

O/747/21

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3480090
IN THE NAME OF MAIL ORDER ONLINE LTD FOR THE TRADE MARK**



IN CLASSES 5, 10, 28 & 35

AND

**OPPOSITION THERETO UNDER NO. 421516
BY ISLESTARR HOLDINGS LIMITED**

Background and pleadings

1. Mail Order Online Ltd (“the applicant”) applied to register the trade mark



with the application number 3480090 in the United Kingdom (“UK”) on 8 April 2020. It was accepted and published in the Trade Marks Journal on 19 June 2020 in respect of the following good and services:

Class 5: Lubricant substances for use on the penis, anus or vagina, namely, gels and water-based, silicone-based and oil-based lubricants; herbal preparations for arousing or enhancing sexual desire or improving sexual performance.

Class 10: Massage devices, namely apparatuses for vibrating or stimulating the body; reproductions of parts of the male and female anatomy in the nature of artificial penises and artificial vaginas; synthetic reproductions of penises and vaginas, namely, artificial penises and vaginas; devices for aiding copulation, masturbation and sexual arousal in the nature of adult sexual aids, namely, penis rings, nipple clamps, vibrators, dildos, dongs, butt plugs, penis sleeves, penis extensions, harnesses, masturbators, sex chairs, sex swings, body prostheses, love dolls, vaginal exercisers, benwa balls; condoms.

Class 28: Games and playthings, namely, adult-themed board games, card games, role-playing games and accessories therefore.

Class 35: Mail-order services, online retail store services provided through an Internet website featuring clothing, scents, novelty items, gifts, devices providing erotic massage and stimulation and other products concerning human sexuality or that are primarily erotic, sensual or sexual in nature.

2. Islestarr Holdings Limited (“the opponent”) oppose the trade mark on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opponent originally based the opposition on two further grounds, namely section 5(3) and

5(4)(a) of the Act. However, no evidence was filed by the opponent during the evidence rounds. As an opposition on these grounds requires substantiation through the filing of evidence, both parties were informed by way of a letter from the Tribunal dated 20 May 2021 that the oppositions would proceed based on section 5(2)(b) only.

3. The opposition under section 5(2)(b) relies on the opponent’s earlier UK and European Union (“EU”) trade marks detailed in the table below.¹

Trade mark & Territory	Filing & registration no.	Filing & registration date	Goods relied upon
PILLOW TALK / UK	3229710	8 May 2017 / 28 July 2017	Class 3 (see full list in Annex A)
PILLOW TALK / EU	17317901	11 October 2017 / 26 January 2018	Class 3 (see full list in Annex A)

3. By virtue of their earlier filing dates, the marks relied upon constitute earlier marks under section 6 of the Act.
4. The opponent argues that the respective goods and services are similar and the marks are similar.
5. The applicant filed a counterstatement denying the claims made. The applicant denied both that the marks were similar and that the goods and services were similar.
6. Only the applicant filed evidence in these proceedings. This will be summarised to the extent that it is considered necessary.
7. Only the applicant filed written submissions which will not be summarised but will be referred to as and where appropriate during this decision. No hearing

¹ Although the UK has left the EU and the transition period has now expired, EUTMs, and International Marks which have designated the EU for protection, are still relevant in these proceedings given the impact of the transitional provisions of The Trade Marks (Amendment etc.) (EU Exit) Regulations 2019 – please see Tribunal Practice Notice 2/2020 for further information.

was requested and so this decision is taken following a careful perusal of the papers. The opponent is represented by Lane IP and the applicant is represented by Appleyard Lees IP LLP.

8. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon in these proceedings are derived from an EU Directive. That is why this decision continues to refer to EU trade mark law.

Evidence

9. The applicant filed evidence in the form of a witness statement in the name of Rachel Louise Garrod, described as a Chartered Trade Mark Attorney employed by the applicant's representative. The statement introduces a total of 12 exhibits, namely Exhibit RLG1 to Exhibit RLG12.
10. Exhibits RLG1 to RLG3 comprise Register print outs of the trade marks relied upon in these proceedings. Exhibit RLG4 comprises search results for trade marks 'similar to' PILLOW TALK in classes 3, 5, 10, 28 and 35 from the UK IPO website. This provides 11 results. Exhibit RLG6 provides screenshots from what is described in Ms Garrod's statement as the opponent's website. Exhibit RLG5 and Exhibit RLG8 to Exhibit RLG11 all comprise Google search results for various topics. The results at Exhibit RLG5 are the first three pages of a Google search for 'pillow talk'. These show 'Pillow Talk' make up as the top result, which as indicated by the applicant's Exhibit RLG6 are the opponent's products. Other results show PILLOW TALK used for homeware and bedding, and as a title of a film. Exhibit's RLG8 to RLG11 comprise the first three pages of google search results for various goods listed in the opponent's and the applicant's specifications, including cosmetics, lubricants, massage devices, sex toys and adult games. The results bring up lists of pages selling the goods described in the searches. Amongst the search for 'lubricants' there is a page on 'boots.com' headed Lubricants, Massage & Gels | Condoms & Sexual Health – Boots.'

11. At Exhibit RLG7 a print out is provided from the website www.dictionary.com/browse/pillow-talk. Two definitions are shown as below:

pillow talk ☆

See synonyms for: [pillow talk](#) / [pillow talks](#) on Thesaurus.com

noun

- 1 private conversation, endearments, or confidences exchanged in bed or in intimate circumstances between spouses or lovers.

pillow talk

noun

- 1 intimate conversation in bed

COLLINS ENGLISH DICTIONARY - COMPLETE & UNABRIDGED 2012 DIGITAL EDITION
© HM COLLINS SONS & CO. LTD. 1979, 1986 © HARPERCOLLINS
HERS 1998, 2000, 2003, 2005, 2006, 2007, 2009, 2012

12. Whilst I have kept the summary of the evidence brief, this has been read and considered in full.

Proof of use

13. As neither of the earlier marks relied upon had been registered for a period of more than five years on the date at which the application was filed, they are not subject to proof of use requirements under section 6A of the Act.

Decision

Section 5(2)(b)

14. Section 5(2)(b) of the Act is as follows:

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

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

15. Section 5A of the Act is as follows:

“5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

16. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

The principles

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

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

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

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

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

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

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

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

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

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

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

Comparison of the goods and services

17. Section 60A of the Act provides:

“(1) For the purpose of this Act goods and services-

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

(2) In subsection (1), the "Nice Classification" means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1975.”

18. 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.

19. In the judgment of the Court of Justice of European Union (“CJEU”) in *Canon*, Case C-39/97, the court stated at paragraph 23 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”.

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

21. The case law provides further guidance on how the wording of goods and services as registered and filed should be interpreted within the comparison. In *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that:

"... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

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

"...the applicable principles of interpretation are as follows:

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

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

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

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

23. In *Gérard Meric v Office for Harmonisation in the Internal Market*, 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”.

24. The opponent’s specification of goods under both its marks relied upon is largely identical, with its EU specification of goods included within its UK specification in its entirety. I note however, that its specification of goods under its UK mark is slightly broader, with the addition of the goods *disinfectant soap* and *medicated soap* that are not present under the EU registration. I also note that the EU and UK trade marks relied upon are identical. It is therefore not necessary to separate the goods and services comparison out for the marks relied upon, and I will conduct the goods and services comparison based on the opponent’s earlier UK registration, which represents its broadest rights.

25. The goods and services for comparison are outlined in the table below:

Earlier goods	Contested goods and services
Class 3: <i>Cosmetics, make up; skin care preparations; lipsticks; lip gloss; make-up powder and foundation;</i>	Class 5: <i>Lubricant substances for use on the penis, anus or vagina, namely, gels and water-based, silicone-based</i>

<p>moisturisers; beauty care preparations, body care preparations, essential oils for personal use; preparations and products for removing make-up; lotions, creams and conditioners for the face, hands and body; beauty masks; abrasive cloth; abrasive paper; abrasives; adhesives for affixing false hair; adhesives for cosmetic purposes; after-shave lotions; almond milk for cosmetic purposes; almond oil; almond soap; aloe vera preparations for cosmetic purposes; alum stones [astringents]; amber [perfume]; antiperspirant soap; antiperspirants [toiletries]; aromatics [essential oils]; astringents for cosmetic purposes; balms other than for medical purposes; bath salts, not for medical purposes; baths (cosmetic preparations for-); beard dyes; beauty masks; bergamot oil; bleaching preparations [decolorants]</p>	<p>and oil-based lubricants; herbal preparations for arousing or enhancing sexual desire or improving sexual performance.</p>
<p>for cosmetic purposes; breath freshening sprays; breath freshening strips; cakes of toilet soap; cedarwood (essential oils of-); citron (essential oils of-); cleansing milk for toilet purposes; colorants for toilet purposes; color-removing preparations; colour-brightening chemicals for household purposes</p>	<p>Class 10: Massage devices, namely apparatuses for vibrating or stimulating the body; reproductions of parts of the male and female anatomy in the nature of artificial penises and artificial vaginas; synthetic reproductions of penises and vaginas, namely, artificial penises and vaginas; devices for aiding copulation, masturbation and sexual arousal in the nature of adult sexual aids, namely, penis rings, nipple clamps, vibrators, dildos, dongs, butt plugs, penis sleeves, penis extensions, harnesses, masturbators, sex chairs, sex swings, body prostheses, love dolls, vaginal exercisers, benwa balls; condoms.</p>
	<p>Class 28: Games and playthings, namely, adult-themed board games, card games, role-playing games and accessories therefore.</p>
	<p>Class 35: Mail-order services, online retail store services provided through an Internet website featuring clothing, scents, novelty items, gifts, devices</p>

<p>[laundry]; cosmetic kits; cosmetic preparations for slimming purposes; cosmetics for animals; cotton sticks for cosmetic purposes; cotton wool for cosmetic purposes; creams (cosmetic-); creams (skin whitening-); dental bleaching gels; deodorant soap; deodorants for human beings or for animals; depilatories; depilatory preparations; disinfectant soap; douching preparations for personal sanitary or deodorant purposes [toiletries]; dry shampoos; dyes (cosmetic-); eau de cologne; emery; essences (ethereal-); essential oils; ethereal essences; ethereal oils; extracts of flowers [perfumes]; eyebrow cosmetics; eyebrow pencils; eyelashes (adhesives for affixing false-); eyelashes (cosmetic preparations for-); eyelashes (false-); false eyelashes; false hair (adhesives for affixing-); false nails; flower perfumes (bases for-); flowers (extracts of-) [perfumes]; foot perspiration (soap for-); gels (dental bleaching-); greases for cosmetic purposes; hair colorants; hair dyes; hair lotions; hair spray; hair waving preparations; hydrogen peroxide for cosmetic purposes; incense; ionone [perfumery]; jasmine oil; javelle</p>	<p>providing erotic massage and stimulation and other products concerning human sexuality or that are primarily erotic, sensual or sexual in nature.</p>
--	--

water; jelly (petroleum-) for cosmetic purposes; joss sticks; kits (cosmetic-); lavender oil; lavender water; lemon (essential oils of-); lotions for cosmetic purposes; lotions (tissues impregnated with cosmetic-); make-up preparations; make-up removing preparations; mascara; massage gels other than for medical purposes; medicated soap; milk (cleansing-) for toilet purposes; mint essence [essential oil]; mint for perfumery; musk [perfumery]; moustache wax; nail art stickers; nail care preparations; nail polish; nail varnish; nails (false-); neutralizers for permanent waving; oils for cosmetic purposes; oils for perfumes and scents; oils for toilet purposes; pencils (cosmetic-); pencils (eyebrow-); perfumery; perfumes; permanent waving (neutralizers for-); petroleum jelly for cosmetic purposes; polishes (denture-); pomades for cosmetic purposes; powder (make-up-); pumice stone; rose oil; shampoos; shaving preparations; shaving soap; skin care (cosmetic preparations for-); skin whitening creams; slimming purposes (cosmetic preparations for-); soap; soap (antiperspirant-); soap (cakes of-); soap (deodorant-); soap

<p><i>for foot perspiration; sprays (breath freshening-); strips (breath freshening-); sunscreen preparations; sun-tanning preparations [cosmetics]; talcum powder, for toilet use; terpenes [essential oils]; tissues impregnated with cosmetic lotions; toilet water; toiletries; transfers (decorative-) for cosmetic purposes; varnish (nail-); varnish-removing preparations; waving preparations for the hair; wax (depilatory-).</i></p>	
---	--

26. The applicant has argued within its submissions that the goods covered by its mark are dissimilar to those registered in class 3 by the opponent, and that this is particularly clear in respect of classes 10 and 28. The applicant states this is a position that is supported by the UK IPO as classes 10 and 28 are not listed as being similar within its 'cross class search list'. I note at this stage that the class system is purely administrative, and goods and services will not be found to be dissimilar (or similar) to each other simply because they fall within a particular class. The 'cross class' search list as referenced by the applicant is intended as a guide and is not determinative. In any case, this decision is in no way bound by this, and the goods and services will be examined with reference to the relevant factors set out in the case law above.

Class 5: Lubricant substances for use on the penis, anus or vagina, namely, gels and water-based, silicone-based and oil-based lubricants

27. The opponent covers the goods *massage gels other than for medical purposes*. The applicant has submitted that as these will not be used in a sexual context, the goods are not similar to the applicant's lubricants and the consumer will not be confused between the two. I note firstly that this part of the decision is not to

identify which goods or services the consumer would be confused between, but to consider the level of similarity between the goods and services. Once identified, this will be considered alongside the other relevant factors in order to establish if the consumer would be confused.

28. With this in mind, I consider the similarities between the opponent's *massage gels other than for medical purposes* and the applicant's *Lubricant substances for use on the penis, anus or vagina, namely, gels and water-based, silicone-based and oil-based lubricants*. I find the broad intended purpose of these goods to be similar in that the goods will all be used on the body to reduce friction, although the specific purpose and area of intended application will differ. I also find the goods will be of a similar nature, both being gels which are not intended to be easily absorbed into the skin. I find that the goods may share trade channels and be offered by the same entities. I find the goods may be placed near each other in shops, although it is not likely they will be placed side by side. I do not find that the goods will be complementary or be in competition with each other. Whilst I find the intended users may be shared, this will only be at a general level. Overall, I find the opponent's *massage gels other than for medical purposes* to be similar to the applicant's *Lubricant substances for use on the penis, anus or vagina, namely, gels and water-based, silicone-based and oil-based lubricants* to between a low and medium degree.

29. I note the opponent has also submitted that the applicant's goods above are similar to its *essential oils for personal use, lotions for cosmetic purposes and lotions, creams and conditioners for the face, hands and body*. In respect of the earlier essential oils, I find the possibility of shared users, namely the general public, the fact they may be sold in different sections of the same multi-good stores, in addition to the fact that both goods may consist of a clear substance will not result in similarity between the goods themselves in this instance, and I note these factors will be applicable to a large range of dissimilar goods. I find the actual nature, the method of use and the intended purpose will differ and that the goods will not be in competition or complementary. In respect of the lotions, creams and conditioners for the face and body referenced, I note the purpose of these is generally to sooth and hydrate, in order to improve the

appearance or help to heal the skin, either immediately or over time. I find the intended purpose of these items to be very different to the applicant's goods above. Whilst I find the intended consumer may be shared this is again only at a very general level, in that the goods will be aimed at the general public. Whilst there may be a degree of similarity in respect of the nature of the goods, I find they will differ in the sense that the cosmetic lotions are designed to be absorbed into the skin, whereas the lubricants are not. I note they may both be sold in the same larger retailers but I do not find they will be placed near each other in these stores. I find it very unlikely the goods will be offered by the same entities, and I do not find them to be complementary or in competition. Overall, I do not find the very general similarities to render the goods similar for the purpose of this comparison.

Class 5: Herbal preparations for arousing or enhancing sexual desire or improving sexual performance

30. I see no reason why the applicant's goods above should be found to be similar to the earlier goods covered by the opponent in this instance. Whilst it is possible that some of the goods may be sold in the same larger stores, and share the same consumer by way of members of the general public, I find the nature, intended purpose, method of use will differ, and that these goods will not be complementary in a trade mark sense, or in competition. I therefore find no similarity between the above goods and those protected by the opponent.

Class 10: Massage devices, namely apparatuses for vibrating or stimulating the body

28. The applicant's goods above will include a range of massage devices including those for the back and body. I find the nature of these devices to be very different to the opponent's *massage gels other than for medical purposes*, but there will be a degree of overlap in the intended purpose in the sense that they are both intended to assist with massaging the body. The goods may be offered by the same entities and share trade channels. I do not find the goods to be complementary as I find they may be sold and used separately to one another, although I acknowledge they may also be used

together. I find it very unlikely there will be competition between the goods. Whilst the intended user will again be shared, this will only be at a very general level. Overall, I find the goods to be similar to a low degree.

Class 10: Reproductions of parts of the male and female anatomy in the nature of artificial penises and artificial vaginas; synthetic reproductions of penises and vaginas, namely, artificial penises and vaginas; devices for aiding copulation, masturbation and sexual arousal in the nature of adult sexual aids, namely, penis rings, nipple clamps, vibrators, dildos, dongs, butt plugs, penis sleeves, penis extensions, harnesses, masturbators, sex chairs, sex swings, body prostheses, love dolls, vaginal exercisers, benwa balls; condoms.

29. In respect of the applicant's remaining goods in class 10 above, I note that there is a possibility they may end up in the same larger retail stores, and that they may share intended users at a very general level, in that they may all be aimed at the general public. However, I do not find that the goods share a nature or intended purpose. I find the goods and services will not generally be offered by the same entities, they are very unlikely to be placed near each other in stores and, I find the method of use will differ. I do not find the goods and services will not be complementary or in competition. Overall, I do not find that the very general level of overlap that may exist between any of the applicant's goods above and the opponent's goods is sufficient to render these similar.

Class 28: Games and playthings, namely, adult-themed board games, card games, role-playing games and accessories therefore.

I see no reason for the applicant's goods above to be found similar to the opponent's earlier goods.

Class 35: Mail-order services, online retail store services provided through an Internet website featuring clothing, scents, novelty items, gifts, devices providing erotic massage and stimulation and other products concerning human sexuality or that are primarily erotic, sensual or sexual in nature.

30. The opponent has submitted in its pleadings as follows:

“Further the class 35 services “Mail order services, online retail store services provided though an internet website featuring ... scents” is similar to at least “*perfumery; perfumes*” of the opponent’s marks”

31. The applicant has disputed this in its written submissions, stating that *perfumery; perfumes* are specific products and that ‘scents’ will cover a range of things, including items such as room sprays. I do not find that this line of argument assists the applicant as it is my view that scents will also cover *perfumery* and *perfumes*.

32. The applicant also argues that the retail services selling the scents will be doing so alongside the applicant’s range of other goods online, and so they will in no way be seen as related to the opponent’s goods. However, again this argument does not assist the applicant as the specific marketing conditions chosen by the applicant are not relevant to my considerations, which must be made on the basis of the goods and services as filed and registered. How the applicant may or may not choose to market or sell its goods and services will be subject to change overtime.²

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

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

² See paragraph 59 of *Devinlec Développement Innovation Leclerc SA v OHIM*, Case C-171/06P

earlier trade mark in all the circumstances in which the trade mark applied for might be used if it were to be registered; (iv) the criteria for determining whether, when and to what degree services are ‘*similar*’ to goods are not clear cut.”

34. However, on the basis of the European courts’ judgments in *Sanco SA v OHIM*³, and *Assembled Investments (Proprietary) Ltd v. OHIM*⁴, upheld on appeal in *Waterford Wedgwood Plc v. Assembled Investments (Proprietary) Ltd*⁵, Mr Hobbs concluded:

- (i) Goods and services are not similar on the basis that they are complementary if the complementarity between them is insufficiently pronounced that, from the consumer’s point of view, they are unlikely to be offered by one and the same undertaking;
- (ii) In making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it is necessary to envisage the retail services normally associated with the opponent’s goods and then to compare the opponent’s goods with the retail services covered by the applicant’s trade mark;
- (iii) It is not permissible to treat a mark registered for ‘retail services for goods X’ as though the mark was registered for goods X;
- (iv) The General Court’s findings in *Oakley* did not mean that goods could only be regarded as similar to retail services where the retail services related to exactly the same goods as those for which the other party’s trade mark was registered (or proposed to be registered).

³ Case C-411/13P

⁴ Case T-105/05, at paragraphs [30] to [35] of the judgment

⁵ Case C-398/07P

35. I find the applicant's retail services will be different in nature, purpose, and method of use to the opponent's goods. I consider the retail services normally associated with the opponent's goods and I find these will include stores (including online stores) that specialise in selling perfumes only, or sell a large range of the same, in addition to retail environments where a selection of one or two perfumes are offered by the same entity and under the same mark as the retail services themselves, for example own brand perfumes offered by a retailer selling multiple brands or multiple goods.

36. The General Court ("GC") found at paragraph 54 of *Oakley*⁶ that the goods which are the subject of the retail services must at the very least be important to the goods, if not indispensable as "Such services, which are provided with the aim of selling certain specific goods, would make no sense without the goods". For the reasons set out in the paragraph above, I also find it likely the consumer will believe that the entity offering the retail services will also offer the goods in this instance. I therefore find these goods and services to be complementary. I do not find the fact that the applicant covers retail services for 'scents' generally to detract from this finding, as this encompasses retail services for the opponent's perfumes. Whilst the intended user of the goods and services will be shared, again this will be at a general level, namely members of the general public.

37. Considering all of the factors outlined above, I find there is a medium level of similarity between the applicant's services *Mail order services, online retail store services provided through an internet website featuring ... scents* and the opponent's goods, namely *perfumery and perfumes*.

38. I also consider the applicant's services concerning the mail order and online retail store services relating to gifts. I find the term gifts to be general, and that it will often include perfumes as well as bath, body and cosmetic items in the forms of gift sets. I find therefore that the opponent's earlier goods

⁶ *Oakley, Inc v OHIM*, Case T-116/06

including its perfumes and its body, bath and cosmetic items and the applicant's services relating to the mail order and online retail of gifts including these items will be complementary, as I find the items themselves will be essential for the retail of the same in gift form, and the consumer is likely to believe that the entity offering these services would also be responsible for the goods themselves. Again, the intended user of the goods and services will be shared at a general level. I find there will be a medium degree of similarity between the opponent's earlier goods including its perfumes, body, bath and cosmetic items and the applicant's mail order and retail services relating to gifts.

39. I consider whether I find similarity between the opponent's earlier *massage gels other than for medical purposes* and the opponent's *Mail-order services, online retail store services provided through an Internet website featuring devices providing erotic massage and stimulation*. I find the nature, intended purpose and method of use of these goods and services to differ from either other. I do not find these to be complementary in the trade mark sense, and I do not find them to be in competition. I find the users may be shared, but only at the general level that they are both aimed at the general public. I note the comments of Mr Geoffrey Hobbs Q.C. regarding the findings of the GC in *Oakley* that retail services may still be similar to goods even where they do not relate to the exact goods sold. However, without any further evidence or submission on this point, I do not find the opponent's massage gels to be similar to the applicant's *Mail-order services, online retail store services provided through an Internet website featuring devices providing erotic massage and stimulation*.

40. The opponent has not advanced any reasons why I should find similarity between its earlier goods and the applicant's remaining services. With consideration to the relevant factors as outlined in the case law identified, I find no reason to consider the applicant's remaining services similar to the opponent's earlier goods.

41. An opposition under section 5(2)(b) can only succeed in instances where some similarity has been found between the respect goods and services.⁷ I therefore find the decision will continue in respect of the following goods and services covered by the applicant only:

Class 5: Lubricant substances for use on the penis, anus or vagina, namely, gels and water-based, silicone-based and oil-based lubricants

Class 10: Massage devices, namely apparatuses for vibrating or stimulating the body

Class 35: Mail order services, online retail store services provided though an internet website featuring [...] scents and gifts

42. The opposition fails in respect of all remaining goods and services filed by the applicant.

Comparison of marks


43. 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 Court of Justice of the European Union 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

⁷ *Waterford Wedgwood plc v OHIM* – C-398/07 P (CJEU)

then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

44. It would be wrong, therefore, to dissect the trade marks artificially, 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.

Earlier trade mark	Contested trade mark
PILLOW TALK	

45. As the two earlier marks relied upon are identical, there is no need for me to refer to these separately within this comparison, and so I will refer to them jointly as “the earlier mark”.

46. The earlier mark is made up of two known English words that hang together to make the phrase PILLOW TALK. The overall impression resides in the mark as a whole, with each part playing an equal role within the same.

47. The contested mark is made up of the same two words PILLOW TALK. These elements play the greatest role in the overall impression of the mark, again hanging together as a pair to give the mark its meaning, although the word PILLOW is the most dominant in terms of its size and position. I note the use of the stylisation, including the heart used to dot the letter ‘i’, as well as the fading effect on the word ‘talk’. Whilst I do not find these elements to be negligible, I do find they play a far lesser role in the overall impression of the mark. In the most generous reading of the later mark, I find that the lines used on either side of the word talk play a very minimal role in the overall impression of the same, but it is my view that often these will go unnoticed and be negligible.

Visual comparison

48. The applicant argues that due to the stylisation and colour used by the contested mark, and due to the fact the earlier mark is filed as a plain word mark without stylisation, the marks are similar visually only to a low degree.

49. Both marks share the two identical words PILLOW TALK. As the earlier mark is filed as a word mark, it may be used in a variety of standard fonts and colours, which may bring the marks visually closer together. However, I do acknowledge that certain elements of the stylisation of the contested mark, including the use of the heart to dot the letter 'i' and the colour fading effect, would fall outside of the fair and notional use of the earlier word mark, and these elements help to differentiate the marks visually. Considering the similarities and the differences between the marks, it is my view that overall they are visually similar to a high degree.

Aural comparison

50. The pronounceable elements in the two marks comprise two identical words. The marks are aurally identical.

Conceptually comparison

51. The applicant has argued that as the goods they sell are to be used in "intimate circumstances" and the opponent's goods are not, that the marks would convey different concepts to the consumer and are only similar conceptually to a low degree.

52. On the contrary, it is my view that both marks will convey to the consumer the meaning of 'pillow talk' as per the definition filed in the applicant's evidence, namely:

'Private conversation, endearments or confidences exchanged in bed or in intimate circumstances between spouses or lovers.'⁸

⁸ See Exhibit RLG7

53. I do not find the difference in the goods and services covered has any impact on the conceptual message conveyed by the mark itself. I find the marks to be conceptually identical.

Average consumer and the purchasing act

54. 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.

55. 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.”

56. All of the goods and services appear to be aimed at members of the general public, and particularly in the case of the applicant's goods and services, the general public is likely to be aged 16 or over. None of the goods filed appear to warrant a particularly high level of attention from the consumer. Whilst there will be some goods within the opponent's specification such as the everyday toiletry items, which may have only a low level of attention paid, in respect of the applicant's goods and services, the level of attention paid will at least average.

57. In respect of the applicant's class 5 items, namely the lubricants, these are designed to be applied to intimate areas of the consumer's body, and as such, considerations regarding the and quality of the product will be made, and at least an average degree of attention will be paid.
58. In respect of the applicant's class 10 goods, I find it unlikely these will be everyday purchases, and whilst they might vary in terms of cost, considerations as to the suitability for the consumer's needs will be paid. In respect of the massage devices, the consumer may consider the practicalities of the goods, with considerations given to the size and usability, prior to making a purchase. Again, there will be at least an average degree of attention paid in respect of these goods.
59. In respect of the applicant's class 35 services, I find the consumer will pay attention to factors such as the reliability of the services provided, and as such, I find they will again pay at least an average degree of attention in respect of the same.
60. I find the goods and services will generally be engaged with visually, but I find that aural recommendations may be made either by contemporaries or retail assistants, and as such, I cannot completely discount the aural comparison.

Distinctive character of the earlier trade mark

61. 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).”

62. Whilst the earlier mark may convey a meaning to the average consumer, I do not find this to be descriptive or allusive of the goods themselves. Overall, I find the earlier mark to be inherently distinctive to a medium degree.

63. The opponent did not file any evidence of use of its mark, and as such I am unable to conclude that the distinctiveness of the mark has been enhanced further through use.

GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion

64. Prior to reaching a decision under Section 5(2)(b), I must first consider all relevant factors, including those as set out within the principles A-K at paragraph 16 of this decision. I must view the likelihood of confusion through the eyes of the average consumer, 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 they have kept in their mind. I must consider the level of attention paid by the average consumer, and consider the impact of the visual, aural and conceptual similarities of the marks by

reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. I must consider that the level of distinctive character held by the earlier mark will have an impact on the likelihood of confusion. I must consider that the likelihood of confusion may be increased where the distinctive character held by the earlier mark is high and may be less likely where it is low. I must remember that the distinctive character of the earlier mark may be inherent, but that it may also be increased through use, and that the distinctiveness of the common elements is key.⁹ I must keep in mind that a lesser degree of similarity between the goods and services may be offset by a greater degree of similarity between the marks, and vice versa. I must also consider that both the degree of attention paid by the average consumer and how the goods or services are obtained will have a bearing on how likely the average consumer is to be confused.

65. I consider at this point that there are two types of confusion that I may find. The first type of confusion is direct confusion. This occurs where the average consumer mistakenly confuses one trade mark for another. The second is indirect confusion. This occurs where the average consumer notices the differences between the marks, but due to the similarities between the common elements, they believe that both products derive from the same or economically linked undertakings.¹⁰

66. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, Mr James Mellor Q.C. (as he then was), 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.

⁹ See *Kurt Geiger v A-List Corporate Limited*, BL O-075-13, in which Mr Iain Purvis Q.C. as the Appointed Person pointed out that the level of 'distinctive character' is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar.

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

67. In this case, I found the marks to be visually similar to a high degree and aurally and conceptually identical. I found many of the goods to be dissimilar, and for these, there is no likelihood of confusion. Of the remaining goods, I found these to range from similar to a low to a medium degree. I found the earlier mark to hold a medium degree of inherent distinctive character, and I did not find that this had been enhanced through use. I found the average consumer would pay at least an average degree of attention in respect of the applicant's goods and services. However, it is my view in this instance that the very high similarity between the marks will help to offset the lower level of similarity between some of the goods. Considering all of the relevant factors, it is my view that there will be a likelihood of direct confusion in respect of all of the goods and services for which similarity with the opponent's earlier mark was found, even where an above average level of attention is paid.

68. I also consider the likelihood of indirect confusion. It is my view that should the differences between the marks be noticed by the consumer, there will be a likelihood of indirect confusion, by virtue of the wording PILLOW TALK, which is the entire earlier mark, being reproduced entirely and comprising the most dominant elements of the later mark, and considering the highly similar nature of the marks as a whole. I find this, alongside the other factors outlined above will be sufficient for the consumer to assume that the marks originate from the same or economically linked undertaking, with one simply being a slightly more stylised version of the original.

69. I find the outcome in this opposition to be the same whether it is based on the earlier EU or UK registration relied upon.

Final Remarks

70. The opposition has failed in respect of the majority of the goods and services, and subject to any successful appeal, the application will proceed to registration for the goods and services outlined below:

Class 5: Herbal preparations for arousing or enhancing sexual desire or improving sexual performance.

Class 10: Reproductions of parts of the male and female anatomy in the nature of artificial penises and artificial vaginas; synthetic reproductions of penises and vaginas, namely, artificial penises and vaginas; devices for aiding copulation, masturbation and sexual arousal in the nature of adult sexual aids, namely, penis rings, nipple clamps, vibrators, dildos, dongs, butt plugs, penis sleeves, penis extensions, harnesses, masturbators, sex chairs, sex swings, body prostheses, love dolls, vaginal exercisers, benwa balls; condoms.

Class 28: Games and playthings, namely, adult-themed board games, card games, role-playing games and accessories therefore.

Class 35: Mail-order services, online retail store services provided through an Internet website featuring clothing, novelty items, devices providing erotic massage and stimulation and other products concerning human sexuality or that are primarily erotic, sensual or sexual in nature.

71. The application will be refused in respect of the following goods and services for which the opposition has been successful:

Class 5: Lubricant substances for use on the penis, anus or vagina, namely, gels and water-based, silicone-based and oil-based lubricants

Class 10: Massage devices, namely apparatuses for vibrating or stimulating the body;

Class 35: Mail order services, online retail store services provided through an internet website featuring [...] scents and gifts

COSTS

72. Both parties have achieved some success in these proceedings, but the success of the applicant outweighs the success of the opponent. In the circumstances, the applicant is entitled to a contribution towards its costs, but

I will apply a 30% reduction to the awarded amount to account for the opponent's partial success. In this instance, I have made an award below the scale amount set out in Tribunal Practice Notice 2/2016 for preparing and filing of the applicant's evidence, as this was only of very little assistance to these proceedings. I therefore award the applicant a total sum of £665. The sum is calculated as follows:

Reviewing the TM7 and	
preparing and filing a response	£500
Preparing and filing the evidence	£100
Preparing and filing written	
submissions in lieu	£350
30% reduction for the opponent's	
partial success	-£285
Total	£665

73. I therefore order Islestarr Holdings Limited to pay Mail Order Online Ltd the sum of £665. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 8th day of October 2021

Rosie Le Breton

For the Registrar

Annex A

Goods relied upon under UK trade mark number 3229710

Cosmetics, make up; skin care preparations; lipsticks; lip gloss; make-up powder and foundation; moisturisers; beauty care preparations, body care preparations, essential oils for personal use; preparations and products for removing make-up; lotions, creams and conditioners for the face, hands and body; beauty masks; abrasive cloth; abrasive paper; abrasives; adhesives for affixing false hair; adhesives for cosmetic purposes; after-shave lotions; almond milk for cosmetic purposes; almond oil; almond soap; aloe vera preparations for cosmetic purposes; alum stones [astringents]; amber [perfume]; antiperspirant soap; antiperspirants [toiletries]; aromatics [essential oils]; astringents for cosmetic purposes; balms other than for medical purposes; bath salts, not for medical purposes; baths (cosmetic preparations for-); beard dyes; beauty masks; bergamot oil; bleaching preparations [decolorants] for cosmetic purposes; breath freshening sprays; breath freshening strips; cakes of toilet soap; cedarwood (essential oils of-); citron (essential oils of-); cleansing milk for toilet purposes; colorants for toilet purposes; color-removing preparations; colour-brightening chemicals for household purposes [laundry]; cosmetic kits; cosmetic preparations for slimming purposes; cosmetics for animals; cotton sticks for cosmetic purposes; cotton wool for cosmetic purposes; creams (cosmetic-); creams (skin whitening-); dental bleaching gels; deodorant soap; deodorants for human beings or for animals; depilatories; depilatory preparations; disinfectant soap; douching preparations for personal sanitary or deodorant purposes [toiletries]; dry shampoos; dyes (cosmetic-); eau de cologne; emery; essences (ethereal-); essential oils; ethereal essences; ethereal oils; extracts of flowers [perfumes]; eyebrow cosmetics; eyebrow pencils; eyelashes (adhesives for affixing false-); eyelashes (cosmetic preparations for-);

eyelashes (false-); false eyelashes; false hair (adhesives for affixing-); false nails; flower perfumes (bases for-); flowers (extracts of-) [perfumes]; foot perspiration (soap for-); gels (dental bleaching-); greases for cosmetic purposes; hair colorants; hair dyes; hair lotions; hair spray; hair waving preparations; hydrogen peroxide for cosmetic purposes; incense; ionone [perfumery]; jasmine oil; javelle water; jelly (petroleum-) for cosmetic purposes; joss sticks; kits (cosmetic-); lavender oil; lavender water; lemon (essential oils of-); lotions for cosmetic purposes; lotions (tissues impregnated with cosmetic-); make-up preparations; make-up removing preparations; mascara; massage gels other than for medical purposes; medicated soap; milk (cleansing-) for toilet purposes; mint essence [essential oil]; mint for perfumery; musk [perfumery]; moustache wax; nail art stickers; nail care preparations; nail polish; nail varnish; nails (false-); neutralizers for permanent waving; oils for cosmetic purposes; oils for perfumes and scents; oils for toilet purposes; pencils (cosmetic-); pencils (eyebrow-); perfumery; perfumes; permanent waving (neutralizers for-); petroleum jelly for cosmetic purposes; polishes (denture-); pomades for cosmetic purposes; powder (make-up-); pumice stone; rose oil; shampoos; shaving preparations; shaving soap; skin care (cosmetic preparations for-); skin whitening creams; slimming purposes (cosmetic preparations for-); soap; soap (antiperspirant-); soap (cakes of-); soap (deodorant-); soap for foot perspiration; sprays (breath freshening-); strips (breath freshening-); sunscreen preparations; sun-tanning preparations [cosmetics]; talcum powder, for toilet use; terpenes [essential oils]; tissues impregnated with cosmetic lotions; toilet water; toiletries; transfers (decorative-) for cosmetic purposes; varnish (nail-); varnish-removing preparations; waving preparations for the hair; wax (depilatory-).

Goods relied upon under EU trade mark number 17317901

Cosmetics, make up; skin care preparations; lipsticks; lip gloss; make-up powder and foundation; moisturisers; beauty care preparations, body care preparations, essential oils for personal use; preparations and products for removing make-up; lotions, creams and conditioners for the face, hands and body; beauty masks; abrasive cloth; abrasive paper; abrasives; adhesives for affixing false hair; adhesives for cosmetic purposes; after-shave lotions; almond milk for cosmetic purposes; almond oil; almond

soap; aloe vera preparations for cosmetic purposes; alum stones [astringents]; amber [perfume]; antiperspirant soap; antiperspirants [toiletries]; aromatics [essential oils]; astringents for cosmetic purposes; balms other than for medical purposes; bath salts, not for medical purposes; baths (cosmetic preparations for-); beard dyes; bergamot oil; bleaching preparations [decolorants] for cosmetic purposes; breath freshening sprays; breath freshening strips; cakes of toilet soap; cedarwood (essential oils of-); citron (essential oils of-); cleansing milk for toilet purposes; colorants for toilet purposes; color-removing preparations; colour-brightening chemicals for household purposes [laundry]; cosmetic kits; cosmetic preparations for slimming purposes; cosmetics for animals; cotton sticks for cosmetic purposes; cotton wool for cosmetic purposes; creams (cosmetic-); creams (skin whitening-); dental bleaching gels; deodorant soap; deodorants for human beings or for animals; depilatories; depilatory preparations; douching preparations for personal sanitary or deodorant purposes [toiletries]; dry shampoos; dyes (cosmetic-); eau de cologne; emery; essences (ethereal-); essential oils; ethereal essences; ethereal oils; extracts of flowers [perfumes]; eyebrow cosmetics; eyebrow pencils; eyelashes (adhesives for affixing false-); eyelashes (cosmetic preparations for-); eyelashes (false-); false eyelashes; false hair (adhesives for affixing-); false nails; flower perfumes (bases for-); flowers (extracts of-) [perfumes]; foot perspiration (soap for-); gels (dental bleaching-); greases for cosmetic purposes; hair colorants; hair dyes; hair lotions; hair spray; hair waving preparations; hydrogen peroxide for cosmetic purposes; incense; ionone [perfumery]; jasmine oil; javelle water; jelly (petroleum-) for cosmetic purposes; joss sticks; kits (cosmetic-); lavender oil; lavender water; lemon (essential oils of-); lotions for cosmetic purposes; lotions (tissues impregnated with cosmetic-); make-up preparations; make-up removing preparations; mascara; massage gels other than for medical purposes; milk (cleansing-) for toilet purposes; mint essence [essential oil]; mint for perfumery; musk [perfumery]; moustache wax; nail art stickers; nail care preparations; nail polish; nail varnish; nails (false-); neutralizers for permanent waving; oils for cosmetic purposes; oils for perfumes and scents; oils for toilet purposes; pencils (cosmetic-); pencils (eyebrow-); perfumery; perfumes; permanent waving (neutralizers for-); petroleum jelly for cosmetic purposes; polishes (denture-); pomades for cosmetic purposes; powder (make-up-); pumice stone; rose oil; shampoos; shaving preparations; shaving soap; skin care (cosmetic preparations for-); skin whitening creams; slimming purposes (cosmetic preparations for-); soap; soap (antiperspirant-);

soap (cakes of-); soap (deodorant-); soap for foot perspiration; sprays (breath freshening-); strips (breath freshening-); sunscreen preparations; sun-tanning preparations [cosmetics]; talcum powder, for toilet use; terpenes [essential oils]; tissues impregnated with cosmetic lotions; toilet water; toiletries; transfers (decorative-) for cosmetic purposes; varnish (nail-); varnish-removing preparations; waving preparations for the hair; wax (depilatory-).