

O-637-17

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No. 3201988
BY VICTORIAN PLUMBING LIMITED
TO REGISTER THE TRADE MARK**

VP  'S

**IN CLASSES 11, 20, 21 & 35
AND**

**IN THE MATTER OF OPPOSITION
THERE TO UNDER No. 408599 BY
VENTE-PRIVEE.COM**

BACKGROUND

1) On 13 December 2016, Victorian Plumbing Ltd (hereinafter the applicant) applied to register the trade mark shown above in respect of the following goods:

In Class 11: Apparatus for lighting, heating, steam generating, ventilating, water supply and sanitary purposes; bath, basin, sink and shower installations; basins, baths, bidets, sinks, spa baths, whirlpools, bath panels and screens, showers, shower controls, shower cubicles, shower enclosures, shower stalls, shower trays and cases, shower panels and screens, shower spray heads, brackets for supporting shower spray heads, shower mixing valves; taps, mixers and faucets; radiators; valves, radiator valves, isolating valves; pipes, hoses and connectors; heaters, space heaters, water heaters, shower heaters, towel heaters, heated towel rails, heated towel rail accessories immersion heaters; water tanks, lids for water tanks; fans, extractor fans; ventilation ducting; toilets, toilet suites, toilet bowls; cisterns; regulating and safety apparatus for water or gas apparatus and pipes; vanity units; light fittings; parts and fittings for the aforesaid goods.

In Class 20: Furniture, mirrors, picture frames; furniture for bathrooms; separate units, combination units; non-metallic wall plugs; mirrored tiles; non-metallic towel hooks and rails; shower curtain rails; parts and fittings for the aforesaid goods.


In Class 21: Toilet utensils and containers; shower tidies, soap and sponge dishes and baskets; tooth brush, mug and tumbler holders; towel rails; towel rings; toilet brushes and brush holders; toilet roll holders; waste bins; pedal waste bins; bath racks; parts and fittings for the aforesaid goods.

In Class 35: The bringing together, for the benefit of others, apparatus for lighting, heating, steam generating, ventilating, water supply and sanitary purposes namely bath, basin, sink and shower installations including basins, baths, bidets, sinks, spa baths, whirlpools, bath panels and screens, showers, shower controls, shower cubicles, shower enclosures, shower stalls, shower trays and cases, shower panels and screens, shower spray heads, brackets for supporting shower spray heads, shower mixing valves, taps, mixers and faucets, radiators, valves, radiator valves, isolating valves, pipes, hoses and connectors, heaters, space heaters, water heaters, shower heaters, towel heaters, heated towel rails, heated towel rail accessories

immersion heaters, water tanks, lids for water tanks, fans, extractor fans, ventilation ducting, toilets, toilet suites, toilet bowls, cisterns, regulating and safety apparatus for water or gas apparatus and pipes, vanity units, regulating and safety apparatus for water or gas apparatus and pipes namely vanity units, light fittings, light switches, light pulls, thermostats, air conditioning equipment, furniture, mirrors, picture frames, furniture for bathrooms, separate units, combination units, non-metallic wall plugs, mirrored tiles, non-metallic towel hooks and rails, shower curtain rails, toilet utensils and containers, shower tidies, soap and sponge dishes and baskets, tooth brush, mug and tumbler holders, towel rails, towel rings, toilet brushes and brush holders, toilet roll holders, waste bins, pedal waste bins, bath racks, parts and fittings for the aforesaid goods, enabling customers to conveniently view and purchase those goods in a wholesale and/or retail outlet, by mail order, through a catalogue, or via a website.

2) The application was examined and accepted, and subsequently published for opposition purposes on 23 December 2016 in Trade Marks Journal No.2016/052.

3) On 22 February 2017 Vente-Privee.com (hereinafter the opponent) filed a notice of opposition. The opponent is the proprietor of the trade marks shown below:

Mark	Number	Application & registration date	Class
 Colours Claimed/Indication: Black, white.	EU 6386197	23.10.07 14.03.13	9, 16, 35, 38, 41 & 42
VP SHOP	EU 014967079	29.12.15 Pending	9, 35, 36, 38, 39, 41, 42 & 43

- a) The opponent relies upon both the above earlier trade marks for its opposition under Section 5(2)(b) of the Act. The opponent contends that the distinctive and dominant element of the mark in suit and its earlier marks are the letters “VP” and that the marks are similar. The opponent provides a list of its services which it states are similar to the goods and services applied for by the applicant. This list is replicated later in the decision.
- b) The opponent claims that its mark EU 6386197 has a reputation in the UK in its class 35 services, such that use of the mark in suit would take unfair advantage of, or be detrimental to the distinctive character or repute of, its mark. Use of the mark in suit

would dilute the distinctive character of the opponent's earlier mark such that it would no longer "be capable of arousing immediate association with the goods and services for which it is registered". Use of the mark in suit on inferior goods or services would be detrimental to the repute of the opponent's earlier mark by degrading or tarnishing the same and reducing its power of attraction. Use of the mark in suit would take unfair advantage of the repute of the opponent's earlier mark by free-riding on its distinctive character or repute. The mark in suit therefore offends against section 5(3) of the Act.

c) The opponent contends that it has used the mark VP in the UK since 2008 in respect of "retail services in connection with apparatus for lighting, heating, steam generating, cooking, refrigeration, drying, ventilating, water supply and sanitary purposes, furniture, mirrors, picture frames, household or bathroom utensils and containers, combs and sponges, brushes, articles for cleaning purposes, plumbing supplies, bathroom supplies, bathroom furniture, bathroom accessories, toilet accessories, bathroom suites, toilets, basins, baths, showers, shower enclosures, shower accessories, waste bins, taps, tiles, electric household goods, DIY apparatus". It contends that it has an extensive reputation and goodwill in the mark "VP". It contends that the application offends against Section 5(4)(a) of the Act.

4) On 15 March 2017 the applicant filed a counterstatement, basically denying that the marks are similar; that the goods and services applied for are similar to the services of the opponent and also putting the opponent to proof of its claimed reputation and goodwill.

5) Both sides filed evidence. Both parties seek an award of costs in their favour. The matter came to be heard on 30 November 2017 when Mr Fiddes of Messrs Urquhart-Dykes & Lord LLP represented the applicant. The opponent chose not to attend but supplied written submissions.

OPPONENT'S EVIDENCE

6) The opponent filed a witness statement, dated 18 May 2017 by David Tate, the opponent's Trade Mark Attorney. He states that he has access to the opponent's records and also relies upon his own knowledge and investigations. He states that the opponent operates an "event sales" (also known as "flash sales") on-line shopping club, specialising in selling brand overstock under the names VENTE-PRIVEE and VP, with sub-brands such as VP VOYAGES, VP SOUND-FACTORY, VP SUMMER

CAMP and VP BUBBLE. He states that event sales are made by the opponent for a limited time only (3 to 5 days) and are organised in close collaboration with over 2,600 major international brands in all product categories including ready to wear fashion, fashion accessories, music, homeware, toys, sports equipment, high-tech and gastronomy. It is claimed that the opponent invented the online event sales concept and is a leader in the field. It is claimed that the opponent has 2,100 employees in eight European countries and 24 million members throughout Europe, it is stated that the opponent generated €1.3 billion gross turnover in 2011 and €1.7 billion in 2014 in Europe, whilst in the UK turnover was €10.2m in 2013 and over €10.8m in 2014. It is claimed that in 2012 there were 570,000 members in the UK and that significant use of the trade marks VENTE-PRIVEE and VP had been made in the UK since September 2008.

7) He provides the following exhibits:

- DT1: This is said to be two pages from one of the opponent's 2011 brochures. This document is headed "10 years of success" and refers to "vente-privee.com". There is a reference to 50,000 sex toys sold in one event in three days and 3,400 swimming pools (size and price unspecified) in one sale.
- DT2: A selection of press articles and media reports of the opponent. This includes reports from: *Drapers* website (June 2008), *Business Week* (January 2008), *Daily Mail* (July 2008), *The Times* (August 2008), *Look* (March 2012), and *Moneywise* website (June 2015). All refer to Vente-Privee or Vente-privee.com and most refer to its selling the overstock of well-known brands. Also included are articles from the London Evening Standard (June 2014), BBC (15 July 2014), *Odyssey* (August 2014) which refer to the flash sales business and mention the opponent as Vente-Privee.
- DT3: Press releases by the opponent dated February 2013, December 2013 and June 2015 all of which refer to the opponent as Vente-Privee or vente-privee.com. Pages 49-73, 76-81 and 85-140 inclusive appear to be in foreign languages. Someone, has inserted English words onto some of the pages, but there is no statement as to who did the translation and whether they are qualified to undertake such work, it is not obvious what is upon these pages so I shall therefore not take these exhibits into consideration. There are a few pages which appear to be from an English language website. These are page 75 which has vende-privee at the top, at the bottom of the page it has, under the heading "Services & goodies" "VPgift" and "VPmobile";

page 82 which has “Vente-privee” at the top and at the bottom shows a device with the words “this symbol shows that VP is authorised to sell this G-Star RAW product”; page 83 which is headed “vente-privee” and refers to “VPmobile” in respect of a mobile application and page 84 which is headed “vente-privee” and refers to “VPgift” in respect of gift vouchers.

- DT4: A Google search of the terms “vente privee” and “VP”. The document shows thirty-one returns dated from July 2007 to March 2014 all of which reference vente-privee. These have been posted from countries around the world and whilst they use the shorthand “VP” it is after the full name has been used and is usually in capital letters. Some of the posts are by the opponent or its employees.
- DT5: This is said to be copies of the opponent’s website dated 22 June 2013. It is claimed to show sales of numerous goods. However, the document is not in English.
- DT6: Screenshots from the opponent’s website (Vente-Privee) which show the following products being offered for sale to UK customers on the following dates:

June 2014: Storage baskets, boxes and containers for the bedroom; laundry baskets; bathroom accessories.

January 2015: Storage baskets, boxes and containers for the bedroom; laundry baskets; hygiene accessories, wall storage baskets, towel holders for the bathroom; boxes, bags and accessories for the kitchen.

APPLICANT’S EVIDENCE

8) The applicant filed a witness statement, dated 11 July 2017, by Alan Michael Fiddes, the opponent’s Trade Mark Attorney. He states that the information he provides comes from his own knowledge and also the records of his client to which he has access. He states that his client was incorporated in September 2000 and has focussed upon the refurbishment, repair and resale of original Victorian and Edwardian bathroom furniture. The applicant has principally sold its goods via its website www.victorianplumbing.co.uk which was established in 2001 and which continues in use to date. Turnover in recent years is as follows:

Year	£million
2012/13	8.8
2013/14	19.2
2014/15	42.2

9) Mr Fiddes states that the mark in suit has been used on its website to refer to goods it recommends to its client base.

- Exhibit 2: Printouts from the applicant's website showing use of the mark in suit which began in July 2016. These appear to be dated July 2017. One of which contains the following wording: "The team here at Victorian Plumbing have selected their favourite en suite bathrooms.....Which one do you love most?"
- Exhibit 3 & 4: This is said to show samples of advertisements published in magazines such as *Good Homes*, *Your Homes* and *Grand Designs*. Monthly circulation figures for 2016 have been provided and are 111,850, 46,185 and 28,582 respectively. However, the only dates visible are July 2017, and the names of magazines cannot be seen.

10) That concludes my summary of the evidence filed, insofar as I consider it necessary.

DECISION

11) The first ground of opposition is under section 5(2)(b) which reads:

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

(a)

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark."

12) An “earlier trade mark” is defined in section 6, the relevant part of which states:

“6.-(1) In this Act an “earlier trade mark” means -

- (a) a registered trade mark, international trade mark (UK) or Community trade mark which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks.”

13) The opponent is relying upon its two trade marks listed in paragraph 3 above which are clearly earlier trade marks. Given the interplay between the date that the opponent’s mark was registered (14 March 2013 and pending) and the date that the applicant’s mark was published (23 December 2016), the proof of use requirements do not bite.

14) When considering the issue under section 5(2)(b) I take into account the following principles which are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

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

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

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

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

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

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

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

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

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

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

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

The average consumer and the nature of the purchasing decision

15) As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods and services. I must then determine the manner in which these goods and services are likely to be selected by the average consumer in the course of trade. In

Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

16) The specifications of both parties cover a multitude of goods and also retail services in relation to a vast range of products. The consumers for such goods and services would be the general public including businesses. Whilst such goods and services are likely to be the subject of different criteria for selection, in effect most are likely to be found on the internet, in a catalogue or self-selected in a shop. Thus the visual aspect will be the most important element in selection although I must also consider aural issues as such items maybe recommended during a conversation. When seeking such goods and services the average consumer is likely to take a low degree of care in choosing a storage basket for example, whereas when selecting a central heating system they will pay at least a medium degree of attention. **The average consumer for such items will take a low to medium degree of care in choosing what to purchase and where to purchase it.**

Comparison of goods and services

17) In the judgment of the Court of Justice of the European Union (CJEU) in *Canon*, Case C-39/97, the court stated at paragraph 23 of its judgment that:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary”.

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

- a) The respective users of the respective goods or services;
- b) The physical nature of the goods or acts of services;
- c) The respective trade channels through which the goods or services reach the market;
- d) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- e) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

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

“...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking”.

20) In *Sanco SA v OHIM*, Case T-249/11, the General Court indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. *chicken* against *transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited* BL-0-255-13:

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes.”

Whilst on the other hand:

“.....it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.

21) In *Oakley, Inc v OHIM*, Case T-116/06, at paragraphs 46-57, the General Court held that although retail services are different in nature, purpose and method of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree.

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

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

23) However, on the basis of the European courts’ judgments in *Sanco SA v OHIM* (Case C-411/13P), and *Assembled Investments (Proprietary) Ltd v. OHIM* (Case T-105/05, at paragraphs [30] to [35] of the judgment), upheld on appeal in *Waterford Wedgwood Plc v. Assembled Investments (Proprietary) Ltd* (Case C-398/07P), Mr Hobbs concluded that:

i) Goods and services are not similar on the basis that they are complementary if the complementarity between them is insufficiently pronounced that, from the consumer's point of view, they are unlikely to be offered by one and the same undertaking;

ii) In making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it is necessary to envisage the retail services normally associated with the opponent's goods and then to compare the opponent's goods with the retail services covered by the applicant's trade mark;

iii) It is not permissible to treat a mark registered for 'retail services for goods X' as though the mark was registered for goods X;

iv) The General Court's findings in *Oakley* did not mean that goods could only be regarded as similar to retail services where the retail services related to exactly the same goods as those for which the other party's trade mark was registered (or proposed to be registered).

24) The opponent detailed the goods and services it felt were similar in its statement of grounds.

These are set out below:

Applicant's goods	Opponent's goods and services
Class 11: Apparatus for lighting, heating, steam generating, ventilating, water supply and sanitary purposes.	Class 35: Presentation of goods on communications media, in particular on a sales website, for retail purposes, namely, on the one hand apparatus (and parts therefor) for lighting, heating, steam generating, ventilating, water supply purposes, sanitary installations and equipment (and parts therefor).
Class 11: bath, basin, sink and shower installations; basins, baths, bidets, sinks, spa baths, whirlpools, bath panels and screens, showers, shower controls, shower cubicles, shower enclosures, shower stalls, shower trays and cases, shower panels and screens, shower spray heads, brackets for supporting shower spray heads, shower mixing valves; taps, mixers and faucets;	Class 35: Presentation of goods on communications media, in particular on a sales website, for retail purposes, namely, on the one hand apparatus (and parts therefor) for lighting, heating, steam generating, ventilating, water supply purposes, sanitary installations

<p>radiators; valves, radiator valves, isolating valves; pipes, hoses and connectors; heaters, space heaters, water heaters, shower heaters, towel heaters, heated towel rails, heated towel rail accessories immersion heaters; water tanks, lids for water tanks; fans, extractor fans; ventilation ducting; toilets, toilet suites, toilet bowls; cisterns; regulating and safety apparatus for water or gas apparatus and pipes; vanity units; light fittings; parts and fittings for the aforesaid goods.</p>	<p>and equipment (and parts therefor), bathtubs, sinks, washbasins, showers (and parts therefor), toilets, bidets, taps, tap fittings, plumbing goods.</p> <p>Class 42: architecture; design of interior décor.</p>
<p>Class 20: Furniture, mirrors, picture frames.</p>	<p>Class 35: Presentation of goods on communications media, in particular on a sales website, for retail purposes, namely, on the one hand, furniture (including parts therefor), mirrors, picture frames.</p>
<p>In Class 20: furniture for bathrooms; separate units, combination units; non-metallic wall plugs; mirrored tiles; non-metallic towel hooks and rails; shower curtain rails; parts and fittings for the aforesaid goods.</p>	<p>Class 35: Presentation of goods on communications media, in particular on a sales website, for retail purposes, namely, on the one hand, furniture (including parts therefor), mirrors, picture frames, tiles, shower curtains, bath towels and linen.</p>
<p>Class 21: Toilet utensils and containers.</p>	<p>Class 35: Presentation of goods on communications media, in particular on a sales website, for retail purposes, namely, on the one hand, household utensils, apparatus and containers and toilet utensils.</p>
<p>In Class 21: shower tidies, soap and sponge dishes and baskets; tooth brush, mug and tumbler holders; towel rails; towel rings; toilet brushes and brush holders; toilet roll holders; waste bins; pedal waste bins; bath racks; parts and fittings for the aforesaid goods.</p>	<p>Class 35: Presentation of goods on communications media, in particular on a sales website, for retail purposes, namely, on the one hand, household utensils, apparatus and containers and</p>

	toilet utensils, bathroom accessories such as soap dispensers, refuse bins and attachments for towels.
<p>Class 35: In Class 35: The bringing together, for the benefit of others, apparatus for lighting, heating, steam generating, ventilating, water supply and sanitary purposes namely bath, basin, sink and shower installations including basins, baths, bidets, sinks, spa baths, whirlpools, bath panels and screens, showers, shower controls, shower cubicles, shower enclosures, shower stalls, shower trays and cases, shower panels and screens, shower spray heads, brackets for supporting shower spray heads, shower mixing valves, taps, mixers and faucets, radiators, valves, radiator valves, isolating valves, pipes, hoses and connectors, heaters, space heaters, water heaters, shower heaters, towel heaters, heated towel rails, heated towel rail accessories immersion heaters, water tanks, lids for water tanks, fans, extractor fans, ventilation ducting, toilets, toilet suites, toilet bowls, cisterns, regulating and safety apparatus for water or gas apparatus and pipes, vanity units, regulating and safety apparatus for water or gas apparatus and pipes namely vanity units, light fittings, light switches, light pulls, thermostats, air conditioning equipment, furniture, mirrors, picture frames, furniture for bathrooms, separate units, combination units, non-metallic wall plugs, mirrored tiles, non-metallic towel hooks and rails, shower curtain rails, toilet utensils and containers, shower tidies, soap and sponge dishes and baskets, tooth brush, mug and tumbler holders, towel rails, towel rings, toilet brushes and brush holders, toilet roll holders, waste bins, pedal waste bins, bath racks, parts and fittings for the aforesaid goods, enabling customers to conveniently</p>	Class 35: See Annex A

view and purchase those goods in a wholesale and/or retail outlet, by mail order, through a catalogue, or via a website.	
--	--

25) I first turn to the class 11 goods of the applicant. Such items are usually sold in shops, via catalogues and on-line. It is common for such outlets to stock numerous brands, none of which reflect the name of the selling organisation. The opponent's services covers one aspect of the trade channels for such goods. It is clear that the opponent sells items which are identical or highly similar to the applicant's goods. **I therefore find that there is a low degree of similarity.**

26) I next turn to the applicant's class 20 goods as shown above. I accept that the opponent has within its specification for retail services subsets which cover all of the goods included in the applicant's specification, as set out in the table above. In my opinion, such goods will be sold in shops, via catalogues and on-line, where it is common place to find a range of brands for sale. The opponent's services covers one aspect of the trade channels for such goods. **To my mind, there is a low degree of similarity between the applicant's class 20 goods and the opponent's class 35 services.**

27) Next, I turn to the applicant's class 21 goods. Again it is clear that the opponent's retail services has subsets which cover all the applicant's specification, as set out in the table above. In my opinion, such goods will be sold in shops, via catalogues and on-line. The opponent's services covers one aspect of the trade channels for such goods, where it is common place to find a range of brands for sale. **To my mind, there is a low degree of similarity between the applicant's class 21 goods and the opponent's class 35 services.**

28) Lastly, I turn to the class 35 services of the applicant. **The retail services of both parties are identical.**



Comparison of trade marks

29) It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by them, bearing in mind their distinctive and dominant

components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, Bimbo SA v OHIM, that:

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

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

Opponent's trade marks	Applicant's trade mark
1 	
2 VP SHOP	

31) I shall first compare the opponent's mark 1 above to the applicant's mark. The applicant contends that “the figurative elements” of the opponent's mark “are, given that the mark consists of two letters, significant as they constitute a distinctive element of the overall impression created by the mark”. It also denies that the “heart” device is laudatory or lacking in distinctive character, it claims that it is “an element within the mark which has individual distinctive character and contributes to the overall distinctive character of the sign in issue”. For its part, the opponent contends that the “heart” device is referred to in the applicant's evidence as referring to products which the applicant is recommending to its clients. It also points to the wording on exhibit 2 (see paragraph 9 above) which asks the customer which product they “love”. The opponent contends that as the device element indicates love or affection, the mark in suit is effectively a “VP” mark and therefore the marks are closely similar.

32) Clearly, the two marks have a degree of visual difference in that the opponent's mark is white on black whereas the applicant's mark is black on white. However, such "colour reversing" does not, in my view, distinguish marks in the eyes of the average consumer. The opponent's mark is set in an oblong whereas the applicant's mark has no boundaries. Again, in my view, the average consumer is unlikely to regard this as significant. The fonts are slightly different, but neither is unusual. Whilst I fully accept that the "heart" device has an individual distinctive character it is of low distinctiveness as it will be seen as referring to love. I believe that the average consumer will view the mark in suit as meaning that "VP loves" whatever the sign is attached to, such as the en-suite products shown in exhibit 2 of the applicant's evidence which, I believe, clearly demonstrates how the applicant is using the mark in suit and indeed how it actually intends the mark to be perceived. Despite the differences, the marks are visually and aurally similar to a medium degree, whilst conceptually both will be seen as "VP" marks. **Overall, there is a medium degree of similarity between the opponent's mark 1 and the mark in suit.**

33) I now turn to compare the opponent's mark 2 (above) to the mark in suit. To my mind the word "shop" when used in conjunction with retail services in class 35 will clearly be seen as descriptive and will be given relatively short shrift by the average consumer. The marks distinctive and dominant element are the letters "VP" and so my conclusion is the same as that expressed above, and for the same reasons. **Overall, there is a medium degree of similarity between the opponent's mark 2 and the mark in suit.**

Distinctive character of the earlier trade mark

34) In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

"22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

35) The opponent’s mark 1 consists of two letters “V” and “P” which when combined do not appear to have any meaning in relation to retail services. **The mark is inherently distinctive to at least an average degree. The opponent has shown little use of its mark, as set out in the evidence summary earlier in this decision and so cannot benefit from enhanced distinctiveness.**

Likelihood of confusion

36) In determining whether there is a likelihood of confusion, a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective services and vice versa. As I mentioned above, it is also necessary for me to keep in mind the distinctive character of the opponent’s trade mark as the more distinctive this trade mark is, the greater the likelihood of confusion. I must also keep in mind the average consumer for the services, the nature of the purchasing process and the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he has retained in his mind. Earlier in this decision, I concluded that:

- the average consumer is a member of the general public (including businesses), who will select the goods and services by predominantly visual means, although not discounting aural considerations and that they will pay a low to medium degree of attention to the selection of such items.
- the services of the opponent are similar to the class 11, 20 & 21 goods of the applicant to a low degree, whilst the class 35 services of the two parties are identical.

- the marks of the two parties are similar to a medium degree.
- the opponent's mark has an average degree of inherent distinctiveness but cannot benefit from an enhanced distinctiveness through use.

37) It is easy to envisage a situation whereby an average consumer looking for any of the applicant's goods will carry out an internet search. If they came across a retail site under the opponent's mark they would assume that the goods of the applicant were an "own brand" of the opponent and sold on its website. **The opposition under Section 5(2) (b) therefore succeeds in full.**

38) The other two grounds of opposition are under sections 5(3) and 5(4) which read:

"5(3) A trade mark which-

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

And:

"5(4): A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

- (a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

- (b) [.....]

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

39) In respect of section 5(3) the relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, [1999] ETMR 950, Case 252/07, *Intel*, [2009] ETMR 13, Case C-408/01, *Addidas-Salomon*, [2004] ETMR 10 and C-487/07, *L'Oreal v Bellure* [2009] ETMR 55 and Case C-323/09, *Marks and Spencer v Interflora*. The law appears to be as follows.

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

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

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

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

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

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

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

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

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

40) In respect of section 5(4)(a) Halsbury's Laws of England (4th Edition) Vol. 48 (1995 reissue) at paragraph 165 provides the following analysis of the law of passing off. The analysis is based on guidance given in the speeches in the House of Lords in *Reckitt & Colman Products Ltd v. Borden Inc.* [1990] R.P.C. 341 and *Erven Warnink BV v. J. Townend & Sons (Hull) Ltd* [1979] AC 731. It is (with footnotes omitted) as follows:

"The necessary elements of the action for passing off have been restated by the House of Lords as being three in number:

(1) that the plaintiff's goods or services have acquired a goodwill or reputation in the market and are known by some distinguishing feature;

(2) that there is a misrepresentation by the defendant (whether or not intentional) leading or likely to lead the public to believe that the goods or services offered by the defendant are goods or services of the plaintiff; and

(3) that the plaintiff has suffered or is likely to suffer damage as a result of the erroneous belief engendered by the defendant's misrepresentation.

The restatement of the elements of passing off in the form of this classical trinity has been preferred as providing greater assistance in analysis and decision than the formulation of the elements of the action previously expressed by the House. This latest statement, like the House's previous statement, should not, however, be treated as akin to a statutory definition or as if the words used by the House constitute an exhaustive, literal definition of passing off, and in particular should not be used to exclude from the ambit of the tort recognised forms of the action for passing off which were not under consideration on the facts before the House."

41) Further guidance is given in paragraphs 184 to 188 of the same volume with regard to establishing the likelihood of deception or confusion. In paragraph 184 it is noted (with footnotes omitted) that:

"To establish a likelihood of deception or confusion in an action for passing off where there has been no direct misrepresentation generally requires the presence of two factual elements:

(1) that a name, mark or other distinctive feature used by the plaintiff has acquired a reputation among a relevant class of persons; and

(2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other feature which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as successive hurdles which the plaintiff must surmount, consideration of these two aspects cannot be completely separated from each other, as whether deception or confusion is likely is ultimately a single question of fact.

In arriving at the conclusion of fact as to whether deception or confusion is likely, the court will have regard to:

- (a) the nature and extent of the reputation relied upon;
- (b) the closeness or otherwise of the respective fields of activity in which the plaintiff and the defendant carry on business;
- (c) the similarity of the mark, name etc. used by the defendant to that of the plaintiff;
- (d) the manner in which the defendant makes use of the name, mark etc. complained of and collateral factors; and
- (e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.

In assessing whether confusion or deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action.”

42) It can be seen from the above that in order to succeed under these grounds the opponent needs to show that in respect of the marks/ signs it relies upon, it has a reputation with a significant proportion of the public and that it has goodwill. As can be seen from the evidence summary earlier in this decision the opponent has singularly failed to show any use of the mark/sign “VP” or “VP SHOP” which it relied upon under these two grounds. It has therefore failed to show that it enjoys either reputation or goodwill under either of its marks which are both effectively “VP” marks. **The grounds of opposition based upon sections 5(3) and 5(4) therefore fail.**

CONCLUSION

43) Although the opposition based upon sections 5(3) and 5(4)(a) have failed, the opponent did succeed in full under section 5(2)(b). As the opposition has been completely successful the application will be refused.

COSTS

44) As the opponent has been successful it is entitled to a contribution towards its costs.

Expenses	£200
----------	------

Preparing a statement and considering the other side's statement	£200
Preparing evidence and considering the other side's evidence	£500
Preparing submissions and attendance at the hearing	£600
TOTAL	£1500

45) I order Victorian Plumbing Limited to pay Vente-Privee.com the sum of £1500. This sum is to be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 12th day of December 2017

**George W Salthouse
For the Registrar,
the Comptroller-General**

Annex A

Opponent's Class 35 specification in full:

Advertising, including online advertising on a computer network; Mail advertising (including by electronic means); Radio advertising; Television advertising; Arranging newspaper subscriptions for others; Business management; Business appraisals; Commercial information agencies; Market studies; Economic forecasting; Statistical information; Market research; Advertising management; Rental of advertising equipment, space and media (including online on a global communications network such as the Internet); Business consultancy, information or enquiries; Assistance in management of business activities; Business management and organisation consultancy; Efficiency experts; Business research; Commercial administration of the licensing of the goods and services of others; Organisation of exhibitions and trade fairs for commercial or advertising purposes; Bill-posting; Publication of publicity texts; Business management consultations; Professional consultancy relating to advertising and promotion; Computerised file management; Consultancy relating to the administrative management of Internet websites; Collection and systematic ordering of data in a central file; Dissemination of advertising matter, direct mail advertising; Publicity columns preparation; Updating of advertising material; Sales promotion (for others); Opinion poll; Providing facilities for exhibitions (administrative); Business management of hotels; Shop window dressing; Demonstration of goods; Sample distribution; Auctioneering services; Import-export agencies; Rental of advertising time on communication media; Business management of performing artists; Professional management of models, celebrities, artistes, athletes, comedians and fashion designers; Modelling agencies, namely selection, recruitment and placement of models; Modelling for advertising or sales promotion; Public relations services; News clipping services; Management of the careers of models, celebrities, artistes, athletes, comedians and fashion designers; Negotiating contracts for models, celebrities, artistes, athletes, comedians and fashion designers; Document reproduction; Administrative management of promotional gifts; Organisation of promotional and advertising operations to obtain customer and personnel loyalty; **Presentation of goods on communications media, in particular on a sales website, for retail purposes, namely, on the one hand, *chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry, unprocessed artificial resins, unprocessed plastics, manures, fire-extinguishing compositions, tempering and soldering preparations, chemical substances for preserving foodstuffs, tanning substances, adhesives used in industry, fuel additives, engine-decarbonising chemicals, fuel-saving preparations, water softening preparations, chemicals for use in cleaning chimneys, radiator flushing chemicals, chemical preparations for use in photography, paper and films for use in photography,***

adhesives, ungluing preparations, flower preservatives, corrosive preparations, anti-corrosive preparations, disinfectants, solvents, thinners, compositions for repairing inner tubes of tyres, paints, varnishes, coatings, lacquers, turpentine, preservatives against rust and against deterioration of wood, anti-corrosion preparations, colorants, mordants, raw natural resins, metals in foil, paste and powder form for use in painting, decorating, printing and art, binding preparations for paints, thickeners for paints, food dyes, printing inks, mothproofing preparations, bleaching preparations and products and other substances for laundry use, cleaning, refurbishing, polishing, waxing, buffing, scouring, stripping and abrasive preparations and products, leather care preparations, soaps, products and preparations for the bath, shaving preparations, hair removal preparations, perfumery, essential oils, incense, indoor fragrances, cosmetics, hair lotions, dentifrices, adhesives for cosmetic purposes, breath fresheners, sharpening preparations, preparations for personal and intimate hygiene, false eyelashes, non-slip preparations, hair colorants and dyes, skin tanning cosmetics, cosmetics for slimming purposes, skin care preparations, make-up removing preparations, deodorants, henna, oils for cosmetic purposes, oils for toilet purposes, potpourris (fragrances), drying agents for dishwashing machines, hair care preparations, hand and nail care preparations, antistatic preparations for household purposes, lipstick cases, massage preparations, decorative transfers for cosmetic purposes, cosmetic kits, permanent wave preparations, false nails, eyelashes and hair, industrial oils and greases, lubricants, dust absorbing, wetting and binding compositions, fuels (including motor spirit) and illuminants, candles and wicks for lighting, fragranced candles, methylated spirit, firelighters, dust binding compositions for sweeping, dust removing preparations, gas for lighting, fuel gas, grease for leather, pharmaceuticals and veterinary preparations, medicines, contraceptive substances, 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, products, preparations and materials for dental use, fly catching paper, belts for sanitary napkins, chemical preparations for medical purposes, tobacco-free cigarettes for medical purposes, babies' nappies, nappies for pets, sanitary pants and towels, deodorants, filled portable medicine cases, medicinal herbs, sexual lubricants, dressings, filled first-aid boxes, medicinal preparations for hair growth, tanning pills, slimming pills, semen for artificial insemination, sterilising preparations, contraceptive preparations, common metals and their alloys, metal building materials, transportable buildings of metal, swimming pools, materials of metal for railway tracks, non-electric cables and wires of common metal, ironmongery, small items of metal hardware, pipes and tubes of metal, safes, goods of metal (namely badges, brooches, toolboxes (empty), works of art, decorative objects, statues, statuettes, sculptures, figurines, furniture,

decorative mobiles, goods for framing purposes, shutters, fences, doors, windows, clothes hooks, handles for doors and drawers, blinds, cookery moulds, nails, screws), ores, chains and locks for doors, window casement bolts, peepholes for doors, anchors, bars for metal railings, preserve tins of metal, boxes of common metal, bungs of metal, bottles of metal, padlocks, safety cashboxes, safety chains, frames of metal for windows and doors, chimneys of metal, keys, reels for flexible hoses, scaffolding and ladders, staircases, handles for doors and windows, blinds, ironwork for doors, door chimes, machines (namely vacuum cleaners, laundry washing machines, dishwashers, electric kitchen beaters, electric food processors, blenders, juice extractors, pasta-making machines, mixing machines for household purposes, sewing machines, knitting machines, cleaning appliances utilising steam, high-pressure cleaning appliances, agricultural machines, clippers, compressed air machines, compressors, electric drills, power saws, electric planing machines, welding units, electric hammers, electric screwdrivers) and machine tools, motors and engines, machine coupling and transmission components, agricultural implements, incubators for eggs, automatic vending machines, doors for lifts, equipment and apparatus for agriculture, gardening and forestry, conveyors, lifts, link rods for machines, motors and engines, sparking plugs for internal combustion engines, cables for controlling machines, motors and engines, electricity generators, filtering machines, cartridges for filtering machines, gas-operated cutting blow pipes, soldering irons, goods for soldering purposes, aerated water making apparatus, electromechanical apparatus for the preparation of beverages or foodstuffs, readers, electric door or window openers, air pumps, rolling mills, hand tools and implements (hand-operated), cutlery, side arms, razors, agricultural tools, gardening tools, ladles, cutting dies, sharpening instruments, clamps, saws, pliers, shears, lawn clippers, beard clippers, manicure sets, razor blades, files (tools), irons, steamers, trouser presses, 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 (including parts therefor), apparatus for recording, transmission or reproduction of sound or images (including parts therefor), magnetic data carriers, recording discs, compact discs, DVDs and other recording media, mechanisms for coin-operated apparatus (including parts therefor), cash registers (including parts therefor), calculating machines, data processing equipment, computers (including parts and peripheral devices therefor), computer software, fire-extinguishing apparatus, computer hardware, electronic organisers, magnets, accumulators for vehicles, alidades, amplifiers, bulbs, testing apparatus not for medical purposes, calibrating rings, anodes, downloadable computer software applications, hemline markers, audio and video devices for monitoring babies, musical juke boxes, safety tarpaulins, rods for water diviners, personal stereos, betatrons, electric coils, riding helmets, lens hoods, pressure indicator plugs for

valves, connected bracelets and watches, covers for electric outlets, digital photo frames, cameras, magnetic cards, video games, protective helmets, headphones, video cassettes, photovoltaic cells, battery chargers, shoes for protection against accidents, radiation and fire, electronic collars to train animals, USB flash drives, diving suits, counters, covers for smartphones, cords for spectacles, electronic pens for visual display units, cartoons, detectors, dictating machines, ticket dispensers, telephone receivers, video screens, transmitters (telecommunication), luminous signs, electronic tags for goods, spectacle cases, cases for smartphones, optical fibres (light conducting filaments), downloadable music and image files, protective films for computer screens, for tablets and for smartphones, gloves for protection against accidents, satellite navigation apparatus, clothing for protection against fire, automated teller machines, speakers, binoculars, optical lenses, contact lenses, electronic readers, optical goods, video recorders, microphones, egg candler, modems, photocopiers, printers, electric batteries, pince-nez, pedometers, mouth guards, downloadable electronic publications, answering machines, electric locks, dog whistles, bells (warning devices), door bells, digital tablets, electrified fences, spectacles, surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth, orthopedic articles, suture materials, apparatus and products for sexual stimulation, sex toys, contraceptives, babies' bottles, acupuncture instruments and apparatus, nursing appliances, stockings for varices, bed pans, ear plugs, abdominal belts, maternity belts, commode chairs, hearing aids, corn knives, menstrual cups, incubators for babies, invalids' hoists, incontinence sheets, feeding bottle valves, childbirth mattresses, microdermabrasion apparatus, furniture especially made for surgical, medical, dental and veterinary purposes, soporific pillows for insomnia, orthodontic appliances, combs for removing lice, physiotherapy apparatus, balling guns, condoms, erotic dolls, hair prostheses, artificial breasts, teats, breast pumps, apparatus for acne treatment, special clothing for operating theatres, vibromassage apparatus, massage apparatus, instruments and devices for sexual stimulation, apparatus, instruments and devices for stimulating sexual arousal, boosting sexual performance and satisfying sexual needs, imitations of adult sexual organs, apparatus (and parts therefor) for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, aerating, air conditioning and water supply purposes, sanitary installations and equipment (and parts therefor), bulbs (including parts therefor), lamps for lighting (including parts therefor), strings of electric lights, neon lights, luminous decorations, chimneys (and parts therefor), air conditioners, ventilators, fans, hairdryers, bathtubs, sinks, washbasins, showers (and parts therefor), toilets, bidets, taps, apparatus and installations for filtering air and water (and parts therefor), irrigation apparatus and devices, extractor hoods for cookers, hydromassage apparatus (and parts therefor), sauna installations (and parts therefor), turkish bath installations (and parts therefor), fountains (and parts therefor), plumbing goods, tap

fittings, pipework goods, barbecues, lava rocks for use in barbecue grills, coal stoves, carbon for arc lamps, vehicles, apparatus for locomotion by land, air or water (including parts therefor), motors, two-wheeled trolleys, wheelbarrows, coupling and transmission components for land vehicles, aeronautical apparatus, machines and devices, anti-theft devices for vehicles, trailer hitches for vehicles, pushchair covers, pushchair hoods, handling carts, cleaning trolleys, carts, panniers adapted for bicycles and motorcycles, disengaging gear for boats, reduction gears for land vehicles, drones, wheelchairs, luggage nets for vehicles, funiculars, vehicle covers, seat covers for vehicles, pushchairs, paddles for canoes, baskets adapted for cycles, parachutes, tyres, air pumps, luggage carriers for vehicles, ski carriers for motor vehicles, strollers, safety seats for children, for vehicles, chairlifts, oarlocks, tilting-carts, cable transport apparatus and installations, scooters, golf carts, motor vehicle roof racks, luggage carriers and storage boxes for land vehicle roof racks, devices for transporting objects, for vehicles, transport trailers, firearms (including parts therefor), ammunition and projectiles, explosives, fireworks, firecrackers, signal rockets, pyrotechnic products, pyrophoric substances, sprays for personal defence purposes, firing platforms, sights for weapons, precious metals, alloys of precious metals, goods in precious metals, in alloys of precious metals or coated therewith (namely: costume jewellery, brooches, works of art, decorative objects, statues, statuettes, sculptures, figurines, decorative mobiles, goods for framing purposes, clothes hooks, handles for doors and drawers, keyrings, boxes, cases for watches and jewellery, cufflinks, ingots), jewellery (and parts therefor), precious and semi-precious stones, horological instruments (and parts therefor), chronometric instruments (and parts therefor), medals, coins, rhinestones, jewellery rolls, copper tokens, badges of precious metal, tie clips, tie pins, cabochons for making jewellery, jewellery findings, cuff-links, charms (jewellery), busts of precious metal, musical instruments (including parts therefor), music rolls, music boxes, plectrums, music stands, turning apparatus for sheet music, babies' nappies, baby bibs, portable lanterns of paper, badges of paper, boxes of paper, flags of paper, shields of paper, signs of paper, labels of paper, figurines, works of art, decorative objects, table linen of paper, filters of paper, gift wrap, toilet paper, table covers of paper or plastic, place mats of paper or plastic, tablemats, coasters, garlands, photograph frames of paper or cardboard, flower-pot covers, cups of cardboard or plastic, twine of paper, hats of paper (clothing), artificial flowers, mats, party favours, dolls, bedding for animals, printed matter, photographs, adhesives for stationery or household purposes, artists' materials, paintbrushes, typewriters, office requisites, except furniture, instructional and teaching material, printers' type, printing blocks, cooking bags, rubber, gutta-percha, gum, asbestos, mica, goods of rubber, gutta-percha, gum, asbestos or mica (namely stoppers, insulation materials for building construction, sealing materials for building construction, soundproofing materials for building construction, works of art, decorative objects, statues, statuettes,

sculptures, figurines), plastics in extruded form for use in manufacture, packing, stopping and insulating materials, goods for insulation purposes, watering hoses, pipes for use in plumbing, pipes for use in heating, ducts, elbow bends for pipes or ducts, collars and fastening elements for pipes or ducts, connectors for pipes or ducts, seals for use in plumbing, leather and imitations of leather, goods of leather or imitations of leather (namely: cases for mobile telephones, boxes, cases, chests, wrist straps, key cases, bags, photograph or picture frames, coasters, belts, decorative objects, coverings and trimmings for furniture), animal skins, hides, trunks and travelling bags (including parts therefor), walking sticks (including parts therefor), umbrellas and parasols (including parts therefor), whips, harness and saddlery, mountaineering sticks, purses, walking stick seats, handbags, collars for animals, clothing for animals, slings for carrying infants, key cases, net bags for shopping, leather thread, umbrella covers, leads for animals, straps of leather, suitcases, chin straps (straps of leather), muzzles, nose bags (feed bags), parasols, pocket wallets, music cases, backpacks, empty tool bags, bags, sachets (envelopes, pouches) of leather for packaging, baby carriers, garment bags for travel, satchels, valves of leather, building materials, pipes for building, asphalt, pitch and bitumen, transportable buildings, monuments, doors, windows, gates, tiling, joinery goods for use in buildings, mortar for building, plaster, wood, wainscoting, plates of plaster for building, reinforcing materials of metal for building, tiles, wood panelling, letter boxes, partitions for buildings, fences, water pipes, ventilation ducts, aquarium gravel, furniture (including parts therefor), kitchen furniture, modular bathroom furniture, lounge furniture, bedroom furniture, mirrors, picture frames, goods 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 (namely curtain rings, curtain holders, curtain rails, fastening elements for curtains, works of art, decorative objects, furniture, boxes, chests for storage purposes, storage lockers, statues, statuettes, sculptures, figurines, stoppers, lids, stopper caps, goods for framing purposes, tool handles, dressmakers' dummies, busts, decorative mobiles, clothes hooks, clothes hangers, handles for doors and drawers, baskets, blinds, curtains, goods for packaging and storage, containers, storage boxes, trimmings for furniture, door fittings, window fittings, locks, bells, house numbers, towel holders, umbrella holders, plant racks, trays), cupboard doors, wardrobes, cushions, pillows, mattresses, armchairs, sofas, chairs, easy chairs, tables, worktops, furniture partitions, storage furniture, tea trolleys, support bars enabling people with reduced mobility to use sanitary installations, attachments for towels, hot water bottles, kettles, stoves, attachments for curtains, bedding, framing goods, household or kitchen utensils, apparatus and containers, combs and sponges, brushes, brush-making materials, articles for cleaning purposes, steel wool, unworked or semi-worked glass, glassware, porcelain and earthenware, drinking vessels and holders therefor, isothermic bottles, bags and containers for foodstuffs or beverages, bottles,

stoppers for bottles and for carafes, bread baskets, breadboards, serving trays, egg cups, jars for foodstuffs, boxes for transporting or preserving foodstuffs, strainers, coasters, coffee or tea services, coffee filters, tea strainers, tea balls, coffee grinders, pepper mills, salt mills, sugar basins, cocktail shakers, cocktail sticks, drinking glasses, cocktail glasses, fitted picnic baskets, including dishes, drying racks for laundry, ironing boards, laundry baskets, ceramics for household purposes, flowerpots, gardening gloves, cosmetic and toilet utensils, bathroom mirrors, bathroom stools, bathroom cup holders, dishes, table mats, coasters (tableware), indoor aquaria, cages for pets, oven gloves, watering cans, watering devices (and parts therefor), tableware, carboys, electric devices for attracting and destroying insects, pressure cookers, stew-pans, cooking pots, litter trays for pets, window-boxes, brooms, towel holders, candle rings, boxes for dispensing paper towels, lunch boxes, perfume burners, candelabra, electric brushes, toothbrushes (electric and non-electric), cruets, serving platters, coffee pots, candlesticks, heaters (electric and non-electric) for feeding bottles, baby baths, shoe horns, apparatus for wax-polishing, toothpicks, soap dispensers, soap boxes, spice sets, candle extinguishers, currycombs, shoe trees, mess-tins, gardening gloves, portable cold boxes (electric and non-electric), ironing board covers, tie presses, toiletries kits, brooms, artificial nest eggs, bottle openers, glove stretchers, drinking straws, washing boards, cutting boards, stands for shaving brushes, menu card holders, knife rests for the table, sponge holders, toilet paper holders, soap dispensers, soap holders, pottery, pots, refuse bins, serviette rings, flat-iron stands, candle jars, holders for flowers and plants (flower arranging), epergnes, wine-tasters (pipettes), carafes, clothing stretchers, indoor terrariums, boot jacks, shoe horns, buttonhooks, piggy banks, cooking utensils (electric and non-electric), vases, moulds (kitchen utensils), spray bottles, perfume sprayers, cream jugs, flower pots, mustard jars, glue-pots, children's potties, cotton ball jars, lids for pots, bathtub shelves of plastic, tool handles, broom handles, brush goods, tableware, ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags, padding and stuffing materials, raw fibrous textile materials, eiderdowns, hammocks, braid, sacks for the transport and storage of goods, rigging, yarns and threads, for textile use, sewing thread and yarn, textiles and textile goods, bed covers, table covers, sheets, duvets, blankets, mattress covers, pillowcases, cushion covers, duvet covers, protective covers for furniture, bath linen, bed linen, table linen, household linen, cloths, curtains, net curtains, curtain holders, shower curtains, fittings for curtains, curtain rails, napkins, tablecloths, place mats, banners, printers' blankets of textile, canvas for tapestry or embroidery, hat linings, of textile, in the piece, blankets for pets, flags, bolting cloth, toilet lid covers, plastic material (substitute for fabrics), furniture coverings of textile or plastic, wipes for make-up removal, billiard cloth, clothing, footwear, headgear, underwear, slippers, socks, gloves, spats, belts, suspenders, muffs, sleep masks, mitres, gaiter straps, garment pockets, shirt fronts, pocket squares, heels for shoes, heel pieces, welts for

footwear, boot uppers, ready-made linings (parts of clothing), dress shields, masquerade costumes, foot muffs (electrically heated or not), shower caps, lace boots, swimming caps, tips for footwear, necklets, non-slipping devices for footwear, fittings of metal for footwear, sock suspenders, lace and embroidery, ribbons and braid, buttons, hooks and eyes (haberdashery), pins and needles, artificial flowers, plants and fruits, garlands, carpets, rugs, mats and matting, linoleum, materials for covering existing floors, wall hangings, wallpaper, games and playthings, party favours, firecrackers, gymnastic and sporting articles, Christmas trees and decorations for Christmas trees, articles for use in fishing, confetti, articles and equipment for playing sport, foodstuffs, 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, coffee, tea, cocoa and artificial coffee, rice, tapioca and sago, flour and preparations made from cereals, bread, pastries and confectionery, edible ices, sugar, honey, syrups, yeast, baking-powder, salt, mustard, vinegar, sauces (condiments), spices, ice, grains, agricultural, horticultural and forestry products, live animals, fresh fruits and vegetables, seeds, natural plants and flowers, foodstuffs for animals, malt, beers, mineral and aerated waters, non-alcoholic beverages, fruit beverages and fruit juices, preparations for making beverages, alcoholic beverages, packaging goods, goods for protection during transport, envelopes, gift boxes, gift vouchers, vouchers to be exchanged for goods or services, vouchers for the purchase of goods or services, money-off coupons, gift certificates, gift cards, promotional codes, promotional cards, loyalty cards, membership cards, tickets, debit and credit cards, payment cards, magnetic cards, **and, on the other hand, goods relating to the fields of** care, beauty, hairdressing, shaving, hygiene, hair removal, dietetics and health for human beings and animals, parapharmaceuticals, relaxation, sexuality, massage, perfumery and cosmetics, childcare, games and playthings, modelling, pyrotechnics, clothing and fashion accessories, textiles, dressmaking, ironing, haberdashery, leatherware, footwear, headgear, jewellery, horological instruments, optical goods, interior and exterior decoration, lighting, heating, drying, ventilating, air-conditioning, refrigerating, furniture, bedding, tableware (including cutlery and crockery), household linen, table linen, bed linen, bath towels and linen, gastronomy, foodstuffs, delicatessen goods, beverages (including alcoholic beverages), oenology, cookery (including kitchen utensils, containers and accessories, cooking apparatus and instruments), household furnishings and fittings (interior and exterior), cleaning, gardening, horticulture, forestry, seeds (grains), animals (including pets), DIY, tools, ironmongery, plumbing, locksmithing, home automation, security against theft and fire, weighing, measuring, photography, cinema, theatre, shows, entertainment, leisure, sporting and cultural activities, fishing, travel, satellite navigation, printed matter, the press and publishing, music, art, sound or image recording, sound or image transmission, sound or image reproduction, stationery, household electrical

appliances, audio-visuals, telecommunications, telephony (including mobile telephony), information technology, data processing equipment, electricity (namely, apparatus, and parts and fittings therefor, for conducting, switching, transforming, accumulating, regulating and controlling electricity), motor vehicles, apparatus for locomotion and transport (by land, air or water); **Grouping together (except transport) for others of goods, namely care, beauty and hygiene** *products for people and animals, perfumery and cosmetics, clothing and fashion accessories, textiles, haberdashery, leather goods, jewellery, clocks and watches, optical goods, furniture, luxury tableware items, household linen, garden equipment, DIY goods, tools, sports equipment and games, photographic apparatus, cinema apparatus, printing and publishing apparatus, musical instruments, stationery, household electrical goods, audiovisual goods, telecommunications apparatus, telephony apparatus (including mobile phones) and computer equipment, enabling customers to conveniently view and purchase those goods by any means, in particular on a trading website;* Employment agencies; Personnel recruitment; Clerical services; Accounting; Leasing of typewriters; Office machines and equipment rental; Rental of photocopying machines; Rental of vending machines; None of the aforesaid services in class 35 being in the field of finance.