

O/0507/23

CONSOLIDATED PROCEEDINGS

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. UK00003696697
AND UK00003723689 BY HUMA IRFAN LIMITED
TO REGISTER:**

HUMA

AS A TRADE MARK IN CLASSES 14, 18 & 25

AND

Huma London

AS A TRADE MARK IN CLASSES 3, 9, 14, 18, 21 & 25

AND

**IN THE MATTER OF THE OPPOSITIONS THERETO
UNDER NOS. 429924 AND 431605 BY
PUMA SE**

BACKGROUND AND PLEADINGS

1. On 17 September 2021, Huma Irfan Limited (“the applicant”) applied to register the trade mark ‘HUMA’ (“the applicant’s first mark”) in the UK. On 19 November 2021, the applicant applied to register the trade mark ‘Huma London’ (“the applicant’s second mark”) in the UK. The goods for which the applicant seeks registration under both marks are set out in **Annex 1** to this decision.
2. The applicant’s first and second marks were published for opposition purposes on 8 October 2021 and 3 December 2021, respectively. The applicant’s first mark was opposed on 6 January 2022 (“the ‘924 opposition”) and its second mark was opposed on 3 March 2022 (“the ‘605 opposition”). Both oppositions were brought by PUMA SE (“the opponent”) and are reliant upon sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”).
3. Under the 5(2)(b) and 5(3) grounds of the ‘924 opposition, the opponent relies on the following marks:

Mark:	Reg no.	Filing date	Reg. date	Class(es)
PUMA	801459903	29/11/2018	17/08/2019	9 & 14
	912579728	06/02/2014	30/06/2014	18, 25 & 28
PUMA	1147681	27/01/1981		14
	779443	04/07/1958		25
	874725	25/01/1965		25
	1037791	05/11/1974		18

4. The ‘605 opposition relies on some of the above marks, namely the ‘903, ‘728,¹ ‘443 and ‘725 marks. In addition, the opponent relies on two further marks, being the following:

¹ Under the ‘605 opposition, the opponent relies on classes 18 and 25 only for this mark

Mark:	Reg no.	Filing date	Reg. date	Class(es)
PUMA	1264076	04/04/1986		3
	801470520	04/02/2019	08/11/2019	8, 21 & 26 ²

5. The '903, '728 and '520 marks are comparable marks based on either an earlier EUTM or International Registration designating the EU ("IR"). On 1 January 2021, in accordance with Article 54 of the Withdrawal Agreement between the UK and the European Union, the UK IPO created comparable UK trade marks for all right holders with an existing EUTM or IR. In addition, note that the '903 and '520 marks enjoy priority dates derived from the earlier IRs upon which they were based. These are 6 September 2018 and 26 November 2018, respectively.
6. Under the 5(2)(b) ground of both oppositions, the opponent pleads that as a result of the high degree of similarity between the marks and the similarity of the goods there will be a likelihood of confusion on the part of the public, which includes a likelihood of association.
7. In respect of the 5(3) ground of both oppositions, the opponent claims that its marks all enjoy a significant reputation and that, because the marks at issue are similar, consumers are likely to link them and will, therefore, likely believe that the applicant's marks are connected with or authorised by the opponent. The opponent claims that this is liable to cause injury to the opponent through unfair advantage, detriment to the repute of the opponent's mark and detriment to and dilution of the distinctive character of the opponent's mark.
8. The goods that the opponent relies on under the above grounds are set out in **Annex 2** to this decision.
9. Turning to the 5(4)(a) ground of both oppositions, the opponent relies on the sign 'PUMA', which it claims to have used throughout the UK since at least 1948. The opponent claims that its sign has been used in respect of "clothing, footwear,

² Under the 5(3) ground, the opponent relies on the existence of a reputation in its class 21 goods only

headgear, [sportswear], leather goods, bags, jewellery, watches and accessories.” Under this ground, the opponent claims that its extensive use of its sign gives rise to a cause of action under the law of passing off. This is because the opponent has accrued goodwill in relation to the sign ‘PUMA’ and any use of the applicant’s similar marks for the goods covered would amount to a misrepresentation that would lead the public to believe that the applicant’s goods are those of or connected with the opponent.

10. The applicant filed counterstatements denying the claims made. Upon the filing of the same, the Tribunal confirmed to the parties by way of correspondence dated 19 August 2022 that, in accordance with Rule 62 of the Trade Mark Rules 2008, the oppositions would be consolidated.

11. The opponent is represented by Appleyard Lees IP LLP and the applicant is unrepresented. Both parties filed evidence. No hearing was requested and only the opponent filed written submissions in lieu. This decision is taken following a careful perusal of the papers.

12. 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 on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

EVIDENCE

13. The opponent’s evidence in chief came in the form of two witness statements, the first being that of Ms Desirée Russo dated 17 October 2022. Ms Russo is a Junior Trademark Manager who has been employed by the opponent’s representatives since December 2021. Ms Russo’s statement is accompanied by 15 exhibits, being DR01 to DR15. The second statement is that of Mr Daniel James Bailey dated 19 October 2022. Mr Bailey is a Chartered Trade Mark Attorney and Solicitor at the

opponent's representatives and his statement is accompanied by one exhibit, being DJB01.

14. The applicant's evidence in chief came in the form of the witness statement of Ms Huma Irfan. Ms Irfan is the founder and director of the applicant and her statement is accompanied by 18 exhibits, being HI1 to HI18.

15. I have read all of the evidence and submissions and will refer to points from the same where necessary.

PRELIMINARY ISSUES

16. Having reviewed the applicant's evidence, there are a number of points that I will be required to discuss when making various assessments throughout the course of this decision. That being said, there are some points that I wish to discuss as preliminary issues. I will deal with these in turn below.

Legal right and Human Right of Ms Irfan to use her name

17. The applicant's witness, being its founder and director, Ms Irfan states at paragraph five of her witness statement that she is a British citizen and, under British law, she has the legal right and the Human Right to use her name, being Huma. It is not expressly stated why this argument has been raised but I take it to be in support of claim that, as it is her name, Ms Irfan (or her company) is entitled to have a trade mark registered for it. This point is noted but, as correctly pointed out by the opponent in its submissions, it is of no relevance to these proceedings. These proceedings do not relate to the applicant's right to use its founder's name but, instead, relate to whether the average consumer would be confused when confronted by the marks at issue or whether use of the applicant's marks would cause damage (either under 5(3) or 5(4)(a)) to the opponent's marks. I also note that the applicant has not given rise to a pleaded defence under the 5(3) ground that it had due cause to register the marks at issue. As a result, the issue in respect of Ms Irfan's name is not relevant to the assessments that I must make.

Registered trade marks consisting of the word 'HUMA'

18. The applicant has enclosed in evidence a print-out showing eight trade marks listed as registered on the UK trade marks register that include the word 'HUMA', including a leading British healthcare technology company.³ As was the case above, there is no express reason as to why the applicant has sought to introduce this evidence. While it is not for me to articulate the applicant's arguments, it is possible that this evidence was introduced because (1) the applicant wishes to demonstrate that the opponent did not oppose these marks, (2) that their presence on the register means that the applicants' marks at issue should achieve the same fate or (3) their existence on the register erodes the distinctiveness of the opponent's marks. Either way, the argument holds no weight. The mere existence of these marks as registered trade marks on the UK register is of no consequence to any of the assessments that I am required to make throughout the course of this decision. On this point, I refer to the case of *Zero Industry Srl v OHIM*, Case T-400/06 wherein the General Court ("GC") stated that:

"73. As regards the results of the research submitted by the applicant, according to which 93 Community trade marks are made up of or include the word 'zero', it should be pointed out that the Opposition Division found, in that regard, that '... there are no indications as to how many of such trade marks are effectively used in the market'. The applicant did not dispute that finding before the Board of Appeal but none the less reverted to the issue of that evidence in its application lodged at the Court. It must be found that the mere fact that a number of trade marks relating to the goods at issue contain the word 'zero' is not enough to establish that the distinctive character of that element has been weakened because of its frequent use in the field concerned (see, by analogy, Case T 135/04 *GfK v OHIM – BUS(Online Bus)* [2005] ECR II 4865, paragraph 68, and Case T 29/04 *Castellblanch v OHIM – Champagne Roederer (CRISTAL CASTELLBLANCH)* [2005] ECR II 5309, paragraph 71). "

³ HI14

19. While the applicant has referred to the existence of these marks on the register, there is no evidence of any use in the marketplace. Therefore, their mere existence on the register is of no assistance to the applicant and I will say no more about it.

DECISION

Section 5(2)(b): legislation and case law

20. Section 5(2)(b) of the Act reads as follows:

“(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 or association with the earlier trade mark.”

21. Section 5A of the Act states as follows:

“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.”

22. The trade marks relied on by the opponent qualify as “earlier trade marks” for the purposes of the claimed grounds since they were applied for at an earlier date than the applicant’s marks.⁴ While some of the opponent’s marks had completed their

⁴ See Section 6(1)(a) of the Act

registration processes more than five years before the filing date of the applicant's mark, the applicant did not request that the opponent provide proof of use for its marks. Therefore, the opponent's marks are not subject to proof of use pursuant to section 6A of the Act. This means that the opponent can rely upon all of the goods for which its marks are registered.

23. 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 Office for Harmonization in the Internal Market (Trade Marks and Designs) ("OHIM")*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P 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

24. The competing goods are set out in **Annex 1** and **Annex 2** of this decision.

25. When making the comparison assessing the similarity of the goods or services, all relevant factors relating to the goods in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

“[...] 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”.

26. 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.

27. The General Court (“GC”) confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, that, even if goods are not worded identically, they can still be considered identical if the goods specified in the contested trade mark application are included in a more general category covered by a term under the earlier mark (or vice versa).

28. I have submissions from the opponent in respect of the goods at issue. I do not intend to repeat those submissions here but will, if necessary, refer to them further below. As for the applicant's position, I note that a lot is made of the point that the applicant's brand is inspired by the traditional and cultural heritage of South Asia and the Middle East and that its designs utilise traditional and historical South Asian and Middle Eastern methods.⁵ In addition, the applicant argues that its design philosophy does not include any sports or casual wear like the opponent's sportswear and casual brand and line of products.⁶ I note that the opponent sought to counter this point by filing the evidence of Mr Bailey which included print-outs showing that the opponent's goods can be purchased via the same retailers as South Asian inspired clothing and accessories.⁷ This evidence is noted but it is from after the relevant dates (being 17 September 2021 for the '924 opposition and 19 November 2021 for the '605 opposition) so is of no real assistance here. In any event, I do not consider that it was necessary to file such evidence as, while I appreciate the specific focus of the applicant's brand, this is not apparent from the specifications applied for. For the avoidance of doubt, my assessment of the similarity of the goods is a notional one and I am required to take into account all of the ways in which the marks could be used by reference to the goods for which they are applied for/registered, not the intention or current practice of either party.

29. As evident from the list of goods included in the annexes of this decision, there are a wide range of goods that I am required to consider. Further, there is an overlap between the goods in the specifications of the applicant's marks insofar as they both include goods in classes 14, 18 and 25 (albeit not an identical list of goods). These classes make up the entirety of the goods in the applicant's first mark's specification. Ordinarily, I would deal with the applicant's marks one after the other but given the nature of the overlap, I will consider both marks' class 14, 18 and 25 goods before moving to consider the class 3, 9 and 21 goods of the applicant's second mark.

⁵ HI18

⁶ See paragraph 26 of the witness statement of Ms Irfan

⁷ DJB1

Class 14

30. The specification of the opponent's '903 mark includes the broad term "jewellery, ornaments, precious stones". This means that this mark is protected for all types of jewellery goods. It is my understanding that jewellery covers any type of decorative item that is worn for personal adornment. Not only does this cover items worn on the body such as rings and necklaces but it also covers those worn on clothing such as brooches and cufflinks. I note that the applicant's first mark consists of the following goods:

Shoe jewellery; Shoe jewelry; Fashion jewellery; Jewellery fashioned of precious metals; Jewellery fashioned of cultured pearls; Jewellery fashioned of semi-precious stones; Jewellery fashioned from non-precious metals; Jewellery; Jewellery, including imitation jewellery and plastic jewellery; Ornaments [jewellery]; Costume jewellery; Precious jewellery; Artificial jewellery; Watch bracelets; Bracelets for watches; Jewellery articles; Enamelled jewellery; Imitation jewellery; Jewellery of precious metals; Jewellery in precious metals; Jewellery in semi-precious metals; Jewellery cases of precious metal; Jewellery in non-precious metals; Jewellery stones; Precious stones; Semi-precious stones; Jewellery incorporating precious stones; Jewellery made of precious stones; Articles of jewellery with precious stones; Articles of jewellery with ornamental stones; Cufflinks; Tie bars; Tie pins; Tie clips.

In addition, I note that the applicant's second mark consists of the following goods:

Fashion jewellery; Jewellery fashioned of precious metals; Jewellery fashioned of cultured pearls; Jewellery fashioned of semi-precious stones; Jewellery fashioned from non-precious metals; Jewellery, including imitation jewellery and plastic jewellery; Ornaments [jewellery]; Enamelled jewellery; Shoe jewellery; Imitation jewellery; Costume jewellery; Facial jewellery; Jewellery; Precious jewellery; Artificial jewellery; Jewellery items; Jewellery chains; Body jewellery; Jewellery incorporating pearls; Articles of jewellery; Amulets

[jewellery]; Jewellery brooches; Jewellery articles; Jewellery incorporating diamonds; Charms for jewellery; Items of jewellery; Plastic costume jewellery; Gold jewellery; Jewellery charms; Jewellery products; Jewellery rolls; Articles of imitation jewellery; Jewellery hat pins; Jewellery foot chains; Imitation jewellery ornaments; Body costume jewellery; Jewellery made from gold; Jewellery incorporating precious stones; Synthetic stones [jewellery]; Sterling silver jewellery; Jewellery in non-precious metals; Jewellery made of precious metals; Jewellery made of semi-precious materials; Jewellery made from silver; Jewellery in precious metals; Jewellery made of plastics; Jewellery made of crystal; Jewellery made of glass; Tie bars; Tie pins; Tie clips; Tie bars of precious metals; Tie clips of precious metal; Cuff links and tie clips; Tie-pins of precious metal; Tie chains of precious metal; Tie clasps of precious metals; Cufflinks; Cuff links of precious metal; Cuff links of precious metals with semi-precious stones; Cuff links made of precious metals with precious stones; Hat jewellery; Ornamental hat pins; Hat ornaments of precious metal; Jewelry pins for use on hats;

31. All of the above goods of the applicant are either jewellery goods or precious stones. As such, I find that they are identical to the opponent's "jewellery, ornaments, precious stones". Where they are not self-evidently identical with the opponent's goods, I consider them to be identical under the principle outlined in *Meric* on the basis that the opponent's broader term encompasses the applicant's goods.

32. The applicant's first mark includes the term "precious metals" and while I do not consider that this covers those metals in a jewellery form (on the basis that it could cover goods such as gold bars, for example), I do find that it is similar to "jewellery" and "precious stones" in the '903 mark's specification. This is on the basis that while the nature of a precious stone and a metal is different, there is an overlap in method of use and purpose in that both goods can be purchased simply to display or as an alternative to holding money. The user may also overlap but, where it does not, there may be a competitive relationship between them in that a user may wish to invest in precious metals over precious stones, or vice versa. As for trade

channels, I consider that, even though the producers will differ, it is likely that a retailer of precious stones will also sell precious metals. Overall, I consider that these goods are similar to at least a medium degree.

33. I note that there are goods in the applicant's specifications that may not necessarily be considered either jewellery or precious stones. These include "synthetic precious stones", "imitation precious stones", "natural gem stones" and "artificial gem stones" in the applicant's first mark and "charms for key rings" in the applicant's second mark. Having said that, the opponent's term also includes "ornaments" which is, in my view, broad enough to encompass these goods of the applicant. They are, therefore, identical under the principle outlined in *Meric*. Alternatively, if these goods of the applicant are not considered ornaments then I consider that they will be highly similar to either "precious stones" or "ornaments" in the '903 mark. This is on the basis that while they may differ in nature, they overlap in purpose, method of use, user (or alternatively, may be competitive with each other) and trade channels (I appreciate that a producer of precious stones may not produce the goods of the applicant, however, they are likely to be purchased via the same retailers).

34. While on the topic of jewellery goods, I note that the applicant's specifications included various cases for jewellery, namely "jewellery cases", "jewellery caskets", "jewellery boxes", "presentation boxes for jewellery" and "musical jewelry boxes" in both marks), "leather jewelry boxes", "jewellery boxes", "boxes for cufflinks" and "jewelry boxes" in the first mark and "jewellery boxes of precious metal", "jewellery caskets of precious metal", "boxes for tie-pins", "presentation boxes for jewellery" and "wooden jewellery boxes" in the second mark. While the opponent's marks do not include a direct counterpart for these goods, I consider that they are similar with "jewellery, ornaments, precious stones" in the '903 mark's specification. While the goods differ in nature, method of use and purpose, I consider that they overlap in user and trade channels. This is on the basis that a purchaser of jewellery goods will likely also buy cases for those goods. Further, I consider it likely that these goods are produced by the same undertakings and are purchased through the same retailers. Lastly, I consider that the goods are complementary on the basis

that jewellery is important and indispensable to the applicant's range of jewellery cases and it is likely that the average consumer will believe that the same undertaking is responsible for both types of goods.⁸ Overall, I consider that these goods are similar to a medium degree.

35. The applicant's specifications both include "watches", "watches made of precious metals" and "watches made of precious metals or coated therewith". I note that the applicant's first mark also includes "electronic watches" and "clocks and watches". All of these goods fall within the opponent's broader categories of "mechanic or electric watches for horological purposes, also as day counters, stopwatches, divers' watches" and "clocks" in the '903 mark and "watches, clocks and parts and fittings for all the aforesaid goods" in the '681 mark. These goods are, therefore, identical under the principle outlined in *Meric*.

36. While both of the applicant's marks include "watch boxes" in their specifications, only the first mark includes "presentation boxes for watches" and "cases for watches and clocks" and "cases of precious metals for watches". I note that the '903 mark includes the term "cases and gift containers for watches". The opponent's term is broad enough to encompass the applicant's meaning that these goods are identical under the principle outlined in *Meric*.

37. "Leather watch straps" and "watch straps made of metal or leather or plastic" are goods present in both of the applicant's marks' specifications. "Non-leather watch straps" and "straps for watches" are present in only the specification of the applicant's first mark. I note that the '903 mark expressly includes the terms "watchbands" and "watch straps". The applicant's goods all fall within the opponent's broader categories meaning that they are identical under the principle outlined in *Meric*.

38. The remaining goods to consider in the class 14 goods of the applicant are "leather key rings" in both of its marks' specifications, "leather key fobs" in its first and "key

⁸ *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06

rings [trinkets or fobs]” in its second. I do not consider that these goods are types of jewellery, precious stones, ornaments or watches. I see no obvious level of similarity with these goods and the class 14 goods of the opponent. Having said that, I note that the opponent’s ‘728 mark includes the term “key cases” in class 18. I note that these goods are in different classes but I also note Section 60A(1)(b) of the Act which states that goods are not to be regarded as dissimilar on the ground that they are in different classes. The method of use between these goods differs in that the keys are placed into or onto the goods in different ways, however, I consider that they do overlap in nature somewhat. This is on the basis that both parties’ goods are those that are used to collect and hold a user’s keys. I appreciate that the applicant’s key fobs and key rings can have a decorative purpose but there is nothing preventing the opponent’s term from being decorative also. Even if not, all of these goods’ core purpose is to collect and hold keys meaning that there is a general overlap in purpose. The goods may not necessarily overlap in user as a user may not wish to have a key ring or key fob as well as a key case. However, the goods are clearly competitive as a user will likely choose one over the other. Lastly, I consider that the trade channels that produce and sell these goods will be the same and, if not, the goods will certainly be found on the same shelves in retailers. Overall, I consider that these goods are similar to a medium degree.

Class 18

39. In assessing the parties’ class 18 goods, I believe that I can deal with the opposition against the applicant’s second mark relatively swiftly. This is on the basis that the opponent’s ‘791 mark includes the term “articles included in Class 18 made of leather or of imitation leather”. I consider that such a broad term includes all of those goods contained in both of the applicant’s class 18 specifications, albeit the opponent’s goods will be made of leather or imitation leather. In light of the limitation of the opponent’s goods to just leather/imitation leather only, I am of the view that the applicant’s goods can be said to encompass the opponent’s goods as they are not restricted to use in certain materials. These goods are, therefore, identical under the principle outlined in *Merit*. While it does not affect the outcome of this comparison, I do wish to point out that some of the applicant’s class 18

goods are leather and imitation leather goods meaning that those goods will be self-evidently identical to the opponent's goods.

40. While the above is noted, the '791 mark is not at issue in the opposition against the applicant's first mark and, instead, I must consider the class 18 goods in the opponent's '728 mark. The '728 mark includes the goods "leather and imitations of leather". These are self-evidently identical to "imitation leather" and "synthetic leather" in the applicant's first mark's specification. The latter finding is on the basis that synthetic leather may also be reasonably classified as an imitation of leather, however, failing that, it will be considered a sub-category and will, therefore, still be identical, albeit under the principle outlined in *Meric*.

41. The applicant's first mark's specification includes the term "leather for shoes". This is not the finished product of a shoe but the raw leather material, albeit treated so that it can be used with shoes. In my view, this falls within the broader category of "leather" in the '728 mark meaning that I consider these goods to be identical under the principle outlined in *Meric*.

Fashion handbags; Bags; Leather; Leather bags; Leather cases; Leather pouches; Leather shopping bags; Luggage, bags, wallets and other carriers; Luggage; Travel luggage; Luggage bags; Handbags; Leather briefcases; Leather suitcases; Leather handbags; Leather wallets; Leather purses; Leather boxes; Leather coin purses; Leather bags and wallets; Leather credit card wallets; Wallets; Card wallets; Key wallets; Credit card wallets; purses and wallets; Wallets, not of precious metal; Leather luggage tags; Leather key cases; Labels of leather; Leather shoulder straps; Leather luggage straps; Shoe bags.

42. I have identified a range of goods in the '728 mark that can be said to be identical or highly similar with the above goods that are present in the applicant's first mark. These are as follows:

"Leather and imitations of leather, and goods made of these materials, namely briefcases, bags, bags for clothing, holdalls, weekend bags, multipurpose bags,

all-purpose athletic bags, all-purpose sports bags, work bags, attaché cases, shopping bags [...] handbags, small clutch purses, sling bags [...] belt bags and hip bags, pouches [...] shoe bags [...] shoulder belts and straps [...] luggage tags, Luggage label holders [...] Coin purses, [...] Wallets, Coin purses, Card holders, [...] Briefcases [...] key cases [...] trunks and travelling bags.”

While the above goods of the opponent are leather or imitation leather goods, the applicant's goods are either specifically leather goods themselves or, if not, are not limited to exclude being leather goods and, therefore, can be used in such a way. Where the goods are identical, I consider that they will either be self-evidently so or under the principle outlined in *Meric*. However, where they are not identical, they will be highly similar as they are likely to overlap in nature, method of use, user, purpose and trade channels.

43. “Wallets of precious metal”, “purses of precious metal” and “purses made of precious metal” in the applicant's first mark's specification are goods that are not made of leather. While the '728 mark does contain the same goods, they are made from leather or imitations of leather meaning they cannot be said to be identical to the goods of the applicant. However, I still consider that there is a degree of similarity between them. I see no reason why these goods of the applicant cannot overlap in nature, method of use, purpose, user and trade channels with the opponent's “leather and imitations of leather, and goods made of these materials, namely [...] coin purses, wallets” just because they use different materials. Granted the nature might differ due to the materials used but they are still wallets and purses so there is still some overlap there. Overall, I consider these goods to be similar to a high degree.

44. “Animal apparel” and “apparel for animals” in the applicant's first mark's specification has no counterpart in the '728 mark's class 18 goods. However, I note that the opponent also relies on its class 25 goods in that same mark, being “apparel, footwear, headgear”. As I have discussed above, the fact that goods are in different classes does not mean that they are dissimilar. At their core, I accept that there is some overlap in nature, method of use and purpose on the basis that

they are all clothing goods made from the same materials that will be worn by the wearer in the ordinary way for similar purposes, i.e. to keep warm or for aesthetic purposes. However, the fact that the opponent's goods are worn by humans whereas the applicant's goods are worn by animals means that the degree of overlap between these factors is very limited. I accept that the user will be the same in that someone buying clothing for their pet is also a user of the opponent's broad clothing goods. As for trade channels, I appreciate that some companies may offer clothing for pets and humans alike, however, I have no evidence before me to demonstrate that such a practice is common in the trade. Further, I do not consider that the goods will be sold in the same shops but even if they are (in that a large retailer may sell human clothes and pet clothes, for example), they would not be placed within close proximity of one another. Therefore, I see no overlap in trade channels. Lastly, there is no degree of complementarity or competition between the goods. Overall, I am of the view that the limited nature of the overlaps discussed result in a finding that these goods are similar to a low degree.

45. While "saddlery, whips", "saddlery of leather" and "leather for harnesses", "leather leashes" and "leather leads" in the applicant's first mark's specification are all made of leather, their purpose is to be used on animals. They are not clothing items so the comparison in the preceding paragraph is of no relevance here. Aside from a fleeting overlap in nature in that these goods and the class 18 goods of the '728 mark are all made of leather, I see no obvious levels of similarity between these goods and the goods of the opponent. They are, therefore, dissimilar.

Class 25

46. The class 25 goods in the applicant's first mark's specification are as follows:

Footwear; Parts of clothing, footwear and headgear; Shoes; Fashion hats; Face masks [fashion wear] ; Clothing; Clothes; Headgear; Leather jackets; Leather pants; Leather dresses; Leather coats; Leather headwear; Leather slippers; Leather clothing; Leather waistcoats; Leather shoes; Leather garments; Leather suits; Leather belts [clothing]; Suits of leather; Imitation leather dresses;

Trousers of leather; Clothing of leather; Slippers made of leather; Headwear; Dresses; Underwear; Sandals; Belts [clothing].

The class 25 goods in the applicant's second mark's specification are as follows:

Fashion hats; Face masks [fashion wear] ; Hats; Fur hats; Fake fur hats; Clothing; Leather headwear; Leather dresses; Leather clothing; Leather shoes; Leather garments; Waist belts; Belts for clothing; Belts made of leather; Belts made from imitation leather; Fur muffs; Fur stoles; Clothing made of fur; Gloves including those made of skin, hide or fur; Footwear; Parts of clothing, footwear and headgear; Headwear; Underwear; Shoes; Fascinator hats; Articles of clothing; Socks; Beach clothing; Woolen clothing; Scarves; Neck scarves; Mufflers as neck scarves; Gloves [clothing].

These goods are all different types of clothing and as clothing and apparel are synonyms of the same goods, I find that all of the above goods fall within the very broad term "apparel, footwear, headgear" in the opponent's '728 mark's specification. These goods are, therefore, identical under the principle outlined in *Meric*. In addition (and for the sake of completeness), I note that the opponent's '443 mark includes the term "articles of clothing, none being made of fur". So while this term is also identical under the principle outlined in *Meric* against the majority of goods, it is not identical to those fur related goods. Having said that, I still consider that there is a high degree of similarity between them as they overlap in nature, method of use, purpose, user and trade channels.

47. While it does not necessarily further the opponent's case, I note that, for the sake of completeness, the applicant's footwear goods will be identical with the class 25 goods in the opponent's '725 mark, being "shoes and parts thereof included in Class 25, all for use in sports and athletics". There is nothing in the applicant's specifications that exclude them from being used for sports and athletics meaning that they encompass the more limited goods of the opponent. They are, therefore, identical under the principle outlined in *Meric*.

48. This concludes the comparison in relation to the applicant's first mark so, as above, I will continue with considering the remaining goods in the applicant's second mark.

The applicant's second mark

Class 3

49. The opponent's '076 mark includes the broad terms "cosmetics", "non-medicated toilet preparations" and "perfumes". All of these goods are either self-evidently identical to or encompass the broad range of goods of the applicant meaning that they are identical under the principle outlined in *Meriç*. Given that the applicant's class 3 goods cover almost a full page of terms, I will not reproduce them here but, for the avoidance of doubt, this finding applies to all goods in the class 3 specification of the applicant's second mark.

Class 9

50. "Sunglasses", "fashion sunglasses" in the applicant's specification are either self-evidently identical to or identical under the principle outlined in *Meriç* with "sunglasses" in the specification of the opponent's '903 mark.

51. "Fashion eyeglasses", "fashion spectacles", "frames for spectacles", "cases for spectacles" and "chains for spectacles" in the applicant's specification are either self-evidently identical to or identical under the principle outlined in *Meriç* with "eyeglasses", "spectacle lenses and frames", "spectacle cases" or "spectacle chains" in the specification of the opponent's '903 mark.

52. It is my view that sunglasses are a sub-category of spectacles and, as such, I consider that "sunglasses frames" and "frames for [...] sunglasses" are identical under the principle outlined in *Meriç* with "spectacle lenses and frames" in the applicant's specification. However, if I am wrong to conclude that sunglasses are a subcategory of spectacles, I find that these goods are highly similar. This is on the basis that the nature, method of use, user and trade channels overlap. I

appreciate that, in this scenario, the purpose may differ as the purpose of a spectacle lens or frame is to eventually be worn to enhanced the user's eyesight whereas the opponent's goods will be used to protect from the sun. That being said, I acknowledge that some users of sunglasses will also use them to enhance their sight in the case of prescription sunglasses, for example.

53. Following the same logic discussed in the preceding paragraph, I find that "sunglass cases", "covers for sunglasses", "chains for sunglasses", "cases for [...] sunglasses" and "chains for [...] sunglasses" are identical under the principle of *Meric* with "spectacle cases" and "spectacle chains" in the '903 mark. Again, following the same reasoning above, I make the alternative finding that the goods are similar to a high degree if my conclusion that sunglasses are sub-categories of spectacles is wrong.

54. Lastly, I note that the applicant's mark includes the term "riding hats". By virtue of being in class 9, these goods are protective hats and I consider it reasonable to infer that they are used in the sport of horse racing, dressage or other equestrian activities. I say this because, as far as I understand it, 'riding hats' is not a term used in cycling or motorcycling, for example. Regardless, I consider that these goods fall within the broader category of "protective helmets for motorists and cyclists as well as protective helmets for sports" in the opponent's '903 mark. These goods are, therefore, identical under the principle outlined in *Meric*. Failing that, I find that if the applicant's goods are not used in conjunction with sports, they are similar to a high degree as both terms cover protective headgear. While the purposes may differ and the users may not overlap, I consider that they overlap in nature, method of use and trade channels.

Class 21

55. The applicant's class 21 goods include the terms "cosmetics applicators", "cosmetic sponges", "cosmetic spatulas", "cosmetic brushes", "cosmetics brushes", "applicators for cosmetics", "cosmetic powder compacts" and "make-up sponge". As all of these goods are cosmetic brushes or other types of applicators,

I find that they fall within the broader term of the opponent, being “brushes and applicators” in its ‘520 mark. These goods are, therefore, identical under the principle outlined in *Meric*.

56. “Racks for cosmetics”, “holders for cosmetics” and “dispensers for cosmetics” in the applicant’s specification are all goods that are used as cosmetic containers or holders. While the ‘520 mark has no direct counterpart to these goods, I consider that there is a degree of similarity with these goods and the class 3 goods in the opponent’s ‘076 mark, namely the broad term “cosmetics”. It is my view that although the nature, method of use and purpose for these goods differ, they will overlap in user in that a user of cosmetics is also likely to buy dispensers, racks and holders for the same. The goods are also likely to share trade channels as they will be produced by the same undertakings and are likely to be found in the same or adjoining sections of retailers. Further, they will be complementary on the basis that the cosmetic goods themselves are clearly important and indispensable for holders, racks and dispensers of cosmetics and I consider that the average consumer would believe that one undertaking is responsible for them all. Overall, I consider that there is a medium degree of similarity between these goods.

57. I have found the ‘605 opposition (being against the applicant’s second mark) has identity or similarity with all of the opponent’s goods, however, the same cannot be said in respect of the ‘924 opposition. While I have found that the majority of goods at issue in the applicant’s first mark are identical or similar to the opponents’ marks, I have found goods dissimilar. On this point, I remind myself that some degree of similarity between goods is necessary to engage the test for likelihood of confusion meaning that the 5(2)(b) opposition aimed against those goods must fail.⁹ As such, the ‘924 opposition aimed against the following goods fails:

Class 18: Saddlery, whips; saddlery of leather; leather for harnesses; leather leashes; leather leads.

⁹ *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

The average consumer and the nature of the purchasing act

58. As the case law set out above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods. I must then decide the manner in which these goods are likely to be selected by the average consumer in the course of trade. 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. (as he then was) 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.”

59. I appreciate that some goods will attract a more specialist subset of consumers such as those who purchase the protective headwear goods in the parties' class 9 specifications (such as those who participate in horse racing, for example). That being said, I consider that this subset of consumers still makes up a part of the general public and, therefore, conclude that the average consumers for the parties' goods are members of the general public at large. The goods will all be available via a range of retailers (be that specialist or general) and their online equivalents. In physical stores, the goods will be displayed on shelves and self-selected by the consumer. A similar approach will follow for online sales in that the consumer will select them having viewed images of the goods on a website. As a result, I find that the visual component will dominate the selection process of the goods at issue. Having said that, I do not discount an aural component playing a part as a result of advice from sales assistants or word of mouth recommendations.

60. The range of goods are such that they will inevitably be selected relatively frequently (such as a range of cosmetic items) and relatively infrequently (riding hats and spectacles, for example). Again, the costs of the goods at issue will vary quite considerably from cheap clothing goods such as socks to relatively expensive items such as leather handbags, for example. In respect of the level of attention that the consumer will play, I do not intend to labour over the factors that the consumer will pay for each set out goods but will say that, generally, they will consider things such as materials or ingredients used and fit or compatibility. Based on everything I have said above, it should come as no surprise that I find that the level of attention paid for the goods at issue will vary. For example, low cost clothing or cosmetic goods such as socks or lip gloss will attract a lower degree of attention whereas relatively expensive goods such as leather handbags or perfumery goods will attract a medium degree of attention. As for those class 9 protective goods, they are goods that are important to the safety of the user so will, in my view, require a higher degree of attention. While I accept that it will extend to a higher than medium degree of attention, I do not consider that it will be high.

Comparison of the marks

61. It is clear from *Sabel v Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade 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 trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components.

62. 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.”

63. 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.

64. The respective trade marks are shown below:

The opponent's marks	The applicant's marks
<p style="text-align: center;">PUMA</p> <p style="text-align: center;">(the '903, '728, '076 and '520 marks collectively, "the figurative marks")</p> <p style="text-align: center;">PUMA</p> <p style="text-align: center;">(the 681, 443, 725, 791 marks, collectively, "the word marks")</p>	<p style="text-align: center;">HUMA</p> <p style="text-align: center;">(the applicant's first mark")</p> <p style="text-align: center;">Huma London</p> <p style="text-align: center;">("the applicant's second mark")</p>

65. In respect of the comparison of the marks at issue, I note that I have detailed written submissions from the opponent and comments and evidence from the applicant. I have given consideration to all of these submissions/comments and while I do not intend to reproduce them in full here, I will discuss them where necessary below. Having said that, the applicant has raised a number of issues in its evidence regarding the understanding of 'HUMA' and, as this will inform both the aural and conceptual comparisons, I will deal with this here.

66. In its evidence, the applicant provided arguments regarding the differences between the marks at issue, namely in reliance upon the different meanings of 'HUMA'. I do not intend to go through the entirety of the evidence on this point but, in summary, I note that the applicant argues that the word 'HUMA' is *a bird in*

*Persian mythology similar to the phoenix and believed to bring good luck.*¹⁰ The applicant further argues that 'HUMA' has several other meanings including the name of places/ivers in China, Iran, India and Bulgaria,¹¹ the name of an Iranian airline¹² and the name of an asteroid.¹³ The applicant also argues that due to the size of the South Asian and Middle Eastern population in the UK, this will be well-known across the average consumer base.

67. For the avoidance of doubt, the test that applies to comparisons of marks in proceedings before the Tribunal is that, for an argument such as that put forward by the applicant to be of relevance, I must be satisfied that at least a significant proportion of average consumers in the UK would view, pronounce or understand a mark in a certain way. The simple fact that a mark has a dictionary defined 'British English' meaning does not automatically mean it will be understood by a significant proportion of average consumers. Such an argument needs to be supported by evidence pointing towards the average consumers' understanding, not simply the existence of other meanings. I do not consider that such evidence has been provided in this case. In any event, even if I was satisfied with the applicant's argument as to the meaning and pronunciation of 'HUMA', I do not consider that it is of any assistance. I make this finding on the basis that, regardless of some consumers' understanding of 'HUMA', at least a significant proportion (and, in my view, the majority) of consumers would understand it simply as a made-up or foreign language word with no obvious meaning. If those consumers are confused then I am entitled to find confusion and the position in respect of the remaining consumers that may understand 'HUMA' to be a mythical bird, an asteroid or the Iranian airline (as examples) is not relevant.¹⁴ While I make no determination on the applicant's position, I will proceed on the basis that 'HUMA' will be viewed as

¹⁰ HI2

¹¹ HI12

¹² HI10

¹³ HI9

¹⁴ On this point, see the case of *Comic Enterprises Ltd v Twentieth Century Fox Film Corporation* [2016] EWCA Civ 41 which set out that if a court concludes that a significant proportion of the relevant public is likely to be confused such as to warrant the intervention of the court then it may properly find infringement. Although this was an infringement case, the principle applies equally to opposition reliant upon section 5(2)(b) of the Act.

a mark with no obvious meaning. I will say no more about the arguments put forward by the applicant.

Overall Impression

The applicant's marks

68. The applicant's marks are both word only marks. The first mark is the word 'HUMA' and there are no other elements that contribute to the overall impression of the mark that lies in the word itself. The second mark is the words 'Huma London'. For reasons I will come to discuss below, I find that 'Huma' will play the greater role in the overall impression of the mark with 'London' contributing less.

The opponent's marks

69. The opponent's word marks are made up of the word 'PUMA' which is the only element that contributes to their overall impressions. As for the figurative marks, these are also made up of the word 'PUMA', albeit displayed in a slightly stylised bold typeface. The word 'PUMA' will play the greater role in the overall impression of those marks with the typeface playing a much lesser (but still noticeable) role.

Visual Comparison

70. At paragraph 31 of its written submissions, the opponent states that notional and fair use of the applicant's marks mean that they may be used in the same typeface as that of its figurative marks. The opponent submits that on clothing or footwear, any visual dissimilarities in the H will go entirely unnoticed. In support of such an argument, the opponent refers to its evidence that shows photos of how its marks are displayed on clothes. These are as follows:



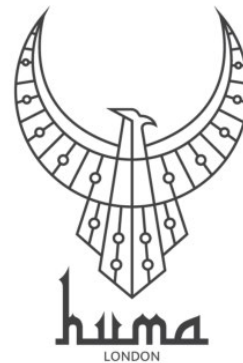
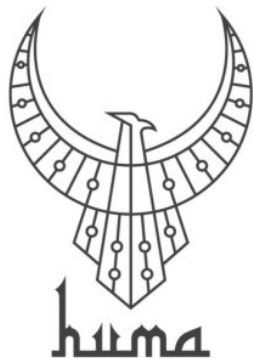
PUMA
Puma X. Silena Gomez sport bra 15



16

71. While the evidence and submissions are noted, I do not consider that two dimensional graphical representations of the above goods are a fair reflection of how the marks will be seen on these goods. While I do agree that the fair and notional use of the applicant's marks covers the use of an identical or similar typeface to that used by the opponent, I do not consider that the difference presented by the letter 'H' will go unnoticed.

72. Another point that I wish to draw attention to is the comments of Ms Irfan in her evidence, namely paragraph 16 of her statement wherein she refers to the 'logo of the Huma brand'. These are displayed in exhibit HI8 of her statement and are as follows:



73. As I have discussed above, the applicant's marks are word only marks. There are no figurative elements in either of the marks at issue so the inclusion of the above devices are not at issue here. They are, therefore, of no assistance to the applicant.

¹⁵ Page 112 of DR07

¹⁶ Page 119 of DR07

Further, I note that the typeface used in the examples shown above is rather striking. While I appreciate that the fair and notional use of word only marks means that they can be used in any standard typeface, I do not consider the typeface used in the logos reproduced above to be standard. Even if it was, it could be said that the opponent's word marks are covered for use in the same typeface also. In addition, use in this typeface does not eliminate all of the other typeface possibilities from the comparison I must make. As was the case with the device elements used, the typefaces used are of no assistance to the applicant. I will now proceed to the actual visual comparison at issue.

The applicant's first mark and the opponent's marks

74. In respect of a comparison with the opponent's word marks, I note that both parties' marks are four letter words that share their second, third and fourth letters, being the letters 'U-M-A'. They differ in the presence of the letter 'H' at the start of the applicant's mark and the letter 'P' at the start of the opponent's marks. While I appreciate that three of the four letters are identical, the point of difference is at the beginning of the marks. On this point, I remind myself that this is where the average consumers tend to focus.¹⁷ Further, even though there is no special test which applies to the comparison of 'short' marks,¹⁸ I am of the view that in the present case the shortness of the marks at issue means that the average consumer is more likely to notice the differences. Taking all of this into account, I find that these marks are similar to a higher than medium (but not high) degree.

75. In respect of the opponent's figurative marks, I remind myself that at paragraph 71 above I found that notional and fair use of the applicant's word only marks may cover the same or similar typeface used. As a result, I consider that the same comparison discussed in the preceding paragraph will apply to these marks also, namely that they are similar to a higher than medium (but not high) degree.

¹⁷ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

¹⁸ See paragraph 44 of *BOSCO*, BL O/301/20

The applicant's second mark and the opponent's marks

76. The same similarities discussed in respect of the applicant's first mark also apply to its second. The only point of difference is the presence of the word 'London' at the end of the applicant's second mark. While I have found that this plays a lesser role in the overall impression of that mark, it will still impact upon the visual comparison of the marks at issue. Taking into account all I have said in the preceding comparison and bearing in mind the additional point of difference, I find that the applicant's second mark is similar to no more than a medium degree with the opponent's marks, be that the word marks or figurative ones.

Aural Comparison

77. I note that the applicant's counterstatement argues that 'HUMA' will be pronounced as 'HOMA'.¹⁹ Following on from my comments at paragraph 67 above, I will give no consideration to this argument and, instead, proceed on the basis that 'HUMA' will be pronounced as 'HYOO-MUH'. This makes up the entirety of the applicant's first mark. Turning to the opponent's marks, they will all be pronounced in the ordinary way, being 'PYOO-MUH'. The second syllables are identical and the first syllables are highly similar. That being said the marks are short marks and their differences come at their beginnings. Taking all of this into account, I consider that the applicant's first mark is similar to between a medium and high degree with the opponent's marks.

78. As for the applicant's second mark, I consider that, regardless of its role in the mark, 'London' will still be pronounced.²⁰ The pronunciation of this element means that the aural component of the applicant's second mark is double in length of the opponent's marks. While noted, this does not entirely extinguish the similarity of the 'HUMA'/'PUMA' elements. Overall, I consider that the applicant's second mark is similar to a medium degree with the opponent's marks.

¹⁹ This is supported by the Wikipedia print-out at H13

²⁰ See *Purity Hemp Company Improving Life as Nature Intended*, Case BL O/115/22 wherein Mr Phillip Harris, as the Appointed Person, found that descriptiveness of an element does not make it aurally invisible.

Conceptual Comparison

79. Conceptually, the opponent's marks will be understood as a reference to a species of large cat. As I have discussed above, I will proceed on the basis that 'HUMA' will be understood as a made-up or foreign language word with no obvious meaning to the average consumer in the UK. In comparing the applicant's first mark with the opponent's marks, I find that they are conceptually dissimilar. This is on the basis that the opponent's marks have a well-known and immediately graspable meaning whereas the applicant's first mark does not.

80. As for the applicant's second mark, the addition of 'London' will simply be seen as an indicator that the goods produced and sold under that mark originate from the city of London. Use of geographical indicators in this way are not uncommon in trade marks and, therefore, it will have very little impact on the concept of the applicant's second mark. Further, it does nothing to inform the meaning of the 'Huma' element which will still be understood as above. Therefore, despite the addition of an understandable element in 'London', these marks will still be conceptually dissimilar.

Distinctive character of the opponent's marks

81. 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).”

82. Registered trade marks possess varying degrees of inherent distinctive character, perhaps lower where a mark may be suggestive or allusive of a characteristic of the goods or services for which it is registered, ranging up to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use made of it. The opponent has claimed that its marks enjoy an enhanced degree of distinctive character through use and has filed evidence to that effect.

83. Before considering the position in respect of enhanced distinctiveness through use, it is necessary to consider the inherent position. While I appreciate that ‘PUMA’ has no allusive or descriptive qualities when considered against the goods at issue, it is a well-known word with an immediately graspable meaning. As a result, I do not consider that its use is particularly remarkable from a trade mark perspective. As a result, I consider that ‘PUMA’ will enjoy a medium degree of inherent distinctive character. In respect of the word only marks, there are no other elements that impact upon the distinctive character of those marks so it follows they are inherently distinctive to a medium degree. As for the figurative marks, I appreciate that the typeface used will be noticed but I do not consider that it will impact upon the distinctiveness of the marks to any degree that would take the level above that which lies in the word ‘PUMA’. As a result, I also find that the figurative marks are inherently distinctive to a medium degree.

84. I turn now to consider whether the evidence filed is sufficient to find that the opponent's marks enjoy an enhanced degree of distinctive character. The opponent's evidence sets out that it has continuously and extensively used its marks in relation to footwear since 1948 and in relation to clothing, headwear, leather goods, bags and accessories since the 1950s. The evidence goes on to confirm that its accessories segment not only consists of bags, balls and sports accessories but also watches, sunglasses, fragrances and cosmetics.

85. In respect of turnover, I note that global, EMEA and UK figures for 2017 to 2021 have been provided. For the purposes of an enhanced distinctive character assessment, it is the UK turnover figures that are relevant. These are as follows:

Year	UK Sales - £ Million
2017	146.1
2018	175.0
2019	179.2
2020	163.3
2021 ²¹	242.1
Total:	905.7

86. While the figures are noted, there is no explanation as to how the above figures are broken down into the subsets of goods that the opponent claims to sell. Having said that, I note that the annual report filed in support of the turnover figures includes a breakdown of sales by product division.²² While this breakdown relates to the global figures, I note that the footwear division has consistently been the opponent's largest product division with apparel coming in second and accessories in third. Again, these are global breakdowns but I see no reason why a similar position would not be applicable to the UK.

²¹ The relevant dates for the present assessment are 17 September and 19 November 2021 meaning that some of the 2021 figures will inevitably fall outside of the relevant period.

²² DR05

87. Further supporting the claim to have used its marks in relation a broad range of goods is a set of print-outs taken from the online archive facility, the Wayback Machine, that show the opponent's goods for sale on various third party retailers' websites.²³ I do not intend to go over each print-out but note the retailing of the opponent's goods via Zalando, Mister Spex,²⁴ Sports Direct and ASOS, amongst others. All of these print-outs are dated at various points prior to the relevant dates in 2021. The print-outs show a wide variety of clothing goods, trainers, bags, hats and sunglasses. In addition, I note that there are some print-outs from September 2022 and, therefore, not reflective of the position as at the relevant dates. These includes a print-out from 'Beauty Outlet' which shows what appears to be a make-up collaboration with Maybelline and print-outs from 'makeup.uk' and 'perfumeshopping.com' that show perfumes, shower gels and deodorants.

88. In support of the size of the opponent's business, the evidence includes an article from an independent source that lists the opponent's 'PUMA' brand as the third largest sportswear brand in the world.²⁵ I note that the article makes reference to its source being statista.com, a website that I understand to be dedicated to tracking statistics of companies. I note that the article discusses the position for 2021 and refers to the opponent's 'main sports product' as being shoes. This latter point supports the evidence discussed at paragraph 86 above which confirms that the opponent's largest product division is shoes.

89. The evidence discusses marketing expenditure. Unlike the turnover figures discussed above, no UK specific figures are provided. Globally, I note that the opponent's marketing spend between 2017 and 2021 was as follows:

Year	Worldwide marketing expenses - € million
2017	822.9
2018	931.2
2019	1,112.1

²³ DR07

²⁴ The Mister Spex print-outs show a number of items without any image loaded. The only images shown are of sunglasses and the website itself includes a write-up regarding sunglasses only.

²⁵ DR06

2020	1,050.2
2021 ²⁶	1,309.1
Total:	5,225.5

90. While the UK figures are not provided, the size of the global marketing spend is such that I consider it reasonable to infer that the opponent incurred a significant expenditure in the UK. Such an inference is supported by the size of the opponent's turnover in the UK (being those reproduced at paragraph 85 above).

91. The evidence includes approximately 90 pages of articles showing 'PUMA's' presence in the UK press.²⁷ I do not intend to go over these in any great detail but note that there are articles that discuss the opponent's 'PUMA' brand in UK-wide publications such as 'Mail Online', 'British Vogue' and 'Evening Standard'. Of these articles, I note that the opponent's presence at London Fashion Week is also discussed. While I have no evidence on this point, it is my understanding that London Fashion Week is a long-established and important event in the fashion industry. I am conscious not to assume that my own understanding on this point is more widespread than it may be, however, I do not consider that is a point that would give rise to any serious point of dispute.²⁸

92. Taking all of the evidence into account, it is clear that the opponent operates an enormous global business that retail in footwear, clothing and accessories such as bags and sunglasses. The UK arm of the opponent's business is also clearly very significant with a turnover of approximately £900 million²⁹ over a five year period. I appreciate that the turnover figures provided are not particularly long standing but the opponent has confirmed that it has been selling 'PUMA' branded footwear since 1948 and 'PUMA' branding clothing since the 1950s. This is clearly representative of a long standing period of use. Further, the turnover for 2017 alone (being the first year for which the figures were provided) was £146.1 million and numbers like

²⁶ As discussed at fn. 18, the relevant dates for the present assessment are 17 September and 19 November 2021 meaning that some of the 2021 expenditure will inevitably fall outside of the relevant period.

²⁷ DR13

²⁸ *Chorkee Ltd v Cherokee Inc.*, Case BL O/048/08

²⁹ Even bearing in mind that some of the 2021 figures are after the relevant period, the turnover is still likely to be in the region of £900 million

these do not simply appear overnight. On that basis and while I have nothing to suggest any exact figures for the preceding years, I am content to conclude they would have been at significant levels for a prolonged period of time. Taking all of this into account, I am content to conclude that the distinctiveness of its marks has been enhanced to a high degree.

93. While that may be the case, I do not consider that this finding extends to all of the goods that remain in issue (being the opponent's goods in classes 3, 9, 14, 18, 21 and 25). I note that the narrative evidence of the opponent states that it sells watches and cosmetic goods and while I appreciate the opponent may sell such goods, the supporting evidence in relation to this point is insufficiently solid in that it either does not show the goods at all or does so by way of print-outs from after the relevant dates. As such, I do not consider it appropriate, regardless of how large the turnover is, to simply infer that the narrative evidence alone is sufficient to find that the opponent has obtained a high degree of distinctive character in relation to the same. Therefore, I see no reason to conclude that the above finding of enhanced distinctiveness applies to the opponent's goods in classes 3 or 14. As for the class 18 goods, I note the presence of a range of bags in the evidence. However, the goods in the opponent's class 18 specifications are specifically made of leather or imitation leather. There are no examples of leather bags in the opponent's evidence. Lastly, I do not consider that sufficient use has been shown in relation to any goods in class 21. For the avoidance of doubt, my finding in respect of an enhanced degree of distinctiveness applies only to the following marks and their respective goods:

The '903 mark

Class 9: Sunglasses.

The '728 mark

Class 25: Apparel, footwear, headgear.

The '443 mark

Class 25: Articles of clothing, none being made of fur.

The '725 mark

Class 25: Shoes and parts thereof included in Class 25, all for use in sports and athletics.

Likelihood of confusion

94. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier marks, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

95. In my goods comparison above, I found the parties' goods to range from being identical to similar to a low degree. I have found the average consumer for the goods to be members of the general public who will select the goods at issue via primarily visual means, although I do not discount an aural component playing a part. I have concluded that the average consumer will, generally, pay a medium degree of attention when selecting the goods at issue but this may be lower for some goods but may also extend to higher than medium (but not high) for others. I have found that the opponent's marks are inherently distinctive to a medium degree but, for those marks reliant upon goods in classes 9 and 25, the distinctiveness has been enhanced to a high degree due to the use made of them.

In respect of the similarity of the marks at issue, I have found the applicant's first mark to be visually similar to a higher than medium (but not high) degree, aurally similar to between a medium and high degree and conceptually dissimilar with the opponent's marks. Additionally, I have found the applicant's second mark to be visually similar to a no more than a medium degree, aurally similar to a medium degree and conceptually dissimilar with the opponent's marks.

96. Taking all of the above into account and bearing in mind the principle of imperfect recollection, I am not convinced that any of the parties' marks would be mistakenly recalled or misremembered for one another. While I appreciate the level of visual and aural similarity between the marks, I consider that the conceptual distinction between a well-known dictionary word and a seemingly made-up or foreign language word with no obvious meaning would clearly be noticed. This conceptual difference will, in view, counteract any visual and aural similarities.³⁰ This is particularly the case given that the marks have a different first letter and, as I have set out above, this is where the average consumer tends to focus. Even taking into account the high degree of distinctive character of 'PUMA', I see no reason why their different beginnings and concepts would be overlooked or misremembered. Consequently, I do not consider there to be any likelihood of direct confusion. For the avoidance of doubt, this finding applies even where the parties' marks are viewed on identical goods and in situations where the average consumers pays a lower degree of attention.

97. Turning now to consider a likelihood of indirect confusion, I am reminded of the case of *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, wherein Mr Iain Purvis Q.C., as the Appointed Person, explained that:

"16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the

³⁰ *The Picasso Estate v OHIM*, Case C-361/04 P

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)".

98. Further, I note the case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, wherein Arnold LJ referred to the comments of James Mellor Q.C. (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at paragraph 16 that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there

must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

99. The opponent’s submissions in respect of a likelihood of indirect confusion are as follows:

“Even if the marks are not directly confused with one another, there is a likelihood of confusion arising from the fact that the average consumer, although aware of the differences between the marks, will nevertheless assume that the goods of the Applicant derive from the Opponent, or at the very least, from economically linked undertakings.”

100. There is no further explanation as to why the average consumer would assume that the goods of the applicant derive from the opponent (or from an economically linked undertaking). This presents a significant problem for the opponent as I do not consider that this case falls within any of the categories set out in *L.A. Sugar* (cited above). Dealing with those categories in turn, I appreciate that the opponent’s use of ‘PUMA’ is highly distinctive due to the use made of it. However, the distinctive character lies in the word as a whole. I do not consider that the shared use of the common letters ‘U-M-A’ is something that the average consumer would believe that only the opponent used. Secondly, I appreciate that the difference created by the applicant’s use of ‘London’ in its second mark is something that may be considered a non-distinctive element, however, this is not the sole point of difference. Instead, the crucial difference between the marks is the applicant’s use of ‘H’ as its first letter against the opponent’s use of ‘P’. While these differences may not be stark from a visual or aural perspective, they are not simply the addition of non-distinctive elements and I see no reason why these are differences that the average consumer would expect to find in a sub-brand or brand extension. Lastly, I see no reason why the alteration of the first letter from a ‘P’ to ‘H’ is entirely logical and consistent with a brand extension. On the contrary, I consider that the alteration of the well-known and distinctive element, ‘PUMA’, to a different and seemingly made-up or foreign language word, ‘HUMA’, is completely illogical and it is my view that the average consumer would reach the same conclusion. Put simply, there is no basis for such an alteration. I appreciate that

the categories set out in *L.A. Sugar* are not exhaustive, however, I have nothing before me in support of any alternative argument. If such an alternative argument existed, it is for the opponent to bring it. Taking all of this into account and bearing in mind the comments from *Liverpool Gin* in the preceding paragraph, I conclude that there is no likelihood of indirect confusion between any of the parties' marks. As was the case above, I consider that this is the case even where the marks are viewed on identical goods and in circumstances where the average consumer may pay a lower degree of attention.

101. As a result of the above, the oppositions reliant upon section 5(2)(b) hereby fail. I will now proceed to consider the remaining grounds of the oppositions.

Section 5(3)

102. Section 5(3) of the Act states:

“5(3) A trade mark which –

is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark.”

103. The relevant case law can be found in the following judgments of the CJEU: *Case C-375/97, General Motors*, *Case 252/07, Intel*, *Case C-408/01, Adidas-Salomon*, *Case C-487/07, L’Oreal v Bellure*, *Case C-323/09, Marks and Spencer v Interflora*, *Case C383/12P, Environmental Manufacturing LLP v OHIM*. The law appears to be as follows:

a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors, paragraph 24*.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors, paragraph 26*.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Salomon, paragraph 29* and *Intel, paragraph 63*.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel, paragraph 42*

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

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel, paragraphs 76 and 77* and *Environmental Manufacturing, paragraph 34*.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel*, paragraph 74.


(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV*, paragraph 40.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the holder of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

104. Before proceeding, it is necessary to point out that as the opponent's '903, '728 and '520 marks are either comparable marks based on a pre-existing EUTM or International Registrations designated the EU, use of the same in the EU prior to IP Completion Day (being 31 December 2020) is relevant to the assessment of the existence of a reputation. That being said, I do not consider this to be of any real relevance here. This is because, as per the case of *Pago International GmbH v Tirolmilch registrierte GmbH*, Case C-301/07, an EU trade mark may be considered to have a reputation if it is known by a substantial part of the territory of the European Community and that the territory of a single Member State alone may be considered as satisfying that requirement. Further, I note the case of *Whirlpool*

Corporations and others v Kenwood Limited [2009] ETMR 5 (HC), wherein Geoffrey Hobbs Q.C. confirmed that when assessing reputation in the EU, the UK is a substantial part of the same. While these cases were determined prior to the UK's departure from the EU, they remain relevant insofar as use in the EU is a relevant factor.

105. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that its marks and the applicant's marks are similar. Secondly, the opponent must show that its marks have achieved a level of knowledge/reputation amongst a significant part of the public. Thirdly, it must be established that the level of reputation and the similarities between the marks will cause the public to make a link between them, in the sense of the earlier marks being brought to mind by the later mark. Finally, assuming the first three conditions have been met, section 5(3) requires that one or more of the types of damage will occur. It is unnecessary for the purposes of section 5(3) that the goods be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

106. Under its 5(3) ground, the opponent relies on the same marks and same goods as it did under its 5(2)(b) ground. For the sake of completeness, those marks are the word only marks, being 'PUMA', and the figurative marks, being . As for the goods relied upon, these are reproduced in full in **Annex 2** of this decision.

107. When assessing the enhanced distinctive character of the opponent's marks, I undertook an assessment of the evidence filed. I rely on that same assessment for the present ground and a summary of the evidence can be found at paragraphs 84 to 92 above. I do not intend to reproduce that evidence here but remind myself that the opponent has been operating its shoe business since 1948 and its clothing business since the 1950s. Further, the UK turnover for 2017 to 2021 stood at £905 million and its global advertising spend for that same period was over €5 billion (albeit no UK specific figures are provided but I consider it reasonable to infer a significant spend existed in the UK for this period). I also note the availability of a range of the opponent's goods via UK-wide third party retailers such as ASOS,

Selfridges and Sports Direct. Lastly, I note the presence of the opponent's marks across a range of UK-based press coverage. Taking all of this into account, I am content to conclude that the opponent has demonstrated that its marks enjoy a very strong reputation in the UK. As was the case for my distinctive character assessment above, this finding only applies to the following goods:

The '903 mark

Class 9: Sunglasses.

The '728 mark

Class 25: Apparel, footwear, headgear.

The '443 mark

Class 25: Articles of clothing, none being made of fur.

The '725 mark

Class 25: Shoes and parts thereof included in Class 25, all for use in sports and athletics.

Link

108. As noted above, my assessment of whether the public will make the required mental 'link' between the marks must take account of all relevant factors. The factors identified in *Intel* are:

The degree of similarity between the conflicting marks.

109. I have found the applicant's first mark to be visually similar to a higher than medium (but not high) degree, aurally similar to between a medium and high degree and conceptually dissimilar to the opponent's marks. As for the applicant's second mark, I have found it to be visually similar to no more than a medium degree, aurally similar to a medium degree and conceptually dissimilar to the opponent's marks.

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

110. I have undertaken a full goods comparison above. However, that comparison was made in respect of the entirety of the opponents' specifications. Under the current ground, the opponent has only demonstrated a reputation in respect of some goods. Inevitably, this results in different outcomes than those which were reached during the 5(2)(b) goods comparison. Where the applicant's goods were found identical or similar to the opponent's reputed goods, the same findings will apply here. However, for the remainder of the applicants' goods, I am of the view that regardless of any specific level of similarity, the nature of the applicant's goods is such that there is a degree of closeness between them and the reputed goods of the opponent. This is on the basis that the relevant public concerned with the goods may consider there to be an association between them insofar as they are all general consumer goods aimed at the same section of the relevant public. Further, even where they are not found in the same sections of shops, the relevant public will understand that the producers and retailers of the goods at issue will overlap to some degree.

The strength of the earlier mark's reputation

111. The opponent's marks have a very strong reputation in the UK in relation to some goods only.

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

112. I have found above that the inherent distinctive character of the opponent's marks is medium. I have found that this has been enhanced through use to a high degree in respect of the same goods that have accrued a reputation.

Whether there is a likelihood of confusion

113. I have found there to be no likelihood of confusion.

Conclusion on link

114. The opponent's pleaded case is that, as the marks are highly similar, consumers are likely to link the parties' marks and are also likely to believe, incorrectly, that goods marketed under the applicant's marks are connected with or authorised by the opponent. It is my view that the opponent's case hinges on there being an economic connection between the marks. I have found this not to be the case and, as such, even taking into account the strength of the opponent's reputations, I conclude that there will be no such connection between the marks at issue. Even without the need for the existence of an economic connection between the marks, I do not consider that the relevant public would make a link between them, regardless of what goods the applicant's marks are displayed on. Notwithstanding the fact that both parties' marks share the letters 'U-M-A', the different first element and the marks' different concepts are sufficient to prevent the consumer from linking them. Even taking into account the strength of the opponent's reputation, I remind myself that this lies in the word 'PUMA' as a whole and will not be dissected to the point where any shared use of the letter string 'UMA' will be automatically linked to the opponent. I see no reason why the relevant public would, upon being confronted by a seemingly made-up or foreign language word in 'HUMA' bring to mind a different (albeit visually and aurally similar) highly distinctive and reputed word that carries its own distinct and separate meaning.

115. If I am wrong to conclude as I have above, I make an alternative finding that the strength of the opponent's reputation and distinctiveness of its marks would cause another (also) significant proportion of the relevant public to call 'PUMA' to mind upon being confronted with the applicant's marks. This would be on the basis that the mere sight of a mark that includes a reference to a similar looking and sounding word to 'PUMA' would trigger a mental association with the opponent's marks in

the thought process of those consumers.³¹ That being said, I consider that this only applies to those goods listed at paragraph 107 above. I will, therefore, proceed to consider damage for those goods, premised on my alternative finding of a mental link arising.

Damage

116. The opponent has pleaded that use of the applicant's marks would, without due cause, take unfair advantage of the reputation of the opponent's marks and/or be detrimental to the distinctive character or reputation of the opponent's marks I will deal with each head of damage in turn below.

Unfair Advantage

117. Unfair advantage can be taken of an earlier mark where there is no likelihood of confusion between it and the later mark. In these circumstances, the unfair advantage is usually the result of the transfer of the image of the earlier mark, or of the characteristics it projects, to the goods/services identified by the later mark. This is often argued to apply in look-alike trade mark cases where there is clear blue water between the word elements of the marks,³² or cases where the respective goods/services are dissimilar, but use of the later mark is still capable of unfairly exploiting the reputation of the earlier mark.³³

118. I do not doubt that the opponent enjoys a strong reputation in its reputed goods, however, I am not convinced that use of the applicant's marks would free-ride on the coat-tails of the reputation and/or prestige associated with the opponent's marks. Neither do I consider that the applicant would illegitimately benefit from the opponent's marks simply by using the conceptually distinct, albeit similar, word 'HUMA'.

³¹ The degree of similarity required to create a link between the marks may be less than that required to create a likelihood of confusion: *Intra-Press SAS v OHIM*, CJEU, Joined Cases C-581/13P & C582/13

³² *Lonsdale Sports Limited v Erol*, [2013] EWHC 2956 (Ch)

³³ *Claridges Hotel Limited v Claridge Candles Limited and Anor*, [2019] EWHC 2003 (IPEC)

119. The dominant and distinctive element of the opponent's marks is the word 'PUMA'. It is this element that will, in my view, be considered the attractive force of the opponent's business operations. I am of the view that in order to free-ride on the opponent's marks, there must be something in the applicant's marks that the relevant public would consider as something that takes an unfair advantage of a perceived connection with 'PUMA'. While I accept that 'HUMA' share similarities with 'PUMA', it is not something that I consider as sufficient to give rise to an unfair advantage via a commercial advantage in favour of the applicant or exploitation of the marketing efforts of the opponent. I do not consider that the reputation enjoyed by the opponent's marks will transfer onto the applicant's marks simply due to the shared use of the letters 'U-M-A'

Detriment to reputation

120. In *Unite The Union v The Unite Group Plc* , Case BL O/219/13, Ms Anna Carboni as the Appointed Person considered whether a link between an earlier mark with a reputation and a later mark with the mere potential to create a negative association because of the identity of the applicant or the potential quality of its goods/services was sufficient to found an opposition based on detriment to reputation. She said:

"46. Indeed, having reviewed these and other opposition cases, I have not found any in which the identity or activities of the trade mark applicant have been considered in coming to a conclusion on the existence of detriment to repute of an earlier trade mark. I can understand how these matters would form part of the relevant context in an infringement case, but I have difficulty with the notion that it should do so in an opposition. After all, many, if not most, trade mark applications are for trade marks which have not yet been used by the proprietor; some are applied for by a person or entity that intends to license them to a third party rather than use them him/itself; and others are applied for by an entity that has only just come into existence.

47. I do not exclude the possibility that, where an established trading entity applies to register a mark that it has already been using for the goods or services to be covered by the mark, in such a way that the mark and thus the trader have already acquired some associated negative reputation, perhaps for poor quality goods or services, this fact might be taken into account as relevant “context” in assessing the risk of detriment to repute of an earlier trade mark. Another scenario might be if, for example, a trade mark applicant who was a known Fascist had advertised the fact prior to the application that he was launching a new line of Nazi memorabilia under his name: I can see how that might be relevant context on which the opponent could rely if the goods and services covered by the application appeared to match the advertised activities. But I would hesitate to decide an opposition on that basis without having had confirmation from a higher tribunal that it would be correct to take such matters into account.”

121. The opponent argues that if the applicant’s marks are used, the opponent will have no quality control over the goods and cannot, therefore, maintain control of its reputation. In my view, the opponent’s case on detriment to reputation is entirely speculative. There is no evidence that the applicant has already acquired a negative reputation and there is nothing inherent in the marks or the goods applied for which would be likely to damage the reputation of the opponent’s marks. This head of damage is dismissed.

Detriment to distinctive character

122. In *Environmental Manufacturing LLP v OHIM*, Case C-383/12P, the CJEU stated that:

“34. According to the Court’s case-law, proof that the use of the later mark is, or would be, detrimental to the distinctive character of the earlier mark requires evidence of a change in the economic behaviour of the average consumer of the goods or services for which the earlier mark was registered, consequent on the use of the later mark, or a serious likelihood that such a change will occur

in the future (*Intel Corporation*, paragraphs 77 and 81, and also paragraph 6 of the operative part of the judgment)”.

It went on:

“42. Admittedly, Regulation No 207/2009 and the Court’s case-law do not require evidence to be adduced of actual detriment, but also admit the serious risk of such detriment, allowing the use of logical deductions.

43. None the less, such deductions must not be the result of mere suppositions but, as the General Court itself noted at paragraph 52 of the judgment under appeal, in citing an earlier judgment of the General Court, must be founded on ‘an analysis of the probabilities and by taking account of the normal practice in the relevant commercial sector as well as all the other circumstances of the case’.³⁴

123. The opponent argues that the applicant’s use of its highly similar marks in the same field will inevitably impair the ability of opponent’s marks to identify the goods for which they are registered. Further, the opponent argues that the distinctive character of its marks will be diluted through genericide and will lose their ability to function as trade marks. While this argument is noted, the opponent has not proven that a bringing to mind of its marks would result in a change in the economic behaviour of the average consumer of the goods in the opponent’s marks’ specifications. Nor has it proven that there is a serious likelihood that this would happen. I appreciate that there is an element of similarity between the marks from a visual and aural perspective but I consider that they are, on the whole, too different for this to be a real risk. As such, I do not consider that the ability of the consumer to designate the origin of the opponent’s goods will be weakened due to the presence of the applicant’s marks. Instead, I conclude that the relevant public

³⁴ See also *32Red Plc v WHG (International) Limited and others* [2011] EWHC 665 (Ch) at [133], in which the judge held that a change in consumers’ economic behaviour could be inferred from the inherent probabilities of the situation and para. 137 of - *Ziff Management Europe Ltd v Och Capital LLP* [2011] F.S.R. 11 (HC).

would be able to correctly designate the origin of each parties' goods thanks to the distinct conceptual impressions of the marks at issue.

124. Given my findings above, the opposition under the 5(3) ground fails in its entirety. I will now move to consider the 5(4)(a) ground.

Section 5(4)(a)

125. Section 5(4)(a) of the Act reads as follows:

“(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented-

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

(aa)

(b)

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an “earlier right” in relation to the trade mark.”

126. Subsection (4A) of Section 5 states:

“(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application.”

Goodwill

127. For the same reasons given above when assessing enhanced distinctive character and reputation, I am satisfied that, as at the relevant dates (being the date of the applications at issue) the opponent had a very strong level of goodwill in relation to its business in some of its goods, namely “clothing, footwear, headgear, [sportswear]” and “bags”,³⁵ of which the sign ‘PUMA’ was distinctive. I am not satisfied that there was a substantial goodwill in relation to the remaining goods, being “leather goods”, “jewellery”, “watches” and “accessories”.

Misrepresentation

128. For essentially the same reasons as given at paragraphs 96 to 100 above (being my likelihood of confusion assessment), there will be no misrepresentation.³⁶ The differences in the impressions created by ‘PUMA’ and ‘HUMA’ are too great for the relevant public to believe that the contested goods are those of the opponent, despite the strong reputation of the earlier sign, even for identical goods. Similarly, although the letters ‘U-M-A’ are replicated in the later marks of the applicant, the reputation does not lie in these letters and the relevant public is unlikely to be deceived into thinking that use of these letters following different first letters would indicate that the goods are those of the opponent. Any similarity attributed to the use of the letters ‘U-M-A’ in the opponent’s marks will not result in the mistaken belief that the contested marks are a further development of the opponent’s brands. The 5(4)(a) ground is not made out and, therefore, fails.

CONCLUSION

129. The oppositions have failed in their entirety and, subject to any appeal, the applicant’s marks may proceed to registration for all of the goods applied for.

³⁵ As discussed at paragraph 93 of this decision, the opponent failed to demonstrate use for its range of leather bags. This was solely due to the distinction between leather and non-leather bags. Under the present ground, the opponent relies on “bags” at large and, as discussed above, there are many examples of different types of bags in the evidence, hence the conclusion here of an existence of goodwill for such goods.

³⁶ As recognised by Lewinson L.J. in *Marks and Spencer PLC v Interflora*, [2012] EWCA (Civ) 1501, the test for misrepresentation is different to that for likelihood of confusion, though it is doubtful whether the difference between the legal tests will produce different outcomes.

COSTS

130. The applicant has been successful and, in the ordinary course of these proceedings, would be entitled to a contribution towards its costs. However, the applicant is unrepresented meaning that, in order to claim its costs, it is required to file a completed costs pro-forma. It did not do so. I note that a blank costs pro-forma was provided to the applicant under the cover of a letter from the Tribunal dated 9 February 2023. I also note that this letter set out that:

“If the pro-forma is not completed and returned, costs, other than official fees arising from the action (excluding extensions of time), may not be awarded.”

131. As no costs pro-forma was filed and the applicant incurred no official fees arising from this action, I make no order as to costs. Both parties are hereby ordered to bear their own costs of these proceedings.

Dated this 1st day of June 2023

**A COOPER
For the Registrar**

Annex 1

The applicant's first mark

Class 14

Shoe jewellery; Shoe jewelry; Fashion jewellery; Jewellery fashioned of precious metals; Jewellery fashioned of cultured pearls; Jewellery fashioned of semi-precious stones; Jewellery fashioned from non-precious metals; Jewellery; Jewellery, including imitation jewellery and plastic jewellery; Ornaments [jewellery]; Costume jewellery; Precious jewellery; Artificial jewellery; Jewellery cases; Jewellery caskets; Jewellery boxes; Presentation boxes for jewellery; Leather key rings; Leather jewelry boxes; Leather watch straps; Leather key fobs; Non-leather watch straps; Watches; Watch bracelets; Electronic watches; Bracelets for watches; Clocks and watches; Straps for watches; Presentation boxes for watches; Cases for watches and clocks; Watches made of precious metals; Jewellery boxes and watch boxes; Cases of precious metals for watches; Watch straps made of metal or leather or plastic; Watches made of precious metals or coated therewith; Jewellery articles; Enamelled jewellery; Imitation jewellery; Precious metals; Jewellery of precious metals; Jewellery in precious metals; Jewellery in semi-precious metals; Jewellery cases of precious metal; Jewellery in non-precious metals; Jewellery stones; Precious stones; Synthetic precious stones; Imitation precious stones; Semi-precious stones; Natural gem stones; Artificial gem stones; Jewellery incorporating precious stones; Jewellery made of precious stones; Articles of jewellery with precious stones; Articles of jewellery with ornamental stones; Cufflinks; Boxes for cufflinks; Tie bars; Tie pins; Tie clips; Watch boxes; Jewelry boxes; Musical jewelry boxes.

Class 18

Fashion handbags; Bags; Animal apparel; Saddlery, whips and apparel for animals; Leather; Leather bags; Imitation leather; Leather briefcases; Leather suitcases; Synthetic leather; Leather handbags; Leather wallets; Leather purses; Leather boxes; Leather leashes; Leather leads; Leather cases; Leather pouches; Leather shopping bags; Leather shoulder straps; Leather luggage tags; Leather key cases; Labels of leather; Leather luggage straps; Leather coin purses; Saddlery of leather; Leather for

shoes; Leather for harnesses; Leather bags and wallets; Leather credit card wallets; Wallets; Card wallets; Key wallets; Credit card wallets; Handbags, purses and wallets; Luggage, bags, wallets and other carriers; Luggage; Travel luggage; Luggage bags; Wallets of precious metal; Purses of precious metal; Purses made of precious metal; Wallets, not of precious metal; Shoe bags.

Class 25

Footwear; Parts of clothing, footwear and headgear; Shoes; Fashion hats; Face masks [fashion wear] ; Clothing; Clothes; Headgear; Leather jackets; Leather pants; Leather dresses; Leather coats; Leather headwear; Leather slippers; Leather clothing; Leather waistcoats; Leather shoes; Leather garments; Leather suits; Leather belts [clothing]; Suits of leather; Imitation leather dresses; Trousers of leather; Clothing of leather; Slippers made of leather; Headwear; Dresses; Underwear; Sandals; Belts [clothing].

The applicant's second mark

Class 3

Cosmetics; Milks [cosmetics]; Creams (Cosmetic -); Cosmetic soaps; Cosmetic pencils; Nail cosmetics; Functional cosmetics; Moisturisers [cosmetics]; Skincare cosmetics; Cosmetic powder; Eye cosmetics; Cosmetic preparations; Cosmetics preparations; Cosmetic creams; Multifunctional cosmetics; Cosmetic kits; Cosmetic rouges; Cosmetic moisturisers; Cosmetic masks; Cosmetic oils; Hair cosmetics; Mousses [cosmetics]; Decorative cosmetics; Colour cosmetics; Lip cosmetics; Organic cosmetics; Skin balms [cosmetic]; Cosmetic bath salts; Cleansing creams [cosmetic]; Body paint (cosmetic); Cosmetic massage creams; Cosmetic eye gels; Cosmetic hand creams; Facial washes [cosmetic]; Cosmetic facial lotions; Facial masks [cosmetic]; Cosmetic facial packs; Body scrubs [cosmetic]; Facial gels [cosmetics]; Cosmetic body mud; Cosmetic face powders; Skin care cosmetics; Nail hardeners [cosmetics]; Moisturising concentrates [cosmetic]; Powder compacts [cosmetics]; Skin creams [cosmetic]; Nail primer [cosmetics]; Facial creams [cosmetics]; Facial lotions [cosmetic]; Cosmetic sunscreen preparations; Cosmetic facial masks; Cosmetic nail preparations; Lip stains [cosmetics]; Cosmetic skin enhancers; Body creams [cosmetics]; Lip protectors [cosmetic]; Facial cleansers

[cosmetic]; Skin masks [cosmetics]; Night creams [cosmetics]; Nail tips [cosmetics]; Nail paint [cosmetics]; Toning creams [cosmetic]; Moisturising gels [cosmetic]; Skin fresheners [cosmetics]; Cosmetic nourishing creams; Face wash [cosmetic]; Facial scrubs [cosmetic]; Cosmetic suntan lotions; Face packs [cosmetic]; Smoothing emulsions [cosmetics]; Cosmetic mud masks; Facial moisturisers [cosmetic]; Cosmetic-impregnated tissues; Facial toners [cosmetic]; Lip coatings [cosmetic]; Skin cleansers [cosmetic]; Skin toners [cosmetic]; Cosmetic skin fresheners; Henna [cosmetic dye]; Body care cosmetics; Facial creams [cosmetic]; Cosmetic suntan preparations; Facial packs [cosmetic]; Beauty care cosmetics; Cosmetic hair lotions; Cosmetic body scrubs; Make-up removers; Make-up preparations; Make-up powder; Make-up removing lotions; Make up removing preparations; Perfumes; Perfumed creams; Perfume oils; Perfumed powder; Perfumed soaps; Fragrances; Body fragrances; Make-up; Make-up primer; Make-up foundations; Make-up kits; Make-up removing preparations.

Class 9

Sunglasses; Fashion sunglasses; Sunglass cases; Sunglasses frames; Covers for sunglasses; Chains for sunglasses; Cases for spectacles and sunglasses; Frames for spectacles and sunglasses; Fashion eyeglasses; Fashion spectacles; Chains for spectacles and sunglasses; Riding hats.

Class 14

Fashion jewellery; Jewellery fashioned of precious metals; Jewellery fashioned of cultured pearls; Jewellery fashioned of semi-precious stones; Jewellery fashioned from non-precious metals; Jewellery, including imitation jewellery and plastic jewellery; Ornaments [jewellery]; Enamelled jewellery; Shoe jewellery; Imitation jewellery; Costume jewellery; Facial jewellery; Jewellery; Precious jewellery; Artificial jewellery; Jewellery items; Jewellery chains; Body jewellery; Jewellery incorporating pearls; Articles of jewellery; Amulets [jewellery]; Jewellery brooches; Jewellery cases; Jewellery caskets; Jewellery articles; Jewellery incorporating diamonds; Wooden jewellery boxes; Charms for jewellery; Items of jewellery; Plastic costume jewellery; Gold jewellery; Jewellery charms; Jewellery boxes; Jewellery products; Jewellery rolls; Articles of imitation jewellery; Jewellery hat pins; Jewellery foot chains; Imitation

jewellery ornaments; Body costume jewellery; Jewellery made from gold; Jewellery incorporating precious stones; Synthetic stones [jewellery]; Sterling silver jewellery; Jewellery boxes of precious metals; Jewellery in non-precious metals; Jewellery made of precious metals; Jewellery caskets of precious metal; Jewellery made of semi-precious materials; Jewellery made from silver; Jewellery in precious metals; Jewellery made of plastics; Jewellery made of crystal; Jewellery made of glass; Tie bars; Tie pins; Tie clips; Boxes for tie-pins; Tie bars of precious metals; Tie clips of precious metal; Cuff links and tie clips; Tie-pins of precious metal; Tie chains of precious metal; Tie clasps of precious metals; Watches; Watch boxes; Leather watch straps; Watches made of precious metals; Jewellery boxes and watch boxes; Watch straps made of metal or leather or plastic; Watches made of precious metals or coated therewith; Cufflinks; Boxes for cufflinks; Cuff links of precious metal; Cuff links of precious metals with semi-precious stones; Cuff links made of precious metals with precious stones; Hat jewellery; Ornamental hat pins; Hat ornaments of precious metal; Jewelry pins for use on hats; Presentation boxes for jewellery; Musical jewelry boxes; Leather key rings; Charms for key rings; Key rings [trinkets or fobs].

Class 18

Cosmetic purses; Cosmetic bags; Fashion handbags; Saddlery; Saddlery of leather; Clothing for animals; Leashes for animals; Harnesses for animals; Leads for animals; Bags for clothes; Leather briefcases; Leather suitcases; Leather straps; Leather bags; Leather handbags; Leather wallets; Leather purses; Leather boxes; Leather leashes; Leather leads; Leather cases; Leather pouches; Leather luggage tags; Leather key cases; Labels of leather; Leather luggage straps; Leather coin purses; Belts (Leather shoulder -); Pouches of leather; Leather shoulder belts; Imitation leather bags; Leather for shoes; Boxes of leather; Belt pouches; Saddle belts; Belt bags; Shoulder belts; Belt bags and hip bags; Bags; Travel bags; Shoe bags; Luggage bags; Makeup bags; Handbags; Clutch handbags; Handbags, purses and wallets; Handbags made of leather; Purses made of precious metal; Wallets; Card wallets; Key wallets; Credit card wallets; Leather bags and wallets; Wallets of precious metal; Luggage, bags, wallets and other carriers; Artificial fur bags; Articles of clothing for horses; Articles of luggage; Wallets incorporating RFID blocking technology ; Key cases; Key bags; Key pouches.

Class 21

Cosmetics applicators; Cosmetic sponges; Cosmetic spatulas; Cosmetic brushes; Cosmetics brushes; Holders for cosmetics; Dispensers for cosmetics; Applicators for cosmetics; Cosmetic powder compacts; Racks for cosmetics; Make-up sponges.

Class 25

Fashion hats; Face masks [fashion wear] ; Hats; Fur hats; Fake fur hats; Clothing; Leather headwear; Leather dresses; Leather clothing; Leather shoes; Leather garments; Waist belts; Belts for clothing; Belts made of leather; Belts made from imitation leather; Fur muffs; Fur stoles; Clothing made of fur; Gloves including those made of skin, hide or fur; Footwear; Parts of clothing, footwear and headgear; Headwear; Underwear; Shoes; Fascinator hats; Articles of clothing; Socks; Beach clothing; Woolen clothing; Scarves; Neck scarves; Mufflers as neck scarves; Gloves [clothing].

Annex 2

The '903 mark

Class 9

Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signaling, checking [supervision], life-saving and teaching apparatus and instruments; apparatus for the recording, transmission or reproduction of sound and images; audio amplifiers; audio speakers; electronic docking stations for use with electronic book readers, tablet computers, MP3 players, MP4 players, cellular phones, smart phones and smart watches; camcorders; computer software; mobile telephone software; downloadable software in the nature of a mobile applications, for processing images, graphics, audio, video, numbers and text as well as for sending and receiving of electronic messages, graphics, images, audio and audio visual content; downloadable software in the nature of a mobile applications for creating, recording, managing, editing, organizing, uploading, downloading, accessing, viewing, posting, displaying, tagging, modifying, transferring, linking, storage and use of data and information; Computer software for personal information management, and data synchronization software; sensors for determining distance, acceleration, timing, and pressure for communicating sport, fitness, and activity data to electronic devices; pedometers; receivers used for capturing fitness data from a sensor, namely, time, distance, pace, and calories burned; electronic monitoring devices incorporating microprocessors, digital display, and accelerometers, for detecting, storing, reporting, monitoring, uploading and downloading sport, fitness training, and activity data to the internet, and communication with gaming consoles and personal computers, regarding time, pace, speed, steps taken, athletic skill, calories burned, heart and body rate, global positioning, direction, distance, altitude, navigational and weather information; computer and cellular phone software for fitness and weight management; computer and cellular phone software for use with video game consoles; cases, straps, wrist and arm bands for electronic monitoring devices; electronic monitoring devices incorporating indicators that light up and change color based on wearer's cumulative activity level; telephones; video telephones; cellular phones; smart phones; cables for

cellular phones; straps and ribbons for cellular phones; holders adapted for cellular phones; headphones; stereo headphones; in-ear headphones; stereo boxes; loudspeakers; connecting apparatus and chargers for mobile and handheld mobile digital devices; parts and fittings for cellular phones included in this class; covers, cases and bags adapted for cellular phones, tablet computers and laptops; covers for cellular phones made of fabric or other textile materials; batteries; rechargeable batteries; chargers; USB chargers; hands frees kits and snap on cases adapted for cellular phones and tablet computers; audio docking stations; screen protective films adapted for cellular phones and table computers and portable speakers; MP3 players; Personal Digital Assistants (PDAs); portable computers; portable media players; smart watches; tablet computers; electronic notebooks; wearable computers; wearable smart phones; wearable watches; wearable telecommunication apparatus; wearable communications devices in the form of wristwatches; downloadable mobile applications for use with wearable computer devices; wearable digital electronic communication devices; wearable computer peripherals; peripherals for mobile devices; wearable peripherals for mobile devices; sunglasses; eyeglasses; spectacle lenses and frames; spectacle cases; contact lenses; spectacle chains; clothing for protection against accidents, including footwear; clothing especially made for rescue purposes face-protection shields, protective eyewear and masks; helmets, including protective helmets for motorists and cyclists as well as protective helmets for sports; special containers (cases, sheaths, housings), adapted to the apparatus and instruments included in this class; signaling whistles; respiratory devices for divers; photo and photo-reporter bags included in this class; mouse pads; watches that communicate data to personal digital assistants, smart phones, table PCs, PDAs, and personal computers through internet websites and other computer and electronic communication networks; watchbands that communicate data to personal digital assistants, smart phones, table PCs, PDAs, and personal computers through internet websites and other computer and electronic communication networks; bracelets that communicate data to personal digital assistants, smart phones, table PCs, PDAs, and personal computers through internet websites and other computer and electronic communication networks.

Class 14

Precious metals and their alloys; jewellery, ornaments, precious stones; mechanic or electric watches for horological purposes, also as day counters, stopwatches, divers' watches; clocks; parts and fittings for watches; wristwatches; electronic clocks and watches; bracelets [jewelry]; watchbands; control clocks [master clocks]; their parts and fittings, namely cases and gift containers for watches, stands for clocks, chains for watches and watch straps; cases for watches [presentation].

The '728 mark

Class 18

Leather and imitations of leather, and goods made of these materials, namely briefcases, bags, bags for clothing, holdalls, weekend bags, multipurpose bags, all-purpose athletic bags, all-purpose sports bags, work bags, attaché cases, shopping bags, two-wheeled shopping bags, souvenir bags, bags (envelopes, pouches), for packaging, tote bags, handbags, small clutch purses, sling bags, Gladstone bags, ladies' handbags, gentlemen's handbags, bags for men, hip bags, evening handbags, evening bags, beach bags, bags for sports, courier bags, changing bags, tool bags, bags for campers, belt bags and hip bags, pouches, gym bags, shoe bags, satchels, school book bags, school bags, shoulder belts and straps, shoulder bags, haversacks, camping bags, boston bags, casual bags, sling bags for carrying infants, diplomatic bags, document cases, folders, document wallets, boxes, luggage, travel luggage, trunks for travel purposes, baggage, flight bags, trunks and travelling bags, travel bags, flight bags, wheeled shopping bags, travelling handbags, vanity cases, not fitted, garment carriers, suit carriers, travel garment covers, duffel bags, rucksacks, bags for climbers, bags for campers, nappy bags; Bags and pouches, included in class 18, and small goods of leather, namely luggage tags, Luggage label holders, Bags for men, Baggage, Coin purses, Coin purses, Pocket wallets, Wallets, Coin purses, Card holders, Card holders, Briefcases, Credit-card holders, Credit-card holders, Credit-card holders, Business card cases, Driving licence cases, Key bags, Key bags, Fanny packs, Clutch bags, Small pouches, Toiletry bags, Cosmetic purses, Cosmetic purses, Make-up bags, Cosmetic purses, Cosmetic purses, Cosmetic purses, Tie cases,

Laces; Wallets, pocket wallets, key cases, handbags, briefcases, shopping bags, satchels, carrier bags, travelling bags, sports bags, included in class 18, duffel bags, rucksacks, school bags, belt bags, toiletry bags, trunks and travelling bags; Umbrellas, parasols and walking stick.

Class 25

Apparel, footwear, headgear.

Class 28

Games and playthings, gymnastic and sporting equipment, gymnastic and sporting articles (included in class 28); Skiing and tennis equipment; Skis, ski bindings, ski poles, edges for skis, climbing skins for skis; Balls, including balls for sports and balls for games, golf balls, tennis balls; Dumb-bells, shot puts, Discus, javelins, clubs for gymnastics, Sport hoops; Shin pads, Knee, elbow and ankle guards for sports purposes; Sports gloves, included in class 28; Tennis rackets, cricket bats, golf clubs, hockey sticks; Table tennis rackets, badminton rackets and squash rackets and parts therefor, in particular grips, strings, grip and lead tape; Bags for sports equipment, specially designed for the objects to be carried therein; Specially adapted bags and sleeves for tennis rackets, table tennis rackets, badminton rackets, squash rackets, cricket bats, golf clubs and hockey sticks; Roller skates and ice skates, inline skates, table tennis tables and nets; Nets for sports, goal and ball nets; Start and finish banners, tapes and awnings for sports events, sight screens for tennis courts, umpires' stools for tennis events.

The '681 mark

Class 14

Watches, clocks and parts and fittings for all the aforesaid goods

The '443 mark

Class 25

Articles of clothing, none being made of fur.

The '725 mark

Class 25

Shoes and parts thereof included in Class 25, all for use in sports and athletics.

The '791 mark

Class 18

Articles included in Class 18 made of leather or of imitation leather, trunks, travelling bags, carrying bags and cases included in Class 18, but not including any such goods made from or incorporating, animal furskins or materials simulating animal furskin.

The '076 mark

Class 3

Bleaching preparations included in Class 3; substances for laundry use; cleaning, polishing and scouring preparations; perfumes; non-medicated toilet preparations; essential oils; cosmetics; hair lotions, dentifrices.

The '520 mark

Class 8

Electrical hair styling apparatus; hand-operated implements and appliances for styling hair; electric and non-electric hair curling irons; hair tongs; hair styling irons; hair straighteners; hair clippers; hair trimmers; scissors; razors; shavers; parts and fittings for all of the aforesaid goods.

Class 21

Brushes; brushes for personal hygiene; hair brushes; hair combs; electric hair, brushes and combs; cosmetic brushes and applicators; sponges; brush making,

materials; covers and cases, for brushes and combs; brush holders; hair brush containers; hair brush holders; parts and fittings for all of the aforesaid goods.

Class 26

Hair accessories; hair bands; hair bows; hair clips; hair grips; hair slides; hair pins; hair fasteners; hair ornaments; hair pieces; false hair; wigs; tresses of hair; hair curlers; non-electric hair curlers; hair coloring caps; badges for wear, not of precious metal; cords for clothing.