

O/298/13

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NUMBER 2627042  
BY TESCO STORES LTD TO REGISTER THE FOLLOWING MARK IN CLASSES 2, 6, 9,  
11, 12, 15, 16, 18, 20, 21, 24, 25, 27, AND 28**



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**Background**

1. On 4 July 2012, Tesco Stores Ltd ('the applicant') applied to register the above mark for a wide range of goods as follows:

Class 2: Paints, paints for play; varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists; emulsions; dyes; enamels; painters' colours; distempers; japans; paint and varnish driers; wood preservatives; wood stains; anti-corrosive and anti-fouling compositions; anti-corrosive oils; preservatives against rust; shoe dyes; leather stains; wallpaper removing preparations; food colorants and food dyes; ink toners for photocopiers; printing inks.

Class 6: Window fittings, fasteners, guards, locks, safety fittings for windows and doors, safety gates; parts and fittings for all the aforesaid goods; common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores.

Class 9: Baby monitoring systems, baby alarms, thermometers, cyclists safety helmets and crash helmets; parts and fittings for all the aforesaid goods; scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus

and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishing apparatus.

Class 11: Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes; air conditioning apparatus; electric kettles; gas and electric cookers; vehicle lights and vehicle air conditioning units; installations, equipment and apparatus for cooling, sanitising, filtering, purifying, deodorising, evaporating and sterilising; coffee machines; bathroom installations and fittings; air conditioners for vehicles; lamp fittings for vehicles; aquaria apparatus; electric lights for Christmas trees; hair dryers; domestic fireplaces; torches; foot warmers; hot water bottles; ornamental fountains; electric blankets; ice boxes, freezers; ice making machines; water softeners; air conditioning units and humidifiers; night lights; parts and fittings for all the aforesaid.

Class 12: Vehicles; apparatus for locomotion by land, air or water; wheelchairs; motors and engines for land vehicles; vehicle body parts and transmissions; mopeds; scooters; motor cycles; bicycles; tyres and wheels for vehicles and bicycles; perambulators; prams; pushchairs, buggies, baby carriages; rain covers for prams; baby walkers; wheelchairs; wheelbarrows; trolleys; anti-theft alarms and devices for vehicles; vehicle safety restraint apparatus and equipment; child restraints, seat belts and harnesses; accessories for perambulators and baby carriages; parts and fittings for all the aforesaid; chair lifts; boats; rubber dinghies; seat covers; wind-shields; luggage nets and luggage carriers.

Class 15: Musical instruments.

Class 16: Stationery, paper articles, cardboard articles, printed matter, books, magazines, albums, cards, calendars, posters, advertising and promotional material, wrapping and packaging materials, instructional and teaching materials, picture holders, framed pictures, babies bibs, babies nappies, diapers and pants; paper, cardboard and goods made from these materials, not included in other classes; printed matter; book binding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); printers' type; printing blocks.

Class 18: Umbrellas, parasols, travel/shopping bags, baby carriers; parts and fittings for all the aforesaid goods; leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; hand bags, purses and wallets; changing bags.

Class 20: Furniture; cots, beds, cot beds, carry cots, high chairs, baby changing units, feeding chairs for babies, playpens, baby bouncers, rocking cradles, cribs, Moses baskets, cot bumper pads, mattresses, bedding, baby changing mats, cushions; mirrors; picture frames; drinking straws; works of art and ornaments made of wood, wax, bamboo, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl,

meerscham, plaster and substitutes for all these materials or of plastics; sleeping bags; ladders; barrels; air mattresses, cushions and pillows; curtains and parts and fittings not of cotton; beds, bedding (except linen) and non-metallic bed fittings and materials; display boards; cots and cradles; cushions; non-metallic door and window fittings; kennels for household pets; animal and pet carriers; slatted indoor blinds; coat hangers and coat hooks; non-metallic infant walkers; inflatable publicity objects; plastic key cards; non-metallic number plates; playpens for babies.

Class 21: Babies' baths, babies' potties, baskets, combs, sponges, brushes; household or kitchen utensils and containers (not of precious metal or coated therewith); articles for cleaning purposes; glass; glassware; porcelain and earthenware not included in other classes; baby baths; portable baths; candlesticks (not of precious metal); gloves for household purposes; non-electric whisks, blenders, presses, grinders, polishers, pressure cookers, mills for household purposes; shoe appliances, toothbrushes; presses and stretchers; vanity cases; watering devices; non-metallic piggy banks; cash boxes; animal and pet cages; animal and pet litter trays and boxes; containers for household pets; animal traps; indoor terraria.

Class 24: Textiles and textile goods, not included in other classes; bed and table covers; plastic coverings for furniture; pillow or cushion covers; plastic or textile or net curtains; upholstery fabrics; woollen fabric; eiderdowns.

Class 25: Articles of clothing, footwear and headgear; maternity wear; lingerie; swimwear; nightwear, dressing gowns; pyjamas; clothing, footwear and headwear for babies and young children.

Class 27: Floor coverings; carpets; carpets for vehicles; bath mats; rugs; mats; matting; linoleum; wall hangings (non-textile); wallpaper; artificial turf.

Class 28: Games and playthings; soft toys; activity centres; play gyms; toys for learning; mobiles for use on costs and prams; ride-on toys; toys tricycles; playing cards; gymnastic and sporting articles; decorations for Christmas trees; childrens' toy bicycles; toys and dolls; artificial snow for Christmas trees; synthetic Christmas trees; Christmas crackers; marionettes; playing cards; confetti; sports equipment; toy scooters; in-line skates and roller skates.

2. On 19 July 2012, the UK Intellectual Property Office ('the IPO') issued an examination report objecting to the application under section 3(1)(b) of The Trade Marks Act 1994 ('the Act'). The examination report reads as follows:

***"Absolute Grounds for Refusal (Section 3)***

*The application is not acceptable in Classes 02, 06, 09, 11, 12, 16, 18, 20, 21, 24, 25, 27, 28 as there is an objection under Section 3(1)(b) of the Act. The mark consists of a pictorial image of a rabbit, being a sign which would not be seen as a trade mark as it is devoid of any distinctive character because it will be perceived as a representation of the goods in Class 28 and in respect of all other goods concerned as mere decoration or adornment.*

*For goods aimed at children or specifically for children, the average consumer will not attribute any trade mark significance to the sign."*

3. The examiner nevertheless felt that in respect of certain goods and services the application was acceptable. The acceptable goods and services were also listed in the examination report.
4. The then-attorney for the applicant responded, relying on authority in paragraphs 26 - 28 of *'There ain't no 'f' in 'justice''* (BL O-094-08, a decision of the Appointed Person), as well as providing the examiner with a number of prior registrations depicting rabbits and bears. The attorney contended that it was inequitable that this application was the subject of refusal when the other comparable signs had been registered.
5. In turn, the examiner responded by requesting that the applicant supply examples of how the mark is being used, or is intended to be used, under rule 62 of the Trade Marks Rules 2008 ('the Rules'). The attorney replied (via an e-mail dated 3 October 2012), saying that the mark was *not* currently in use, but also disclosing that the applicant was in the process of preparing brand guidelines which were attached to the email. The attorney said that, from those guidelines, it could be seen that the sign the subject of the application was to be used as a trade mark rather than as mere decoration.
6. These guidelines show the rabbit had the name 'FLO', whilst a teddy bear (the subject of a co-pending application 2627043) was called 'FREDDIE' and they had various 'friends'. They set down certain parameters for use of the characters, including that they could not be distorted or modified in any way and they must not be placed against any alternative background impairing their visibility.
7. Various colours are also prescribed in the guidelines, but it is noted that application as filed contains no colour claim or limitation - the representation is simply in greyscale format.
8. The examiner was unpersuaded these guidelines demonstrated the sign was distinctive, and the objection was maintained by letter dated 26 October 2012. An *ex parte* hearing was requested, and this was held before me by telephone on 18 February 2013. By this time, the attorney representing the applicant had changed to Mr Julius Stobbs.
9. At the hearing I confirmed that I would be deferring my decision on the basis that I needed to look afresh at the goods and services in respect of which the examiner had originally said the application may be acceptable, and those in respect of which it was not. Although the hearing did not individually address each separate item of goods which had been objected to by the examiner (which in my view would have been overly burdensome), I considered Mr Stobbs to have been given ample opportunity to address the principles to be applied, in particular in relation to those goods and services which may have presented the high point of the objection i.e. those designed with babies or young children in mind.
10. On 20 February 2013, I issued my I issued my combined hearing report and provisional decision which substantially revised the list of goods and services in respect of which the examiner had applied objection, ironing out, in my view, any anomalies and inconsistencies.

As regards Class 25 specifically, I anticipated refusal of 'clothing, footwear and headwear for babies and young children' but invited the attorney, within a period of two months, to propose a category of those goods in respect of which the sign may be acceptable<sup>1</sup>.

11. The attorney responded on 25 February 2013, saying he had understood at the hearing that I was mainly in agreement with his arguments and that, by implication, he was surprised to see that I had maintained the objection in relation to many of the goods. He then suggested a further hearing may be appropriate in relation to those goods for which I had maintained the objection. I replied on 19 March 2013, saying that, in my view, the hearing had properly addressed the principles to be applied. I also said it was proper to group goods or services together and not have to be faced with the obligation to discuss, or have a hearing on each and every item in respect of which objection had been or was proposed to be taken. Authority on this question is referred to in paragraph 20 below. In effect then I was, and am of the view that the obligation to provide an opportunity to be heard prior to an adverse decision<sup>2</sup> had been fully discharged.

12. On 15 April 2013, the attorney requested a full statement of grounds by filing Form TM5. Technically, the application had not been formally refused but I saw no further reason to delay matters and so on 19 April 2013 I formally refused the application in respect of the goods I had indicated in my hearing report and provisional decision dated 20 February 2013. It is important to stress, however, that it is this full statement of grounds comprises my *final* decision rather than the provisional decision. The list of goods for which the application is finally refused differs from my provisional decision of 20<sup>th</sup> February 2013 and this will be fully explained below.

13. Thus, and in summary, the application stands provisionally refused under section 3(1)(b) in respect of the following goods which were listed in my hearing report and provisional decision dated 20 February 2013:

Class 12: Perambulators; prams; pushchairs; buggies; baby carriages.

Class 16: Wrapping and packaging materials; babies bibs; babies nappies; diapers and pants.

Class 20: Babies' baths, babies' potties, baby baths; portable baths.

Class 24: Bed covers; plastic coverings for furniture; pillow covers.

Class 25: Clothing, footwear and headwear for babies and young children.

Class 27: Wallpaper.

Class 28: Games and playthings; soft toys; activity centres; play gyms; toys for learning; mobiles for use on cots and prams; ride-on toys; toys tricycles; children's toy bicycles; toys and dolls; toy scooters.

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<sup>1</sup> Applying PAN 02/11 on Partial Refusals

<sup>2</sup> Rule 63 of the rules

## Decision

14. The case has been decided on a *prima facie* basis only and under the provisions of section 3(1)(b) of the Act, which reads:

*“3.-(1) The following shall not be registered –*

*(a) ...*

*(b) trade marks which are devoid of any distinctive character,*

*(c) ....*

*(d) ...*

*Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.”*

## Legal submissions by the attorney

15. At the hearing, Mr Stobbs argued the sign is not descriptive in relation to any of the goods; he submitted, for example, that it is a two-dimensional sign<sup>3</sup> which would not depict a soft toy. He emphasised that his client is seeking protection for the specific representation and not in respect of what he termed ‘generic rabbits’. He submitted, as did the previous attorney, that the possibility that the sign may be used in a non-trade mark manner should *not* detract from its distinctiveness *per se*, and the precise manner in which the sign is used is a matter for the applicant. Further, the possibility of ‘dual use’ (as both descriptor and trade mark) is insufficient grounds, of itself, to deny distinctiveness - a point substantiated via reference to the ‘*There ain’t no ‘f in ‘justice*’ decision referred to earlier. He submitted that, in taking objection, the Registry unjustly assumed a ‘worst case scenario’ in relation to use of the sign; and that the applicant currently uses the sign as a trade mark in the context of, e.g. swing tags on clothing. It is clear, however, from the earlier correspondence to which I have referred, the sign was not in use at the time of filing the application. Mr Stobbs also reminded me that the applicant is fully aware, and has signed a declaration<sup>4</sup> to the effect that he will use the sign as a trade mark, and is also aware of the consequences of not using it as a trade mark. For the sake of completeness, it was submitted that I should also address the claim of inequitable treatment by the previous attorney, by reference to other purportedly comparable signs that have been accepted for registration.

## Relevant authorities - general principles

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<sup>3</sup> This is plainly true since there is no claim made on Form TM3 in the relevant box to the mark being a three dimensional shape – see also paragraph 29 below.

<sup>4</sup> The relevant declaration reads: “*The trade mark is being used by the applicant, or with his or her consent, in relation to the goods or services stated, or there is a bona fide intention that it will be so used.*”

16. The European Court of Justice ('CJEU') has emphasised the need to interpret the grounds for refusal of registration listed in Article 3(1) of Directive 2008/95/EC ('the Directive', being the codified version of the original Directive 89/104/EEC) and Article 7(1) of Council Regulation (EC) No 207/2009 ('the Regulation', being the codified version of original Council Regulation 40/94), in the light of the general interest underlying each of them (Case C-37/03P, *Bio ID v OHIM*, paragraph 59 and the case law cited there and, e.g. Case C-273/05P *Celltech R&D Ltd v OHIM*).

17. The general interest to be taken into account in each case must reflect different considerations according to the ground for refusal in question. In relation to section 3(1)(b) (and the equivalent provisions referred to above upon which section 3(1)(b) is based) the Court has held that "...the public interest... is, manifestly, indissociable from the essential function of a trade mark" (Case C-329/02P '*SAT.1' Satelliten Fernsehen GmbH v OHIM*). The essential function thus referred to is that of guaranteeing the identity of the origin of the goods or services offered under the mark to the consumer or end-user by enabling him, without any possibility of confusion, to distinguish the product or service from others which have another origin (see paragraph 23 of the above mentioned judgment). Marks which are devoid of distinctive character are incapable of fulfilling that essential function.

18. The question then arises as to how distinctiveness is assessed under section 3(1)(b). Paragraph 34 of the CJEU Case C-363/99 *Koninklijke KPN Nederland NV v Benelux-Merkenbureau* ('*Postkantoor*') reads as follows:

*"A trade mark's distinctiveness within the meaning of Article 3(1)(b) of the Directive must be assessed, first, by reference to those goods or services and, second, by reference to the perception of the relevant public, which consists of average consumers of the goods or services in question, who are reasonably well informed and reasonably observant and circumspect (see inter alia Joined Cases C-53/01 to C-55/01 Linde and Others [2003] ECR I-3161, paragraph 41, and Case C-104/01 Libertel [2003] ECR I-3793, paragraphs 46 and 75)."*

19. So the question of a mark being devoid of distinctive character is answered by reference to the goods and services applied for, and the perception of the average consumer for those goods or services.

20. In applying that assessment to this case it is important I am convinced, firstly, that the objection applies to all the services applied for. If there are goods or services specified which are free of objection under section 3(1)(b) then they must be allowed to proceed. In the case of CJEU Case C-239/05 *BVBA Management, Training en Consultancy v Benelux-Merkenbureau* the question being referred to the court was whether the Directive, on which the Act is based of course, must be interpreted as meaning that the competent authority is required to state its conclusion separately for each of the individual goods and services specified in the application. The Court answered, and in paragraph 38 said that the competent authority was required to assess the application by reference to individual goods and services. However, where the same ground of refusal is given for a category or group of goods or services, the competent authority may use only general reasoning for all the goods and services concerned.



21. As regards the question as to who the average consumer may be in this case, this will be members of the public, in many cases parents or carers on behalf of babies or children. These are not specialised goods by any means, and although some items may be more expensive than others I would not consider the goods to be subject to a specialised purchase procedure or the purchaser to be anything more than reasonably circumspect.

22. I need to address Mr Stobbs's legal submissions. The (non-binding) view of the Appointed Person in '*There ain't no 'f' in 'justice'*', in particular in relation to 'dual use' signs (as descriptor or trade mark)<sup>5</sup>, does not, in my view do anything to undermine, displace or otherwise interfere with the obligation to conduct, in *ex parte* examination, a thorough and full<sup>6</sup> fact-based examination of the sign presented for registration, taking into account perceptions of the average consumer and normal and fair use, within which I would include known or proven marketing norms.

23. I also acknowledge that within the common law UK jurisdiction at least, the higher authorities in the UK (being the Court and the Appointed Persons) see the role of the registry as being that of a 'gatekeeper', to prevent marks from being registered in the first place that may result in others having to rely on statutory defences<sup>7</sup>. I would also mention at this point that Mr Stobbs stressed he is only seeking protection in relation to a particular representation of a rabbit, and yet the law allows him, if the sign is registered, to seek remedy also against 'similar' signs<sup>8</sup>.

24. Nor would I accept that the obligation above is in any way lessened by the declaration as to trade mark use signed by the applicant on Form TM3.

25. The test under section 3(1)(b) is whether the sign presented for registration is 'unpossessed' of distinctive character as far as the average consumer is concerned and in relation to the specified goods and services. There is no obligation to rule on the possible dividing line between a lack of distinctiveness or a minimum level of distinctiveness<sup>9</sup>.

26. The sign presented must have the capacity to serve the essential function of a trade mark to distinguish the goods and services of a single undertaking. To me, this suggests that, in *ex officio* examination, the Registrar is looking for what may be termed, for want of a better word, 'resonance', or that which may enable the consumer to respond to a particular sign as being an indicator of origin.

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<sup>5</sup> It is also worth noting that in '*There ain't no 'f' in 'justice'*', the duality question was somewhat pronounced by the unclear or even non-existent link between the goods applied for and the sign. Given, in particular, that absence of nexus, the supposition by the registrar that the mark would be used in a certain way (e.g. as a statement or message across a T-shirt) was considered by the Appointed Person to amount to a 'worst case scenario'. In this case, the sign is a device only and I make no supposition as to any particular context of use, or location on, or in relation to, the objected to goods. The only supposition I make is that I assume use in relation to the goods which, as is well established, may be on the goods themselves or used in the context of e.g. advertising.

<sup>6</sup> See e.g. paragraph 123 of the *Postkantoor* case

<sup>7</sup> See, by way of example only, *Starbucks HK Ltd and others v B SkyB and others* [2012] EWHC 3074 at paragraph 117

<sup>8</sup> Section 10(2) of the Act

<sup>9</sup> See e.g. BL O-313-11 *Flying Scotsman*, at para 19, a decision of the Appointed Person, citing also C-104/00 P *Deutsche Krankenversicherung AG v OHIM (Companyline)* [2002] ECR I-7561 at paragraph [20]

27. Finally in relation to legal principle, the plea of inequitable treatment is often raised in these circumstances. In my opinion, such a plea is entitled to be raised, and in response the Registrar is required at least to consider any prior registered cases relied upon to ensure that e.g. the bar has not been set too high<sup>10</sup>. It should be stressed, however, that earlier registrations cannot be binding to an extent that the Registrar may perpetuate errors or, e.g. not take account of the particular time and circumstances under which the prior registration was enacted. I can confirm I have reviewed the prior acceptances referred to and do not believe they show the decision in this case to be in any way inequitable. It is noticeable that the other depictions of rabbits are either possessed of manifestly distinctive features or there is no obvious connection with the goods applied for.

### **Findings of fact**

28. In this case, and as a parent myself, I am well aware that what may loosely be termed 'children's items' often feature characters such as this in order to attract or adorn. This is something of which I can take judicial notice. Of course, this does not rule out the sign from protection by way of registration, but it serves nonetheless as important background marketing 'noise', in relation to which the sign must be assessed in the *prima facie*.

29. In a case such as this, given the 'marketing noise', to which I have referred, it is my view that that 'resonance', or whatever one chooses to call it, will require a device which may be said to be outside the norm so to speak. That is to say, the rabbit ought to be possessed of some feature or characteristic which it may be safely concluded would be capable of inducing in the average consumer the required recognition that the sign denotes origin, as distinct from functioning as, e.g. solely an adornment or decoration.

30. In its features the sign is plainly, a two dimensional representation of a rabbit. It is true it is not an actual, realistic depiction of a rabbit<sup>11</sup> but rather a two dimensional and simplistic child-like image, but it is plainly a rabbit nonetheless. Arguably there is one feature in particular which may be said to be 'outside the norm', and that is the eye patch over the right eye. But it is my view that patch configurations (including those which also appear on the tummy section) are commonly found on real rabbits, and so the impact of any pictorial representation may be somewhat diminished. As I have already said, colour is not a feature of the sign as it is filed in greyscale format. The absence of any unique 'stand out' features is telling in this case, especially when this is considered against the background of the marketing norms to which I have referred.

### **Conclusion**

31. In all the circumstances, I find the application should be refused for additional goods listed in this paragraph, as well as those already listed at paragraph 13 above. This is

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<sup>10</sup> See e.g. the approach taken in BL O/185/12 *Feedback Matters*, a decision of the Appointed Person at paragraph 63 and following.

<sup>11</sup> In this regard, I accept the attorney's submissions that the sign is not a 3D depiction of a bunny rabbit, as had originally been claimed by the examiner.

because there were clear clerical errors in that list, with goods listed under class 20 which were, in fact, in class 21. Furthermore, I've had the chance to iron out further inconsistency and, based on my general reasoning, I feel that these additional goods fall the wrong side of the line. As regards class 25 specifically, I had proposed refusal just of articles of clothing, footwear and headgear for babies and young children on the basis the broader term would not include such goods. On further reflection the broader term would, naturally speaking, include clothing such as that being specifically for children, and must be refused accordingly.

The additional goods are as follows:

Class 9: Baby monitoring systems, baby alarms,

Class 12: Scooters; perambulators; prams; pushchairs; buggies; baby carriages; rain covers for prams; baby walkers; child restraints; accessories for perambulators and baby carriages.

Class 16: Wrapping and packaging materials; babies bibs; babies nappies; diapers and pants.

Class 18: Baby carriers

Class 20: Cots, beds, cot beds, carry cots, high chairs, baby changing units, feeding chairs for babies, playpens, baby bouncers, rocking cradles, cribs, moses baskets, cot bumper pads, mattresses, bedding, baby changing mats, beds, bedding (except linen) and non-metallic bed fittings and materials; cots and cradles; non-metallic infant walkers; playpens for babies.

Class 21: Babies' baths, babies' potties, baby baths; portable baths.

Class 24: Bed covers; plastic coverings for furniture; pillow covers.

Class 25: Articles of clothing, footwear and headgear; clothing, footwear and headwear for babies and young children.

Class 27: Wallpaper.

Class 28: Games and playthings; soft toys; activity centres; play gyms; toys for learning; mobiles for use on cots and prams; ride-on toys; toys tricycles; childrens' toy bicycles; toys and dolls; toy scooters.

32. By way of further explanation, I have selected the above on the basis either that:

- they comprise broad terms (wrapping and packaging materials, wallpaper) that could include goods specifically for babies and children and a proposed limitation or exclusion is likely to involve a characteristic of the goods rather than a specific and recognisable type;

and/or

- they are overtly baby and child-related (prams, clothing etc).

33. This means that in relation to the following goods, the application is accepted:

Class 2: Paints, paints for play; varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists; emulsions; dyes; enamels; painters' colours; distempers; japans; paint and varnish driers; wood preservatives; wood stains; anti-corrosive and anti-fouling compositions; anti-corrosive oils; preservatives against rust; shoe dyes; leather stains; wallpaper removing preparations; food colorants and food dyes; ink toners for photocopiers; printing inks.

Class 6: Window fittings, fasteners, guards, locks, safety fittings for windows and doors, safety gates; parts and fittings for all the aforesaid goods; common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores.

Class 9: Thermometers, cyclists safety helmets and crash helmets; parts and fittings for all the aforesaid goods; scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishing apparatus.

Class 11: Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes; air conditioning apparatus; electric kettles; gas and electric cookers; vehicle lights and vehicle air conditioning units; installations, equipment and apparatus for cooling, sanitising, filtering, purifying, deodorising, evaporating and sterilising; coffee machines; bathroom installations and fittings; air conditioners for vehicles; lamp fittings for vehicles; aquaria apparatus; electric lights for Christmas trees; hair dryers; domestic fireplaces; torches; foot warmers; hot water bottles; ornamental fountains; electric blankets; ice boxes, freezers; ice making machines; water softeners; air conditioning units and humidifiers; night lights; parts and fittings for all the aforesaid.

Class 12: Vehicles; apparatus for locomotion by land, air or water; wheelchairs; motors and engines for land vehicles; vehicle body parts and transmissions; mopeds; motor cycles; tyres and wheels for vehicles and bicycles; wheelchairs; wheelbarrows; trolleys; anti-theft alarms and devices for vehicles; vehicle safety restraint apparatus and equipment; seat belts and harnesses; parts and fittings for all the aforesaid; chair lifts; boats; rubber dinghies; seat covers; wind-shields; luggage nets and luggage carriers.

Class 15: Musical instruments.

Class 16: Stationery, paper articles, cardboard articles, printed matter, books, magazines, albums, cards, calendars, posters, advertising and promotional material, instructional and teaching materials, picture holders, framed pictures, paper, cardboard and goods made from these materials, not included in other classes; printed matter; book binding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); printers' type; printing blocks.

Class 18: Umbrellas, parasols, travel/shopping bags; parts and fittings for all the aforesaid goods; leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; hand bags, purses and wallets; changing bags.

Class 20: Furniture; cushions; mirrors; picture frames; drinking straws; works of art and ornaments made of wood, wax, bamboo, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, plaster and substitutes for all these materials or of plastics; sleeping bags; ladders; barrels; air mattresses, cushions and pillows; curtains and parts and fittings not of cotton; display boards; cushions; non-metallic door and window fittings; kennels for household pets; animal and pet carriers; slatted indoor blinds; coat hangers and coat hooks; inflatable publicity objects; plastic key cards; non-metallic number plates.

Class 21: Baskets, combs, sponges, brushes; household or kitchen utensils and containers (not of precious metal or coated therewith); articles for cleaning purposes; glass; glassware; porcelain and earthenware not included in other classes; candlesticks (not of precious metal); gloves for household purposes; non-electric whisks, blenders, presses, grinders, polishers, pressure cookers, mills for household purposes; shoe appliances, toothbrushes; presses and stretchers; vanity cases; watering devices; non-metallic piggy banks; cash boxes; animal and pet cages; animal and pet litter trays and boxes; containers for household pets; animal traps; indoor terraria.

Class 24: Textiles and textile goods, not included in other classes; table covers; cushion covers; plastic or textile or net curtains; upholstery fabrics; woollen fabric; eiderdowns.

Class 25: Maternity wear; lingerie; swimwear; nightwear, dressing gowns; pyjamas.

Class 27: Floor coverings; carpets; carpets for vehicles; bath mats; rugs; mats; matting; linoleum; wall hangings (non-textile); artificial turf.

Class 28: Playing cards; gymnastic and sporting articles; decorations for Christmas trees; artificial snow for Christmas trees; synthetic Christmas trees; Christmas crackers; marionettes; playing cards; confetti; sports equipment; in-line skates and roller skates.

34. In this decision, I have considered all documents filed by the applicant/agent and all arguments submitted to me in relation to this application.

35. Finally, for the sake of completeness I should add that following my provisional decision of 20<sup>th</sup> February 2013 and at the same time as requesting a statement of grounds the applicant through its attorney filed a request to divide the application. However, In light of any possible appeal to this final decision and also due to the fact the request to divide the application was based on my provisional decision and not this final decision, I consider it prudent to suspend action on the request to divide.

**Dated this 26 day of July 2013**

**Edward Smith  
For the Registrar  
The Comptroller-General**