

O/419/19

TRADE MARKS ACT 1994

IN THE MATTER OF REGISTRATION NO. UK00003175755

IN THE NAME OF NINA JOSHI

FOR THE FOLLOWING TRADE MARKS (SERIES OF 2):

Red Inside
RedInside

IN CLASSES 3, 9, 14, 16, 18, 21, 25, 28, 30, 32, 33 AND 41

AND

AN APPLICATION FOR A DECLARATION OF INVALIDITY

UNDER NO. 502029 BY LIWE ESPANOLA S.A.

BACKGROUND AND PLEADINGS

1. Nina Joshi (“the proprietor”) applied to register the series of two trade marks shown on the cover page of this decision (“the Contested Registration”) in the UK on 21 July 2016. It was registered on 23 December 2016 for following goods and services:

Class 3 Soaps, shampoos, perfumes, essential oils, cosmetics, hair lotions, depilatories, skin lotions, skin treatments, toiletries, nail varnish, Skincare products, namely, facial cleansers, facial exfoliants, facial toners, facial creams, facial lotions, facial moisturizers, facial emulsions, facial masks, facial scrubs, anti-aging creams and lotions, anti-wrinkle creams, lotions and skin conditioners; lip gloss; make-up; aromatic body care products, namely, body lotion, shower gel, non- medicated lip balm, soap, body polish, body and foot scrub; body and beauty care cosmetics; face and body creams; fragrances and perfumes; all the aforesaid containing colours other than red.

Class 9 Spectacles, Spectacles, spectacle frames, spectacle cases, sunglasses, sunglass frames, sunglass cases; parts and fittings for all the aforesaid goods.

Class 14 Precious metals, alloys, and goods in these or coated therewith, namely jewellery, watches and measuring instruments, clocks, watchstraps, buckles for watchstraps, medals, badges, tie pins; jewellery; watches and measuring instruments; clocks; bracelets; charms; cuff links; earrings; key rings; chains; scarf pins; brooches; pendants; decorations for shoes; trophies; alarm clocks; buttons and holders for all the aforesaid goods. Watchstraps, clocks, jewellery, medals, badges, buckles for watch straps, tie clips, tie pins.

Class 16 Printed matter; writing paper; periodicals; instructional material; ring binders; book ends; bookmarks; pen trays; calendars; writing pads; cards; blocks of paper; pens; pencils; folders; paperweights; pen and pencil holders; rulers; school requisites; giftwrap; erasers; desk sets;

bumper stickers; money clips; all of the aforesaid containing colours other than red.

Class 18 Leather and imitations of leather, and goods made of these materials, namely belts, traveling bags, luggage, bags; belts; travelling bags; luggage; satchels; rucksacks; beach bags; pocket wallets; purses; kit bags; umbrellas. Bags, handbags, purses, none of the aforesaid goods containing red linings inside; rucksacks, backpacks, knapsacks, satchels, portfolios, attache cases, wallets, briefcases, trunks, suitcases; holdalls, dufflebags, sports bags; garment carriers; umbrellas and parasols; none of the aforesaid goods containing red linings inside.

Class 21 Household or kitchen utensils; mugs; cups; glasses; water bottles; money boxes; napkin rings.

Class 25 Clothing, footwear, headgear. Clothing; shoes; hats and caps; T-shirts; shirts; vests; beach clothing; casual wear; pants; leather jackets; sweaters; sports shirts; tracksuits; kerchiefs; jackets; trousers; shorts; neckties; shawls; neckties; knitted jackets; suits; gloves; fitness clothing; hats; jackets; tracksuits; shawls; polo shirts; neckties; aprons; socks; sun visors, Aprons; t-shirts; caps; women's and girls' apparel and sportswear, namely, t-shirts, shirts, knit shirts, tank tops, sweat shirts, sweat pants, sweat jackets, yoga pants, yoga tops, lounge pants, loungewear, socks, shoes, sports bras, gym shorts; shapewear, namely, bodysuits, leggings, control briefs, corsets, girdles, thigh shapers, waist shapers; intimate apparel, namely, lingerie, camisoles, nightgowns, robes and bras; jeans; swimwear; women's clothing, namely, shirts, dresses, skirts, blouse, camisoles, pants, trousers.

Class 28 Games and playthings; gymnastic and sporting articles; soft toys; plush toys; puppets; dolls; toys filled with beans or similar fillings; board games; video games; portable computer games; toy vehicles; seasonal decorations.

Class 30 Coffee, tea, cocoa and artificial coffee; rice; tapioca and sago; flour and preparations made from cereals; bread, pastries and confectionery; edible ices; sugar, honey, treacle; yeast, baking-powder; salt; mustard; vinegar, sauces (condiments); spices; ice.

Class 32 Non-alcoholic beverages and beer.

Class 33 Alcoholic beverages.

Class 41 Education; providing of training; entertainment; sporting and cultural activities.

2. On 6 April 2018, Liwe Española S.A. (“the applicant”) applied to have the Contested Registration declared invalid under section 47 of the Trade Marks Act 1994 (“the Act”). The applicant originally sought to rely on sections 5(2)(b), 5(3) and 5(4)(a) of the Act. However, after failing to file any evidence or submissions during the evidence rounds, the applicant’s section 5(3) and 5(4)(a) grounds were struck out. The application for invalidation proceeds on the basis of section 5(2)(b) only and is directed only against the proprietor’s goods and services in classes 3, 9, 18, 28 and 41. For the purposes of this ground, the applicant relies on the following marks:

INSIDE

EUTM registration no. 14057137

(“the First Earlier Mark”)

Filing date 13 May 2015; registration date 5 November 2015

Relying on all goods for which the mark is registered (as set out in paragraph 13 below)



EUTM registration no. 13455894

("the Second Earlier Mark")

Filing date 13 November 2014; registration date 13 June 2015

Relying on all goods and services for which the mark is registered (as set out in paragraph **13** below)

3. The applicant claims that the Contested Registration is similar to its own marks and that the goods for which the First Earlier Mark is registered are similar or identical to the proprietor's goods in classes 3, 9 and 18 and that the goods and services for which the Second Earlier Mark is registered are similar or identical to the proprietor's goods and services in classes 28 and 41.

4. The proprietor filed a counterstatement denying the grounds of invalidity.

5. The applicant is represented by Murgitroyd & Company and the proprietor is unrepresented. Neither party filed evidence. No hearing was requested and only the proprietor filed written submissions in lieu. This decision is taken following a careful perusal of the papers.

PRELIMINARY ISSUE

6. I note that in its Statement of Grounds the applicant has made reference to its family of 'INSIDE' marks. However, the applicant now relies upon only 2 marks in these proceedings and has filed no evidence to demonstrate that it has a family of marks which are present on the market¹. I do not, therefore, consider that this line of argument assists the applicant.

DECISION

7. Section 5 of the Act has application in invalidation proceedings because of the provisions set out in section 47. The relevant legislation is set out below:

"47. [...]"

¹ *Il Ponte Finanziaria SpA v OHIM*, Case C-234/06

(2) The registration of a trade mark may be declared invalid on the ground-

(a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or

(b) ...

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

(2A) But the registration of a trade mark may not be declared invalid on the ground that there is an earlier trade mark unless –

(a) the registration procedure for the earlier trade mark was completed within the period of five years ending with the date of the application for the declaration,

(b) the registration procedure for the earlier trade mark was not completed before that date, or

(c) the use conditions are met.”

8. The proprietor requested proof of use of the applicant's marks. However, given the date of registration of the applicant's marks and the date of this application, proof of use does not apply as the marks completed their registration procedure less than five years before the date on which the invalidation application was made.

9. The invalidation is based on section 5(2)(b) of the Act, which reads as follows:

“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.”

10. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

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

(a) a registered trade mark, international trade mark (UK) or Community trade mark or international trade mark (EC) 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.”

11. Given the filing date of the applicant’s marks, they qualify as earlier trade marks under section 6 of the Act.

Section 5(2)(b) – case law

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

(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 greater 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 to mind the earlier mark, 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.

Comparison of goods and services

13. As noted above, the opposition is directed against the proprietor's goods and services in classes 3, 9, 18, 28 and 41 only. The competing goods and services are, therefore, as follows:

Applicant's goods and services	Proprietor's goods and services
<p>First Earlier Mark</p> <p><u>Class 3</u></p> <p>Soaps; Detergents; Bleaching preparations, cleaning preparations; Perfumery, toilet water, aftershave, cologne; Essential oils; Aromatherapy products, not for medical use; Deodorants and antiperspirants; Preparations for the care of the scalp and hair; Shampoos and conditioners; Hair dye; Cosmetic hair-styling preparations; Toothpaste, mouth washes, not for medical purposes; Non-medicated preparations for oral and dental care; Non-medicated toiletries; Shower bath preparations; Skin care preparations; Oils, creams and lotions for the skin; Preparations for use in shaving; Pre-shave and after-shave preparations;</p>	<p><u>Class 3</u></p> <p>Soaps, shampoos, perfumes, essential oils, cosmetics, hair lotions, depilatories, skin lotions, skin treatments, toiletries, nail varnish, Skincare products, namely, facial cleansers, facial exfoliants, facial toners, facial creams, facial lotions, facial moisturizers, facial emulsions, facial masks, facial scrubs, anti-aging creams and lotions, anti-wrinkle creams, lotions and skin conditioners; lip gloss; make-up; aromatic body care products, namely, body lotion, shower gel, non-medicated lip balm, soap, body polish, body and foot scrub; body and beauty care cosmetics; face and body creams; fragrances and perfumes; all the aforesaid containing colours other than red.</p>

Depilatories; Sun-tanning and sun protection preparations; Cosmetics; Make-up and make-up removing preparations; Lip care preparations; Talcum powder, for toilet use; Cotton wool, Tissues, Wipes and Cosmetic wipes, all the aforesaid being impregnated for sanitary and cosmetic purposes; Pre-moistened or impregnated cleansing pads, tissues or wipes.

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; Headphones; Compact discs, DVDs and other digital recording media; Mechanisms for coin-operated apparatus; cash registers, calculating machines; Fire-extinguishing apparatus; speakers for portable media players; Digital telecommunications apparatus; Opticians' goods; Microphone cables; USB cables; Spectacles [optics]; Chains

Class 9

Spectacles, Spectacles, spectacle frames, spectacle cases, sunglasses, sunglass frames, sunglass cases; parts and fittings for all the aforesaid goods.

Class 18

Leather and imitations of leather, and goods made of these materials, namely belts, traveling bags, luggage, bags; belts; travelling bags; luggage; satchels; rucksacks; beach bags; pocket wallets; purses; kit bags; umbrellas. Bags, handbags, purses, none of the aforesaid goods containing red linings inside; rucksacks, backpacks, knapsacks, satchels, portfolios, attache cases, wallets, briefcases, trunks, suitcases; holdalls, dufflebags, sports bags; garment carriers; umbrellas and parasols; none of the aforesaid goods containing red linings inside.

Class 28

Games and playthings; gymnastic and sporting articles; soft toys; plush toys; puppets; dolls; toys filled with beans or similar fillings; board games; video games; portable computer games; toy vehicles; seasonal decorations.

Class 41

<p>for glasses and sunglasses; Socks, electrically heated; Digital cameras; Webcams; Multifunctional cameras; Underwater photographic cameras; Disposable photographic cameras; Headphones for listening to music; Recorded CDs; Position sensors; Compact discs; Recording discs; Holders and cases for compact discs and digital video discs; Bags for mobile telephones; Sleeves for laptops; Covers of paper for telephone receivers; Polarizing spectacles; Children's eye glasses; Snowglasses; Sunglasses; Swim goggles; Sports glasses; Scuba goggles; Anti-glare glasses; Safety goggles; Flame-retardant gloves; Gloves for divers; books recorded on tape; Lenses for eyeglasses; Hands free kits for phones; Card reading equipment; Lenses for sunglasses; Respiratory masks, other than for artificial respiration; Digital photo frames; Portable flash memories; USB flash drives; palm held computers; Electronic publications, downloadable; Electronic publication, Namely, Magazines; Sprinkler systems for fire protection; Driers for laboratory instruments of glass; Viewfinders, photographic.</p>	<p>Education; providing of training; entertainment; sporting and cultural activities.</p>
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Class 18

Leather and imitation leather; Goods of leather, namely handbags, Casual bags, Portfolio bags, Shoulder belts, Backpacks, Carrying cases, Purses, Valises; Animal skins, hides, Hands bags, Casual bags, Backpacks, Trunks and travelling bags, Carry-on bags, Card wallets [leatherware], Pocket wallets, Satchels and other holders; Umbrellas, parasols, canes and walking sticks; Whips and saddlery; Beach bags; Bags for campers; Sport bags; Shopping bags; Handbags; Cases, of leather or leatherboard; Pouch baby carriers; Keycases; Slings for carrying infants; Valises; Suitcases; Attache cases; Backpacks; Moleskin [imitation of leather]; Purses; Briefbags; Garment bags for travel; Clothing for pets; Leather shoulder belts; Walking stick seats; Traveling trunks; Net bags for shopping; Wheeled shopping bags; Holdalls.

Second Earlier Mark

Class 28

Sporting articles and equipment; Toys, games, playthings and novelties; Fairground and playground apparatus; Festive decorations and artificial Christmas trees.

Class 41

Education, entertainment and sports; Publishing and reporting; Translation and interpretation; Education; Providing of training; Entertainment; Sporting and cultural activities, academies (education); Cultural activities; Sporting activities; Rental of sound and video-recording apparatus; Rental of radios and televisions; Rental of video cameras; Rental of sports grounds; Rental of stage scenery; Film and video rental; Rental of newspapers and periodicals; Holding of competitions via the internet; Conducting of educational conferences; conducting athletic events; Conducting teaching events; Holding of recreational events; Circuses; Health club services [health and fitness training]; Night clubs; Coaching [training]; Consultancy relating to education, training and further training, and relating to entertainment, provided by telephone call centres and telephone helplines; Consultancy relating to commercial training; Consultancy relating to training, further training and education; Consultancy relating to booking of tickets for sporting, scientific and cultural events, provided by telephone call centres and telephone helplines; Coordinating and holding of sporting and cultural events; Gymnastic instruction; Language training courses;

Correspondence courses; Vocational retraining; Dissemination of educational material; Distribution of motion picture films; Directing of radio and television programmes; Photo editing; Dubbing; Animal training; Publication of printed matter and texts other than publicity texts; Edition of television and radio programs; Education; Stage shows; Movie studios; Theatre productions; Movie showing; Providing sports facilities; Recreation facilities (Providing -); Providing of access to television, music and video entertainment shows via an interactive website; Providing of access to information, listings and news relating to television programming and entertainment on websites; Computer training; Training (Practical -) [demonstration]; Photography; Nursery schools; Organisation of dances and parties in discotheques; Organisation of automobile races; Organisation of award ceremonies and gala evenings for recreational purposes; Organization of sports competitions; Competitions (Organization of -) [education or entertainment]; Organisation of shows and concerts; Planning (Party -) [entertainment]; Operating of lotteries; Arranging of symposiums and workshops; Arranging and holding of conferences, conventions, congresses,

<p>lectures, exhibitions, day school courses for adults, workshops, concerts, seminars, colloquiums and symposiums, all the aforesaid for recreational or educational purposes; Arranging and conducting of colloquiums; Arranging and conducting of concerts; Amusement park services; Preparing, holding and organisation of conferences; Preparing, holding and organisation of congresses; Preparing, holding and organisation of seminars; Preparing, holding and organisation of symposiums; Library services; Production of television documentaries; Production of shows; Production of audio and video recordings; Film production, other than advertising films; Services for the production of radio programmes; publication of calendars; Publishing catalogues; Publication of annuals; Publication of newspapers on the Internet for customers; Publication of leaflets; Publication of periodicals, catalogues and prospectuses; Publication of books; Publishing of printed matter, Except publicity texts; Publication of newspapers; publishing of reviews; Publication of specialist magazines; Publication of electronic books and journals on-line; Online publication of non-downloadable guidebooks, travel maps, street</p>	
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directories and leisure guides for cities, for use by travellers; Online publication of multimedia material; Multimedia publication of printed matter, books, magazines, specialist magazines, periodicals, newsletters, informative guides, maps, graphics, photographs, videos, music and electronic publications; Multimedia publication of magazines, specialist magazines and periodicals; Photographic reporting; Performances (Presentation of live -); Orchestra services; Booking of tickets for recreational events; Theatre productions; Entertainer services; Library services; Casino facilities [gambling] (Providing -); Health and recreational club services; Language interpreter services; Providing karaoke services; Museum services; Providing on-line music, not downloadable; Providing on-line videos, not downloadable; Discotheque services; Discotheque services.

Class 43

Rental of furniture, linens and table settings; Animal boarding; Provision of food and drink; Temporary accommodation; Services for providing food and drink; Temporary accommodation; Rental of conference rooms; Rental of rooms for ceremonies,

<p>conferences, congresses, exhibitions, seminars and meetings; Rental of chairs, tables, table linen, glassware; Rental of tents; Hotel reservations; Room reservation services; Childcare for infants and preschool children, provided in nurseries; Restaurants, bars and catering; Bars, pubs; Snack-bars; Cafeterias; Cocktail bars; self serve coffee bars; Food and drink preparation; Provision of restaurant services; Providing of centres for organising fairs and exhibitions; Providing of facilities for holding receptions and social events on special occasions; Restaurant services; Self-service restaurants; Gourmet restaurants; Tourist restaurants; Restaurants and Fast food bars; Tea rooms; Serving of food and drink in internet cafes; Serving of food and drink in restaurants and bars; Serving of food and drink for restaurant customers; Serving of food and drink (waiting); Serving of tea, coffee, cocoa, aerated beverages or fruit juice beverages; Bar services; Specialist wine bars; Restaurants, bars and catering; Buffets for cocktail bars; Coffee shops, cafeterias and restaurants.</p>	
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14. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, Case C-39/97, the court stated at paragraph 23 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.”

15. Guidance on this issue has also come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

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

16. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court (“GC”) stated that:

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category,

designated by trade mark application (Case T-388/00 *Institut for Lernsysteme v OHIM – Educational Services* (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark.”

17. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that:

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

18. In *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another*, [2000] F.S.R. 267 (HC), Neuberger J. (as then was) stated that:

“I should add that I see no reason to give the word “cosmetics” and “toilet preparations”... anything other than their natural meaning, subject, of course, to the normal and necessary principle that the words must be construed by reference to their context.”

19. In *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. (as the then was) stated that:

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They

should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.”

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

21. In *Sanco SA v OHIM*, Case T-249/11, the GC 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.”

Class 3

22. “Soaps”, “essential oils”, “cosmetics” and “depilatories” appear in both the proprietor’s specification and the applicant’s specification and are self-evidently identical.

23. “Perfumes” in the proprietor’s specification and “perfumery” in the applicant’s specification are self-evidently identical.

24. “Shampoos” in the proprietor’s specification falls within the broader category of “Shampoos and conditioners” in the applicant’s specification. “Hair lotions” in the proprietor’s specification will fall within the broader category of “preparations for the care of the scalp and hair” in the applicant’s specification. “Skin lotions” and “skin treatments” in the proprietor’s specification fall within the broader category of “oils, creams and lotions for the skin” in the applicant’s specification. “Non-medicated toiletries” in the applicant’s specification falls within the broader category of “toiletries” in the proprietor’s specification. “Lip gloss” and “make-up” in the proprietor’s specification fall within the broader category of “make-up and make-up removing preparations” in the applicant’s specification. “Body and beauty care cosmetics” in the proprietor’s specification fall within the broader category of “cosmetics” in the applicant’s specification. “Face and body creams” in the proprietor’s specification fall within the broader category of “oils, creams and lotions for the skin” in the applicant’s specification. “Fragrances and perfumes” in the proprietor’s specification fall within the broader category of “perfumery” in the applicant’s specification. These goods can, therefore, be considered identical to the principle outlined in *Meric*.

25. The Cambridge English dictionary defines “cosmetics” as “substances put on the face or body that are intended to improve its appearance or quality²”. In my view, “nail varnish” in the proprietor’s specification falls within this broader term “cosmetics” in the applicant’s specification. Consequently, these goods can be considered identical on the principle outlined in *Meric*. If I am wrong in this finding, then the goods will overlap in users, uses and trade channels and will be highly similar.

² <https://dictionary.cambridge.org/dictionary/english/cosmetics>

26. “Skincare products, namely, facial cleansers, facial exfoliants, facial toners, facial creams, facial lotions, facial moisturizers, facial emulsions, facial masks, facial scrubs, anti-aging creams and lotions, anti-wrinkle creams, lotions and skin conditioners” in the proprietor’s specification is an itemised list of the skin care products for which the proprietor’s mark is registered. In my view, “Skincare products” is self-evidently identical to “skin care preparations” in the applicant’s specification. As all of the specific goods listed in the proprietor’s specification fall within the term “skincare products”, these will therefore also be identical to “skin care preparations” in the applicant’s specification. If I am wrong in this finding, then the goods will overlap in user, uses, trade channels and method of use and will be highly similar.

27. “Aromatic body care products, namely, body lotion, shower gel, non- medicated lip balm, soap, body polish, body and foot scrub” in the proprietor’s specification falls within the broader categories of “Aromatherapy products, not for medicated use” and “skin care preparations” in the applicant’s specification. These goods are, therefore, identical on the principle outlined in *Meric*.

Class 9

28. The term “Spectacles” appears twice in the proprietor’s specification. This term is self-evidently identical to “Spectacles [optics]” in the applicant’s specification.

29. “Sunglasses” appears in both the applicant’s specification and the proprietor’s specification and are self-evidently identical.

30. “Spectacle frames” and “spectacle cases” in the proprietor’s specification overlap in user, uses and trade channels with “spectacles [optics]” in the applicant’s specification. They are also complimentary goods. I consider these goods to be highly similar. The same points apply to “sunglasses frames” and “sunglasses cases” in the proprietor’s specification and “sunglasses” in the applicant’s specification. These goods are also highly similar.

31. “Parts and fittings for all the aforesaid goods” in the proprietor’s specification falls within the broader category of “Opticians’ goods” in the applicant’s specification. These

goods can, therefore, be considered identical on the principle outlined in *Meric*. If I am wrong in this finding, then “chains for glasses and sunglasses”, “lenses for eyeglasses” and “lenses for sunglasses” in the applicant’s specification will all fall within the broader category of “parts and fittings for all the aforesaid goods” in the proprietor’s specification. These goods will, therefore, be considered identical on the principle outlined in *Meric*.

Class 18

32. “Beach bags”, “pocket wallets”, “umbrellas”, “backpacks”, “attache cases”, “suitcases”, “holdalls” and “sports bags” appear identically in both the proprietor’s specification and the applicant’s specification.

33. In my view, “hands bags” in the applicant’s specification and “handbags [...] none of the aforesaid goods containing red linings inside” in the proprietor’s specification are self-evidently identical. The same applied to “purses, none of the aforesaid goods containing red linings inside” in the proprietor’s specification and “purses” in the applicant’s specification.

34. “Briefcases” in the proprietor’s specification is self-evidently identical to “briefbags” in the applicant’s specification.

35. “Garment carriers” in the proprietor’s specification is self-evidently identical to “garment bags for travel” in the applicant’s specification.

36. “Umbrellas” and “parasols” in the applicant’s specification are self-evidently identical to “umbrellas and parasols” in the proprietor’s specification.

37. “Suitcases” in the applicant’s specification fall within the broader category of “luggage” in the proprietor’s specification. “Travelling bags” and “trunks” in the proprietor’s specification will fall within the broader category of “trunks and travelling bags” in the applicant’s specification. “Kit bags” in the proprietor’s specification falls within the broader category of “sports bags” in the applicant’s specification. Many of the goods in the applicant’s specification (for example, “beach bags”) will fall within the

broader category of “bags [...] none of the aforesaid goods containing red linings inside” in the proprietor’s specification. “Satchels” appears twice in the proprietor’s specification. In my view, this term will fall within the broader category of “satchels and other holders” in the applicant’s specification. “Rucksacks” appears twice in the proprietor’s specification. In my view, this term and the term “knapsacks” will fall within the broader category of “casual bags” in the applicant’s specification. These goods can, therefore, be considered identical on the principle outlined in *Meric*.

38. “Goods of leather, namely [...] shoulder belts” in the applicant’s specification will fall within the broader category of “belts” in the proprietor’s specification. “Goods of leather, namely [...] purses” in the applicant’s specification will fall within the broader category of “purses” in the proprietor’s specification. “Goods of leather, namely [...] portfolios” in the applicant’s specification will fall within the broader category of “portfolios” in the proprietor’s specification. “Card wallets [leatherware]” and “Pocket wallets” in the applicant’s specification fall within the broader category of “wallets” in the proprietor’s specification. “Dufflebags” in the proprietor’s specification falls within the broader category of “casual bags” in the applicant’s specification. These goods can, therefore, be considered identical on the principle outlined in *Meric*.

39. “Leather and imitation leather” in the applicant’s specification falls within the broader category of “leather and imitation of leather, and goods made of these materials, namely belts, travelling bags, luggage, bags” in the proprietor’s specification. “Goods of leather, namely [...] casual bags, [...] shoulder belts” in the applicant’s specification will also fall within this term. “Leather and imitations of leather, and goods made of these materials, namely [...] travelling bags [...] luggage” in the proprietor’s specification will fall within the broader category of “trunks and travelling bags” in the applicant’s specification. These goods can, therefore, be considered identical on the principle outlined in *Meric*.

Class 28

40. “Games and playthings”, “soft toys”, “plush toys”, “puppets”, “dolls”, “toys filled with beans or similar fillings”, “board games”, “video games”, “portable computer games” and “toy vehicles” in the proprietor’s specification will fall within the broader category

of “Toys, games, playthings and novelties” in the applicant’s specification. “Festive decorations and artificial Christmas trees” in the applicant’s specification will fall within the broader category of “seasonal decorations” in the proprietor’s specification. These goods can, therefore, be considered identical on the principle outlined in *Meric*.

41. In my view “gymnastic and sporting articles” in the proprietor’s specification would fall within “sporting articles and equipment” in the applicant’s specification. Gymnastics is a sport and so articles relating to it would, more broadly, be considered sporting articles. I therefore consider these goods to be identical on the principle outlined in *Meric*. If I am wrong, then the goods will overlap in trade channels, users, uses and methods of use and will be highly similar.

Class 41

42. “Education”, “providing of training”, “entertainment” and “sporting and cultural activities” appear identically in both the applicant’s specification and the proprietor’s specification.

The average consumer and the nature of the purchasing act

43. 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 *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”.

44. I have no submissions from the proprietor on the average consumer or the purchasing process for the goods and services in issue. In its Statement of Grounds, the applicant states:

16. [...] In considering the relevant consumer, account should be taken of the lowest common denominator that could lead to confusion which is an impulsive buyer.”

45. It is not clear from this statement whether the applicant is suggesting that the goods and services in question are impulse buys for which a low degree of attention will be paid during the purchasing process or whether they are suggesting that individuals who are naturally inclined to make purchases on impulse should be taken into consideration when identifying the average consumer. In the latter case, the case law is clear that the average consumer is reasonably informed and circumspect and so individuals who are at the extremes (such as those who always pay little attention or those who scrutinise every purchase in detail) would not fall within the legal construct of the average consumer.

46. I consider that the average consumer for the goods and services will be a member of the general public, although I recognise that some of the services may also be purchased by business users. The cost and frequency of purchase of the goods will vary but are likely to be average and reasonably frequent. Nonetheless, a number of factors will still be taken into account by the average consumer when purchasing the goods such as fragrance, aesthetic appearance and suitability for certain skin types or age ranges. These are not goods that would be considered impulse buys. I therefore consider that the level of attention paid by the average consumer when purchasing the goods will be medium. The cost and frequency of purchase of the services is also likely to vary. For example, some entertainment costs are likely to be relatively low (such as the cost of a cinema ticket) whereas some education services will be expensive (such as the cost of University tuition fees). The frequency of purchase of the services will also vary but is likely to be fairly infrequent. Overall, I consider that the level of attention paid during the purchasing process for the services in issue will vary from medium to above medium.

47. The goods are likely to be purchased from the shelves of a retail outlet or their online or catalogue equivalent. The services are likely to be purchased through the perusal of the premises' frontage, on websites and in advertisements (such as flyers, posters or online adverts). The purchasing process for the goods and services is, therefore, likely to be dominated by visual considerations. However, given that advice may be sought from sales assistants and word-of-mouth recommendations may also play a part, I do not discount that there will be an aural component to the selection of the goods and services.


Comparison of trade marks

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

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

50. The respective trade marks are shown below:

Applicant's marks	Contested Registration
<p style="text-align: center;">INSIDE (First Earlier Mark)</p> <p style="text-align: center;">and</p> <div style="text-align: center;">  </div> <p style="text-align: center;">(Second Earlier Mark)</p>	<p style="text-align: center;">Red Inside</p> <p style="text-align: center;">and</p> <p style="text-align: center;">RedInside (series of 2)</p>

51. I have lengthy submissions from both parties on the similarity of the marks and, whilst I do not propose to reproduce those here, I have taken them into consideration in reaching my decision.

Overall Impression

Contested Registration

52. The Contested Registration consists of the words Red Inside/RedInside. In the second mark in the series, the words are conjoined. However, in my view, this does not alter the distinctive character of the marks and my comparison will apply to both equally. In my view, the Contested Registration may be read in two ways. Firstly, for some consumers, it will be read as two independent words. Secondly, for some consumers, it will be viewed as a unit. Either way, the overall impression of the marks lies in the combination of these two elements, with neither word dominating.

The First Earlier Mark

53. The First Earlier Mark consists of the ordinary dictionary word INSIDE. There are no other elements to contribute to the overall impression, which lies in the word itself.

The Second Earlier Mark

54. The Second Earlier Mark consists of the ordinary dictionary word INSIDE, which is presented in a stylised font with a circular device around the letters IN. The word itself plays the greater role in the overall impression of the mark, with the stylisation and device playing a lesser role.

Visual Comparison

The First Earlier Mark and the Contested Registration

55. Visually, the marks coincide in the presence of the word INSIDE in both marks. Registration of a word only mark covers use in any standard typeface and so differences created by the use of upper, lower or title case will be irrelevant. The point of difference between the marks is the presence of the word RED in the Contested Registration which has no counterpart in the First Earlier Mark. I consider the marks to be visually similar to at least a medium degree.

The Second Earlier Mark and the Contested Registration

56. Visually, the dominant element of the Second Earlier Mark is the word INSIDE, which also appears in the Contested Registration. However, the points of visual difference between the marks are the presence of the circle device and stylisation in the Second Earlier Mark which has no counterpart in the Contested Registration and the word RED in the Contested Registration which has no counterpart in the Second Earlier Mark. I consider the marks to be visually similar to a lower than medium degree.

Aural Comparison

The First Earlier Mark and the Contested Registration

57. Aurally, the word INSIDE in both marks will be given its ordinary English pronunciation. The word RED in the Contested Registration will also be given its

ordinary English pronunciation, but has no counterpart in the First Earlier Mark. I consider the marks to be aurally similar to at least a medium degree.

The Second Earlier Mark and the Contested Registration

58. As the device in the Second Earlier Mark cannot be articulated aurally, the same points apply to these marks. I, therefore, consider there to be at least a medium degree of aural similarity between the marks.

Conceptual Comparison

59. The proprietor argues that the words RED INSIDE will be understood to be a reference to the fact that 'we are all red inside'. The proprietor states that this carries a message about equality. There is no evidence to suggest that this meaning would be understood by consumers. Of those consumers who view the proprietor's mark as a unit, there may be some consumers who recognise this meaning. However, it is more likely that consumers will simply recognise the more general meaning (being a reference to something which is the colour red inside). Therefore, even for those consumers who will perceive the words RedInside/Red Inside as a unit, the majority will see the word 'Red' as a descriptor and on a conceptual level it will not alter the significance of the word 'Inside'. For those consumers, the marks will be conceptually similar to a medium degree. For those consumers who do not see the proprietor's mark as a unit, the word INSIDE will have the same conceptual meaning in both marks. The word RED will be given its ordinary dictionary meaning. The stylisation and device in the Second Earlier Mark does not prevent the word element of the mark from being perceived as "INSIDE" and does not add anything to its conceptual meaning. For those consumers, I consider that all of the marks are conceptually similar to at least a medium degree.

Distinctive character of the earlier marks

60. 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-2779, 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 promotion of 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).”

61. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

62. In its counterstatement, the proprietor states:

“16. [...] It is agreed the Applicant’s marks are highly distinctive, and in fact, highly unlikely to be confused for that very reason.”

63. In its Statement of Grounds, the applicant states:

“7. The Applicant’s Mark have an increased level of inherent distinctiveness because they do not allude to the Applicant’s Goods and Services. The

Applicant's Marks are distinctive of the Applicant alone and no one other in the fashion and clothing fields. Some of the Applicant's Marks have been continuously used in Spain since at least 2004 in respect of some of the Applicant's Goods and Services and have acquired additional distinctiveness as a result of the long-standing use. The Applicant's Marks are all therefore entitled to a broader ambit of protection because of their inherent and their acquired distinctiveness, and the enhanced reputation and fame which the marks enjoy."

64. However, the applicant has filed no evidence to support its claim for enhanced distinctiveness. In any event, the relevant market for assessing enhanced distinctiveness is the UK and, therefore, use of the earlier marks in Spain would not be sufficient to demonstrate enhanced distinctiveness.

65. I must make an assessment of the inherent distinctiveness of the earlier marks as a whole. The word INSIDE is an ordinary dictionary word. I do not consider it to be allusive or descriptive of the goods for which the First Earlier Mark or Second Earlier Mark are registered. The word INSIDE in the Second Earlier Mark is presented in a stylised font with a circle device drawn around the letters IN. However, it is the distinctiveness of the common element that is key for the purposes of my assessment³. The additional stylisation in the Second Earlier Mark does not have a counterpart in the Contested Registration and, therefore, any distinctiveness created by this will not increase the likelihood of confusion. Therefore, I consider that both marks will be inherently distinctive to a medium degree.

Likelihood of confusion

66. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. There is no scientific formula to apply in

³ *Kurt Geiger v A-List Corporate Limited*, BL O-075-13

determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the applicant's trade marks, the average consumer of the goods and services and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

67. I have found the First Earlier Mark and the Contested Registration to be visually, aurally and conceptually similar to at least a medium degree. I have found the Second Earlier Mark and the Contested Registration to be visually and conceptually similar to a medium degree and aurally similar to at least a medium degree. I have found the earlier marks to have a medium degree of inherent distinctive character. I have identified the average consumer to be a member of the general public or a business user who will select the goods and services primarily by visual means (although I do not discount an aural component). I have concluded that the degree of attention paid during the purchasing process will vary from medium to higher than medium. I have found the parties goods and services to be either identical or highly similar.

68. Whilst keeping in mind the conceptual, visual and aural similarities of the marks, I do not consider that the consumer will fail to recognise the differences between them (that is, the presence of the word RED in the proprietor's marks and the stylisation and device in the Second Earlier Mark). This is particularly the case given that at least a medium degree of attention will be paid during the purchasing process. I do not consider that there will be a likelihood of direct confusion.

69. It now falls to me to consider the likelihood of indirect confusion. Indirect confusion was described in the following terms by Iain Purvis Q.C., sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.”

70. In my view, a significant proportion of average consumers will view the Contested Registration as two independent words. For these consumers, the word INSIDE will have distinctive significance which is independent of the whole⁴. Bearing in mind my conclusions summarised above, I consider that the presence of the word INSIDE in both marks will create an expectation on the part of the average consumer that the goods and services originate from the same or economically linked undertakings. The addition of the word RED in the Contested Marks will be seen as an alternative mark being used by the same undertaking (such as part of a different range or brand extension). This is particularly the case, bearing in mind the degree of similarity between the goods and services. In my view, there is, therefore, a likelihood of indirect confusion.

71. In *Comic Enterprises Ltd v Twentieth Century Fox Film Corporation* [2016] EWCA Civ 41, Kitchin L.J. stated that:

“if, having regard to the perceptions and expectations of the average consumer, the court concludes that a significant proportion of the relevant public is likely to be confused such as to warrant the intervention of the court then it may properly find infringement.”

⁴ *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch)

72. This was, of course, in the context of infringement. However, the same approach is appropriate under section 5(2)⁵. It is not, therefore, necessary for me to find that the majority of consumers will be confused. The question is where there is a likelihood of confusion amongst a significant proportion of the public displaying the characteristics attributed to an average consumer. The fact that there will be a likelihood of indirect confusion for a significant proportion of the public is, therefore, sufficient for a finding that there is a likelihood of confusion overall.

73. In any event, as noted above, whilst there may be some consumers who recognise the reference to equality identified by the proprietor, the majority of consumers who view Red Inside/RedInside as a unit, will simply see the word RED as a descriptor which qualifies the word INSIDE. I therefore consider that they will simply view the marks as alternative marks used by the same or economically linked undertakings and there will, therefore, be a likelihood of indirect confusion for these consumers.

CONCLUSION

74. The application for invalidation succeeds in its entirety and the registration is hereby declared invalid in respect of all goods and services for which it is registered in classes 3, 9, 18, 28 and 41. Under section 47(6) of the Act, the registration is deemed never to have been made in respect of these goods and services.

75. The Contested Registration will remain registered for all of those goods in classes 14, 16, 21, 25, 30, 32 and 33 against which the application for invalidity was not directed.

COSTS

76. The applicant has been successful and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 2/2016. I have reduced the amount payable to the applicant in respect of the official fee to reflect the fact that two of the grounds originally relied upon were struck out due to the applicant's

⁵ *Soulcycle Inc v Matalan Ltd* [2017] EWHC 496 (Ch), Mann J.

failure to file evidence and/or submissions during the evidence rounds. In the circumstances, I award the applicant the sum of £600 as a contribution towards the costs of proceedings. The sum is calculated as follows:

Preparing a statement and considering the proprietor's statement	£200
Preparing written submissions in lieu	£300
Official fee	£100
Total	£600

77. I therefore order Nina Joshi to pay Liwe Española S.A. the sum of £600. This sum should be paid within 14 days of the expiry of the appeal period or, if there is an appeal, within 14 days of the conclusion of the appeal proceedings.

Dated 19 July 2019

S WILSON
For the Registrar