

BL O/350/20

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION 3409539

BY

MARIA LINNEA HAMREFALT PETTERSSON

TO REGISTER THE FOLLOWING TRADE MARK:

PILOT MARIA

AND

OPPOSITION THERETO (NO. 417559)

BY

TM (JJ) LIMITED

Background and pleadings

1. Maria Linnea Hamrefalt Pettersson (hereafter “the applicant”) applied to register the trade mark:

PILOT MARIA

in the UK on 02 June 2019. It was accepted and published in the Trade Marks Journal on 05 July 2019, in respect of a wide range of goods and services in classes 9, 16, 18, 25, 28, 35, 38, 39 and 41.

2. The opposition is raised only in respect of the applied for goods and services in classes 09, 18, 25 and 35. The applicant’s goods and services in classes 16, 28, 38, 39 and 41 are unopposed. A list of the contested goods is set out below in Annex A.
3. TM (JJ) Limited (hereafter “the opponent”) opposes a part of the goods and services in the trade mark on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”).
4. The opposition is based on the following two earlier UK registrations:

3046467, filed on 12 March 2014 and registered on 26 September 2014, for the mark **PILOT**, in classes 3, 09, 14, 18, 25 and 35.

5. The opposition under this mark relies only on the opponent’s earlier goods and services in classes 09, 18, 25 and 35. The full list of goods and services relied upon under 3046467 are set out below in Annex B.

AND

3065808, filed on 12 March 2014 and registered on 06 November 2015, for the mark **PILOT**, in classes 18 and 25.

6. The opponent relies on all of the goods under this earlier mark for the purposes of this opposition. The full list of goods relied upon under 3065808 are set out below in Annex B.

7. The opponent's marks qualify as earlier marks in accordance with section 6 of the Act, but as neither of the earlier marks had been registered for more than five years at the date that the contested application was filed, they are not subject to the proof of use provisions contained in section 6A of the Act.
8. In the statement of grounds, the opponent argues that the marks at issue are visually similar as the dominant element in the contested mark is the word 'PILOT', which is identical to the earlier marks relied upon. It also claims that the marks share the concept of 'PILOT' and are therefore conceptually similar, and that the marks are phonetically similar as they all start with the element 'PILOT'. The opponent states that the goods and services of the applicant are all identical or similar to the goods and services contained within the two earlier marks. As the marks are similar and the goods and services are either identical or similar, the opponent claims that there is a likelihood of confusion.
9. The applicant filed a counterstatement stating that the applicant is a commercial airline pilot and media personality with 549,000 Instagram followers. She is also an author of a blog and a public figure, having delivered a Tedx Talk. The applicant claims that the average consumer will differ across the range of goods and services at issue and will likely display a varying degree of attention during the selection process, e.g. a low level of attention when selecting class 25 goods and a higher degree of attention when selecting services in class 35.
10. The applicant argues that the marks are only similar to a very low degree as the element 'PILOT' has a number of different meanings and the element 'MARIA' forms the dominant and distinctive element of the contested mark. The applicant also states that the earlier marks have a very low level of inherent distinctive character. The applicant claims therefore, that there is no likelihood of confusion on the part of the public.
11. Both sides filed written submissions which will not be summarised here but will be referred to as and where appropriate throughout this decision.
12. The applicant requested a hearing, which took place on 15 June 2020. At the hearing the applicant was represented by Ms Ashton Chantrielle of counsel. The opponent did not attend the hearing but filed written submissions in lieu.

13. Throughout the proceedings the applicant has been represented by Insanity Talent Management Limited and the opponent has been represented by Swindell & Pearson Limited.

Hearing

14. In written submissions provided in lieu of attendance at the hearing, the opponent stated that the marks at issue are similar and that the applicant had accepted as much in its submissions, when stating that the marks are similar “to a very low degree”. The opponent also stated that the goods and services at issue are identical or similar and provided detailed explanation of the clash between the contested goods and services and the opponent’s earlier goods and services, in a class by class analysis. In support of a claim of a likelihood of confusion the opponent referred to several pieces of case law which are also referred to in paragraph 22 below.

15. The opponent also submitted that the earlier marks are entirely replicated within and at the beginning of the contested mark, and that the overall impression created by the marks is similar and goes towards a finding of likelihood of confusion. It added that the marks are visually, aurally and conceptually similar as they all share the word ‘PILOT’, and that it is commonly argued that the first part of a mark is the part that makes the most impact upon consumers and, in this case, the first words of the marks are identical.

16. At the hearing Ms Chantrielle provided detailed submissions which I do not intend to set out in great length here. I will summarise briefly the main points she made and, where necessary, will refer in greater detail to those submissions later my decision.

17. Ms Chantrielle told me that the contested trade mark consists of the words ‘PILOT’ and ‘MARIA’ together, which she claimed play an equal role in the overall impression conveyed by the mark. She added that they are co-dominant elements in the mark and that neither word has any more significance or any more or less impact than the other, so that when the average consumer is faced with the mark, they will perceive it as a whole.

18. Ms Chantrielle stated that the two individual words, when considered together, provide a very different character to the word 'PILOT' than that given in the earlier marks. She claimed that the word 'MARIA' characterises the word 'PILOT', giving it quite a different overall impression. She added that the real difference between the marks is a lack of conceptual similarity, arising as a result of the fact that the word 'MARIA' is present in the contested trade mark but not in the earlier marks.

19. Ms Chantrielle, turning to the comparison of the goods and services, conceded that a large number of the goods and services at issue are the same or identical, e.g. the entire class 25 element of the application. However, she argued that some of the goods and services were dissimilar. Those goods and services are set out in paragraph 28 below.

20. Ms Chantrielle submitted that the average consumer will be a member of the general public but, due to the wide range of goods and services at issue, the average consumer will display a range of levels of awareness during the selection and purchase process. She added that, in respect of some of the class 35 services, the consumer may also be a professional displaying a higher level of attention.

Decision

Section 5(2)(b) of the Act

21. 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.”

22. The following principles are gleaned from the decisions of the Court of Justice of the European Union (“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:

(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

23. In the judgment of the CJEU in *Canon*, Case C-39/97, the court stated at paragraph 23 of its judgment that:

“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”.

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

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

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

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

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

(e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

25. In *Boston Scientific*¹, the General Court (“GC”) described goods/services as “complementary” in circumstances where “... *there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking*”. I also take note that in *Kurt Hesse v OHIM*², the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods.

26. In her skeleton arguments, Ms Chantrielle conceded that some of her client’s goods and services were identical to some of the opponent’s earlier goods and services, and some were similar. During the hearing Ms Chantrielle identified several other areas of ‘retail’ services in the applicant’s class 35 specification which she conceded were similar to the opponent’s earlier services.

27. All of the contested goods and services that have been accepted by the applicant as being identical or similar to the opponent’s earlier goods and services are set out below in Annex C. Also set out in Ms Chantrielle’s skeleton arguments are the remaining contested goods and services, which she argued are neither similar nor identical to any of the opponent’s earlier goods and services.

¹ *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06

² Case C-50/15 P

28. For the purposes of this matter, I need now only assess those goods and services which Ms Chantrielle claims are dissimilar, to determine whether there is any similarity between them and the opponent's earlier goods and services. The goods and services of the applicant that are claimed to be dissimilar to the opponent's earlier goods and services are:

Class 09: Telephone ringtones; computer games; video games; virtual reality systems.

Class 18: Baggage tags; Luggage labels; Luggage straps; Luggage tags.

Class 35: Advertising; business management; business administration; promotional services on behalf of others; promotional services in the form of online entertainment and education; promotional services in the form of sharing of multimedia content via the Internet and other computer and communications networks; marketing services; distribution of leaflets and samples; marketing and public relations services; business management and organisational services; registration and composition of written and digital communications; business management and organisation consultancy; document reproduction; business management of performing artists; management of computer files; organization of exhibitions for commercial or advertising purposes; radio advertising; on-line advertising on a computer network; rental of advertising time on all means of communication; telephone subscriptions, radio telephony subscriptions; subscriptions to a radio message service; subscriptions to a telecommunications service; retail services connected with the sale of a variety of goods namely badges, printed matter and printed publications, books, newsletters, booklets, programmes, periodic publications, postcards, photographs, posters, greeting cards, removable beverage coolers (containers) for drink cans and bottles, clothing, footwear, headgear, hand-held electronic games (excluding the transport thereof), provided either in store, by mail order, telephone, or via the Internet; provision of the aforesaid services from a computer database or the Internet; compilation of advertisements for use as web pages on the Internet; provision of space on web sites for advertising and retailing goods; gathering commercial messages, press reports and market research data (including

using electronic means and/or by computer); arranging and conducting of business and commercial conferences and seminars; advisory and information services relating to the aforesaid; retail services connected with the sale of a variety of goods namely removable beverage coolers (containers) for drink cans and bottles (excluding the transport thereof), provided either in store, by mail order, telephone, or via the Internet; provision of the aforesaid services from a computer database or the Internet; compilation of advertisements for use as web pages on the Internet; provision of space on web sites for advertising and retailing goods; advisory and information services relating to the aforesaid.

29. The opponent claims that the contested *telephone ringtones* in class 09 are similar to its earlier *apparatus for recording, transmission or reproduction of sound or images, MP3 and other digital format audio and video players*. Telephone ringtones are sounds produced by a telephone which let the phone owner know when a call, message or text has been received. The consumer may choose to change/purchase new or different sounds or ringtones to be used on their telephone. The earlier goods referred to by the opponent are items of hardware or machinery used to transmit or reproduce sound or images. These goods are not identical as they do not share purpose, channels of trade or manufacturer. The end-user may however purchase both types of goods, and it can be argued that they are complementary because a telephone (apparatus for transmitting sound and images) is required in order for a telephone ringtone to be of any use. These goods are therefore considered to be similar but only to a low degree.

30. The opponent has claimed that the contested *computer games; video games; virtual reality systems* in class 09, are similar to, amongst other things, its earlier *computer software; computer gaming machines; chips, discs and tapes bearing or for recording computer programs and software, multimedia products comprising or for use with the transmission of audio and video data*.

31. I find these goods to be similar in the sense that the contested computer games and video games are comprised of computer software. They also require computer hardware or gaming machines in order to be used as intended. The producer of computer software may produce games software and the producer of gaming

machines often produces the games that will work with that machine. The end user may be the same and the channels of trade are likely to be shared, as it is common for retailers of games machines to also provide a selection of games that are designed to be used on specific machines. These goods are also complementary, in the sense that a game machine cannot be used as intended without the appropriate games, and video or computer games require a machine or piece of hardware on which to be played. These goods are found to be similar to a low degree.

32. The contested *virtual reality systems* may be said to fall within the same or a similar category as computer apparatus or gaming machines. These systems require computer software to function as intended and are generally used to entertain the consumer through the engagement of a game or interaction within a gaming environment. These goods may share nature, purpose, manufacturer, channels of trade and end user and are therefore similar to a medium degree.

33. The opponent claims that the contested *Baggage tags; Luggage labels; Luggage straps; Luggage tags* are parts or fittings of the finished articles covered under the earlier marks, e.g. *luggage, baggage, bags of leather, travelling bags*. I accept this argument of the opponent. I find that these goods are similar to a low degree as they may be produced by the same undertakings, may share channels of trade and end user, and may be considered to be complementary in the sense that a baggage/luggage strap, tag or label requires a piece of baggage or luggage in order to be of any use at all. These goods are similar to a low degree.

34. The opponent has divided the contested class 35 services into two parts: firstly, the non-retail services and secondly the retail services provided by the applicant. Regarding the non-retail services, the opponent claims that the contested *Advertising; business management; business administration; promotional services on behalf of others; promotional services in the form of online entertainment and education; promotional services in the form of sharing of multimedia content via the Internet and other computer and communications networks; marketing services; distribution of leaflets and samples; marketing and public relations services; business management and organisational services; registration and composition of written and digital communications; business management and organisation consultancy; document reproduction; business management of performing artists;*

management of computer files; organization of exhibitions for commercial or advertising purposes; radio advertising; on-line advertising on a computer network; rental of advertising time on all means of communication; telephone subscriptions, radio telephony subscriptions; subscriptions to a radio message service; subscriptions to a telecommunications service; compilation of advertisements for use as web pages on the Internet; provision of space on web sites for advertising and retailing goods; gathering commercial messages, press reports and market research data (including using electronic means and/or by computer); arranging and conducting of business and commercial conferences and seminars; advisory and information services relating to the aforesaid are similar to the earlier Administration relating to marketing.

35. I find there to be a link between the contested: *Business administration; business management and organisational services; business management and organisation consultancy; promotional services on behalf of others; promotional services in the form of online entertainment and education; promotional services in the form of sharing of multimedia content via the Internet and other computer and communications networks; marketing services; distribution of leaflets and samples; marketing and public relations services; gathering commercial messages, press reports and market research data (including using electronic means and/or by computer); advisory and information services relating to the aforesaid,* and the opponent's *Administration relating to marketing*, as marketing and promotional services may be said to be closely linked if not synonymous, and undertakings involved in these areas of business will likely overlap in the kinds of services offered to consumers. The contested terms '*Business administration; business management and organisational services*' can be said to be so broad in scope that they encompass the opponent's *Administration relating to marketing* services which in effect covers all of the organisation, management and administration services required to provide marketing services. These services may share channels of trade, provider, end user and can be said to be in competition. These services are similar to a medium degree.

36. The remaining contested services from that category, namely: *Advertising; registration and composition of written and digital communications; document*

reproduction; business management of performing artists; management of computer files; organization of exhibitions for commercial or advertising purposes; radio advertising; on-line advertising on a computer network; rental of advertising time on all means of communication; telephone subscriptions, radio telephony subscriptions; subscriptions to a radio message service; subscriptions to a telecommunications service, compilation of advertisements for use as web pages on the Internet; provision of space on web sites for advertising and retailing goods; arranging and conducting of business and commercial conferences and seminars; have no clear or obvious connection with the opponent's administration relating to marketing, and are not generally provided by the same undertakings. I find these services to be dissimilar.

37. Turning to the contested retail services in class 35, the opponent claims that all of the applicant's retail services are the same or similar to the earlier retail services included under the two earlier marks.

38. Following the applicant's concessions in this regard, the remaining contested retail services are: *Retail services connected with the sale of a variety of goods namely badges, printed matter and printed publications, books, newsletters, booklets, programmes, periodic publications, postcards, photographs, posters, greeting cards, removable beverage coolers (containers) for drink cans and bottles, clothing, footwear, headgear, hand-held electronic games (excluding the transport thereof), provided either in store, by mail order, telephone, or via the Internet; provision of the aforesaid services from a computer database or the Internet; retail services connected with the sale of a variety of goods namely removable beverage coolers (containers) for drink cans and bottles (excluding the transport thereof), provided either in store, by mail order, telephone, or via the Internet; provision of the aforesaid services from a computer database or the Internet.*

39. In *Gérard Meric v Office for Harmonisation in the Internal Market ('Merici')*, Case T-133/05, the General Court stated that:

"29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 Institut für Lernsysteme

v OHIM- Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”

40. The opponent has protection for the retail of an extremely wide variety of goods including e.g. printed matter including books, booklets, magazines and newspapers; computers, software, hardware, smart telephones, MP3 players; clothing, headgear and footwear. I find that the earlier retail services of the opponent wholly encompass the contested retail services and are therefore identical.

41. In conclusion, the contested goods and services have been found to be identical; similar to a medium degree; similar to a low degree and dissimilar.

42. The contested goods and services that have been found to be dissimilar to the opponent's earlier goods and services will play no further part in this matter. These are:

Class 35: Advertising; registration and composition of written and digital communications; document reproduction; business management of performing artists; management of computer files; organization of exhibitions for commercial or advertising purposes; radio advertising; on-line advertising on a computer network; rental of advertising time on all means of communication; telephone subscriptions, radio telephony subscriptions; subscriptions to a radio message service; subscriptions to a telecommunications service, compilation of advertisements for use as web pages on the Internet; provision of space on web sites for advertising and retailing goods; arranging and conducting of business and commercial conferences and seminars.

Average consumer and the purchasing act

43. 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*.

44. 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.”

45. The opponent states that the average consumer of the contested goods and services is fundamentally anyone. The opponent also states that the goods and services at issue are not specialised and may be purchased on-line, in shops or may be asked for by name, with advice sought from sales assistants. As such the aural components of the marks should not be discounted.

46. The applicant claimed that in relation to the relevant goods in class 25, the average consumer would be a member of the general public with a low degree of attention. In respect of the relevant goods in classes 9 and 18, the average consumer would be a member of the general public with a low to average degree of attention, and regarding the services at issue in class 35, the average consumer would be a member of the general public with a degree of attention ranging from average to higher than average, depending on the services.

47. I feel that both parties have, to some degree, accurately identified the average consumer. In my opinion the goods at issue, and the retail of goods, are non-specialised in nature and involve day to day purchases performed by the general public. For these goods and services, I find the level of attention likely to be paid during the selection and purchase process, to be of a medium degree. I disagree with the applicant in its assessment regarding the class 25 goods. I do not think that the level of attention paid during the selection of clothing, footwear or headgear can be said to be low across the board. Whilst some consumers may purchase e.g. socks with little attention other than ensuring the right size, a consumer of e.g.

shoes, dresses or headwear, can be expected to pay at least a medium degree of attention. In regard to the non-retail services at issue in class 35, I agree with the applicant that the level of attention being paid in the selection of e.g. advertising or administration services, can be said to be at least medium and likely to be higher than medium. I find also, that in regard to those non-retail services, the average consumer may be a professional consumer displaying a higher than average level of attention, something that Ms Chantrielle accepted might be the case during the hearing.

48. The selection of the goods and services at issue will be largely a visual process, however, I agree with the opponent's comments regarding the aural components of the marks and I do not ignore the potential for the marks to be spoken, for example, by sales assistants in a retail establishment, or when making a purchase over the telephone.

49. Consequently, I find that the average consumer will pay a medium degree of attention during the selection of the goods and retail services at issue, and will pay a medium or slightly higher than medium degree of attention when selecting the non-retail focussed services in the class 35 elements of the marks at issue.

Comparison of marks

50. 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.”

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

52. The respective trade marks are shown below:

Earlier marks	Contested trade mark
PILOT	PILOT MARIA

53. The opponent’s earlier marks are comprised solely of the word ‘PILOT’ presented in standard typeface. The overall impression of the marks lies in their totality.

54. The applicant’s mark is a plain word mark comprised of the words, ‘PILOT’ and ‘MARIA’ presented in standard typeface. Neither word can be said to be the more dominant or eye-catching and I find that neither word is of any greater distinctiveness than the other. Both words in the contested mark can be said to play an equal role in the mark as a whole, and the overall impression of the mark therefore lies in its totality.

Visual similarity

55. Visually, the marks are similar inasmuch as they share the word ‘PILOT’. The marks differ visually in the addition of the word ‘MARIA’ in the contested mark; an element that has no counterpart in the earlier marks and which effectively doubles the size of the contested mark, making a significant impact visually. Although the shared element ‘PILOT’ is the first element in the contested mark, I find that, because of the additional textual element ‘MARIA’, which forms fifty percent of the mark, these marks can be said to be visually similar to no more than a medium degree.

Aural similarity

56. The marks at issue all contain the word 'PILOT', which forms the entirety of the earlier marks and the beginning of the contested mark. This element will be pronounced as *PY/LOT* identically in each of the marks. The marks differ aurally in the additional verbal element 'MARIA' of the contested mark, which will be pronounced as *MAH/REE/AH*. Whilst the beginnings of each mark are aurally identical, the additional three syllable word 'MARIA' in the contested mark serves to create a significant aural distinction between the marks at issue. I find therefore that the marks at issue are aurally similar to only a low degree.

Conceptual similarity

57. The word 'PILOT', which is the commonly shared element in the marks at issue, is a fairly common English word that can be defined in a number of ways, e.g. "*A person who is trained to fly an aircraft; a person who steers a ship through a difficult stretch of water, for example the entrance to a harbour*" or "*A pilot scheme or a pilot project is one which is used to test an idea before deciding whether to introduce it on a larger scale*" or "*A pilot or a pilot episode is a single television programme that is shown in order to find out whether a particular series of programmes is likely to be popular*".³

58. The word 'MARIA' in the contested mark will be perceived by the relevant public as a female forename.

59. As the marks at issue all share the concept of a pilot, as defined in a number of ways above, it can be accepted that they share a conceptual hook to some degree. The addition of the female forename 'MARIA' in the contested mark will, however, create the conceptual notion of a pilot, in the sense of a person acting as the pilot of an aircraft or ship, who is named Maria. I find that the contested mark will be perceived as a unitary sign indicating a particular person with a specific role. It is quite unlikely, in my opinion, that the average consumer would dissect the mark into its two

³ <https://www.collinsdictionary.com/dictionary/english/pilot>

component words and reflect on the individual meanings of each word, rather than perceive the contested mark as an expression that creates a singular conceptual identity.

60. Therefore, whilst each of the marks at issue contain the word 'PILOT', I find that the contested mark will be perceived conceptually as a person named Maria who is a pilot, whilst the earlier marks will be perceived simply as a 'Pilot', with a number of possible definitions of that term commonly understood to exist. Therefore, I conclude that the marks are conceptually similar but to only a low degree.

61. In conclusion, the marks have been found to be visually similar to a medium degree, aurally similar to a low degree, and conceptually similar to a low degree.

Distinctive character of the earlier trade marks

62. 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).”

63. The opponent claims that the word ‘PILOT’ is distinctive *per se* for all of the goods and services covered under the earlier marks and that, as it is not suggestive or allusive of a characteristic of the goods and services registered, it has a high level of inherent distinctiveness.

64. I disagree with the opponent’s suggestion that the earlier marks are inherently highly distinctive. The word ‘PILOT’ is a common dictionary word that will be readily understood by the relevant public. For certain goods, e.g. airline travel bags, the term may be considered by the average consumer, to be allusive or suggestive of certain qualities or features of those goods, but this is far from a certainty. The word ‘PILOT’ can therefore be said to be inherently distinctive, but to no more than a medium degree.

Likelihood of Confusion

65. The factors assessed so far have a degree of interdependency (*Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, paragraph 17), a global assessment of them must be made when determining whether there exists a likelihood of confusion (*Sabel BV v. Puma AG*, paragraph 22). However, there is no scientific formula to apply. It is a matter of considering the relevant factors from the viewpoint of the average consumer and determining whether they are likely to be confused.

66. Confusion can be direct (which effectively occurs when the average consumer mistakes one mark for the other) or indirect (where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods/services down to the responsible undertakings being the same or related).

67. I have already found that:

- the goods and services at issue are identical; similar to a medium degree or similar to a low degree;
- the marks are visually similar, but to no more than a medium degree; aurally similar to a low degree and conceptually similar to a low degree;

- the average consumer will largely be a member of the general public but may also be a professional;
- the consumer will pay a medium level of attention when selecting the goods and the retail services, but may pay a slightly higher level of attention when selecting the non-retail focussed services in class 35; a professional consumer of the non-retail services is also likely to pay a higher level of attention during the purchasing process;
- the purchasing process will be largely visual, however I do not ignore the aural components of the marks and the role that an aural assessment will play;
- the earlier marks have a medium degree of inherent distinctiveness.

68. Taking all of the aforesaid into account, I find that direct confusion will not occur. The average consumer will immediately notice the additional element 'MARIA' in the contested mark and will not mistake one mark for the other.

69. Having found no likelihood of direct confusion, I now go on to consider the matter in respect of indirect confusion.

70. Mr Iain Purvis QC, sitting as the Appointed Person, in L.A. *Sugar Limited v By Back Beat Inc*, Case BL-O/375/10 noted that:

"16. ...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).”

71. These examples are not exhaustive but provide helpful focus.

72. In my opinion, the addition of the word ‘MARIA’ in the contested mark cannot be said to be an example that falls squarely within any of the categories set out above. I have not found the common element ‘PILOT’ to be strikingly distinctive. This is not a term that is so distinctive that the average consumer would expect only one undertaking to use it in trade. The word ‘MARIA’ cannot be said to be non-distinctive when taken in the context of the whole. Whilst forenames may not be considered to be the most distinctive of signs when applied to goods and services such as hairdressing, barbering, jewellery or cosmetics; in the context of the goods and services at issue here, the word ‘MARIA’ cannot be dismissed as lacking distinctive character. In fact, I have found that the addition of that element serves to conceptualise the contested mark as a reference to a specific person. Finally, the addition of the word ‘MARIA’ would not be perceived by the average consumer as a logical or consistent extension or evolution of the ‘PILOT’ brand. The addition of a female forename to the word ‘PILOT’ can be said to be somewhat unusual in its construction and would not be an obvious choice, within the context of a single undertaking extending a range of products or services to an existing market.

73. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), Arnold J. (as he then was) 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.”

74. In my opinion, the contested mark 'PILOT MARIA' hangs together and the average consumer will perceive the mark as a unitary sign that has a different meaning to the meanings of the separate components.

75. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, Mr James Mellor Q.C., as the Appointed Person, stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark. This is mere association not indirect confusion.

76. It may be the case that when faced with the contested mark, a consumer of the earlier goods or services may call to mind the opponent's 'PILOT' mark, or vice-versa, however I find that this would amount to no more than mere association and that indirect confusion is unlikely to occur.

Conclusion

77. As I have found that there is no likelihood of confusion, direct or indirect, the opposition fails and, subject to appeal, the application may proceed to registration for all of the applied for goods and services.

Costs

78. The applicant has been successful and is entitled to a contribution towards its costs. I note that the applicant's representative Insanity Talent Management Limited has submitted a costs proforma. I also note that Ms Chantrielle submitted during the hearing that, in the event of being successful in this matter, the applicant seeks costs on the usual scale. The costs proforma submitted by Insanity Talent Management Limited appears to attempt to recoup the full costs borne in this matter. The Tribunal is a low-cost authority which does not, in normal circumstances, award costs beyond the scale which is set out in Tribunal Practice Notice 2/2016. I find that there is nothing in this matter which would suggest that a contribution towards costs over and above the normal scale should be the case. I therefore award costs to the applicant based on the aforementioned scale.

79. I award costs to the applicant as follows:

Considering the statement of grounds and preparing the counterstatement	£200
Preparing skeleton arguments and Considering the opponent's submissions In lieu	£300
Preparing for and attending a hearing	£700
<u>Total</u>	<u>£1200</u>

80. I therefore order TM (JJ) Limited to pay Maria Linnea Hamrefalt Pettersson the sum of £1200. This sum is to be paid within two months 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 14th day of July 2020

**Andrew Feldon
For the Registrar
The Comptroller-General**

ANNEX A

Full list of the opposed goods and services:

The applied for goods and services that are under opposition from the opponent's earlier mark 3046467 are:

Class 09: Apparatus and instruments for recording, reproducing and/or transmitting sound and/or video and/or data and/or information and/or visual information; programs and tapes; pre-recorded disks; recording disks; compact discs; sound recordings; enhanced sound and/or visual recordings; interactive sound and/or visual recordings; pre-recorded disks; gramophone records; audio tapes; tape cassettes; video tapes; laser discs; interactive compact discs; CD ROMs; super audio compact discs; DVDs; podcasts; digital music (downloadable); audio apparatus and instruments; MP3 players; personal digital assistants; telephone ring tones; mobile telephones; devices for storing information, data, images and sound (included in this class); sound, text or graphics supplied in electronic form and/or downloadable; sound and/or visual recordings; sound and/or visual recording media; computer games; video games; virtual reality systems; computer software for use in downloading, transmitting, receiving, editing, extracting, encoding, decoding, playing, storing and organising data including audio and video data; sound, video and data recordings; apparatus for the downloading, transmitting, encoding, decoding, editing, playing and storage of data including audio and video recordings; interactive computer software; digital music and / or publications (downloadable) provided on-line from databases, from the Internet or from any other communications network including wireless, cable or satellite; parts and fittings for all the aforesaid goods.

Class 18: Airline travel bags; All-purpose carrying bags; Articles of luggage; Back packs; Baggage tags; Bags; Carrying cases; Carry-on bags; Clutch handbags; Clutch purses; Handbags, purses and wallets; Luggage; Luggage labels; Luggage straps; Luggage tags.

Class 25: Clothing, footwear, headgear.

Class 35: Advertising; business management; business administration; promotional services on behalf of others; promotional services in the form of online entertainment and education; promotional services in the form of sharing of multimedia content via the Internet and other computer and communications networks; marketing services; distribution of leaflets and samples; marketing and public relations services; business management and organisational services; registration and composition of written and digital communications; business management and organisation consultancy; document reproduction; business management of performing artists; management of computer files; organization of exhibitions for commercial or advertising purposes; radio advertising; on-line advertising on a computer network; rental of advertising time on all means of communication; telephone subscriptions, radio telephony subscriptions; subscriptions to a radio message service; subscriptions to a telecommunications service; retail services connected with the sale of a variety of goods namely badges, video and/or sound recordings, gramophone records, compact discs, audio tapes, cassettes and cartridges, video tapes, cassettes and cartridges, magnetic tapes, discs and wires all for bearing sound or video recordings, optical discs bearing sound or video recordings, computer software, computer software and publications in electronic form supplied on-line from databases or from the Internet, CD-ROM's, DVD's, digital music (downloadable) provided from the Internet, digital music (downloadable) provided from MP3 Internet web sites, MP3 players, apparatus for recording, transmission or reproduction of sound and images, video games, apparatus for games adapted for use with television receivers and computers, rucksacks, backpacks, bags, cases, wallets, removable beverage coolers (containers) for drink cans and bottles, clothing, footwear, headgear, (excluding the transport thereof), provided either in store, by mail order, telephone, or via the Internet; provision of the aforesaid services from a computer database or the Internet; compilation of advertisements for use as web pages on the Internet; provision of space on web sites for advertising and retailing goods; gathering commercial messages, press reports and market research data (including using electronic means and/or by computer); arranging and conducting of business and commercial conferences and seminars; advisory and information services relating to the aforesaid.

The applied for goods and services under opposition from the opponent's earlier mark 3065808 are:

Class 18: Airline travel bags; All-purpose carrying bags; Articles of luggage; Back packs; Baggage tags; Bags; Carrying cases; Carry-on bags; Clutch handbags; Clutch purses; Handbags, purses and wallets; Luggage; Luggage labels; Luggage straps; Luggage tags.

Class 25: Clothing, footwear, headgear.

Class 35: Retail services connected with the sale of a variety of goods namely rucksacks, backpacks, bags, cases, (not including any cases for writing implements); wallets, (not including any wallets for writing implements); removable beverage coolers (containers) for drink cans and bottles, clothing, footwear, headgear, (excluding the transport thereof), hand-held electronic games (excluding the transport thereof), provided either in store, by mail order, telephone, or via the Internet; provision of the aforesaid services from a computer database or the Internet; provision of the aforesaid services from a computer database or the internet; compilation of advertisements for use as web pages on the Internet; provision of space on web sites for advertising and retailing goods; advisory and information services relating to the aforesaid.

ANNEX B

The goods and services relied upon by the opponent:

The goods and services relied upon by the opponent under earlier mark 3046467:

Class 09: Compact disc holders, record holders, ear plugs, e-books, e-cards, e-messages, electronic greetings cards and electronic greetings messages, digital greetings cards and digital greetings messages, electronic and or digital cards, birthday e-cards, Christmas e-cards, wedding e-cards, new baby e-cards, baptismal e-cards, bar mitzvah e-cards, bat mitzvah e-cards, maternity leave e-cards, paternity leave e-cards, promotion e-cards, leaving for another job e-cards, moving house e-cards, relocation e-cards and having a baby e-cards, lap top bags, Christian confirmation e-cards, first confession e-cards, engagement e-cards, retirement e-cards, graduation e-cards, divorce e-cards, cards upon professional qualification, e-cards to celebrate exam success, coming of age e-cards, downloadable publications, downloadable newspapers, newsletters, magazines, pamphlets, booklets, books, brochures, headphones, magnets, memory cards, mouse pads, public address speaker systems, electronic communications apparatus and instruments, electrical communications apparatus and instruments; computer software, computer hardware, computer firmware, personal computers, lap top computers, tablet computers, smart telephones mobile telephones, software downloaded in electronic form for use on computers, telephones, mobile telephones, smart telephones, Personal Digital Assistants, or other electronic apparatus, applications being software for use on mobile telephones, smart telephones, tablet computers, and personal computers, downloadable electronic publications and software, telecommunications apparatus and instruments, downloadable data in digital form, downloadable data in electronic form, downloadable software, data storage components, handheld computers, personal digital assistants, electronic notepads, telephones, mobile phones, smart phones, computer hardware and software, database management software, parts and accessories for handheld and mobile digital electronic devices, parts and accessories for mobile telephones, Computer software for use in downloading, transmitting, receiving, editing, extracting, encoding, decoding, playing, storing of data including audio and video recordings; interactive products comprising or for use

with any of the aforesaid goods; all the aforesaid goods excluding the fields of construction and heavy construction; downloadable music, downloadable films, Television programs, videos, music videos, radio broadcasts, electronic publications, on-line publications, downloadable publications, compact discs, records, cassettes, tapes, discs, laser discs, CD-Roms, DVDs, video cassettes, video discs, digital audio tapes, MP3 players, podcasts, sound recordings, video recordings, apparatus for recording, transmission or reproduction of sound or images, amplifiers, sound decks, loudspeakers, microphones, megaphones, photographic equipment, apparatus for the transmission of messages, downloadable educational material, magazines, downloadable newsletters, downloadable news sheets, downloadable advertising sheets, downloadable printed matter, downloadable books, downloadable pamphlets, downloadable journals, MP3 and other digital format audio and video players, electronic organizers, magnetic data carriers, computer gaming machines, videophones, cameras, prerecorded computer programs for personal information management, electronic mail and messaging software, paging software, database synchronization software, computer programs for accessing, browsing and searching online databases, computer hardware and software for providing integrated telephone communication with computerized global information networks, mobile telephone covers, mobile telephone cases, mobile telephone cases made of leather or imitations of leather, mobile telephone covers made of cloth or textile materials, batteries, not including electric accumulators for vehicles, batteries not including electric batteries for vehicles, rechargeable batteries not including electric accumulators for vehicles, rechargeable batteries not including electric batteries for vehicles, chargers, chargers for electric batteries, headphones, stereo headphones, in-ear headphones, stereo speakers, audio speakers, audio speakers for home, personal stereo speaker apparatus, microphones, sunglasses, eye glasses, car audio apparatus, apparatus for connecting and charging portable and handheld digital electronic devices, computer software for use in organising data including audio and video data, sound, video and data recordings, chips, discs and tapes bearing or for recording computer programs and software, multimedia products comprising or for use with the transmission of audio and video data, apparatus for the downloading, transmitting, encoding, decoding, editing, playing and storage of data including audio and video recordings, interactive products comprising or for use with any of the aforesaid goods, egg timers, parts and fittings for all the aforesaid goods;

none of the aforesaid goods for use in connection with surface water sports or scuba diving.

Class 18: Hand bags, wallets and purses of leather, hand bags, wallets and purses of imitation leather, animal skins, hides, trunks umbrellas, parasols and walking sticks, whips, harness and saddlery, backpacks, shopping bags, sling bags, school bags, beach bags, satchels, briefcases, handbags, pocket wallets, purses, clip top purses, change purses, evening bags, hand bags being tote bags, hand bags being shoulder bags, cosmetic bags, bridal hand bags, haversacks, handbags, beach bags, holdalls, wallets, backpacks, shopping bags purses, key cases being leather ware, kit bags, gym bags, sports bags, duffle bags, rucksacks, school satchels, shopping bags, sling bags for carrying infants, boot bags, credit card holders, holdalls, parts and fittings for all the aforesaid goods.

Class 25: Footwear, outer clothing, under clothing, woven clothing, knitwear being clothing, silk, linen, wool, clothing made from silk, linen, leather, PVC, lace, cheesecloth, fur, artificial fur, imitation leather, wool and man-made fibres; clothing made from a combination of cotton, silk, linen, leather, PVC, lace, cheesecloth, fur, artificial fur, imitation leather, wool and man-made fibres; clothing trimmed with cotton, silk, linen, leather, PVC, lace, cheesecloth, fur, artificial fur, imitation leather, wool and man-made fibres; girls clothes, shirts and blouses with wing collar, shirts and blouses with Eton collars, evening wear, namely shirts and blouses and dinner jackets, shirts and blouses with detachable collars, shirts and blouses without collars, children's shirts and blouses, shirts and blouses for babies, bow ties, ties, lounge suits, three piece suits including waistcoats, trousers, sports clothing, T-shirts, tee-shirts, long sleeved T-shirts, short sleeved T-shirts, T-shirts with graphics printed on them, men's T-shirts, women's T-shirts, children's T-shirts, T-shirts for babies, socks, stockings and hosiery, mittens, pullovers, wool scarves, silk scarves, headscarves, evening scarves, waistcoats, leather waistcoats, imitation leather waistcoats, denim waistcoats, quilted waistcoats, fur waistcoats, artificial fur waistcoats, puffer waistcoats, pvc waistcoats, ski hats, sports jerseys, swimwear, gilets, overcoats, coats, jerseys, jumpers, tops, crop tops, party tops, evening tops, oversized tops, casual tops, polos tops, turtle necked tops, shell tops, smock tops, swing tops, batwing tops, sweaters, cardigans, pullovers, ponchos, corsetry,

scarves, scarves, scarves being snoods, hanky scarves, shawls, mufflers, pashminas, wraparounds, wraps, gloves, swimming costumes, one piece swimming costumes, bikini swimming costumes, tankinis, tops, thongs, pants, bras, bodyshapers, beachwear, sarongs, leisure wear, blouses, dresses, dresses being eveningwear, prom dresses, maxi dresses, midi dresses, party dresses, wedding dresses, mini dresses, bodycon dresses, bridesmaid dresses, skater dresses, tulip dresses, pvc dresses, leather dresses, imitation leather dresses shorts, jeans, denim jackets, denim trousers, $\frac{3}{4}$ length trousers, capri pants, trousers being leggings, trousers being jeggings, pvc trousers, shorts, hot pants, hot pants being shorts, cycle shorts, pvc shorts, denim clothing, $\frac{3}{4}$ length denim trousers, skirts, $\frac{3}{4}$ length denim skirts, denim hot pants, culottes, denim city shorts, clothing made from pvc and denim, skirts, maxi skirts, mini skirts, skort skirts, denim skirts, skater skirts, midi skirts, tulip skirts ra-ra skirts neckties, articles of lingerie, articles of underwear, pyjamas, night wear, dressing gowns, bath robes, beach robes, articles of beachwear, beach clothing, beach dresses, beach shorts, beach wraps, rain coats, coats, denim coats, fur coats, artificial fur coats, parkas being coats, quilted coats, mackintoshes being coats, raincoats, puffa coats, leather coats, imitation leather coats, pvc coats, sou'westers, cagoules, sportswear, boxer's shorts and vests, sports bras, sports panties, sports briefs, and jockstraps, sports pants, sports shorts, sports T-shirts, sports crop-tops, sports vests, trackpants, track suits, jogging suits, warm-up suits, running shorts, running vests, capes, knitwear being capes running tops, running pants, bicycling shorts, soccer shirts, soccer shorts, soccer socks, football strips, football kits, items of clothing for playing football in, football shirts, football boots, studs for football boots, football boots for use on synthetic turf surfaces, football shorts and football socks, rugby shirts, rugby shorts and rugby socks, sweatshirts, hooded tops, woolly hats, bobble hats, baseball caps, cricket hats, sunhats, sun-visors, swimming caps, aprons being clothing, boxer shorts, camisoles, headbands, ear muffs headgear for wear, jackets, leather jackets, imitation leather jackets, denim jackets, sheepskin jackets, fur jackets, artificial fur jackets, puffa jackets, pvc jackets waterproof and water resistant outer garments, waterproof and water resistant outer clothes, footwear uppers, heel pieces and tips for footwear, footwear, calf boots, bootys, industrial boots studs, spikes and metal fittings for footwear, welts for boots and shoes, belts being clothing, textile belts, fabric belts, leather belts, imitation leather belts, elasticated belts, clasp belts, butterfly belts,

suspender belts, garter belts, waist belts, money belts, tuxedo belts, heels for boots and shoes, tips for foot-wear, soles, inner soles, non-slipping devices for footwear, articles of industrial and work footwear, headgear and clothing, protective and safety footwear other than for protection against injury or accident, waterproof and water resistant clothing, footwear, slippers, bath sandals and bath slippers, dance shoes, ladies shoes, leather shoes, high heeled shoes, shoes with stiletto heels, ladies shoes with heels, dancewear including footwear, beachwear including footwear, shoes, boots, trainers, flip-flops, sandals mules, slip on shoes, slip on boots, moccasin, loafers, deck shoes, plimsolls, Wellington boots, beach shoes, parts and fittings for all the aforesaid goods; none of the aforesaid goods for use in connection with surface water sports or being goods of neoprene, neoprene gloves, water booties, synthetic elastic fabric wear, sports hosiery, sports booties or parts and fittings for these excluded goods.

Class 35: Administration relating to marketing, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, cosmetic creams, anti-ageing creams, anti-wrinkle creams, soaps, perfumery, essential oils, cosmetics, cosmetic preparations, cosmetic preparations for skin care, dentifrices for personal use, toiletries and toilet preparations, bath additives, bath creams, bath concentrates, bath crystals, bath cubes, bath essences, bath foams, bath gels, bath lotions, bath oils and bath oil concentrates, bath pearls, bath powders, bath preparations, soaps, shower gels, shaving lotion, shaving gels, shaving mousse, hair lotions, hair care products and preparations, preparations for the hair, hair shampoo, perfumes, colognes and skin preparations, skin lotions, aftershave lotions, perfumes, eau de cologne, colognes, after-sun products and preparations, artificial tan preparations and products, sun cream, sun block, skin creams, lotions and preparations for protection against sun burn, non-medicated suntan lotions bath preparations, massage creams, massage oils, preparations for cleaning and cleansing the body, skin, scalp, teeth, mouth, nails, hair, dermatological preparations, dermatological substances, dermatological creams, pre-moistened disposable paper towelettes, talcum powder, body milks, body lotions, baby oil, non medicated baby care products, babies' creams, petroleum jelly for cosmetic purposes, white petroleum jelly, preparations and products for oral hygiene, cotton wool in the form of balls, buds, pads, pleats, rolls, sticks, swabs, wipes, tips and

wadding, cotton wool for cosmetic use, antiperspirants, deodorants, body deodorants, deodorant creams for personal use, deodorant preparations for personal use, deodorant soap, deodorant sprays for personal use, deodorant sticks for personal use, deodorants for personal use, deodorants for personal use in the form of sprays, deodorants for personal use in the form of sticks, deodorants for the body, deodorants for the feet, compact disc holders, record holders, ear plugs, e-books, e-cards, e-messages, electronic greetings cards and electronic greetings messages, digital greetings cards and digital greetings messages, electronic and or digital cards, birthday e-cards, Christmas e-cards, wedding e-cards, new baby e-cards, baptismal e-cards, bar mitzvah e-cards, bat mitzvah e-cards, maternity leave e-cards, paternity leave e-cards, promotion e-cards, leaving for another job e-cards, moving house e-cards, relocation e-cards and having a baby e-cards, Christian confirmation e-cards, first confession e-cards, engagement e-cards, retirement e-cards, graduation e-cards, divorce e-cards, cards upon professional qualification, e-cards to celebrate exam success, coming of age e-cards, downloadable publications, downloadable newspapers, newsletters, magazines, pamphlets, booklets, books, brochures, headphones, magnets, memory cards, mousepads, public address speaker systems, computer software, computer hardware, computer firmware, personal computers, lap top computers, tablet computers, smart telephones mobile telephones, software downloaded in electronic form for use on computers, telephones, mobile telephones, smart telephones, Personal Digital Assistants, or other electronic apparatus, applications being software for use on mobile telephones, smart telephones, tablet computers, and personal computers, downloadable electronic publications and software, electronic communications apparatus and instruments, electrical communications apparatus and instruments, telecommunications apparatus and instruments, downloadable data in digital form, downloadable data in electronic form, downloadable software, downloadable music, downloadable films, Television programs, videos, music videos, radio broadcasts, electronic publications, on-line publications, downloadable publications, compact discs, records, cassettes, tapes, discs, laser discs, CD-Roms, DVDs, video cassettes, video discs, digital audio tapes, MP3 players, podcasts, sound recordings, video recordings, apparatus for recording, transmission or reproduction of sound or images, amplifiers, sound decks, loudspeakers, microphones, megaphones, photographic equipment, data storage components, apparatus for the

transmission of messages, downloadable educational material, magazines, downloadable newsletters, downloadable news sheets, downloadable advertising sheets, downloadable printed matter, downloadable books, downloadable pamphlets, downloadable journals, MP3 and other digital format audio and video players, handheld computers, personal digital assistants, electronic organizers, electronic notepads, magnetic data carriers, telephones, mobile phones, smart phones computer gaming machines, videophones, cameras, computer hardware and software, prerecorded computer programs for personal information management, database management software, electronic mail and messaging software, paging software, database synchronization software, computer programs for accessing, browsing and searching online databases, computer hardware and software for providing integrated telephone communication with computerized global information networks, parts and accessories for handheld and mobile digital electronic devices, parts and accessories for mobile telephones, mobile telephone covers, mobile telephone cases, mobile telephone cases made of leather or imitations of leather, mobile telephone covers made of cloth or textile materials, batteries, rechargeable batteries, chargers, chargers for electric batteries, headphones, stereo headphones, in-ear headphones, stereo speakers, audio speakers, audio speakers for home, personal stereo speaker apparatus, microphones, car audio apparatus, apparatus for connecting and charging portable and handheld digital electronic devices, Computer software for use in downloading, transmitting, receiving, editing, extracting, encoding, decoding, playing, storing and organising data including audio and video data, sound, video and data recordings, chips, discs and tapes bearing or for recording computer programs and software, multimedia products comprising or for use with the transmission of audio and video data, apparatus for the downloading, transmitting, encoding, decoding, editing, playing and storage of data including audio and video recordings, interactive products comprising or for use with any of the aforesaid goods, precious metals and their alloys, jewellery of precious metal, jewellery in precious metals, jewellery coated with precious metal, figurines and statuettes of precious metal, figurines and statuettes coated with precious metal, jewellery and imitation jewellery, precious stones, cufflinks and tie pins, brooches, jewellery cases, figurines being statuettes of precious stones, figurines coated with precious metal, figurines for ornamental purposes of precious stones, figurines of precious metal, figurines made from gold, silver or platinum, action figures being

decorative of precious metal or made from, model figures being ornaments coated with precious metal, model figures made of precious metal or precious stones, rings, ear rings, ear- studs, nose studs, nose rings, eyebrow, lip, cheek, nose, face and body rings, belly button rings, belly button studs, nipple rings and nipple studs and nipple bars, body jewellery being studs, bars, piercing and rings, items of intimate body jewellery, being studs, bars, piercing or rings, finger rings, bracelets, necklaces, precious stones, key fobs coated with precious metal, key rings, key rings of precious metals, printed matter, bookbinding material, adhesives for household purposes, artists' materials, paint brushes, typewriters and office requisites (except furniture), instructional and teaching material (except apparatus), plastic materials for packaging, printers' type, printing blocks, printed publications, greetings cards, birthday invitations, wedding invitations, party invitations, birthday cards, Christmas cards, wedding cards, new baby cards, baptismal cards, bar mitzvah cards, bat mitzvah cards, maternity leave cards, paternity leave cards, promotion cards, leaving for another job cards, moving house cards, relocation cards and having a baby cards, Christian confirmation cards, first confession cards, engagement cards, retirement cards, graduation cards, divorce cards, cards upon professional qualification, cards to celebrate exam success, coming of age cards, gift wrapping, gift wrapping foil, gift wrapping materials, gift wrapping paper, magazines, business card holders, bookmarks, calendars, periodicals, journals, newspapers, newsletters, brochures, flyers, advertising material, pamphlets, prospectuses, books, forms, maps, magazines, manuals, pictures photographs, photograph albums, calendars, catalogues, instructional and teaching materials, publicity material, promotional material, advertising material, books, writing instruments, office requisites (other than furniture), stickers, car stickers, programmes, posters, postcards, prints, playing cards, greeting cards, cards, tickets, leaflets, carrier bags, paper bags, ring binders, notebooks, book covers, folders, diaries, adhesive labels, business cards, business card holders, souvenir plastic carrier bags, computer programs in printed form, paper tapes, cards, ribbons and discs, paper tissues, paper napkins, menus, tickets, vouchers, parts and fittings for all the aforesaid goods, leather and imitations of leather, luggage made of leather, bags made of leather, purses made of leather, wallets made of leather, luggage made of imitation leather, bags made of imitations leather, purses made of imitation leather, wallets made of imitation leather, giftware namely neck ties and cufflinks sold together, giftware namely hipflasks and tankards;

giftware namely golf tees, giftware namely cigarette lighters, giftware namely necktie pins and neck tie bars, animal skins, hides, trunks and travelling bags, umbrellas, parasols and walking sticks, whips, harness and saddlery, luggage, backpacks, shopping bags, sling bags, school bags, beach bags, satchels briefcases, lap top bags, pilot cases, handbags, pocket wallets, purses, clip top purses, change purses, evening bags, hand bags being tote bags, hand bags being shoulder bags, cosmetic bags, bridal hand bags, weekend bags, flight bags, haversacks, articles of imitation leather, key cases being leather ware, kit bags, gym bags, sports bags, duffle bags, rucksacks, school satchels, shopping bags, sling bags for carrying infants, boot bags, credit card holders, hold-alls, travelling bags, textiles, bed and table covers, travellers' rugs, textiles for making articles of clothing, textiles for making articles of headgear, textiles for making parts of articles of clothing, textiles for making parts of articles of headgear, duvets, covers for pillows, cushions or duvets, tea cosies, breathable piece goods made of textile materials, water vapour permeable textiles, waterproof textile fabrics, breathable fabrics, performance fabric, technical fabrics, fabrics with insulating properties, textile goods for manufacturing water proof clothing, footwear and headgear, textile goods for manufacturing breathable clothing, footwear and headgear, textile goods for manufacturing technical clothing, footwear and headgear, textile goods for manufacturing clothing, footwear and headgear with insulating properties, paints, varnishes, lacquers, candles and wicks for lighting, scented candles, hand tools and hand operated implements, cutlery, side arms, razors, electric razors and hair cutters, electric nail clippers, non-electric nail clippers, , manicure instruments, electrical appliances for manicure, manicure implements, manicure sets, hand-operated instruments for beauty purposes, hand-operated tools for beauty purposes, hairdressing scissors, pruning scissors, non-electric scissors other than for surgical use, scissors for kitchen use, scissors for cutting nails, paper, cardboard, garden furniture, garden furniture made of metal wood or plastics, handles made of plastics for garden implements, cat flaps not of metal or masonry, dog flaps not of metal or masonry, beds for domestic pets, beds for animals, carriers for animals, beds for household pets, beds for pets, dog mats, dog cushions, cat mats, cat cushions, materials for use as beds for domestic pets, radiator beds for pets, cat radiator beds, cat beds being hammocks, carriers for transporting domestic pets other than cages, scratching posts for animals, scratching posts for cats, dog houses, dog kennels, hutches for pets, furniture, mirrors, bathroom furniture,

bedroom furniture, kitchen furniture, living room furniture, dinning room furniture, mirrored furniture, upholstered furniture, cushions, pillows, chairs, armchairs, seats, sofas, tables, beds, metal furniture, shelves, racks, benches, boxes magazine racks, trolleys, CD racks, DVD racks, utensil racks, recipe book stands, bottle racks, spice racks, picture frames, chests, cabinets, desks, hat stands, mattresses, trolleys, curtain fittings, curtain rods, rails, poles, rings, hooks and tie-backs, wine racks, mobiles, wind chimes, wall plaques, metal picture frames, non metal picture frames, seat pads, non metallic key rings, figurines being statuettes of wood, wax, plaster or plastic, ornamental figurines wood, wax, plaster or plastic, figurines made of gypsum cement or of gypsum derivatives, plaster, plastics, wax, wood or wood resin, miniature figurines book rests being furniture, clothes racks being furniture, parts and fittings for the aforesaid goods, plant tubs, plant pots, plant containers, planters, bowls for flower pots, covers, not of paper, for flower pots, flower pots, pots for flowers, brushes for connection to garden hose, garden gnomes, garden sprinklers for attachment to hoses, gardening gloves, watering apparatus other than hose or automatic for garden use, watering cans, apparatus for attachment to watering cans, plastics trays for use as litter trays for cats, cages for household pets, containers for pet food, containers of precious metal for pet food being for household or kitchen use, food containers for pet animals, plastic containers for dispensing food to pets, cooking utensils for use with domestic barbecues, non-electric hand implements for use in barbecue cooking, cups, saucers, mugs, breakfast mugs, plates, egg cups, storage jars', bowls dishes, rice bowls, butter dish, oven gloves, baking trays made of aluminium, cake trays of precious metal, cloths for wiping tableware, trays for household utensils of china, ceramic, earthenware, glass, porcelain or plastic cutlery trays, decorative trays of china, ceramic, earthenware, glass, porcelain or plastic, draining trays, ice cube trays, metal trays for domestic purposes, non-metallic trays for domestic purposes, serving trays, litter trays for pets, trays for domestic purposes, trays for domestic use, cruet sets, household or kitchen utensils and containers (not of precious metal or coated therewith), combs and sponges, brushes (except paint brushes), brush-making materials, articles for cleaning purposes, steel wool, unworked or semi-worked glass (except glass used in building), glassware, porcelain and earthenware, baby baths being portable, basins bowls, bottle openers, ceramics for household purposes, combs, cups of paper or plastic, cups, not of precious metal, drinking glasses, glasses, mugs, not of precious metal, paper plates,

table plates, not of precious metal, tableware other than knives, forks and spoons not of precious metal, toilet cases, toothbrushes, electric, vacuum bottles, domestic, household, bathroom or kitchen utensils and containers, wheeled containers of non-metallic materials for household or kitchen storage, containers for household storage purposes, kitchen use containers for kitchen storage purposes, containers of common metal with compartments for storage for kitchen use, containers of precious metal for storage purposes for household use, containers of precious metal for storage purposes for kitchen use, combs and sponges, brushes, lavatory brushes, soap and towel holders and dispensers, soap dishes, bath bridges, articles for cleaning purposes, glassware, porcelain and earthenware, egg holders, egg timers and egg cups, toast racks, picnic hampers, picnic baskets, baskets, utensil containers, utensil pots, ice buckets, ice cube moulds, basins, bowls, receptacles, pitchers, bottles, plates, cups, mugs, saucers, jars, pots, pans, dishes, baskets, bins, boxes, ironing boards, bread bins, bread boards, cutting boards, beaters, blenders, bristles, brushes, buckets, candlesticks, candle rings, candle extinguishers, candle holders, coffee grinders, percolators, filters, pots, cooking utensils, whisks, cruets and cruet stands, dustbins and wastebins, flower pots, graters, griddles and grills, sieves, shakers, sprinklers, strainers, napkin rings, kettles, lazy susans, spice jars and containers, spice mills, salt and pepper grinders, spice sets, draining racks, table mats and coasters, mug trees, cooking utensils and tools, holders to contain wine bottles and dispense wine, toilet roll dispensers, towel rails, coasters in the form of a stand, coasters in the form of crockery, coasters made of china, earthenware, glass, porcelain, coasters and placemats not of paper and other than table linen, figures including model figures, doll figures and decorative action figures of earthenware, bone china, ceramic, decorative glass, lead crystal, porcelain, terra-cotta, glass, crystal, china, figurines including ornamental figurines, doll figurines and miniature figurines of earthenware, bone china, ceramic, decorative glass, lead crystal, porcelain, terra-cotta, glass, crystal, china, water bottles, containers for liquid being bottles, textiles, bed and table covers, travellers' rugs, textiles for making articles of clothing, textiles for making articles of headgear, textiles for making parts of articles of clothing, textiles for making parts of articles of headgear, duvets, covers for pillows, cushions or duvets, tea cosies, breathable piece goods made of textile material, breathable piece goods made of textile materials, water vapour permeable textiles, waterproof textile fabrics, breathable

fabrics, performance fabric, technical fabrics, fabrics with insulating properties, textile goods for manufacturing water proof clothing, footwear and headgear, textile goods for manufacturing breathable clothing, footwear and headgear, textile goods for manufacturing technical clothing, footwear and headgear, textile goods for manufacturing clothing, footwear and headgear with insulating properties, lace and embroidery, ribbons and braid, buttons, hooks and eyes, pins and needles, artificial flowers, hair extensions, weaves being hair extensions, hair pieces in the form of dreadlocks, synthetic hair in the form of dreadlocks, braids being hair extensions, wool hair extensions, wool hairpieces, wool hair weaves, plastic hairpieces, hairpieces with ringlets, tresses of hair, synthetic hair tresses, synthetic hair, hairpieces, human hair, wigs, human hairpieces, plaited hair, plaits of hair, false hair, false hairpieces, hair nets, non-electric hair styling implements and waving appliances not being hand implements, hair colouring caps, non-electric hair rollers for curling the hair not being hand held, elastic for tying hair, elasticated hair bands, elasticated hair ribbons, hair ornaments, hair pins, hair ribbons, bows for the hair, hair fasteners, hair buttons, hair ornaments not of precious metal, hair slides, hair bands, hair clips, slides being hair grips, sticks for use in decorating the hair, sticks for use in styling the hair, barrettes, strips of plastics for use in highlighting of hair, strips of plastics for use in tinting of hair, heat fusible textile transfers for affixing to clothing, headwear and luggage, heat transfer emblems of textile, heat-fusible textile transfers for attachment to garments, headwear and luggage, pin badges, and other badges for wear, identity badges for wear, carpets, rugs, mats and matting, linoleum and other materials for covering existing floors, wall hangings (non- textile) wall coverings of paper, printed wall coverings, wall coverings being hangings, wall coverings being hangings of paper, wall coverings being hangings of synthetic materials, wallpaper, wallpaper depicting works of art, plain wallpaper, wallpaper with designs, wallpaper with repetitive designs, snack foods, prepared and packaged meals and food, meat, fish, poultry and game, meat extracts, products containing meat, sausages, dairy puddings, cooked meat, cooked meat products, preserves, preserved, dried and cooked fruits and vegetables, jellies, jams, eggs, milk and milk products, edible oils and fats, snack foods, prepared and packaged meals and foods, coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, flour and preparations made from cereals, bread, pastry products, confectionery, ices, ice creams, honey, treacle, yeast, baking powder, salt, mustard, vinegar, sauces, salad dressing, spices,

puddings, mineral and aerated waters, and other non-alcoholic drinks, fruit drinks and fruit juices, syrups for making beverages, Clothing, footwear, headgear, outer clothing, under clothing, woven clothing, knitwear being clothing, clothing of cotton, silk, linen, wool, clothing made from man made-fibres, clothing made from cotton, silk, linen, leather, PVC, lace, cheesecloth, fur, artificial fur, imitation leather, wool and man-made fibres; clothing made from a combination of cotton, silk, linen, leather, PVC, lace, cheesecloth, fur, artificial fur, imitation leather, wool and man-made fibres; clothing trimmed with cotton, silk, linen, leather, PVC, lace, cheesecloth, fur, artificial fur, imitation leather, wool and man-made fibres; shirts, blouses, womens clothes, girls clothes, shirts and blouses with wing collar, shirts and blouses with Eton collars, evening wear, namely shirts and blouses and dinner jackets, shirts and blouses with double cuffs, shirts and blouses with French cuffs, shirts and blouses with detachable collars, shirts and blouses without collars, long sleeve shirts and blouses, short sleeved shirts and blouses, shirts and blouses with graphics printed on them, men's shirts, women's blouses, children's shirts and blouses, shirts and blouses for babies, bow ties, ties, lounge suits, three piece suits including waistcoats, trousers, sports clothing, T-shirts, tee-shirts, long sleeved T-shirts, short sleeved T-shirts, T-shirts with graphics printed on them, men's T-shirts, women's T-shirts, children's T-shirts, T-shirts for babies, socks, stockings and hosiery, mittens, pullovers, wool scarves, silk scarves, headscarves, evening scarves, waistcoats, leather waistcoats, imitation leather waistcoats, denim waistcoats, quilted waistcoats, fur waistcoats, artificial fur waistcoats, puffa waistcoats, pvc waistcoats, ski hats, sports jerseys, swimwear, gilets, overcoats, coats, jerseys, jumpers, tops, crop tops, party tops, evening tops, oversized tops, casual tops, polos tops, turtle necked tops, shell tops, smock tops, swing tops, batwing tops, sweaters, cardigans, pullovers, ponchos, corsetry, scarves, scarves, scarves being snoods, hanky scarves, shawls, mufflers, pashminas, wraparounds, wraps, gloves, swimming costumes, one piece swimming costumes, bikini swimming costumes, tankinis, tops, thongs, pants, bras, bodyshapers, beachwear, sarongs, leisure wear, blouses, dresses, dresses being eveningwear, prom dresses, maxi dresses, midi dresses, party dresses, wedding dresses, mini dresses, bodycon dresses, bridesmaid dresses, skater dresses, tulip dresses, pvc dresses, leather dresses, imitation leather dresses shorts, jeans, denim jackets, denim trousers, $\frac{3}{4}$ length trousers, capri pants, trousers being leggings, trousers being jeggings, pvc

trousers, shorts, hot pants, hot pants being shorts, cycle shorts, pvc shorts, denim clothing, ¾ length denim trousers, skirts, ¾ length denim skirts, denim hot pants, culottes, denim city shorts, clothing made from pvc and denim, skirts, maxi skirts, mini skirts, skort skirts, denim skirts, skater skirts, midi skirts, tulip skirts ra-ra skirts neckties, articles of lingerie, articles of underwear, pyjamas, night wear, dressing gowns, bath robes, beach robes, articles of beachwear, beach clothing, beach dresses, beach shorts, beach wraps, rain coats, coats, denim coats, fur coats, artificial fur coats, parkas being coats, quilted coats, mackintoshes being coats, raincoats, puffa coats, leather coats, imitation leather coats, pvc coats, sou'westers, cagoules, sportswear, boxer's shorts and vests, sports bras, sports panties, sports briefs, and jockstraps, sports pants, sports shorts, sports T-shirts, sports crop-tops, sports vests, trackpants, track suits, jogging suits, warm-up suits, running shorts, running vests, capes, knitwear being capes running tops, running pants, bicycling shorts, soccer shirts, soccer shorts, soccer socks, football strips, football kits, items of clothing for playing football in, football shirts, football boots, studs for football boots, football boots for use on synthetic turf surfaces, football shorts and football socks, rugby shirts, rugby shorts and rugby socks, sweatshirts, hooded tops, headgear, hats, woolly hats, caps, bobble hats, baseball caps, cricket hats, sunhats, sun-visors, swimming caps, aprons being clothing, boxer shorts, camisoles, caps being headwear, headbands, ear muffs headgear for wear, jackets, leather jackets, imitation leather jackets, denim jackets, sheepskin jackets, fur jackets, artificial fur jackets, puffa jackets, pvc jackets waterproof and water resistant outer garments, waterproof and water resistant outer clothes, footwear uppers, heel pieces and tips for footwear, footwear, calf boots, bootys, industrial boots studs, spikes and metal fittings for footwear, welts for boots and shoes, belts being clothing, textile belts, fabric belts, leather belts, imitation leather belts, elasticated belts, clasp belts, butterfly belts, suspender belts, garter belts, waist belts, money belts, tuxedo belts, heels for boots and shoes, tips for foot-wear, soles, inner soles, non-slipping devices for footwear, articles of industrial and work footwear, headgear and clothing, protective and safety footwear other than for protection against injury or accident, waterproof and water resistant clothing, headwear, footwear, slippers, bath sandals and bath slippers, dance shoes, ladies shoes, leather shoes, high heeled shoes, shoes with stiletto heels, ladies shoes with heels, dancewear including footwear, beachwear including footwear, shoes, boots, trainers, flip-flops, sandals mules, slip

on shoes, slip on boots, moccasin, loafers, deck shoes, plimsolls, Wellington boots, beach shoes, parts and fittings for all the aforesaid goods; none of the aforesaid goods for use in connection with surface water sports or scuba diving, or being goods of neoprene or life vests, life jackets, life preservers, wet suits, neoprene gloves, water booties, synthetic elastic fabric wear, sports hosiery, sports booties, protective clothing for use in water sports, goggles for use in water sports, masks for use in water sports, helmets for use in water sports, or parts and fittings for these excluded goods.

The goods and services relied upon by the opponent under earlier mark 3065808:

Class 18: Luggage, baggage, bags of leather, luggage, baggage, bags of imitation leather, travelling bags, suitcases, hardshell luggage, weekend bags, articles of imitation leather being luggage, bags, being leather ware, travelling bags; but not including pilot bags, pilot cases, carry-on luggage or briefcases.

Class 25: Clothing, headgear, clothing of cotton, clothing made from cotton, mad-made fibres; shirts, blouses, women's clothes, shirts and blouses with double cuffs, shirts and blouses with French cuffs, long sleeve shirts and blouses, short sleeve shirts and blouses, shirts and blouses with graphics printed on them, men's shirts, women's blouses, headgear, hats, caps, caps being headwear, headwear; but not including any such goods being uniforms; none of the aforesaid goods for use in connection with surface water sports or being goods of neoprene, neoprene gloves, water booties, synthetic elastic fabric wear, sports hosiery, sports booties or parts and fittings for these excluded goods.

ANNEX C

The contested goods and services which the applicant has conceded are identical or similar to the opponent's earlier goods and services:

Class 09: Apparatus and instruments for recording, reproducing and/or transmitting sound and/or video and/or data and/or information and/or visual information; programs and tapes; pre-recorded disks; recording disks; compact discs; sound recordings; enhanced sound and/or visual recordings; interactive sound and/or visual recordings; pre-recorded disks; gramophone records; audio tapes; tape cassettes; video tapes; laser discs; interactive compact discs; CD ROMs; super audio compact discs; DVDs; podcasts; digital music (downloadable); audio apparatus and instruments; MP3 players; personal digital assistants; mobile telephones; devices for storing information, data, images and sound (included in this class); sound, text or graphics supplied in electronic form and/or downloadable; sound and/or visual recordings; sound and/or visual recording media; computer software for use in downloading, transmitting, receiving, editing, extracting, encoding, decoding, playing, storing and organising data including audio and video data; sound, video and data recordings; apparatus for the downloading, transmitting, encoding, decoding, editing, playing and storage of data including audio and video recordings; interactive computer software; digital music and / or publications (downloadable) provided on-line from databases, from the Internet or from any other communications network including wireless, cable or satellite; parts and fittings for all the aforesaid goods.

Class 18: Airline travel bags; All-purpose carrying bags; Articles of luggage; Back packs; Bags; Carrying cases; Carry-on bags; Clutch handbags; Clutch purses; Handbags, purses and wallets; Luggage.

Class 25: Clothing, footwear, headgear.

Class 35: Retail services connected with the sale of a variety of goods namely video and/or sound recordings, gramophone records, compact discs, audio tapes, cassettes and cartridges, video tapes, cassettes and cartridges, magnetic tapes, discs and wires all for bearing sound or video recordings, optical discs bearing sound

or video recordings, computer software, computer software and publications in electronic form supplied on-line from databases or from the Internet, CD-ROM's, DVD's, digital music (downloadable) provided from the Internet, digital music (downloadable) provided from MP3 Internet web sites, MP3 players, apparatus for recording, transmission or reproduction of sound and images, video games, apparatus for games adapted for use with television receivers and computers; provided either in store, by mail order, telephone, or via the Internet; provision of the aforesaid services from a computer database or the Internet; retail services connected with the sale of a variety of goods namely rucksacks, backpacks, bags, cases, wallets, clothing, footwear, headgear, (excluding the transport thereof), provided either in store, by mail order, telephone, or via the Internet; provision of the aforesaid services from a computer database or the Internet.