

O-294-14

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NUMBER 3000786**

**BY TESCO STORES LIMITED**

**TO REGISTER THE FOLLOWING TRADE MARK**

**IN CLASSES 03, 04, 05, 08, 09, 10, 11, 16, 18, 20, 21, 24, 25, 28, 29, 30, 31, 32, 33, 35,  
36, 38, 39, 41, 43:**



**TRADE MARKS ACT 1994  
IN THE MATTER OF APPLICATION NUMBER 3000786  
BY TESCO STORES LIMITED  
TO REGISTER THE FOLLOWING TRADE MARK  
IN CLASSES 03, 04, 05, 08, 09, 10, 11, 16, 18, 20, 21, 24, 25, 28, 29, 30, 31, 32, 33, 35,  
36, 38, 39, 41, 43:**



## **Background**

1. On 5 April 2013, Tesco Stores Limited ('the applicant') applied to register trade mark application number 3000786, consisting of the device depicted above, for a large number of goods and services fully listed at Annex 1.

2. On 4 May 2013 the UK Intellectual Property Office ('IPO') issued an examination report in response to the application. In the report, an objection was raised against all classes under section 3(1)(b) only of the Trade Marks Act 1994 ('the Act') on the basis that (in the examiner's words):

*"...the mark is devoid of any distinctive character. This is because it would appear to serve a merely decorative purpose in relation to the goods and services applied for. The consumer would be looking for additional branding to denote the origin of the goods and services."*

3. On 29 May 2013 the applicant's attorney, Mr Julius Stobbs of Stobbs IP ('the attorney') requested an *ex parte* hearing on the case. The hearing took place before me - via telephone - on 8 July 2013.

4. At the hearing, the attorney submitted the following in support of the case for *prima facie* acceptance:

- The sign is not a simple geometric form;
- The sign is not in common use in the course of trade;
- On inspection, the sign has certain unique features;

The attorney was also prepared to concede inherent distinctiveness in respect of those goods for which the sign as filed might be considered to be a figurative illustration e.g. ropes.

5. I reserved my decision in the *prima facie* at the hearing and subsequently gave it in writing on 10 July 2013, whereby I maintained objection under section 3(1)(b). This did not, however, constitute formal refusal of the application as I gave a period in which the applicant could consider its options, for example, the applicant could await formal refusal and then

seek a fully reasoned statement of grounds from which to appeal, or may opt to pursue a plea of acquired distinctiveness.

6. In response, on 9 September 2013 Mr Stobbs asked for an extension of time and also requested further explanation from me regarding my factual description of the mark, which I had tentatively described in the hearing report as being “five in-line parallelograms”, whilst also conceding that, because of their curved corners, the said five shapes could not be called ‘parallelograms’ in the strictest sense. I hereby accept that the signs are not ‘pure’ parallelograms given their outline shape, and will address the matter of how one might describe the sign in more detail later in the decision.

7. I had also said at the hearing that I intended to research case law on the question of whether a sign could be regarded as ‘excessively simplistic’ to the point that it cannot perform the essential function of a trade mark and thus to be registered in the *prima facie*. This principle was discussed at the hearing and I made Mr Stobbs aware of certain case law on the point which will be discussed at more length below in my decision.

8. I duly granted the attorney an extension of time until 11 December 2013.

9. Mr Stobbs responded in a letter dated 11 December 2013. He indicated his wish to explore the possibility of demonstrating the sign had achieved acquired distinctiveness in the market place and, by way of a precursor to further submissions, included a brief brand history, together with an account of a customer perception survey. The reason the possibility of such a survey was mentioned was that, at the hearing, I had said it was not beyond the realm of possibility that consumers may ‘recognise’ the sign. I use the term ‘recognise’ at this stage, not because it is necessarily wholly reflective, or exhaustive of any relevant legal test for acquired distinctiveness, but because it is a convenient shorthand and may, at the least, be supportive of such a case. I will discuss the proposed survey in more detail and depth below in my decision.

10. As I see it, then, the purpose of his letter of 11 December 2013 was to get from me no more than a steer which may have given him the go ahead to file costly formal evidence in the form of both traditional evidence of use and a survey along the lines proposed, and/or to provide anything else I may have deemed potentially probative; or, in the alternative, to arrive at the conclusion, based on what he had told me, that the likelihood of showing acquired distinctiveness was so remote as to make the provision of formal evidence a costly, but ultimately worthless exercise.

11. On 17 February 2014, I formally refused the application giving my reasons in brief. These reasons were that, firstly, in the *prima facie* case, I regard the sign to be too simplistic to function as a trade mark. Secondly, that as regards the question of acquired distinctiveness, in my view there would be no further benefit to be had in allowing the application to proceed. I will deal below as to why exactly I felt that curtailment was appropriate in this case.

12. Mr Stobbs submitted a form TM5 dated 18 March 2014 seeking a statement of full reasons for my decision and this I now give.

## Decision

18. The relevant section of the Act read as follows:

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

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

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.”

### Established legal principles: section 3(1)(b)

19. The relevant authorities at European and UK level have long established certain key legal principles to be applied in relation to section 3(1)(b) of the Act. These can be summarised as follows:

- 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 under EU law) the Court has held that “...*the public interest... is, manifestly, indissociable from the essential function of a trade mark*” (Case C-329/02P, *Satelliten Fernsehen GmbH v OHIM ‘SAT.1’*). 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.
- It is also well established, in the UK at least, that the words ‘devoid of distinctive character’ are interpreted as meaning being ‘unpossessed’ of distinctive character, based on the perceptions of the average consumer and in relation to the goods and services applied for.
- Section 3(1)(b) is independent from other grounds of objection such as section 3(1)(c) and must include within its scope those marks which, whilst not designating a characteristic of the relevant goods and services (i.e. not being necessarily descriptive), will nonetheless fail to serve the essential function of a trade mark in that they will be incapable of designating origin. In terms of assessing distinctiveness under section 3(1)(b), the CJEU provided guidance in *Koninklijke KPN Nederland NV v Benelux-Merkenbureau (Postkantoor)* (C-363/99) where, at paragraph 34, it stated:

*“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*

*55/01 Linde and Others [2003] ECR I- 3161, paragraph 41, and C-104/01 Libertel [2003] ECR I-3793, paragraphs 46 and 75)."*

- It is also a well-established principle these days that the Registrar's role is to engage in a full and stringent examination of the facts, underling the Registrar's frontline role in preventing the granting of undue monopolies, see to that effect CJEU Case C-51/10 P, *Agencja Wydawnicza Technopol sp. z.o.o. v OHIM* [2011] ECR I-1541. Whilst that case was, technically speaking, in relation only to section 3(1)(c) or its equivalent in European law, the principle about the 'prevention of undue monopolies' must hold good whether section 3(1)(b) and/or (c) applies.

- It is nonetheless important I am convinced that the objection applies to all the goods and 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 Case C-239/05 *BVBA Management, Training en Consultancy v Benelux-Merkenbureau*, the question being referred to the CJEU 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 Court also confirmed that the competent authority may use only general reasoning for all the goods and services concerned. It is plain from this judgment that the Court had in mind purely practical considerations which had to be balanced against a legal provision in the Trade Marks Directive which allows for refusal only in relation to goods and services where objections apply.

20. In addition to these well-known principles, there is good authority for the proposition that a specific category of 'sign' which, by virtue of excessive simplicity, is incapable of performing the essential function of a trade mark. At the hearing, I drew attention to the following from OHIM Board of Appeal, Case R-860/2012-5, where, at paragraphs 9 and 10, the following was said:

*"9. According to the case-law, a sign which is excessively simple and is constituted by a basic, geometric figure, such as a circle, a line, a rectangle or a conventional pentagon, is not, in itself, capable of conveying a message which consumers will be able to remember, with the result that they will not regard it as a trade mark unless it has acquired distinctive character through use (see judgments of 12 September 2007, T-304/05, 'Representation of a pentagon', paragraph 22, and of 29 September 2009, T139/08, 'Half a Smiley smile', paragraph 26).*

*10. That being so, a finding that a mark has distinctive character within the meaning of Article 7(1)(b) CTMR is not subject to a finding of a specific level of linguistic or artistic creativity or imaginativeness on the part of the proprietor of the trade mark. It suffices that the trade mark distinguish the goods and services from those of other undertakings (see judgment of 16 September 2004, C-329/02, 'SAT.2', par. 41 and judgment of 9 September 2010, C-265/09 P, 'a', para 38)."*

21. Of course I am not, technically speaking, bound by decisions of the OHIM Board of Appeal but at the same time this does not mean they are not usefully expressive of underlying legal principle. It should also be noted in the case quoted above that reliance by the OHIM Board of Appeal is placed on a higher authorities from the General Court itself, as in, e.g. Case T-304/05 *Representation of a pentagon* and Case T-139/08 *Half a smiley face*.

**Application of legal principles: assessment in the *prima facie* case**

22. In this case, the average consumer is not obviously specialist and the wide ranging goods and services are everyday products available to the general public in, for example, a supermarket. Accordingly, the average consumer is assumed to be reasonably circumspect but no more than that.

23. In terms of the inherent characteristics of the sign applied for, I regard it to be geometrically simple and banal, notwithstanding that the colour blue is a feature. The shape is not, as has been described by Mr Stobbs, that of 'five chevrons'. My understanding of a chevron, which can have heraldic history and application, is that it is invariably 'V'-shaped. With the greatest will in the world, none of the elements comprising the sign presented for registration, collectively or individually, are remotely 'V'-shaped. For the purposes of this decision, I will simply refer to the device as being a 'regularly-spaced series of five in-line blue coloured, parallelogram-like shapes'. Whether or not the applicant and/or the attorney agrees with my given description is, in effect and in any event, irrelevant as to the Registrar's decision to refuse; the legal test I am required to apply is one which requires consideration of consumer perception over and above geometrical felicity of description.

24. I recognise, of course, the sign here is not a simple 'pentagon' or 'smiley face', as in the cases considered by the General Court and referred to in the case before the OHIM Board of Appeal referred to above. However, the broader question of whether, in principle, such a simple, non-verbal sign can ever be capable of functioning as a trade mark in the *prima facie* was considered in those cases, and has relevance, in my view, to this case. The question I am bound to ask in such a case is how, within the context of an everyday shopping experience during which the consumer is bombarded with all manner of 'messages', a sign such as this could ever have the requisite resonance or capacity, in and of itself, to imprint itself into the consciousness of the consumer in such a way as to indicate the origin of the goods or services. The simple answer is that it would not, absent something else, such as a verbal element, or if the device itself were so eye-catching or arresting as to have the requisite capacity to perform the essential function of a trade mark.

25. As is also stressed in the OHIM case quoted above, registration authorities are not called on to make a judgment of creative originality or level of imagination; they are simply asked to assess whether, in their opinion, signs presented for registration are capable of functioning as trade marks. Fine arguments then, about unique features of the sign and non-commonplace configurations are entirely unpersuasive unless, in my opinion, such features or characteristics are going to have the effect on the average consumer of rendering the sign as an indication or badge of origin. In this case, I firmly do not believe such fine characteristics - even if they are technically present in the sign - will have the desired effect.

26. Specifically also, I do *not* rely on a claim that the sign presented here will inevitably, and only ever, be regarded as ‘decoration’ as the examiner stated. I simply say that, in its inherent characteristics, it is incapable of functioning as a trade mark.

27. Of course, the question arises as to whether the sign is incapable of functioning as a trade mark across the board of goods and services, or whether there may be some goods or services in respect of which the objection would not apply. In this regard, the inherent characteristics of the sign do not vary depending on the goods or services; this is a non-verbal sign without the benefits of linguistic nuance or peculiarity; it is what it is. Another thing that does not vary in this case and in my opinion, are the particular susceptibilities of the average consumer, in terms of recognising trade mark usage. For these reasons, I conclude that the objection under section 3(1)(b) arises, in the *prima facie*, across the board and in relation to all goods and services; to say otherwise would be to indulge in a fruitless and ill-founded exercise of fine-tuning, wholly detached from reality.

### **Acquired distinctiveness - legal principles and reasons for curtailment**

28. These too, are well known and the established principles can be expressed as follows:

- Mere evidence of use, even if substantial, does not make the case for acquired distinctiveness.
- If, to a real or hypothetical individual, a word or mark is ambiguous in the sense that it may be distinctive or descriptive then it cannot comply with the requirements of the Act for it will not provide the necessary distinction or guarantee.<sup>1</sup>
- It follows that, with regard to the acquisition of distinctive character through use, the identification by the relevant class of persons of the product or service as originating from a given undertaking must be as a result of the use of the mark as a trade mark. The expression ‘use of the mark as a trade mark’ in section 3 refers solely to use of the mark for the purposes of the identification, by the relevant class of person, of the product as originating from a given undertaking<sup>2</sup>;
- The mark must have acquired distinctiveness through use throughout the territory of the UK.
- In assessing whether a trade mark has acquired a distinctive character, the competent authority must make an overall assessment of the relevant evidence, which in addition to the nature of the mark may include (i) the market share held by goods bearing the mark, (ii) how intensive, geographically widespread and long-standing the use of the mark has been, (iii) the amount invested by the proprietor in promoting the mark, (iv) the proportion of the relevant class of persons who, because of the mark, identify the goods or services as emanating from the proprietor, (v) evidence from trade and professional

---

<sup>1</sup> Both the first two principles are stated in *Bach and Bach Flower Remedies Trade Marks* [2000] 513, paras. 49 and 45 respectively

<sup>2</sup> See, e.g. *Societe des produits Nestlé SA v Mars UK Ltd*, (C-353/03 (*‘Nestlé’*)); *Philips Electronics NV v Remington Consumer Products Ltd* (C-299/99); *Henkel KGaA v Deutsches Patent – und Markenamt* (C-218/01) and also see Case BL O/166/08 *Vibe Technologies* to which I drew attention at the hearing (Para 60 onwards).

associations and (vi) (where the competent authority has particular difficulty in assessing the distinctive character) an opinion poll. If the relevant class of persons, or at least a significant proportion of them, identifies goods or services as originating from a particular undertaking because of the trade mark, it has acquired a distinctive character<sup>3</sup>;

- The position must be assessed as at the date of application, being 5 April 2013.

### **The proposed survey**

29. In his letter of 11 December 2013, Mr Stobbs proposed a methodology for an anticipated formal survey, being that the consumer, howsoever selected, would be asked the following three successive questions:

- (1) If you saw this [hold up trade mark image] would it make you think of anything?
- (2) If you saw this in the context of a shop would it make you think of anything?
- (3) If you saw this used by a supermarket or used in relation to products sold in a supermarket would it make you think anything?

30. Mr Stobbs said in his letter that the idea behind the first question was to make people look at the sign and give an indication of anything at all that it made them think of. He specifically emphasised that the questions contained no reference to the sign being a 'brand', and no reference to any particular product area. The reason for the second and third questions was to clarify the thinking of the person responding to the survey if they have not made any kind of connection with the applicant up to this point. In particular, linking questions (2) and (3) to a shop or supermarket was reasonable, bearing in mind the fact the products and services covered by the application are specifically those of a shop or supermarket.

31. The survey was not, however, just proposed 'methodology' at this point as, in fact, Mr Stobbs had gone so far as to actually conduct the proposed survey on 29 November 2013. He said he had undertaken the survey in two locations, one being Cheshunt, just outside London, and the other being Linton, just outside Cambridge. The survey had been conducted at both locations by employees of his company, Stobbs IP, and without any introductory 'filtering' type questions, by which I assumed him to mean that the respondents were selected randomly and, e.g. employees of Tesco were not excluded. The results, he said, were encouraging, and of 31 participants in the survey, 27 were able to identify the sign as signifying Tesco when asked the first question without any context. Of the remaining 4 participants in the survey, the persons conducting the survey continued to ask the second, and if necessary the third question. Only two of the remaining participants completed the entire survey without mentioning or recognising the sign as relating to Tesco. The other two, when asked the second question, identified Tesco in the context of that question.

---

<sup>3</sup> *Windsurfing*; Case C-342/97 *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV* [1999] ECR I-1318 at [23], *Philips v Remington* at [60]-[62], *Libertel v Benelux-Merkenbureau* at [67], *Nestlé v Mars* at [31] and C-25/05P *August Storck KG v Office for Harmonisation in the Internal Market (Storck II)* [2006] ECR I-5719 at [75].



32. Mr Stobbs has not put the results of the survey in as formal evidence or any other material supporting acquired distinctiveness for that matter since he wanted to ensure that such a survey or any other material provided would, in fact, be probative and meet, in particular, my concern that such use as the applicant had made was only, or predominantly, with the word 'Tesco'. No doubt, of particular concern to Mr Stobbs was that, had I felt I could not extrapolate the small number of respondents of his mini-survey (31) to the vast number of average consumers in the UK, and a much bigger survey was required, then this would potentially be very costly to the client. Prior to undertaking and incurring the not insubstantial expense of such a survey, it is not entirely unnatural on his part that he may wish to seek my views on its potential worth.

33. Clearly, and as the case-law provides, a consumer survey can be a useful means of demonstrating acquired distinctiveness. The question for me though, was how probative, if at all, a survey along the lines proposed would, in fact, be? In particular, and even if conducted on a much larger scale, would the results have helped with the question of acquired distinctiveness, or would they have just shown e.g. that people 'recognised', or even 'associated' the sign with Tesco? Would such 'association', in any event, be enough from which to infer that the sign has acquired distinctiveness? This brings me to an underlying dilemma of 'reliance' (as a guarantee of origin), over and above 'association', a dilemma which remains unaddressed by the CJEU and, in the UK at least, can be traced back to the Appointed Person case of BL O/166/08, *Vibe Technologies Application* ('Vibe'). At paras 71 - 88 of the *Vibe* case, the Appointed Person reviews the relevant case law at the time, both at EU and UK level, for the purpose of shedding light on this question, originally posed in *Kerly's Law of Trade Marks (14th Edn)*, paras 8-023 - 8-025. The Appointed Person notes that at paragraph 8-025, the editors of *Kerly's* propose the following propositions: (1) mere association with a particular manufacturer is not enough; (2) the use of the sign must establish, in the perception of the average consumer, that the product originates from a particular undertaking; and (3) that perception must result from the use of the sign as a trade mark - in other words, the proprietor must have done something in his use to identify the sign as a trade mark, and mere extensive use during a period of monopoly is most unlikely to have achieved this.

34. In the Appointed Person's view, these propositions had not, at the time of *Vibe* or subsequently, been addressed by the CJEU and his preference was to refer further questions to that Court. He nonetheless decided the *Vibe* case because the applicant was not prepared to have the matter referred to the CJEU. In doing so, he nonetheless undertook a careful review of cases that had come before the UK Courts, in particular, *Unilever plc's Trade Mark Application* [2002] EWHC 2709, [2003] RPC 35 and *Dyson Ltd's Trade Mark Application* [2003] EWHC 1062 (Ch), [2003] RPC 47. In both cases, references had been made to the CJEU which, for one reason or another had not in the Appointed Person's mind, been answered (in one case the reference was withdrawn, and in the other, decided on another basis). Having reviewed those UK cases, his own conclusion was, however, clear: a proprietor or applicant had to show *reliance* and not just *association*, but the questions of the CJEU were simply 'parked' at the time of *Vibe*, to re-emerge once again in a much more recent case before the UK Court and after the filing date of this application.

35. This was the case of *Societe des Produits Nestlé SA v Cadbury UK Ltd* [2014] 16 (Ch) ('Kit Kat'), and on the question of 'association' or 'reliance', the Judge says the following:

46. *An issue which has been considered by English courts in a number of cases is whether, having regard to the propositions set out above, it is sufficient to establish that a trade mark has acquired a distinctive character that at the relevant date a significant proportion of the relevant class of persons recognise the mark and associate it with the applicant's goods in the sense that, if they were to be asked who marketed goods bearing that mark, they would identify the applicant (whether expressly or impliedly e.g. by reference to some other trade mark used by the applicant)?*

47. *To date, the answer which has been given to this question by the English courts is that this is not sufficient, and that what the applicant must establish is that a significant proportion of the relevant class of persons rely upon the trade mark (as opposed to any other trade marks which may also be present) as indicating the origin of the goods. It is not essential for the applicant to have explicitly promoted the sign in question as a trade mark. It is sufficient for the applicant to have used the sign in such a way that consumers have in fact come to rely on it as indicating the origin of the goods. On the other hand, if the applicant has explicitly promoted the sign as a trade mark, it is more likely that consumers will have come to rely upon it as indicating the origin of the goods. See in particular the passages from *British Sugar plc v James Robertson & Sons Ltd* [1996] RPC 281 at 304 (Jacob J), *Philips Electronics NV v Remington Consumer Products Ltd* [1999] RPC 809 at 819 (Aldous LJ), *Unilever plc's Trade Mark Application* [2002] EWHC 2709, [2003] RPC 35 at [31]-[33], [37], [40] and [42]-[43] (Jacob J), *Dyson Ltd's Trade Mark Application* [2003] EWHC 1062 (Ch), [2003] RPC 47 at [45] and *Bongrain* at [28] (Jacob LJ) cited in *Vibe* at [77]-[86] and the discussion in *Vibe* itself at [72]-[76] and [88]-[91].*

48. *Nevertheless, the English courts have recognised that it is not clear that this analysis is correct. Accordingly, in *Unilever* Jacob J referred questions to the Court of Justice, but the reference was withdrawn when the dispute between the parties was settled. In *Dyson Patten J* also referred questions to the Court of Justice, but the Court dealt with the reference on other grounds. In *Vibe I* stated at [89] that, had it not been for the applicant's opposition, I would have referred questions once again. Despite the passage of more than five years since then, the position is no clearer now.*

#### *The present case*

49. *It is clear from the hearing officer's decision that he applied the law as stated in *Vibe*, as he was bound to do. Counsel for Nestlé's primary submission was that the hearing officer had fallen into error in not recognising that, in the light of his findings of fact, the present case was factually distinguishable from *Vibe*. Counsel's secondary submission was that, if (contrary to his primary submission) the present case was not distinguishable from *Vibe*, then the issue of law discussed above should be referred to the Court of Justice for a preliminary ruling.*

50. *In support of his primary submission, counsel for Nestlé particularly relied on the passages from the hearing officer's decision at [38] and [103] which I have quoted in*

paragraph 24 above. He argued that this finding of fact by the hearing officer established that a significant proportion of the relevant class of persons did rely on the trade mark as indicating the origin of the goods. I do not accept this submission. The hearing officer's finding of fact only establishes that a significant proportion of the relevant class of persons recognise the shape constituted by the Trade Mark and associate it with goods manufactured by Nestlé in the sense I have explained in paragraph 45 above. In my judgment the hearing officer was correct to conclude that it had not been shown such persons have come to rely on the Trade Mark to identify the origin of the goods for the reasons he gave at [109].

51. Before proceeding further, it is perhaps worth elaborating a little on the hearing officer's third reason. As counsel for Cadbury accepted, a sign may come to be relied upon by consumers as indicating the origin of goods, and thus acquire a distinctive character, even though the sign is not visible to the consumer at the time of purchase. A very old example of this is the stamp frequently placed by wine producers on the corks in bottles of wine. Both because the cork was traditionally covered by lead foil and (where applicable) because of the dark glass of the bottle, the stamp was not visible to consumers at the point of sale, but only when the cork was extracted from the bottle (or at least when the foil was removed, if the bottle was made from clear glass). The point of the stamp was to confirm the authenticity of the product. In other words, it was an early form of anti-counterfeiting measure. As such, it was recognised by the English courts in the nineteenth century that such stamps functioned as trade marks and were distinctive of wine produced by the relevant producer: see the cases discussed in Prescott, "Trade marks invisible at point of sale: some corking cases" [1990] EIPR 241. As the hearing officer rightly held, however, there is no evidence, and it is inherently unlikely, that consumers of four-finger Kit Kats rely upon the shape of the product to confirm the authenticity of the goods. Indeed, I would go further: the fact that Nestlé ensures that each finger is embossed with the words Kit Kat as shown in paragraph 4 above amounts to a clear recognition that consumers do not rely on the shape in this way, rather what they rely upon is the trade mark Kit Kat.

52. Turning to counsel for Nestlé's secondary submission, he argued that the law was not correctly stated in Vibe and that the correct interpretation of Article 3(3) of the Directive was that association in the sense defined above was sufficient to demonstrate the acquisition of a distinctive character.

53. Counsel for Cadbury valiantly argued that there was no need for a reference because it was clear from the judgment of the Court of Justice in Storck I at [60]-[62] that the hearing officer had been correct to conclude that the Trade Mark had not been used as a trade mark and hence had not acquired a distinctive character. I do not accept this argument, because it begs the question as to what is meant by "use of the mark as a trade mark": does it require the applicant to show that, as a result of the use of the mark, consumers rely on the mark as a trade mark, or is it sufficient that consumers recognise the mark and associate it with the applicant's goods? As I have said, I consider that the law on this point remains unclear. Furthermore, I consider that it is necessary for the law to be clarified in order to determine whether the Trade Mark had acquired a distinctive character by the relevant date.

54. Accordingly I shall refer a question to the CJEU which I am provisionally minded to express as follows:

"1. In order to establish that a trade mark has acquired a distinctive character following the use that had been made of it within the meaning of Article 3(3) of Directive 2008/95/EC, is it sufficient for the applicant for registration to prove that at the relevant date a significant proportion of the relevant class of persons recognise the mark and associate it with the applicant's goods in the sense that, if they were to be asked who marketed goods bearing that mark, they would identify the applicant; or must the applicant prove that a significant proportion of the relevant class of persons rely upon the mark (as opposed to any other trade marks which may also be present) as indicating the origin of the goods?"

55. In case it assists the Court of Justice, it is my opinion that, for the reasons I explained in *Vibe*, the correct answer to the question is that the applicant must prove that a significant proportion of the relevant class of persons rely upon the trade mark (as opposed to any other trade marks which may also be present) as indicating the origin.

36. It is clear from the above that the Judge himself, based on previous cases from the UK Courts, is certain in his own mind that 'association' is not enough and 'reliance' has to be shown, whatever exactly that is, and however it is proven. He is simply seeking confirmation from the CJEU that his view and that of the UK Courts is correct. In my position, the parallels with this case are obvious, and not in any way negated by the fact that the *Kit Kat* case above relates to a shape, as did the *Unilever* case, and the *Dyson* case involved a lengthy period of *de facto* monopoly. The fact this case involves a device, in actual use with a distinctive word 'Tesco' (as in Annex 2), does not mean the matter is outside the scope of the question of 'reliance'.

37. Given the UK Courts clear expression of the need to show *reliance*, over and above *association*, and long before the above *Kit Kat* case was formally referred to the CJEU in January 2014, the outcome in this case, based on what the attorney had said and proposed in his letter of 11 December 2013, was to me entirely predictable. In light, though, of the fact that the *Kit Kat* reference was made *after* the date of filing this application, and has not yet been answered, I should make clear that my decision in this case would have been arrived at on the basis of established case law and irrespective of any referral. As I have said, the position of the UK Courts on the question of reliance was clear, even before the reference was made; the applicant had not drawn my attention to any use (let alone trade mark use) made by it of the sign applied for, apart and independently from the word Tesco. The fact is that even if the CJEU answers the question posed by saying that 'association' is enough, I would not regard the applicant as having clearly shown that they have made trade mark use of the sign for which application is made. Finally, I anticipated that, however large the constituency of any final survey, real problems may have existed as to the probative worth of any survey, not just in relation to the substantive questions asked, but also the methodology. That is to say, it had not passed my attention that conducting the mini-survey (partly at least) in Cheshunt, being the home of the Headquarters of Tesco, employing thousands of people, would be more than likely to give skewed results in any case.

38. In this last regard, I should record also that on 28 January 2014, during a hearing on another case, Mr Stobbs and I had a further, unscheduled, discussion on this case, during which I said I had concerns that any survey which took place in Cheshunt would, in my view, be likely to give skewed results since Cheshunt is well known as the Headquarters of Tesco in the UK. It seemed to me, as a preliminary view, that this, at the very least, gave rise to questions as to who exactly the consumers were who were asked the questions in Cheshunt and where, and in what context exactly, they were asked the questions. Even if the questions were asked of random strangers on the streets of Cheshunt, the probability of asking someone who having some connection with Tesco, such as being an employee or knowing one, would have been significantly higher than in any other town or city in the UK, and thus the possibility of skewed results would be very real. During this discussion Mr Stobbs strenuously denied any attempt to mislead the Registrar, and in a letter dated 30 January 2014, said the choice of Cheshunt was down to the fact the surveys were conducted by members of his team, one of whom, Richard Ferguson, was on a secondment at the Tesco head office. Mr Stobbs said the location of Cheshunt was chosen purely because of the 'efficacy of him (i.e. Richard Ferguson) conducting the survey'. Mr Stobbs also said that he too may have had concerns that Cheshunt may not have been the most representative of locations had the results in Cheshunt not been reflected at the other location, Linton. In this letter, Mr Stobbs reiterated his offer to conduct the survey in other locations should I have considered it necessary. In the event I did not, simply because the questions as proposed would not assist in my determination. Given, for example, the fact that Tesco is the largest retailer in the country, some recognition and even association of, Tesco with the sign would almost inevitably occur but this would not, of itself, indicate trade mark usage, or, and in particular, 'reliance'.

39. So, in sum, the applicant could and would have provided what it terms a 'staggering' amount of evidence of use (termed 'mere' evidence of use by the UK Courts), saying the 'logo in which the mark is incorporated' has been in continuous use by the applicant, Tesco PLC, since 1996. Tesco says it owns 3000 stores with a turnover of £40 billion in the UK (figures from 2012/13) and the mark is used by the applicant on all paper work, transport vehicles and own branded products. Further, it states that 300,000 people are employed by the applicant, and over 16 million consumers are members of the 'Clubcard' loyalty scheme. All of this is incontrovertible but, crucially, none of it addresses the question of how exactly the consumer, or even Tesco, 'relies' on the sign as presented as a trade mark, or even shows how the sign as presented is used as a trade mark.

40. It is worth pausing at this stage and making a few comments on the sign as presented and its relationship with the word Tesco. The burden of showing that the relevant public regard the sign as presented as a trade mark in its own right would be huge in this case. In certain cases, the Nike 'swoosh' comes to mind, an especially distinctive form of 'underlining' may assume its own identity; it may be used on its own, for example, and though education, be capable of individual identity. In this case, the sign is used simply as a form of 'underlining' in relation to the word Tesco; the equivalent, almost, of simple punctuation and wholly ancillary, and subservient to the word 'Tesco'. In trade mark terms, it would not be exaggerating to say that this sign not just 'limps' (by comparison with the word, Tesco), but is dependent for its very existence on that word.

41. In due course the CJEU will give the answer to the question of 'reliance' over 'association' and this will be applied in the *Kit Kat* case. Greater clarity may result as to what exactly 'reliance' could mean and how exactly it is shown. Fortunately, in this case I am not required to provide any codification and it would be most unwise to speculate in this case. I would simply rest on the fact that whatever it is, and indeed, under established principles irrespective of *Kit Kat*, it will involve more than mere use by the applicant, alongside an obviously dominant word, Tesco. I may have felt otherwise had the applicant drawn to my attention clear examples of use of the sign, independent of the word Tesco, or even alerted me to ways Tesco may have 'highlighted' or brought consumer's attention to the sign in some way. For clarity, I should say that my 'feeling otherwise' does not imply the application would inevitably have been allowed on the basis of acquired distinctiveness, simply that, in the circumstances the applicant should have been given the opportunity to present its formal evidence, the case not being obviously hopeless.

42. Faced with this situation, my inevitable conclusion, following the letter of 11 December 2013, was that, in fact, this was a hopeless case, whether or not the evidence had been properly formalised. In such a case, the option of curtailment by refusal was clear. The alternative of allowing the application to proceed, involving a potentially extended period of pendency and inevitable uncertainty affecting third parties, and during which the applicant expended large amounts of money on the provision of successive iterations of unsupportive evidence (or at least, evidence not going to the heart of the matter), was not an attractive proposition. Nor indeed is it one which has found any favour at all with e.g. the Appointed Person in the *Vibe* case - see to that effect paragraphs 15 and 16 especially, relying upon *Bongrain SA's Trade Mark Application* [2005] RPC 14 at paragraph 31.

### **Conclusion**

43. In this decision, I have considered all the papers filed and submissions made. For the reasons given above, the application is refused in its entirety under section 3(1)(b).

**Dated this 4th day of July 2014**

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

## ANNEX 1

Class 3: Bleaching preparations and other substances for laundry use; Cleaning, polishing, scouring and abrasive preparations; Soaps; Perfumery, essential oils, cosmetics, hair lotions; Dentifrices ; Abrasive paper; Abrasives; Adhesives for affixing false eyelashes; Adhesives for affixing false hair; Adhesives for cosmetic purposes; After-shave lotions; Air fragrancing preparations; Almond Aloe vera preparations for cosmetic purposes; Antiperspirant soap; Antiperspirants [toiletries]; Antistatic preparations for household purposes; Aromatics [essential oils]; Astringents for cosmetic purposes; Balms other than for medical purposes; Bases for flower perfumes; Bath salts, not for medical purposes; Beard dyes; Beauty masks; Bergamot oil; Bleaching preparations [decolorants] for cosmetic purposes; Bleaching salts; Bleaching soda; Breath freshening sprays; Breath freshening strips; Cake flavourings [essential oils]; Cakes of soap; Canned pressurized air for cleaning and dusting purposes; Carbides of metal [abrasives]; Cleaning chalk; Cleaning preparations; Cleansing milk for toilet purposes; Cloths impregnated with a detergent for cleaning; Cobblers' wax; Color-brightening chemicals for household purposes [laundry]; Color-removing preparations; Colorants for toilet purposes; Corundum [abrasive]; Cosmetic creams; Cosmetic dyes; Cosmetic kits; Cosmetic pencils; Cosmetic preparations for baths; Cosmetic preparations for eyelashes; Cosmetic preparations for skin care; Cosmetic preparations for slimming purposes; Cosmetics; Cosmetics for animals; Cotton sticks for cosmetic purposes; Cotton wool for cosmetic purposes; Decorative transfers for cosmetic purposes; Degreasers other than for use in manufacturing processes; Dental bleaching gels; Dentifrices; Denture polishes; Deodorant soap; Deodorants for human beings or for animals; Deodorants for pets; Depilatories; Depilatory wax; Detergents other than for use in manufacturing operations and for medical purposes; Disinfectant soap; Douching preparations for personal sanitary or deodorant purposes [toiletries]; Dry-cleaning preparations; Dry shampoos; Drying agents for dishwashing machines; Eau de Cologne; Emery; Emery cloth; Emery paper; Eyebrow cosmetics; Eyebrow pencils; Fabric softeners for laundry use; False eyelashes; False nails; Flavorings for beverages [essential oils]; Floor wax; Floor wax removers [scouring preparations]; Fumigation preparations [perfumes]; Furbishing preparations; Glass cloth; Greases for cosmetic purposes; Grinding preparations; Hair dyes; Hair lotions; Hair spray; Hair waving preparations; Henna [cosmetic dye]; Hydrogen peroxide for cosmetic purposes; Incense; Ionone [perfumery]; Joss sticks; Lacquer-removing preparations; Laundry bleach; Laundry blueing; Laundry glaze; Laundry preparations; Laundry soaking preparations; Laundry starch; Laundry wax; Leather bleaching preparations; Leather preservatives [polishes]; Lip glosses; Lipsticks; Lotions for cosmetic purposes; Make-up; Make-up powder; Make-up preparations; Make-up removing preparations; Mascara; Massage gels other than for medical purposes; Medicated soap; Mint essence [essential oil]; Mint for perfumery; Mouth washes, not for medical purposes; Musk [perfumery]; Mustache wax; Nail art stickers; Nail care preparations; Nail polish; Neutralizers for permanent waving; Non-slipping

liquids for floors; Non-slipping wax for floors; Oils for cleaning purposes; Oils for cosmetic purposes; Oils for perfumes and scents; Oils for toilet purposes; Paint stripping preparations; Perfumery; Perfumes; Petroleum jelly for cosmetic purposes; Polish for furniture and flooring; Polishing creams; Polishing paper; Polishing preparations; Polishing wax; Potpourris [fragrances]; Preparations for cleaning dentures; Preparations for unblocking drain pipes; Pumice stone; Rust removing preparations; Sandpaper; Scale removing preparations for household purposes; Scouring solutions; Shampoos; Shampoos for pets; Shaving preparations; Shaving soap; Shaving stones [astringents]; Shining preparations [polish]; Shoe cream; Shoe polish; Shoe wax; Shoemakers' wax; Skin whitening creams; Smoothing preparations [starching]; Smoothing stones; Soap; Soap for brightening textile; Soap for foot perspiration; Soda lye; Stain removers; Starch glaze for laundry purposes; Sun-tanning preparations [cosmetics]; Sunscreen preparations; Tailors' wax; Talcum powder, for toilet use; Terpenes [essential oils]; Tissues impregnated with cosmetic lotions; Toilet water; Toiletries; Tripoli stone for polishing; Turpentine, for degreasing; Varnish-removing preparations; Volcanic ash for cleaning; Wallpaper cleaning preparations; Washing soda, for cleaning; Waxes for leather; Whiting; Windscreen cleaning liquids blusher; eye make-up; body powder; concealers for skin; face and body beauty creams; face powder; make-up for the face and body; lipstick; lip balm; lip gloss; lip liner; foundation make-up; body sprays; scented linen sprays; incense sticks; fragrances and lotions for personal use; oils for toiletry purposes; bath beads; potpourris; perfuming sachets; scented body lotions and creams; scented body spray; scented ceramic stones; scented fabric refresher spray; scented oils used to produce aromas when heated; aromatherapy oils; baby oil; bath oil; body oil; cosmetic oils; essential oils; perfume oils; tanning oils; Cologne; after-shave; after-shave balms; after-shave creams; after-shave emulsions; after-shave gel; after-sun lotions; aromatherapy lotions; bath lotion; bathing lotions; body lotion; cosmetic suntan lotions; face and body lotions; hair waving lotion; hand lotions; non-medicated skin care preparations, namely, creams, lotions, gels, toners, cleaners and peels; styling lotions; beauty creams; body cream; exfoliant creams; face and body creams; pre-shave creams; shaving balm; shaving cream; shaving gel; shaving preparations; skin cream; bath soaps; deodorant soap; bath gel; hair gel; hair styling spray; shower and bath gel; beauty lotions; eau de parfum; perfume; eau de toilette; deodorants for body care; deodorants for personal use; preparations for the hair and for the care of the skin (non-medicated); toiletries for babies and infants (non-medicated); non-medicated creams for the prevention and treatment of nappy rash; petroleum jelly (for cosmetic purposes); pre-impregnated wipes and towels with personal cleansing and/or cosmetic lotions; pre-impregnated wipes and towels for the treatment and prevention of nappy rash; pre-impregnated wipes and towels for hygienic purposes (personal use); hygienic wipes and towels for cleaning purposes (household use); skin creams; skin balms; body lotions; body oils; body butters; baby lotion; nipple creams and balms; lotions, creams and gels for treatment of stretch marks; moisturising gels; bar soaps; liquid soaps; shampoo; hair conditioner; all in one bath and hair cleansers; bath and shower gels and foams; talcum powder; liquid talc; baby massage oil; sunscreen; sun protection



oils, lotions, creams and gels; after-sun oils, lotions, creams and gels; toothpaste; mouthwash; cosmetic products; lip balms; cotton sticks; cotton wool; medicated soaps; medicated shampoo; medicated hair conditioner; baby wipes; parts and fittings for the aforesaid goods.

Class 4: Industrial oils and greases; Lubricants; Dust absorbing, wetting and binding compositions; Fuels (including motor spirit) and illuminants; Candles and wicks for lighting; Additives, non-chemical, to motor fuel; Alcohol [fuel]; Beeswax; Belting wax; Benzene; Benzol; Blocks of peat [fuel]; Bone Carburants; Castor oil for technical purposes; Ceresine; Charcoal [fuel]; Christmas tree candles; Coal; Coal briquettes; Coal dust [fuel]; Coke; Combustible briquettes; Cutting fluids; Dust removing preparations; Electrical energy; Ethanol [fuel]; Firelighters; Firewood; Fish oil, not edible; Fuel; Fuel gas; Fuel oil; Fuel with an alcoholic base; Gas for lighting; Gas oil; Gasoline; Grease for belts; Grease for boots; Grease for leather; Illuminating grease; Illuminating wax; Industrial grease; Industrial oil; Industrial wax; Kerosene; Lamp wicks; Lanolin; Lighting fuel; Lubricants; Lubricating grease; Lubricating oil; Methylated spirit; Motor oil; Nightlights [candles]; Oil for the preservation of leather; Oil-gas; Oils for paints; Paraffin; Perfumed candles; Petrol; Petroleum ether; Petroleum jelly for industrial purposes; Petroleum, raw or refined; Preservatives for leather [oils and greases]; Producer gas; Rape oil for industrial purposes; industrial purposes; Tallow; Tapers; Textile oil; Wicks for candles; Wood briquettes; Xylene; Xylol; motor oils; fuels; firelighters candles; wicks; charcoal, coke, coal, wood for burning, briquettes; parts and fittings for all the aforesaid goods.

Class 5: Pharmaceutical and veterinary preparations; Sanitary preparations for medical purposes; Dietetic food and substances adapted for medical or veterinary use, food for babies; Dietary supplements for humans and animals; Plasters, materials for dressings; Material for stopping teeth, dental wax; Disinfectants; Preparations for destroying vermin; Fungicides, herbicides ; Absorbent cotton; Acetates for pharmaceutical purposes; Acids for pharmaceutical purposes; Aconitine; Adhesive bands for medical purposes; Adhesive plasters; Adhesives for dentures; Adjuvants for medical purposes; Air deodorising preparations; Air purifying preparations; Albumin dietary supplements; Alcohol for pharmaceutical purposes; Alloys of precious metals for dental purposes; Aloe vera preparations for pharmaceutical purposes; Aluminium acetate for pharmaceutical purposes; Amino acids for medical purposes; Amino acids for veterinary purposes; Anaesthetics; Analgesics; Animal washes; Anti-rheumatism bracelets; Anti-rheumatism rings; Antibiotics; Antioxidant pills; Antiseptic cotton; Antiseptics; Appetite suppressant pills; Appetite suppressants for medical purposes; Articles for headache; Aseptic cotton; Asthmatic tea; Bacterial preparations for medical and veterinary use; Bandages for dressings; Bath preparations, medicated; Bath salts for medical purposes; Bracelets for medical purposes; Breast-nursing pads; Chemical contraceptives; Chemical preparations for medical purposes; Chemical preparations for pharmaceutical purposes; Chemical preparations for the diagnosis of pregnancy; Chemical preparations for veterinary purposes; Compresses; Cooling sprays for medical purposes; Dental cements; Deodorants for clothing and textiles; Detergents for

medical purposes; Dietary supplements for animals; Dietetic beverages adapted for medical purposes; Dietetic foods adapted for medical purposes; Dietetic substances adapted for medical use; Dog lotions; Dog washes; Douching preparations for medical purposes; Drugs for medical purposes; Eye-washes; Eyepatches for medical purposes; Febrifuges; First-aid boxes, filled; Food for babies; Fungicides; Hydrogen peroxide for medical purposes; Insect repellent incense; Laxatives; Lozenges for pharmaceutical purposes; Medical preparations for slimming purposes; Medicinal hair growth preparations; Mouthwashes for medical purposes; Nutritional supplements; Personal sexual lubricants; Pesticides; Petroleum jelly for medical purposes; Pharmaceutical preparations; Pharmaceutical preparations for skin care; Pharmaceutical preparations for treating dandruff; Poisons; Preparations for destroying dry rot fungus; Preparations for destroying mice; Preparations for reducing sexual activity; Preparations for the treatment of burns; Preparations to facilitate teething; Protein dietary supplements; Rat poison; Remedies for perspiration; Sedatives; Slimming pills; Slug exterminating preparations; Surgical dressings; Tanning pills; Tissues impregnated with pharmaceutical lotions; Tobacco-free cigarettes for medical purposes; feminine hygiene products; panty liners; tampons; maternity towels; pants for feminine hygiene; sanitary briefs; incontinence pads; incontinence pants; nappies; disposable nappies; disposable nappies made of cellulose; disposable nappies made of paper; nappies for incontinence; cotton wool for pharmaceutical purposes; cotton wool in the form of buds for medical use; towels impregnated with medicated or disinfectant lotions; impregnated antiseptic wipes; impregnated medicated wipes; petroleum jelly (for medical purposes); skin care creams for medical use; medicated creams; babies' creams (medicated); medicated skin creams; nappy cream (medicated); sanitising wipes; moist wipes impregnated with a pharmaceutical lotion; antiseptic wipes; medicated balms; teething gel; medicated nipple creams; disposable nappies made of paper and/or cellulose; parts and fittings for all the aforesaid goods.

Class 8: Hand tools and implements (hand-operated); Cutlery; Side arms; Razors; Agricultural implements, hand-operated; Beard clippers; Blade sharpening instruments; Clamps for carpenters or coopers; Cleavers; Crimping irons; Crow bars; Curling tongs; Cuticle nippers; Cutlery; Cutter bars; Cutters; Cutting bars; Cutting tools [hand tools]; Emery files; Garden tools, hand-operated; Hair clippers for animals [hand instruments]; Hair clippers for personal use, electric and non-electric; Hair-removing tweezers; Knife steels; Knives; Lawn clippers [hand instruments]; Nail files; Nail files, electric; Nail nippers; Nail punches; Needle files; Needle-threaders; Pedicure sets; Penknives; Pizza cutters, non-electric; Riveting hammers [hand tools]; Scrapers [hand tools]; Scraping tools [hand tools]; Screwdrivers; Sledgehammers; Spades [hand tools]; Spanners [hand tools]; Sugar tongs; vegetable shredders and slicers; non-electric can openers; irons; cuticle tweezers and nippers; hair-removing tweezers; pedicure sets; nail files; needle-threaders; scissors; nail clippers; cutlery for use with babies, children and infants; forks; knives; spoons; cases for cutlery; disposable tableware (cutlery) made of plastics; soft-tip spoons for use with babies, infants and children; parts and fittings for all the aforesaid goods.

Class 9: 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; Compact discs, DVDs and other digital recording media; Mechanisms for coin-operated apparatus; Cash registers, calculating machines, data processing equipment, computers; Computer software; Fire-extinguishing apparatus; Balancing apparatus; Bar code readers; Barometers; Batteries, electric; Batteries, electric, for vehicles; Batteries for lighting; Battery boxes; Battery chargers; Cabinets for loudspeakers; Computer programs [downloadable software]; Computer software, recorded; Eyeglass chains; Eyeglass cords; Eyeglass frames; Eyepieces; Facsimile machines; Global Positioning System [GPS] apparatus; loudspeakers; megaphones; karaoke apparatus and instruments; video game cartridges; video telephones; domestic electrical appliances; fire extinguishing apparatus; fire alarms; fire blankets; answering machines; binoculars; camcorders; cameras; contact lenses; electrical door bells; burglar alarms; security lights; smoke detectors; luminous beacons; spectacle frames and glasses; sunglasses; vehicle breakdown warning triangles; weighing apparatus and instruments; telephone directory databases; but not including electronic timers and counters, electro-mechanical plug-in relays, sockets; electrically operated lighters for smokers; breathing apparatus for underwater swimming; swimming belts and swimming jackets; floats for bathing and swimming; life-belts; life jackets; divers' apparatus; life-saving apparatus and equipment; bullet proof waistcoats; barometers; buoys; metal detectors; distance measuring apparatus; dog whistles; dosage dispensers; magnetic encoders; magnetic encoded cards and cards bearing machine readable information; identity cards; bank cards; credit cards; cheque cards; cash cards; cards bearing magnetic data media; debit cards; smart cards; floppy disks; fuel and gasoline dispensing pumps for service stations; tyre gauges; gas testing instruments; electrically heated hair curlers; protective helmets; holograms; magnets; electric make-up removing appliances; telephone apparatus and instruments; telephones, mobile telephones and telephone handsets; adapters for use with telephones; battery chargers for use with telephones; desk or car mounted units incorporating a loudspeaker to allow a telephone handset to be used hands-free; in-car telephone handset cradles; bags and cases specially adapted for holding or carrying portable telephones and telephone equipment and accessories; computerised personal organisers; aerials; micro processors; keyboards; modems; monitoring (other than in-vivo monitoring) apparatus and instruments; parts and fittings for all the aforesaid; optics but not including telescopes, microscopes, microscopic kits, dissecting sets, binoculars, monoculars, shooting glasses, safety goggles, opera glasses, magnifiers, mounted slides for use with microscopes, telescopic sights for firearms, rifle scopes, pistol scopes, shot gun scopes, spotting scopes, tripods, sighting scopes, mounting systems for the attachment of scopes to weapons; x-rays producing apparatus and installations, not for medical purposes; recorded media including computer

software; educational software; educational programmes; films; films bearing recorded educational material; DVDs, CD-ROMS; children's educational software; downloadable publications; downloadable electronic publications; baby monitors; thermometers; safety caps; safety covers for electrical equipment and apparatus; safety alarms; eyewear; protective eyewear, visors and hats; buoyancy aids; inflatable arm-bands being flotation devices; parts and fittings for the aforesaid goods.

Class 11: Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes; Acetylene burners; Acetylene flares; Acetylene generators; Air conditioners for vehicles; Air conditioning apparatus; Air conditioning installations; Air cooling apparatus; Air deodorising apparatus; Air driers; Air filtering installations; Apparatus for dehydrating food waste; Coffee filters, electric; Coffee machines, electric; Coffee percolators, electric; Coffee roasters; Coils [parts of distilling, heating or cooling installations]; Cookers; Cooking apparatus and installations; Cooking rings; Cooking utensils, electric; Deep fryers, electric; Diving lights; Drip irrigation emitters [irrigation fittings]; Drying apparatus and installations; Electric lights for Christmas trees; Fabric steamers; Fans [air-conditioning]; Fans [parts of air-conditioning installations]; Filters for drinking water; Fireplaces, domestic; Flare stacks for use in oil refineries; Flares; Flues for heating boilers; Flushing apparatus; Flushing tanks; Footwarmers, electric or non-electric; Glue-heating appliances; Hair driers; Hand drying apparatus for washrooms; Headlights for automobiles; Heaters, electric, for feeding bottles; Heating apparatus, electric; Hot water bottles; Ice boxes; Ice machines and apparatus; Immersion heaters; Kettles, electric; Kitchen ranges [ovens]; Lamps; Lampshade holders; Light bulbs; Light bulbs, electric; Light bulbs for directional signals for vehicles; Light diffusers; Light-emitting diodes [LED] lighting apparatus; Lighters; Lighting apparatus and installations; Microwave ovens [cooking apparatus]; Refrigerating apparatus and machines; Refrigerating appliances and installations; Roasting spits; Rotisseries; Safety lamps; Sanitary apparatus and installations; Sockets for electric lights; Tanning apparatus [sun beds]; steam generation devices, apparatus and equipment; cookers and cooking appliances; stoves; cooker guards; ionisation, purifying and deodorising apparatus and machines; vaporisers; disinfectant distributors and dispensers for sanitary purposes; heaters for feeding bottles and heating plates; baby food heaters; solar collectors and thermoelectric heating and cooling devices; hot water bottles; foot warmers; cooling appliances and devices and installations; beverage and liquid cooling apparatus and devices; baths; shower baths; bath fittings; toilet seats and portable sanitary installations; sanitary apparatus and installations; toilet seat adaptors and toilet seat adaptors for children; steriliser and sterilisation apparatus and equipment; sterilisers for babies' feeding bottles; disposable sterilisation pouches; electric kettles; steam sterilisation devices; UV sterilisation devices; travel sterilising devices for babies' bottles and feeding equipment; water sterilizers; water purification installations; disinfecting apparatus; lights for babies, infants and children; parts and fittings for all the aforesaid goods.

- Class 16: Paper, cardboard and goods made from these materials, not included in other classes; Printed matter; Bookbinding 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; Adhesive tapes for stationery or household purposes; Bibs of paper; Pen cases; Pen clips; Pen wipers; Pencil holders; Pencil lead holders; Pencil leads; Pencil sharpeners, electric or non-electric; Pencil sharpening machines, electric or non-electric; Pencils; Penholders; Pens [office requisites]; Photographs [printed]; Pictures; Placards of paper or cardboard; Place mats of paper; Plastic film for wrapping; Plastics for modelling; Portraits; Postage stamps; Postcards; Posters; Printed matter; Printed publications; Printed timetables; Self-adhesive tapes for stationery or household purposes; Sheets of reclaimed cellulose for wrapping; Shields [paper seals]; Table linen of paper; Table napkins of paper; Tablecloths of paper; Tablemats of paper; Tags for index cards; Tailors' chalk; Teaching materials [except apparatus]; Tickets; Toilet paper; Towels of paper; Tracing cloth; Tracing needles for drawing purposes; Tracing paper; Tracing patterns; Trading cards other than for games; Transparencies [stationery]; waxed paper; Wood pulp board [stationery]; Wood pulp paper; Wristbands for the retention of writing instruments; Writing board erasers; Writing brushes; Writing cases [sets]; Writing cases [stationery]; Writing chalk; Writing instruments; Writing materials; Writing or drawing books; Writing pads; Writing paper; Writing slates; Xuan paper for Chinese painting and calligraphy; diaries; thesauri; dictionaries; books on a variety of subjects, namely history, wine, dining, etiquette, fashion, public speaking, and game rule books; personal organizers; calendars; stationery; gift wrapping paper; gift boxes; gift bags; appointment books; greeting cards; mail order catalogues featuring all of the foregoing as well as clothing and accessories, and cosmetics; passport cases; parts and fittings for all the aforesaid goods.
- Class 18: Leather and imitations of leather, and goods made of these materials and not included in other classes; Animal skins, hides; Trunks and travelling bags; Umbrellas and parasols; Walking sticks; Whips, harness and saddler; suitcases, bags, attache cases, haversacks, hat boxes, briefcases, belts, handbags, key cases, leather laces, music cases, wallets and purses, satchels; wheeled shopping bags; trunks; game bags; fittings for animals, harnesses, collars, leads and muzzles; fur; articles made from fur; umbrellas; parasols; parts and fittings for all the aforesaid goods.
- Class 20: Furniture, mirrors, picture frames; Goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics; Bedding, except linen; Beds; Beds for household pets; Bedsteads of wood; Benches [furniture]; Bins, not of metal; Bins of wood or plastic; Bottle racks; Broom handles, not of metal; Chests for toys; Chests of drawers; Chopping blocks [tables]; Crates; Cupboards; Curtain holders, not of textile

material; Curtain hooks; Curtain rails; Curtain rings; Curtain rods; Display boards; Display stands; Divans; Dog kennels; Door bells, not of metal, non-electric; Door fittings, not of metal; Door handles, not of metal; Door knockers, not of metal; Doors for furniture; Dressing tables; Filing cabinets; Fireguards; Inflatable publicity objects; Interior textile window blinds Latches, not of metal; Picture frames; Pillows; Settees; Sideboards; Tables; Tables of metal; Washstands [furniture]; Pillows; chairs; tables; mats for infant playpens; toy chests; decorative mobiles; pillows; desks; bedroom furniture; non-metal key rings; hand-held mirrors; wind chimes; high chairs; high chairs for babies; babies' cradles; children's cradles; bouncing cradles; cots; cots for use by children and infants; cribs; nursery cots; safety cots; travel cots; bedding for cots (other than bed linen); sleeping bags; sleeping bags for babies; expandable safety gates for door openings; expandable safety gates for stairs; support pillows for use in baby car safety seats; baby changing mats; changing mats; children's safety gates; baby walkers; parts and fittings for all the aforesaid goods.

Class 21: Household or kitchen utensils and containers; Combs and sponges; Brushes (except paint brushes); Brush-making materials; Articles for cleaning purposes; Steelwool; Unworked or semi-worked glass (except glass used in building); Glassware, porcelain and earthenware not included in other classes; Apparatus for wax-polishing, non-electric; Basins [bowls]; Baskets for domestic use; Basting spoons, for kitchen use; Beaters, non-electric; Beer mugs; Bird baths; Birdcages; Blenders, non-electric, for household purposes; Bottle openers; Bottles; Brushes for footwear; Chamber pots; Chopsticks; Coffee filters, non-electric; Cooking pot sets; Cooking pots; Cooking utensils, non-electric; Corkscrews; Cosmetic utensils; Decanters; Deep fryers, non-electric; Dishwashing brushes; Drying racks for washing; Flower pots; Fly swatters; Frying pans; Glass, unworked or semi-worked, except building glass; Heat-insulated containers; Heat insulated containers for beverages; Heaters for feeding bottles, non-electric; Holders for flowers and plants [flower arranging]; Ice cube molds; Insect traps; Ironing board covers, shaped; Ironing boards; Kitchen containers; Kitchen mixers, non-electric; Kitchen utensils; Knife rests for the table; Mops; Pots; Pottery; Sponges for household purposes; Steel wool for cleaning; Stew-pans; Table plates; Tableware, other than knives, forks and spoons; Toilet sponges; Toilet utensils; Toothbrushes; Toothbrushes, electric; Toothpick holders; Waffle irons, non-electric; Washing boards; Washtubs; Works of art of porcelain, ceramic, earthenware or glass; steel wool for cleaning; stew-pans; strainers; strainers for household purposes; sugar bowls; syringes for watering flowers and plants; table plates; tableware, other than knives, forks and spoons; tankards; tar-brushes, long handled; tea balls; tea caddies; tea cosies; tea services [tableware]; tea strainers; teapots; thermally insulated containers for food; tie presses; toilet brushes; toilet cases; toilet paper dispensers; toilet paper holders; toilet sponges; toilet utensils; toothbrushes, electric; toothpick holders; toothpicks; towel rails and rings; trays for domestic purposes, of paper; trays (litter -) for pets; trivets [table utensils]; trouser presses; watering devices; wax-polishing appliances, non-electric, for shoes; works of art, of porcelain, terra-cotta or glass; cups; bowls; plates; tea

sets; lunchboxes; plastic cups; plastic bowls; plastic plates; beakers; sippers; snack-pods; snack-pots; food-pots; egg-cups; thermally insulated flasks; thermally insulated containers for drink; basins (bowels); dishes for microwave ovens; baby baths; portable baby baths for babies and infants; blenders for food preparation (non electric); bath seats for babies; potties and toilet potties; toilet seat trainers; brushes for cleaning bottles; textile gloves for cleaning; toothbrush holders; hair brushes; nail brushes; wash bags; parts and fittings for all the aforesaid goods.

Class 24: Textiles and textile goods, not included in other classes; Bed covers; Table covers; Bath linen, except clothing; Bed blankets; Bed clothes; Bed covers of paper; Bed linen; Billiard cloth; Bolting cloth; Brocades; Buckram; Bunting; Calico; Canvas for tapestry or embroidery; Cheese cloth; Chenille fabric; Cheviots [cloth]; Cloth; Coasters [table linen]; Cotton fabrics; Covers for cushions; Crepe [fabric]; Fabric for footwear; Fabrics for textile use; Household linen; Jersey [fabric]; Lining fabric for shoes; Linings [textile]; Loose covers for furniture; Marabouts [cloth]; Mattress covers; Napkins, of cloth, for removing make-up; Net curtains; Non-woven textile fabrics; Sanitary flannel; Serviettes of textile; Sheets [textile]; Shower curtains of textile or plastic; Shrouds; Silk [cloth]; Silk fabrics for printing patterns; Sleeping bags [sheeting]; Table linen, not of paper; Table runners; Tablecloths, not of paper; Tablemats, not of paper; Taffeta [cloth]; Textile material; Tick [linen]; Ticks [mattress covers]; Towels of textile; Traced cloth for embroidery; Travelling rugs [lap robes]; Trellis [cloth]; Tulle; Upholstery fabrics; Velvet; Wall hangings of textile; Washing mitts; Woollen cloth; Zephyr [cloth]; textiles for making clothing; duvets; duvet covers; pillow covers; bath linen; bed canopies; curtains; blankets; bed blankets made of cotton; bed blankets made of wool; bed blankets made of man-made fibres; blankets for babies; cot blankets; lap blankets; children's blankets; travel blankets; towel blankets; hooded towels; hooded towels for babies; face towels; children's towels; sleeping bags for babies; parts and fittings for all the aforesaid goods.

Class 25: Clothing, footwear, headgear; aprons [clothing]; ascots; babies' pants [clothing]; bandanas [neckerchiefs]; bath sandals; bath slippers; bathing caps; beach clothes; beach shoes; belts [clothing]; money belts [clothing]; berets; bibs, not of paper; boas [necklets]; bodices [lingerie]; boot uppers; boots; ski boots; brassieres; breeches for wear; camisoles; caps [headwear]; shower caps; chasubles; clothing; clothing for gymnastics; coats; collar protectors; collars [clothing]; combinations [clothing]; corselets; corsets [underclothing]; masquerade costumes; wristbands [clothing]; cyclists' clothing; detachable collars; dresses; ear muffs [clothing]; esparto shoes or sandals; football boots; studs for football boots; footmuffs, not electrically heated; non-slipping devices for footwear; footwear; tips for footwear; fittings of metal for footwear; heelpieces for footwear; welts for footwear; hat frames [skeletons]; furs [clothing]; gabardines [clothing]; garters; girdles; gloves [clothing]; dressing gowns; gymnastic shoes; half-boots; hats; paper hats [clothing]; headbands [clothing]; headgear for wear; heelpieces for stockings / heel pieces for stockings; heels; hoods [clothing]; hosiery; inner soles; stuff jackets [clothing];

jackets [clothing]; jerseys [clothing]; jumper dresses; knitwear [clothing]; lace boots; layettes [clothing]; clothing of imitations of leather; clothing of leather; leggings [leg warmers]; leg warmers; leggings [trousers]; ready-made linings [parts of clothing]; liveries; maniple; mantillas; sleep masks; mittens; motorists' clothing; muffs [clothing]; neckties; outerclothing; overalls; overcoats; pants [clothing]; paper clothing; parkas; cap peaks; pelerines; pelisses; petticoats; pocket squares; pockets for clothing; ponchos; pullovers; pyjamas; ready-made clothing; bath robes; sandals; saris; sarongs; sashes for wear; scarfs; shawls; dress shields; shirt fronts; shirts; shoes; short-sleeve shirts; sports jerseys; ski gloves; skirts; skull caps; slippers; slips [undergarments]; sock suspenders; socks; soles for footwear; gaiters; sports shoes; boots for sports; stocking suspenders; stockings; sweat-absorbent stockings; fur stoles; suits; swimsuits; suspenders for clothing [suspenders]; sweat-absorbent underclothing [underwear]; sweaters; tee-shirts; tights; togas; top hats; trouser straps; trousers; bathing trunks; turbans; underpants; underwear; uniforms; footwear uppers; veils [clothing]; fishing vests; visors [headwear]; waistcoats / vests; waterproof clothing; wet suits for water-skiing; wimples; wooden shoes; shirt yokes; baby grows; cloth bibs; dressing gowns; onesies; sleepsuits; bodysuits; rompers; pramsuits; mittens for babies; mittens for infants; hats for babies; hats for infants; booties; earmuffs; socks; blouses; anoraks; windbreakers; hats; braces; sportswear, footwear for sports; clothing for motorsports; overalls for motorsport; parts and fittings for all the aforesaid.

Class 28: Games and playthings; Gymnastic and sporting articles not included in other classes; Decorations for Christmas trees; Air pistols [toys]; Amusement machines, automatic and coin-operated; Apparatus for games; Appliances for gymnastics; Arcade video game machines; Archery implements; Artificial snow for Christmas trees; Backgammon games; Bags especially designed for skis and surfboards; Balls for games; Bar-bells; Baseball gloves; Bells for Christmas trees; Billiard balls; Billiard cue tips; Billiard cues; Billiard markers; Billiard table cushions; Billiard tables; Bingo cards; Bite indicators [fishing tackle]; Bite sensors [fishing tackle]; Body boards; Body-building apparatus; Bowling apparatus and machinery; Bows for archery; Boxing gloves; Building blocks [toys]; Building games; Camouflage screens [sports articles]; Candle holders for Christmas trees; Caps for pistols [toys]; Chalk for billiard cues; Checkerboards; Checkers [games]; Chess games; Chessboards; Christmas tree stands; Christmas trees of synthetic material; Conjuring apparatus; Controllers for game consoles; Cricket bags; Cups for dice; Darts; Dice; Discuses for sports; Dolls; Dolls' beds; Dolls' clothes; Dolls' feeding bottles; Dolls' houses; Dolls' rooms; Dominoes; Fishing tackle; Flippers for swimming; Floats for fishing; Gaming machines for gambling; Golf bags, with or without wheels; Golf clubs; Golf gloves; Hockey sticks; In-line roller skates; Jigsaw puzzles; Kaleidoscopes; Kite reels; Kites; Knee guards [sports articles]; Ornaments for Christmas trees, except illumination articles and confectionery; Playing balls; Playing cards; Plush toys; Portable games with liquid crystal displays; Protective paddings [parts of sports suits]; Radio-controlled toy vehicles; Roller skates; Scale model vehicles; Scooters [toys]; Shuttlecocks; Skateboards; Skating boots with skates attached; Ski bindings; Skis; Skittles;



Sleighs [sports articles]; Slides [playthings]; Swimming belts; Swimming jackets; Swimming kick boards; Swimming pools [play articles]; Swings; Tables for indoor football; Tables for table tennis; Targets; Teddy bears; Tennis ball throwing apparatus; Tennis nets; Theatrical masks; Toy masks; Toy pistols; Toy vehicles; Toys; Toys for domestic pets; starting blocks for sports; stationary exercise bicycles; strings for rackets; stuffed toys; surf boards; surf skis; surfboard leashes; swimming belts; swimming jackets; swimming kick boards; swimming pools [play articles]; swings; tables for indoor football; tables for table tennis; targets; teddy bears; tennis ball throwing apparatus; tennis nets; theatrical masks; toy masks; toy pistols; toy vehicles; toys; toys for domestic pets; trampolines; twirling batons; video game machines; water wings; waterskis; wax for skis; weight lifting belts [sports articles]; children's toys; stuffed toy animals; soft toys; balloons; toy bakeware and cookware; bath toys; bean bags; snow globes; music box toys; dolls; porcelain dolls; bean bag dolls; paper dolls; puppets; collectible toy figures; doll houses; doll furniture; accessories for dolls; clothing for dolls; dolls for playing; educational playthings; parts and fittings for all the aforesaid goods.

Class 30: Meat, fish, poultry and game; Meat extracts; Preserved, frozen, dried and cooked fruits and vegetables; Jellies, jams, compotes; Eggs; Milk and milk products; Edible oils and fats; Ajvar [preserved peppers]; Albumen for culinary purposes; Albumin milk; Alginates for culinary purposes; Almonds, ground; Aloe vera prepared for human consumption; Anchovy; Animal marrow for food; Apple purée; Bacon; Beans, preserved; Black pudding; Bone oil, edible; Broth; Broth concentrates; Butter; Buttercream; Caviar; Charcuterie; Cheese; Clams [not live]; Cocoa butter; Coconut butter; Coconut, desiccated; Coconut fat; Coconut oil; Compotes; Condensed milk; Corn oil; Cranberry sauce [compote]; Crayfish, not live; Cream [dairy products]; Croquettes; Crustaceans, not live; Curd; Dates; Edible birds' nests; Edible fats; Edible oils; Fat-containing mixtures for bread slices; Fatty substances for the manufacture of edible fats; Fish fillets; Fish meal for human consumption; Fish mousses; Fish, not live; Fish, preserved; Fish, tinned [canned (Am.)]; Foods prepared from fish; Frosted fruits; Frozen fruits; Fruit-based snack food; Fruit chips; Fruit jellies; Fruit peel; Fruit, preserved; Fruit preserved in alcohol; Fruit pulp; Fruit salads; Fruit, stewed; Fruits, tinned [canned (Am.)]; Game, not live; Gelatine; Gherkins; Ginger jam; Ham; Herrings; Hummus [chickpea paste]; Isinglass for food; Jams; Jellies for food; Kefir [milk beverage]; Kimchi [fermented vegetable dish]; Kumys [kumyss] [milk beverage]; Lard for food; Lecithin for culinary purposes; Lentils, preserved; Linseed oil for culinary purposes; Liver; Liver pâté; Lobsters, not live; Low-fat potato chips; Margarine; Marmalade; Meat; Meat jellies; Meat, preserved; Meat, tinned [canned (Am.)]; Milk; Milk beverages, milk predominating; Milk ferments for culinary purposes; Milk products; Mushrooms, preserved; Mussels, not live; Non-alcoholic egg nog; Nuts, prepared; Olive oil for food; Olives, preserved; Onions, preserved; Oysters, not live; Palm kernel oil for food; Palm oil for food; Peanut butter; Peanuts, processed; Peas, preserved; Pectin for culinary purposes; Piccalilli; Pickles; Pollen prepared as foodstuff; Pork; Potato chips; Potato flakes; Potato fritters; Poultry, not live; Powdered eggs; Prawns, not live; Preparations for making bouillon;

Preparations for making soup; Preserved garlic; Processed fish spawn; Processed seeds; Processed sunflower seeds; Prostokvasha [soured milk]; Raisins; Rape oil for food; Rennet; Ryazhenka [fermented baked milk]; Salmon; Salted fish; Salted meats; Sardines; Sauerkraut; Sausages; Sausages in batter; Sea-cucumbers, not live; Seaweed extracts for food; Sesame oil; Shellfish, not live; Shrimps, not live; Silkworm chrysalis, for human consumption; Smetana [sour cream]; Snail eggs for consumption; Soups; Soya beans, preserved, for food; Soya milk [milk substitute]; Spiny lobsters, not live; Suet for food; Sunflower oil for food; Tahini [sesame seed paste]; Toasted laver; Tofu; Tomato juice for cooking; Tomato purée; Tripe; Truffles, preserved; Tuna fish; Vegetable juices for cooking; Vegetable mousses; Vegetable salads; Vegetable soup preparations; Vegetables, cooked; Vegetables, dried; Vegetables, preserved; Vegetables, tinned [canned (Am.)]; Whey; Whipped cream; White of eggs; Yogurt; Yolk of eggs; preparations made of soya; soup and soup products in powder or liquid form; enriched soup and soup products in powder or liquid form; preparations for making soup in powder or liquid form; beverages made from or containing milk; preparations for making milk based beverages; mixed milk beverages (milk predominating); milk shakes; milk powder for foodstuffs; milk powder for nutritional purposes; dried foodstuffs; foods made from milk products; food preparations with added minerals; food preparations with added proteins; food preparations with added vitamins; food supplement preparations in liquid form; food supplement preparations in powdered form; preparations for food for human consumption; preparations for use as dietetic additives for food for human consumption; preparations with a milk base consisting of foodstuffs; prepared food mixes; vitamin enriched foodstuffs; dietary supplements; desserts of yogurt; drinking yogurts; energy drinks made predominantly from milk; flavoured milk beverages; flavoured milk powder for making drinks.

Class 31: Grains and agricultural, horticultural and forestry products not included in other classes; Live animals; Fresh fruits and vegetables; Seeds; Natural plants and flowers; Foodstuffs for animals; Malt; Barley; Beans, fresh; Beet; Berries, fresh fruits; Beverages for pets; Bird food; Bran; Bran mash for animal consumption; Bred stock; Bulbs; Bushes; Cereal seeds, unprocessed; Chestnuts, fresh; Chicory roots; Chicory [salad]; Christmas trees; Citrus fruit; Cocoa beans, raw; Coconut shell; Coconuts; Crayfish, live; Crustaceans, live; Cucumbers, fresh; Dog biscuits; Fishing bait, live; Flowers, natural; Fruit, fresh; Garden herbs, fresh; Grains [cereals]; Grapes, fresh; Leeks, fresh; Lemons, fresh; Lentils, fresh; Lettuce, fresh; Maize; Malt for brewing and distilling; Mushrooms, fresh; Mussels, live; Oats; Oil cake; Olives, fresh; Onions, fresh vegetables; Oranges; Plant seeds; Plants; Plants, dried, for decoration; Potatoes, fresh; Poultry, live; Rhubarb; Rice, unprocessed; Seedlings; Sesame; Shellfish, live; Spinach, fresh; Sugarcane; Wheat; Wheat germ for animal consumption; Wood chips for the manufacture of wood pulp; Wreaths of natural flowers.

Class 32: Beers; Mineral and aerated waters and other non-alcoholic beverages; Fruit beverages and fruit juices; Syrups and other preparations for making beverages; Syrups for lemonade; Table waters; Tomato juice [beverage];

Vegetable juices [beverages]; Waters [beverages]; Whey beverages; beverages containing added minerals; beverages containing added trace elements; beverages enriched with added minerals; beverages enriched with added trace elements; beverages enriched with added vitamins; cold tea; fruit drinks and fruit juices; energy drinks; energy drinks containing caffeine; hypertonic and hypotonic drinks (for use and/or as required by athletes); non-alcoholic malt beverages; effervescent (sherbet) tablets and effervescent powders for drinks and non-alcoholic cocktails; smoothies (non-alcoholic fruit beverages); beverages containing vitamins; preparations for making beverages; malt syrup for beverages; malt wort; non-alcoholic malt free beverages; malt beer.

Class 33: Alcoholic beverages (except beers); Alcoholic beverages containing fruit; Alcoholic beverages, except beer; Alcoholic essences; Alcoholic extracts; Anise [liqueur]; Anisette [liqueur]; Aperitifs; Arak [arrack]; Bitters; Brandy; Cider; Cocktails; Curacao; Digesters [liqueurs and spirits]; Distilled beverages; Fruit extracts, alcoholic; Gin; Hydromel [mead]; Kirsch; Liqueurs; Nira [sugarcane-based alcoholic beverage]; Peppermint liqueurs; Perry; Piquette; Pre-mixed alcoholic beverages, other than beer-based; Rice alcohol; Rum; Sake; Spirits [beverages]; Vodka; Whisky; Wine; alcoholic energy drinks; alcoholic punches; blended whisky; bourbon whisky; calvados; carbonated alcoholic beverage; cream liqueurs; distilled beverages and spirits; flavoured spirits; grappa; liqueurs containing cream; low alcoholic drinks; low alcoholic wine; malt whisky; mulled wines; port; port wines; rum punch; sangria; schnapps; sherry; sparkling wines; tequila; vermouth; wine coolers [drinks].

Class 35: Advertising; Business management; Business administration; Office functions; Advisory services for business management; Arranging newspaper subscriptions for others; Arranging subscriptions to telecommunication services for others; Business information; Office machines and equipment rental; On-line advertising on a computer network; Photocopying services; Public relations; Rental of vending machines; Sales promotion for others; Shop window dressing; retail and online services in connection with the sale of bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, abrasive cloth, preparations for the hair and for the care of the skin (non-medicated), toiletries for babies and infants (non-medicated), non-medicated creams for the prevention and treatment of nappy rash, petroleum jelly (for cosmetic purposes), pre-impregnated wipes and towels with personal cleansing and/or cosmetic lotions, pre-impregnated wipes and towels for the treatment and prevention of nappy rash, pre-impregnated wipes and towels for hygienic purposes (personal use), hygienic wipes and towels for cleaning purposes (household use), skin creams, skin balms, body lotions, body oils, body butters, baby lotion, baby oil, nipple creams and balms, lotions, creams and gels for treatment of stretch marks, moisturising gels, soaps, bar soaps, liquid soaps, shampoo, hair conditioner, all in one bath and hair cleansers, bath and shower gels and foams, talcum powder, liquid talc, baby massage oil, sunscreen, sun protection oils, lotions, creams and gels,

after-sun oils, lotions, creams and gels, toothpaste, mouthwash, cosmetic products, lip balms, cotton sticks, cotton wool, medicated soaps, medicated shampoo, medicated hair conditioner, pharmaceutical and veterinary preparations, sanitary preparations for medical purposes, dietetic food and substances adapted for medical or veterinary use, food for babies, dietary supplements for humans and animals, plasters, materials for dressings, material for stopping teeth, dental wax, disinfectants, preparations for destroying vermin, fungicides, herbicides, feminine hygiene products, panty liners, sanitary towels, tampons, maternity towels, pants for feminine hygiene, sanitary briefs, incontinence pads, incontinence pants, nappies, disposable nappies, disposable nappies made of cellulose, disposable nappies made of paper, nappies for incontinents, cotton wool for pharmaceutical purposes, cotton wool in the form of buds for medical use, towels impregnated with medicated or disinfectant lotions, impregnated antiseptic wipes, impregnated medicated wipes, petroleum jelly (for medical purposes), skin care creams for medical use, medicated creams, babies' creams (medicated), medicated skin creams, nappy cream (medicated), sanitising wipes, moist wipes impregnated with a pharmaceutical lotion, antiseptic wipes, baby wipes, medicated balms, teething gel, medicated nipple creams, hand tools and implements (hand-operated), cutlery, side arms, razors, nail clippers, cutlery for use with babies, children and infants, forks, knives, spoons, cases for cutlery, disposable tableware (cutlery) made of plastics, soft-tip spoons for use with babies, infants and children, 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, compact discs, DVDs and other digital recording media, mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment, computers, computer software, fire-extinguishing apparatus, recorded media including computer software, educational software, educational programmes, films, films bearing recorded educational material, DVDs, CD-ROMS, children's educational software, downloadable publications, downloadable electronic publications, baby monitors, thermometers, safety caps, safety covers for electrical equipment and apparatus, safety alarms, children's safety gates, eyewear, protective eyewear, visors and hats, sunglasses, buoyancy aids, inflatable arm-bands, surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth, Orthopaedic articles, suture materials, feeding bottles, feeding bottle teats, teats for babies, infants and children, re-usable and disposable teats for bottles and drinking cups for babies, infants and children, spoons for administering medicine, incubators for babies, gloves for medical purposes, maternity belts, medical physical exercise apparatus, incontinence sheets for babies, infants and children and adults, birthing mats, plastic and/or paper bags and wraps for disposal of hospital waste, disposable bags and precursors therefor for hospital waste, surgical and medical sponges, medical thermometers (electrical, and/or non-electrical, and/or digital), teething rings, teethers and teething rattles, pacifiers, baby soothers, nursing appliances

for use in breast feeding, breast shields, breast shells, nipple shields, nipple protectors, medicine syringes, medicine dispensers, and nasal aspirators, apparatus for lighting, heating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, steam generation devices, apparatus and equipment, cookers and cooking appliances, stoves, cooker guards, ionisation, purifying and deodorising apparatus and machines, vaporisers, disinfectant distributors and dispensers for sanitary purposes, heaters for feeding bottles and heating plates, baby food heaters, solar collectors and thermoelectric heating and cooling devices, hot water bottles, foot warmers, cooling appliances and devices and installations, beverage and liquid cooling apparatus and devices, baths, shower baths, bath fittings, toilet seats and portable sanitary installations, sanitary apparatus and installations, toilet seat adaptors and toilet seat adaptors for children, steriliser and sterilisation apparatus and equipment, sterilisers for babies' feeding bottles, disposable sterilisation pouches, electric kettles, steam sterilisation devices, UV sterilisation devices, travel sterilising devices for babies' bottles and feeding equipment, water sterilizers, water purification installations, disinfecting apparatus, lights for babies, infants and children, car seats, pushchairs, prams, strollers, wheeled trolleys, transporters and buggies, baby walkers, perambulators incorporating carry cots, rain covers for pushchairs, prams, strollers, transporters and buggies, harnesses for prams, harnesses for use with pushchairs, tricycles, bicycles, booster seats, vehicle safety apparatus for children, paper, cardboard and goods made from these materials, not included in other classes, printed matter, bookbinding 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, paper, cardboard and goods made from these materials, not included in other classes, printed matter, bookbinding material, photographs, stationery, adhesives for stationery or household purposes, paper products for household and sanitary use, such as kitchen and bath towels, kitchen rolls, napkins, handkerchiefs, toilet paper, paper wipes, paper towels, printed matter, including printed publications, magazines, brochures, leaflets, coupons and vouchers postcards, stationery, disposable nappies made of paper and/or cellulose, books for babies, infants and children, printed guides, printed guides relating to parenting and new born babies, packs containing printed matter relating to new born babies and parenting advice, leaflets, leaflets relating to new born babies and parenting advice, activity books, colouring books, books for babies, infants and children, sticker books, stickers, photograph albums, calendars, diaries, diaries relating to babies' progress, planners (printed) relating to babies and infants, birthing diaries (printed matter), birthing planners (printed matter), bags made of leather, bags made of imitation leather, nappy and changing bags, harnesses for babies, baby carriers, baby carriers worn on the body, infant carriers worn on the body, chairs, tables, mats for infant playpens, toy chests, decorative mobiles, pillows, desks, bedroom furniture, non-metal key rings, hand-held mirrors, wind chimes, high chairs, high chairs for babies, babies' cradles, children's cradles, bouncing cradles, cots, cots for use by children and infants,

cribs, nursery cots, safety cots, travel cots, bedding for cots (other than bed linen), sleeping bags, sleeping bags for babies, expandable safety gates for door openings, expandable safety gates for stairs, support pillows for use in baby car safety seats, baby changing mats, brushes and combs (not included in other classes), cups, bowls, plates, tea sets, lunchboxes, plastic cups, plastic bowls, plastic plates, beakers, sippers, snack-pods, snack-pots, food-pots, egg-cups, thermally insulated containers for food, thermally insulated flasks, thermally insulated containers for drink, basins (bowels), dishes for microwave ovens, baby baths, portable baby baths for babies and infants, blenders for food preparation (non electric), bath seats for babies, potties and toilet potties, toilet seat trainers, brushes for cleaning bottles, textile gloves for cleaning, toothbrushes, toothbrush holders, hair brushes, nail brushes, wash bags, textiles for making clothing, duvets, table cloths, bed covers, duvet covers, pillow covers, bath linen, bed canopies, curtains, blankets, bed blankets made of cotton, bed blankets made of wool, bed blankets made of man-made fibres, blankets for babies, cot blankets, lap blankets, children's blankets, travel blankets, towel blankets, hooded towels, hooded towels for babies, face towels, children's towels, sleeping bags, sleeping bags for babies, clothing, footwear, headgear, baby grows, cloth bibs, dressing gowns, onesies, sleepsuits, bodysuits, rompers, pramsuits, mittens for babies, mittens for infants, hats for babies, hats for infants, booties, earmuffs, socks, play mats, exercise mats, yoga mats, games and playthings, gymnastic and sporting articles not included in other classes, children's toys, stuffed toy animals, soft toys, balloons, toy bakeware and cookware, bath toys, bean bags, snow globes, music box toys, dolls, porcelain dolls, bean bag dolls, paper dolls, puppets, collectible toy figures, doll houses, doll furniture, accessories for dolls, clothing for dolls, dolls for playing, educational playthings, parts and fittings for all the aforesaid goods; the bringing together, for the benefit of others, of a variety of clothing, footwear, headgear, fashion accessories, jewellery, horological goods, chronometric goods, paper goods, printed matter, leather goods, luggage, bags, travel goods, goods for carrying and transporting babies, infants and children, furniture, furnishings, textiles, carpets, rug, games, toys, games, playthings, sporting articles, foods and drink and other goods for human consumption or for making goods for human consumption, non-alcoholic beverages, alcoholic beverages, health and beauty articles, toiletries, cosmetics, baby articles, baby feeding apparatus and instruments, maternity apparatus and instruments, feminine hygiene products, cleaning articles, laundry articles, pharmacy goods, hardware and metal goods, machines and equipment for household use, cleaning apparatus, lighting apparatus and instruments, heating apparatus and instruments, cooking apparatus and instruments, refrigerating apparatus and instruments, kitchenware, hand tools, cutlery, photographic equipment, domestic electrical and electronic equipment including white goods, household goods, household containers and utensils, kitchenware, do-it-yourself equipment, gardening equipment, enabling customers to conveniently view and purchase those goods from a supermarket or hypermarket or mini-market or from a general merchandise catalogue by mail order, or by means of telecommunications or from a general merchandise Internet website; provision of information to customers and advice or assistance in the selection of goods

brought together as above, advertising and promotional services, dissemination of advertising and promotional materials, direct mail advertising services, market research and marketing services, distribution of samples, shop window dressing, accounting commercial administration of the licensing of the goods and services of others, commercial information and advice for consumers (consumer advice shop), employment agencies; telephone answering for unavailable subscribers; payroll preparation; price comparison services; presentation of goods on communication media, for retail purposes; rental of advertising space; rental of photocopy and vending machines; management of a retail store and or supermarket; cost price analysis; organisation, operation and supervision of loyalty schemes and incentive schemes; sales incentive schemes; on-line administration and supervision of a discount, special offer and gift voucher scheme; operation of incentive and loyalty schemes; organisation, operation and supervision of loyalty and incentive schemes via the internet and mobile devices; information, advisory and consultancy services relating to the aforesaid.

Class 36: Insurance; Financial affairs; Monetary affairs; Real estate affairs; Accident insurance underwriting; Actuarial services; Antique appraisal; Apartment house management; Banking; Brokerage; Brokerage of carbon credits; Business liquidation services, financial; Charitable fund raising; Check [cheque] verification; Clearing, financial; Credit bureaux; Credit card services; Debit card services; Debt advisory services; Debt collection agencies; Deposits of valuables; Electronic funds transfer; Exchanging money; Financial analysis; Financial consultancy; Financial evaluation [insurance, banking, real estate]; Financial information; Financial management; Financial sponsorship; Financing services; Fiscal valuations; Fund investments; Guarantees; Health insurance underwriting; Hire-purchase financing; Home banking; Instalment loans; Insurance brokerage; Insurance consultancy; Insurance information; Insurance underwriting; Issuance of credit cards; Issue of tokens of value; Issuing of travellers' checks [cheques]; Jewelry appraisal; Leasing of farms; Leasing of real estate; Lending against security; Life insurance underwriting; Loans [financing]; Marine insurance underwriting; Mortgage banking; Mutual funds; Numismatic appraisal; Organization of collections; Pawnbrokerage; Provident fund services; Real estate agencies; Real estate appraisal; Real estate management; Rent collection; Rental of offices [real estate]; Renting of flats; Repair costs evaluation [financial appraisal]; Retirement payment services; Safe deposit services; Savings bank services; Securities brokerage; Stamp appraisal; Stock brokerage services; Stock exchange quotations; issuing of tokens of value; issuing tokens of value in relation to customer loyalty schemes; the issuing of vouchers including for restaurants and cafés, entertainment events, cinema, television, on-demand television, online media, online content, hotels, accommodation, flights, travel, holidays, theatre, theme parks and activity days; savings schemes; information, advisory and consultancy services relating to all the aforesaid; parts and fittings for all the aforesaid services.

Class 38: Telecommunications; Cable television broadcasting; Cellular telephone communication; Communications by computer terminals; Communications by

fiber [fibre] optic networks; Communications by telegrams; Communications by telephone; Computer aided transmission of messages and images; Electronic bulletin board services [telecommunications services]; Electronic mail; Facsimile transmission; Information about telecommunication; Message sending; Paging services [radio, telephone or other means of electronic communication]; Providing access to databases; Providing internet chatrooms; Providing online forums; Providing telecommunication channels for teleshopping services; Providing telecommunications connections to a global computer network; Providing user access to global computer networks; Radio broadcasting; Rental of access time to global computer networks; Rental of facsimile apparatus; Rental of message sending apparatus; Rental of modems; Rental of telecommunication equipment; Rental of telephones; Satellite transmission; Telecommunications routing and junction services; Teleconferencing services; Telegraph services; Telephone services; Television broadcasting; Telex services; Transmission of digital files; Transmission of greeting cards online; Transmission of telegrams; Videoconferencing services; Voice mail services; Wire service; Wireless broadcasting; mobile telecommunications services; telecommunications portal services; Internet portal services; mobile telecommunications network services; fixed line telecommunication services; provision of broadband telecommunications access; broadband services; broadcasting services; television broadcasting services; broadcasting services relating to Internet protocol TV; provision of access to Internet protocol TV; Internet access services; email and text messaging services; information services provided by means of telecommunication networks relating to telecommunications; services of a network provider, namely rental and handling of access time to data networks and databases, in particular the Internet; communications services for accessing a database, leasing of access time to a computer database, providing access to computer databases, rental of access time to a computer database; operation of a network, being telecommunication services; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

Class 39: Transport; Packaging and storage of goods; Travel arrangement; Air transport; Aircraft rental; Ambulance transport; Armored-car transport; Arranging of cruises; Arranging of travel tours; Barge transport; Boat rental; Boat storage; Boat transport; Booking of seats for travel; Bottling services; Bus transport; Car parking; Car rental; Car transport; Carting; Chauffeur services; Courier services [messages or merchandise]; Delivery of goods; Delivery of goods by mail order; Distribution of energy; Electricity distribution; Escorting of travellers; Ferry-boat transport; Flower delivery; Franking of mail; Freight brokerage; Freight forwarding; Freight [shipping of goods]; Freighting; Garage rental; Guarded transport of valuables; Hauling; Horse rental; Ice-breaking; Launching of satellites for others; Lighterage services; Marine transport; Message delivery; Motor coach rental; Newspaper delivery; Operating canal locks; Packaging of goods; Parcel delivery; Parking place rental; Passenger transport; Physical



storage of electronically-stored data or documents; Piloting; Pleasure boat transport; Porterage; Railway coach rental; Railway transport; Railway truck rental; Refloating of ships; Refrigerator rental; Removal services; Rental of aircraft engines; Rental of diving bells; Rental of diving suits; Rental of freezers; Rental of motor racing cars; Rental of storage containers; Rental of vehicle roof racks; Rental of warehouses; Rental of wheelchairs; Rescue operations [transport]; River transport; Salvage of ships; Salvaging; Shipbrokerage; Sightseeing [tourism]; Stevedoring; Storage; Storage information; Storage of goods; Taxi transport; Towing; Traffic information; Tram transport; Transport; Transport and storage of trash; Transport brokerage; Transport by pipeline; Transport of travellers; Transport reservation; Transportation information; Transportation logistics; Transporting furniture; Travel reservation; Underwater salvage; Unloading cargo; Vehicle breakdown assistance [towing]; Vehicle rental; Water distribution; Water supplying; Wrapping of goods; home delivery services; information, advice and assistance relating to all the aforementioned services; parts and fittings for all the aforesaid services.

Class 41: Education; Providing of training; Entertainment; Sporting and cultural activities; Academies [education]; Amusement parks; Amusements; Animal training; Arranging and conducting of colloquiums; Arranging and conducting of concerts; Arranging and conducting of conferences; Arranging and conducting of congresses; Arranging and conducting of seminars; Arranging and conducting of symposiums; Arranging and conducting of workshops [training]; Arranging of beauty contests; Boarding schools; Booking of seats for shows; Bookmobile services; Calligraphy services; Cinema presentations; Circuses; Club services [entertainment or education]; Coaching [training]; Conducting fitness classes; Correspondence courses; Disc jockey services; Discotheque services; Dubbing; Education information; Educational examination; Electronic desktop publishing; Entertainer services; Entertainment information; Film production, other than advertising films; Gambling; Game services provided on-line from a computer network; Games equipment rental; Gymnastic instruction; Health club services [health and fitness training]; Holiday camp services [entertainment]; Language interpreter services; Layout services, other than for advertising purposes; Lending libraries; Microfilming; Modelling for artists; Movie studios; Music composition services; Music-halls; News reporters services; Night clubs; Nursery schools; Operating lotteries; Orchestra services; Organization of balls; Organization of competitions [education or entertainment]; Organization of exhibitions for cultural or educational purposes; Organization of fashion shows for entertainment purposes; Organization of shows [impresario services]; Organization of sports competitions; Party planning [entertainment]; Personal trainer services [fitness training]; Photographic reporting; Photography; Physical education; Practical training [demonstration]; Presentation of live performances; Production of music; Production of radio and television programmes; Production of shows; Providing amusement arcade services; Providing casino facilities [gambling]; Providing golf facilities; Providing karaoke services; Providing museum facilities [presentation, exhibitions]; Providing on-line electronic publications, not downloadable; Providing recreation facilities; Providing sports facilities;

Publication of books; Publication of electronic books and journals on-line; Publication of texts, other than publicity texts; Radio entertainment; Recording studio services; Recreation information; Religious education; Rental of audio equipment; Rental of camcorders; Rental of cine-films; Rental of lighting apparatus for theatrical sets or television studios; Rental of movie projectors and accessories; Rental of radio and television sets; Rental of show scenery; Rental of skin diving equipment; Rental of sound recordings; Rental of sports equipment, except vehicles; Rental of sports grounds; Rental of stadium facilities; Rental of stage scenery; Rental of tennis courts; Rental of video cassette recorders; Rental of videotapes; Scriptwriting services; Services of schools [education]; Sign language interpretation; Sport camp services; Subtitling; Television entertainment; Theatre productions; Ticket agency services [entertainment]; Timing of sports events; Toy rental; Translation; Tuition; Videotape editing; Videotape film production; Videotaping; Vocational guidance [education or training advice]; Vocational retraining; Writing of texts, other than publicity texts; Zoological garden services; information services relating to education, training, entertainment, sporting and cultural activities provided by means of telecommunication networks; provision of news information; television production services, television programming services; television production and television programming services provided by means of Internet protocol technology; provision of entertainment by means of television and Internet protocol television; provision of musical events; entertainment club services; discotheque services; presentation of live performances; night clubs; rental of music venues and stadiums; casino services; ticket reservations for entertainment, sporting and cultural events; ticket information services for entertainment, sporting and cultural events; ticket agency services; education services relating to health; provision of training in the field of health care and nutrition; provision of training in the field of pregnancy and baby care; information, advisory and consultancy services relating to the aforesaid.

Class 43: Services for providing food and drink; Temporary accommodation; Accommodation bureaux [hotels, boarding houses]; Bar services; Boarding for animals; Boarding house bookings; Boarding houses; Cafés; Cafeterias; Canteens; Day-nurseries [crèches]; Food and drink catering; Holiday camp services [lodging]; Hotel reservations; Hotels; Motels; Providing campground facilities; Rental of chairs, tables, table linen, glassware; Rental of cooking apparatus; Rental of drinking water dispensers; Rental of lighting apparatus other than for theatrical sets or television studios; Rental of meeting rooms; Rental of temporary accommodation; Rental of tents; Rental of transportable buildings; Restaurants; Retirement homes; Self-service restaurants; Snack-bars; Temporary accommodation reservations; Tourist homes; wine bars; brasserie services; café services; catering (food and drink); delicatessens [restaurants]; fast food services; food preparation services; rental of chairs, tables, table linen, glassware, cooking apparatus, meeting rooms, temporary accommodation; hotels; snack-bars; tea room services; cafe, cafeteria and restaurant services; provision of creche facilities; hotel reservations; information and advisory services relating to the aforesaid services.

ANNEX 2

