (Am.)]; Brooches [jewelry]; Decorative brooches [jewellery]; Gemstones, pearls and precious metals, and imitations thereof; Jewellery; Jewellery boxes and watch boxes; Time instruments; Decorative boxes made of precious metal; Earrings; Bracelets [jewellery, jewelry (Am.)].

Class 25: Baby doll pyjamas; Woolen clothing; Clothing of imitations of leather; Cashmere clothing; Leg warmers; Printed t-shirts; Crop tops; Baselayer bottoms; Bathwraps; Swimming trunks; Bathrobes; Trunks; Bathing trunks; Swim wear for gentlemen and ladies; Bathing suits; Bikinis; Bermuda shorts; Sportswear; Silk clothing; Girls' clothing; Capes; Bustiers; Boxer shorts; Boleros; Blousons; Blazers; Fleeces; Women's ceremonial dresses; Down jackets; Womens' outerclothing; Dresses; Guernseys; Knitted gloves; Robes; Barber smocks; Leisurewear; Slacks; Handwarmers [clothing]; Gloves including those made of skin, hide or fur; Gloves [clothing]; Scarfs; Ankle socks; Belts [clothing]; Trousers shorts; Trousers; Menswear; Shirts; Jackets [clothing]; Denims [clothing]; Denim jeans; Denim jackets; Jerseys [clothing]; Sweatpants; Jogging tops; Knee-high stockings; Cashmere scarves; Short trousers; Bathing suit cover-ups; Coats; Monokinis; Negligees; Petticoats; Skirts; Raincoats; Pajamas (Am.); Polo shirts; Ponchos; Pullovers; Tube tops; Shawls and headscarves; Neck scarfs [mufflers]; Shawls and stoles; Sashes for wear; Shorts; Shirts and slips; Socks; Cardigans; Stockings; Beach clothes; Gym suits; Tee-shirts; Sweat shirts; Tank tops; Tights; Strapless bras; Sweat shorts; Neckerchiefs; Underwear; Winter coats; Bobble hats; Millinery; Hats; Small hats; Visors; Leather headwear; Children's headwear; Knitted caps; Beach hats; Sports

caps; Sun hats; Ski hats; Caps [headwear]; Bath sandals; Bath slippers; Bath shoes; Footwear for women; Leisure shoes; Flip-flops; Ladies' boots; Pumps [footwear]; Slippers; Clothing; Headgear; Footwear.

Class 26: Patches for clothing; Belt clasps; Belt buckles; Elasticated hair ribbons; Electric hair rollers; Hair twisters [hair accessories]; Hair bands; Bows for the hair; Decorative articles for the hair; Barrettes; Ponytail holders and hair ribbons; Twisters [hair accessories]; Hair ribbons; Brooches [clothing accessories]; Accessories for apparel, sewing articles and decorative textile articles; Hair ornaments, hair rollers, hair fastening articles, and false hair.

Class 44: Application of cosmetic products to the face; Application of cosmetic products to the body; Providing information about beauty; Consultancy in the field of body and beauty care; Consultation services relating to skin care; Consultancy services relating to beauty; Advisory services relating to beauty treatment; Advice relating to hair care; Consultation services in the field of make-up; Skin care salons; Hair cutting; Services for the care of the skin; Services for the care of the face; Tanning salons; Services of a hair and beauty salon; Nail salon services; Services for the care of the feet; Beauty salons; Cosmetic treatment; Pedicurist services; Hair colouring services; Hygienic and beauty care; Hygienic care for human beings; Depilatory waxing; Personal hair removal services; Services for the care of the hair; Cosmetic treatment for the hair; Cosmetic treatment for the body; Cosmetics consultancy services; Facial beauty treatment services; Cosmetic treatment services for the body, face and hair; Cosmetic make-up services; Manicuring; Manicure and pedicure services; Nail care services; Aromatherapy services; Massage; Foot massage services; Reflexology; Make-up consultation services provided on-line or in-person; Beauty treatment services especially for eyelashes; Human hygiene and beauty care.